

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1948 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991-92

163

FIGURE 23

ESTIMATES OF SEABIRD SPECIES VALUE/PRICE FROM VARIOUS SOURCES

(In dollars per one specimen)

SPECIES	SOURCE								
	Seattle Aquarium	Sea World	Los Angeles Zoo	Mystic Marine Life Aquarium	New York Zoological Park	Busch Gardens	International Zoological Distributors	International Animal Exchange	Boston Zoological Gardens
Common Loon		200	300		1500		200	800	250
Arctic Loon		200	500		1500		500	800	250
Red-throated Loon		200	500		1500		500	800	250
Loon spp.		200			1500			800	250
Western Grebe	75	200	150		1000		25	800	250
Red-necked Grebe	75	200	300		1000		25	800	250
Horned Grebe	75	200	300		1000		25	800	250
Eared Grebe	75	200	250		1000			800	250
Grebe spp.					1000			800	250
Northern Fulmar					500			800	250
Sooty Shearwater		100	200		500			800	250
Brandt's Cormorant			75	200		500			800
Pelagic Cormorant		75	200		500			800	150
Cormorant spp.		75	200		500			800	
Northern Pintail	20			50	200	35	15	800	50
Ruddy Duck	150	75		90	300	75	90	800	100
Greater Scaup		37	150		100	50	15	800	50
Scaup spp.			150		100			800	
Black Scoter					500		150	800	250
Surf Scoter	228	1000	700		500		150	800	250
White-winged Scoter	228	1000	100		500		150	350	800
Scoter spp.					500			800	
American Coot			30		300		10	800	50
Red Phalarope		50	100		150			800	150
Western Gull			50		50			800	50
Common Murre	228	100	200		500			800	250
Pigeon Guillemot	228	100	250		500			800	250
Cassin's Auklet	228	100	250		500			800	250
Marbled Murrelet	228	100	250		500			800	250
Rhinoceros Auklet	228	100	200		500			250	800
Ancient Murrelet									
Auklet spp.		100	200		500			800	
Red-tailed Hawk	50				500		150	800	100

Source: Sterling Hobe Corporation 1985

ACE 447676

However, most of the species in this list are not and probably cannot be bred in captivity (Briggs, pers. comm.). Therefore, true replacement from captive breeding is probably impossible. It is absurd to value them at 0 since they cannot be replaced. Therefore, this section presents some calculations on the assumption that they could be redistributed or replaced.

225

Figure 24 presents a range of calculations, multiplying the number of dead birds times the second lowest and the second highest replacement costs given in Figure 23. The second lowest and highest costs were selected in order to eliminate extreme values. Using this approach, the total replacement costs for the birds estimated to have been killed in the Puerto Rican incident amount from \$574,692 to \$1,528,050.

226

An alternative approach to estimating replacement costs is to estimate the cost of creating new habitat or enhancing existing habitat to support enough nesting pairs of each species to replenish the population. Again, to represent true replacement costs, this should be new or enhanced habitat, not just the cost of acquiring already existing habitat. Research on estimating replacement costs based on this alternative approach is currently being conducted and will be concluded within the next several months. Upon completion of this research, the estimates of habitat replacement or enhancement will be included in a supplement to this report.

227

If replacement of the birds were attempted, it would take several years to accomplish. In the interim, there would be a loss of use which would have to be included to derive the total cost of a replacement strategy. Most of the birds destroyed in the Puerto Rican incident require three to twelve years to mature. Assuming no natural regeneration and that the replacement effort began immediately after the spill and all the replacement birds were released three years later, there would be three years lost use in addition to the

FIGURE 24

REPLACEMENT COST FOR MARINE BIRDS

SPECIES	TOTAL DEAD BIRDS *	LOW ESTIMATE		HIGH ESTIMATE	
		Cost/Bird	Total Cost	Cost/Bird	Total Cost
Common Loon	19	200	3,800	800	15,200
Arctic Loon	178	250	44,000	800	140,800
Red-throated Loon	6	250	1,500	800	4,800
Loon spp.	-	-	-	-	-
Western Grebe	109	75	8,175	800	87,200
Red-necked Grebe	2	75	150	800	1,600
Horned Grebe	7	75	525	800	5,600
Eared Grebe	25	200	5,000	800	20,000
Grebe spp.	1	75	75	800	800
Northern Fulmar	-	500	-	500	-
Sooty Shearwater	3	200	600	500	1,500
Brandt's Cormorant	2	200	400	500	1,000
Pelagic Cormorant	3	150	450	500	1,500
Cormorant spp.	2	150	300	500	1,000
Northern Pintail	1	20	20	200	200
Ruddy Duck	5	75	375	300	1,500
Greater Scaup	2	37	74	150	300
Scaup spp.	-	-	-	-	-
Black Scoter	-	250	-	500	-
Surf Scoter	25	228	5,700	800	20,000
White-winged Scoter	10	228	2,280	800	8,000
Scoter spp.	-	-	-	-	-
American Coot	13	30	390	300	3,900
Red Phalarope	10	100	1,000	150	1,500
Western Gull	33	50	1,650	50	1,650
Common Murre	1856	200	371,200	500	928,000
Pigeon Guillemot	2	228	456	500	1,000
Cassin's Auklet	548	228	124,944	500	274,000
Marbled Murrelet	1	228	228	500	500
Rhinoceros Auklet	4	200	800	500	2,000
Ancient Murrelet	1	200	200	500	500
Alcid spp.	7	200	1,400	500	3,500
Red-tailed Hawk	1	100	100	500	500
TOTALS	2874		\$575,792		1,528,050

* November 20, 1984 to May 30, 1985

Federal District Court
Federal Building
Anchorage, Ak. 99501

From: Brent D. Cole
551 Kimberly
Wasilla, Ak. 99687

4/10/91

RE: Settlement of the Exxon Valdez Oil Spill.

I would like to protest the fact that pertinent information was not made public in time to allow response. I hope this letter will provide a voice for many who would have responded if more time had been allowed.

There seems to be an attitude that settlement money be allowed to be spent as the State and Federal Government see fit. I submit there is a responsibility to insure that such funds shall be spent for the compensation of victims and restoration of the environment.

No amount of money can restore what has been taken from Alaskans and all U.S. citizens. It will be many years before the effects are known, and there will be many hidden costs. The market for our fish has suffered, as well as much of Alaska's best fishing waters destroyed. What is the loss of subsistence, and medical problems which will arise because of the contamination worth? I have lost about \$60,000, but will never be compensated because I can not substantiate the loss. The court is well aware of the difficulty a cancer patient will have proving their condition resulted from the spill.

I believe that the amount of money which is being offered is not enough to compensate the losses incurred, and it is insufficient to release Exxon from liability for all future damages! Furthermore, Exxon's record of numerous large oil spills throughout the world, before and after the Valdez, is evidence that there has not been enough deterrence to cause Exxon to act responsibly toward the environment.

- 1 -

APR 11 1991

U.S. DISTRICT COURT

ACE 447679

(5)

I have heard it suggested that Exxon deliberately created the Valdez spill, and I can not dismiss this as a possibility. It was notable that large price increases were seen at the pump nation wide within a couple of days of the Valdez grounding. The increases were enough to account for several billion dollars in increased profits. This might have been motive enough to deliberately create the spill!

I have worked for the oil companies at Prudhoe Bay, and for oil-field service companies for over 8 years. In that time I have come to understand the thinking and lack of ethics by which the Oil Companies operate. A prime example is the under-reporting of oil flowing through the pipeline. I asked several of Arco's field production supervisors how much oil was flowing through the pipeline while working at Prudhoe in 1987 and 1988. Every one of them told me that it was well in excess of 2 million barrels a day. 1.7 million barrels a day was the amount reported according to information submitted to the State of Alaska for tax purposes. Another favorite practice is to shuffle many millions of gallons of gasoline and crude oil to other oil companies immediately before taking inventory. Of course there is nothing in writing anywhere.

Before the Valdez grounding it was commonly believed among the field hands that in the event of a large spill in Alaskan waters, the policy would be to "wait for it to flush out to sea". That is exactly the policy that was followed! There was never a serious attempt to contain or pick up the oil, it was just a big show. Since that time pertinent information has been withheld from the public in an effort to make things look better than they are and reduce the settlement.

I believe it is contrary to the public interest to allow the proposed settlement to be ratified.

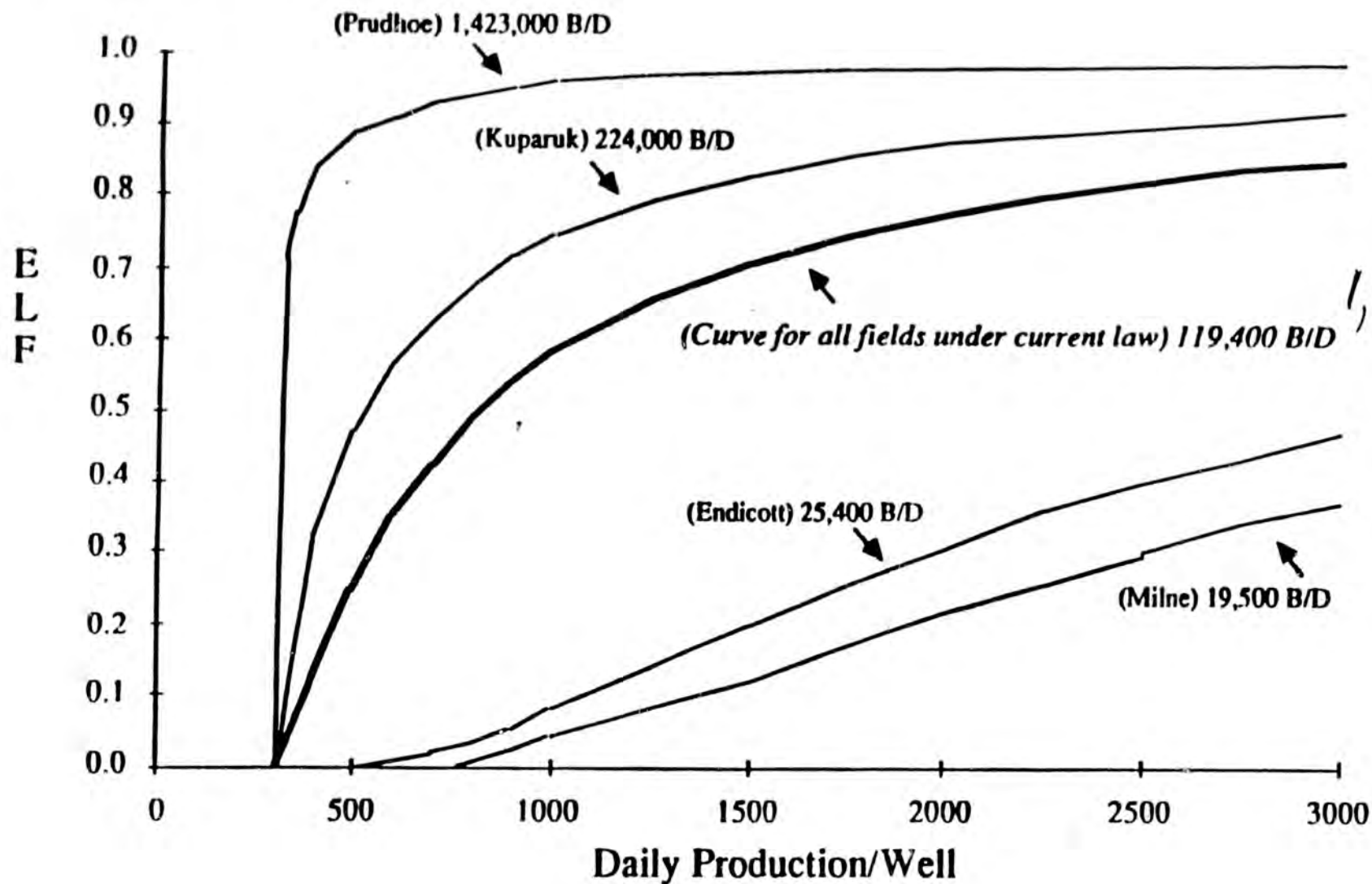
Sincerely,

Brant D. Cole

April 21, 1987
Office of The Governor

Alternate ELF

Constant At 55,000,000



1,423,000
224,000
~~119,400~~
25,400
19,500
1,691,900

ACE 447681

TECHNICAL NOTE ON ARCO'S KUPARUK EXAMPLE

Tax Effects of Drilling an Additional Well Under Current Law

Mr. James Weeks, Kuparuk Unit Manager for ARCO, provided testimony to the House Finance Committee on March 27, 1987. Examples of severance tax effects (see following page) accompanied his testimony. The examples compare the severance tax effects of adding one additional well in the Kuparuk field under the current ELF and under the proposed ELF (CSHB 154 fin.). The examples show that the addition of one well producing just under 300 barrels per day would increase output from 90,168,000 barrels of oil per year (BOPY) to 90,277,000 BOPY. At the \$9.00 per barrel price assumed in ARCO's example, annual gross revenue to the owners increases by \$981,000.

$$(90,277,000 \text{ BOPY} - 90,168,000 \text{ BOPY}) * (\$9/\text{barrel}) =$$

$$(109,000 \text{ BOPY}) * (\$9/\text{barrel}) = \$981,000$$

The first of ARCO's two examples shows how under current law the owners would collect an annual severance tax *rebate* of \$37,846 on this additional revenue. The effective severance tax rate on the new production is thus -3.9 percent. The effect is analagous to a personal income tax where the effective tax rates become lower as increasing income moves the taxpayer into a higher bracket.

