

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1985 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

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AFFIDAVIT OF SERVICE

STATE OF ALASKA)
 : ss.
THIRD JUDICIAL DISTRICT)

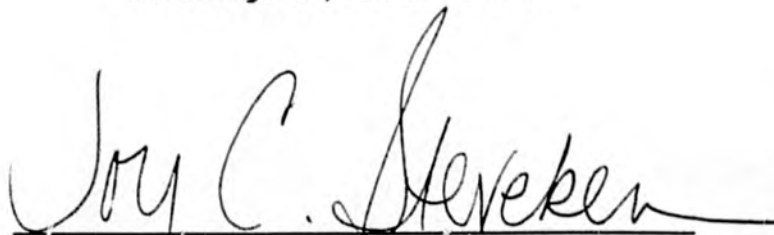
Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that she has hand served or sent overnight delivery on April 16, 1991 the following document:

**Notice of Lodging by Exxon Corporation and
Exxon Shipping Company of Summary Regarding
Natural Resources**

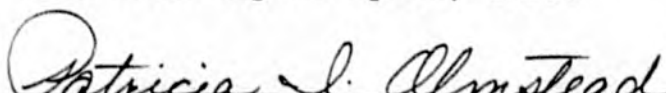
upon:

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Assistant U.S. Attorney
222 West Seventh Avenue, #9
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William Brighton, Esq.
Environment Enforcement Section
Environment and Natural
Resources Division
Room 1541 (EES Dockets)
U.S. Department of Justice
Main Justice Building
Tenth and Pennsylvania
Ave., N.W.
Washington, D.C. 20530


Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 16th day of April, 1991.


Notary Public for Alaska
My Commission Expires: 5-11-93

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Attorneys for Exxon Shipping Company

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. A91-083 Civil
	)	
EXXON CORPORATION, a New Jersey	)	
corporation, and EXXON SHIPPING	)	
COMPANY, a Delaware corporation,	)	
	)	
Defendants.	)	
	)	
	)	
AND COUNTERCLAIM	)	
	)	

NOTICE OF LODGING BY EXXON CORPORATION AND EXXON SHIPPING
COMPANY OF SUMMARY REGARDING NATURAL RESOURCES

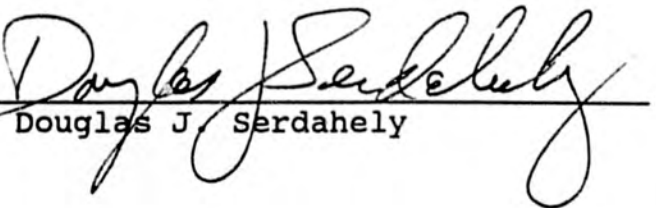
Please take notice that defendants Exxon Corporation and Exxon Shipping Company are lodging with the Court the attached summary and appended studies regarding natural resource injuries and recovery arising from the Exxon Valdez oil spill.

These materials, which have been publicly available for some time, are lodged to assist the Court in evaluating the pending consent decree and to provide the Court with information which both supplements and contrasts with views contained in the government summary of effects on natural resources filed on April 8, 1991.

DATED this 16th day of April, 1991.

BOGLE & GATES
Attorneys for Exxon Shipping Company

By:

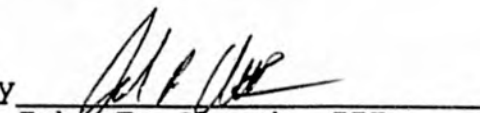

Douglas J. Serdahely

DATED this 16th day of April, 1991.

JOHN F. CLOUGH, III
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WARREN CHRISTOPHER
PATRICK LYNCH
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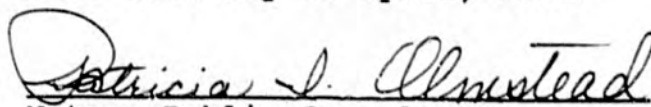
**Notice of Lodging by Exxon Corporation and
Exxon Shipping Company of Summary Regarding
Natural Resources**

upon:

Barbara Herman, Esq.
Craig J. Tillery, Esq.
Assistant Attorneys General
State of Alaska
Department of Law
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501


Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 16th day of April, 1991.


Notary Public for Alaska
My Commission Expires: 5-11-93

BOGLE & GATES

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SUMMARY OF PUBLISHED STUDIES ON THE EFFECTS OF THE EXXON VALDEZ OIL SPILL ON NATURAL RESOURCES

April 16, 1991

Introduction

Following the grounding of the Exxon Valdez on March 23-24, 1989, Exxon commissioned scientific studies for publication on the consequences of the oil spill. These studies have been available to the public for some time and now form the bases for this summary. These and other published studies describing the state of the ecology in the affected area demonstrate, among other things, that the water is clean, fish are abundant and safe to eat, and wildlife is thriving. Taken together, these studies characterize the robust state of recovery of the area affected by the oil spill.

This summary addresses broad categories of natural resources by providing the conclusions reached by the named scientists and by appending full copies of their studies, which have been publicly available for sometime.

Water is Clean

Effects of the oil spill on the waters of Prince William Sound and the western Gulf of Alaska are of critical importance to Alaskans and visitors. They provide a habitat for large commercial and recreational fisheries and a source of subsistence foods for native villagers. Recognizing its significance, immediately following the spill a water quality study of unprecedented scope was begun. The study, conducted by five leading environmental assessment firms and led by Dr. Jerry Neff, provided a concise evaluation of water quality in the affected area in the months following the spill.

Results from over 5000 water analyses, covering the period from March 1989 through March 1990, indicated the average concentrations of potentially hazardous hydrocarbons in the water remained well below State of Alaska standards. Furthermore,

"A comparison was made of the measured VOA (Volatile Aromatic) and PAH (Polycyclic Aromatic Hydrocarbon) concentrations in the water column and on the water surface (in sheens) of Prince William Sound with the published literature on the toxicity of petroleum to marine organisms, particularly Alaskan species. Average concentrations of petroleum hydrocarbon . . . are well below (approximately 10 to more than 1000 times below) concentrations that have been shown to be toxic or cause harmful sublethal effects in marine animals." [1]

[] Technical references listed in Attachment A.

In summary, Dr. Neff concluded that,

"It is extremely unlikely that hydrocarbon concentrations resulting from the spilled oil have had or will have any adverse effects on plants and animals living in the water column of Prince William Sound and the western Gulf of Alaska, including commercial fishery species."

As noted below in the Fishery Resources section, subsistence foods were found to be safe to eat as would be anticipated based upon the results of the water quality study.

In response to public and agency concern about the sheens observed in Prince William Sound, Dr. Neff discussed a special sheen study in his report, conducted as part of the overall water quality effort. As background, Dr. Neff provided technical detail on sheens (i.e., their typical thickness and how their color indicates thickness), noting that they are very thin. For example, a sheet of paper is typically 450 times thicker than a rainbow-colored sheen. He also noted that a tablespoon of oil would form a sheen of 625 square feet. Further, he stated,

"Oil sheens are patchy, short-lived phenomena in western parts of Prince William Sound. Surface waters covered with oil sheens derived from spilled oil washing off oiled shores contain low concentrations of highly weathered oil (crude oil which has lost its lighter, more toxic components)."

He further reported that,

"Crude oil is not the only source of sheens in Prince William Sound. Natural organic material from decaying vegetation or from heavy schooling of some fish, such as herring, can cause sheens that are difficult to distinguish from oil."

He also noted that National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service had revealed that some Prince William Sound fisheries closed in 1989 because of sheens which were later shown to be caused by bilge oil, diesel oil, and hydraulic fluid -- not Valdez crude oil. He also observed that by late summer 1990 sheen monitoring reports showed that only a small percentage of the sheens observed were identified to be from the spill. He concluded,

"It is unlikely that marine organisms in Prince William Sound are being adversely affected by sheens of spilled oil."

Habitat Recovery is Well Underway

The biologic habitat most acutely affected initially by the spill were those shorelines impacted by floating oil. The cleanup program conducted by Exxon in 1989 and 1990 under the direct supervision and approval of the U. S. Coast Guard, which incorporated advice of various federal, state, and local entities, dealt directly with the shoreline. The cleanup program on which Exxon has expended more than \$2 billion was, like the water evaluation,

unprecedented in its extent. [19,20] Exxon's successful cleanup program along with the widespread use of bioremediation techniques hastened the restoration and recovery process.

Several observers have noted the obvious extent of nature's recovery. Drs. J. M. Baker, R. B. Clark, and P. F. Kingston in describing the biological recovery of shorelines in April and September, 1990, noted:

"Only a portion of the shoreline had been oiled (by the spill in 1989) and, as with most other oil spills, the bulk of the damage had disappeared during the first year. The area has retained its natural beauty; there are abundant signs of plant and animal life, and recovery is well under way on even the most severely impacted beaches." [17]

"The summer settlement and growth of the organisms we saw was good biological evidence that the sea and the shores were clean enough for recovery to take place. Mussels, barnacles and rockweed that were abundant on the shores as newly settled juveniles in Spring had become established as young adult populations by the Fall. Such development had taken place even where there had been no clean-up or there was still residual oil on the shore." [2]

This observation of recovery was confirmed by a July 5, 1990, NOAA report which found:

"there was evidence of recolonization of biological communities and that the small amounts of remaining subsurface oil were not causing a serious impact on the environment." [3]

Dr. E. H. Owens has monitored recovery of the oiled shorelines since 1989. In spite of focusing on a set of study sites which were biased toward worse-case conditions, Owens found

"The combined result of treatment and natural cleaning was that the majority of shorelines retained little or no oil by the end of the summer of 1990 . . . The combined average surface oil cover area of all the Prince William Sound study sites dropped drastically between May 1989, from 46 percent of the total observed area to less than 2 percent by September 1990." [6]

With respect to the general nature of recovery of shoreline biologic communities, he observed,

"Key organisms were observed to be similar in abundance and distribution on most oiled and non-oiled sites in September 1990." [6]

In its consideration of 1991 cleanup requirements, NOAA stated, ". . . even where there is direct contact with weathered oil, intertidal organisms have shown remarkable recovery," in a report released to the Coast Guard on March 15, 1991. [4]

NOAA further observed in its report on its 1990 Shoreline Monitoring Program that, "Evidence of intertidal recovery was observed at all impacted sites." [5]

Fishery Resources are Abundant, Productive, and Safe to Eat

The Alaska fisheries support the state's second largest economic component, second only to the oil industry. As such, the potential impacts of the spill on fishing resources required evaluation. The water quality study provides strong evidence that those resources were virtually unaffected. Perhaps, the most persuasive indications of the viability of the resource are the record 1990 harvests of pink salmon and herring, the two most significant commercial fish in Prince William Sound. Over 44 million pink salmon were caught (51 percent of the state's total), far exceeding the prior record of 29 million fish. Similarly, approximately 8300 tons of herring, more than the entire year's "harvest quota," were caught in a 20 minute period although the season typically lasts several hours. Early reports on the 1991 herring fishery indicate another highly successful season.

Further, a number of experts have directly assessed the potential spill effects and have confirmed the view that impacts are likely minimal and the fisheries resources remain safe for human consumption. Royce, et al, in assessing the condition of the fisheries resources, stated that,

"The potential long-term impact of the oil spill on fish is under careful study, but it is unlikely that any significant adverse effects on finfish populations will be discovered. Throughout 1989 and 1990, there were no confirmed reports of large fish mortalities, oil tainting, or contamination of commercial seafood products from the spill. In addition, long-term damage to finfish has not been documented in the hundreds of studies of earlier oil spills -- many of which were larger than the Exxon Valdez spill." [8]

Minerals Management Service (MMS) of the Department of Interior has summarized the results of studies of Exxon Valdez spill effects on herring in Prince William Sound. Robert M. Meyer with MMS delivered a paper to the International Herring Symposium in Anchorage in October 1990 noting,

"Results from studies of herring eggs and larvae conducted following the Exxon Valdez oil spill indicated that the presence of spilled oil had no measurable effect on hatching success, occurrence of abnormal larvae, or larval growth and mortality rates (McGurk, 1990 a, b). These results suggest that the developing eggs and resulting larvae were exposed to levels of dissolved and dispersed oil less than that needed to elicit an acute response, i.e., death, deformity, or reduced growth rates." [7]

In commenting on the risks associated with an oil spill near Port Moller, MMS pointed out,

"... the observation that spawning populations of Pacific herring are found in areas where chronic hydrocarbon pollution is endemic, i.e., San Francisco Bay, Pudget (sic) Sound, etc. suggests that herring populations are able to tolerate exposure to sublethal concentrations of hydrocarbons that exceed those expected to occur (sic) in Port Moller following an offshore oil spill."

