

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1983 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

200

Trustees of any defenses in any subsequent legal action, or of any other rights or remedies.

VI. NATURAL RESOURCE DAMAGE ASSESSMENT PLAN

The Trustees shall prepare and implement a plan of study to assess the likely costs or expenses to be incurred for restoration, replacement or loss of use of natural resources. The Trustees will not have a firm estimate of the cost of the assessment until the Plan is completed. The Plan shall identify and document the use of the scientific and economic methodologies to study short- and long-term impacts that are intended to be used during the assessment. Exxon shall be given an opportunity to participate in the development of the plan consistent with the provisions of 43 C.F.R. § 11.32.

VII. INITIAL DISBURSEMENT

A. Exxon independently covenants to pay \$15 million to the Trustees. Exxon shall within 3 working days of the execution of this agreement provide \$2.5 million in immediately available funds to the Trustees which will be deposited into an appropriate account in the United States Treasury, which account the Trustees shall designate, for the Trustees' use to reimburse and fund natural resource damage assessment activities. Upon receipt of these funds by the Trustees, \$2 million will be available to each Trustee for use in activities in connection with the assessment of the likely costs or expenses to be incurred for restoration, replacement or loss of use of natural resources affected by the oil released from the tanker Exxon Valdez. The initial disbursement does not reflect the respective obligation of the Trustees, nor does it prejudice the manner of future disbursements to be agreed upon by the Trustees.

B. The remaining \$6.5 million shall be provided by Exxon in \$1 million increments to reimburse the designated United States Treasury account within five (5) days of receipt of notice by the Trustees or the lead Trustee that balance of said account has been depleted to less than \$0.3 million. Nothing shall release Exxon of the independent obligation to pay \$15 million under the terms of this paragraph.

VIII. ADDITIONAL DISBURSEMENTS

In the event that expenses for the natural resource damage assessment exceed the initial \$15 million provided pursuant to Section VII, the Trustees will request that Exxon provide additional funds to the above account. The parties recognize that additional funds may be necessary to complete the damage assessment. Exxon agrees to give any such request its prompt consideration, but is not bound to act favorably upon such request by the terms of this agreement.

IX. EXCESS DISBURSEMENTS

If the funds provided by Exxon under Section VII and VIII exceed the actual cost of conducting the natural resource damage assessment, then such excess shall be credited toward Exxon's responsibility for replacement or restoration of the natural resources which are affected by the released oil from the tanker Exxon Valdez. Exxon's agreement to this Section is not an admission and does not contravene Section V. B.

IX. GENERAL

A. This agreement in no way affects or relieves Exxon of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

B. Information disclosure requests made to any Trustee shall be governed by applicable federal and state laws and regulations.

C. It is the intent of the parties that the clauses of this agreement are severable, and should any part of this agreement be declared by a court of competent jurisdiction to be invalid, the other parts of this agreement shall remain in full force and effect.

X. MODIFICATION

Any modification of this agreement shall be in writing, executed by all the parties.

This agreement can be executed in one or more counterparts, all of which shall be considered the original document.

IN WITNESS WHEREOF, the parties hereto have hereunto signed this agreement on the day and year appearing opposite their signatures.

EXXON:

Frank J. Iarossi Date
President
Exxon Shipping Co.

TRUSTEES:

Don W. Collineworth Date
Commissioner
Department of Fish and Game,
State of Alaska

Clayton K. Yautter Date
Secretary
United States Department
of Agriculture

Manuel Lujan, Jr. Date
Secretary
United States Department
of the Interior

William E. Evans Date
Under Secretary for Oceans
and Atmosphere, Administrator
of the National Oceanic and
Atmospheric Administration,
United States Department of
Commerce

SCOMM

77:30

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CHIEF CLERK
BARBARA L. CAVAS

SECURITY STAFF
DIRECTOR OF COUNSEL
GEORGE D. FINE

U.S. House of Representatives Committee on

Merchant Marine and Fisheries

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

April 12, 1991

Dear Judge Holland:

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

These views are based on the ongoing effort of our Subcommittees to monitor the response to the oil spill, particularly by Federal agencies, including the assessment of injury to natural resources and plans for restoring the environment of Prince William Sound. In this capacity, our Subcommittees conducted an oversight hearing on the proposed settlement on March 20, 1991. Prior to that hearing, we asked the Department of Justice to prepare and make public a summary describing and quantifying the scope and severity of injuries caused by the EXXON VALDEZ spill to natural resources. That summary was prepared and submitted to Congress and the Court on April 8th.

Following the hearing, we asked the Justice Department to provide "all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages", while offering, if requested, to maintain the confidentiality of those documents. That request was denied in a letter to us on April 9th. A copy of the correspondence is enclosed.

We believe there is a strong general argument to be made in favor of settling the pending Federal and state claims now, thereby avoiding prolonged litigation and making funds immediately available for restoration purposes. But we also believe that no settlement should be accepted unless it serves the public interest and meets the requirements of Federal law. We are unable at this time to determine if the proposed settlement satisfies these criteria. We therefore respectfully recommend that you not approve the proposal unless and until certain fundamental issues are clarified.

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Specifically, we believe that the following three actions should be taken prior to approval of the settlement: 1) disclosure to the court of enough information to permit a fully informed judgment about the monetary sufficiency of the proposed settlement; 2) a commitment by the trustees to release all damage assessment and restoration studies and related documents to the public after the settlement is approved; and 3) clarifications by the trustees concerning the manner in which the recovered funds will be spent and the extent of public participation in the restoration planning and decisionmaking process. Each point is discussed below.

1. THE TRUSTEES HAVE FAILED TO PROVIDE THE INFORMATION NEEDED TO ASSESS THE MERITS OF THE PROPOSED SETTLEMENT.

a. How much will restoration cost?

Section 311 of the Clean Water Act requires the United States to recover from Exxon sufficient funds to cover the costs of replacing or restoring the natural resources under its trusteeship that were damaged or destroyed by the oil spill. At this point, only the trustees--and perhaps not even they--are in a position to judge whether or not the amount of the settlement is sufficient to meet this statutory obligation. This is true because the trustees have not disclosed to the court, and have refused to disclose to Congress and the public, the detailed information necessary to assess the severity of damage and the anticipated costs of restoration or replacement.

Although we do not know how large the settlement should be, we do know that it is not as large as some of its proponents have encouraged the public to believe. Last month, we asked the Congressional Research Service to review the proposed agreement to determine its net value to the Federal and state governments in real terms, taking into account the effects of inflation and Exxon's ability to deduct civil payments from its taxes. That study, a copy of which is enclosed, placed the estimated net value of the settlement at between \$421 million and \$524 million.

The difficulty of judging the adequacy of the settlement is further complicated by the facts that the damage assessment process is, according to the Administration's April 8th summary, still in a "preliminary" stage; the degree of injury to some important species, including salmon, will not be known for years; injuries to several other species are continuing; and specific restoration plans have not been made, nor costs estimated.

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b. Should restoration funds be used to pay cleanup costs?

Today, more than two years after the spill, oil remains trapped in sediments and gravel. More cleanup may occur this summer. Under the proposed agreement, any future cleanup activities (and certain past cleanup costs) will be paid for by the Fund established to finance restoration activities. This will create a direct tension between cleanup funding and restoration funding -- an "either-or" scenario even though the Clean Water Act requires both.

The adequacy of this arrangement depends upon the sufficiency of funds to cover both obligations. Once again, no good conclusion can be made about this aspect of the agreement without better information on projected cleanup costs and restoration costs.

We, like the public, are not able to make a good judgment about the monetary adequacy of the proposed settlement. That is important, but it is far more important that the court have access to all the documents it needs to make that judgment. Those documents must include more than a summary of the injuries to natural resources that have occurred, but also an expert evaluation of the cost of restoring those injuries, acquiring equivalent resources, if necessary, and providing compensation for lost use and other values pending restoration. We urge you to withhold approval of the settlement unless and until that information has been provided to the court.

2. THE PUBLIC'S NEED TO KNOW.

As mentioned above, the trustees have refused to release their evaluations of the scope and severity of the injury to natural resources resulting from the spill. This refusal is based on the claim that disclosure would jeopardize the proposed settlement and is covered by a loosely construed attorney-client privilege.

We agree that the trustees are entitled to maintain the confidentiality of a limited amount of detailed information gathered or prepared specifically to assist the prosecution of a pending case and that would, if publicly revealed, seriously undermine their legal position. That entitlement is an extremely narrow one in our judgment, however, and should never again be interpreted as broadly as it has been by the trustees in the present case.

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The fact is that the trustees in this instance developed a virtual obsession about secrecy. That obsession undermined the effectiveness and coordination of oil spill response and damage assessment efforts and unnecessarily limited public access to information on matters as important as public health. The sharing of scientific data and the dissemination of expert opinions is vital to maintain public confidence and ensure the effectiveness of response actions. In this case, the trustees operated with a degree of secrecy for which there was no practical or legal justification.

It is important to remember that the information available to the Executive branch concerning natural resource injuries in the EXXON VALDEZ case was gathered pursuant to public law, by public personnel and at public expense. The information pertains to resources that are publicly managed, publicly owned and subject to public trusteeship under federal law. Accordingly, we believe that citizens deserve access to the information whether they desire simply to assess the merits of the deal worked out by the trustees or to make a more informed judgment about their own legal options.

Consequently, we urge you to solicit an enforceable commitment from the Federal Government that all information available to it concerning the scope and nature of injuries done to natural resources as a result of the oil spill, including documents that place an estimated dollar value on those injuries and the costs of restoration, will be made public promptly subsequent to approval of any proposed settlement.

3. THE TRUSTEES MUST CLARIFY VAGUE COMMITMENTS ABOUT HOW THE FUNDS WILL BE SPENT.

The proposed settlement and Memorandum of Agreement between the Federal and state trustees provide only a vague and inadequate description of the purposes for which the recovered monies will be spent and the manner in which decisions about spending priorities will be made. We therefore recommend to the court that it seek substantial further clarifications from the trustees on these matters.

The effect of the consensus decisionmaking approach proposed for the Trustee Council will be to allow each Federal and state representative to veto any proposal by any participant. In the event that the obligations of the Federal and state trustees under Federal and state law are not identical, the Trustee Council may be operating under a set of dual and potentially conflicting obligations. Under section 311 of the Clean Water Act, recovered funds must be used to solely to restore,

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Page Five

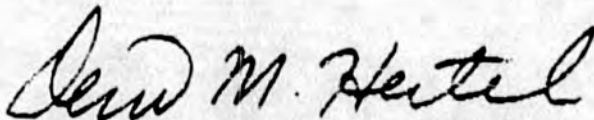
rehabilitate or acquire the equivalent of the damaged natural resources. We encourage the Court to make it clear that this limitation must be strictly adhered to by the trustees. The restoration fund is not to be viewed as a general fund to finance favorite projects or to conduct assessments in perpetuity.

We also urge you to solicit a clearer commitment from the Federal and state trustees for public participation in the natural resource damage restoration process. As you know, the proposed Memorandum of Agreement and Consent Decree provides that the Trustees shall ensure "meaningful public participation", including the "possible" establishment of a public advisory group. We believe a more detailed commitment should be made before the agreement becomes final.

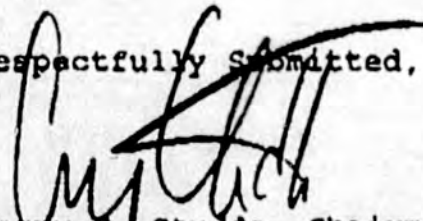
CONCLUSION

We appreciate the opportunity to provide the court with our recommendations on the proposed settlement. While we value and applaud the attempt by the litigants to settle their differences, we believe that certain clarifications are necessary before the proposed settlement is approved. We respectfully urge the court to seek those clarifications prior to taking final action on the agreement.