The second ARCO example illustrates how this will be changed under the proposed law. Instead of giving the owners a \$37,846 windfall, the proposed law will collect \$58,611 (6.0 percent) of the incremental \$981,000 for the state in severance tax. The table below summarizes the effects under the current and proposed severance tax laws, as shown in the ARCO examples.

**TAX EFFECTS OF DRILLING ONE ADDITIONAL WELL
(ARCO Kuparuk Example)**

	Change In Annual Gross Revenue	Change In Annual Severance Tax	Tax Rate On Incremental Production	Average Tax Rate Before Drilling	Average Tax Rate After Drilling	Percent Change In Average Tax Rate Due To Drilling
Current Law	\$981,000	(\$37,846)	-3.9%	7.820%	7.806%	-0.180%
Proposed Law	\$981,000	\$58,611	6.0%	10.944%	10.938%	-0.055%

Jack Kimm

April 10th 1991

P. O. BOX 7
ANCHORAGE, ALASKA 99510
USA

The Hon. Russel Holland
Hearing Exxon Valdez spill-case
Federal Court
Anchorage, Alaska

HAND CARRY

APR 11 1991

U. S. DISTRICT COURT

Your honor,

Thank you for your labor over this matter.

The day the spill happened I was in Japan trying to drum up bookings for summer tourist season. When the big headlines hit the street, there were droves and droves of cancellations: "Alaska is too dirty now" they seem to think.

An old gent in his 80s told me, "I am so sorry for you." It is like this, he said.

"There was a pretty daughter of 17 in the old days. The family was poor. So to eat, we had to let her go work in a bar as a drink~~ing~~ - serving waitress. She brought in money. So we could live, everyone had enough to eat. Then one day a drunk came in and propositioned her. She politely refused. She was an unkissed virgin, the old timer said. The drunk whipped a knife and brutally scarred her pretty face. Scarred for life."

About the same thing happened to your unkissed, unmolested innocence, didn't it? he said.

XXXXX

Exxon is a grown up. An adult corporate citizen. Like all adults in this country, they must make restitution fully where they cannot bring it back "as was".

Lax control of personnel with drinking problems! What would have happened if a Jumbo pilot so drunk crashed with 400 people? But this damage is much worse. Damage in many places permanent.

ACE 447683

(59)

Such a thing as this cannot be over-looked, or condoned.
One may run a business, make money, etc but one may never
hurt your country or fellow citizens in the process.

This is a horrible crime, this neglect, this callousness.
Alaska - America's God's country - scarred by their neglect,
their irresponsibility.

Their responsible officials should be checked for their
life-long citizenship education.

Thank you, Judge Holland

A handwritten signature in dark ink, appearing to read 'Jack Kimm', with a long horizontal line extending to the right.

Jack Kimm
A long timer

ACE 447684

FORTIER & MIKKO
A PROFESSIONAL CORPORATION

Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 804
ANCHORAGE, ALASKA 99503
April 11, 1991

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

The Clerk of Court
U.S. District Court
Federal Building
U.S. Court House
222 W. 7th Avenue #4, Rm. 261
Anchorage, AK 99513-7564

Hand Delivered

Dear Judge Holland:

I am writing this letter in a personal capacity, and not as a lawyer for any particular group. However, my law firm is primarily engaged in Alaska Native Law, particularly the representation of Village Corporations.

I have represented Chenega Corporation and Port Graham Corporation for over seven years. In my representation, I have also become very close, personally, to each of the Communities. My personal relationship with each of the Communities is a deeply enriching and rewarding experience for me; I have learned more from those relationships than from any other single experience of my life.

I was in Chenega on March 31, 1989, as the battle for Saw Mill Bay began. That battle had to do with saving a hatchery, not with protecting a peoples' way of life. For the past two years, the images of my friends at Chenega Bay struggling with the impact of that trauma continues to haunt me. The air was thick with oil fumes, the Island upon which Chenega Bay is located was surrounded by oil, helicopters and airplanes were continuously taking off and landing, Crab Bay was filled with vessels from Cordova and Valdez, and my friends were reduced to obtaining their food from an Exxon boat docked at the Chenega Bay dock.

ACE 447685

APR 11 1991

U.S.D. DIST. CT.

60

When I returned from Chenega Bay, I was shaken and ill, realizing that I had witnessed the complete destruction of a way of life, which destruction occurred overnight. Several years later, one of my dear friends, an elder from the Village, Paul Kompkoff Sr., appeared on national television, his image video taped at Sleepy Bay, once one the most beautiful areas in Prince William Sound. He said that Exxon was calling him a liar but he had lived in the area all of his life (some seventy years) and he knew what there was before the oil spill; there were otters and seals and the lands and seas were rich. Now there was nothing. Exxon called him a liar because, according to Exxon, the Sound was restored. A few days ago, a damages assessment released by the Federal government established that Paul was right; the sea birds were virtually wiped out of his homelands; the entire otter population had been destroyed in and about traditional Chenega lands and there are no seals.

I traveled to Port Graham as the oil was hitting the beaches surrounding their lands in April 1989. My friend, Mary Malchoff, served me bidarkis, a favorite food. I was eating as many as I could, because in Anchorage you can't get bidarkis. One of Mary's children told me that I could be eating the last of the bidarkis in Port Graham for a long time, because the oil spill would inundate where mollusks lived, the seacoast. I haven't eaten a bidarkis since. Port Graham lands are considered the most highly toxic, the entire mollusk population the most deadly to eat in the entire spill area, now.

I have learned that subsistence is not merely food gathering; it is sharing, love, and culture all wrapped into an ability to survive handed down for centuries. In both Chenega and Port Graham, subsistence is not possible. In 1989, Villages from Southeast Alaska to Tyanelc shared salmon with Port Graham and Chenega. That was a sharing of food resources. Subsistence is a way of life, sharing within the Village. And that is impossible today.

I witnessed the victimization of my friends. Exxon brags that the settlement, including the criminal sentencing, is insignificant, and is probably tax deductible, and Exxon apparently needs lots of tax deductions. My friends don't need any tax deductions; they don't have any income, anyway. However, their way of life has been destroyed by Exxon and they, as victims of extreme economic violence, receive no compensation.

The victim of a robbery may apply through the violent crimes compensation fund; my friends applications to TAPPA, as you ordered, are rendered meaningless by the claims of Exxon against that very same fund.

Exxon ought to know that it is being punished, in order to deter such criminal conduct by others, and to isolate Exxon as a danger. Society as a whole, and the microsocieties at Chenega Bay and Port Graham in particular, are entitled to retribution, which the court should exact from Exxon. Exxon Company U.S.A. and Exxon Shipping are responsible for the largest oil spill in North American history, in an area of unsurpassed beauty. Chenega, the worst hit lands and community in the spill area, is the oldest continually inhabited settlement in all of Prince William Sound. The way of life has withstood many centuries, including the largest recorded earthquake in North American history but it cannot survive the destruction of the environment. And that is what happened. Port Graham, similarly, continues to struggle.

Under the sentencing guidelines, the Court is to consider the impact on the victims. In this case, the U.S. Probation office did not prepare a sentencing report. Exxon is riding on its tax deductible cleanup effort which has not restored and cannot restore the resources or the lifestyles of my friends in Chenega Bay or Port Graham. Not in our lifetime or perhaps in their childrens lifetimes.

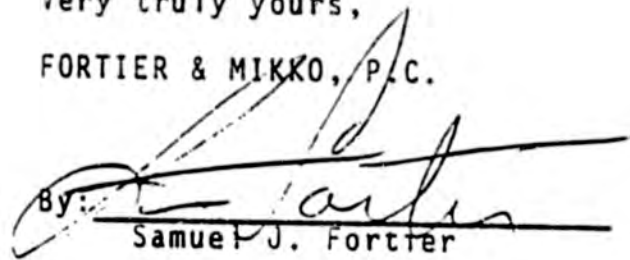
The plea agreement is not fair, nor just. It does not isolate, condemn, or rehabilitate Exxon. No restitution is required to be paid to the victims. The plea agreement does not conform with the sentencing guidelines, nor with the pattern of illegality in which Exxon and Exxon Shipping engage. The simple fact is this tragedy could and should have been avoided, but for the criminal acts of the defendants.

This is not a simple misdemeanor case. It is a felony case and should be treated as such.

The Clerk of Court
Judge Holland
Page 4
April 11, 1991

Very truly yours,

FORTIER & MIKKO, P.C.

By: 

Samuel J. Fortier

SJF:cbs (4/11.1:cc3)

ACE 447688

PORT Graham CORPORATION

VIA POST OFFICE ROUTER - PORT GRAHAM - ALASKA 99603



April 11, 1991

Judge Holland
222 W. 7TH Avenue #54
Anchorage, Alaska 99501

Dear Judge Holland:

In reference to the Exxon Criminal settlement we make the following comments:

We feel that the settlement of one hundred Million dollars is too lenient on Exxon because of the damage done to the state and federal land. The natural resource damage to the animals such as the seals, seaotters and fish according to the Federal governments study is beyond what we expected it to be. Additionally there is no statement on how the state is to use its portion, and we strongly disagree with the Federal Government agreement to put its portion in to the violent crimes compensation fund. This money was for crimes in the state of Alaska and the money should be spent on the citys, and villages that were traumatized emotionally and physically by the oil spill and the clean up efforts.

In closing it is wrong in our minds that smaller companys that spill oil are fined the full amounts under the law and a large company such as Exxon can negotiate to lower its liability under the law. When this ability is not available to the smaller companys that are fined similar circumstances.

Sincerely,

Patrick Norman, President
Port Graham Corporation

PN:cm

ACE 447689

APR 11 1991

U.S. MAIL



April 11, 1991

Judge Holland,

Though it had been my intention on making a list of all the problems I see in the proposed settlement with Exxon Shipping Company (ESC), I realize that with only hours left till the deadline, I've cut myself short on time. However, I would like to ask that you reexamine the question concerning Exxon's double standards

Two years ago, Exxon Shipping Company (ESC), while in a pre-settlement conference hearing, offered to pay me a sum of money in exchange for my dropping a suit against them. In accepting this offer, it was my understanding that the payment was in lieu of all the stress that I had been put through. It was for this reason that I was shocked some six months later upon receiving a letter, along with a tax statement from them, claiming that they had reported this payment to the Internal Revenue Service as taxable wages. It turns out that many fishermen that I've talked to have also felt duped by (ESC)'s deceptive practices.

The question I would like to put forth is why is it ok for Exxon to expect others to pay taxes on their misfortunes of pain and suffering, while they themselves turn things around one hundred and eighty degrees and expect the American people to pick up nearly half of the proposed billion dollar settlement, through (ESC)'s write-offs. Through examining the just released oil spill studies, it is obvious that (ESC) is still up to their neck in practicing intentional subterfuge. That is, of down playing all that has happened throughout Alaska. Has our nation elapsed to the standard of

"might is right" and since (ESC) is so powerful, they can be permitted to twist things any which way that suits them?

May I suggest that if you feel compelled to accept the billion dollar settlement, at least refuse to give Exxon any more tax breaks in regards to their contemptible behavior. In closing, may I just say that I hope those hip boots have helped you in your travels, to pass through the knee deep quagmire of litigations.

Sincerely yours

A handwritten signature in black ink, appearing to read "Chris Daniels", with a stylized flourish at the end.

Chris Daniels

ACE 447691

APR 11 1991

U. S. DISTRICT COURT

8211 HENRY CR.

ANCHORAGE, AK 99507

APR 11 1991

U.S. DIST. CT.

APRIL, 11 1991

CLERK OF COURT

U.S. DISTRICT COURT

222 W. 27th AVE RM 261

ANCHORAGE, AK 99513

HONORABLE JUDGE H. RUSSEL HOLLAND

DEAR SIR;

I AM A PRIVATE CONCERNED CITIZEN WORRY-
ING ABOUT THE EXXON SETTLEMENT. I FEEL
THAT CULTURAL RESOURCES SHOULD BE INCLUDED
IN THE SETTLEMENT. FOR THE DAMAGE AND
INJURIES OF ARCHAEOLOGICAL SITES CAUSED

ACE 447692

13

BY THE SPILL. AND DAMAGE THAT NO ONE
IS HELD ACCOUNTABLE FOR.

IN MY UNDERSTANDING OF THE PLEA AGREE-
MENT CULTURAL RESOURCES IS BEING EXCLUDED,
IN THE CIVIL AND CRIMINAL SUITES.

AS A CITIZEN OF THE UNITED STATES AND
RESIDENT OF ALASKA I THINK CULTURAL
RESOURCES IS ONE OF OUR IMPORTANT
LINKS TO THE PAST HISTORY, PRESENT AND
FUTURE YEARS TO COME.

SO PLEASE HELP IN ANY WAY YOU
CAN TO INCLUDE CULTURAL RESOURCES
IN THE SETTLEMENT. IT WILL BENEFIT ALL
CITIZENS,

THANK YOU FOR YOUR TIME

Sincerely
Martha M. Olympic

61
Wyndeth V. Davis
2513 La Honda Drive
Anchorage, Alaska 99517
April 10, 1990

H. Russel Holland,
United States District Judge
United States District Court
222 West 7th Avenue
Anchorage, Alaska 99513

APR 11 1991

U.S. DIST. CT.

Justice Holland,

I am writing in response to your call for comments on the plea agreement in the criminal suit against Exxon Corporation and Exxon Shipping Company. As a citizen of the United States and a resident of the state of Alaska, the plea agreement is of great interest to me. I understand that the acceptance of such a plea is to the advantage of the people in that it assures timely compensation for some of the damaged resources. I also understand the need for the court to process cases not only justly, but swiftly, and that a case of this magnitude, if tried, would monopolize a great deal of the court's time with an unknown outcome.