This observation is obviously applicable where there is a transitory exposure, as was the case with the Valdez spill.

The NOAA report of March 15, 1991, found no evidence of residual oil causing sublethal effects by progressing up the foodchain. Results from their 1990 Shoreline Monitoring Program noted,

"Chemical analyses of tissues from selected intertidal organisms indicated accumulation of hydrocarbons from the environment but no evidence of magnification through predator-prey interactions." [5]

Both NOAA and the Food and Drug Administration (FDA) have tested the safety for human consumption of subsistence foods (particularly salmon, bottomfish, and shellfish; but including seals, deer, ducks, and sea lions). Neither agency has identified unsafe foods from the impacted areas. [9]

Wildlife is Abundant and Thriving

With respect to seabird impacts, it is important to understand there are about 67 million birds in the Gulf of Alaska and Prince William Sound (NOAA, "The Gulf of Alaska, Physical Environment and Biological Resources", 1986). While the spill caused initial mortality of seabirds, the populations remain abundant. Moreover, the spill mortalities are well within the range of impacts frequently sustained by seabird populations due to natural events and chronic pollution without apparent long-term detriment. Drs. Baker, Clark, and Kingston note,

"Seabirds are among the most conspicuous casualties of oil slicks and, as such, attract considerable public attention. But there is no reason to suppose that, from a biological point of view, this mortality is damaging to seabird populations. Arctic and sub-Arctic seabirds also suffer heavy mortality from natural causes and from fishery practices. Even the auks (family including murre), which because of their very low reproductive rate might be expected not to be able to make good these losses, have sustained their population; and there is no evidence that other seabirds with a greater reproductive potential have declined in numbers." [16]

Eagles and sea otters were the subject of much public concern after the spill. While both species suffered initial mortalities, there are strong indications that both are recovering quickly and thriving. [12,14] M. J. Gibson and Dr.

J. White, who worked on eagle and bird rehabilitation in 1989 and visited Prince William Sound in 1990 reported,

"accumulating evidence indicates the area's eagle population is generally healthy and thriving" [11]

Moreover,

"We observed numerous eaglets and recent fledglings throughout the area. In 1990, many pairs were not only occupying previously oiled territories, but they had also nested, laid eggs, incubated, and hatched chicks that had developed normally." [11]

With regard to sea otters, the observations in 1990 are also encouraging. More than 16,000 sea otters inhabited the portions of Prince William Sound and the Gulf of Alaska that were impacted by the oil according to A. R. DeGange in a U.S. Fish and Wildlife Service symposium in April 1990. Drs. T. M. Williams and R. W. Davis, who organized and worked in Exxon's otter rehabilitation program in 1989, visited Prince William Sound in 1990 to gauge the recovery of the otters in impacted areas. [10] From their observations they noted,

"Large numbers of adults and pups were found in previously oiled areas, and they appear to feed and behave normally. These results suggest that many of the previously contaminated areas are able to support sea otters." [13]

Drs. Baker, Clark, and Kingston also commented on the recovery of sea otter populations,

"Sea otters are abundant in Prince William Sound. With a potential for the population to grow at nearly 20% per year, we have concluded that whatever losses suffered in the oil spill are likely to be rapidly made good by natural reproduction." [2]

Ecological Overview

These observations on individual species and habitats are indicative of the health of the overall ecosystem in Prince William Sound and the Gulf of Alaska. Drs. Baker, Clark, and Kingston have commented on the relative rate of ecological recovery from their perspective which reflects the study of numerous past spills. They note,

"There is a wealth of information about the recovery of cold water marine ecosystems following oil spills in various parts of the world. In all cases recovery events have been similar to those seen in Prince William Sound. If anything, because of the exceptionally thorough clean-up measures and natural cleaning processes, biological recovery has started sooner and proceeded further in Alaska than might have been anticipated." [2]

Dr. A. W. Maki, Exxon's lead environmental scientist on the Valdez spill, integrated the observations on parts of the ecosystem into an overall

assessment in his article in Environmental Science and Technology. Among his findings he noted,

"Field counts of plants, fish, and mammals from throughout the spill area provide convincing data that wildlife species are surviving and reproducing, thus confirming that biological recovery is rapidly taking place." [15]

Recovery Consistent with Historical Observations

The quick and robust recovery of Prince William Sound and the Gulf of Alaska is consistent with scientific observations made following previous spills over the last 25 years. Dr. J. E. Mielke summarized the technical literature on spills in his 1990 Congressional Research Service report, "Oil in the Ocean: The Short- and Long-Term Impacts of a Spill." He found,

"Short-term impacts on marine animal life are dramatic but recovery of species populations in almost every case studied has been swift." [18]

The recovery in Prince William Sound and the Gulf of Alaska conforms to this pattern. Drs. J. M. Baker, R. B. Clark, and P. F. Kingston have personally worked on many previous spills; they visited spill impacted areas in April and September, 1990, to assess the recovery in comparison to previous spills. They found,

"Our examination of the spill area confirmed our expectations, based on knowledge gained from previous accidents, that natural recovery is proceeding in Prince William Sound and the Gulf of Alaska. We expect the recovery to continue and to be relatively rapid." [17]

"Although isolated patches of weathered oil may still be found, nearly all of the beaches in Prince William Sound and the Gulf of Alaska are of clean appearance. Some small and isolated portions of the shoreline may retain oil for several years, but our investigations of previous oil spills indicate that the long-term impact on plants and animals should be minimal."

"The recovery process is well under way. Once started, if it is allowed to proceed without interruption, it will continue and be robust, as it has been following other spills throughout the world."

Cleanup is Essentially Complete

The cleanup of the spill is also in an advanced state. Little additional work remains to be done. The Owens report cited earlier clearly portrays the rapid disappearance of oil from the shoreline [6] and, as early as July 1990, NOAA noted that, "... deeply buried subsurface oil (i.e., oil beyond the reach of near-term bioremediation and other less-intrusive cleanup methods) poses little risk of causing further significant environmental injury." In addition, in its March 15, 1991 letter to the Coast Guard, NOAA stated,

"We are rapidly reaching the point of diminishing returns where the amount of effort, and the associated impacts, required to further reduce the total amount of oil remaining on, or in, a beach cannot be justified based solely on the assumption that the presence of oil poses a threat to the overall health of the local environment." [4]

In addressing the environmental threat of remaining oil, NOAA states,

"The bulk composition of the remaining oil is comprised primarily of the residual or asphaltene fractions which have negligible solubility and little demonstrated toxicity, and thus pose little environmental risk to intertidal and water-column organisms, even if there were routine releases."

Given the minimum remaining oil, Drs. Baker, Clark, and Kingston addressed further cleanup from the perspective of those who have closely monitored past oil spills.

"There have been continuing public discussions about whether further clean-up of remaining oil on the beaches in Prince William Sound and the Gulf of Alaska is necessary." [2]

"Whether or not further clean-up measures to remove this residual oil are justified largely depends on the human use a beach is put to. Our judgement is that where recovery of animal and plant life is already well established, the residual oil is obviously doing no harm and the organisms established on the shore will hasten the final removal and degradation of the oil residues."

Conclusion

The extensive cleanup program conducted by Exxon, in combination with natural processes, removed the threat of further injury to wildlife by direct contact, substantially restored the aesthetic appeal of the area, and facilitated biologic recovery, particularly in the heavily oiled areas. Furthermore, the studies summarized herein demonstrate a rapid recovery of the impacted resources.

Attachments

Attachment A
Technical References

Water

1. Neff, J. M. (Senior Consultant, A. D. Little). "Water Quality in Prince William Sound and the Gulf of Alaska." Cambridge, Massachusetts: Arthur D. Little; 37 pp.; March, 1991.

Habitat Recovery

2. Baker, J.M. (Independent consultant, former Director of U.K. Field Studies Council); Clark, R.B. (Prof. Emeritus of Zoology, University of Newcastle Upon Tyne); Kingston, P.F. (Asst. Director of U.K. Institute of Offshore Engineering). "Two Years after the Spill: Environmental Recovery in Prince William Sound and the Gulf of Alaska." Presented at American Association of Petroleum Geologists Convention; 31 pp.; Dallas, TX, April 7-10, 1991.
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4. National Oceanic and Atmospheric Administration. "NOAA Review of Status of Prince William Sound Shorelines Following Two Years of Treatment by Exxon." In: March 15, 1991, letter to RADM D. E. Ciancaglini by D.M. Kennedy.
5. National Oceanic and Atmospheric Administration. "Exxon Valdez Shoreline Monitoring Program: 1990 Results" Pentec Environmental, Inc. and Environmental and Energy Service Co. Released April 9, 1991, in Washington, D. C. by NOAA.
6. Owens, E.H. (Senior Consultant, Woodward-Clyde). "Changes in Shoreline Oiling Conditions 1-1/2 Years after the 1989 Prince William Sound Spill." Unpublished report. Seattle, Washington: Woodward-Clyde; 116 pp.; March, 1991.

Fish and Subsistence Recovery

7. Meyer, R.M. (U.S. Department of Interior Minerals Management Service). "Assessing the Risk to Pacific Herring from Offshore Gas and Oil Development in the Southeastern Bering Sea" Paper presented at the International Herring Symposium, Anchorage, Alaska, October 1990.
8. Royce, W.F. (Prof. Emeritus Fisheries, University of Washington); Schroeder, T.R. (Fisheries Consultant, former Fisheries Management

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Biologist Alaska Department of Fish & Game); Olsen, A.A. (Fisheries Consultant, Alaska); Allender, W.J. (Prince William Sound sport fishing operator and owner, former commercial fisherman). "Alaskan Fisheries Two Years after the Spill." Unpublished report. Homer, Alaska: Cook Inlet Fisheries Consultants; 35 pp.; February, 1991.

9. U.S. Food and Drug Administration. "Report of the Quantitative Risk Assessment Committee: Estimation of Risk Associated with Consumption of Oil-Contaminated Fish and Shellfish by Alaskan Subsistence Fishermen Using a Benzo[a]pyrene Equivalency Approach." Advisory Opinion on the Safety of Aromatic Hydrocarbon Residues Found in Subsistence Foods that were Affected by the Exxon Valdez Oil Spill. Submitted to the Alaska Oil Spill Task Force by the U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Washington, D.C; August 9, 1990.

Wildlife Recovery

10. Davis, R.W. (Head of Department of Marine Biology, Texas A & M University). "Advances in Rehabilitating Oiled Sea Otters: The Valdez Experience." Presented at a special symposium, "The Effects of Oil on Wildlife," held in conjunction with the 13th Annual Conference of the International Wildlife Rehabilitation Council, October 17-18, 1990, Herndon, Virginia; 20 pp.
11. Gibson, M.J. (Independent Raptor expert); White, J. (Doctor of Veterinary Medicine, International Bird Rescue Center). "Results of the Eagle Capture, Health Assessment, and Short-term Rehabilitation Program Following the Valdez Oil Spill." Presented at a special symposium, "The Effects of Oil on Wildlife," held in conjunction with the 13th Annual Conference of the International Wildlife Rehabilitation Council, October 17-18, 1990, Herndon, Virginia; 16 pp.
12. Gibson, M.J. (Independent Raptor specialist); "The Abundant Bald Eagles of Prince William Sound, Alaska." Unpublished Summary. 4 pp.; February 1991.
13. Williams, T.M. (Research Physiologist, Naval Ocean Systems Center). "Evaluating the Long Term Effects of Crude Oil Exposure in Sea Otters: Laboratory and Field Observations." Presented at a special symposium, "The Effects of Oil on Wildlife," held in conjunction with the 13th Annual Conference of the International Wildlife Rehabilitation Council, October 17-18, 1990, Herndon, Virginia; 13 pp.
14. Williams, T.M.; Davis, R.W.; "Sea Otters Thrive in Prince William Sound." Unpublished Summary. 4 pp.; February 1991.