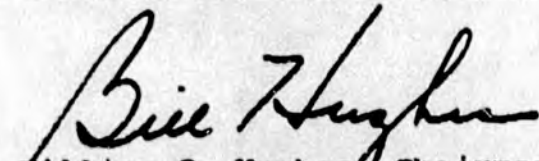
Respectfully Submitted,



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



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



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

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

Enclosures

SCOMM

77:31

7-LS1211ND

Cook

4/15/91

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Approving the proposed Exxon Valdez oil spill claims settlement.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 WHEREAS under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 WHEREAS the Attorney General has stated in a public meeting that if the legislature fails to
8 approve the proposed settlement the state will take action to terminate the proposal;

9 BE IT RESOLVED by the Alaska State Legislature that it approves the Agreement and Consent
10 Decree signed March 12, 1991, relating to the settlement of State v. Exxon Corporation, et al., United
11 States District Court, District of Alaska, Civil Action No. A91-083; and be it

12 FURTHER RESOLVED that the Governor is respectfully requested to inform the United States
13 Department of Justice that the legislature has approved the proposed settlement.

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Approving the proposed Exxon Valdez oil spill claims settlement.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 **WHEREAS** under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 **WHEREAS** the legislature's failure to approve the proposed settlement or disapproval of it will
8 not automatically terminate the proposal, but is, essentially, advisory to the executive branch of state
9 government and to the United States Department of Justice; and

10 **WHEREAS** the provisions of the proposed settlement do not appear to be negotiable; and

11 **WHEREAS** settlement of this major case is more desirable than years of litigation; and

12 **WHEREAS** if the case is settled, money that would otherwise be tied up in protracted litigation
13 will be immediately available to begin restoration of areas damaged by the oil spill; and

14 **WHEREAS** because of these considerations the legislature believes it is in the best interest of
15 the state to approve the proposed settlement despite the fact that members of the legislature do not
16 wholeheartedly support all of the provisions of the proposal;

- 1 **BE IT RESOLVED** by the Alaska State Legislature that it approves the Agreement and Consent
2 Decree signed March 12, 1991, relating to the settlement of State v. Exxon Corporation, et al., United
3 States District Court, District of Alaska, Civil Action No. A91-083; and be it
4 **FURTHER RESOLVED** that the Governor is respectfully requested to inform the United States
5 Department of Justice that the legislature has approved the proposed settlement.

7-LS1136A

Cook

3/29/91

SENATE BILL NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY****Introduced:****Referred:****A BILL****FOR AN ACT ENTITLED**

1 "An Act making special appropriations to a joint trust fund of proceeds from the
2 settlement of certain claims arising from the Exxon Valdez oil spill; and providing for an
3 effective date."

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

5 * **Section 1.** State interests in money paid by defendants during fiscal years 1991 and 1992 under the
6 Agreement and Consent Decree that settles State v. Exxon Corporation, et al., United States District
7 Court, District of Alaska, Civil Action No. A91-083 that is to be deposited into a joint trust fund under
8 the Memorandum of Agreement and Consent Decree filed in United States v. State, United States
9 District Court, District of Alaska, Civil Action No. A91-081, is appropriated to the joint trust fund
10 established under the Memorandum of Agreement and Consent Decree to be used in accordance with
11 the Memorandum of Agreement and Consent Decree.

12 * **Sec. 2.** State interests in money paid by defendants after fiscal year 1992 under the Agreement and
13 Consent Decree that settles State v. Exxon Corporation, et al., United States District Court, District of
14 Alaska, Civil Action No. A91-083 that is to be deposited into a joint trust fund under the Memorandum

1 of Agreement and Consent Decree filed in United States v. State, United States District Court, District
2 of Alaska, Civil Action No. A91-081, is appropriated to the joint trust fund established under the
3 Memorandum of Agreement and Consent Decree to be used in accordance with the Memorandum of
4 Agreement and Consent Decree.

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

7-LS1135A

Cook

3/29/91

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act granting authority to the attorney general to dispose of certain claims arising
2 from the Exxon Valdez oil spill, approving an agreement and consent decree involving
3 claims arising from the oil spill; and providing for an effective date."

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

5 * Section 1. The attorney general is authorized to enter into an agreement and consent decree to settle
6 State v. Exxon Corporation, et al., United States District Court, District of Alaska, Civil Action No. A91-
7 083. Under the settlement the attorney general is authorized to

8 (1) establish a joint trust fund with the federal government for the collection and joint
9 use by the state and federal governments of money received under the settlement agreement;

10 (2) dismiss or otherwise terminate State v. Exxon Corporation, et al., Superior Court for
11 the State of Alaska, Third Judicial District, Civil No. 3AN-89-6852 and other Civil claims of the state
12 arising from the Exxon Valdez oil spill.

13 * Sec. 2. The legislature approves the Agreement and Consent Decree signed March 12, 1991,
14 relating to the settlement of State v. Exxon Corporation, et al., United States District Court, District of

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1 Alaska, Civil Action No. A91-083.

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

SCOMM

77:32

**TESTIMONY OF
MAYOR BOBBY VAN BROCKLIN,
CITY OF CORDOVA,
BEFORE THE ALASKA HOUSE SELECT COMMITTEE
ON EXXON VALDEZ SETTLEMENT
APRIL 14, 1991**

Committee Members, Attorney General Cole, Commissioner Rosier and Commissioner Sandor:

I would like to start my testimony with Cordova's point of view based on a little history.

The people of Cordova have expressed concern about the Trans-Alaska Pipeline System from the time of its conception. After a hard-fought battle, the System was approved by a margin of one vote by the U.S. Senate. During the time of operation until the Exxon Valdez spill, Cordova continued to express its concerns and always were assured that "the best equipment, material and expertise will make operations at Port Valdez and in Prince William sound the safest in the world."

On March 23, 1989, all our concerns plus some we hadn't thought of started to become a reality. Even under good weather conditions, for the first three days, Alyeska or Exxon couldn't live up to their promises. Not even close. Less than 3,000 of the 260,000 barrels were recovered. And, with a weather change, the Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflicting one of the worst wildlife disasters in our nation's history, and disrupting the lives of thousands of Alaskans who depend on the natural resources of this region.

We all know that the Trans-Alaska Pipeline provides 25% of the nation's oil and 80% of the State of Alaska's revenue. Everyone enjoys the benefits of the oil. However, only a few coastal communities share the risk posed by the transportation of this oil along our coast. The risks and benefits are not shared proportionately. Cordova's economy is based almost entirely on Prince William Sound's resources, especially commercial fishing. Through years of efforts, we have tried to enhance these resources through the Prince William Sound Aquaculture Corporation and 1989 was the first year the plan was to be in full production. I remember a conversation I had with a local fisherman a week or two before the spill. The conversation went like this. I was asked, well what do you think the season's going to be like this year? My reply was last year we had great fish prices, but only 10,000,000 fish; this year the price will probably drop some, but the prediction is 40,000,000 fish. Even if half the fish don't return for some crazy reason, it will be better than last year, which wasn't bad. Cordova's expectations were of a good to great fishing season which would mean our economy would be thriving. On March 23, we went from being optimists to pessimists because our world as we knew it started to fall apart. Next started a time of more promises and harsh reality. The mighty resources of Alyeska and Exxon, the State of Alaska and the federal government couldn't put Humpty Dumpty back together. The community tried rage, cooperation, begging and blind faith and again we got more promises. Don Cornett from Exxon made his famous quote in Cordova: "Trust us. We will make you whole." I think Mr. Cornett's definition of "whole" is a little different than the folks of Cordova or the folks from other oil affected areas.

The Vice President, the Governor, and countless Senators, Congressmen, Admirals, cabinet members, State Senators and House members, environmentalists, reporters and lawyers came. Some made promises. Some made statements. Others just listened. But little was ever done to address the impacted people. By law, it's my understanding that

people don't qualify as a resource, so their needs haven't been addressed. If the testimony you hear today seems a little harsh, you will know why. Our mistrust in government and the oil industry is based on the fact that promises are not kept. So please don't ask us to trust you. We would prefer it in writing, backed up by a letter of credit. So much for the history lesson. Let's get to specifics on the proposed settlement.

Since we are to fend for ourselves in recovery of people damages and city governments are closer to the people than the State, I have some statements and questions that the people of Cordova and the municipality would like answers to.

The State is the trustee of all the studies and legal preparation for Exxon Valdez damages, but now the people are being put in the position to sue just to get the information. This doesn't set well when you come to us now and say the federal and state governments will fix or restore the damage if we go along with the settlement. Mr. Attorney General, tell me why I should trust the state or federal government to repair my environment and natural resources? Please give me examples of what the trustees would do and give me a equal number of examples of the trustees will not do?

What about full study of the spill? Will this be completed or curtailed because of settlement?

Why has the State, especially at paragraph 13(c), on page 15 of the agreement and consent decree, not adopted the language that it represented it would to Judge Sporkin? The State in its settlement agreement purports to reserve only the "rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title or interest in land or other property interest affected by the oil spill." What does the word "present" mean in that case? Is the State trying to support Exxon's view that the only recovery available to fishermen and others dependent on natural resources is what they would have recovered in 1989, but that otherwise, the recovery belonged to the State, and that has been compromised by the settlement?

Much the same case is made by paragraph 13(b) which purports to preserve certain aspects of Alaska Native claims. Why not just preserve whatever Alaska Native claims which are available? Why did the State tried to give the benefit of certain language to Exxon, to the detriment of certain private plaintiffs?

Why is the State sacrificing some of the availability of the Trans-Alaska Pipeline Liability Fund, by explicitly allowing Exxon to try to recover some of its losses from that fund, to the detriment of the various private plaintiffs, who may have no other source of recovery if Judge Holland is right about Robins Dry Dock?

What do the provisions at paragraphs 24-30 mean? It looks as if Exxon is free to have the governments be responsible for a portion of the fault, but that the governments are not free to bring in Exxon. Paragraph 30.

Did the State have any responsibility to its municipalities and to its citizens (be they fishermen, landowners, kayakers, businessmen, or Alaska Natives) when they are facing a litigant of Exxon's size not to settle its claims alone, but to make more of an attempt to try to get Exxon to the settlement table and compensate the individuals who were really hurt most by the spill?

The State says its settlement does not affect any other parties' rights, but this ignores the realities of litigation. With the State in the case, Exxon recognizes that it is facing a

group of plaintiffs with formidable assets and resources, not otherwise available to private plaintiffs.

Why does the State seem to go out of its way to help support Exxon's legal positions, e.g. (a) representing that only the "Governments" may recover natural resource damages under the Clean Water Act [Par. 4 of the introduction]; (b) defining Natural Resources or Natural Resource Damages broadly to appear to cut off other parties' rights [Par. 6(c),(d)]; or (c) suggesting that the agreement settles "all consequences" of the spill (paragraph 6(g))?

The municipalities were able to get a State grant for an impact analysis to look at effects of the spill on municipal finance and other "people issues." The State should continue to fund this effort both to assist municipalities with their damage case, and to help the State and municipalities plan for future catastrophic disasters. This study was the Oiled Mayors' Study. Mr. Attorney General, have you examined the Oiled Mayors' Study? Do you know why the recommendations in the study funded by a million dollars by the State of Alaska haven't been acted upon?

