

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2003 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

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BACKGROUNDER

EXXON-VALDEZ OILSPILL

ON MARCH 24, 1989, AT FOUR MINUTES PAST MIDNIGHT, the Exxon-Valdez ran aground on Bligh Reef in Prince William Sound, Alaska, ripping a gash in her hull and immediately spilling 11 million barrels of oil into the waters of the Sound. Following are some facts associated with the spill:

Prince William Sound, on Alaska's southern coast, encompasses about 10,000 square miles along its 3,000 miles of shoreline. The area is home to about 6,000 residents.

In addition to the oil pipeline terminal at Valdez, the Sound is important for its valuable commercial fisheries, especially salmon and herring. The dockside value of its fish catch in 1988 was \$71 million.

In 1988, some 2,000 tankers came in and out of Valdez, from which the Exxon-Valdez had departed March 23.

The Exxon-Valdez spilled some 11 million barrels into the Sound the following day. The bulk of its cargo, however, 47 million barrels of crude, was saved and offloaded by April 4. Although the accident created a spill of enormous magnitude, the largest tanker spill in U.S. history, it was not the largest tanker spill in the world. That dubious distinction belongs to the Amoco-Cadiz, which broke up off the French coast in 1978, dumping six times as much oil as Exxon-Valdez.

By April 13, the spill had spread out over 1,000 square miles. By that time about 35 percent of the original oil had evaporated, 40 percent had washed up on the Prince William Sound's shoreline and 25 percent had left the Sound.

By April 24, an estimated 1,000 men and women from state and federal agencies were in Alaska, assisting in cleanup, damage assessment, logistics and research.

Since the accident, the Exxon Corporation has spent an estimated \$2.5 billion on equipment, cleanup and other spill-related work. In 1989 alone, the U.S. Government spent an additional \$100 million in spill-related efforts.

The so-called "Trustee Agencies," those charged under federal law with protecting the country's natural resources, are the National Oceanic and Atmospheric Administration (NOAA), the Departments of the Interior and Agriculture; and the Alaska Departments of Fish and Game, Environmental Conservation, and Law.

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EXXON VALDEZ BACKGROUNDER

(cont.)

The natural resources the trustees protect include:

- Surface waters
- Coastal habitats
- Benthic (i.e., bottom dwelling) marine communities
- Marine and anadromous fish (e.g. salmon and herring)
- Marine invertebrates (e.g., clams, crabs and shrimp)
- Marine mammals (e.g., seal, sea otters and whales)
- Birds (e.g., bald eagles and murre)
- Terrestrial wildlife (e.g., deer, bear and river otters).

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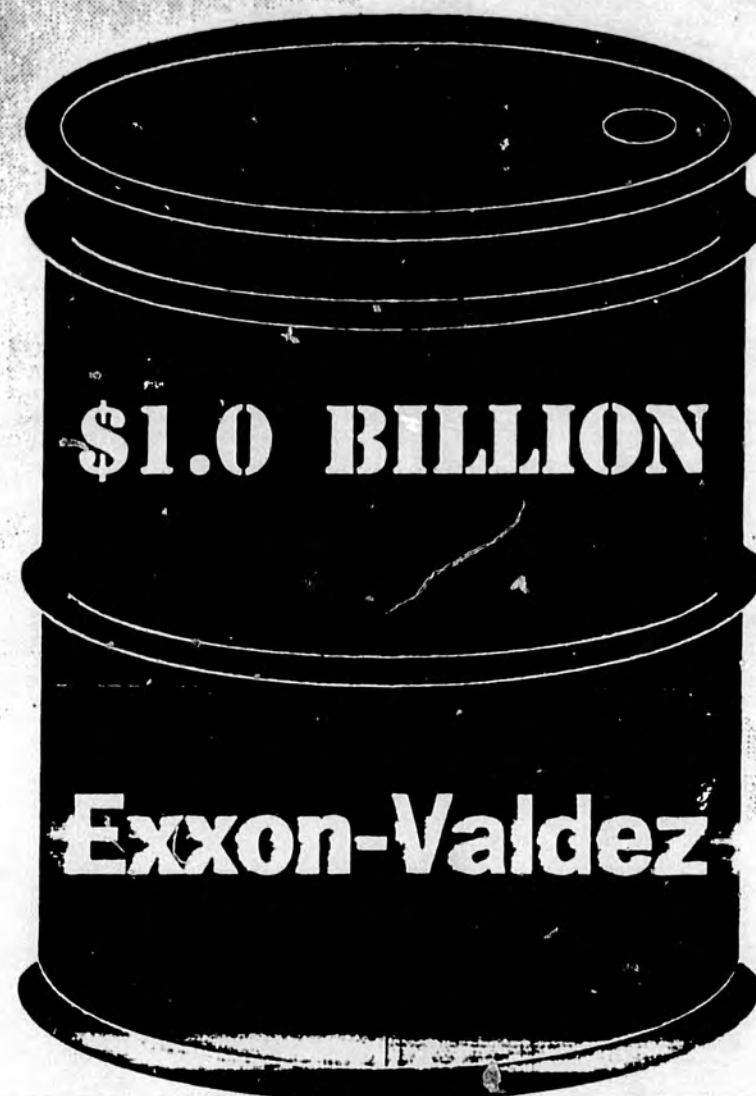


Exxon-Valdez Settlement Largest Ever

Shell-Martinez

San Francisco Bay • 1988

\$19.7 MILLION



Exxon-Valdez Chronology

- **March 23, 1989**—The Exxon-Valdez leaves Valdez, Alaska.
- **March 24**—The Exxon-Valdez runs aground on Bligh Reef, Alaska, ripping a gash in her hull and spilling 11 million gallons of oil into Prince William Sound.
- **April 4**—The balance of the Exxon-Valdez's cargo, 47 million barrels of oil, has been saved and offloaded.
- **April 13**—The spill has spread out over 1,000 square miles. Thirty five percent of the original oil has evaporated, 40 percent has washed up on the Sound's shore, and 25 percent has left the Sound.
- **April 24**—More than 1,000 state and federal employees have arrived in Alaska to assist in cleanup, damage assessment, logistics and research.
- **February 5, 1991**—High level negotiations begin on settlement.
- **March 13, 1991**—Settlement announced.





Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 13, 1991

AG
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EXXON TO PAY RECORD ONE BILLION DOLLARS IN CRIMINAL FINES AND
CIVIL DAMAGES IN CONNECTION WITH ALASKAN OIL SPILL

WASHINGTON, D.C. -- Attorney General Dick Thornburgh and Alaska Governor Walter Hickel today announced that Exxon Corporation and Exxon Shipping Company have agreed to settle all federal and state civil claims resulting from the Exxon Valdez oil spill on March 24, 1989, by the payment of \$900 million in damages. The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million for natural resource damages not currently foreseen.

The Attorney General also announced that the two corporate defendants have agreed to plead guilty to federal environmental criminal charges and to pay a criminal fine of \$100 million, of which \$50 million will be remitted; the State of Alaska will receive \$50 million of the \$100 million as restitution for restoration of the damaged natural resources. This is, by far, the largest single environmental criminal recovery ever exacted.

According to the plea agreement, which will be filed in the District of Alaska, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory

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Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"The aggregate of one billion dollars in civil damages and criminal restitution is by far the largest single amount ever paid as a result of environmental violations. Through tough negotiations by the Department of Justice, the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Transportation, the National Oceanic and Atmospheric Administration (NOAA), the State of Alaska, and federal prosecutors, the federal and state interests surrounding the legal responsibilities of Exxon Shipping and Exxon Corporation have been vindicated," said Thornburgh.