Ecological Overview

15. Maki, A.W. (Environmental Advisor, Exxon). "The Exxon Valdez Oil Spill: Initial Environmental Impact Assessment." Environmental Science and Technology. 25(1): 24-29; 1991.

Technical References (Continued)

Historical Perspective on Oil Spill Impacts

16. Baker, J.M. (Independent consultant, former Director of U.K. Field Studies Council); Clark, R.B. (Prof. Emeritus of Zoology, University of Newcastle Upon Tyne); Kingston, P.F. (Asst. Director of U.K. Institute of Offshore Engineering); Jenkins, R.H. (Deputy Director of U.K. Institute of Offshore Engineering). "Natural Recovery of Cold Water Marine Environments after an Oil Spill." Thirteenth annual Arctic and Marine Oilspill Program, June 6-8, 1990, Edmonton, Alberta; 111 pp.; June, 1990.
17. Baker, J.M. (Independent consultant, former Director of U.K. Field Studies Council); Clark, R.B. (Prof. Emeritus of Zoology, University of Newcastle Upon Tyne); Kingston, P.F. (Asst. Director of U.K. Institute of Offshore Engineering). "Environmental Recovery in Prince William Sound and the Gulf of Alaska: Field Observations." Presented at the Thirteenth Annual Arctic and Marine Oilspill Program, June 6-8, 1990, Edmonton, Alberta; 12 pp.; June 1990.
18. Mielke, J.E. (Specialist on Marine and Earth Sciences, Congressional Research Service). "Oil in the Ocean: The Short- and Long-Term Impacts of a Spill." Congressional Research Service Report for Congress. CRS Report 90-356 SPR; Washington, D.C.: Library of Congress; 34 pp.; July 24, 1990.

Oil Spill Cleanup

19. Carpenter, A.D. (Alaska Operations Manager, Exxon); Dragnich, R.G. (Alaska Operations Waste Management Coordinator, Exxon); Smith, M.T. (Alaska Operations Technology Development Exxon Production Research). "Marine Operations and Logistics During the Exxon Valdez Spill Cleanup." In: Proceedings of the 1991 International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), March 4-7, 1991, San Diego, California. Washington, D.C.: American Petroleum Institute Publication 4529; 205-212; 1991.
20. Harrison, O.R. (Alaska Operations General Manager, Exxon). "An Overview of the Exxon Valdez Oil Spill." In: Proceedings of the 1991 International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), March 4-7, 1991, San Diego, California. Washington, D.C.: American Petroleum Institute Publication 4529; 313-319; 1991.

4/15/91

SCOMM

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DIVISION OF LEGAL SERVICES
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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 17, 1991

SUBJECT: Use of money in the "470" fund for litigation
(Work Order No. 7-1234)

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

FROM: Tamara Brandt Cook *TBC*
Director

You have asked whether money in the Oil and Hazardous Substance Release Response Fund ("470" fund) may be used to cover the costs of litigation involving the Exxon Valdez oil spill. The commissioner of environmental conservation is authorized to use money in the fund under AS 46.08.040(a) for the purposes listed in that subsection. One of the purposes listed would clearly permit the commissioner to make some money available for litigation efforts. Under paragraph (5) the commissioner is authorized to use money from the fund to

recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance. . .

In addition, paragraph (7) may provide the commissioner some authority to use money for litigation expenses to collect damages to the environment if there is some expectation that money recovered will be used for restoration.

It must be stressed, however, that the various statutes dealing with uses that may be made of money in the fund apply to the executive branch. There is nothing that purports to limit the legislature's power to appropriate from the fund for any purpose. Even if there were, it is unlikely that such statutorily imposed limitation would be held by a court to effectively curtail the legislature's constitutional power of the purse. Therefore, the legislature may appropriate money from the "470" fund to cover litigation expenses incurred as a result of the oil spill or for any other public purpose it chooses. Such an appropriation would, of course, be subject to the governor's veto power.

Senator Dick Eliason

April 17, 1991

Page 2

With respect to the \$.05 per barrel con- surcharge, suspension of the surcharge is based upon a determination of the amount collected from the surcharge through a calendar quarter minus the amount expended from the "470" fund. If the difference equals or exceeds \$50,000,000, the surcharge is suspended. (AS 43.55.230) Appropriations from the fund should qualify as amounts "expended," as well as expenditures made by the executive branch under AS 46.08.040. Since appropriations from the fund have the effect of depleting it, the surcharge will tend to remain in place if the legislature begins to tap into the fund directly through its appropriation power.

Under AS 43.55.240, if the legislature fails to appropriate revenue from the surcharge to the "470" fund or the governor vetoes the appropriation so that it does not become law, it is possible that the surcharge will not be imposed during a fiscal year. But nothing, other than the governor's veto, prevents the legislature from appropriating surcharge revenue to the fund and then appropriating it back out again, even though this will have the effect of keeping the surcharge in place when the \$50,000,000 cap might have otherwise been reached.

TBC:pl
91-268.plm

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Department of Commerce

APR 15 1991

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**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

**NATIONAL OCEAN SERVICE
OFFICE OF OCEANOGRAPHY AND MARINE ASSESSMENT
OCEAN ASSESSMENTS DIVISION
ROCKVILLE, MARYLAND 20852**

8 April 1991

MEMORANDUM FOR: NOAA/GC Thomas A. Campbell
Washington Policy Group
Trustee Council

FROM:

Douglas A. Wolfe
Robert B. Spies
Donald C. Malins

SUBJECT:

RECOMMENDATIONS RELATED TO REVIEW AND
RELEASE OF NRDA DATA AND TO PUBLICATION OF
EXXON VALDEZ ASSESSMENT RESULTS

We want to share with you our collective concerns about recent efforts and activities to place for public access all available, quality-assured NRDA data into the Oil Spill Public Information Center in Anchorage as soon as possible. Our view is that the release of "data" (whether quality-assured or not) without accompanying interpretive reports will raise a series of conflicting interpretations from various interested parties. The controversy ensuing from such releases and counterclaims would be regrettable and could erode support for the NRDA process. In addition, we believe that publicly available interpretive analyses of the NRDA data performed by the NRDA Project Managers, and that the reports and manuscripts should undergo peer review prior to formal publication.

The release of the NRDA planning documents (detailed study plans and interim project reports) should not, in most cases, be a problem as long as they are clearly identified as interim planning documents that: a) are based on incomplete data; b) have not undergone peer review; and c) contain interpretations subject to revision. The raw data that were available to the Project Managers and taken into consideration at the time they drafted those reports could also be appended and made available with the same caveats. Additional data generated more recently, however, should NOT be archived in the repository for public access until such time as the Project Managers have had the opportunity to review, analyze and interpret those data. This concern applies very strongly to the hydrocarbon analytical data collected under project Technical Services No. 2. Large amounts of these data have become available only after the last



interim reports were written, and in many cases, the Project Managers have not yet had an opportunity to review the data, much less develop interpretive reports. In most cases, the Project Managers are still waiting for additional data before they can reasonably undertake their detailed data analyses and interpretations.

We are also concerned that without coordinated direction, the very large base of information (both scientific and economic) developed about the EXXON VALDEZ spill (easily the best-studied spill in human history to date) might be released and published in a haphazard and diffuse manner, resulting in a product not easily accessible either to the scientific community or to the interested public. The current push for release of available data to the Public Information Center could stimulate Project Managers to rush incomplete results towards publication in the most accessible publication outlets. While our principal investigators should definitely be encouraged to publish their results as early as possible in peer-reviewed scientific journals, this process should be driven by the maturation and analysis of logical units of data and the development of significant interpretations and conclusions.

An attractive mechanism for public release of information would be for the Trustees (perhaps in cooperation with Exxon) to sponsor a major symposium for the presentation of EVOS results, and to publish, in one place, a comprehensive collection of scientific papers related to the spill. The sponsors could install an acceptable mechanism for peer review of all papers. The proceedings could be published through an existing scientific journal, or could take the form of a separate, high quality volume (such as that published by the French *Centre National pour l'Exploitation des Oceans* for the *Amoco Cadiz* spill). This approach would motivate the investigators to analyze and publish their results on a rigorous schedule, ensure that a large block of EVOS information (from all possible sources) becomes accessible in one place, and provide a uniform standard for quality control on the publication. A logical and practical time frame for this symposium would be during spring of 1992 (providing ample time for analysis of Oil-Year 3 results). The team of Wolfe, Spies, and Malins possesses considerable experience in the organization and conduct of such symposia and the publication of high quality proceedings. With NOAA's support, we could undertake this activity, working through the existing structure of the Management Team to notify the Project Managers and request their participation. Planning must start very soon, however, if this approach and schedule are to be implemented.

cc: C.N. Ehler

STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

MEMORANDUM

TO: Representative Max Gruenberg, Chair
House Special Committee on the *Exxon Valdez*
Oil Spill Claims Settlement

Representative Kay Brown, Chair
House DEC Budget Subcommittee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 18, 1991

SUBJECT: Information Regarding Expenditures Covered by the Memorandum of Agreement between the State, the Federal Government, and Exxon.

This memorandum has been prepared in response to your request regarding information on state expenditures involved in responding to the *Exxon Valdez* oil spill. In order to respond to your questions, we reviewed the Memorandum of Agreement (MOA) between Exxon and the State and federal governments.

We were able to obtain expenditure information compiled by Peterson and Associates that appears to have been the basis for the \$72 million cost recovery amount included in the MOA. Due primarily to time constraints, we are not able to provide you with total assurance regarding the reasonableness of the MOA's cost recovery provisions.

The expenditure information used in the development of the MOA's \$72 million ceiling is comprehensive. From our cursory review of the Peterson and Associates information, and discussions with a Peterson and Associates representative and agency staff of the significantly involved departments, we believe that the \$72 million amount in the MOA appears to reasonably represent the oil spill response, assessment, and litigation costs incurred by the State through December 31, 1990.

Using the Peterson and Associates information, compiled from the State's accounting system, we have developed the following information. We also offer some observations and concerns that we have regarding cost recovery under the terms of the MOA.

COST REIMBURSEMENT

Section V. B of the MOA allows the State to receive up to \$72 million for "reimbursement of allowed expenses," incurred through December 31, 1990. The section further allows the State to receive reimbursement of "response and cleanup costs incurred after December 31, 1990."

From the detailed listing of expenditures prepared by Peterson and Associates, we developed the following table summarizing expenditures by agency through December 31, 1990.

DEPARTMENT	Estimated Recorded Expenditures (thousands)		Remaining Expenditures or Costs (thousands)
Administration	3,591.0		3,103.0
Commerce and Economic Development	627.0	499.0	128.0
Community and Regional Affairs	1,429.0	40.0	1,389.0
Environmental Conservation	38,652.0	24,621.0	14,031.0
Fish and Game	23,467.0	6,440.0	17,027.0
Governor's Office	1,345.0	730.0	615.0
Health and Social Services	827.0	7.0	820.0
Labor	895.0	273.0	622.0
Law	17,342.0	0.0	17,342.0
Military and Veterans' Affairs	949.0	653.0	296.0
Natural Resources	2,989.0	1,341.0	1,648.0
Public Safety	334.0	18.0	316.0
Transportation and Public Facilities	1,131.0	1,013.0	118.0
University of Alaska	439.0	53.0	386.0
TOTALS	94,017.0	36,176.0	57,841.0
NON-CASH EXPENDITURE ADDED IN MOA TOTALS:			
Overhead (4,600.0)/Financing (3,900.0) Estimates			8,500.0
Damage Assessment Obligations (costs incurred but not paid by 12/31/90)			3,100.0
Litigation Obligations (costs incurred but not paid by 12/31/90)			2,500.0
Total Expenditures used to set MOA Cost Recovery Cap			71,941.0

The table on the following pages highlights the major, but not all, components of each department's costs and includes our observations.