Can we trust the State or Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing. Mr. Attorney General, last session the oiled communities tried to have the legislature advance raw fish tax claims to municipalities. This was shot down in Senate Finance--Exxon told them they would fix us up. That hasn't happened. Without State studies, can you tell me if Exxon were to agree to settle with us tomorrow, what would be a fair number without knowing the study information?

Can you clarify how municipalities will be asked to prosecute their raw fish tax claims against the defendants for maximum recovery?

Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to private plaintiffs? [Paragraph 22 makes it obvious that this alternative will be open to Alyeska.]

**ISSUES OF PARTICULAR CONCERN TO LEGISLATURES
LOOKING AT THE SETTLEMENT FROM THE VIEW OF ALL
CITIZENS OF THE STATE**

1. Don't the people of the State need a much better understanding of the real effect of the money package?
 - (a) The real value of the money being given to the State by Exxon -- this is the whole "present value" idea. Exxon agrees to pay money over time. It is basically paying back a loan of the "Present value" of the money. What interest rate should be used in the real calculation?
 - (b) The real costs which the State and feds have accumulated so far --
 - (1) We need not just the total cleanup cost to the State and feds, but when those costs accumulated, because to the extent the State and feds don't get interest on the amount due, they are being underpaid.
 - (2) We need the same for attorneys fees',
 - (3) We need the same for the trustee and other science costs;
 - (4) We need a realistic estimate of what the rest of the cleanup costs will be for which a commitment has been made to pay Exxon when they do the work from their own money in the form of a credit; do we have any data on what was spent last year for cleanup to use as a guide ?
 - (5) The caps that the State and federal government put on the amount of the trust money which will be allocated to State and federal costs (in Par. 10 of the agreement) are not necessarily the actual value of those costs. To the extent they are not, a subsidy is being given by the people to Exxon.
 - (6) The federal government is not apparently seeking any money for litigation costs. Is that not just a subsidy to Exxon, or is the federal government being reimbursed from some other source?
 - (c) We need to really understand the tax value of this settlement to Exxon, because that affects the federal public fiscally as well. Exxon appears to have gone out of its way to force the State and federal government to spend the "leftover" money for certain projects only. How much of a tax break will that mean for Exxon? Otherwise wouldn't they have to pay taxes on this money since it would be earnings?
 - (d) We need to decide what is really going to be done with what, if any, money is left:
 - (1) Is it going to be used for projects, such as timber purchases, which might hurt local communities, e.g., Seward, more than help them?
 - (2) In what areas is it going to be used? Is there any understanding now of how it should be spent?
 - (3) Who will have control over the trust fund? It appears to be 3 federal and 3 State people, whose choice is left completely to the Governor;

- (4) What controls will there be on the trustees? There appear to be none now.
2. Can a responsible citizen or legislator now assess the appropriateness of the settlement since neither knows:
- (a) The liability case against Exxon, and Alyeska (this is to be found largely in the work product of Preston and the AG);
 - (b) The damages case against Exxon, and Alyeska [this is to be found largely in the science from the trustees, a summary of part of which was first made available a few days ago, but the bulk of which has not been made available];
 - (c) The downside of continuing with the litigation
 - costs for attorneys? Has any serious analysis been done of the Preston and costs: have they been cost effective; what would it cost if a "tight ship" set up from here on out? Is there any foundation for the representations of the Governor that it would take 10 more years to litigate the case? Is the case that complicated? What would be the real costs that are being forgone through settlement?
 - (2) The impact of not settling on other State projects (e.g., ANWR and other development projects). The assumption is that the State wants to put Exxon, and certain other tax litigation behind it so that development can occur. How valid is this position? Do the people of the State really want that development? Has this issue been really looked at?
 - (d) The case against the State for its own negligence (which for the most part may remain open as a result of the settlement given that there is a significant risk that the State will be exposed to a damage verdict).
 - (e) The effect of a settlement of some of the State claims on those that remain--is the State worse off now in terms of its potential liability to private plaintiffs than it was before? Is there a bigger chance it will have to pay than if it was in the case at a trial against Exxon?
 - (f) Can we trust the State or the Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing.
3. The reopener clause appears to have severe problems:
- (a) The reopener may be used in very limited circumstances, and only if "the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the effective date" of the agreement. Is there any reasonable possibility that this clause is of any value to the State. Why was it even bargained for?
 - (b) The reopener clause invites litigation again. If the State asserts its validity, nothing stops Exxon from fighting its application, and again, "settling" differences with the State. It lacks any objective standards.

(c) There is no scientific evidence presented from which one can make a judgment about the usefulness of the reopener clause.

4. The indemnity provisions seem to put the State in a worse position than it was prior to the settlement with respect to liability and with respect to exposure for attorneys' fees. Whereas the State had not been sued prior to the settlement and probably would not have been sued had it secured the agreement of Exxon that it would not assert that the State was responsible, or had it obtained Exxon's agreement to indemnify the State, it now has been sued by hundreds of parties who did not want to sue the State. The cost of defending the case may well exceed the cost of prosecuting the case. The State is now looking at serious potential exposure for damages, or, alternatively, with the ridiculous notion of fighting its own citizens in a liability battle, and trying to belittle their injuries suffered from the spill.

5. How does the State control billing by Exxon for post agreement spill costs? The language in paragraph 11(b) seems to cover everything in the world; including Exxon's attorneys' expenses [i.e., "other professional expenses."] Is there no control in the agreement for Exxon's accountability to the fund it itself created through a settlement with the State?

6. Why is there the tension between paragraphs 12(a) and (b)? Which is the paragraph which more probably will apply because of what we expect Exxon to actually expend, and what does that paragraph mean?

7. Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to the private plaintiffs? (Paragraph 22 makes it obvious that this alternative will be open to Alyeska)

8. Is there any serious attempt at deterrence through the amount of penalty involved, especially when Chairman Rawls telling the media that the settlement and criminal penalty will have no noticeable effect on Exxon's bottom line? The \$421 million present value which Exxon is paying is just 4/10 of 1% of Exxon's annual revenues of \$95 billion.

9. What deterrent effect is there for Alyeska which avoids any liability for its part in the damage to the environment through this settlement?

10. Should the legislature be concerned with what has appeared to be an intentional withholding of information from the legislature and the citizens of the State by Exxon and the State of the information necessary to make an informed judgment about the settlement?

11. Do the recent revelations of Alyeska's conscious indifference to the need for a realistic contingency plan to deal with large spills make any difference in assessing the settlement?

12. Have the people of the State, who are just now getting an idea of what the settlement document says, and its economic ramifications had enough time to make a Judgment, or to provide you with political input into what should be done?

13. Is it constitutional for the State to enter into a plan committing to trustees, without legislative scrutiny, the discretion to spend what may be large amounts of money?

14. What is the joint conduct agreement described in paragraph 35?

WHAT SHOULD THE LEGISLATURE DO AT THIS JUNCTURE?

The legislature should postpone any approval of the settlement until:

- a. It has sufficient information, and time, to assess whether the settlement provides enough money to fix the long-term damage to the Alaskan environment;
- b. provisions are added to give the oil affected areas, a voice in how the money is spent;
- c. Exxon and Alyeska settle the compensatory and punitive damages claims of the people and entities injured by the spill, or if that cannot be accomplished within 30 days, Exxon and Alyeska agree that they will not put the State on trial in absentia when those damage claims go on trial.

SCOMM

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**TESTIMONY OF
MARILYN LELAND
EXECUTIVE DIRECTOR, CORDOVA DISTRICT FISHERMEN UNITED,
BEFORE THE ALASKA HOUSE SELECT COMMITTEE
ON EXXON VALDEZ SETTLEMENT
APRIL 14, 1991**

My name is Marilyn Leland. I am the Executive Director of Cordova District Fishermen United, also known as CDFU. I have been intimately involved with the Exxon Valdez oil spill since before 7:00 a.m. on March 24, 1989. More than two years later, the oil spill still dominates my life.

Gentlemen, first let me thank you for coming to Cordova to hear our comments on the proposed settlement with Exxon. Although we understand the need for comments at this time, the timing really couldn't be worse for Prince William Sound fishermen. As I am giving this testimony, there are roughly 1,000 herring fishermen, crewmen, tendermen and pilots who are not in town, but are on the fishing grounds. Because of that fact, I want to assure you that the sparse attendance today does not indicate a lack of interest in the settlement. Prince William Sound fishermen are very interested, but the herring are here now is when they must work to make a living.

As I see it, there are several basic problems with the settlement, some of which could have been avoided had the people who had been damaged been allowed to be a part of the process and much of which could still be cured by the release of the damage assessment data.

First, to the value of the settlement--at this time it is impossible for us to determine what the damages are worth or even if an actual damage figure can be determined now. We have not been privy to the state's damage assessment data. However, we have seen Fish & Wildlife's preliminary data this week, which indicates that there may be substantial injury to fishing resources in Prince William Sound, in particular salmon and herring. The report states: "The full extent of short term injury to pink salmon cannot be assessed until after the 1991 run returns to spawn in the summer." That statement, alone, causes us to question whether it is possible to set a value on the damage at this time.

The report also states that: "Preliminary analyses indicate a 70 percent greater mortality of pink salmon eggs laid in the summer of 1989 and a 50 percent greater mortality in the summer of 1990 in oiled streams as compared to control streams. Larvae from heavily oiled streams showed gross morphological abnormalities, including club fins and curved spines."

The report goes on: "Tagging studies have demonstrated that the annual mortality of adult Dolly Varden was 32 percent greater in oiled areas than in unoled areas." With respect to herring, it was reported that "Study results show a large increase in the percentage of abnormal embryos and larvae in oiled areas of Prince William Sound during the 1989 reproductive season. Larvae also had a greater incidence of eye tumors in oiled areas. These effects continued but at somewhat lower rates in 1990. Results also showed greater egg mortality in oiled areas as compared to unoled areas. Whether the adult population has been affected by these larval injuries will not be determined until the 1989 and 1990 cohorts return to spawn in 1992 and 1993."

While we agree that it would be good to settle the State's claims and begin to put the oil spill behind us, you cannot make a monetary settlement until the full extent of the damages are known. Exxon made partial settlements with some of the fishermen because of this same issue. Has the State explored that possibility with Exxon?

Further, with respect to the release of the damage assessment data, it is imperative that the information be made public so that reasonable plans for recovery can be made; or if it is determined that recovery is not possible in certain instances, that consideration be given for alternative enhancement projects.

We have been told that the damage assessment data cannot be released until a disposition has been made of all litigation because it could be used against the State. That's a legitimate concern. Except, the individual plaintiffs were not suing the State and did not want to sue the State, but were forced to because of this settlement. The individual plaintiffs even offered to waive all claims against the State, but that offer was declined. The individual plaintiffs asked for an extension of the statute of limitations so that the possibility for waivers could be fully explored. The extension was refused. We then filed against the State.

An argument that has been made for settlement at this time is the tremendous savings in attorneys' fees the State will realize by not having to continue the litigation against Exxon and Alyeska. However, in reality the State has traded those two defendants for thousands of individual plaintiffs. Not only will the State still have attorneys' fees, but they are also now facing exposure for actual payment of damages. The bottom line could be a greater cost to the State.

We would argue that not only is it to soon to determine the value of the injuries sustained, but the settlement figure is no doubt too small to be an incentive for the oil companies to correct deficiencies so that we could have a greater certainty that this sort of disaster will not happen again in Alaska. The total cost to Exxon, after tax, is less than \$425 million according to the federal government. The cost to Alyeska is nothing. Last year, Exxon's revenue was \$117 billion. Based on that figure, even if Exxon were to pay the total settlement in one year, it would total less than .004% of their total revenue. On the other hand, if a fisherman is caught making a set too early or drifting over a line, he is likely to be fined several thousands of dollars, be required to surrender fish he has in his hold and could potentially lose his vessel and his fishing permit, which is as it should be. The cost of the fine and the value of the surrendered fish would be significantly more than .004% of the fisherman's annual revenue and the loss of the boat and permit would most likely constitute a major chunk of his net worth. You can bet that fisherman will make better efforts to know exactly where the line is or have his watch set with Fish and Game's so that he doesn't repeat that mistake.