Filed in the District of Alaska today is a civil complaint and accompanying consent decree alleging violations of the Clean Water Act. The decree states that Exxon Shipping and Exxon Corp. will pay a total of \$900 million in civil damages over the next ten years to federal and state trustees. The money will be used for additional cleanup and both short and long term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses such as cleanup and scientific research.

Both the Plea Agreement and the Consent Order will require court review and approval.

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Governor Hickel, who initially proposed settlement in a personal one-on-one meeting in Juneau with Exxon's Chairman Lawrence Rawl on January 15, 1991, commends the outcome. Said Hickel, "When Mr. Rawl and I first met in Juneau, we made it clear that negotiations could only be successful if we kept the talks at the highest level. Today, we have a settlement which is the result of eight weeks of intensive negotiations. It's a good settlement and its use will benefit the environment directly.

"On behalf of the State of Alaska, I want to commend Attorney General Thornburgh for his legal leadership, Alaska Attorney General Charlie Cole for his aggressive yet patient commitment, Secretary of Interior Manuel Lujan for his tenacity, Secretary of Transportation Samuel Skinner, NOAA Administrator Dr. Knauss, and Environmental Protection Agency (EPA) Administrator Reilly. We have a winner -- environmentally, psychologically, and financially."

Reilly said, "I am pleased with the settlement being announced today. The one billion dollar settlement with Exxon -- plus a \$100 million reopener for damages currently unanticipated -- is the largest environmental assessment ever and the funds will be available years earlier than any recovery that could have been secured through full litigation.

"These funds assure that necessary activities will be carried out and monitored to restore Prince William Sound. It

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also should send a clear signal to ship owners that they share responsibility for protecting waters and coastlines. The settlement closes a chapter on the nation's largest oil spill ever, and it allows us to turn our attention finally now to the tasks of restoration," said Reilly.

John Knauss, NOAA Administrator and Commerce Undersecretary, called the settlement, "a good deal for the nation and one that resolves all of the governments' outstanding claims against Exxon. It will permit us to complete the critical cleanup and begin restoration of Prince William Sound now, while avoiding years of lengthy and costly litigation."

Interior Secretary Manuel Lujan said of the agreement, "This settlement serves notice to all that carelessness in transporting oil can have costly consequences. It also ensures adequate funding to complete the cleanup, continue appropriate studies and restore the fish, wildlife and other natural resources of Prince William Sound."

Secretary of Agriculture Edward Madigan said of today's settlement, "The funds from the settlement will enable the Department of Agriculture to restore the natural beauty of the portion of the Chugach National Forest that was impaired by the spill."

The Department of Justice and Alaska signed an agreement outlining how and under what authority money obtained in a

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settlement with Exxon would be spent. Following the law, there are six trustee agencies which will administer the funds from the civil settlement: NOAA, the Department of Agriculture, the Department of Interior, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the Alaska Attorney General's Office.

Under this agreement, the trustees will collectively decide how the approximately \$750 million paid by Exxon in satisfaction of civil claims and remaining after past expenses such as those for scientific research and cleanup will be spent to restore Prince William Sound and the Gulf of Alaska.

Thornburgh praised Governor Hickel; Alaska Attorney General Charlie Cole; Administrator Reilly; Secretary Lujan; Secretary Skinner; NOAA Administrator Knauss and General Counsel Tom Campbell; General Counsel of the Department of Agriculture Alan Raul; Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart; and Assistant Attorney General for the Civil Division Stuart Gerson, for their dedication and cooperative spirit throughout the thousands of hours of negotiations needed to reach this settlement.

Thornburgh pointed out that the United States and Alaska have asked the U.S. District Court in Alaska to allow a 30-day public comment period regarding the civil consent order. This public comment period is not required by law but is being

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requested to allow any interested parties not a part of this settlement to express publicly their opinion regarding today's settlement.

More than 700 miles of Alaska shoreline were covered with crude oil spilling from the Exxon Valdez when it ran aground on Bligh Reef in Prince William Sound on March 24, 1989.

Approximately 11 million gallons of crude oil spilled from the Valdez fouling the waters and shorelines of both National Wildlife Refuges and National Parks. As a result, more than 36,000 migratory birds, including at least 100 bald eagles along with numerous other varieties of wildlife, were killed.

Since the date of the spill, Exxon has spent approximately \$2.2 billion to clean up Prince William Sound and the Gulf of Alaska. Cleanup has included the containment of oil using booms, skimming oil from the surface of the water, mobilizing thousands of workers to conduct excavation of contaminated beaches, high pressure water washing of beaches, and rescuing and rehabilitating wildlife fouled by oil.

On February 27, 1990, Exxon Shipping Co. and Exxon Corp. were each indicted by a federal Grand Jury in Alaska. Both were charged with one misdemeanor violation of the Clean Water Act, one misdemeanor violation of the Refuse Act, one misdemeanor violation of the Migratory Bird Treaty Act, one felony violation of the Ports and Waterways Act, and one felony violation of the

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Dangerous Cargo Act. According to the plea agreement, Exxon Shipping will plead guilty to three misdemeanors and Exxon Corporation will plead guilty to one misdemeanor.

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91-101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Order

THE NATIVE VILLAGE OF
CHENEGA BAY, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-483 SS

CHENEGA CORPORATION, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-484 SS

MEMORANDUM OPINION AND ORDER

These cases are before the Court on a continuation of the hearing commenced on March 7, 1991, on plaintiffs' motions for a temporary restraining order, and on the plaintiffs' motions for a preliminary injunction. The plaintiffs are Native Alaskan villages, the some 5,000 residents of these villages, and Native Village Corporations owned by these villagers. The defendants are officials of the United States Government and of the State of Alaska. Plaintiffs seek to enjoin the defendants from consummating settlement negotiations with Exxon Corporation, Exxon Shipping Co., [collectively, "Exxon"] and Alyeska Pipeline Service Co., relating to the discharge of oil by the M/V EXXON VALDEZ. The Court on March 7, 1991, issued a ten-day temporary restraining order

restraining a settlement. Plaintiffs now seek issuance of a preliminary injunction. Defendants seek dissolution of the temporary restraining order.

Plaintiffs contend that the defendants plan to enter into an agreement with Exxon and Alyeska settling civil claims against Exxon and Alyeska that the defendants may have as a result of the Valdez oil spill. The plaintiffs' claim, in essence, is that this planned agreement will compromise the plaintiffs' rights to seek relief themselves against Exxon and Alyeska. The plaintiffs' claims for damages against Exxon and Alyeska are currently being prosecuted in federal and state courts in Alaska.

In response to plaintiffs' motions, the defendants have represented to the Court that "resolution of [the United States'] natural resource damages should not impair rights or claims of third parties." Declaration of George W. Van Cleve at ¶ 4. The Court believes this representation to mean that after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed. The Court will further take the defendants' representation to mean that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources and/or lands they have an interest in, even if it is claimed the same natural resources and/or lands are covered by the settlement agreement among the defendants and Exxon and Alyeska.

The Court accepts the defendants' good-faith representations. On the basis of these representations, the Court believes that the

plaintiffs' rights are not affected by the planned settlement agreement. Accordingly, it is this _____ day of March 1991 hereby

ORDERED that the temporary restraining order issued by this Court on March 7, 1991, is DISSOLVED; and it is further

ORDERED that plaintiffs' motions for a preliminary injunction are DENIED; and it is further

ORDERED that the Court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so that plaintiffs' rights are protected. The Court shall maintain this case on its docket so that the plaintiffs may on motion request such additional relief as they may be entitled to, and so that the defendants may make an appropriate motion to have this case transferred to the United States District Court for the District of Alaska, as the defendants have indicated in court they may desire to do.