My concern with the content of the plea agreement stems from the court's apparent lack of concern for cultural resources damaged by the spill of oil from the Exxon Valdez. The proposed criminal and civil plea agreements construct a condition in which all legal avenues for seeking damages to be used for the restoration/mitigation of cultural resources are closed to federal agencies.

-Cultural resources are clearly, repeatedly named in federal legislation as valuable property of the people of the United States (in the National Historic Preservation Act, the Archeological Resources Protection Act, and others). Was this taken into account when discussing settlement of criminal charges against Exxon and the Exxon Shipping Company?

-The Archeological Resource Protection Act (ARPA), 16 U.S.C. Sec. 470aa, prohibits the unauthorized removal of archeological resources from federal lands. Such removal was clearly noted in incident reports relating to the activities of Exxon clean-up crews working on archeological sites. Are these violations being ignored or forgiven?

-Section 106 of the National Historic Preservation Act, 16 U.S.C. Sec. 470f requires study and consultation with the Advisory Council on Historic Preservation regarding avoidance or mitigation of impact, including the impact of activities such as cleaning and damage assessment (either of which may further impact the resource). Have these factors been considered? If so, why are they not reflected in the plea agreements?

-As I understand it, the current criminal plea agreement precludes any future suit for civil or administrative penalties against those involved (IIIA). This disallows even the consideration of the existing legislation (ARPA, NHPA) in collection of damages for assessment/repair of cultural resources (even section IIIB does not allow for such litigation, despite initial appearances).

-The current civil plea agreement, based on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), under the current Justice Department interpretation does not recognize cultural resources as natural resources (despite a constant debate with the Trustee's Council and other concerned parties that cultural resources are, in fact, covered under CERCLA...as they are under other environmental legislation). Therefore, cultural resources are overlooked in the plea agreement as well.

-It is my understanding that the federal Injury Assessment of damage done to cultural resources has not yet begun. Are we willing to write off a damage of which we know neither the nature nor the extent?

-In spite of the lack of a federal Impact Assessment, the state of Alaska, in published response data, clearly notes that cultural resources have sustained damage (in terms of looting, our ability to date the materials, or clean them to the point where they can be dated, impacts during cleaning, plus further damage expected as erosion of site areas increases due to local vegetation die-back, and as publicity makes the sites more accessible to looters. During the response process, AT LEAST ten (10) damaged archeological sites were discovered ON FEDERAL LAND (and I believe 15-16 more in the general Prince William Sound area).

The point in voicing these observations has its foundation in the recognition that, 1) Cultural resources are the valued, nonrenewable property of the citizens of the United States, and that, 2) Cultural resources have clearly been damaged, to an extent we do not know, and cannot know until an actual Impact Assessment is carried out. Where is our responsibility to the citizens of the U.S., when we choose to penalize individuals and corporations for the destruction of complex ecosystems, but not the equally complex and valuable cultural resources we are also mandated to protect?

I urge you to consider the impact of the criminal plea agreement in terms of the precedent it sets with regard to damage of cultural resources in environmental disasters. If no compensation is required (or even asked for) in the case of the Exxon Valdez, what is to discourage the exclusion of cultural resources in other cases involving crimes against the environment (natural and cultural)? Why should we have preservation legislation at all, let alone spend federal and state monies to enforce it on the level of the individual, while corporations and other bodies are allowed to flout these same laws, on a large scale, with no penalty?

Please realize that the oiled archeological sites, documenting the complex heritage of Native Alaskans, as well as the historic sites which hold the secrets of the mining period in Alaska, are just as significant as some of the battlefields, homes and institutions which also grace our National Register. As much as the pueblo sites of the Southwest, they belong to us, and not only deserve but require our attention.

Thank you,

Wyndell V. Davis

62
4/11/91

The Honorable Judge H. Russell Holland
United States District Judge
United States District Court
222 West Seventh Avenue
Anchorage, Alaska 99513

APR 11 1991

U.S.D. DIST. COURT

Your Honor:

Presented below are my comments and concerns regarding the plea agreement entered into between the United States of America and the Exxon Corporation and Exxon Shipping Company.

First of all, I am very concerned with the fact that when environmental catastrophic disasters occur, brought about by actions of major corporations we simply point our fingers at them. We are not even slapping their wrists. Considering the magnitude of the damage to the environment, cultural resources and the subsistence lifestyles of Alaskan people, the negotiations allowing Exxon to plead guilty to misdemeanor charges dropping the felony charges are a slap in our face. Not being privy to the negotiations, I realize there are many variables determining this plea agreement not available for public scrutiny, thus impeding to some extent our perspective. However, it appears that a general feeling of public impotence prevails when it comes to matters of restitution.

Secondly, I believe there has been an oversight by the Department of Justice for excluding cultural resources as a natural resource under CERCLA. Cultural resources are the property of the people of the United States as well as representing the ancestral ties of the Native and Indian peoples of Alaska. To ignore the damage to this irreplaceable resource is an affront to the heritage of the American people. The possibility of addressing restitution via charges under the Archaeological Resource Protection Act in the criminal case have further been nullified in paragraph III A (civil or administrative penalties). Furthermore, why is the Department of Justice the only party allowed to bring civil and administrative penalties against Exxon (III B)?

In essence, these are my concerns and I appreciate the opportunity to comment on these issues and especially appreciate your willingness to listen. Thank you.

Sincerely,

Michele M. Jespersen

Michele M. Jespersen

ACE 447697

62

63

631 E. 22nd Ave #B-8
Anchorage, AK 99503
11 April 1991

The Honorable H. Russell Holland
U.S. District Court
222 W. 7th Ave.
Anchorage, AK 99513

APR 11 1991

U.S. DISTRICT COURT

Dear Sir:

It is with grave concern that I read of the pending settlement between EXXON/EXXON SHIPPING and the United States of America. A part of our cultural heritage, specifically archeological sites, lie on and beneath those beaches. These cultural resources have been totally ignored in this settlement, and they belong to all of us.

Cultural resources would have been protected by the Archeological Resources Protection Act (ARPA), but this is considered an administrative penalty and as such may not be imposed in the criminal case (Section IV.C.). Cultural resources have also been excluded from the civil case: due to a major oversight the Comprehensive Environmental Responsibilities Compensation & Liability Act (CERCLA) excludes injury to cultural resources.

At this point the archeological sites have not even been assessed for damage. The objects that were oiled in this disaster have been found non-datable by carbon-14 methods. Additional damage is unknown and without funds provided by this settlement may remain unknown. Ten archeological sites were found within the National Park Service areas, additionally sixteen sites were said to be found on other oiled beaches.

As a museum registrar I have worked with Alaska archeological collections for two years. The information from these sites is of interest to the scientific community worldwide in establishing the passage of early man into the western hemisphere. The EXXON settlement must include funds for a complete damage assessment study of archeological sites within the affected area, funds for studies of methods to clean artifacts of oil, and funds to rectify and ameliorate damage caused in this most unnatural disaster.

Sincerely,

Connie Estep

Connie Estep

64

Kristen Griffin
1819 Juneau Drive
Anchorage, Alaska 99501

H. Russel Holland
United States District Judge
U.S. District Court
222 West 7th Avenue, Room 261
Anchorage, Alaska 99513

APR 11 1991
U. S. DISTRICT COURT

April 10, 1991

Dear Sir:

I have only one comment regarding the criminal settlement in the Exxon Valdez oil spill. Although it has been reported that the events related to the oil spill and the spill cleanup did impact cultural resources on federal lands, the settlement completely excludes cultural resources from consideration. Cultural resources are important enough to the American people to be protected by the federal government through legislation. Why is our government willing to overlook both their value and existing legislation in this case?

I feel strongly that the criminal settlement has inadequately considered injury to cultural resources and that a formal assessment of injury should precede any settlement. At the very least, the criminal settlement should, based on existing information, make the same admission of injury to cultural resources that was made for migratory birds.

Regarding federal lands in particular, the settlement (in sections IA and IIIA) should not rule out application of the Archeological Resources Protection Act. Most importantly, I think it is inappropriate for the United States to agree (as stated in section IIIA) not to seek additional civil penalties for the injury. Thank you for the opportunity to comment.

Kristen Griffin
Kristen Griffin

ACE 447699

67

11 April, 1991

65
APR 11 1991

U. S. DISTRICT COURT

The Honorable H. Russel Holland
United States District Judge
c/o
Court Clerk
U.S. District Court
222 W. 7th Ave., Rm. 261
Anchorage, Alaska 99513

Dear Sir:

The following are comments I wish to present regarding the Plea Agreement in the case of the United States versus the Exxon Corporation and the Exxon Shipping Company (No. A90015 CR.):

1.) Considerations for the recovery of, or restitution for, damaged cultural resources present along oiled shorelines are absent from the Plea Agreement in its present form. Such an omission is inconsistent with normal federal policy in environmental impact assessments as preventive measures related to construction or other environment altering activities undertaken by entities on public lands or those whose projects are funded with federal monies. In addition, this omission appears to contradict previous interpretations of the Clean Water Act with respect to the inclusion of cultural resources (including prehistoric human remains and other archaeological remains, and historic cultural features) with natural resources as elements of the environment that the Act is designed to protect. In essence, the federal government appears to be grossly inconsistent in its interpretation of federal laws, and is neglecting a resource of critical importance to Alaska Natives.

2.) Studies of "Archaeological Injury" by the Department of Agriculture are not given consideration in the Plea Agreement, because such studies have only recently been initiated (RFP's are still out). This presents a circumstance in which the degree or amount of the injury is undetermined at the time the agreement may be accepted, and acceptance closes the door on future legal consideration of the injury and possible lawsuits by federal agencies against Exxon, in spite of potential for future discovery of invaluable cultural remains that are now damaged by North Slope crude oil. This circumstance applies to biological resources as well, and has future ramifications for the lifestyles of Alaska Natives, commercial fishermen as well as parties with other interests in the area of the oil spill damage. Acceptance of the agreement closes the door for legal recourse by injured parties to recover losses in the future that are presently unquantified.

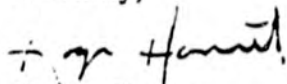
ACE 447700

(68)

Holland, page 2.

Thank you for the opportunity of commenting on this case.

Sincerely,



Roger Harritt

626 W. 21st

Anchorage, Alaska 99503-1848

(907) 272-7560

ACE 447701

66

10831 Trails End
Anchorage, Alaska 99516

April 10, 1991

APR 11 1991

U.S. DISTRICT COURT

Honorable H. Russell Holland, Judge
U.S. District Court
Anchorage, Alaska 99501

Ref: A90-015 CR.

Dear Judge Holland:

Thank you for providing the public with the opportunity to comment on the proposed Plea Agreement filed March 13, 1991 in U.S. v. Exxon and Exxon Shipping, A90-015CR. I urge you to reject the proposed plea agreement. If accepted, it would fail to deter criminal conduct by Exxon, Exxon Shipping and other potential oil spillers in the future. The amount of the fine is small compared to either: 1) the damage caused by the spill; 2) or to the amount necessary to deter this conduct by defendants or others faced with a similar situation in the future.

The minimum fine upon conviction under one of the charges against Exxon Shipping, under the Refuse Act, 33 USC 411, is \$500. An average person convicted of one violation of Section 407 of this Act and sentenced to the minimum fine, earning a typical median family income of, say \$16,500, would pay 3.03% of his/her income in fines. Applying this benchmark to Exxon's profits, the minimum fine should be at least \$150,000,000.

Of course, Exxon and Exxon Shipping are entitled to the presumption of innocence on these charges until proven otherwise. However, dismissal of the felony charges without some sort of preliminary hearing by the Court to determine whether probable cause exists is not appropriate.

In return for four misdemeanor pleas, defendants would be immunized from prosecution by the Department of Justice on all other criminal charges related to the EXXON VALDEZ oil spill in the past and presumably into the future, as long as they are engaged in activities related to the cleanup. Immunity from future conduct which would otherwise be charged as criminal, seems an unduly generous plum in a plea agreement.

Why should Alyeska Pipeline Service Company be protected from possibly criminal liability? Exxon's minority interest (20.34%) in Alyeska Pipeline Service Company is apparently considered sufficient justification to prevent

ACE 447702

(69)

the Department of Justice from bringing criminal charges or civil or administrative penalties against them:

for any violation of federal law arising out of the grounding of the "EXXON VALDEZ", the resulting oil spill, the containment or cleanup of that spill, or its conduct in connection with the preparation or submission of oil spill contingency plans or related documents, by Alyeska Pipeline Service Company to the federal or state government." (Plea Agreement, pp. 6-7)

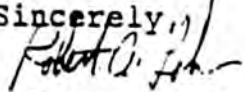
This despite the fact that Alyeska is not even charged in the above-referenced case.

The summary of scientific studies released this week indicates that the damage to Prince William Sound is more serious and long-lasting than previously believed. This must be taken into account. Although the plea agreement asserts that "The defendants have cooperated in the federal criminal investigation of the grounding of the "EXXON VALDEZ" and the resulting oil spill." (page 7, Plea Agreement), Exxon has lied by dramatically understating the number of birds killed in the oil spill and has declined to release its scientific data which would be of great value in developing restoration measures.

Nothing in the proposed plea agreement would deter similar behavior to that alleged in the indictment by Exxon, Exxon Shipping or others who face a choice about how much effort to put into reducing the risk of future oil spills. Since the Court is prohibited from imposing stricter terms than those offered in the proposed agreement without a trial, the trial should proceed.