There are too many unanswered questions about how the settlement money will be spent. With three state and three federal officials, none of whom have been elected by the people, making up the trustees, the people who have been most impacted by the spill are likely to have little input on how those funds are spent. We still alternately hear both suggestions and denials that the funds should be spent to create a world class marine park in Prince William Sound, to complete the Copper River Highway and even to build a deep-water port at Fire Island. Random House Dictionary defines "restore" as "to bring back into existence, use, or the like; reestablish; to bring back to a former, original or normal condition; . . . to bring back to a state of health, soundness, or vigor." Because there has never been a world class marine park in Prince William Sound, the Copper River Highway has never been completed and there has never been a deep water port at Fire Island, none of these projects would fit the definition of "restore."

What is perhaps most frustrating is the fact that when this disaster began, the people most affected in the area tried to infiltrate the bureaucracy that was Exxon and Alyeska only to be told that we weren't needed, that we were amateurs and in Don Cornett's inimitable words that we should trust them and we would be made whole. Well, Exxon did find out that they needed us and we weren't amateurs, but we still haven't been made whole and we are still being treated by Exxon and now the State of Alaska as though the plans for clean up and restoration and the settlement are not any of our concern and that we should just trust you. Well, we've heard that for too long and it just doesn't work anymore.

We ask the legislature to postpone approval of the settlement until it has sufficient information and time to assess whether the settlement provides enough money to fix the long-term damage to the Alaskan environment; provisions are added to give the legislature, and the public, a voice in how the money is spent; and Exxon and Alyeska settle the compensatory and punitive damages claims of the people injured in the spill, or if that cannot be accomplished within 30 days, Exxon and Alyeska agree that they will not put the State on trial in absentia when those damage claims go to trial.

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Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

April 12, 1991

DEPARTMENT OF
NATURAL RESOURCES

Commissioner Harold Heinze
Alaska Department of Natural Resources
400 Willoughby Avenue
Juneau, Alaska 99801

APR 12 1991

COMMISSIONER'S OFFICE
ANCHORAGE

PUBLIC RECORDS REQUEST

Will fax it. smh

Dear Mr. Heinze:

Trustees for Alaska, Alaska Center for the Environment, and Thomas Lokash hereby request information under the Alaska Public Records Act, AS 9.25.110. Please furnish us, within 10 working days of your receipt of this letter, with a copy of the following documents:

- a. Any and all economic, sociological and scientific studies generated to assess the damage to Alaskan lands, waters, flora, fauna, or residents (the "Damage Assessments") as a result of the grounding of the T/V Exxon Valdez on March 24, 1989 (the "Spill"), including, but not limited to, the post-mortem examination of dead marine mammals, birds or fish;
- b. Any and all correspondence, memoranda, and other documentation provided to the Alaska Legislature concerning the Spill settlement, including data describing those members of the Alaska Legislature to whom such information was distributed;
- c. Any and all correspondence, memoranda, and other documentation regarding the detection of mutagenic, carcinogenic, or toxic substances in areas affected by the Spill;
- d. Any and all correspondence, memoranda, and other documentation concerning the cost of removing the remaining oil from areas affected by the Spill; and
- e. Any and all correspondence, memoranda, and other documentation concerning the cost of restoring the areas affected by the Spill.

We also request that you provide us with a catalogue of the above referenced documents so that this information will be readily accessible to the public and their Legislative representatives.

In determining whether to honor this request, we refer you to Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989) ("[A] public agency may not circumvent the statutory

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disclosure requirements by agreeing to keep the terms of a settlement confidential.")

If you withhold any portion of the requested documents, please identify the document and specify the exemption that applies and provide any guidance documents or legal opinions that support your interpretation.

If you determine that any of the requested documents, or portions of them, are exempt from release, please segregate those portions and release the remainder of the document.

We also request that you waive any applicable fees for material search and duplication, since furnishing this material will benefit the public. Trustees for Alaska is a non-profit, public interest environmental law firm. We will make information requested available to our members and the general public upon request.

Trustees is not seeking financial gain through this request and does not anticipate using the information received for financial gain. In the event that charges in excess of \$100.00 are anticipated meeting this request, please notify the undersigned of the appropriate cost before filling this request.

Trustees is representing all of the groups and individuals making this request. Your response to this request should be made to the undersigned.

Thank you for your attention to this matter.

Sincerely,


Randall M. Weiner
Executive Director

Request made to below agencies
Commissioner Rosier
Commissioner Sandoz
Charles Cole

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APR-12-91 FRI 13:27 BLED SOE & KNUTSON
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FACSIMILE COVER SHEET

To: DATE: 4/12/91
FILE NO: 1266
465-4565 Mary McDonnell
Max Gruenberg Dick Eliason 465 4928
TO: _____
COMPANY: _____
PHONE NUMBER: _____ FACSIMILE NUMBER: _____
RE: Exxon Settlement
FROM: Jeff Parker
NUMBER OF PAGES (INCLUDING COVER SHEET): 15
COMMENTS: See p. 3 - I would strongly urge
you to get the testimony of the economists named
on p 3 who performed the damage calculation
studies and were to be expert witnesses for
OPERATOR: JP the State and the
United States. I

believe the names of these experts
have not been made public until
now and the Legislature and Congress
deserves to hear from them.
IF YOU DO NOT RECEIVE ALL OF THE ABOVE STATED PAGES,
PLEASE CALL (907) 272-5200 IMMEDIATELY.

Jeff

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April 11, 1991

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

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

Dear Judge Holland:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Alyeska Should Not be Excused From Criminal Liability.

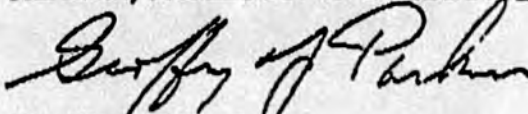
Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that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

CONCLUSION

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

Respectfully submitted,

ADLER, JAMESON & CLARAVAL


Geoffrey Y. Parker

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

April, 1986

Prepared for:

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management
Sanctuary Programs Division
Washington, D.C. 20235

Under Contract Number
50-DGNC-6-00102

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Attachment B

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

Replacement Costs

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

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

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

FIGURE 23

ESTIMATES OF SEABIRD SPECIES VALUE/PRICE FROM VARIOUS SOURCES

(In dollars per one specimen)

SPECIES	SOURCE								
	Seattle Aquarium	Sea World	Los Angeles Zoo	Myrtle Marine Life Aquarium	New York Zoological Park	Busch Gardens	International Zoological Distributors	International Animal Exchange	Boston Zoological Gardens
Common Loon		200	140		1500		200	300	250
Arctic Loon		180	300		1500		300	300	250
Red-Throated Loon		280	500		1500		300	300	250
Loon spp.		200			1500			300	250
Western Grebe	75	200	250		1800		25	300	250
Red-necked Grebe	75	200	300		1800		25	300	250
Horned Grebe	75	200	300		1800		25	300	250
Hared Grebe	75	200	250		1800			300	250
Grebe spp.					2000			300	250
Northern Fulmar					500			300	250
Sooty Shearwater		100	200		500			300	250
Deandt's Cormorant			75	200		500		300	250
Pelagic Cormorant		75	200		500			300	250
Cormorant spp.		75	280		500			300	250
Northern Pinnell	20			50	200	35	15	300	250
Ruddy Duck	150	75		30	300	75	20	300	250
Greater Scaup		37	150		200	50	15	300	250
Scaup spp.			150		200			300	250
Black Scoter					500		150	300	250
Surf Scoter	220	1000	700		500		150	300	250
White-winged Scoter	220	1000	300		500		250	350	300
Scoter spp.					500			300	250
American Coot			50		300		10	300	250
Red Phalarope		50	100		150			300	250
Western Gull			50		50			300	250
Common Murre	220	100	200		500			300	250
Pigeon Guillemot	220	100	250		500			300	250
Cassin's Auklet	220	100	250		500			300	250
Mottled Murrelet	220	100	250		500			300	250
Rhinoceros Auklet	220	100	200		500			250	200
Ancient Murrelet									
Auklet spp.		100	200		500			300	250
Red-tailed Hawk	50				500		150	300	250

Sources: Sterling Noble Corporation 1985

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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.

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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 14**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	176	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

to 32%, K_2O = 5 to 9%, and CO_2 = 27 to 32% (3-5, 15). Analyses of fresh samples, which were sealed before complete cooling, indicate that the 1988 lavas were almost water-free. The volatile contents of F (2.5 to 4.5%), Cl (3.5 to 5%), and SO_2 (4 to 5.5%) are higher than reported previously for the 1960 lavas (15). Such high volatile concentrations no doubt contributed to the lower solidus temperature of the lava of Oldoinyo Lengai compared with that of the synthetic system studied by Cooper *et al.* (13).

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

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

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16. During November 1988, B. Dawson and co-workers (B. Dawson, personal communication) carried out additional temperature measurements and obtained higher temperatures from 573° to 597°C. These data show that better magma is available at depth.
17. The DTA and DTG analyses were carried out at the

Kenneth S. Thomsen, University of Oregon, Eugene, OR 97403. V. Kruger is thanked for his help. The members of the expedition, K. Kraft, C. J. Wern, C. Hug-Pick, and A. Dammann are thanked. We also thank the Peterson family, Arusha, and our local porters for their help.

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Magnification of Secondary Production by Kelp Detritus in Coastal Marine Ecosystems

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

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

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

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

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

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

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

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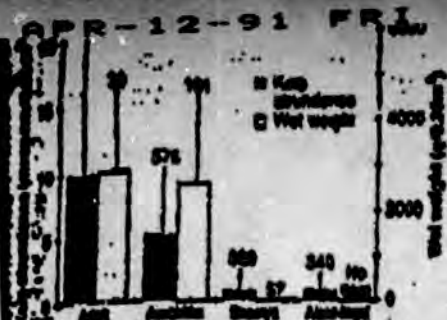


Fig. 1. Kelp abundance and wet weight (mean and 1 SD) of quadrat counts and sample weights for four islands with sea otters (Adak and Amchitka) and without otters (Shemya and Aleid-Nikolai). Sample size is given above each error bar.

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

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

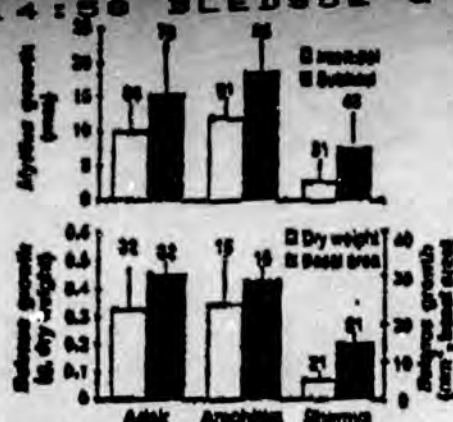


Fig. 2. Growth rates of translocation experiments; means and 1 SD of growth in length (mussels, *Mytilus*) or dry weight and basal area (barnacles, *Balanus*). Sample size is given above each error bar.

grow faster in kelp-dominated than in urchin-dominated environments. First, we translocated two species of suspension feeders (the mussel *Mytilus edulis* and the barnacle *Balanus glandula*) from a common source (Puget Sound, Washington) into cages at six intertidal and six subtidal sites at Adak, Amchitka, and Shemya Islands. Mussels were translocated in 1985 and 1986 and barnacles in 1986. Mussels were individually tagged and measured (maximum valve length) (12); barnacles were allowed to settle on fiberglass plates, thinned to minimize competition, and measured in four dimensions (length and width of operculum and base). Barnacle locations were mapped for individual identification and the plates were placed in the same cages with the mussels. All animals were remeasured after 1 year. Mussel valve elongation, barnacle final dry weight (15), and change in barnacle basal plate area were the parameters used to compare growth among islands.