Stanley Sporkin
United States District Court

Dear Friends,

July 4, 1990

Enclosed is a "Draft Proposal for a Comprehensive Settlement of Natural Resource Damages from the 'Exxon-Valdez' Oil Spill" and an attached discussion paper on the "Acquisition of Timber Harvesting Rights for Restoration".

This document was developed in response to requests from commercial fishermen, Alaska Natives, environmental groups, tour operators, recreationalists, and biologists that we now join together to formulate a constructive resolution to this disaster. It is intended to serve as a catalyst for settling natural resource damages in a fair and expeditious manner. As such, it is being circulated for review to the private and public plaintiffs and the defendants in the case.

It is hoped that a consensus will emerge among the parties involved to proceed in negotiating and finalizing such a settlement this year.

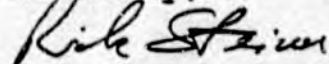
The Coastal Coalition is an informal network of concerned citizens that formed in response to the spill in order to provide a constructive focus for citizen input. Presently, our goal is to help formulate a comprehensive settlement for natural resource damages that is agreeable to all parties. Such a settlement would side-step years of costly litigation, provide for environmental restoration, and allow all of us to get on with life.

Our intent with this inquiry is to plant the seed and get some indication of your interest in having such settlement negotiations proceed. Please let us hear from you as soon as possible concerning any comments you might have on the enclosed document, and whether or not you agree to it in principle. Your thoughts are very important to this process. It is our intent that any final agreement should be molded to accomodate the most broadly based constituency possible.

We will be in touch with you regarding a meeting with other public and private plaintiff's representatives to discuss all of this, probably sometime in early August.

Let's join together to put this thing behind us.

Sincerely,



Rick Steiner, The Coastal Coalition

DRAFT PROPOSAL

for a

COMPREHENSIVE SETTLEMENT OF NATURAL RESOURCE DAMAGES FROM THE "EXXON-VALDEZ" OIL SPILL

TO: State/Federal Trustees for Natural Resources Damages
FROM: THE COASTAL COALITION
July 1990

It has become evident that all parties, both plaintiffs and defendants, involved in litigation for natural resource damages arising from the Exxon-Valdez oil spill would be best served by reaching a comprehensive settlement as soon as possible. This realization is predicated upon several considerations.

First, even after years of exhaustive impact assessment research, it would remain difficult to arrive at any consensus concerning how to quantify the extent of damage or how to value the damaged resources (i.e., how much to collect in damages).

Secondly, research should be driven by fundamental scientific interest in the behavior and response of this ecosystem to such a perturbation--not by the need to collect evidence for litigation.

Thirdly, restoration of the impacted environment can and should commence immediately. In addition to direct restoration efforts, there is an immediate opportunity to protect, through acquisition, threatened habitat within the region.

And, finally, expensive, drawn-out litigation would only prolong and exacerbate the degree of psychological, social, and political impact of the spill. A settlement will provide a sense of resolution and relief from an otherwise quite protracted and tense process.

In light of such considerations, it is proposed that the Natural Resource Trustees seek immediate settlement of all natural resource damages. Such settlement should extinguish all criminal liability (i.e., the Federal indictments) and all civil liability for natural resource damages. This settlement should be carefully structured so as not to influence the case for compensatory damages.

We respectfully suggest that a comprehensive disposition of this case should collect \$2 billion to endow an Alaska Restoration Fund.

The Alaska Restoration Fund should be managed by a non-profit corporation governed by a court-approved Board of Directors, so that people from the impacted region can be directly involved in the management of the Fund, and thus their own future.

The Fund should support the following principle elements:

1. Direct Restoration

The Fund should be used to support direct, on-site efforts to restore or replace damaged resources to their pre-spill condition. This would include such things as supplementing injured salmon runs, reinnoculating areas with herring, breeding and release programs for damaged bird populations, reestablishing plants in injured salt marshes, and improving or protecting the habitat of other spill-impacted species.

2. Acquisition of Equivalent Resources

The Fund should purchase or otherwise protect resources that are similar or related to the injured resource in terms of ecological value, functions, or services provided. Priority should be given to the acquisition of certain development rights (e.g., timber, minerals, oil, etc.) in order to protect threatened habitat. An example of such acquisitions is presented in more detail in the attached discussion paper.

3. Research

The Fund should support a broad array of scientific research projects that address critical resource issues and fundamental scientific pursuits within the region. A comprehensive program of baseline and monitoring studies should be initiated with which to more precisely understand the effects of future such events on this ecosystem.

4. Education

A variety of natural resource education initiatives should be supported by the Fund. Particularly, a scholarship Fund should be established to support the education of residents from the region in natural resource science, management, economics, and conservation.

5. Sustainable Economic Development

The final goal of the Fund should be to design and implement economic development projects within the region that are compatible with the natural and cultural environment, and that are sustainable over the long-term. Inherent in this is a larger economic theme--that Restoration should, in some sense, assist the region in attaining long-term economic stability through sustainability. An important component of this should be the establishment of an Alaska Native Employment Fund.

Valuing the Case

It will always be difficult to establish the value of natural resource damages with precision in cases such as this. We suggest that the amount of \$2 billion would represent a fair and equitable disposition of natural resource damages in this case for several reasons.

First, this amount represents a workable approximation of what damages would come to if calculated as the average of damages derived by three principle economic valuation methodologies--Contingent Valuation, value of charismatic species, and public use value.

Secondly, \$2 billion is approximately the amount of money that will be needed to accomplish the various objectives of the Fund. It is envisioned that of the total amount collected, a portion would be expended immediately for acquisitions. The remaining balance would be maintained as a permanent endowment whose inflation-proofed interest income would support the other elements of the Fund. Such an endowment, providing substantial annual interest dividends, would provide stable support in perpetuity for these other restoration, research, education, and sustainable economic development initiatives.

Thirdly, the severity of impact adds considerable support for a settlement of this magnitude. For instance, it is theoretically possible that this ecosystem will never return to its pre-spill condition. Even small perturbations in natural systems are known to produce large, unpredictable and long-lasting consequences. It is possible that the impacted system will stabilize at an entirely different equilibrium than that existing before the spill. Additionally, it is probable that the population structure of certain long-lived, less fecund species will take several decades to return to pre-spill conditions.

And lastly, this amount of money is entirely proportionate to the value that could be assigned to the permanent loss of the pristine quality of this ecosystem. That the area is an aesthetic resource of global significance is attested to by the extraordinary amount of public attention paid to this spill throughout the world. In the same way that a rape victim can not be "un-raped," the lost pristine character of this region is, unfortunately, irreplaceable.

Thus, this settlement will afford the impacted environment a sufficient amount of care and protection; it will give science a better understanding of ecosystem dynamics; and it will provide the impacted communities more economic and educational opportunity as well as a sense of certainty in looking toward the future. It is, quite simply, the right thing to do.

ACQUISITION OF TIMBER HARVESTING RIGHTS FOR RESTORATION

- A Prerequisite for Recovery -

- I. Introduction
- II. Biological Characteristics of the Forest within the Region
- III. Justifications for Acquisition
 - A. Biological
 - B. Economic
 - C. Psychological
 - D. Socio-Political
- IV. Timber Ownership
 - A. Prince William Sound
 - B. Lower Kenai Peninsula
- V. Additional Considerations

by
Rick Steiner

THE COASTAL COALITION

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I. INTRODUCTION

As the clean-up of the Exxon-Valdez oil spill progresses toward completion, we must now decide what more can be done to aid the recovery of the impacted environment.