It is possible that an agreement could be fashioned which would put this issue behind us and also serve as required deterrent. However, the March 13, 1991 effort falls far short of the mark. I urge you to reject it.

If, despite this advice, you are inclined toward accepting the proposed Plea Agreement, please require a pre-sentence investigation and report. This would allow time for scientific data to be provided to the Court for its review in deciding whether the sentence proposed is appropriate or not. The record before you is certainly not complete concerning any prior criminal convictions of defendants, their financial condition, or the circumstances affecting their behavior.

Sincerely,

Robert A. Lohr

re: Exxon Valdez Settlement

APR 11 1991

U.S. DIST. CT.

Gordon Scott (61)

Box 747

Greenwood AK 99587

April 11, 1991

Judge Holland

From what I've heard, seen, and read, it seems like Exxon and Alyeska are getting off the hook lightly if this plea agreement is accepted.

The only thing we gain by this is closing the book on this issue.

It sounds like if we press charges the monetary damages would be far greater than this settlement if Exxon, Exxon Shipping, and Alyeska had the book thrown at them.

It was plainly obvious to me and others that Exxon and Alyeska were continually trying to cut back on their planning for oil spills and the response to the grounding of the Exxon Valdez. They deliberately tried not to be effective at capturing free floating oil by holding back their contractors, whilst mounting a PR campaign to say all the wonderful things they were doing and that there had been little damage done. If we close the book it eliminates any chance of bringing to justice and/or embarrassment the people of Exxon and Alyeska who were responsible for the bad decisions.

The oil spill and resultant defiling of Alaska's wild shoreline and ecosystem was similar to rape of a defenseless virgin. It will never be the same. Do we let our convicted rapists pay a meager fine and go free?

Gordon Scott

I made this copy from a 1972
Funk & Wagnalls Standard
Encyclopedic Dictionary of this
geological time scale that I
make connection to to be gospel!

and finally recovery (ie) settlement
of this litigation ^{there} should be no undue
influence to conceal the facts as
well as the gospel, can't you see
the connection, over the lack of the
connection due to the undue influence
so far to date. will you please take
charge of these lawyers and say that
recovery (ie) settlement will be no
less than the age of the oldest dated
rock's \$3 billion 5 hundred million year
old, so start at \$3.5 billion dollars
because that's what they know, they
by there own use's of undue influence
is a very strong connection that they
know the value of the dollar and
not of life.

signed 4-11-1991

Charles Edison McKeel

geology (jē-ol-ō-jē) n. pl. also 1. The science that treats of the origin and structure of the earth, including the physical forces which have shaped it and its physical and organic history, esp. as shown by rocks and rock formations. 2. The structure of the earth in a given region. — **ge-ol-og-ist** n. **ge-o-met-ric** (jē-ō-met-rik) adj. 1. Pertaining to or according to the rules and principles of geometry. 2. Forming, consisting of, or characterized by straight lines, bars, crosses, zigzags, etc., as in painting or sculpture. Also **ge-o-met-ri-cal**. — **ge-o-met-ri-cal-ly** adv.

ge-o-pol-i-tics (jē-ō-pol-ē-tiks) n. pl. (construed as sing.) The study of political and economic geography, trine, of Nazi Germany, advocating aggressive also **German Ge-o-pol-i-tik** (gē-ō-pol-ē-tik). — **ge-o-pol-i-ti-cal** (-pē-til-ē-kal), **ge-o-pol-i-tic** adj. — **ge-o-pol-i-ti-cally** adv. — **ge-o-pol-i-ti-cian** (-pē-til-ē-ti-ōn) n. **Geor-gian** (jōr-jeen) adj. 1. Of or pertaining to the period of the first four Georges in England, 1714-1830. George V. 1910-36. 2. Of or pertaining to Georgia or Georgians. 3. Of or pertaining to the language of Georgia.

GEOLOGICAL TIME SCALE

Read from bottom to top.

ERAS	TIME PERIODS ROCK SYSTEMS	TIME EPOCHS ROCK SERIES	APPROX. DURATION MILLION YEARS	APPROX. PERCENT TOTAL AGE	LIFE FORMS
CENOZOIC	QUATERNARY	RECENT PLEISTOCENE	1	2	Rise and dominance of Man.
	UPPER TERTIARY	PLIOCENE MIOCENE	65		Modern animals and plants.
	LOWER TERTIARY	OLIGOCENE EOCENE PALEOCENE			Rapid development of modern mammals, insects, and plants.
MESOZOIC	UPPER CRETACEOUS		75	5	Primitive mammals; last dinosaurs; last ammonites.
	LOWER CRETACEOUS				Rise of flowering plants.
	JURASSIC		45		First birds, first mammals. Diversification of reptiles; climax of ammonites; coniferous trees.
	TRIASSIC		45		Rise of dinosaurs; cycadlike plants; bony fishes.
PALEOZOIC	PERMIAN		45	9	Rise of reptiles. Modern insects. Last of many plants and animal groups.
	PENNSYLVANIAN	CARBON- IFEROUS	75		First reptiles. Amphibians; primitive insects; seed ferns; primitive conifers.
	MISSISSIPPIAN				Climax of shell-crushing sharks. Primitive ammonites.
	DEVONIAN		50		First amphibians, first land snails. Primitive land plants. Climax of brachiopods.
	SILURIAN		20		First traces of land life. Scorpions. First lungfishes. Widespread coral reefs.
	ORDOVICIAN		70		First fish. Climax of trilobites. First appearance of many marine invertebrates.
	CAMBRIAN		50		First marine invertebrates, including trilobites.
	PROTEROZOIC ARCHEOZOIC	PRE- CAMBRIAN	About 3000	84	First signs of life. Algae.

Age of oldest dated rocks: about 3,500,000,000 years.

83,500,000,000

Age of oldest dated rocks: about 3,500,000,000 years.

\$3,500,000,000

ge-om-e-tri-cian (jē-om-ē-tri-ān, jē-ō-mē-) n. A specialist in geometry. Also **ge-om-e-ter** (-ē-ter).

geometric progression *Math.* A sequence of terms of which each member is greater than its predecessor by a constant ratio, as 2, 4, 8, 16, 32, 64.

ge-om-e-try (jē-om-ē-trē) n. pl. -tries The branch of mathematics that treats of space and its relations, esp. as shown in the properties and measurement of points, lines, angles, surfaces, and solids. [**< OF < L < Gk. < gē** earth + **metron** to measure]

ge-o-phys-ics (jē-ō-fiz-iks) n. pl. (construed as sing.) The study of the earth as the product of complex physico-chemical forces acting upon it internally and from outer space, esp. with reference to exploration of its less accessible regions. — **ge-o-phys-i-cal** adj. — **ge-o-phys-i-cist** n.

2.). — n. 1. A native or inhabitant of Georgia. 2. Of an ancient mountain people native to the Caucasus. 3. Caucasian language of the Georgians of the Soviet Union. **ge-o-stat-ics** (jē-ō-stat-iks) n. pl. (construed as sing.) Statics of rigid bodies in relation to balanced forces on or beneath the earth's surface. — **ge-o-stat-ic** adj. **ge-ra-ni-um** (jē-rā-nē-ōm) n. 1. A plant with showy pink or purple flowers; also called *cranewill*. 2. A closely related plant, originally from South Africa. 3. A very deep almost red color. [**< L < Gk. geranos** crane] **ger-fal-con** (jōr-fal-kən, -fəl-, -fō-) n. A large (alcon) arctic regions, with feathered shanks; also spelled *gyrfalcon*. [**< OF < OHG** gyrfalco + **OF** falcon] **ger-i-at-rics** (jē-rē-at-riks) n. pl. (construed as sing.) 1. A branch of medicine that deals with the structural changes

You have to connect them to be gospel!

1 of 1

THIS BOTTLE CONTAINS:

100% **SPIRULINA PACIFICA**, American grown in unpolluted waters. This dried whole food contains an array of important minerals, balanced amino acids, essential fatty acids (incl GLA), chlorophyll, Beta-Carotene and other important plant pigments, vitamins B-1, B-2, B-12, D, E, H & K, glycogen and rhamnose, RNA & DNA and many other essential nutrients commonly lacking in today's "fast food" diets.

SPIRULINA PACIFICA is an alkaline food, simple in structure and very easily utilized by the human body. The nutrients are bio-chelated by the process of photosynthesis and are quickly assimilated into the human body where they help to cleanse (detoxify) and rebuild (nourish). Many users report significant improvements in energy levels and enhanced well-being. Others notice improvements in mental capacity and a strengthening of the immune system. Being a whole food results of this product are nutritional only, and no claims are made towards healing.

This fine product, and others, supplied by the

ENZYMEX PRESS
2804 FAIRMANKE STREET
ANCHORAGE, ALASKA 99503
(907) 573-5433 (LIVE)

BIOGENIC
SUNLIGHT
NUTRIENTS

**SPIRULINA
PACIFICA**

#22 ONE POUND NET WEIGHT POWDER

HOW TO USE:

SPIRULINA PACIFICA is best used as a staple food, one teasp. to three Tbsp. per day as desired or needed. This versatile, high quality food can be:

- Blended into fruit or vegetable juices
- Stirred into salad dressings and sauces
- Used to make green guacamole
- Sprinkled on popcorn
- Mixed into ice cream or yoghurt
- Dipped with chips or bread sticks
- Added to energy shakes and smoothies

SPIRULINA PACIFICA is used by people the world over for energy, weight control, metabolic balancing, immune system support and all-around nutritional assistance. Newcomers to this food do best to begin their consumption slowly, giving their body time to adjust to this lively concentrated food. We recommend an initial serving of one teasp. and after a few days at this quantity, increasing steadily to the desired level.

Use daily to ensure balanced energy, stable metabolism and high mental activity. Use *Spirulina Pacifica* as you would any staple food, enjoy its numerous blessings and participate in the efforts to heal mankind and restore balance to the planet.

ALPHA. and PEACE!

ACE 447712

4 of 4

(6)

4-11-1991

APR 11 1991

To: U.S. District Judge's H. Russell
Holland of Anchorage, and Stanley
Sporkin of Washington, D.C.

I Charles E. McKee urge the rejection
of this settlement because I
consume on a daily basis Algae
grown in unpolluted waters off of
Honolulu Hi. The same blue/green
Algae consumed by the many
marine invertebrates, fish, mam-
mals, insects and coral reefs in
Prince William Sound and
throughout the world.

Now considering the allegations by
Gov. Walter T. Hickel "I appreciate
Congressman Miller's continuing
concern for the state of Alaska;
however, if there's one thing I learn
in the Exxon Valdez Tragedy, it is
that you cannot take any man's
word as gospel, including oilmen and
congressmen. Well, what about
this geological time scale that
I make connection too, from my nutri-
tional need to other life forms on this
earth and there nutritional needs.

THE FOLLOWING DOCUMENT MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE
ORIGINAL

April 10, 1991

Federal Court
Clerk's Office

APR 11 1991

U.S. DISTRICT COURT

Re: public comment on the Exxon Valdez oil spill

Honorable Judge Russel Holland;

This mornings Anchorage Daily News has printed the responses of some people and reminded all of us, that we have until tomorrow to comment on the worst tragedy to beset Alaska.

As I sit and wonder about the essence and real consideration that my comment will receive in the overall picture of your decision, this empty feeling of hopelessness begins to overtake me.

My name is Paul Frost and I was born and raised in Alaska. I have studied the history of development in Alaska and personally witnessed the cause and effect of greed and money on this great country of Alaska. To observe and allow yourself the perspective gaze upon the changes of Alaska through the eyes of five generations of family, would bring your spirit to tears.

Many years ago in another civilization, a man named Aristotle wrote a story about someone who was tied to a chair in a cave. This man faced the back end of

of this cave with those hands trapped to his head, so he could only look straight ahead. There was a fire behind him that another person, who never spoke, kept lit and during certain hours made shadow figures on the wall. To make the long story short, the shadow figures projected onto the cave wall was the bound man's entire defined world of existence. One day the imprisoned man was suddenly released. As he groped his way to the cave entrance and after much adjustment within his bodily senses, he realized there was life. He looked out, listened to nature's sounds, smelled the wilderness and wondered about God's creation. What was once thought to be life, the shadow figures, he realized was an illusion.

The average common person of common sense, such as myself, without scientific degrees or in possession of studies done by people with masters degrees, don't believe in Exxon's illusion. They are guilty.

Today's cave wall is newspaper and the television screen. The puppeteers, or image makers, who project this masquerade by the light of their fire, fueled by the profit greed, will be consumed. Unfortunately, in their blind pursuit of profit the children of this world will suffer and die.

Some people, such as yourself, have earned the right to mediate what is truly in the public's best interest. I do not envy your honorable and most responsible position to judge what is right. I am most thankful and very appreciative of the time you are allowing me, by reading my comments.

Exxon is guilty of the following:

ACE 447706

1. During the late 1960's and early 1970's when oil interests, through their newly formed Dept. of Energy, i.e. President Nixon, began their marriage with the State Department, the public was told there would be responsible development.
2. The oil companies made many promises and assurances that they would closely monitor and continuously provide the latest technologically advanced clean-up response team and equipment.
3. As indicated in the morning Times newspaper dated April 10th, over a year earlier, the oil companies willfully and knowingly with intent disregarded their promises and systematically removed their ability to respond adequately to any oil spill in Prince William Sound.
4. Exxon knew of Joseph Hazelwood's drinking problem for years before the tragic incident - not accident. They knowingly and willfully failed to monitor his alcohol problem recovery.
5. Once Exxon, through their agent Joseph Hazelwood, in collusion with the State Dept., began spilling all the oil, they responded in a coordinated slow manner.