DEPARTMENT (Total Expended)/ COMPONENT DESCRIPTION	COMPONENT AMOUNT (thousands)	COMMENTS
ADMINISTRATION (3,591.0): Valdez Oil Spill Commission Telecommunications	952.0 2,200.0	The Telecommunication costs may be understated. We reviewed information as of 8/15/90 that showed expenditures of 3,300.0 primarily for two projects: Prince William Sound microwave system (2,091.0) and a non-microwave system for the South Kenai/Kodiak link (1,206.0).
COMMERCE AND ECONOMIC DEVELOPMENT (627.0): Alaska Seafood Marketing Institute (ASMI) Weigh Stations	475.0 130.0	ASMI received 800.0 directly from Exxon. Actual expenditures were somewhat greater than reflected here, however it is immaterial as any costs are paid from funds already received, with a net zero effect on nonreimbursed costs.
COMMUNITY AND REGIONAL AFFAIRS (1,429.0): Community Assistance Grants	1,173.0	Grants were awarded on a competitive/needs based evaluation. Eighteen grants were awarded ranging from 2.3 to Port Lions for equipment repair to 684.0 to Kodiak for a Social/Economic Study.
ENVIRONMENTAL CONSERVATION (38,652.0): Personal Services Travel Contractual Equipment	14,000.0 2,218.0 20,000.0 1,000.0	The oil spill drastically impacted DEC. Personal services included significant overtime, project new hires, and back-fills for employees assigned to the spill. We are more confident in the accounting section at DEC than most of the impacted departments. However, we will verify that further with a detailed financial review for FY 90.
FISH AND GAME (23,476.0): Personal Services Travel Contractual	10,350.0 1,000.0 8,455.0	The majority of the department's work dealt with impact assessment studies on a wide variety of fish and wildlife species. The department fiscal staff believes the total recorded expenditures adequately cover costs incurred.
GOVERNOR'S OFFICE (1,345.0): Oil Spill Coordination Office	995.0	
HEALTH AND SOCIAL SERVICES (827.0): Substance Abuse Grants Mental Health and DD Grants	522.0 231.0	
Labor (895.0): OSHA/Inspections/Job Service Training Spill Workers in Safety Compliance	325.0 174.0	
LAW (17,342.0): Legal Expenses Experts and Consultants	11,400.0 4,682.0	According to the department, the total amount recorded plus the 2,500.0 litigation obligation will cover costs through 12/31/90. It is estimated an additional 4,000.0 will be needed for 1991 costs.
Continued on Next Page.		

(Continued) DEPARTMENT (Total Expended)/ COMPONENT DESCRIPTION	COMPONENT AMOUNT (thousands)	COMMENTS
MILITARY AND VETERANS' AFFAIRS (949.0):		Significant initial response effort from the Division of Emergency Services.
NATURAL RESOURCES (2,989.0): Personal Services Equipment	2,000.0 600.0	Most personal services costs were for temporary project hires for oil spill response. Fiscal staff is confident total covers costs incurred.
PUBLIC SAFETY (334.0): Increased Enforcement Two Enforcement Vessels	100.0 142.0	Personal services costs for overtime/sea pay for troopers and Fish and Wildlife vessel crew for increased enforcement. Little, if any, regular compensation for permanent employees is included.
TRANSPORTATION AND PUBLIC FACILITIES (1,131.0): MV Aurora MV Bartlett	488.0 46.0	MV Aurora provided floating lodging for oil spill workers.

Almost half of the State expenditures were made with 470 funds

Of the \$94 million in expenditures, it has been estimated that more than \$46.7 million has been spent out of the Oil and Hazardous Substance Response Fund (OHSRF), also known as "470 Funds." According to a draft of an internal audit report prepared by the Department of Environmental Conservation, the expenditures from the fund, broken down by agency, are:

EXPENDITURES BY DEPARTMENT FROM THE OIL AND HAZARDOUS SUBSTANCE RESPONSE FUND	Estimated Recorded Expenditures (thousands)
Administration	2,281.0
Environmental Conservation	32,889.0
Fish and Game	7,095.0
Governor's Office	275.0
Labor	272.0
Law	92.0
Military and Veterans' Affairs	60.0
Natural Resources	1,529.0
Transportation and Public Facilities	786.0
University of Alaska	59.0
Other	1,400.0
Total	46,738.0

According to the information compiled by Peterson and Associates, the Department of Fish and Game has received \$5.7 million in reimbursements from the Federal CERCLA process. As of December 31, 1990, Exxon had reimbursed \$30 million to the State's Oil and Hazardous Substance Response Fund (OHSRF). Given these reimbursements, total "out-of-pocket expenditures," broken down by "funding source," are as follows.

Expenditures by "Funding Source"	Expenditures (thousands)
General Fund	41,100.0
CERCLA Reimbursement to General Fund	5,700.0
EXXON Reimbursement to the Oil and Hazardous Substance Response Fund	30,000.0
EXXON Reimbursement to Alaska Seafood Marketing Institute	500.0
Unreimbursed Oil and Hazardous Substance Response Fund Expenditures	16,700.0
Total "Out-of-Pocket" Expenditures by State	94,000.0

OBSERVATIONS AND QUESTIONS

1. What requirements, if any, must the State meet to receive recovery? - It is our understanding that the cost recovery totals listed in the MOA are to settle all expenditure claims still pending before Exxon, in addition to reimbursing the State for expenditures not yet submitted. According to a January 4, 1991 summary, \$49.7 million in state expenditures had been submitted to Exxon. Of this amount Exxon had paid just over \$30 million, was still considering \$4.4 million, and had rejected \$14.8 million in submitted claims. As suggested by the summary of expenditures submitted to Exxon already, a significant part of the \$72 million recovery amount contemplated in the MOA has previously been rejected for reimbursement. Does the cost recovery amount allowed for in the MOA supersede earlier decisions by Exxon officials not to reimburse the State for some of the costs claimed? Does the use of the phrase "allowed expenses" in the MOA imply that the State's expenditures must meet some specific criteria or requirement prior to being eligible for reimbursement?

We have been informally advised by Legal Services Director Tam Cook that the agreement is silent about any specific criteria for "allowed" expenditures. She commented that this possibly could be an issue subject to further discussion and negotiation between the State and Exxon. However, Ms. Cook also reported that Attorney General Cole testified before the Committee that the reimbursement would be paid without further audit or scrutiny by Exxon. We suggest that the Committee get a clear understanding of any further review and approvals to which these expenditures may be subjected.

2. Ownership of assets and other personal property - From the outset of the cost reimbursement process, Exxon had told the State that any durable goods and equipment purchased by the State and reimbursed by Exxon belonged to the company after the oil spill activity was finished. The summary of expenditures that make up the MOA's \$72 million recovery cap, lists over \$4 million in equipment bought by the State. Additionally, more than \$11 million was paid by Exxon directly to vendors. This amount may also include payment for equipment used by the State.

Is Exxon going to continue to insist on the return of the numerous computers, filing cabinets, boats, and telecommunications equipment paid for by the company? If so, a significant effort will be required to inventory, centralize, and value this property, which may require future appropriations from the legislature. It may be in the State's best interest to compensate Exxon for the current diminished value of the equipment.

3. Audit Access to Restoration Funding - In a March 18, 1991 overview memorandum, the Division of Legal Services raised the issue of audit access to the expenditures of the trustees. The memorandum rhetorically asks who, if anyone, will perform audits of the trustees' expenditures? We concur that audit access should be clarified. Due to the unique relationship between the state and federal governments in administering these funds, some provision should be made that clearly gives the Legislative Auditor access, on behalf of the State, to expenditures of the trustees.

In summary, we believe that the \$72 million amount appears reasonable. Additionally, the overhead and financing amount of \$8.5 million is not based on identified expenditures, but on estimates. Therefore, we believe there may be some "cushion" in this number to cover costs not identified as of December 31, 1990.

We hope this memorandum provides some insight into the make-up of the \$72 million ceiling in the MOA. If you need further clarification or detail please contact me at 465-3830.

cc: Representative Ron Larson, Chairman
Legislative Budget and Audit Committee

Members of the Legislative Budget
and Audit Committee

Members of the Senate Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

DRAFT 03/19/91
CONFIDENTIAL - ATTORNEY WORK PRODUCT

**POTENTIAL APPROACH TO SETTLEMENT WITH ALYESKA ASSUMING
RELEASE OF NATURAL RESOURCE DAMAGE CLAIM PURSUANT TO
THE EXXON SETTLEMENT AGREEMENT**

1. Counts in State Complaint involving Alyeska/Owner Companies:

- a. Count I - Negligent or Intentional Failure to Contain or Clean Up
- b. Count III - Negligent or Intentional Misrepresentation
- c. Count VII - Breach of State Right of Way (ROW) Lease
- d. Count VIII - Public Nuisance
- e. Count IX - Private Nuisance
- f. Count XII - Restoration Costs under AS 46.03.780
- g. Count XV - Civil Penalty Under AS 46.03.760(a)
- h. Count XVI - Emotional Distress
- i. Count XVII - Punitive Damages

Note: Count XII (Restoration Costs) is subject to the release. Whether the nuisance actions are covered by the scope of the release is an open question. No theory under AS 46.03.760(a) (Count XV) was ever developed against Alyeska.

2. Remaining Damage Claims to Pursue Against Alyeska:

- a. Past damage assessment, response costs and attorney's fees to the extent that the total amount incurred exceeds the \$72.0 million dollar cap established by the Exxon Settlement Agreement (ESA).
- b. Future response costs and Exxon clean up credit. The State might be able to construct an argument that either or both of these amounts deducted from the amount otherwise available from the settlement monies for restoration should be compensated by Alyeska as effectively unreimbursed expenditures.

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CONFIDENTIAL - ATTORNEY WORK PRODUCT

- c. **Future Litigation Costs:** Includes costs of DOL Civil Section, outside counsel and experts not reimbursed by Exxon. Depends on position taken by private plaintiffs and whether or not a quick settlement with Alyeska is obtainable.
 - d. **Lost oil revenues from taxes and royalties arising out of TAPS shut down due to failure to contain clean up.**
 - e. **Lost fish tax revenues from Fisheries Business Tax, AS 43.75, from Salmon Enhancement Tax, AS 43.76 and Seafood Marketing Assessment, AS 16.51.160.**
 - f. **Punitive Damages.** Difficult to assess merits of case given stage of discovery. Best case relates to Alyeska's woeful state of preparedness at time of spill and its lackadaisical response during first days of the spill.
3. **Other Remedies Arguably Available Against Alyeska:**
- a. **Indemnification Responsibility of Alyeska pursuant to Paragraph 13 of State ROW Lease:** Still may be a bargaining chip especially, since indemnification of third party claims was not a part of the ESA.
 - b. **Injunctive Relief:** Impose requirements for more clean up or ~~higher~~ ^{greater} degree of preparedness. (Note: DEC is currently happy with state of Alyeska's Contingency Plan).

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Department of Law

APR 15 1991

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL OCEAN SERVICE
OFFICE OF OCEANOGRAPHY AND MARINE ASSESSMENT
OCEAN ASSESSMENTS DIVISION
ROCKVILLE, MARYLAND 20852

8 April 1991

MEMORANDUM FOR: NOAA/GC Thomas A. Campbell
Washington Policy Group
Trustee Council

FROM:

Douglas A. Wolfe
Robert B. Spies
Donald C. Malins

SUBJECT:

RECOMMENDATIONS RELATED TO REVIEW AND
RELEASE OF NRDA DATA AND TO PUBLICATION OF
EXXON VALDEZ ASSESSMENT RESULTS

We want to share with you our collective concerns about recent efforts and activities to place for public access all available, quality-assured NRDA data into the Oil Spill Public Information Center in Anchorage as soon as possible. Our view is that the release of "data" (whether quality-assured or not) without accompanying interpretive reports will raise a series of conflicting interpretations and claims from various interested parties. The controversy ensuing from such claims and counterclaims would be regrettable and could erode public support for the NRDA process. In addition, we believe that the first publicly available interpretations and analyses of the NRDA data should be performed by the NRDA Project Managers, and that the resulting reports and manuscripts should undergo peer review prior to formal publication.