In the context of the Clean Water Act and the more extensive damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund, Federal law clearly directs that funds be collected from responsible parties to be used "to restore, replace, or acquire equivalent resources."

In the case of the Exxon-Valdez, in addition to what can be done in the way of direct restoration and replacement of damaged resources, the most practicable mechanism to compensate for natural resource damages is to offset this loss with a substantial "acquisition of equivalent resources." This entails purchasing or otherwise protecting resources that are similar or related to the injured resource in terms of ecological value, functions, or services provided.

The several hundred thousand acres of old growth forest along the coastline of the spill-impacted region, having been scheduled before the spill for logging, now represent an ideal opportunity to exercise this Restoration option. The following is an overview of the concept of acquisition and retirement of timber harvesting rights to protect the impacted ecosystem from any further deterioration. This discussion is meant to provide a basis for further development of the idea, and to serve as an example of how other such acquisitions might work.

Conceptually, before trying to treat anything that has been injured, we must first protect it from any further injury. In the spill-impacted zone, marine, freshwater, and terrestrial systems are tightly connected through biogeochemical cycles into a functionally interlocking ecosystem. Perturbations (i.e. injuries) in one component usually produce significant secondary effects in the others. What's more, compound injuries often operate synergistically--that is, their combined effect is much more than the sum of the two injuries occurring independently. And regardless of how carefully it is carried out, the planned removal of old-growth forests from several hundred thousand acres of the region's coastline cannot help but to have a profound effect on the ecosystem as a whole. The clearcutting proposed for the region would represent an ecological alteration unmatched since the glacial retreat at the end of the Pleistocene. It is widely felt that the scars from logging will be even more persistent than those of the oil spill. This sort of massive perturbation, superimposed upon the deleterious effects of the spill, is likely to produce significant biological, economic, psychological, and socio-political effects far beyond what either one might have caused alone. A consensus is now emerging among many fishermen, biologists, tour operators and other local residents that, while this ecosystem might have been able to recover from either one of these rather large impacts in isolation, their combination could so seriously weaken the health and integrity of the system that its ability to recover would be severely compromised.

CLEARLY, THE FIRST STEP TOWARD FULL RESTORATION AND RECOVERY IS TO PROTECT THE ENTIRE SYSTEM AS COMPLETELY AS POSSIBLE FROM ANY FURTHER SIGNIFICANT HUMAN-INDUCED DISTURBANCE. And, aside from the

threat of additional oil spills in the area, the most immediate threat to the integrity of this ecosystem appears to be the planned removal of over one billion board feet of old-growth timber throughout the coming decade. The acquisition of timber to protect undamaged but threatened wildlife habitat in the impacted region is considered by many to be the single highest priority for Restoration.

Biologically, timber acquisition would protect the terrestrial, freshwater, intertidal, and nearshore habitat of many populations impacted by the spill (e.g., sea otters, diving birds, salmon, herring, eagles, bear, deer, etc.). It would also prevent the diminution of the carbon metabolizing marine bacterial flora that depends upon natural hydrocarbons flowing into nearshore waters from coastal forests. Economically, timber acquisition would maximize profits and minimize risk for timber owners, protect existing commercial and subsistence economies, protect the future of tourism and recreation in the region, and preserve other in-absentia values of the region. The acquisitions would also go a long way toward relieving an overwhelming sense of despair in the region's residents, and would clearly help mitigate other socio-political impacts of the spill.

It should be emphasized that before the spill, timber development represented a legitimate economic opportunity for the region. However, we must now reassess all prior development plans in terms of what is in the best interest of the impacted ecosystem.

Restoration without full protection would be as futile as applying band-aids on a victim with one hand while continuing to inflict serious wounds with the other. And, in a larger sense, Prince William Sound has come to symbolize a violated relationship between humanity and nature. The only way to regain this relationship is to protect the area as completely as possible. This is the least, and perhaps the most that we can now do. Without such protection, full recovery--biological, economic, psychological, and socio-political--will be impossible.

II. BIOLOGICAL CHARACTERISTICS OF THE FORESTS WITHIN THE REGION

These old-growth forests are stable biological communities that have developed over several centuries essentially free from catastrophic (including human) disturbance. They support a rich diversity of highly specialized and adapted organisms such as cavity nesting birds, canopy-dwelling animals, understory saprophytic plants, and epiphytic lichens. These undisturbed forests support two or three generations of dominant tree species, forming a highly partitioned, broken, multi-layered canopy. They are highly retentive of nutrients, both in living and dead organic matter, giving rise to significant detritus-based food webs. For example, small to medium sized streams depend almost entirely upon decaying forest litter as an energy base.

In addition to live spruce and hemlock, these forests are characterized by standing dead snags, and fallen logs on land and in streams. As such, they form a rather unique habitat for a large number of bird, mammal, fish and invertebrate species. With so much production high in their canopy, they provide ideal habitat for flying and climbing consumers, such as foliage-consuming insects, and insectivorous birds. Large snags are valuable as habitat for a variety of vertebrates (e.g. bald eagles) and invertebrates. Logs and bark slabs on the forest floor are important for small mammals that disperse seeds and fungi, for nitrogen-fixing bacteria, and as seed beds for trees and shrubs.

Fallen logs are also critical to the maintenance of the physical and biological stability of headwater streams. Debris dams, for instance, create stepped stream profiles that effectively dissipate energy that would otherwise go into transporting sediment, downcutting of stream channels and washouts. The associated pools and gravel beds provide a range of habitat requirements--temperature, shade, cover, current velocity, and oxygen - for a wide array of aquatic organisms.

The forests in the spill-impacted region are generally confined by steep mountain slopes to a relatively narrow band along shorelines. Three primary forest plant associations are found in the region:

1. The Sitka spruce series--occupies beachfront terraces and alluvial bottomlands. Common understory plants are blueberry, devil's club, skunk cabbage, lady fern, oak fern, and shield fern. Alder are dominant along streams.
2. The mountain hemlock series--found on lowland rolling hills, raised knolls in muskeg, and steep side slopes. Principal understory species on lowland hills are blueberry and devil's club; on raised knolls are copperbush, crowberry, bog blueberry, and deer cabbage; and on steep sideslopes are marten's cassiope, luetkea, shield fern, lady fern.
3. The western hemlock series--occupies some beachfront terraces and lowland rolling hills. It's understory consists of blueberry, rusty menziesii, devil's club, bunchberry, five-leaf bramble, and twisted stalk.

It is important to remember that the coastal forests of south central Alaska are rich, complex systems that produce more than just wood. They are important habitat for about one hundred species of birds, over 30 species of mammals, and several hundred species of invertebrates and plants.