Then that said you don't like the idea before the Alaska Pipeline was built, we were told that the Kenai Peninsula was a big oil spill area, and if you spill oil, you're in trouble and you're going to be there for a long time. None of those statements have come true and they never will.

America's indebtedness is slowing down international corporations the ability to help and manage our land. They are a real obstacle. Not many of them have had a lot of oil in the pipeline but they are waiting for a settlement of the oil price. The bigger dream of using state money, the money and very little of the money to build the pipeline was the

continues and many. He is experienced and he is going to transport the people. The other thing is that the CNR has the good idea of running a water line to Calgary. Some things impractical. I'm interested in that for him.

They are quietly not listening to people. The people are more negative about it, to participate in the discussions of settlement.

I demand, as a citizen born and raised in Alaska, justice. I stop by the right direction would be to bring the settlement as it stands. 2) Allow all parties affected negatively from the settlement to participate in the settlement talks. 3) require double haul tanks. 4) develop an adequate clean-up response team.

Stop Thacker's settlement.

Thank you.

Paul J. Junt
Box 10 34th Ave
Ste. 101
Incheyap, Alaska
99503



70

GREEN PARTY OF ALASKA

P. O. Box 141474 Anchorage, AK 99514-1474 (907) 278-7436

Ecology
Responsibility
Nonviolence
Base Democracy

April 12, 1991

Ecological Wisdom
Grassroots Democracy
Personal and Social Responsibility
Nonviolence
Decentralization
Community-based Economics
Postpatriarchal Values
Respect for Diversity
Global Responsibility
Future Focus/Sustainability

Honorable Russel Holland
U.S. District Court
222 W. 7th Avenue
Anchorage, AK 99501

Dear Judge Holland,

The Green Party of Alaska requests that the proposed settlement in the Exxon case be denied. There are a number of problems which need to be considered before such a settlement should take place.

There is the question of Alaska's indigenous peoples. Although they have the right to pursue their claims independently of this proposed settlement, there is a clear question whether the State of Alaska is operating in the best interest of its citizens when it excludes the concerns of citizens most affected. There is also the question of jurisdiction with the tribal governments that represent people who suffered damage as a result of the Exxon Valdez spill.

There are many inadequacies in the settlement that throws open the question of public interest. There appears to be no justification for negotiating the settlement behind closed doors and then providing a very short time for the public to comment with almost no information available. If the public was really destined to participate, facts and information could have been provided to the public for the past four months. The public comment period is closing today. Important information is just beginning to emerge that the public needs to understand in order to make reasonable comments on the case. It seems reasonable to the Green Party that the public should have additional time to consider information recently released by the Federal Government entitled "Summary of the Exxon Valdez Oil Spill on Natural Resources" dated March 1991. Serious allegations were also raised by U.S. Representative George Miller of California in a letter to the court dated April 8, 1991. The State and Exxon have not released their studies. Alaskans in general have not had an opportunity to consider adequate information.

If the settlement were to go forward, Alyeska Pipeline Service Company would be absolved for potential wrongdoing associated with the damages caused. It would be a legal and moral travesty to let Alyeska off the hook before discovery could illuminate their role in the case. As Representative Miller said, it would tell corporations they can lie because there will be no effective punishment.

ACE 447713

Paid for by the Green Party of Alaska. Tim Feiler, Treasurer

APR 11 1991



U.S. DISTRICT COURT

The financial aspects of the proposed settlement are very unsettling. It begs the question of how can the judicial system actually punish a corporate offender. Please consider that tax write-offs combined with the spread of payments over 10 years essentially allows Exxon to pay as little as 330 million dollars. Add in the fact that Exxon's stock has gone up approximately five dollars per share during the last month, in anticipation of getting the settlement off their books, increasing the value of the company approximately 6 Billion dollars. There will be no noticeable drop in dividends to shareholders. There is no effective deterrent to offenders.

What can be done? Should the corporate executives go to jail? Since the damages are many times more than originally anticipated, should the settlement price be raised to \$4 Billion with 1 Billion up front immediately? Should the settlement include a percentage of all oil Exxon takes from Alaska in the next 20 years? These are the types of things that would make potential offenders take notice. It seems clear that it is almost impossible to punish Exxon for the wrongdoing they have admitted. Even if they didn't have write-offs, prices of their products would simply be passed on to consumers to cover the costs. How can justice be done?

The Coastal Coalition had proposed a 2 Billion dollar trust fund that emphasized acquisition of equivalent resources such as buying timber rights to assure future protection. The Coastal coalition proposal also included direct restoration, research, education, and sustainable economic development--reasonable ideas, processes and implementations.

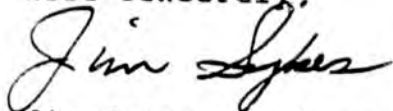
The proposed agreement has the appearance that the State, and its poorly communicating arms of bureaucracy, is setting itself up together with large oil companies and against the very citizens it is supposed to represent. Of course people will argue that it's better to take a little money now rather than continuous litigation that may net the State of Alaska very little in the end. We are talking about justice here, and it doesn't appear that the money offered is adequate compensation for even a small portion of the damages, and it doesn't appear that the wrongdoer suffers any serious consequences for one of the world's largest oil disasters. I believe that given enough time, Alaskans could reach consensus on what a fair settlement would be. The quick and secretive nature of the proposed settlement has prevented this type of approach. Two corporations might settle out of court in the proposed manner, but the State of Alaska is not a corporation, and a different approach should be considered.

The 10 Key Values of the Green Party of Alaska, (grassroots democracy, personal and social responsibility, global responsibility, respect for diversity, nonviolence, ecological wisdom, post-patriarchal values, decentralization, community based economics, and future focus), are values most people hold in high esteem. The responsibility of Exxon as a corporation is not reflected in the proposed settlement. The lack of information and public input really makes it very difficult for a democratic society and a free press to help find a solution.

What will the settlement teach us about personal, social and global responsibility?

The Green Party of Alaska believes that the Exxon proposed settlement is inadequate, not in the public interest, and leaves the court without all the facts relevant to the balance of justice. We urge you to postpone settlement, allow the cash damage award to be substantially raised based on the emerging evidence showing greater damage. We also ask that the proposed settlement be reconsidered with the addition of widespread public input after significant information becomes freely available.

Most sincerely,



Jim Sykes, Spokesperson
Green Party of Alaska



Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION

750 W. Second Ave., Suite 200, Anchorage, AK 99501 (907) 258-4800

LATE

71

April 12, 1991

Clerk of the Court
United States District Court
222 W. 7th Avenue
Anchorage, AK 99513

Dear Sir:

On Thursday, April 11, 1991, the National Wildlife Federation submitted comments on the proposed plea agreement in United States v. Exxon Shipping Co. and Exxon Corp., No. A90-015 Cr. Those comments were prepared by counsel in NWF's Washington, D.C., office, faxed to NWF's Anchorage office, and hand-delivered to the Clerk's office. Due to facsimile transmission problems, line 5 in footnote 11 on page 4 ("Exxon were convicted ...") did not appear in the document delivered to your office.

A complete, re-transmitted copy of our comments is herewith submitted for the Court's information. The only difference between this copy and that submitted yesterday is that footnote 11 herein is complete. We apologize for any inconvenience to the Court.

Sincerely,

Debra L. Donahue
Staff Counsel

cc: Douglas Wolf
National Wildlife Federation

ACE 447114

APR 12 1991

84L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA

vs.

EXXON SHIPPING COMPANY, AND EXXON CORP.

No. A90-015 CR.

COMMENTS OF THE NATIONAL WILDLIFE FEDERATION
ON THE PLEA AGREEMENT OF THE
UNITED STATES, EXXON SHIPPING, AND EXXON CORP.

Erik Olson
Douglas Wolf
National Wildlife Federation
1400 16th Street, N.W.
Washington, D.C. 20036
April 11, 1991

ACE 447115

INTRODUCTION

The National Wildlife Federation ("NWF" or "the Federation"), the nation's largest private conservation education organization with 5.6 million members and supporters, welcomes this opportunity to comment on United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.) (the plea bargain)¹. Such public comment is particularly appropriate given the overwhelming public interest in and concern with this oil spill and the important legal and public policy issues this plea bargain raises.

NWF is very concerned that the proposed plea bargain would let Alyeska Pipeline Service Company (Alyeska) off the hook entirely. This deal in Alyeska's favor was struck despite recent evidence of what a Congressional investigation has suggested was criminal behavior by Alyeska. NWF urges that the Court strike all provisions in the plea agreement which shield Alyeska from punishment. In addition, NWF urges the Court to require a magistrate investigation, or to name an independent counsel or special master to investigate the recent allegations of Alyeska's alleged criminal conduct, and recommend to the Court whether the plea agreement's immunization of Alyeska from criminal prosecution is justified and in the public interest.

NWF also urges that this Court order the government and Exxon to release all scientific and economic data documenting the extent of damage caused by the crimes, in order to assure the public and this court that the fines and restitution are appropriate to the offenses committed. These comments will discuss these and other concerns.

ALYESKA SHOULD NOT BE MADE IMMUNE FROM FUTURE PROSECUTION

In a very unusual provision which may be without precedent, paragraph III A of the Plea Agreement specifically waives the United States' right to prosecute a third party, Alyeska, which is not a defendant in this or any related criminal action, for any criminal violation of federal law arising out of the Valdez spill, the cleanup, or its preparations for a cleanup. This unusual promise was made without any plea, fine, restitution, admission, or extraction of any other benefit to the public or to the government from Alyeska. Our research has been unable to

¹ NWF, with the Wildlife Federation of Alaska and the Natural Resources Defense Council, and represented by the Trial Lawyers for Public Justice, has sued Exxon and Alyeska Pipeline in state court in Alaska to seek creation of a trust fund which would help restore the natural resources damaged by this catastrophe. NWF has actively commented on the natural resource damage assessment process in response to the Valdez spill.

document any previous case in which a corporate defendant has been provided a promise of no prosecution for environmental or other crimes as part of a plea bargain with some other legally separate company, particularly when that third party corporation has failed to provide any benefit to the government for such a promise.

This provision is particularly troubling in light of recent evidence of Alyeska's alleged criminal conduct. If Alyeska is not punished, the fundamental retributive, rehabilitative, and deterrent goals of criminal law with respect to Alyeska's alleged criminal behavior will not be served.

Documents recently submitted to this Court by the U.S. House Interior and Insular Affairs Committee Vice Chairman George Miller (collectively, "the Alyeska materials") establishes that eleven months before the Exxon Valdez spill, Alyeska knew that it could not adequately respond to a major spill in Prince William Sound.² In fact, these documents show that Alyeska unilaterally decided that it would only respond to spills in the Valdez Arm and Valdez Narrows and that it would rely on dispersants and cleanup efforts by the spiller to attempt to take care of any other spills³. In other words, Alyeska unilaterally abdicated a large part of its responsibility to protect the environment⁴.

The outrageous nature of this conduct becomes even clearer when one compares these internal statements with those Alyeska made in many public forums⁵ and makes in its Contingency Plan for Prince William Sound. In the Contingency Plan, Alyeska asserts that it can and will respond to all spills, no matter where they occur in the Sound and no matter what size⁶. The Congressional

² T.L. Polasek, [Alyeska] "Oil Spill Issues," (April 6-7, 1988) (filed with this Court with Alyeska materials).

³ See Cable from Stanley Factor, ARCO Marine, to Roger Gale, Sohio (July 6, 1988) (in Alyeska materials). Further, this document indicates that the Alyeska owner companies were unable to agree to even this incredibly low level of commitment.

⁴ In fact, Alyeska didn't even acquire and deploy the additional equipment that the documents indicate they were planning to purchase. Rep. Miller's April 8, 1991 letter to the Court, at 8-9.

⁵ Id. at 2-3 The misstatements made before the pipeline was approved are particularly significant as the pipeline was ultimately approved by only one vote in the United States Senate, with then-Vice-President Spiro Agnew casting the deciding vote.

⁶ Id. at 3-6.

investigators suggest that these were willful misstatements and probably were criminal violations of Alyeska's duty under the Clean Water Act and other laws.

The plea bargain, in section III A, specifically exempts Alyeska from any criminal liability for any acts associated with the grounding of the Exxon Valdez as well as any "conduct in connection with the preparation or submission of oil spill contingency plans or related documents, by Alyeska Pipeline Service Company to the federal or state government." The plea bargain exacts nothing from Alyeska in return for this beneficence. Plea bargains often are described as contracts; Alyeska has been given all of the benefits of such a contract without having provided any consideration.

NWF invites the Court to examine its law books to find a similar example of a third-party, legally separate from the accused, gaining the benefit of the plea bargain without suffering any detriment. The governments appear to have surrendered all criminal charges for Alyeska's incredible conduct because Exxon insisted. The record before this Court at a minimum suggests that Alyeska likely is an appropriate target of a criminal investigation. The record is completely devoid of any support for the promise not to prosecute Alyeska. This Court, therefore, has insufficient information for it to evaluate, pursuant to its obligations under Federal Rules of Criminal Procedure 11 and 32, whether the plea is in the public interest and whether the sentence fits the crime.⁹ NWF urges the Court to

⁷ The Act makes "[a]ny person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter," such as the Contingency Plan, liable for fines and/or prison. 33 U.S.C. §1319(c)(4). See also 18 U.S.C. §1001 (penalties for knowingly submitting false information to any agency of the United States).