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cc: C.N. Ehler

SCOMM

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STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

MEMORANDUM

TO: Representative Max Gruenberg, Chair
House Special Committee on the *Exxon Valdez*
Oil Spill Claims Settlement

Representative Kay Brown, Chair
House DEC Budget Subcommittee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 18, 1991

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FISH AND GAME (23,476.0): Personal Services Travel Contractual	10,350.0 1,000.0 8,455.0	The majority of the department's work dealt with impact assessment studies on a wide variety of fish and wildlife species. The department fiscal staff believes the total recorded expenditures adequately cover costs incurred.
GOVERNOR'S OFFICE (1,345.0): Oil Spill Coordination Office	995.0	
HEALTH AND SOCIAL SERVICES (827.0): Substance Abuse Grants Mental Health and DD Grants	522.0 231.0	
Labor (895.0): OSHA/Inspections/Job Service Training Spill Workers in Safety Compliance	325.0 174.0	
LAW (17,342.0): Legal Expenses Experts and Consultants	11,400.0 4,682.0	According to the department, the total amount recorded plus the 2,500.0 litigation obligation will cover costs through 12/31/90. It is estimated an additional 4,000.0 will be needed for 1991 costs.
Continued on Next Page.		

(Continued) DEPARTMENT (Total Expended)/ COMPONENT DESCRIPTION	COMPONENT AMOUNT (thousands)	COMMENTS
MILITARY AND VETERANS' AFFAIRS (949.0):		Significant initial response effort from the Division of Emergency Services.
NATURAL RESOURCES (2,989.0): Personal Services Equipment	2,000.0 600.0	Most personal services costs were for temporary project hires for oil spill response. Fiscal staff is confident total covers costs incurred.
PUBLIC SAFETY (334.0): Increased Enforcement Two Enforcement Vessels	100.0 142.0	Personal services costs for overtime/sea pay for troopers and Fish and Wildlife vessel crew for increased enforcement. Little, if any, regular compensation for permanent employees is included.
TRANSPORTATION AND PUBLIC FACILITIES (1,131.0): MV Aurora MV Bartlett	488.0 46.0	MV Aurora provided floating lodging for oil spill workers.

Almost half of the State expenditures were made with 470 funds

Of the \$94 million in expenditures, it has been estimated that more than \$46.7 million has been spent out of the Oil and Hazardous Substance Response Fund (OHSRF), also known as "470 Funds." According to a draft of an internal audit report prepared by the Department of Environmental Conservation, the expenditures from the fund, broken down by agency, are:

EXPENDITURES BY DEPARTMENT FROM THE OIL AND HAZARDOUS SUBSTANCE RESPONSE FUND	Estimated Recorded Expenditures (thousands)
Administration	2,281.0
Environmental Conservation	32,889.0
Fish and Game	7,095.0
Governor's Office	275.0
Labor	272.0
Law	92.0
Military and Veterans' Affairs	60.0
Natural Resources	1,529.0
Transportation and Public Facilities	786.0
University of Alaska	59.0
Other	1,400.0
Total	46,738.0

According to the information compiled by Peterson and Associates, the Department of Fish and Game has received \$5.7 million in reimbursements from the Federal CERCLA process. As of December 31, 1990, Exxon had reimbursed \$30 million to the State's Oil and Hazardous Substance Response Fund (OHSRF). Given these reimbursements, total "out-of-pocket expenditures," broken down by "funding source," are as follows.

Expenditures by "Funding Source"	Expenditures (thousands)
General Fund	41,100.0
CERCLA Reimbursement to General Fund	5,700.0
EXXON Reimbursement to the Oil and Hazardous Substance Response Fund	30,000.0
EXXON Reimbursement to Alaska Seafood Marketing Institute	500.0
Unreimbursed Oil and Hazardous Substance Response Fund Expenditures	16,700.0
Total "Out-of-Pocket" Expenditures by State	94,000.0

OBSERVATIONS AND QUESTIONS

1. What requirements, if any, must the State meet to receive recovery? - It is our understanding that the cost recovery totals listed in the MOA are to settle all expenditure claims still pending before Exxon, in addition to reimbursing the State for expenditures not yet submitted. According to a January 4, 1991 summary, \$49.7 million in state expenditures had been submitted to Exxon. Of this amount Exxon had paid just over \$30 million, was still considering \$4.4 million, and had rejected \$14.8 million in submitted claims. As suggested by the summary of expenditures submitted to Exxon already, a significant part of the \$72 million recovery amount contemplated in the MOA has previously been rejected for reimbursement. Does the cost recovery amount allowed for in the MOA supersede earlier decisions by Exxon officials not to reimburse the State for some of the costs claimed? Does the use of the phrase "allowed expenses" in the MOA imply that the State's expenditures must meet some specific criteria or requirement prior to being eligible for reimbursement?

We have been informally advised by Legal Services Director Tam Cook that the agreement is silent about any specific criteria for "allowed" expenditures. She commented that this possibly could be an issue subject to further discussion and negotiation between the State and Exxon. However, Ms. Cook also reported that Attorney General Cole testified before the Committee that the reimbursement would be paid without further audit or scrutiny by Exxon. We suggest that the Committee get a clear understanding of any further review and approvals to which these expenditures may be subjected.

2. Ownership of assets and other personal property - From the outset of the cost reimbursement process, Exxon had told the State that any durable goods and equipment purchased by the State and reimbursed by Exxon belonged to the company after the oil spill activity was finished. The summary of expenditures that make up the MOA's \$72 million recovery cap, lists over \$4 million in equipment bought by the State. Additionally, more than \$11 million was paid by Exxon directly to vendors. This amount may also include payment for equipment used by the State.

Is Exxon going to continue to insist on the return of the numerous computers, filing cabinets, boats, and telecommunications equipment paid for by the company? If so, a significant effort will be required to inventory, centralize, and value this property, which may require future appropriations from the legislature. It may be in the State's best interest to compensate Exxon for the current diminished value of the equipment.

3. Audit Access to Restoration Funding - In a March 18, 1991 overview memorandum, the Division of Legal Services raised the issue of audit access to the expenditures of the trustees. The memorandum rhetorically asks who, if anyone, will perform audits of the trustees' expenditures? We concur that audit access should be clarified. Due to the unique relationship between the state and federal governments in administering these funds, some provision should be made that clearly gives the Legislative Auditor access, on behalf of the State, to expenditures of the trustees.

In summary, we believe that the \$72 million amount appears reasonable. Additionally, the overhead and financing amount of \$8.5 million is not based on identified expenditures, but on estimates. Therefore, we believe there may be some "cushion" in this number to cover costs not identified as of December 31, 1990.

We hope this memorandum provides some insight into the make-up of the \$72 million ceiling in the MOA. If you need further clarification or detail please contact me at 465-3830.

cc: Representative Ron Larson, Chairman
Legislative Budget and Audit Committee

Members of the Legislative Budget
and Audit Committee

Members of the Senate Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

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**POTENTIAL APPROACH TO SETTLEMENT WITH ALYESKA ASSUMING
RELEASE OF NATURAL RESOURCE DAMAGE CLAIM PURSUANT TO
THE EXXON SETTLEMENT AGREEMENT**

1. Counts in State Complaint involving Alyeska/Owner Companies:

- a. Count I - Negligent or Intentional Failure to Contain or Clean Up
- b. Count III - Negligent or Intentional Misrepresentation
- c. Count VII - Breach of State Right of Way (ROW) Lease
- d. Count VIII - Public Nuisance
- e. Count IX - Private Nuisance
- f. Count XII - Restoration Costs under AS 46.03.780
- g. Count XV - Civil Penalty Under AS 46.03.760(a)
- h. Count XVI - Emotional Distress
- i. Count XVII - Punitive Damages

Note: Count XII (Restoration Costs) is subject to the release. Whether the nuisance actions are covered by the scope of the release is an open question. No theory under AS 46.03.760(a) (Count XV) was ever developed against Alyeska.

2. Remaining Damage Claims to Pursue Against Alyeska:

- a. Past damage assessment, response costs and attorney's fees to the extent that the total amount incurred exceeds the \$72.0 million dollar cap established by the Exxon Settlement Agreement (ESA).
- b. Future response costs and Exxon clean up credit. The State might be able to construct an argument that either or both of these amounts deducted from the amount otherwise available from the settlement monies for restoration should be compensated by Alyeska as effectively unreimbursed expenditures.

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- c. **Future Litigation Costs:** Includes costs of DOL Civil Section, outside counsel and experts not reimbursed by Exxon. Depends on position taken by private plaintiffs and whether or not a quick settlement with Alyeska is obtainable.
- d. **Lost oil revenues from taxes and royalties arising out of TAPS shut down due to failure to contain clean up.**
- e. **Lost fish tax revenues from Fisheries Business Tax, AS 43.75, from Salmon Enhancement Tax, AS 43.76 and Seafood Marketing Assessment, AS 16.51.160.**
- f. **Punitive Damages.** Difficult to assess merits of case given stage of discovery. Best case relates to Alyeska's woeful state of preparedness at time of spill and its lackadaisical response during first days of the spill.

3. **Other Remedies Arguably Available Against Alyeska:**

- a. **Indemnification Responsibility of Alyeska pursuant to Paragraph 13 of State ROW Lease:** Still may be a bargaining chip especially, since indemnification of third party claims was not a part of the ESA.
- b. **Injunctive Relief:** Impose requirements for more clean up or later degree of preparedness. (Note: DEC is currently happy with state of Alyeska's Contingency Plan).

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April 21, 1991

MEMORANDUM ON EXXON VALUATION ISSUES

This memorandum addresses several economic issues in consideration of the proposed settlement of government claims from the Exxon Valdez oil spill. These issues include the valuation of the settlement, the valuation of the natural resources damage, some comparisons of this settlement with other natural resource damage cases, and related matters.

VALUATION OF THIS SETTLEMENT

Various sources have estimated of value of the proposed settlement at amounts ranging from a low of \$421 million (under one of six scenarios used by the Congressional Research Service, Library of Congress) to a high of \$757 million (memorandum from Jim Kelly, research and liaison officer for the Permanent Fund Corp., to staff for Rep. Barnes). The majority of the estimates cluster in the \$500-600 million range. Several uncertainties account for the range.

- Inflation will erode the real value of the large bulk of the settlement that will be received in the future, but no one can know future inflation rates with certainty.
- A similar discount is usually appropriate to reflect the real earnings that could be collected if the funds were available to use or invest now, instead of in the future. The real earnings rate varies independently of inflation.
- The dates on which payments will be made under the settlement are not in all cases certain, i.e., the date for payment of the \$72 million reimbursement of state out-of-pocket costs.
- Some payments result from calculations involving amounts that are not yet known, i.e., Exxon's clean-up costs between January 1, 1991 to the date of final approval.
- An unknown portion of the settlement covers a part of future state clean-up costs that have a high probability of being recoverable from Exxon without litigation.

MEMORANDUM ON EXXON VALUATION ISSUES, page 2

- Tax effects will lower the cost of the settlement to Exxon and reduce its value to the governments by a significant but unknown amount. Whether to include the tax effects is itself a judgement.
- The final installment payment is contingent on unknown future events.
- Additional but unknown liabilities for legal expenses and possible damages may arise as a result of entering the settlement, a factor not accounted for in any of the estimates.

There is no single correct way to deal with these uncertainties. Most economists familiar with the settlement seem to be comfortable in casual calculation and discussion with rounding its present cash value to a half-billion dollars.

NON-USE VALUES

Although the governments have attempted to keep confidential their economic valuations of the Exxon damage, the major results of those studies have been widely discussed in economic circles and with the press. Some of the economic studies attempted to evaluate losses of use values to recreationists, sports fishermen, hunters, subsistence users, and losses associated with commercial fishing. The major thrust of the economic studies, however, and the major part of the several million dollars spent by the governments on economic valuations has been devoted to determining non-use values.