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

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

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

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

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

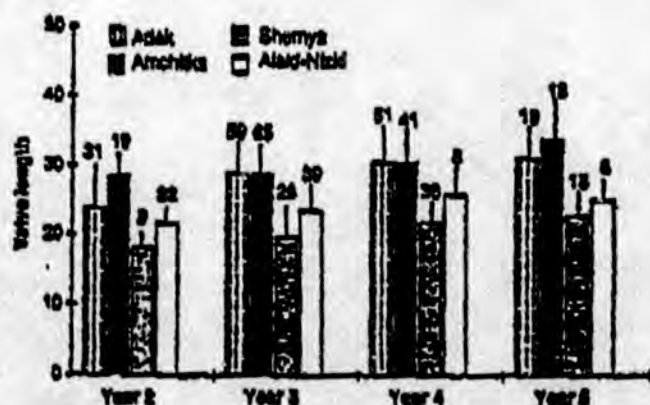


Fig. 3. Age-size relations for *Mytilus edulis* at four Aleutian Islands; means and 1 SD of valve length. Sample size is given above each error bar.

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

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

(23). On the basis of a simple mixing model (24), primary consumers at kelp-dominated islands average, conservatively, 58.8% kelp-derived carbon (Fig. 4), whereas at urchin-dominated islands they average only 32.0%. This was the case despite all consumers being collected in midsummer during periods of peak phytoplankton abundance, when $\delta^{13}\text{C}$ values should be indicative of maximum phytoplankton influence. The moderate percentage of kelp-derived carbon in consumers at urchin-dominated islands is probably the result of input from intertidal kelps and kelps existing in subtidal refuges from urchin grazing. The relatively consistent enrichment of consumers at Adak and Amchitka, regardless of feeding type or trophic level, argues for the pervasive occurrence throughout the nearshore food web of organic carbon originally derived from kelp photosynthesis.

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

rived organic carbon is not restricted to benthic organisms.

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

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

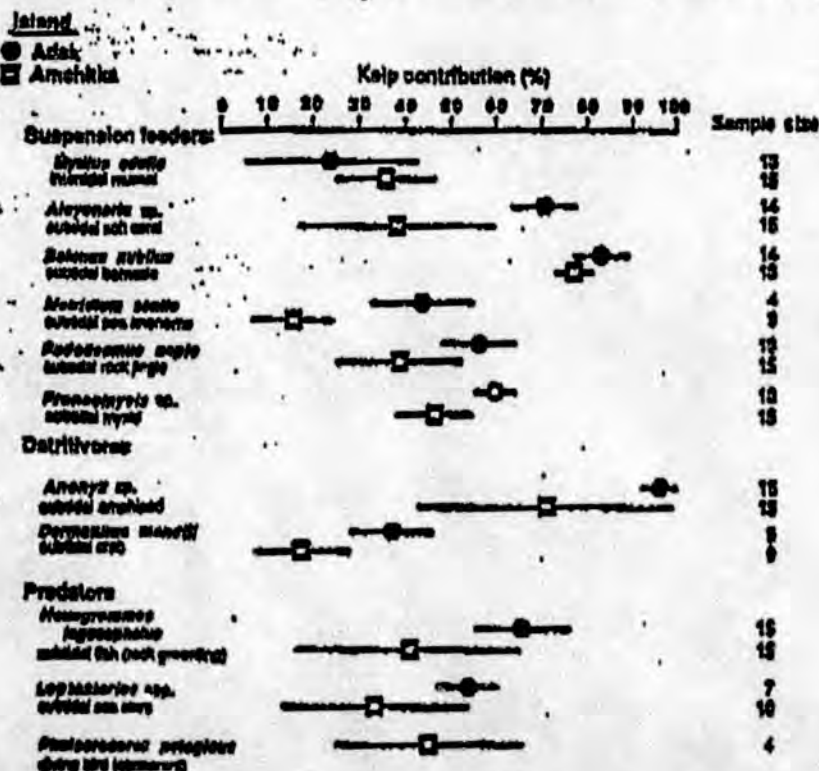


Fig. 4. Percentage of carbon photosynthesized by kelps found in tissues of consumers at islands with extensive subtidal kelp beds. Values are means and $\pm$ SD. Three to five samples were collected and analyzed from each of three sites at each island.

REFERENCES AND NOTES

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2. K. H. Mann, *Mar. Biol.* 14, 199 (1972).
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6. K. H. Mann, *Ecology of Coastal Waters: A Special Approach* (Univ. of California Press, Berkeley, 1982).
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8. F. Forrester, *Cons. Publ. Int. Mar. Sci. Univ. Alaska* (1974), pp. 3-37; W. R. McAllister and F. Forrester, in *The Environment of Amchitka Island, Alaska*, M. L. Merritt and R. G. Poff, Eds. (Ecology Research and Development Administration, Oak Ridge, TN, 1977), pp. 331-382.
9. S. Morada and T. Minoda, *Cons. Publ. Int. Mar. Sci. Univ. Alaska* 2 (1974), pp. 207-241; F. A. Lohrman and J. F. Palmisano, in *The Environment*

SCOMM

77:36

DATE: 12 April 1991

TO: Senator Dick Eliason
Special Committee on the Exxon Valdez Oil Spill Claims Settlement

FROM: Thomas H. Suchanek, Ph.D. (Marine Ecologist)
Division of Environmental Studies
Institute of Ecology
University of California
Davis, CA 95616

RE: THIS IS TESTIMONY FOR THE RECORD: TO BE READ ALOUD TO THE SPECIAL COMMITTEE
Topic: Public Comment on Exxon Valdez Oil Spill Claims Settlement

I am a marine ecologist presently employed by the University of California at Davis. I obtained my Ph.D. in Zoology from the University of Washington in 1978 and have been conducting marine ecological research in Alaska since 1976 (including areas from southeast Alaska's Glacier Bay National Monument to Kodiak Island and the Alaska Peninsula). My areas of specialty include marine biology, marine ecology and the effects of human influence on marine and aquatic ecosystems. I am providing this testimony as an individual marine scientist and therefore, this testimony does not necessarily represent the views of any organization for which I am currently employed or for whom I have been employed in the past.

I am providing this testimony for the record because I have significant concerns that the Exxon Valdez Oil Spill Claims Settlement is inadequate. My primary concern lies in the lack of availability of scientific data that has been generated from the numerous studies conducted by the State of Alaska, the various federal agencies involved in the Trustee Organization and Exxon, especially during the initial phase of research immediately following the spill in the 1989 field season. Because of the complex litigation process, those data are not currently available for review. If this condition is allowed to persist, it will be a tragedy for both science and the environment. This is not necessarily because there is overriding evidence that there was a monumental tragedy that resulted from the oil spill. The problem is that currently, we don't know one way or the other what the impact has been. Rather, it will be a tragedy because we will never know what the true impact was or how long those habitats and communities will take to recover from that initial impact. Only with free and open data from all studies will we benefit at all from the monumental effort expended during that initial summer.

Never before have we experienced an oil spill of this magnitude in U.S. waters and we now have a unique opportunity to benefit greatly from this unfortunate accidental spill. This kind of real-world data (as opposed to models or lab studies) is the most valuable information we could have in order to determine the effects of such a spill on the environment. We couldn't obtain this quality of information from 1000 laboratory or small scale field experiments.

NOTE: With scientific data from the first year, plus follow up studies, we will be in a much better place when future spills occur (and they WILL occur) to know what areas are most sensitive, which habitats and communities need the most protection and what kinds of oil spill clean-up attempts work and which don't work, or even which might have had a more detrimental effect on the environment than the oil itself. If we allow the legal process to take its apparent inevitable course, it appears that the valuable information we could learn from this spill may be locked up forever and no one will benefit from the tremendous scientific effort conducted on this spill.

I urge you to recommend rejection of the Exxon Valdez Oil Spill Claims Settlement in its present form. Rather I believe that a part of that settlement should include release of all scientific data collected by all parties, including most importantly: the State of Alaska, the Trustees Organization involving all of the various federal agencies, and Exxon.

T.H. Suchanek: Exxon Oil Spill Testimony - 4/12/91 - Page 2

Thank you for your time in hearing my concerns. Should you have any questions regarding my testimony, please feel free to contact me directly at the following address or telephone numbers.

Dr. Thomas H. Suchanek
Division of Environmental Studies
Institute of Ecology
University of California
Davis, CA 95616

(916) 752-9035 (Office)
(916) 752-3350 (FAX)

Most sincerely,

Thomas H. Suchanek

Thomas H. Suchanek, Ph.D.

SCOMM

77:37

Kristin Stahl-Johnson
Kodiak Environmental Network
P.O. Box 2661
Kodiak, AK 99615

April 13, 1991

Senate Special Committee on
Exxon Valdez Litigation Settlement
Alaska State Legislature, Seventeenth Session
P.O. Box V
Juneau, AK 99811

Dear Senators,

I am grateful for the opportunity to comment on the out-of-court settlement that the Hickel Administration struck with Exxon, but it is difficult to evaluate it without any substantive information on the true value of the damages. I seriously feel that the people of the State are being sold down the river in exchange for future amicable relations with the oil industry. The Legislature never makes budgetary decisions operating in a vacuum. Why are we being expected to make a major financial decision without the information needed to evaluate it?

Is Mr. Hickel aware of the mammoth amount of energy, emotional, financial, and physical, that the Exxon Valdez spill drew from the Alaskan people? It appears that he and his cohorts would like to label us as radical fanatics, placate us with this settlement and get on with the business of oil development. Does Mr. Hickel carry a mandate of the Alaskan people? Clearly not. Please let intelligent, rational processes prevail in Juneau. Insist on obtaining the results of the injury and economic studies that the public paid for before requiring us to make uninformed decisions about this settlement.

Beyond the lack of substantial data, there is circumstantial evidence pointing to the inadequacy of the settlement. The TAPS Fund has \$56 billion claimed against it, but the State's claim to the fund is confidential and therefore not included in that figure. \$900 million looks awfully insignificant in that company.

Furthermore, why are we reducing the amount of the settlement by allowing reimbursements and cleanup costs to come off the top instead of being paid as a separate item? Add those items to inflation over ten years and this settlement's value is reduced by nearly half its face value! The \$2.2 billion that Exxon squandered on the cleanup is a joke. There is case after case in Kodiak alone to prove that they wasted money at every turn, clearly for propaganda reasons. Why are they so willing to throw money away in some cases and then not pay honest reparations for criminal negligence?

And if you accept this settlement or a better one in the future, where is the public input on how the money will be spent? The Memorandum of Agreement between the federal government and the State looks like a bureaucratic black hole. The money could easily get lost in more classified studies that are unavailable to the public, not to mention the millions each trustee will garner for operating costs. The Agreement needs to include a citizens' committee with a vote.