⁸ In public testimony before several of the House Merchant Marine and Fisheries Committee's Subcommittees, which met in joint session on March 20, 1991 to examine the proposed settlement, United States Assistant Attorney General, Richard Stewart, asserted that the negotiators for the governments added Alyeska to the plea bargain and the consent decree between the United States and Alaska governments and Exxon Corp. and Exxon Shipping, simply because Exxon insisted they do so.

⁹ See generally, J.E. Bond, Plea Bargaining and Guilty Pleas § 6 (1983 & Supps.); W. R. LaFave & J.H. Israel, 2 Criminal Procedure: Criminal Practice Series § 20 (outlining rights and duties of court in reviewing plea bargain).

strike these unjust provisions from the plea bargain. Alyeska's cavalier and criminal actions must not go unpunished.

**THE COURT SHOULD APPOINT A MAGISTRATE, SPECIAL MASTER,
OR INDEPENDENT COUNSEL, TO REVIEW ALYESKA'S ACTIONS**

The Court should request that a magistrate, special master, or independent counsel¹⁰ review the allegations of Alyeska misconduct. The results of such an investigation would inform the Court's determination regarding whether the plea's provision exempting Alyeska from criminal prosecution is in the public interest and should be approved.

OTHER CONCERNS

1. Important Scientific Data Must Be Released

The plea agreement requires Exxon Corp. and Exxon Shipping to pay a total of \$100 million in criminal fines and restitution payments. However, there is no way the public or this Court can meaningfully assess the amount of restitution needed or economic impacts of the spill, to measure against this figure. The federal government's scientific study summary released this week regarding the biological impacts of the spill fails to include any estimates of the economic impacts of the spill or of the restoration costs. None of the numerous economic studies conducted by the government have been released, no information on the findings of Exxon's studies has been made available, and the public, independent experts, and this court are in no position to judge the accuracy even of the summary of biological impacts filed by the government since the studies themselves and all underlying data remain secret.¹¹

¹⁰ See, Bond, Plea Bargaining and Guilty Pleas § 6.18(c) (court may name special prosecutor in rejecting plea bargain as contrary to public interest); United States v. Cox, 342 F.2d 167, 179 (5th Cir.) (en banc), cert. denied, 381 U.S. 936 (1965) (Judge Griffin Bell and dissenters in part suggesting that where government decision not to prosecute is in bad faith or "irrational," court may be authorized to appoint counsel to prosecute case); United States v. Cowan, 381 F.Supp. 214, 223 & n. 11 (N.D.Tex. 1974), rev'd on other grounds, 524 F.2d 504 (5th Cir. 1975), cert. denied, 425 U.S. 971 (1976) (to same effect).

¹¹ What we do know is that Exxon says it has spent "in excess of \$300 million to claimants allegedly injured by the oil spill," Plea Agreement paragraph III C(3)(c), suggesting that under the Alternative Fines Act, 18 U.S.C. section 3571(d), if Exxon were convicted it could be subject to over \$600 million in fines, in addition to providing restitution. Thus, there is already substantial evidence of widespread injury from Exxon's actions, and there is suggestive evidence that the adequacy of

The Court should require that all these studies -- and not just the vague and conclusory summaries just released by the government -- be revealed by Exxon and the government so that the public can intelligently comment on this aspect of the plea bargain, and so that this Court can meaningfully exercise its duties to evaluate the grounds for and adequacy of this plea bargain, and the associated fines and restitution suggested in it.

3. Court Should Impose Prevention Measures

We hereby join in the comments of other conservation organizations before this court calling for the use of creative probation and other requirements requiring Exxon to take actions to prevent other environmental pollution and disasters.

4. Public Should Be Able to Challenge Use of Money

Paragraph IV B of the Plea Agreement purports to provide that Alaska can spend the restitution money it receives under the agreement "without objection, challenge, or judicial or administrative review." As much as the state and United States governments may want to insulate their actions from judicial or other review provided for under the Administrative Procedure Act and other laws, the governments simply cannot enter into a contract with Exxon that purports to eliminate the statutory and other legal rights of third parties to challenge government actions. Thus, this provision must be struck from the agreement as an ultra vires act that is contrary to law and public policy.

Respectfully Submitted,

Douglas Wolf / *DW*
Douglas Wolf, Esq.

Erik D. Olson / *EO*
Erik D. Olson, Esq.

the plea bargain can be questioned with respect to Exxon itself. This is particularly true in light of Exxon's widely reported statements in the wake of the settlement's announcements that the deal would have no effect on Exxon's financial position, suggesting the Company's management has no remorse for its actions and that there will be little or no deterrent effect from the fines imposed.

72
April 11, 1991

The Honorable H. Russel Holland
U.S. District Court
Anchorage, Alaska

Dear Judge Holland:

I am writing to respond to your call for public comment on the plea bargain proposed for Exxon Corporation and its shipping subsidiary.

Based on the information released regarding the settlement, I am opposed to accepting it for the following reasons:

--the damage from the spilled oil now appears to be much greater than previously reported, per the federal government's recent release of its studies. It was tough enough for me to swallow the settlement given Exxon's rosier scenario; given the facts now, the settlement's become totally unpalatable. The damage from the oil is widespread and long-lasting according to the studies; \$1 billion no longer seems like such a great deal.

--pleading guilty to misdemeanor charges doesn't send a clear enough message to others in the oil industry. Criminal charges, with a heftier fine, might help.

--\$1 billion barely makes a dent in Exxon's profits. If Exxon can't fix the problem (and it's obvious no one can) they should at least feel the monetary consequences.

--I don't like the fact that accepting the settlement offer means Alyeska's off the hook for prosecution. Clearly Alyeska didn't fulfill its mandated obligation to be prepared for a spill; they were negligent and should be prosecuted. Simply because Exxon doesn't want to write two checks and owns twenty percent of Alyeska doesn't mean those owning the remaining eighty percent shouldn't be held responsible.

I am 32 years old, the mother of two small children, a weekend kayaker, and a responsible citizen. As an individual, I feel impotent against the power and size (and money) of Exxon but remain hopeful our justice system can speak for me and others who feel as I do.

Sincerely yours,

Constance K. Quinley
Constance K. Quinley
1812 Bowdoin Circle
Anchorage, AK 99508
907-563-8569

ACE 447721

APR 11 1991
U.S. DISTRICT COURT

(15)

APR 11 1991

U.S. DISTRICT COURT

Lloyd Benton Miller
SONOSKY, CHAMBERS, SACHSE, MILLER & MUNSON
900 West 5th Avenue, Suite 700
Anchorage, AK 99501
(907) 258-6377

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SONOSKY, CHAMBERS, SACHSE & MILLER
900 WEST 5TH AVENUE
SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258 6377

UNITED STATES OF AMERICA,	)	NO. A90-015-1CR
	)	NO. A90-015-2CR
Plaintiff,	)	
	)	
EXXON CORPORATION AND	)	
EXXON SHIPPING COMPANY,	)	
Defendants.	)	

CIVIL PLAINTIFFS' COMMENTS ON PROPOSED SENTENCE

All plaintiffs in Case No. A89-095 Civil (Consolidated) before this Court, ~~and~~ plaintiffs and the classes they represent in Case No. 3AN-89-2533 Civil (Consolidated) in the Superior Court for the State of Alaska, Third Judicial District (hereinafter referred to as "the Civil Plaintiffs"), pursuant to this Court's Order of March 22, 1991, hereby submit their comments ~~on~~ the sentence specified in the Plea Agreement entered into by the United States and Defendants Exxon Corporation and Exxon Shipping Company.¹ Civil Plaintiffs urge the Court to ~~del~~

Civil Plaintiffs continue to ask the Court, as they did in their motion dated March 21, 1991, to enter an Order to Impound or Otherwise Preserve All Grand Jury Documents, Subpoenae and Transcripts. Civil Plaintiffs also support the assertions and positions set forth in the letter of U.S. Representative George Miller addressed to this Honorable Court

SONOSKY, CHAMBERS, SACHSE & MILLER
900 WEST 5TH AVENUE

SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258 6377

accepting the Plea Agreement, pursuant to Rule 11(e)(2), F.R.Crim.P., until such time as complete record is before the Court on the impact of the offenses committed by Defendants and their history of violations of the environmental laws.

The Proposed Sentence Cannot Be Properly And Adequately Assessed By The Court Without (1) Full Disclosure Of The Scientific Data and Analyses Accumulated But Withheld By The United States; And (2) After Such Disclosure, Providing An Opportunity For Non-Government Experts to Comment On The Sentence In Light Of The Data.

The Sentencing Reform Act of 1984, as amended, 18 U.S.C. §3553(a), mandates that the Court consider before sentencing: "(1) the nature and circumstances of the offense...." and "(2) the need for the sentence imposed- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense...." To make these determinations in this case the Court will need an extensive assessment by the scientific community of the nature, circumstances, and seriousness of the effects of the oil spill at issue.

That inquiry is not possible now because the government has failed to provide the scientific community, the Civil Plaintiffs who are victims of defendants' offenses, and the public in general with the significant and relevant data and analyses which the government has had in its possession for months. The import of the granite barrier to scrutiny that has been maintained by the government, despite persistent requests for disclosure, is described in detail in the Affidavits of eminent scientists Drs. Capuzzo, McElroy, and Teal, and Bruce W. Tripp, whose affidavits were submitted to the Discovery Master, the Honorable David B. Ruskin, as Appendices F through I to "Plaintiffs' Memorandum in Support of Motion for Disclosure of All Scientific Data on the Impact of the Oil Spill on Natural Resources" in Case No. 3AN-89-2533 in the Superior Court for the State of Alaska, Third Judicial District of Anchorage. Because of this barrier, experts

and dated April 8, 1991.

SONOSKY, CHAMBERS, SACHSE & MILLER
900 WEST 5TH AVENUE

SUITE 700

ANCHORAGE, ALASKA 99501

(907) 258 6377

outside the government have been unable to provide a full assessment to the Court on the nature, circumstances, and seriousness of the effects of the oil spill at issue. The Court should clearly desire to have such expert opinions in light of the gravity of the offenses, the victims' right to provide comments, and the fact that the government is not acting solely as the enforcer of the law, free of non-prosecutorial bias, but rather is also pursuing this Plea Agreement as part of an overall settlement in which it is a settling defendant.

Perhaps recognizing that this Court could not perform its duties in this criminal proceeding without such information, the U.S. Justice Department, only three days before these comments were due, lodged an 18-page *summary* of 58 scientific studies (reportedly costing \$70 million) with this Court in Civil Action A91-002. This Court should require the government to disclose the complete scientific record, and not just a purported summary. Accordingly, the Court should defer sentencing until: (1) the United States makes available to the Court, the Civil Plaintiffs, and the public the *complete* scientific record needed to appraise "the nature and circumstances of the offenses" involved and "the need for the sentence imposed to reflect the seriousness of the offense...and to provide just punishment for the offense;" and (2) the Court affords the opportunity for comment on the sentence in light of that record. In any event, the Court should defer sentencing until the victims of the offense and experts provide comments in response to whatever the government has released and whatever it and Exxon submit on April 16.

**The Fine Agreed To Is Insufficient To Serve The
Needs Of Deterrence.**

In deciding on the adequacy of the sentence, the Court must decide on the impact of that fine. 18 U.S.C. §3553. Here, the impact of the proposed fine on Exxon will be minimal and few if any purposes of the sentencing statute will be met.

SONOSKY, CHAMBERS, SACHSE & MILLER

900 WEST 5TH AVENUE

SUITE 700

ANCHORAGE ALASKA 99501

(907) 258 6377

Numerous statements have already been made by Exxon officials observing that the criminal fine (indeed the overall settlement) will have no appreciable effect on the Company earnings. See, *The New York Times*, Thursday, March 14, 1991, page A16. With the relative small size of this penalty, the sentence is unlikely to "afford adequate deterrence to [Exxon's] criminal conduct" or "to protect the public from further crimes of the defendant." 18 U.S.C. §3553(a) (2)(B) and (C).² This point is reinforced by the fact that the proposed penalty pales in comparison to the maximum penalty under the proposed Sentencing Guidelines. Under those Guidelines, Exxon's sentence could have been four times the overall loss to the victims of the spill.³ At a minimum, the Justice Department's conservative figure of \$600 million (2 times the victim loss as repeated by the defendants) would have been a much more appropriate penalty. Accordingly, the Court should reject this plea agreement.

**Exxon's History of Offenses Must Be Evaluated
Before The Court Rules On This Plea Agreement.**

The history of defendants' offenses must be evaluated in deciding the appropriateness of the sentence and the Plea Agreement. Civil Plaintiffs urge the Court to obtain a full report on the defendants' history of violations of environmental laws given the considerable record of offenses that is already known:

- A. Destruction of Wetlands in Arthur Kill Waterway Caused By Criminally Negligent Pipeline Rupture

On January 1, 1990, an underwater pipeline ruptured from Exxon's Bayway Refinery near Newark, New Jersey, causing approximately 570,000 gallons of refined oil to pollute

² It is noteworthy that the cost of the government's scientific studies, reported as \$70 million, constitutes 70% of the total fine, \$100 million, stipulated in the Plea Agreement.

³ Indeed, if the sentences on all five charges were to be imposed consecutively, the aggregate statutory maximum for each defendant would be \$3 billion, not \$600 million, again without considering the damages in excess of the \$300 million paid by Exxon to date.