Direct Measures of Non-use Values

Non-use values reflect the worth people give to things like eagles, sea otters, and pristine ecosystems that individuals don't directly use, and which are rarely bought and sold at market prices. These values may reflect a desire to preserve options for future recreational use (option value), to preserve options for future generations (bequest value), or simply because the very existence of the resource (existence value) is something an individual is willing to pay to preserve.

The concept of non-use values is widely accepted in economics. Some methods of measuring the values of non-market goods such as eagles sea otters are also well established. If people are willing to pay \$50,000 to preserve the life of an injured sea otter, as they apparently were in the case of the rescue program after the Exxon spill, it is inferred that the value of the otter to people must be at least that amount. Thus, one approach to determining the values of Exxon oil spill losses calculates known, inferred, and projected losses and multiplies those numbers by values for individual animals. In addition to looking at rescue efforts, values can be imputed from information such as the costs zoos incur to acquire animals. For example, zoos are

MEMORANDUM ON EXXON VALUATION ISSUES, page 3

estimated to be paying \$200-500 per bird for murre. The costs of transplant programs, and spending on management and protection can also be used. These relatively accepted approaches to non-use valuation have received little publicity, but studies employing the techniques, together with the emerging picture of the biological injury, reliably support claims of several hundreds of millions of dollars. Mortality to sea otters, murre, other sea birds, eagles, whales, and seals would likely account for the bulk of these values.

Contingent Valuation Measures

The biggest part of the governments' economic effort on the Exxon case has been directed toward determining non-use values using a survey technique called contingent valuation (CV). Respondents are asked how much they would pay to preserve a natural resource, assuming such a transaction were possible; the hypothetical transaction is thus *contingent* on the situation posed by the questioner. The technique is controversial within the economic profession, but has won acceptance in various applications. Although the technique has never been tested directly in a trial, it was approved in theory by a 1989 U.S. Court of Appeals decision in the Ohio case, a proceeding involving challenges to natural resource valuation regulations issued by the Dept. of the Interior. The breadth of that decision was expanded later that same year in the related Colorado case.

Non-use values are not limited to those who live in proximity to the resource; the governments' Exxon contingent valuation surveys were designed to determine the values lost by the entire population of the U.S. The state's national survey was conducted early this year, but it was preceded by extensive focus group studies used to evaluate the proposed questionnaire, and pilot studies to verify survey validity. The federal work had not reached the survey stage when it was suspended.

The state's survey essentially asked the 1000 or more respondents questions to elicit the amount they would be willing to pay in higher taxes and gasoline costs to prevent another accident like the Exxon oil spill. The total amount all U.S. residents would pay was estimate by multiplying the average among the respondents by an figure representing the entire population.

The state's approach to its CV survey has been conservative. For example, respondents were asked questions to elicit the amount they would pay this year to protect against damage over the next ten years. A more accurate (and likely higher) value would have been returned had the questions been designed to elicit the value that the respondents would have been willing to pay if they could have spread the payments over the entire ten year period.

Economists working on the federal economic studies criticized the state's approach for being too conservative. Concern was expressed that the state's economic consultants had been pressured on this point. The attorneys, it was suggested, were stunned by the real values of the damage being returned by the focus groups and pilot surveys, and were fearful that these "too large" values would be more vulnerable to methodological challenge in court. One result of this conservative approach was that the wording of the survey questions provided little or no information to respondents on the issue of long-term injury to the environment. This silence may have left the survey vulnerable to an Exxon counter strategy using a major advertising campaign to influence respondent perceptions of the severity of the natural resources damage. One of the major reasons for keeping the CV survey dates secret was to make it difficult for Exxon to employ this strategy. Nevertheless, in October 1990, the company launched a multi-million dollar television campaign designed to reach half of U.S. households in that month with video pictures of a "now almost recovered" Prince William Sound. An extensive print campaign followed.

The state's economists do not believe the Exxon strategy was successful. Comparing data from pilot surveys conducted before October with the results of the final survey suggest that the Exxon strategy had little effect on the final survey values. In any event, the state's C.V. studies nevertheless yielded significant values for the damage done by the spill to Alaska's natural resources. The CV results have been variously reported as \$2.5 billion to \$5 billion (*N.Y. Times*, March 13, 1991), \$3 billion (*Washington Post*, March 20), \$3 to \$5 billion (Tom Campbell, general counsel of the National Oceanic and Atmospheric Administration in March testimony to Congress), and \$3 billion to \$8 billion (*Anchorage Daily News*, March 31). Economists working on the studies have independently confirmed the \$3 to \$8 billion range, and suggest that because of the state's conservative approach, the actual value is likely to be in the higher end of that range.

Evaluating the Economic Studies

The academic economists and other experts who served on the two governments' litigation teams are largely, perhaps unanimously, opposed to the settlement. Experts, of course are not the final arbiters of these issues. Attorneys usually make the decisions that finally set the values in these cases. Dr. Norman Meade, a U.S. government economist who has studied the historical data, found that natural resource damage issues have generally been settled by U.S. attorneys for 25 to 40 percent of the present values of the economic damage estimated by expert economists. Applying those percentages to the values reported above suggests that the present value of the Exxon natural resources damage settlement should be between \$750

million (25 percent of \$3 billion) and \$3.2 billion (40 percent of \$8 billion). Reimbursements of government expenses, and other damage claims would have to be added to these amounts.

RECOVERIES IN OTHER CASES

Another approach to evaluating this settlement is to compare it directly to the values recovered in other oil spill cases. In terms of present value of the recovery per gallon of spilled oil, this approach tends to confirm the relative severity of the damages and penalties assessed against Exxon in the proposed settlement. On the other hand all of the spills described below differ in many respects from the Exxon Alaska spill, and none extended over as large a geographic area. The listing below is selective, but typical of recent oil spill settlements.

Shell Oil San Francisco Bay Spill

In 1988, the Shell Oil Co. spilled 400,000 gallons of crude oil from its Martinez refinery into San Francisco Bay. In December 1989, the federal and California governments announced the settlement of all state, local, and federal claims arising out of the spill for \$19.75 million, or just under \$50 per gallon. Payments were not extended. At \$50 per gallon, the comparable recovery for the 11 million gallons spilled in the Exxon case would be a present value of \$550 million, well within the range estimated to have been achieved under the Exxon settlement.

The Shell spill affected waters that are among the most polluted on the Pacific Coast. It could be argued that the relatively undamaged nature of the environment affected by the Exxon spill makes it more valuable. On the other hand, the Shell spill affected an area that humans use far more intensively and directly than the Alaska environments hit by the Exxon spill, factors that could increase the likely damages in the more populous area.

Amoco Cadiz Spill

The tanker Amoco Cadiz struck the French Atlantic coast and eventually broke up, spilling an estimated 66 million gallons. The case is still on appeal, but it seems unlikely that the plaintiffs will receive much more than the equivalent of \$61 million, or 92¢ per gallon. While the trial was in the United States, it was conducted under French recovery theories, and did not include any natural resources damages.

U.S. laws and attitudes have evolved considerably since 1978. Most would argue that the precedent is not controlling. Nevertheless, the

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fact that a major oil company could be assessed such a small liability for such a large oil spill on the coast of a Western democracy is a fact that cannot be wholly dismissed in considering the vicissitudes of potential litigation.

Exxon Arthur Kill Spill

In 1990, an underwater pipeline rupture in Arthur Kill, a waterway between New York City and New Jersey, resulted in a 567,000 gallon spill of heating oil. State, federal and local government claims arising out of the spill were recently settled for \$15 million, or \$26 per gallon. At that rate the Exxon spill in Alaska would be worth only \$290 million. Comparability with Exxon's Alaska spill is clouded by the already polluted nature of the Kill, that the New York/New Jersey waterway was not heavily used or appropriate for recreation, the relatively high percentage of the oil recovered (26 percent), and the difference in the kind of oil spilled.

Glacier Bay Cook Inlet Spill

The 1987 spill from the tanker Glacier Bay into Cook Inlet resulted in a recent damage recovery by the state of \$700,000. The volume spilled was never accurately determined; based on estimates, the recovery amounted to \$14 to \$28 per gallon.

Arco Anchorage Port Angeles Spill

This was a spill of 240,000 gallons of North Slope crude oil from the Arco tanker *Anchorage* in 1985. The total state recovery was \$348,000, or \$1.45 per gallon. A relatively high percentage of the spilled oil was recovered, and relatively little biological damage resulted.

ORGANIZATION OF THE TRUSTEESHIP

Concern has been expressed regarding the organizational structure of the trusteeship proposed under the settlement. The negotiators could have chosen other models for trust organization that might have provided the public with greater confidence that the recovered funds will be put to good use. In several recent environmental pollution cases funds recovered as damages have been dedicated much more strictly and directly to environmental purposes.

- In a 1981 settlement of a federal pollution case against the Occidental Chemical Company, the defendants provided a \$1.5 million contribution to California Universities for environmental research.

MEMORANDUM ON EXXON VALUATION ISSUES, page 7

- In 1988, as part of a settlement of a case against General Electric for pollution of a Massachusetts river, the company paid the Fund for New England, a private non-profit philanthropic organization, \$100,000 to undertake projects to enhance river water quality.
- In the largest environmental criminal case up to that date, the Allied Chemical Company agreed in 1977 to put \$8 million into a Virginia Environmental Endowment, an independent grantmaking foundation whose purpose is to improve the environment in Virginia.
- In 1987, the endowment established in the Allied case received an additional \$1 million in settlement of claims against Bethlehem Steel Corp. for pollution of Chesapeake Bay, also under a federal consent decree.

ADEQUACY OF EXXON'S PUNISHMENT

The less tangible effects of the civil and criminal settlements are legitimate matters of legislative interest. Even if the civil settlement was considered the best outcome likely, it might still be rejected on the grounds that accepting it would send the wrong message to future negotiators, or would set an undesirable precedent. Certain economic factors may bear on this judgement, one of which relates to the severity of the punishment.

Exxon officers have stated that the settlement will have no significant future effect on the company's earnings. This is in part because it is largely covered by already established reserves. Had the present cost of the settlement been absorbed last year it would have lowered the corporation's 1990 profits of \$5 billion by about 10-12 percent.

In the Justice Department's 1987 Browning Ferris environmental pollution case the consent decree included a provision that barred the defendant from claiming deductibility for federal tax purposes. Had this provision been included in the settlement it would have likely increased the share of 1990 earnings taken by about three percentage points.

Total expenditures by the company as a result of the spill are likely to be about \$3 billion, all told. An estimated \$450 million of this was covered by insurance, and an estimated \$850 million was offset by tax savings, leaving a net cost to the company of about \$1.7 billion. This figure is about one-third of Exxon's 1990 net earnings, and about 7 percent of Exxon's value to its stockholders.

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REPORT OF THE SENATE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
TO THE ALASKA STATE SENATE

April 23, 1991

The Senate Special Committee on the Exxon Valdez Oil Spill Claims Settlement met 12 times during the last month to review the proposed settlement. The Special Committee met with Legislative Affairs Agency attorneys, the State Attorney General, two State Assistant Attorneys General, the Commissioners of the Alaska Departments of Fish and Game and Environmental Conservation, top-level attorneys for the U.S. Department of Justice and National Oceanographic and Atmospheric Administration, and members of the public. Two of the meetings were statewide teleconferences which provided a forum for members of the public to express their views on the settlement and to ask questions of the Special Committee and the State Attorney General. During those two hearings, the Special Committee heard over eight hours of teleconferenced public testimony. The Special Committee has reviewed the Consent Decree and Memorandum of Agreement, numerous analyses of those documents, and written comments submitted to the Committee. All documents reviewed by the Committee have been distributed to the full Senate.

The decision before the Legislature, of whether or not to approve the proposed settlement, is not a simple one. No one seems to be completely satisfied with this settlement. The Legislature must try to determine which is the "lesser of two evils" -- to sign off on an agreement which raises serious concerns, or to face years of expensive litigation with an unknown outcome.

The Senate Special Committee has decided to introduce a resolution approving the settlement, to be voted up or down by the Senate. The Committee plans to introduce the approval resolution in two forms: a concurrent resolution and a simple resolution. Regardless of whether the concurrent resolution is acted upon by both the House and Senate, a vote on the Senate's simple resolution can express the approval or disapproval of the Senate.