III. JUSTIFICATIONS FOR ACQUISITION

A. Biological

There are seven principle biological arguments for using Restoration funds to retire timber harvesting rights:

1. Protection of forest-dependent and several spill-impacted species

Several of the bird and mammal species that depend to some extent on the old-growth forests in the region are known to have been impacted by the oil spill; (e.g. eagles, loons, murrelets, deer, bear, etc.). Removal of large tracts of this habitat through logging will only make it more difficult for these species to recover. (See #3 below)

2. Hydrological characteristics of watersheds

Regardless of how well buffer requirements are adhered to, the clearcutting planned for many steep sideslopes in the area would seriously alter the erosion, runoff, and sedimentation characteristics of entire watersheds. Watersheds disturbed by logging have dramatically altered hydrological characteristics. The removal of such large amounts of plant biomass, and

compaction of soils causes a dramatic reduction in the water-holding capacity of the area. This can affect the size and even timing of peak flows in nearby streams. This is evident where recent logging in Two Moon Bay has increased the frequency and magnitude of flooding, mudslides, soil erosion, and sediment loading in nearshore waters. Again, regardless of adherence to buffer requirements, percolation can still increase storm flow in streams, and the loss of forest shading will accelerate both the magnitude and timing of spring meltwater runoff. High storm flow can have devastating effects on salmon eggs and fry in streambed gravel.

Increased sedimentation of the intertidal and nearshore environments can be expected if upland forests are clearcut. These nearshore areas are critical habitat for outmigrant salmon smolts, herring spawning, clam and mussel production, and sea otter and bird feeding--all of which were impacted by the spill. Increased sedimentation of this environment could seriously reduce its biological productivity and habitability. Herring eggs and larvae, for instance, are very susceptible to reduced oxygen availability caused by increased sedimentation. Likewise, salmon fry migration and feeding can be affected by increased turbidity of nearshore waters. Also, any reduction in clam, mussel, or other invertebrate populations due to increased sedimentation from logging could have significant negative consequences for the recovery of sea otters, especially weanlings, and diving birds from oil spill impacts.

3. Habitat fragmentation

Logging causes a significant reduction in the most accessible, highest density timber stands, and as such, increases the fragmentation of old-growth habitat. Such habitat fragmentation is known to be a significant cause of reduced genetic variability within individual species. The theory of island biogeography substantiates the concern for reduced biodiversity caused by such habitat fragmentation. Because of their isolation from each other and resultant interruption in gene flow, habitat islands have been found to decline both in number of species present and genetic diversity. A reduction in genetic variability within certain populations of mammals, bird, and plant species would reduce the stability of that particular population, and the ecosystem as a whole. This means that the system would be much less capable of recovering from other perturbations such as insect pests, disease, earthquakes, etc.

It's important to realize that habitat fragmentation is a much more significant threat to the ecological stability of old-growth forests in this particular region because here, these forests constitute a smaller, patchier component of the entire ecosystem than do the forests in the Tongass, British Columbia, and the Pacific Northwest. Additionally, the high noise levels generated by logging operations expand the edge of habitat impacts far beyond the boundaries of the clearcut. Many mammals and birds will attempt to avoid such acoustic disturbance, and in so doing, be pushed further away from their preferred ranges and confined to progressively smaller refugia. Several forest species, such as deer, find it difficult to cross clearcuts, particularly during periods of heavy snow.

4. Regeneration

Because these forests are at the northernmost edge of their range, regeneration of critical habitat structure, composition, and functions in second growth forests is extremely slow. Such slow regeneration rates are due to short growing seasons, low solar irradiance, and soils with low fertility and poor structure due to comparatively recent glaciation. Soil fertility is further reduced by leaching of nutrients after logging. And, although there are a few isolated examples of clearcuts in the Sound that have regrown relatively densely within 50 years or so, these dense second-growth stands have been found to provide unsuitable habitat for many of the original bird, mammal, and plant species that inhabited the area before logging. With no snags, fallen logs, large live trees, or canopy heterogeneity for habitat, these second-growth areas are generally poor in species diversity.

5. Global significance

The forests in this region are unique globally in that they constitute the highest latitude temperate rain forests anywhere in the world. Temperate rain forests worldwide are rare and severely threatened ecosystems. In their original extent, they were distributed in 10 regions in the world covering an area of approximately 70 million acres; only 2-3% of the area of tropical rain forests. Four of the original areas in which they existed historically-- western Scotland, Ireland, a small area in the French Alps, and the southwest coast of Norway have been eliminated entirely.

In addition to the forest system extending from Kodiak to central Oregon, the only other significant stands left are found along the coasts of southern Chile, southern Australia, Tasmania, New Zealand, and Japan. It has been estimated that 60-80% of temperate rainforests worldwide have been logged in recent history.

For this reason alone, the forest in the spill zone should be conserved as a precious representative of disappearing temperate rainforest ecosystems worldwide.

6. The forest/marine bacteria/oil-spill connection

Oceanographers now believe that the large populations of hydrocarbon metabolizing bacteria that have been so important in degrading oil from man-made sources in the region (e.g., the Exxon-Valdez spill and the effluent from the ballast water treatment facility at the Alyeska Terminal) flourish precisely because of the continuous input of biogenic hydrocarbons from the coastal forest. Measurements of the hydrocarbon terpene dissolved in the canopy drip from spruce trees and in nearshore waters suggests that this is the primary energy source for naturally occurring hydrocarbon-oxidizing marine bacteria in the region. In this sense, the coniferous forest actually "immunizes" or prepares this marine system for oil spills. Removal of large tracts of these forests would, theoretically, reduce terpene input and thus the bacterial populations depending upon this

input, causing the waters in the region to become less capable of self-cleansing or bioremediation.

7. Cumulative impact

And finally, all these biological effects need to be understood in the broader long-term ecosystem context. Many local residents and biologists have observed a gradual but continuous reduction of certain wildlife populations associated with increased human use of the region over the past 30 years. Superimposed upon this gradual deterioration in the environment of PWS, the Exxon-Valdez oil spill in 1989 threw the system into a profound state of disequilibrium. Shocking the system with yet one more massive human-induced perturbation--the destruction of vast areas of old-growth forest habitat--would likely produce such a destabilizing effect that the resiliency of the entire ecosystem will be depressed for many decades. Also, it must be remembered that despite how well we think we might understand a particular biological system, even small perturbations can have large and unpredictable consequences (i.e. Chaos Theory). Beyond any doubt, the vitality of this coastal ecosystem would be best served by keeping its existing flora and fauna intact, in full interaction.

The advantages of the acquisition of timber for Restoration purposes are quite straightforward:

1. Profit Maximization

The timber owners would simply make more money by selling their trees for Restoration purposes than by harvesting them. By having money from such a sale up front, the corporations and shareholders could enjoy perhaps 50% more profit over 10 years from reinvestment income. To begin realizing significant dividends from logging, they would probably have to wait several years. Such a windfall of profits would open up many other personal and corporate economic development options. Also, the owners would not incur the expense and risk of operation, and Native Corporations would not have to begin paying taxes on these tracts as developed lands.

2. Market risk minimization

Timber markets are extremely volatile. Though they are now relatively strong, they are subject to at least the same magnitude of reduction that they experienced in the mid 1980s. Purchasing this timber now will allow timber owners to avoid the substantial risk of softening markets in the future.

3. Protection of existing economy

Any potentially negative effect that logging might have on either commercial fisheries or on local subsistence economies would be avoided.

4. Recreation and tourism development

It is widely agreed that the development of recreational and tourism economic opportunities in this region would be seriously impeded by timber harvesting. The scenic/aesthetic value of the area would be reduced in proportion to the number of vistas containing at least one noticeable clearcut. And, because areas planned for logging are relatively steep, virtually all can be seen from afar. It is widely felt that, in addition to commercial fishing, the recreation and tourism industry offers the PWS/Kenai Peninsula area its best opportunity for sustainable economic development that is compatible with the local environment. What is already a multi-million dollar industry probably has, in the absence of timber development, the potential to triple in size over the next decade. Recreation and tourism would also provide more local jobs on a sustainable basis than would a short-lived timber industry.