SONOSKY, CHAMBERS, SACHSE & MILLER

900 WEST 5TH AVENUE

SUITE 700

ANCHORAGE, ALASKA 99501

(907) 258 6377

miles of shoreline and kill hundreds of birds. A guilty plea to criminally negligent discharge of oil under the Clean Water Act was entered on March 20, 1991 and a criminal fine of \$5 million (including \$4.8 million restitution) was imposed. Exxon admitted that it was negligent in training its employees and maintaining the pipeline.

B. *Exxon Corp. v. Yarema*, 516 A.2d 990 (Md. Ct. Spec. App. 1986)

A punitive damage award was upheld based upon the negligent discharge of gasoline from underground storage tanks.

C. *In the Matter of Exxon Corp.*, No. 84-0914AG (Tennessee Dept. of Health and Environment)

Exxon was adjudged to have violated solid waste regulations through improper storage of hazardous wastes.

D. *Exxon Co., U.S.A., v. State of Texas*, 646 S.W. 2d 536 (Tex. Ct. App. 1982)

Exxon was found to be criminally liable for the discharge of catalytic dust from its refinery.

E. *Exxon Co. U.S.A. v. Dunn*, 474 So. 2d 1269 (Fla. Dist. Ct. App. 1985)

Exxon was found liable for personal and property damage caused by sulphurous gas emission and vibrations.

Once a full record on defendants' history of environmental violations is developed the Court will be in a position to examine the extent to which the violations evidence a pattern of corporate indifference toward environmental issues. Only by engaging in such an inquiry will the purpose of 18 U.S.C. § 3553 be served.

DATED at Anchorage, Alaska this 11th day of April, 1991.

SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON

By: Lloyd Benton Miller

Lloyd Benton Miller
Plaintiffs' Liaison Counsel

SONOSKY, CHAMBERS, SACHSE & MILLER

900 WEST 5TH AVENUE

SUITE 700

ANCHORAGE, ALASKA 99501

(907) 258-6377

COHEN, MILSTEIN, HAUSFELD & TOLL

DAVIS, WRIGHT & TREMAINE

STOLL, STOLL, BERNE & LOKTING

WILLIAMS, TRINE, GREENSTEIN & GRIFFITH

CASEY, GERRY, CASEY, WESTBROOK,
REID & HUGHES

DICKSTEIN, SHAPIRO & MORIN

SONOSKY, CHAMBERS, SACHSE & MILLER

Macon Cowles

TRIAL LAWYERS FOR PUBLIC JUSTICE

ON THE BRIEF:

H. Laddie Montague, Jr.

Janice Siegel

BERGER & MONTAGUE, P.C.

Charles S. Crandall

MILBERG, WEISS, BERSHAD, SPECTHRIE
& LERACH

Dear Judge Holland,

Thank you for taking public comment on the Exxon Valdez litigation settlement. I have a few comments.

Prince William Sound is a conglomerate of uses and activity. Besides everything that humans do there is the base of what 'makes' the Sound, the natural ecosystems. The Spill damaged all this, so I think that any settlement should try to address all of these activities? No amount of money could. So any settlement should try to address certain basic problems

caused by the spill which
can be corrected.

1. Release the Scientific Data. If nothing else comes out of this disaster we ought to at least learn something.
2. The public, not special interests (including state agencies) should have input into any money coming from the settlement. I notice not one directly elected official is part of the Trustees.
(+ extend public comment period)
3. Limit spending the money to directly benefitting Research + Restoration of the sound (including Preservation for Research needs).

I've had to work hard
to learn about this
issue, but don't pretend
to help of it. I wish
you the best of luck.

Paul Swazek
Paul T Wardoch
Box 544
4101 University Dr.
Anchorage AK

88508

RECEIVED

APR 11 1991

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

ACE 447730

RECEIVED

APR 11 1991

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

DONNA JEFFERSON

Box 393

TALKEETNA, AK 99676

4/9/91

LIKE MANY ALASKANS, I FEEL THE PWS OIL SPILL
SETTLEMENT NEEDS FURTHER LITIGATION; EXXON GETS
A SLAP ON THE HAND, ALYESKA PIPELINE CO. GETS LET
OFF THE HOOK FOR ITS NEGLIGENCE, AND MOST
DISCOURAGING OF ALL, RESULTS OF ALL THOSE PUBLIC
FUNDED STUDIES ARE BEING WITHHELD FROM
THE PUBLIC!! UNTIL THE ABOVE THREE POINTS
ARE ADDRESSED WITH JUSTICE, I PROTEST THE
SETTLEMENT AND URGE YOU TO LOOK AT IT
WITH GREATER SCRUTINY.

Sincerely,
Donna Jefferson

ACE 447731

75
78

APR 91 11: 47

76

03001 JUNEAU ALASKA 29 04-11 1145A ADT

PMS

000298

HON. H. RUSSELL HOLLAND, U S DIST JUDGE DLR

US DIST COURT 222 WEST 7TH AVE RM 261

ANCHORAGE AK 99515

BT

IN LIGHT OF EVIDENCE PRESENTED IN CONGRESSMAN MILLERS LETTER,
DISMISSAL OF CRIMINAL CHARGES WOULD BE MISCARRIAGE OF JUSTICE.
CIVIL SETTLEMENT IS TOO LOW TO PROVIDE DETERENT AGAINST FUTURE
SPILLS.

DENNIS HARRIS

RECEIVED

APR 11 1991

HON. H. RUSSELL HOLLAND
U.S. DISTRICT COURT

ACE 447732

79

77
U.S. District Court
Judge Russell Holland
222 W. 7th Avenue
Anchorage, Alaska 99513

Dear Honorable Judge Hollard,

I am writing because I do not like the settlement Exxon has given to we Alaskans. I was born and raised in Alaska and have been here in Alaska for over 47 years. I am a working woman, and have been active in the community. My husband is also.

The damage that was done will NEVER be repaired in yours or my lifetime. The distruction to the environment, not to mention the death to all the birds and animals. That part of Alaska is tainted for many years to come.

I feel the damage that is done is damage to each Alaskan. To every Alaskan. We and our children and their children will be effected. I feel 4 billon would be more of a likely settlement. 3 billon put into the permanent fund dividend to be shared with each Alaskan. This is most fair, for it includes not only adults but the children of Alaska, its their future. The other billion would go to the State.

If we let Exxon off with such a small amount, others will not have to take much percaution. Aleyska Pipeline should be in some ways held responsible for their share of neglect. They were neglectful! (1 billion is a small amount compaired to damage done, for the most part, permanent damage)

My husband and I plan to live the rest of our lives in Alaska. Our grandchildren will live here. If we do not stand up for our State, our enviornment, our animals, our birds.....for Alaska who will? The polications for the most case, will not be around they will leave to a warmer climate.

So, your HONOR, I will have to trust that you will think this entire matter through, for each of us, when you decided what it is we should do. I trust that you will think of the damage done for lifetimes to come.

Respectfully,

Judith Lewis
Judith Lewis

JL

ACE 447733

RECEIVED

APR 11 1991

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

(80)

78

April 10, 1991

RECEIVED

APR 11 1991

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

Judge Holland
U.S. District Court
222 West 7th Ave. #4, Room 261
Anchorage, Alaska 99513-7564

RE: Exxon oil spill plea bargain
negotiated by Governor Wally Hickel

Dear Honorable Holland:

I would like to submit the following comments regarding the Exxon plea bargain for the damage done in Prince William Sound area by the Exxon Valdez. I oppose this "plea bargain" for just that reason--it's a bargain for Exxon and a rip-off for the Alaskan people, especially those directly affected in and around Prince William Sound. Exxon will get off "scott-free" if this "bargain" is struck. Exxon is a multi-billion dollar profit-making company who has a lot of power and strength because of their wealth. Someone so strong could potentially have the power to replenish the now-ruined environment. Who will end up cleaning up their mess?--The State of Alaska. Our Governor wants to take the basement "bargain" price of \$1 billion dollars! This is an outrage and it should not happen! What is \$1 billion dollars to Exxon? and where will they come up with the monies to pay for the Alaskan environment? I know where they will get the

ACE 447734

81

monies--from the Alaskans who buy their gas! Now what kind of "bargain" is that? Sounds like a big scam to me! Exxon would lose \$1 billion but would simply hike prices at the gas pump to cut their losses while at the same time taking a tax write off!

As far as I'm concerned, Exxon should be down there right now in Prince William Sound cleaning the area and making the area safe again for marine mammals, mollusks, fish, plants, and the rest of the life that was washed away with oil! In addition, the Marine Mammal Act needs to be addressed in any plea "bargain." What kind of action will be taken on behalf of marine mammals? The whole food chain has been affected and one species should not be left out of any plan to replenish or make safe the areas affected.

I support the people who have to live in the areas affected by the oil spill in their efforts to get some kind of compensation out of Exxon and Alyeska. Both of these companies, along with the State of Alaska are at fault. If a plan had already been devised for such an "accident" why did they not use it? Were they trying to cover up the fact that there was a drunken captain on board the Exxon Valdez? I just don't understand. Anyway, the people affected are not happy with this settlement because I grew up in a rural community where a majority of people depend on the natural resources living around our island, and not only for food but for our culture. I know if I were living there, I would feel very betrayed because my own

April 10, 1991
Page 3

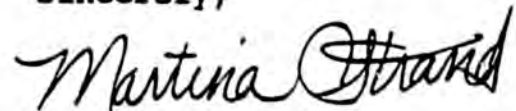
livelihood (whether it be subsistence or commercialized) had been taken away by an oil company who could afford to pay back the environment but got off with a slap on the wrist and a small fine to be recovered via their customers (the very people affected)! It's unfair, unjust and just not a "bargain" for the Alaskan people or for anyone who has to pay their prices at the gas pump. Not only the people living in the oil affected area have been or will be affected. Just because the oil was seen in certain areas, does not mean other areas and the whole food chain in general was not affected. When a species has been nearly wiped out in an area, it's hard for them to naturally replenish themselves. So if the fish in the area have been contaminated and die a lot younger, there will not be as many fish to go around and this will cause a whole chain of catastrophic events to occur. Let's theoretically say there are 500 fish in the Prince William Sound area (after the spill) but had been reduced to be 500,000 strong. This means the people who fish in the area (be it subsistence or commercial) will have less and will be forced to fish other areas in Alaska where there are more fish. But then there will be more people overfishing the areas which were not overfished last year and so on and so on. What about the animal life who depended on the 500,000 fish and now only have 500 fish to work with? Now that this number has been reduced and contaminated, where will the animals go and how will they cope with the people who are trying to use the same 500

ACE 447736

April 10, 1991
Page 4

fish? Sounds like a lot of trouble for a long time until the fish come back to their original 500,000 if at all. And what if the 500 fish that swim back to Prince William Sound are intercepted before they even get back by the Taiwanese illegal fisherman? And I've only singled out the fish. The same questions would apply to all species affected by the oil. The environment is in a delicate balance and you can't take several species out a food chain and expect the environment to recuperate with only \$1 billion dollars to work with! I have no idea just how much should be paid, but it ought to be a lot more than \$1 billion dollars! The price should also state that Exxon cannot bill their customers these costs or take a tax write-off and cut their losses because they will win in the end. The only winners in this game (if the "bargain" price is accepted) will be Exxon and Alyeska. Don't they care that our Mother earth will only tolerate so much? Do they want to live on the earth or would they rather we shot them into space as a form of punishment so they would appreciate the earth? Big corporations like Exxon need to be taught a lesson--money can't buy-off real Alaskans; but since they have the money, let them try to buy our earth back and spend as much as they can.

Sincerely,


Martina Strand
A Concerned Alaskan

ACE 447737

Memorandum

APR 11 1991

U. S. DISTRICT COURT

Date: April 11, 1991

To: United States District Judge H. Russel Holland

From: Karlene B. Leeper, 1652 Sunrise Drive, Anchorage, AK 99508

Subject: Comments on United States of America vs. Exxon Corporation
and Exxon Shipping Company Plea Agreement No. A90-015 CR.

My main concern is that cultural resources, especially archeological sites are not addressed in the Plea Agreement. Some items from the Agreement which I would like to see addressed include:

-Paragraph IIIA of the Plea Agreement seems to preclude actions by U.S. government agencies under several laws protecting cultural resources including the Archeological Resources Protection Act (ARPA), the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). I feel that the Plea Agreement should include criminal charges under acts regarding cultural resources.

-As administrative actions, penalties by U.S. government agencies under the Archeological Resources Protection Act are excluded.

-Paragraph IIIB limits the right of U.S. government agencies other than the Department of Justice to seek civil or administrative actions against Exxon and Exxon Shipping. Why does the Justice Department have this sole power to leave out considerations of other agencies and departments such as the Department of the Interior, the Department of Agriculture and the Department of Commerce?

-Paragraph IV states that payments of \$50 million to the State of Alaska are to be used for restoration, replacement, enhancement and monitoring of affected resources. It is not stated that these include cultural resources. This needs to be specified in the agreement.

-In addition to the impacts of the oiling and shore cleaning methods, the extensive work on the shores of southern Alaska by oil spill workers has exposed locations of archeological sites to the public and has increased potential damage by looting. Increased monitoring and legal assistance is needed to protect the cultural resources on public lands from looting.

-Cultural resources lost and affected by the oil spill are valuable and irreplaceable representations of Alaska's heritage. They seem to have been left out of the criminal plea agreement and the civil settlement. The plea agreement should be revised to include the assurance that a portion of the fines will be set aside for the

ACE 447738

(missing rest of document)

LATE

80

Keith F. Fabing
Box 112021
Anchorage, ALASKA
99511-2021

10 April 1991

The Clerk of the Court
222 West 7th Ave.
Box 4
Anchorage, AK 99513

To whom it may concern,

I wish to express my opposition to the proposed plea agreement between the United States of America (Plaintiff) v. Exxon Corporation and Exxon Shipping Company (Defendants).