To aid the Senate in its deliberations, the Special Committee submits the following summary of the main issues that were raised during the committee hearing process, and expressed in public comment, regarding the settlement.

ADVANTAGES OF THE SETTLEMENT:

1. The settlement would bring finality to the State and federal claims for natural resource damages.
2. The State would avoid some of the future litigation arising from the oil spill and would probably save millions of dollars in legal fees and on damage assessment studies each year for several years.
3. The settlement would provide a definite monetary amount and thus preclude the possibility of recovering less. Damages in this case may be very difficult to quantify.
4. Most of the money recovered would be required to be used to restore, replace, enhance, rehabilitate, or otherwise acquire the equivalent of natural resources or natural resource services injured as a result of the oil spill. Testimony indicated that the amount of money recovered would be sufficient to complete whatever restoration work would be reasonable and feasible.
5. A portion of the money would be available for restoration work immediately, rather than after lengthy litigation.
6. The settlement would not preclude suits by, or affect the legal rights of, third party litigants.

CONCERNS:

1. Since the settlement money would be paid over a ten-year period, the actual value is estimated at approximately \$500 - \$700 million.
2. While the settlement would recover for damages to natural resources, the State in turn would dismiss, without compensation, its claims against Exxon for economic damages (except for the municipal portion of the raw fish tax), and its claims against Alyeska for natural resource damages. The dismissed claims are worth an undetermined, and potentially substantial, amount. (However, the State's claims for economic losses against Alyeska would not be affected. Therefore, the State may be able to recover from Alyeska a portion of the amount it could have recovered from Exxon had the economic loss claims been pursued against Exxon).
3. Without access to damage assessment studies and time to have a thorough independent analysis conducted, the Legislature cannot know whether the dollar amount of the settlement is adequate compensation for the natural resource damage claims being settled and the other claims being dismissed in this settlement. The Attorney General has refused to release the economic studies. Even if the studies had been

released, there was not time to conduct the necessary analysis between the time the settlement was referred to the Legislature and the deadline for approval. Furthermore, even with complete data and analysis of it, it would be difficult to judge the many contingencies and determine the adequacy of the settlement.

4. Under the settlement, the State would not be indemnified by Exxon against claims by third parties and would give up its right to seek indemnification from Exxon. As a result, (1) the State would have to continue to litigate with third parties and pay for that litigation; (2) the State would be exposed to an unknown amount of liability to third parties; and (3) the State would find itself more aligned as a co-defendant with Exxon than as a co-plaintiff with injured Alaskans.

5. The State's influence with regard to the use of most of the money would be in the hands of the three Trustees appointed by the Governor. This raises several concerns:

- a) No provision is made for the Legislature to participate in determining who those Trustees will be, how the money will be spent, or how meetings will be conducted. Nor are there provisions to ensure public accountability. These concerns are magnified by the fact that the Trust will continue for at least 16 years.
- (b) Because the settlement would recover under the Clean Water Act, use of the money would be restricted to restoration. However, definitions under the Act are so vague that we have little idea of the types of things on which the money will be spent. Since it is possible that only time and nature can do much of the actual restoration, the question remains whether the money can or will be put to its best use if bound by the restrictions imposed by the Clean Water Act and the interpretation and judgment of the Trustees.
- (c) There is concern that spending decisions by the three federal and three State Trustees must be unanimous. Without unanimity, decisions will be made by a federal judge. Criteria upon which a judge would base spending decisions are no more defined than they are for the Trustees.

6. The language of the settlement's "re-opener clause" is so restrictive that it is unlikely that Exxon would have to pay any of that \$100 million.

7. The State Constitution makes the Legislature responsible for appropriation of State funds. This raises several concerns with the settlement:

- (a) Money recovered through settlement is in exchange for the money the State would have recovered through the lawsuits which we now give up. Those claims are a "state asset." Therefore, the recovery under the settlement, even though it technically never enters the state general fund, and it is jointly owned by the Federal Government, is a state asset too. The question then arises as to whether the Legislature must make an appropriation of that asset in order for it to be legally spent on anything, including deposit into the Trust Fund. (The Special Committee believes that legislation could be passed to address this aspect of the problem).
- (b) As the Memorandum of Agreement is written, the Trustees, rather than the Legislature, will decide how the Trust money will be spent, again raising constitutional questions.
(Note, however, that if the settlement were approved and a court later found that the Memorandum of Agreement violated the appropriations provisions of the State Constitution (1) the Memorandum of Agreement would terminate and the disposition of the money could be renegotiated; and (2) it is unlikely that the agreement with Exxon would be affected).
- (c) The settlement may also raise constitutional "dedicated funds" questions, both because allowed uses of the money are predetermined by the parameters of the Clean Water Act, and because even if the Legislature officially appropriated the money to the Trust Fund this year, it may not be able to commit future legislatures to appropriating the annual payments that are to go into the Trust over the next nine years.



Official Business

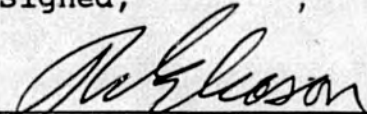
Alaska State Legislature

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State Capitol
Juneau, Alaska 99811

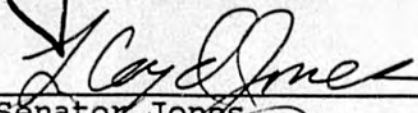
April 23, 1991

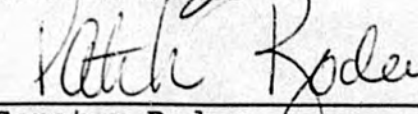
The Senate Special Committee on the Exxon Valdez Oil Spill Claims Settlement hereby submits its report, dated April 23, 1991, to the Alaska State Senate.

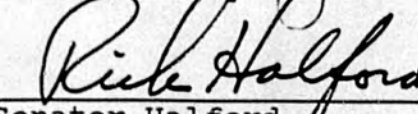
Signed,

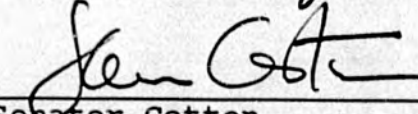

Senator Eliason, Chairman

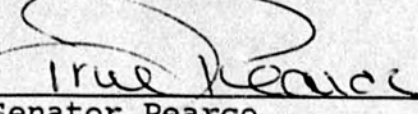

Senator Kerttula


Senator Jones


Senator Rodey


Senator Halford


Senator Cotten


Senator Pearce

SCOMM

77:53

FILED

APR 2 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA_____
DeputyIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EXXON CORPORATION and EXXON
SHIPPING COMPANY,

Defendants.

NO. A90-015 CR

ORDER

(Plea Agreement Rejected)

The court has heretofore taken guilty pleas from the defendants as to certain of the charges pursuant to a plea agreements. The court has now completed its evaluation of that plea agreement and has determined that the same is unacceptable. The plea agreement is rejected for the reasons stated in open court on April 24, 1991.

Under the plea agreement and Rule 11, Federal Rules of Criminal Procedure, defendants are entitled to withdraw their plea of guilty. Counsel for defendants have requested time within which

ORDER (Plea Agreement Rejected)

1

1 to make that decision. On or before May 24, 1991, counsel for
2 defendants shall orally advise the court of their decision; at that
3 time the court will schedule further proceedings and at the request
4 of any party will schedule a status conference. Defendants shall
5 confirm their oral advice to the court by a formal motion to
6 withdraw pleas or other advice to the court with respect to the
7 status of those pleas.

8 For purposes of the Speedy Trial Act, the court notes that
9 excludable delay has occurred between March 22, 1991, and today,
10 April 24, 1991, during which time the court has been considering
11 the proposed plea agreement. See 18 U.S.C. § 3161(h)(1)(i). Addi-
12 tional excludable delay will accrue between April 24, 1991, and
13 May 24, 1991, or such sooner date as both defendants shall have
14 filed their motion to withdraw pleas or such other notice with
15 respect to disposition of this case as the defendants may decide
16 upon. This delay has been requested by each of the defendants, and
17 the court finds that such delay is in the interest of justice and
18 is not contrary to the public interest in speedy trials for the
19 reason that this case involves an event of unusually large propor-
20 tions and therefore potentially involves extraordinarily large fines
21 such that more than a normal amount of time for reevaluation of
22 defendants' position is justifiable.

23 DATED at Anchorage, Alaska, this 24 day of April,
24 1991.

25 
United States District Judge

26 cc; M. Davis, R. Bundy, J. Clough, US Marshal, Pretrial Services

ORDER (Plea Agreement Rejected)

SCOMM

77:54

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

OFFICE OF LEGISLATIVE AFFAIRS
Congressional and Intergovernmental Affairs Division

RAPIDCOM TRANSMISSION SHEET

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Phone Number 907/465-4916 Routing Code Sen. Eliasm
Originator's Name Karen Swanson-Woolf
Phone Number (202) 377-4981 Routing Code LA
Number of Pages 12 (including cover sheet)

COMMENTS:

FYI. Unofficial transcript
of Exxon-Valdez sentencing
hearing



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

UNITED STATES OF AMERICA,

Plaintiff,

VS

EXXON CORPORATION and EXXON SHIPPING
COMPANY,

Defendant.

No. A90-015 CRIMINAL

SENTENCING HEARING

APRIL 24, 1991

PAGES 1 THROUGH 11

Before the Honorable Russell Holland
United States District Court Judge



APPEARANCES:

For Plaintiff:

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James F. Neal, Esq.
James Sanders, Esq.
Neal & Hartwell
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Nashville, TN 37219



PROCEEDINGS

APRIL 24, 1991

(Tape: 1)

(000)

(On record: 8:37 a.m.)

THE CLERK: All rise. His Honor The Court, the United States District Court for the district of Alaska is now in session. The Honorable H. Russell Holland presiding. Please be seated.

THE COURT: Good morning ladies and gentlemen. We are taking up first this morning case A90-15 Criminal, United States of America vs. Exxon Corporation and Exxon Shipping Company. The matter is set down for imposition of sentence. We have a necessary preliminary to that, which is the question of whether or not I should accept the plea agreement which was negotiated between the government and the defendants.

In connection with making that decision, I have, of course, reviewed the sentencing memoranda that have been submitted by counsel. I have received from counsel subsequently summaries of reports of various environmental assessments of the damage which flowed from the grounding of the Exxon Valdez, and I have considered those reports. I have received a considerable number of public comments pursuant to notice which we gave

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U.S.A. vs. EXXON CORPORATION
CENTRODUCING H&M COURT REPORTING

1 indicating that we would accept and consider public
2 comment on this sentencing in lieu of a probation service
3 report. As, I think have been reported, those comments
4 ran rather heavily against the settlement agreement for
5 a whole variety of reasons.

6 Finally, I have received a number of
7 communications from the legislature of the state of
8 Alaska, and in particular, a special house committee,
9 which is considering the civil settlement, which has also
10 been negotiated between these same parties. That
11 committee had requested, at the time we took the changes
12 of plea, that we postpone decision on this matter as far
13 as sentencing until after the committee had had an
14 opportunity to complete its work. Subsequently, the
15 committee chair, I believe, indicated to me that he
16 expected that the committee would have completed its work
17 by today -- or, yesterday, at any rate, and would have
18 some input to me by yesterday, which I indicated was
19 quite acceptable.

20 Unfortunately, I heard again from the committee
21 yesterday, as was reported this morning, indicating that
22 the committee had not yet reached a decision, and, again,
23 asking that I delay this proceeding.

24 With respect to that request, and while I have
25 given it serious consideration, the fact is, I have

1 reached a decision on the acceptability of the plea
2 agreement, and I am not, at this time, persuaded that
3 there is any reason why I should delay or defer
4 announcing that decision.

5 With respect to the plea agreement: I am
6 satisfied that the parties worked very hard; that they
7 worked in complete good faith; and that they came up with
8 an agreement which they believed to be good and
9 acceptable, and one that they could justify to the court.