5. Timber price support

Because this acquisition would take a substantial amount of timber off the market, it is reasonable to expect timber prices elsewhere in the State to be enhanced somewhat.

6. Noncommercial economic value

And lastly, in the context of current economic theory (i.e., "Contingent Valuation") the actual economic value of a resource like the old-growth forests in this region is much more extensive than just its immediate commercial value. In addition to the commercial value of on-site recreation and timber harvesting, these forests offer many off-site, or "in-absentia" user values, including option, existence, and bequest value. Option value is essentially what people would pay to insure the availability of the forest system for future recreational opportunities. Existence value is the benefit derived from simply knowing that the forest exists. And bequest value is the willingness to pay for the economic benefits of saving forest resources for future generations. Timber harvesting could conflict with all nontimber values of these forests --subsistence, sport fishing and hunting, commercial fisheries, recreation, tourism, option, bequest, and existence value. And because the Restoration process should satisfy timber owners financially, it is clear that from a strict economic standpoint, it is in the highest public interest to preserve these forests. This acquisition would ensure a maximum flow of benefits to the greatest number of people.

C. Psychological

The psychological impact of the oil spill, has been, and will continue to be enormous. The pristine natural environment of the region comprises a powerful aspect of local residents' sense of identity, place, and purpose. Most of the people who make the region their home live here just because of its natural bounty, beauty, and wilderness quality. Native culture evolved within the fabric of forest and marine biological systems in the region. The area is, for many people, a sacred place.

The oil spill caused this sense of identity in local residents to rapidly disintegrate. Initial studies have clearly documented widespread perceptions of uncertainty about the future, deteriorating family relations, and Post Traumatic Stress Disorders in impacted communities. Even now, residents still feel a great deal of anger, remorse, and loss for what the spill did to their home. We must now allow these wounds to heal.

The most we can probably do to restore the psychological sense of well-being among local residents is to afford the impacted area as much protection as possible from further human insult. The psychological impact of clearcutting, superimposed upon that of the oil spill, would be devastating.

Prince William Sound has, in a very real sense, come to epitomize the plight of the Global environment. The phenomenal worldwide media attention given the area during the spill attests to the high degree of sympathetic identification felt by people throughout the world for such a spectacular pristine natural area essentially "lost" through corporate and governmental ineptitude. Many people, locally and elsewhere, express a sense of disbelief, indignation and even outrage that now, after perhaps the single greatest environmental disaster in our nation's history, humanity seems poised to inflict yet more environmental damage to the very same area through timber extraction, almost as if nothing had ever happened.

It is important to acknowledge that these are very real emotions and as such they must be addressed by the Restoration process. It should be a priority of the Restoration program to minimize any activity that might detract from an already damaged sense of psychological well-being throughout the region and the world. Another compelling reason, then, to retire timber harvesting rights in the region is to help restore the sense of solace and well-being that is so essential to the quality of life.

This acquisition would allow people to look forward with certainty to the full recovery of the natural environment, rather than despair over its continued degradation. This acquisition is absolutely essential for psychological recovery--without it, full recovery will be impossible.

D. Socio-Political

The oil spill has caused an overwhelming loss of faith in the institutions that manage our society.

The socio-political fallout from the spill has been characterized by bitterness and divisiveness within and between communities, anger toward the oil industry in Alaska and elsewhere, lack of confidence in government, and skepticism regarding economic development in general.

The social challenge for Restoration then, is to restore the cohesiveness within and between communities. Peoples within the impacted region now need a sense of solidarity, of being on the same side of an issue and of belonging to a joint enterprise together. It is now imperative to protect residents in the region from other highly divisive issues, such as logging.

The political impacts of this spill will undoubtedly reverberate through the halls of Juneau and Washington D.C., oil company board rooms, and the minds of voters for quite some time. If something powerful and persuasive isn't done to make amends for this environmental disaster, its dark shadow will continue to loom over such major public policy issues as ANWR, offshore oil leasing, and other important development proposals.

The public wants a clear sign that industry and government will make every effort to "right-their-wrongs." A positive outcome with the acquisitions set forth in this proposal would send a loud and clear message to people everywhere that corporate and political institutions can and do act responsibly--that they do indeed care about the natural environment. The public relations value of such an initiative would benefit the timber industry, Native corporations, government, and the oil industry.

It is increasingly evident that these acquisitions would be enormously popular throughout the nation, and would renew public confidence in our governmental and corporate institutions. Underlying such sentiment is the growing body of public opinion that old-growth rainforests worldwide are a precious, highly-threatened resource that deserve protection, and a greater sensitivity toward the environment in general, (e.g., "Earth Day, 1990").

In a very real sense then, this acquisition for Restoration has, for many, become the "canary in the mine shaft" concerning mankind's commitment to the environment. It's really quite simple--either we do care, or we don't. This will be the legacy we leave for future generations and should be pursued accordingly.

IV. TIMBER OWNERSHIP

The primary land owners in the region are the Federal government, Alaska Native Corporations, and, to a lesser extent, the State of Alaska. All own valuable tracts of old-growth forest. A decision to not allow timber harvesting on these public lands can be obtained simply through an administrative decision on the part of the U.S. Forest Service and the State of Alaska Department of Natural Resources. At this time, the Forest Service has no plans to sell or harvest any of the timber within the Chugach National Forest. The ADNRS is considering classifying several of its isolated land parcels within the region for timber harvesting. The Trustees should seek a Memorandum of Understanding or other legally binding agreement from these two agencies that, in the interest of Restoration, they will not permit any timber harvest on their lands in and around the spill zone.

The more important challenge for Restoration will be to retire the timber harvesting rights on the several hundred thousand acres of lands owned by Alaska Native Corporations in the region. Timber on these private lands is considered to be a valuable financial asset and thus timber owners will have to be sufficiently compensated in exchange for an agreement to extinguish any and all harvesting rights. The approach here should be to make it financially advantageous for the timber owners/land owners to enter into such an agreement, by providing them as much money as they would have earned in profits by harvesting their timber. The two principle areas of concern for acquisition purposes are Prince William Sound and the lower Kenai Peninsula.

Prince William Sound

The Native Corporations with land holdings in Prince William Sound itself are as follows:

Eyak Corporation PO Box 340 Cordova AK 99574 Phone: 424-7161	64,000 acres (Note: acreages here are approximate)
Tatitlek Corporation PO Box 650 Cordova AK 99574 Phone: 424-3777	65,000 acres
Chenega Corporation General Delivery Cordova AK 99574 Phone: 573-5118	76,000 acres
Chugach Alaska Corporation 3000 A Street, Suite 400 Anchorage AK 99503 Phone: 563-8866	57,000 acres in S.W. PWS

Approximate total area proposed for timber acquisition
in Prince William Sound = 262,000 acres

Most of the timber on these lands has been sold, in connection with Net Operating Loss Sale provisions of federal tax laws, and is now owned by the following companies:

Sherstone, Inc. PO Box 828 Cordova AK 99574 Phone: (907) 424-5524	Owns timber on Eyak lands
Citifor, Inc. 7171 Columbia Center 701 Fifth Ave. Seattle WA 98104-7090 Phone: (206) 622-3770	Owns some of the timber on Tatitlek lands between Fidalgo & Gravina
Koncor Forest Products, Inc. 3501 Denali Anchorage AK 99503 Phone: (907) 562-3335	(Timber Trading Company) owns timber on Chugach Corp. lands on Montague & Knight Islands and on Chenega lands

Tatitlek Corporation still retains title to some of their timber, and Chugach Alaska Corporation has purchased timber on Tatitlek lands at Fish Bay in Pt. Fidalgo.