My personal feeling on this issue is that the citizens of the United States and, more importantly, the citizens of the State of Alaska and those in the areas directly and indirectly impacted by the illegal and chronic discharge of oil in the waters of Alaska and the United States by the above stated defendants, have been largely and purposely excluded from the overall process of arranging this plea agreement.

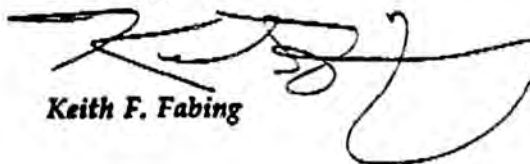
I also feel that the proposed fines against Exxon Corporation and Exxon Shipping Company do not begin to approach the level of punitive compensation due to the citizens of the United States and the State of Alaska when weighed against the overwhelming loss of life within the impacted areas, the long term lifestyle changes that have been forced upon the citizens within these areas, and the emotional impact upon all of those citizens who value the few areas that have been spared the impacts of toxic pollutants that have already compromised most of the waters of the United States.

When one considers the economic position of the Exxon Corporation and their family of companies and subsidiaries within the world, I am forced to question the impact that the proposed fines will have on their organization, particularly when a large portion of their sentence will be passed over onto the backs of the American Taxpayer.

Yes, I am opposed to the adoption of this proposed plea agreement. Regardless of the costs in terms of time and legal fees, I feel that broader participation must be encouraged from all affected parties in this overall process.

Thank you.

Sincerely,



Keith F. Fabing

ACE 447741

APR 12 1991

U.S. DISTRICT COURT

83L

TOTAL P.02

FACSIMILE TRANSMISSION COVER SHEET

ACE 447742

Dr. David C. Harrison
1057 W. Fireweed Ln. 220
Anchorage, Alaska 99503

RACHEL II

LATE

81

APRIL 10, 1991

TO: PRESIDENT ELIASON - STATE SENATE JUNEAU
SPEAKER GRUSSENDORF - STATE HOUSE JUNEAU
MR. BRUCE KENDALL - OFFICE OF THE GOVERNOR

Judge Holland - FEDERAL Judge ALASKA
* (PLEASE ACCEPT THE EXXON SETTLEMENT) AND GET ON WITH THE
BUSINESS OF STATE AND OF PROTECTING OUR ANADROMOUS FISH
ON THE HIGH SEAS.

FOREIGN HIGH SEAS INTERCEPTIONS HAVE DONE MORE DAMAGE
TO ALASKA'S ECONOMY THAN THE OIL SPILL. YOU ASK HOW I
KNOW? SINCE AND PRIOR TO 1937, FOREIGN INTERCEPTIONS OF
OUR ANADROMOUS FISH ON THE HIGH SEAS HAVE COST HUNDREDS
OF BILLIONS OF DOLLARS - TO THE STATE REVENUE - TO THE
RESIDENT COMMERCIAL FISHERMEN OF ALASKA and TO LOCAL
GOVERNMENTS THROUGHOUT ALASKA.

I KNOW MOST OF YOU HAVE HAD A LITTLE HISTORY OF THE ALAMO.
BUT DO YOU REMEMBER HJR 27 AS INTRODUCED IN 1988 by REP.
JIM ZAWACKI. YES, I KNOW, YOU HAVE FORGOTTEN RESIDENT
COMMERCIAL FISHERMEN. IT IS TIME TO STOP FORGETTING - OK!
GOV. HICKEL HAS DONE WHAT CAN BE DONE AND PLEASE ACCEPT THE
EXXON SETTLEMENT AND GET ON WITH MORE IMPORTANT THINGS. OH!
ONE OTHER THING, SUPPORT GOVERNOR HICKEL'S EFFORTS TO GET
ALASKA MOVING AGAIN. WE HAVEN'T HAD A 'DOER' IN THE GOVERNOR'S
OFFICE SINCE I KNOW WHEN. I CALL UPON ALL OUR FISHERMEN
LEGISLATORS TO STAND UP AND BE COUNTED FOR RESIDENT COMMERCIAL
FISHERMEN. YOU CAN DO IT BUT WILL YOU - TIME WILL TELL.

David C. Harrison
David C. Harrison, Capt. F/V Rachel II 33 years resident fisherman
STATE SENATOR 1963-67 WESTERN ALASKA

Alaska Resident Commercial Fishermen Help You Live Better

* For Judge Holland - FEDERAL Judge 9th Court District (85L)

ACE 447121

April 10, 1991

Judge Russell Holland
U.S. Federal Courthouse
Anchorage, Alaska
99501

LATE

82

Dear Judge Holland,

Reviewing past and present revelations on the Oil Spill, I do not think the deal pending with Exxon is a good one. With the new information on loss of wild life, I feel the amount of settlement should be 3-4 billion dollars, and perhaps tied entirely to restitution of wild life and preventive programs for future accidents and injury to aborigines.

Additionally, if the situation is to end with dropped charges, at least Exxon and the responsible Coast guard officials should be given some meaningful public reprimand for their recklessness.

Sincerely yours,

Charles E. Tush M.D.

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

LATE

83

April 9, 1991

Clerk of Court
U.S. District Court
Federal Bldg. U.S. Courthouse
22 W. 7th Avenue #4 Rm 261
Anchorage, Alaska 99513-7564

RECEIVED

APR 12 1991

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Clerk of Court,

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

Oil Spill Settlement Monies:

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

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

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

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

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

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

Sincerely,

Mary

Mary Malchoff, Resident

ACE 447123

(872)

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

LATE

8A

RECEIVED

April 8, 1991

APR 12 1991

Clerk of Court
U.S. District Court
Federal Bldg. U.S. Courthouse
22 W. 7th Avenue #4 Rm 261
Anchorage, Alaska 99513-7564

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Clerk of Court,

We the members of the Port Graham Council who are made up of five (5) Alaskan natives who participate in the activities of Subsistence are concerned over whether the 100 million dollars of the criminal case will be adequate. With one half to the State as a tax deductible payment of restitution only 50 million is a real criminal fine.

We're of strong feelings that the \$50 million criminal fine is very inappropriate for the nature of the crime, the Exxon Disaster brought on damages to every aspect of the native peoples of the Prince William Sound and Lower Cook Inlet and Kodiak area. We feel there needs to be a greater punishment for the crime, Exxon earns several billions of dollars and have caused billions of dollars in damages.

What might have been the fines had Exxon been convicted? We're sure they'd be much greater.

We as Native Subsistence Users have never been considered in any monies paid the State and Federal governments.

I don't feel the 50 million fine monies should be spent on Violent Crime Victims Fund. This is not fair! It should be paid to us the true victims of the Exxon Disaster.

Sincerely,

Elenore McMullen

Elenore McMullen, Chief

ACE 447124

88L

LATE

April 9, 1991

RECEIVED

APR 12 1991

Jennifer Nelson
CLERK, U.S. DISTRICT COURT
5100 Spruce Ck. Anchorage, Alaska
Anchorage, Ak 99516

Honorable Russell Holland
Federal District Court
222 W. 7th
Anchorage, Alaska

This is in response to the proposed Exxon settlement, both criminal and civil. Throughout the entire tragedy, Exxon has done nothing but defend itself and attempt to downplay the devastation which occurred. I have yet to see any evidence on their part of genuine concern for what they destroyed through their ignorance, incompetence, and general disregard for the unique environmental treasure chest of this state. The oil spill has forever destroyed the delicate balance of this enriched environment. Exxon's proposed punishment for this travesty is so minute it is unbelievable. The possibility that the company's directors and others responsible will not be forced to serve time in jail after the incarceration sentence they have handed to Alaska is outrageous. The one billion dollar settlement would be laughable if it was not so depressing. This settlement represents one quarter of Exxon's profits for last year alone, not to mention the fact that half of this petty cash qualifies as a tax deduction.

If we are to protect the part of this great state that has not already been destroyed, we must demand retribution that will not only cause great financial hardship to those who are responsible for so much damage and destruction, but will also allow us the financial capabilities to prevent this from happening again. We need to have the ability to develop research and preventative programs as well as state funded wildlife centers for those animals affected by the spill through physical damage as well as destruction of habitat.

If this settlement is approved, Exxon as well as other oil companies will realize that they can get away with murder.

Sincerely,



Jennifer Nelson

ACE 447125

TOTAL P.13

89L

46

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

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

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

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

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

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

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

1. Inclusion of Exxon Pipeline Company

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

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

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

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

3. The Exclusion of Alaska Native Corporations

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

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

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

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

4. Scientific Studies

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

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

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

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

5. Allocation of Settlement Monies in General

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

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

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

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

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

8. Public Participation

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

9. Covenants Not to Sue

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

10. Judicial Review Provisions

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

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

Dated: Washington, D.C.
April 12, 1991

Attorneys for Plaintiffs:

Terence Gargan
HILL BETTS & NASH
1 World Trade Center
New York, NY 10048

Kenneth F. McCallion
Bernard Persky
James W. Johnson
SUMMIT ROVINS & FELDESMAN
445 Park Avenue
New York, NY 10022

Christopher B. Kende
HOLTZMAN, WISE & SHEPARD
745 Fifth Avenue
New York, NY 10151

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

The New York Times

Copyright © 1991 The New York Times

NEW YORK, WEDNESDAY, APRIL 10, 1991

© 1991 by The New York Times Company

U.S. Says Harm From Valdez Spill Is Much Worse Than Was Thought

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, April 9 — In the most comprehensive public account of the damage caused when oil spilled from the Exxon Valdez two years ago, the Government said today that far more wildlife had been killed and that environmental damage would persist much longer than scientists had originally thought.

The Government said the number of otters, seals, bald eagles, sea birds and other once-abundant animals had plummeted after the Exxon Valdez ran aground and spilled nearly 11 million gallons of oil into Prince William Sound

in Alaska. And it said it did not expect the animal populations to recover for years.

The enormous toll on wildlife in the sound, catalogued in a summary of 38 scientific studies, also includes losses of killer whales, extensive reproductive defects in salmon and herring, and widespread and lingering damage to sea grasses and other plants in tidal zones along 1,200 miles of the western boundary of the sound and down the coast in the Gulf of Alaska, which were coated by oil for months.

Better Left Alone

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

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

Two Federal judges are reviewing the settlement, and their rulings are expected next month. Although Government officials said they were releasing the studies to bolster their assertions that the settlement with

Continued on Page A18, Column 4

LONG-TERM HARM IS SEEN IN SPILL

Continued From Page A1

Exxon was fair, critics said the same information could be used as evidence that the settlement was not adequate.

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

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

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

Shoreline Was Hard Hit

The Government's study said that 384,000 to 580,000 sea birds died after the spill and that colonies of one of the most abundant species, the common and thick-billed murres, lost 60 to 70 percent of breeding birds. Because the murre colonies live on islands where hydrocarbons and chemicals lingering from the spill are still killing them, and because murres instinctively return to their same breeding sites, scientists fear these colonies could be wiped out.

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

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

Mussels found in oiled areas were smaller than mussels in unaffected bays, a study said. Scientists also found that clams and other shellfish absorbed hydrocarbons from the oil and posed a continuing source of poison to sea otters and other species that forage in the tidal zones. A study also found that pollock caught 500 miles from the scene of the accident had elevated levels of hydrocarbons in their bile, evidence that the sea and food supply was affected at great distances from the spill.



George Follmer for The New York Times

Dr. Sylvia Earle, the chief scientist at the National Oceanographic and Atmospheric Administration, and John Robinson, the director of the agency's hazardous materials program, during a news conference yesterday detailing the wildlife loss in the Exxon Valdez oil spill in Alaska.

Sterilized Beaches

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

Scientists with the oceanic administration said today that Exxon came up with the idea of washing beaches with hot sea water and they approved. And the beach washing began within weeks of the spill. In November 1989, the agency received preliminary evidence from its scientists about the damage caused by the practice, and three weeks ago it notified the Coast Guard that the washings should be discontinued on nearly all beaches.

"At the time it made sense," said Dr. Sylvia Earle, the chief scientist at the oceanic administration. "You had a great desire to do something. People

were running around with towels wiping rocks."

Dr. Earle added: "Sometimes the best and ironically the most difficult thing to do in the face of an ecological disaster is to do nothing."

The damage to Prince William Sound is worse than thought.

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

But the new information could also stir new concerns among critics of the

settlement, among them Representative George Miller, a California Democrat who is acting chairman of the House Interior Committee.

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

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

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

The Coast Guard and other agencies have criticized Alyeska's performance, saying the company's failure to mobilize emergency equipment and quickly contain the spill contributed to making the accident the worst domestic environmental disaster of the 1980's.

CERTIFICATE OF SERVICE

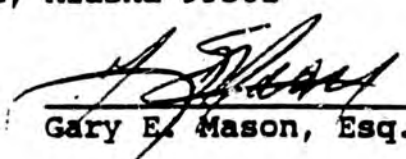
I HEREBY CERTIFY that on April 15, 1991, I caused a copy of the foregoing to be served by hand-delivery upon:

Richard B. Stewart
David A. Carson
Environmental and Natural Resources Division
United States Department of Justice
Tenth and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

and by Federal Express, overnight mail, upon:

Charles Cole
Attorney General
State of Alaska
Pouch K
State Capital
Juneau, Alaska 99811

Barbara Herman
Office of the Attorney General
State of Alaska
1021 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501



Gary E. Mason, Esq.