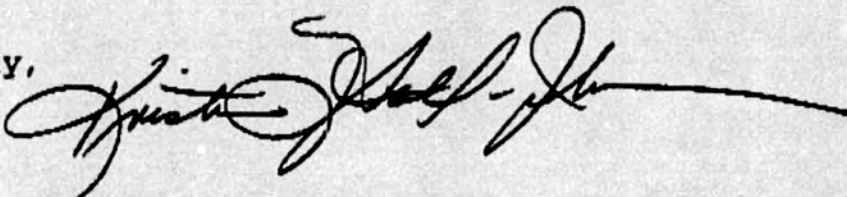
After dealing with some of those same Trustees during the 1989 oil spill cleanup period I feel that it is imperative that a citizens' council with voting power be added to the Trustees. The agreement with the federal government is not in the best interest of the people of Alaska.

I realize that because the federal government has signed off on this agreement, the pressure is on the Legislature to acquiesce. I do pray that the Alaska State Legislature has more fortitude and integrity than that.

Please reject this Settlement and Agreement and send the negotiators back to the table with public input tempered by an adequate evaluation of public data.

Thank you.

Sincerely,





Afognak Joint Venture

*214 Rezanof West Kodiak, Alaska 99615
(907) 486-6014 FAX (907) 486-2514*

April 13, 1991

Senator Richard Eliason
Chairman
Senate Special Committee
on Exxon Valdez Settlement Claim
Alaska State Senate
Juneau, Alaska

Dear Senator Eliason:

We are Native corporations who are major landowners and land managers on Afognak Island in the Kodiak Archipelago. We have questions and concerns regarding the use of Exxon Settlement Funds.

We do not understand how decisions to use the Fund would be coordinated among the Fund administrators. It is our understanding that there is a time period within which the Fund's managing entities must develop a plan.

We are concerned that too much or all of the Fund could be used to pay costs of administration, costs of studies that will not result in benefits to the environment, costs of restoration where the amounts expended will not result in commensurate benefits, or the costs of development projects that are unrelated to habitat protection. We urge that the use of funds include acquisition of habitat resources, or studies that could lead to habitat acquisition for protection. We believe there are special opportunities to acquire habitat. This habitat could be identical to what was damaged by the oil spill. It could also be habitat that is associated or similar to that damaged by the spill and was in the geographic area affected by the spill. On this theme we wish to encourage that the acquisition, or study for acquisition, of lands on Afognak be undertaken.

We have ideas regarding how the acquisition or studies could be accomplished, and we would welcome discussing these with the Fund's decision makers.

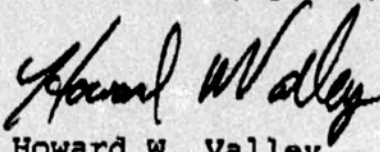
Senator Richard Eliason

April 13, 1991

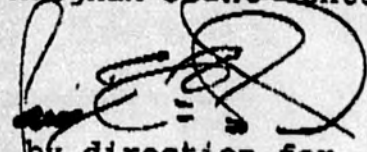
Page 2

Thank you for this opportunity to comment.

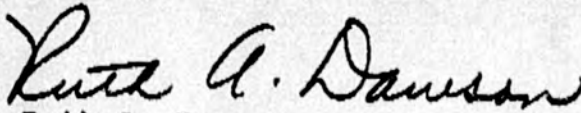
Respectfully yours,



Howard W. Valley
Chairman
Afognak Joint Venture



by direction for
Uwe L. Gross
Chief Executive Officer
Keniag, Inc.



Ruth A. Dawson
President
Afognak Native Corporation

cc: Senator Fred Zharof

SCOMM

77:38



REGIONAL CITIZENS' ADVISORY COUNCIL

April 11, 1991

Senator Dick Eliason
P. O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

The citizens represented by the Regional Citizens' Advisory Council (RCAC) encourage you to do all that is within your power to see that the Exxon Valdez Damage Assessment studies become a part of the public record. More than \$70 million of public funds have been invested to collect invaluable information necessary to understand the damage caused to Alaskan coastal ecosystems by oil spills; Alaskans have the right to know the impacts to their resources.

Enclosed is RCAC Resolution 91-5 stating the Council's support for the full disclosure of Damage Assessment studies. RCAC requests your support.

Sincerely,

Sheila K. Gottehrer
Executive Director
Regional Citizens' Advisory Council



REGIONAL CITIZENS' ADVISORY COUNCIL

Resolution 91-5

EXXON VALDEZ DAMAGE ASSESSMENT STUDIES

WHEREAS, the United States and Alaska State governments undertook scientific studies under the authority of Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Clean Water Act to assess the damages of the *Exxon Valdez* oil spill; and

WHEREAS, these studies involve the expenditure of public funds in the amount in excess of \$70 million; and

WHEREAS, the information from these studies will not only assess the damages in the short term but are designed to predict long term impacts; and

WHEREAS, it is the business of the Regional Citizens' Advisory Council to understand and to promote the understanding of damages caused by oil spills in order to strengthen public commitment to the prevention of future spills;

NOW, THEREFORE, BE IT RESOLVED that the Regional Citizens' Advisory Council ask the Governor of the State of Alaska, the Attorney General of the United States and the Attorney General of the State of Alaska to release all of the information generated by the National Oceanic and Atmospheric Administration, United States Coast Guard, U.S. Fish and Wildlife Service, Alaska Department of Fish and Game, Alaska Department of Environmental Conservation; and

BE IT FURTHER RESOLVED that in the spirit of cooperation and public education the Regional Citizens' Advisory Council asks that Exxon also release all information generated by their damage assessment studies.

Certification

This resolution was duly adopted by the RCAC at an RCAC meeting held March 22, 1991 by the following vote:

Ayes 10

Nays 0

Abstain 0

Marilyn Leland, Secretary

Chris Gates, President

SCOMM

77:39

BIXBY, COWAN & GERRY

Attorneys At Law

P.O. BOX 790

705 2ND AVENUE

CORDOVA, ALASKA 99574

(907) 424-5999

FAX # (907) 424-5357

April 15, 1991

My name is Bill Bixby; I am with the law firm of Bixby, Cowan & Gerry. We represent almost 1,300 commercial fishermen who suffered damage as a result of the Exxon Valdez oil spill.

I have listened to a tele-conference held in Cordova wherein Attorney General Cole seemed to be a little annoyed that individuals who testified asked him questions which were prepared by attorneys. Mr. Cole's position was that the attorneys could address those questions in court and therefore it was somewhat "wrong" for clients to pose those questions to him.

This is only a ploy from Attorney General Cole's part to avoid answering tough questions about the settlement. Mr. Cole knows full well that attorneys such as myself have no standing to bring a motion in court to object to the settlement. It would be akin to any of you on the committee trying to voice an objection of a settlement of an auto accident case of mine. The judge would ask you what business you had sticking your nose into my business.

The problem of standing aside there are also time constraints. The legislature must take action approving or disapproving the settlement in the very near future. As far as I'm aware there are no court hearings scheduled on this matter before the legislature must take action. The tough questions dodged by Mr. Cole must be answered before then if we are to know the meaning of the agreement.

Finally, there is nothing wrong with a client asking you or the Attorney General about the consequences this agreement will have on him. Like most of you, my clients are not lawyers. They can read the agreement but really do not understand the consequences of some of the language in it. Once their attorneys have explained what consequences the language of the agreement could have on them, you can bet your bottom dollar that none of them would ever vote for anyone who approved this settlement in its uncertain form.

Now let me discuss the gravest concern that I have regarding this settlement. It deals with language found in

paragraph 13(c) of the settlement agreement. That paragraph states:

Nothing in this agreement shall affect or impair the following:

c. The rights and obligations, if any, of legal entities or persons other than governments who are the holders of any present right, title, interest in land or other property interest affected by the oil spill.

When attorneys in our office first read that paragraph we had concerns as to the consequences of this paragraph. Our concerns became even greater when Exxon confirmed our suspicions as to how they would interpret this paragraph. We have been told by Exxon that they will not owe money to any fisherman for any damage done to the natural resource (i.e., fish) after the agreement has been adopted by the State. Under their interpretation they have paid the owner (the State) for damage done to the resource. Therefore, they do not have to pay the fishermen except for damages that have been presently accrued to the fishermen. In short, Exxon will not have to pay for damages to the 1991 salmon runs and every salmon run thereafter to fishermen who utilize the resource because they will claim that they have paid the owner (the State) for the damage already via their settlement agreement.

The following example will illustrate the problem. Suppose a client of mine has damages that once they are totally calculated amount to \$100 (for illustrative purposes only). Of that \$100 my client suffered \$30 worth of damage for 1989 and 1990. Under the terms of this agreement my client would only be able to recover the \$30 of damages he has accrued in 1989 and 1990 but will not be able to recoup the rest of his losses as that part of his case has already been settled by the State.

In Cordova, Bobby VanBrocklin posed this question to Attorney General Cole. Mr. Cole referred Bobby to paragraph 32 of the agreement. The last sentence of paragraph 32 says:

Nothing in this agreement, however, is intended to affect legally the claims, if any, of any person or entity not a party to this agreement.

Mr. Cole's reference to this sentence did not truly answer Mr. VanBrocklin's question. He again side-stepped the issue. Going back to my example of the fisherman who suffered \$100 worth of damage, this sentence still gives my client the right to go after his \$30 but still does not allow him to seek the total amount of damage he suffered by the oil spill because of paragraph 13(c) limitations.

Attorney General Cole needs to be pinned down and a definite answer received as to the answer to this question. Does paragraph 13(c) mean that commercial fishermen have no claim for damage to the fish runs after the agreement has been adopted? The agreement needs to be changed to reflect that the fishermen still have the right to go after the total damages incurred by them, i.e., both present and future damages, without interference by the State's settlement agreement.

All we ask is that the agreement reflect this in writing or by having Mr. Cole and all the other parties stipulate to this in open court.

In summary, if this agreement interferes with the right of fishermen to receive total compensation for the damages they have suffered, and will suffer in the future, it needs to be rejected.

Best regards,

William Bixby
BIXBY, COWAN & GERRY

WB/jam

SCOMM

77:40

April 18, 1991

TO: The Honorable Judge H. Russel Holland
US District Court
222 W. 7th
Anchorage, Alaska 99507

FROM: Tim Martin
7100 Lake Otis #37
Anchorage, Alaska 99507
349-3855

SUBJECT: Addendum to comments on the Exxon settlement.

Judge Holland:

I talked with Edgar Boyco last night on Alascom's Norm Sailor's show last night.

I told Mr. Boyco that I have indisputable evidence that the Exxon Valdez was intentionally grounded. Mr Boyco said you better hurry up because you don't have much time. I said there is no statute of limitation on fraud. Mr Boyco said in some cases there is.

I asked Mr Boyco who I should take this information to. He said that's a good question and said he didn't know. I said how about you Mr Boyco. He said if he thought I had something he would run with it but that we both might end up killed.

I told Mr Boyco that if anything happens to me it was in the hands of people who would make it public, and (I might add use my death to push it).

Mr. Boyco said that he didn't know of anywhere I could take this information to have it acted upon.

I,m not going to submit this information at this time to have it buried along with me. I must have assurances that this information is truely given a public hearing.

The intent of this letter is to serve notice that I have this information and will come forth with it when I have assurances that it will be justly acted upon.

I also made the statement along with my reasonings that show that the Exxon Valdez lost far more oil than was reported. To show the strength of my claim that the Exxon Valdez was intentionally grounded, I now offer proof that far more oil left the Exxon Valdez than was reported.

I've included 9 copies of the printout from the loadmaster of the Exxon Valdez. These are exactly as I received them from the NTSB report.

The copies marked from 4 to 9 have the wrong dates of 1/26/80, yet the originals were signed off by Mark Delozier head of Coast Guard Investigations. On the sheet marked 4 there is

Page 2

a correction of the date marked Departure 3/23/89, yet no one initialed this correction.