Lower Kenai Peninsula

Beyond PWS itself, three village corporations on the Kenai Peninsula have considerable land holdings with timber that should be considered for acquisition:

English Bay Corp.
PO Box 8058
English Bay via Homer
Homer AK 99603
Phone: (907) 281-2220

45,000 acres at southern
tip of Kenai Peninsula
and 22,000 acres within
the Kenai Fjords National
Park

Port Graham Corp.
PO Box PGM
Pt. Graham AK 99603
Phone: (907) 284-2227

66,000 acres at southern
tip of the Kenai and
55,000 acres also within
the Kenai Fjords National
Park

Seldovia Native Ass'n.
PO Box 185
Seldovia AK 99663
Phone: (907) 234-7625

23,000 acres within
Kachemak Bay State Park
across from Homer and
423 acres on Island Peninsula

Approximate total area proposed for timber acquisition on
Lower Kenai Peninsula = 221,000 acres

These corporations have sold much of their timber, as in Prince William Sound, to the following companies.

Koncor Forest Products, Inc.
3501 Denali
Anchorage AK 99503
Phone: (907) 562-3335

(Timber Trading
Company) owns the
timber on Seldovia
Native Ass'n. land
holdings within
Kachemak Bay State
Park

Chugach Alaska Corporation
3000 A Street, Ste. 400
Anchorage AK 99503
Phone: (907) 563-8866

owns the timber at
Windy Bay, on Pt.
Graham lands

Kolon California, Inc.
c/o Ceretech International
515-16th Ave., Ste. 155
Bellevue WA 98004
Phone: (206) 455-4850

owns the timber on
English Bay lands

6. Displaced jobs

A very legitimate concern exists over the jobs, particularly of Native shareholders, that would be displaced by this acquisition for Restoration. This concern is addressed by the Sustainable Economic Development section of the proposed comprehensive settlement. An "Alaska Native Employment Fund" should be established to provide on the order of \$5 million annually to be used to employ shareholders in jobs that, as determined by themselves, are sustainable and compatible with their cultural heritage and local environment.

7. Seward Sawmill

Withdrawing these forests from timber production will reduce the flow of raw logs to the newly constructed Chugach sawmill in Seward. Clearly, the Chugach Corporation deserves compensation for this loss. Either a genuine offer should be made for an outright purchase of the mill, or some other subsidy/settlement must be offered.

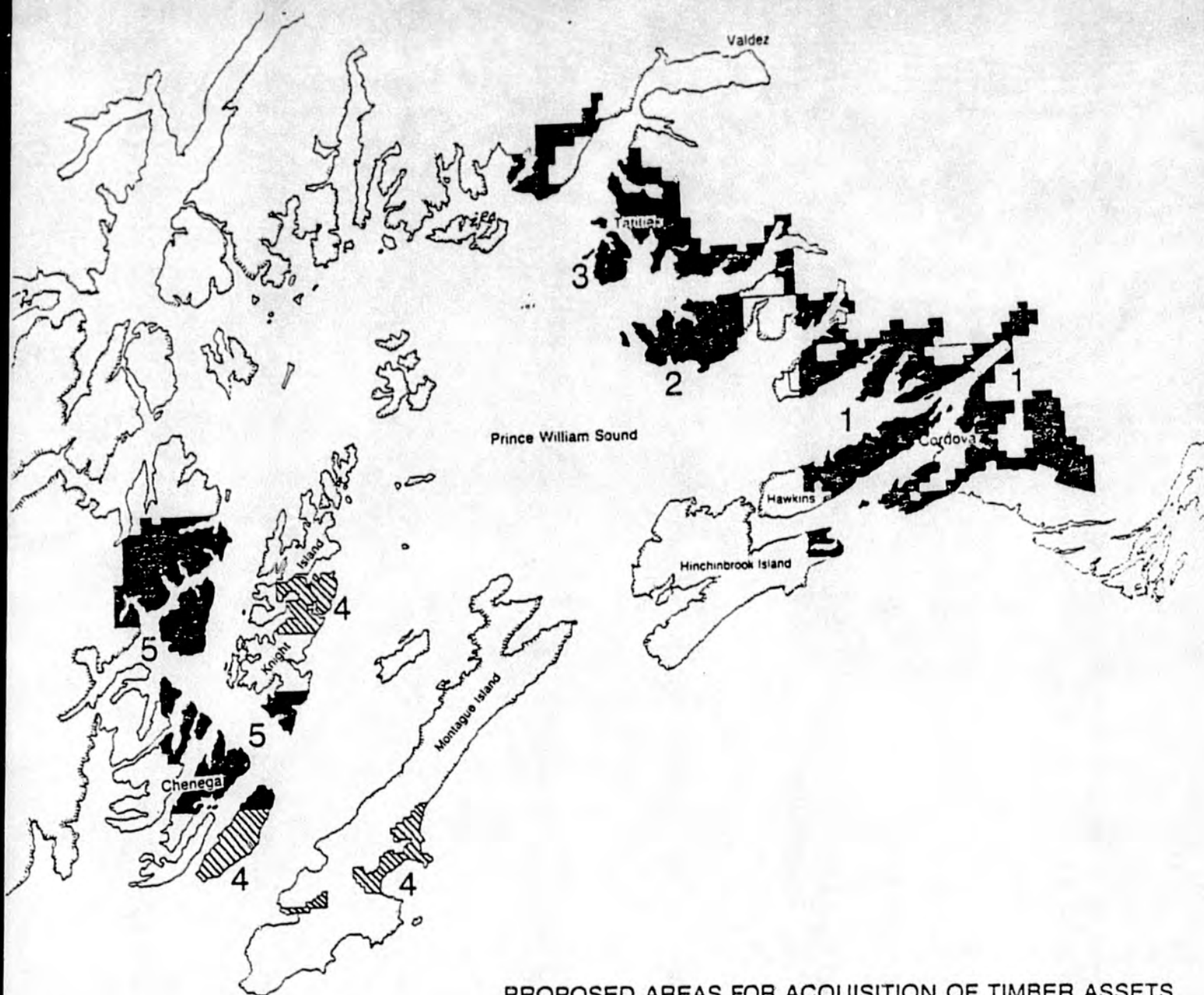
8. Protection of Native Sovereignty

One of the most important considerations for this initiative is to protect the right to self-determination of local Native people. As the principle private land owners in the region, they have the most at stake relative to this issue. It is essential that all the shareholders of each Native corporation in the region be fully informed concerning their options here, and that they come to some agreement among themselves as to what is in their own long-term interest. Presently, some shareholders support timber acquisition for Restoration, others oppose it.

It is incumbent upon the Restoration planning process to provide the corporations and their shareholders with an objective assessment of the implications of supporting or opposing such acquisitions.

IT IS ESSENTIAL THAT THE TRUSTEES REMAIN
SENSITIVE TO THE DESIRES OF NATIVE SHARE-
HOLDERS ON THIS ISSUE, AND PURSUE
ACQUISITIONS ONLY WITH THOSE CORPORATIONS
THAT SUPPORT THE CONCEPT.