10 In evaluating that agreement, I had indicated
11 early on to counsel that while there were no applicable
12 federal sentencing commission guidelines for use in
13 sentencing corporations, that I would look to the general
14 sentencing factors set out in federal law with respect to
15 sentencing in general, and organizations in particular,
16 in evaluating the plea agreement which had been entered
17 into here.

18 I am satisfied that the pleas which were offered
19 and reflected in the agreement, adequately reflect the
20 seriousness of the underlying conduct. That is not a
21 problem with the agreement.

22 In that regard, and if you will excuse just a
23 little bit of editorializing on my part, I have some
24 difficulty with the concept that we criminalize
25 unintentional environmental accidents. In effect,

1 criminalizing the killing of birds and sea otter, and so
2 forth. Yet, we do not criminalize airline crashes, which
3 result from negligence, and which kill people.

4 Congress, in the sentencing guidelines has told
5 us -- the courts -- that we must do better in avoiding
6 disparity in sentencing. I suggest that Congress has
7 some work of its own to do in getting the disparity out
8 of the criminal laws. For, as I see it, we are affording
9 greater protection to birds and sea otter that aren't
10 even good for food, than we are people. I think that's
11 some pretty serious disparity. However, my job is to
12 enforce the law, as it is on the books at the present
13 time, and I mean to do that.

14 The sentencing factors that I alluded to earlier
15 include such things as the nature and circumstances of
16 the offense, history and characteristics of the
17 defendant; the seriousness of the offense; whether the
18 penalties to be imposed adequately deter others from
19 similar conduct. I am to seek to protect the public from
20 further crimes of the defendant. I am to consider
21 restitution with respect to fines and corporate
22 defendants. I am to consider the defendants income and
23 earning capacity and financial resources. In short, I am
24 to consider the size of the defendant organization.

25 I've used those factors in evaluating this plea

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1 agreement. I have come to the conclusion that the fines
2 which the agreement proposes to be imposed do not
3 adequately achieve deterrence. I am afraid that the
4 fines send the wrong message, suggesting that spills are
5 a cost of business, which can be absorbed. The fines, I
6 think, are also inadequate if, as the law requires at the
7 present time, defendants who commit environmental crimes
8 are to be punished. The fine proposed to me does not
9 appear to me to adequately punish the defendants for the
10 conduct to which guilty pleas were offered.

11 There has been a great deal said in the comments
12 which I received about the unavailability of scientific
13 data. In that regard, it is, of course, quite probable
14 that there is more scientific data available to some of
15 us than there is to the general public. But having said
16 that, I would further observe that the availability of
17 scientific data does not, I think, at this time, stand in
18 the way of making the decision which needs to be made
19 here. Much information is available. There is no
20 question but what the Exxon Valdez oil spill was off the
21 chart as far as other environmental disasters that we
22 have had in this country. It was very large, to say the
23 least.

24 The damage, although we cannot presently
25 quantify it with specificity, was very great.

1 Sufficiently so that I feel very comfortable saying that
2 the fines which were proposed to me were simply not
3 adequate.

4 One final matter which has been the subject of
5 some controversy, and which, in my view, should simply
6 not be a factor in connection with this case, has to do
7 with the role of Alyeska in these proceedings. And it is
8 my perception that Alyeska has no role whatsoever in
9 these proceedings.

10 A certain congressman has written me on the
11 subject. It's interesting to note that his communication
12 to me appeared in the press a day and a half before I
13 read about it in the newspaper. And it appears to me
14 that he was more interested in getting some publicity
15 than he was in informing me. Be that as it may, I do
16 not have any role in the decision of whether Alyeska
17 should or should not be prosecuted for anything. That's
18 an executive decision. It's a Justice Department
19 decision. I take no position on it. I have no role on
20 it. I take no responsibility for the decision that is to
21 be made. And I do not think that is an appropriate
22 provision for a plea agreement in connection with this
23 case.

24 As is obvious from my comments, the plea
25 agreement is rejected.

1 Mr. Neal, Mr. Lynch, at this point the
2 defendants are entitled to withdraw their pleas of guilty
3 pursuant to the plea agreement, if they wish to. Are you
4 gentlemen ready to make that decision now or do you
5 require some time to consider the matter?

6 MR. NEAL: May it please the court. James Neal,
7 representing Exxon Shipping. This is a matter we need
8 some time to consider, and we would ask for some time to
9 reflect on what the court said, and consider our course
10 with the court plea.

11 THE COURT: Thirty days?

12 MR. NEAL: Thirty days will be adequate, Your
13 Honor. Thank you.

14 THE COURT: If a decision is made earlier than
15 that, I would appreciate your letting me know about it.
16 We'll look for an answer no later than Friday the 24th of
17 May. As I say, I have some interest in moving this
18 matter along as quickly as it can and should be, but I
19 realize that this is a decision that is going to take
20 some thinking on your part.

21 Thirty days -- May 24. If you have a decision
22 earlier, I will appreciate it.

23 Will that be sufficient for Exxon Corporation,
24 also?

25 MR. LYNCH: Yes, Your Honor.

1 THE COURT: All right. Same will apply to Exxon
2 Corporation. I will expect a decision as soon as
3 possible and no later than the 24th of May.

4 Upon receiving your decision, I'll do one of two
5 things. We will schedule a status conference of some
6 sort at that point, to do whatever needs to be done in
7 the light of the decision that you make. And we will
8 communicate with you a time and place for that meeting.

9 Anything further we need to do, gentlemen?

10 (No response.)

11 Thank you very much. We'll be in recess subject
12 to call.

13 THE CLERK: This court now stands in recess
14 subject to call.

15 (1224)

16 (Off record - 8:50 a.m.)

17 ***END***
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CERTIFICATE

SUPERIOR COURT

)

) SS.

STATE OF ALASKA

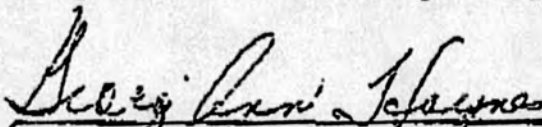
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I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska, hereby certify:

That the foregoing pages contain a full, true and correct transcript.

That this transcript was prepared to the best of my knowledge and ability from United States District Court tapes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 24th day of April, 1991.



Notary Public in and for Alaska
My commission expires: 1/24/95

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U.S.A. vs. EXXON CORPORATION

11

SCOMM

77:55

Exxon's new criminal fine could exceed \$600 million

By MARLEE ENGE
Daily News reporter

Exxon Corp. could face fines of double the financial damage caused by its huge 1989 oil spill now that the company's \$100 million criminal plea bargain has been thrown out.

The government said as recently as February that a fine of more than \$400 million would be justified, and lawyers for spill victims say it could go much higher.

U.S. District Court Judge

Russell Holland said Wednesday that \$100 million was not enough to punish the oil giant and told Exxon it may withdraw its guilty pleas to four misdemeanor charges. The company faces a choice of negotiating a new fine with federal prosecutors and taking it back to Holland, sticking with its guilty pleas and letting Holland set the fine, or going to trial. Thursday, Exxon would say only that it still believes the plea bargain was "appropriate"

and was considering what to do about Holland's ruling.

The guilty pleas and proposed fine were the criminal portion of a settlement package reached last month by Gov. Wally Hickel, the U.S. Justice Department and Exxon officials. The civil portion of the settlement called for Exxon to pay \$900 million in damages over 10 years and allowed for an additional \$100 million pay-

Please see Back Page, EXXON

EXXON: \$600 million fine possible

Continued from Page A-1

ment if more spill damage was discovered after that.

Exxon would not say whether it would

negotiate with the government or go to trial.

A coalition of environmental groups argued in a letter to Holland last week that Exxon should be fined under the law-doubling provision.

"This would increase (Exxon's) exposure to criminal fines to \$2 billion," wrote Hope Babcock, general counsel to the National Audubon Society. That number is twice the \$1 billion maximum that Exxon agreed to pay in civil penalties at the same time it agreed to the \$100 million criminal plea bargain.

And, "depending on the accuracy of recent reports on the results of the state of Alaska's economic studies, this liability could run as high as \$8 billion," she wrote.

A lawyer for the Alaska Sport Fishing Association, meanwhile, hinted in a letter to Holland the company's exposure could be in the tens of billions.

"There are as yet outstanding in excess of \$56 billion in claims," wrote attorney Geoff Parker. "This court should not hesitate to conclude that the pecuniary losses resulting from this spill vastly exceed the \$300 million already paid out." He suggested a fine of \$1 billion.

Babcock said Thursday

she does not expect Holland to hit Exxon with a fine in the billions. He said from the bench he is uncomfortable with laws that make it illegal to dump oil and kill sea otters when airlines that crash planes and kill humans are not held criminally liable.

"That tells me the risk of the court going very, very high is not very high," she said.

Babcock did not suggest a fine to Holland.

"You can't come up with a number high enough to deter the world's largest company," she said. "You cannot make this victim whole."

Babcock interprets that to mean the company doesn't intend to change its practices. She proposed that Holland place Exxon on probation and appoint an independent environmental auditor to review the company's equipment and operating practices. The judge could require Exxon to make changes before the environmental probation is lifted, she said.

"What is really important is you change the behavior of this company. They're continuing to do business in a fragile environment."

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Alternative Fines Act

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed item 3572 has been inserted in this subchapter analysis as the probable intent of Congress to amend such item to conform to the 1987 amendment of such section. See the 1987 amendments note to § 3572.

The bracketed word "remission" has been inserted in item 3573 of this analysis because such item does not conform to its section catchline.

Amendments:

1984. Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1987, effective and applicable as provided by § 235 of such Act, which appears as 18 USCS § 3551 note, added this subchapter and analysis.

1987. Act Dec. 11, 1987, P. L. 100-185, § 8(b), 101 Stat. 1282, amended the analysis of this subchapter by substituting item 3573 for one which read: "3573. Modification or remission of fine".

CROSS REFERENCES

This subchapter is referred to in 18 USCS §§ 3551, 3563, 3613.

SUBCHAPTER C. FINES

§ 3571. Sentence of fine

(a) **In general.** A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) **Fines for individuals.** Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) **Fines for organizations.** Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;

SENTENCES, FINES

18 USCS § 3571

- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
- (7) for an infraction, not more than \$10,000.

(b) **Alternative fine based on gain or loss.** If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(c) **Special rule for lower fine specified in substantive provision.** If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1985; Dec. 11, 1987, P. L. 100-185, § 6, 101 Stat. 1280.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 3571 (Act June 25, 1948, ch 645, § 1, 62 Stat. 839) was repealed by Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(1), 98 Stat. 1987, effective on the first day of the first calendar month beginning 36 months after enactment, as provided by § 235(a)(1) of such Act, as amended, which appears as 18 USCS § 3551 note, and applicable as provided by such § 235, which appears as 18 USCS § 3551 note. Such section provided for rule as to correction of clerical mistakes.

Effective date of section:

Act Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 235(a)(1), 98 Stat. 2031, as amended, which appears as 18 USCS § 3551 note, provides that this section is effective on the first day of the first calendar month beginning 36 months after enactment.

Amendments:

1987. Act Dec. 11, 1987 substituted this section for one which read:

"(a) In general. A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) Authorized fines. Except as otherwise provided in this chapter, the authorized fines are—

"(1) if the defendant is an individual—

"(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than \$250,000;

"(B) for any other misdemeanor, not more than \$25,000; and

"(C) for an infraction, not more than \$1,000; and

"Alternative Fines Act"

SCOMM

77:56

FROM: **EXXON** CORPORATION
225 E. John W. Carpenter Freeway
Irving, Texas 75062-2298

Telephones: (214) 444-1107
444-1108
444-1109

THURSDAY, APRIL 25, 1991

EXXON RESPONDS TO COURT RULING REGARDING AGREEMENT
ENTERED INTO WITH FEDERAL AND ALASKAN GOVERNMENTS

IRVING, TX, APRIL 25 -- Recognizing the substantial costs already incurred by Exxon and the additional payments included in the agreements we entered into with the Federal and State governments, we believed that the agreements were appropriate. While we are carefully considering the implications of the judge's decision, we are continuing our preparation for trial.