Dan Lawn of the DEC said that Exxon simply gave him the figures and he accepted them and said he "couldn't remember what method was used by Exxon to arrive at these figures. Lawn agreed that the proper way to have gauged the grounded tanker was the 'paste and ball method'. He made some quick calculations and said that these were about the same figures he got from James Kunkel, the first mate of the Exxon Valdez.

These printouts prove that the wrong method was used to gauge the Exxon Valdez because the loadmaster only measures the amount of liquid in the tank but doesn't distinguish between water and oil.

Far more oil left the Exxon Valdez than was reported.

Dan Lawn said his only concern at the time was that no samples were taken of the oil pumped off of the Exxon Valdez. He said that he wasn't concerned, at the time, which method was used to gauge the tankers.

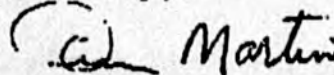
Marge Tillion, wife of Clem Tillion, says that she was called by three divers who worked on the Exxon Valdez who told her that far more oil left the Exxon Valdez than was reported and that large amounts of seawater was pumped onto the unloading tankers.

From this evidence and on-scene witnesses that I've talked with, the Exxon Valdez, conservatively lost 3 times the amount of oil that was reported.

As I'm backing up my claim with this evidence, I can backup my claim that the Exxon Valdez was intentionally grounded, but I won't bring this evidence forward unless I know that this proof is shown to the public.

If I don't get this assurance, then this letter will show as a legal document that I've done everything I can in seeking justice. I await your reply.

Sincerely,



Tim Martin

Inclosures

Barbara Herman, Attorney General's Office
Dick Eliason Senate special Committee on Exxon Settlement
Max Gruenberg House Special Committee on Exxon Settlement
OTHERS

SHIP: EXXON VALDEZ
COND: VZOS-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0915

LOAD SUMMARY

CARGO OIL	=	130348.50 L.TONS
CARGO SLOP	=	7622.16 L.TONS
BALLAST	=	13882.12 L.TONS
LUBE OIL	=	37.00 L.TONS
POTABLE WATER	=	100.00 L.TONS
FEED WATER	=	114.74 L.TONS
FUEL OIL	=	2340.00 L.TONS
DIESEL OIL	=	326.00 L.TONS
MISCELLANEOUS	=	45.46 L.TONS
CREW&EFFECTS	=	140.00 L.TONS
FLOODING	=	.00 L.TONS

DEADWEIGHT	=	154955.90 L.TONS
LIGHTWEIGHT	=	28822.00 L.TONS

DISPLACEMENT	=	183777.90 L.TONS
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PRINT THIS DISPLAY ? (Y/N) >

I HAVE SEEN THE ORIGINAL AND COMPARED
THE COPY WITH IT AND FOUND IT TO BE A
TRUE COPY

Mark J. Delozier 26 MAR 89
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

2

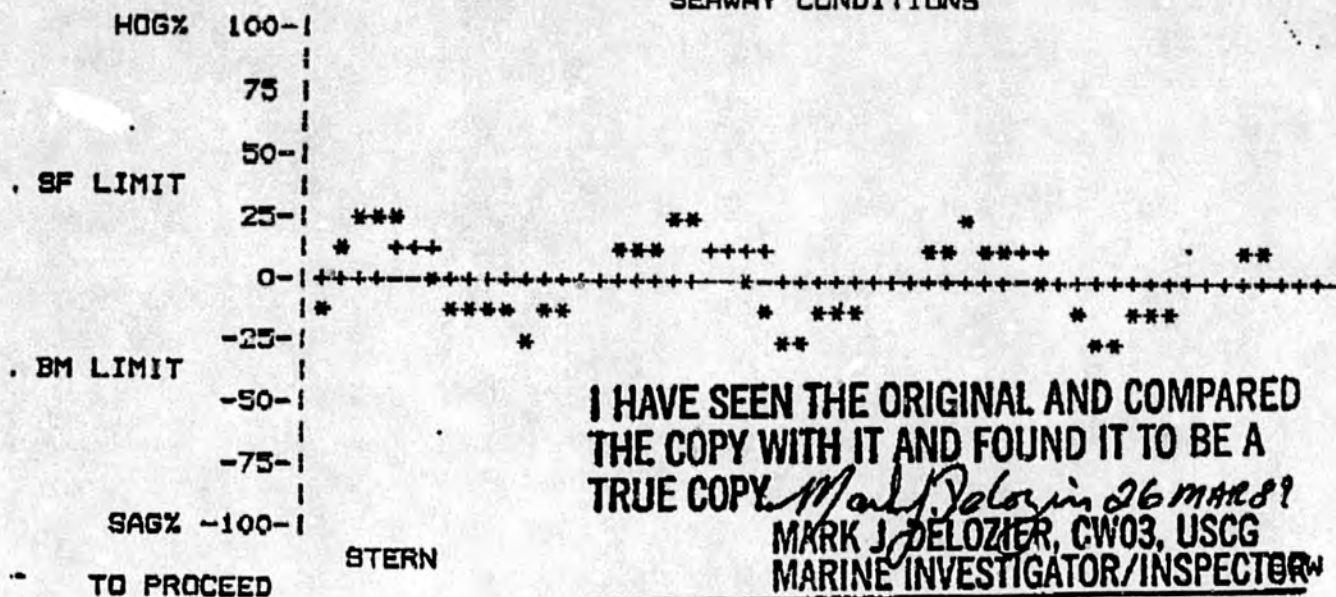
SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0916

DWT= 154955.9 L.TONS DRAFT= 30.32 FEET TRIM= 6.55 FEET

SEAWAY CONDITIONS



MARINE SAFETY OFFICE, VALDEZ, AK. USCG

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0917SHEAR FORCES AND BENDING MOMENTS
SEAWAY CONDITIONS

SHEAR FORCE			BENDING MOMENT		
LIMIT	ACTUAL	%	LIMIT	ACTUAL	%
11549.	-2596.	-22.5	1547703.	-33614.	-2.2
11202.	37.	.3	1665034.	-102087.	-6.1
12814.	3389.	26.4	1864447.	96104.	5.2
13128.	-3423.	-26.1	1558567.	53950.	3.5
14040.	-10.	-.1	1590849.	-91091.	-5.7
13647.	2939.	21.5	1965293.	34901.	1.8
11854.	-66.	-.6	2209370.	139079.	6.3
11403.	-2820.	-24.7	1994574.	-7569.	-.4
11893.	-157.	-1.3	1496613.	-78501.	-5.2
13792.	1942.	14.1	1053082.	-22174.	-2.1

JM SHEAR FORCE = -3545.7 AT 434.70 FEET FROM A.P.
JM BENDING MOMENT= 162985.8 AT 387.45 FEET FROM A.P.

ED PLOT OF SF/BM DATA ? (Y/N) >

3

SHIP: EXXON VALDEZ
COND: VZ05-G

HULL 438 REV 3.4

DATE: 03/24/89
TIME: 0917T : YES
DED : NO
ED : NO
ED : NO

DEFLECTION

AX DEFLECTION = .2 INCHES HOG AT 387.4 FEET FROM A.P.

EFLECTED DRAFT AT FWD MARKS = 47.21 FEET
EFLECTION AT FWD MARKS = .02 INCHES HOGEFLECTED DRAFT AT MIDSHIPS = 50.47 FEET
EFLECTION AT MIDSHIPS = .13 INCHES HOGEFLECTED DRAFT AT AFT MARKS = 53.73 FEET
EFLECTION AT AFT MARKS = .04 INCHES HOG

TO PRINT THIS DISPLAY ? (Y/N) >

I HAVE SEEN THE ORIGINAL AND COMPARED
THE COPY WITH IT AND FOUND IT TO BE A
TRUE COPY. *Mark J. Delozier* 26 MAR 89SHIP: EXXON VALDEZ
COND: VZ05-GHULL 438 REV 3.4
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR
MARINE SAFETY OFFICE, VALDEZ, AK, USCGT : YES
DED : NO
ED : NO
ED : NO

STABILITY

DISPLACEMENT

DRAFT AT LCF

TRANSVERSE METACENTRIC HEIGHT

CENTER OF GRAVITY ABOVE KEEL

METACENTRIC HEIGHT

FREE SURFACE MOMENT CORRECTION

CORRECTED METACENTRIC HEIGHT

REQUIRED METACENTRIC HEIGHT

HEELING MOMENT

HEEL ANGLE (+PORT, -STBD)

DISPL = 183777.90 L.TONS

DM = 50.32 FEET

KM = 69.56 FEET

KG = 48.79 FEET

GM = 20.78 FEET

FSMC = 5.37 FEET

GMC = 15.41 FEET

GMREQD = 15.45 FEET

GMC = 1.00 TIMES GMREQD

HEELMOM = 233528.90 L.TONS-Feet

HEEL = -4.73 DEG.

TO PRINT THIS DISPLAY ? (Y/N) >

DEPARTURE 3/23/85 4

SHIP: EXXON VALDEZ
COND: VZ05-B9D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
#1 CARGO CNTR	88.7	18874.93	13.22		102.4	27.6	135923.2
#1 CARGO PORT	88.8	8354.05	13.27		102.4	27.6	60159.7
#1 CARGO STBD	88.9	8366.00	13.21		102.4	27.6	60245.7
#2 CARGO CNTR	87.0	23816.61	14.72		102.4	27.6	171509.6
#3 CARGO CNTR	87.4	26303.79	14.50		102.4	27.6	189420.3
#3 CARGO PORT	89.3	14870.31	13.92		102.4	27.6	107085.0
#3 CARGO STBD	89.2	14852.72	14.04		102.4	27.6	106958.3
#4 CARGO CNTR	66.8	10966.51	33.26		102.4	27.6	78972.7
#5 CARGO CNTR	81.9	23991.52	18.98		102.4	27.6	172769.1
#5 CARGO PORT	83.5	8601.61	18.60		102.4	27.6	61942.4
#5 CARGO STBD	83.5	8610.00	16.58		102.4	27.6	62008.6

TED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

SHIP: EXXON VALDEZ
COND: VZ05-B9D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1258

LOADING DETAIL

NAME	%	L.TONS	ULL	SG	DEG F	DEG API	NET BBLs
SLOP PORT	80.1	3732.41	17.84		102.4	27.6	178.0
SLOP STBD	83.4	3889.75	15.57		102.4	27.6	11.1
FOREPEAK	.0	.00	91.00	1.0250			
#2 SWB WING P	.0	.00	92.58	1.0250			
#2 SWB WING S	.0	.00	92.50	1.0250			
#4 SWB WING P	.0	.00	92.67	1.0250			
#4 SWB WING S	.0	.00	92.67	1.0250			
ER SWB WING P	.0	.00	44.92	1.0250			
ER SWB WING S	.0	.00	44.83	1.0250			
ER SWB D.B.	.0	.00	11.67	1.0250			
AFTPEAK	4.2	100.00	49.97	1.0250			

TED LIST: .00 DEG INPUTTED TRIM: .00 FEET

VALUE F2=SCRL DN & REPT F3=CHANGE LIST F4=CHANGE TRIM F10=RETURN

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 MARK J. PELTZER, ORO3, USCG
 MARINE INVESTIGATOR/INSPEC
 MARINE SAFETY OFFICE, VALDEZ, AK, USA

5

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1300I : YES
DED : NO
ED : NO
ED : NO

LOADING DETAIL

NAME	WEIGHT	%	SG	TANK	NAME	WEIGHT	%	SG
#1 CARGO CNTR	18874.9	89	.873	2	#1 CARGO PORT	8354.0	89	.873
#1 CARGO STBD	8366.0	89	.873	4	#2 CARGO CNTR	23816.6	87	.873
#3 CARGO CNTR	26303.8	87	.873	6	#3 CARGO PORT	14870.3	89	.873
#3 CARGO STBD	14852.7	89	.873	8	#4 CARGO CNTR	10966.5	67	.873
#5 CARGO CNTR	23991.5	82	.873	10	#5 CARGO PORT	8601.6	83	.873
#5 CARGO STBD	8610.8	84	.873	12	SLOP PORT	3732.4	80	.873
SLOP STBD	3899.7	83	.873	14	FOREPEAK	.0	0	1.025
#2 SWB WING P	.0	0	1.025	16	#2 SWB WING S	.0	0	1.025
#4 SWB WING P	.0	0	1.025	18	#4 SWB WING S	.0	0	1.025
ER SWB WING P	.0	0	1.025	20	ER SWB WING S	.0	0	1.025
ER SWB D.B.	.0	0	1.025	22	AFTPEAK	100.0	4	1.025
LO BUMP	18.0	32	.893	24	LO STOR	19.0	49	.893
LO SETTLLING	.0	0	.893	26	POT WTR P	30.0	31	1.000
WTR S	70.0	61	1.000	28	RES FEED	50.0	39	1.000
T WTR	64.7	100	1.000	30	FO SETT FWD	84.0	71	.989
SETT AFT	84.0	71	.989	32	FO STOR P	1473.0	54	.989
FO STOR S	613.0	34	.989	34	FO DAY	86.0	72	.989
DO DAY EDG	9.0	86	.880	36	DO DAY	90.0	68	.880
DO STOR	227.0	65	.880	38	LO STOR SSDG	1.3	100	.893
CYL OIL DAY	1.0	75	.939	40	CYL OIL STORE	43.0	65	.980
SLOP DB P	.0			42	VOID C	.0		
SLOP DB S	.0			44	ENGINE ROOM	.0		
PUMP ROOM	.0			46	BILGE OIL RES	.0		
FO SLUDGE	.0			48	CREW&EFFECTS	140.0		
RAW SEWAGE	.0							

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MARK J. DELOZIER, CWO3, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

SHIP: EXXON VALDEZ
COND: VZOS-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1301

LOAD SUMMARY

CARGO OIL	=	167403.80 L.TONS
CARGO SLOP	=	7622.16 L.TONS
BALLAST	=	100.00 L.TONS
LUBE OIL	=	37.00 L.TONS
POTABLE WATER	=	100.00 L.TONS
FEED WATER	=	114.74 L.TONS
FUEL OIL	=	2340.00 L.TONS
DIESEL OIL	=	326.00 L.TONS
MISCELLANEOUS	=	45.46 L.TONS
CREW&EFFECTS	=	140.00 L.TONS
FLOODING	=	.00 L.TONS

DEADWEIGHT
LIGHTWEIGHT= 178434.20 L.TONS
= 28822.00 L.TONS

DISPLACEMENT

= 207256.20 L.TONS

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Mark J. Delozier 26 MAR 89
MARK J. DELOZIER, CW03, USCG
MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK. USCG

7

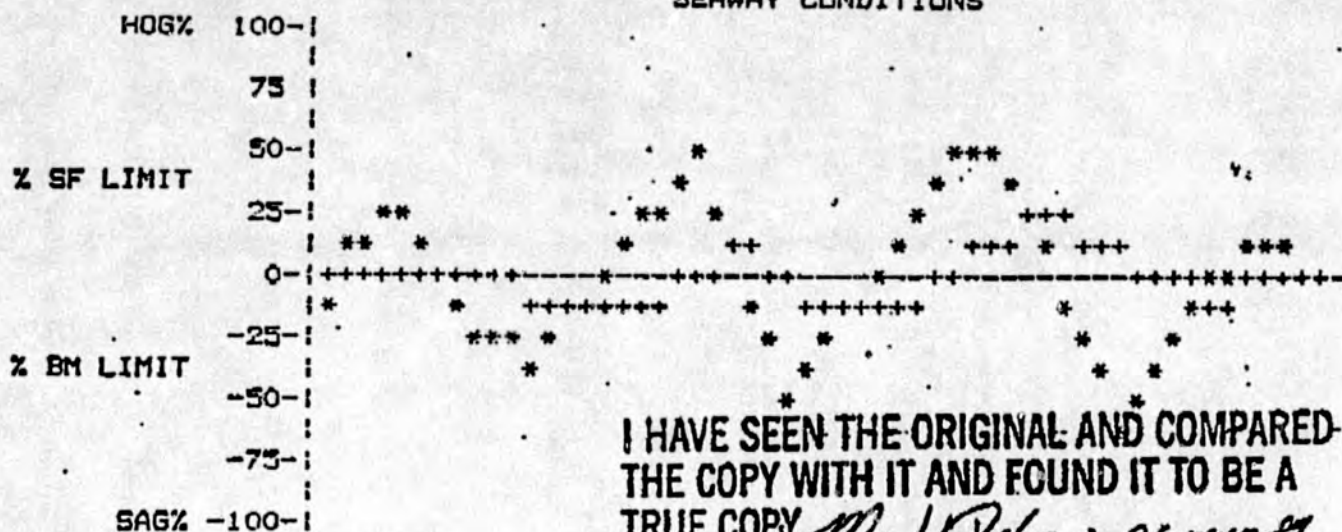
SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1302

DWT= 178434.2 L.TONS DRAFT= 56.29 FEET TRIM= .56 FEET

SEAWAY CONDITIONS



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MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK, USCG
HULL 438 REV 3.4 DATE: 01/26/80 TIME: 1303

SHIP: EXXON VALDEZ
COND: VZ05-89DSHEAR FORCES AND BENDING MOMENTS
SEAWAY CONDITIONS

	SHEAR FORCE		BENDING MOMENT		
LIMIT	ACTUAL	%	LIMIT	ACTUAL	%
11549.	-4144.	-35.9	1347703.	-149238.	-9.6
11202.	-781.	-7.0	1665034.	-294531.	-17.7
12814.	5891.	46.0	1864447.	8312.	.4
13128.	-6003.	-45.7	1558567.	-70218.	-4.5
14040.	1541.	11.0	1570849.	-249300.	-15.7
13647.	7691.	56.4	1965293.	144978.	7.4
11854.	479.	4.0	2209370.	437610.	19.8
11403.	-6635.	-58.2	1994574.	129225.	6.5
11893.	-1342.	-11.3	1496613.	-90364.	-6.0
13792.	2893.	21.0	1053082.	-32328.	-3.1

10M SHEAR FORCE = 7992.8 AT 604.80 FEET FROM A.P.
10M BENDING MOMENT = 433262.0 AT 689.85 FEET FROM A.P.

WANTED PLOT OF SF/BM DATA ? (Y/N) >

8

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1303IT : YES
DED : NO
ED : NO
ED : NO

D E F L E C T I O N

MAX DEFLECTION = .5 INCHES SAG AT 245.7 FEET FROM A.P.

REFLECTED DRAFT AT FWD MARKS = 56.02 FEET
DEFLECTION AT FWD MARKS = .03 INCHES SAGREFLECTED DRAFT AT MIDSHIPS = 56.32 FEET
DEFLECTION AT MIDSHIPS = .27 INCHES SAGREFLECTED DRAFT AT AFT MARKS = 56.52 FEET
DEFLECTION AT AFT MARKS = .03 INCHES SAG

TO PRINT THIS DISPLAY ? (Y/N) >

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MARINE INVESTIGATOR/INSPECTOR

MARINE SAFETY OFFICE, VALDEZ, AK, USCG

SHIP: EXXON VALDEZ
COND: VZ05-89D

HULL 438 REV 3.4

DATE: 01/26/80
TIME: 1304IT : YES
DED : NO
ED : NO
ED : NO

S T A B I L I T Y

DISPLACEMENT
LOADED DRAFT AT LCF
TRANSVERSE METACENTRIC HEIGHT
CENTER OF GRAVITY ABOVE KEEL
METACENTRIC HEIGHT
FREE SURFACE MOMENT CORRECTION
CORRECTED METACENTRIC HEIGHT
REQUIRED METACENTRIC HEIGHTHEELING MOMENT
HEEL ANGLE (+PORT, -STBD)DISPL = 207256.20 L.TONS
DM = 56.29 FEET
KM = 68.18 FEET
KG = 48.49 FEET
GM = 19.69 FEET
FSMC = 4.32 FEET
GMC = 15.18 FEET
GMREQD = 14.67 FEET
GMC = 1.03 TIMES GMREQD
HEEL.MOM = 15714.52 L.TONS-FEET
HEEL = .29 DEG.

PRINT THIS DISPLAY ? (Y/N) >

SCOMM

77:41

COMMENTS OF
ALASKA CENTER FOR THE ENVIRONMENT
DEFENDERS OF WILDLIFE
GREENPEACE
NATIONAL AUDUBON SOCIETY
NATURAL RESOURCES DEFENSE COUNCIL
NORTHERN ALASKA ENVIRONMENTAL CENTER
PRINCE WILLIAM SOUND CONSERVATION ALLIANCE
SIERRA CLUB
TRUSTEES FOR ALASKA

ON THE
PROPOSED SETTLEMENT AGREEMENT
CONCERNING THE EXXON VALDEZ OIL SPILL
BETWEEN THE UNITED STATES, THE STATE OF ALASKA
AND THE EXXON CORP., EXXON SHIPPING CO.
AND THE EXXON PIPELINE CO.

Prepared by:

Sarah Chasis
Robert Adler
Senior Attorneys
Natural Resources Defense Council

Eric Jorgensen
Managing Attorney
Sierra Club Legal Defense Fund

April 18, 1991

The following environmental organizations submit these comments on the proposed Exxon Valdez settlement agreement in response to the request for written comments appearing in the Federal Register (56 FR 11636, March 19, 1991): Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Prince William Sound Conservation Alliance, Sierra Club and Trustees for Alaska.¹ These groups have major reservations about the proposed settlement. Most importantly, since the scientific and economic data on natural resource damages and restoration collected by the government trustees and Exxon have been kept secret, the public, the Congress, the Alaska State legislature and the Federal Court in Alaska cannot determine whether the settlement is fair, reasonable and equitable and whether the trustees have met their statutory and common law duties under the Clean Water Act, section 311(f), and other applicable law to recover natural resource damages, including the costs of restoring, replacing, or acquiring the equivalent of the natural resources damaged or destroyed as a result of the spill.² The environmental organizations ask that

1. These groups are also submitting comments on the Memorandum of Agreement and these comments are incorporated here by reference.

2. The Clean Water Act will be used throughout these comments as the shorthand way of referring to all statutory and common law principals under which the trustees may recover from Exxon.

these data be made available to the public immediately and that approval of the settlement by the court await such disclosure and the opportunity for public comment on the proposed settlement in light of such disclosure.

Even without the data, we are very concerned about the apparent inadequacy of the settlement to compensate for natural resource damages and to cover the costs of restoring, replacing and acquiring equivalent resources. The present value to the governments of the settlement money is approximately \$500 million. This compares with \$3 to 10 billion in damages found by state and federal economic studies. Moreover, after past expenses and future clean-up costs are deducted, the amount actually available for restoration in the early years appears inadequate to undertake important and needed restoration and acquisition projects.

We also are concerned about the \$100 million cap placed on future recovery for unknown damages and the virtually impossible standard the government must meet in order to obtain such future recovery; and the release of Alyeska from any liability for natural resource damages.

Following are more detailed comments on the proposed settlement and the memorandum of agreement between the state and federal governments.