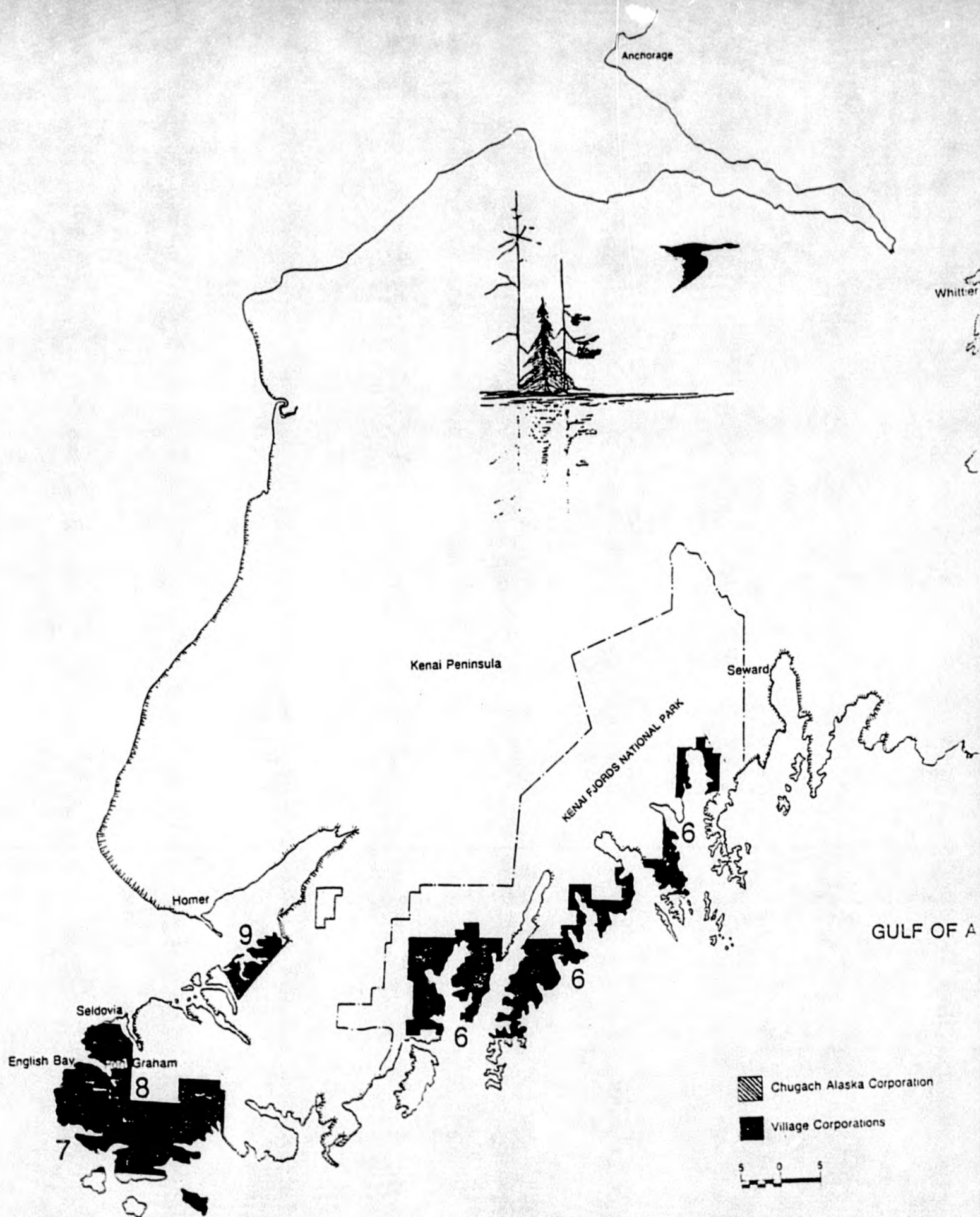
It should be recognized that, before the spill, timber development plans represented sincere and genuine commitment on the part of corporation managers to provide economic opportunity for their shareholders. Acquisitions for Restoration should be presented as a unique opportunity to redirect such development plans in light of the spill.



PROPOSED AREAS FOR ACQUISITION OF TIMBER ASSETS

1. EYAK/SHERSTONE
2. CITIFOR
3. TATITLEK
4. CHUGACH/KONCOR
5. CHENEGA/KONCOR
6. PORT GRAHAM/ENGLISH BAY SELECTIONS
7. ENGLISH BAY/KOLON CALIFORNIA
8. PORT GRAHAM/CHUGACH
9. SELDOVIA NATIVE ASSOCIATION/KONCOR

APPROXIMATE TOTAL AREA PROPOSED — 483,000 ACRES.



Proposed Appropriation Bill

*Sec. 1. (a) The sum of 40,000,000 is appropriated from the general fund to the restoration trust fund established for restoration of natural resources injuries sustained as a result of the Exxon Valdez oil spill.

(b) The sum of 40,000,000 is appropriated to the Department of Fish and Game for restoration of natural resource injuries sustained as a result of the Exxon Valdez oil spill. Expenditures under this appropriation shall be made in consultation with the Departments of Natural Resources and Environmental Conservation.

(c) The appropriation made in (a) of this section is effective upon the date the restoration trust fund is established.

(d) The unexpended and unobligated balance of the appropriation made in (b) of this section is reappropriated to the restoration trust fund on the date that the restoration trust fund is established.

(e) Expenditures made from the appropriations made in this section shall not exceed \$40,000,000.

- ☒ Mary ✓
- ☐ Sheila
- ☐ Laura
- ☐ Jo-Eve
- ☐ Sheri
- ☐ Brandie

 Staff Notes:

☒ Dick

Notes to Dick:
 Letter describes the specific concerns of conservation groups about the conditions of any deal to be struck between the State and Exxon

 Eliason's Instructions:

- ☐ File
- ☒ Back to Staffer Many for resources files

Instructions/Action to Be Taken:

February 8, 1991

The Honorable Walter J. Hickel
Governor of Alaska
State of Alaska
P.O. Box A
Juneau, AK 99811

Dear Governor Hickel:

We are writing on behalf of the Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, USA, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, Trustees for Alaska and Wildlife Federation of Alaska to express our serious concern about the terms of settlement in the Exxon Valdez litigation recently reported in the press.

On behalf of over six million U.S. citizens whom we represent, we wanted to share with you our views on the appropriate provisions of any settlement of this important case. A deal should not be struck hastily behind closed doors. On a matter of such public importance, it is imperative that there be opportunity for public consultation and input. The groups on behalf of whom this letter is sent all have outstanding claims against Exxon in state or federal court and therefore have a direct and immediate interest in the negotiations. We therefore ask that we be immediately and directly involved in any settlement discussions. The following are our major concerns about the settlement.

First, it is difficult to evaluate the adequacy of the \$1.2 billion settlement figure. The studies of the environmental damage caused by the spill conducted by the federal and state trustees (as well as those conducted by Exxon) remain secret. Without information on the damage assessment, it is impossible for the public or elected officials to judge whether \$1.2 billion will adequately compensate for the tremendous harm that the oil spill has caused and continues to cause. We also understand that a significant portion of the \$1.2 billion--perhaps hundreds of millions of dollars--may be used to pay for lost tax revenues and to reimburse state and federal government expenses. This simply would not leave sufficient funds for restoration and acquisition of resources equivalent to those harmed by the spill.

Second, the settlement should include no confidentiality agreements. The settlement should require that all scientific and economic studies conducted by the State and federal governments and Exxon be disclosed immediately to ensure that the

public is informed of the actual environmental and socio-economic damage resulting from the spill. Public disclosure also should be required for all future studies. The governments' studies should be disclosed so the public that has financed them will be informed as to the studies' results. Moreover, all of the studies should be disclosed to advance scientific understanding of the fate and effect of oil spills worldwide, and to encourage enlightened public policymaking based on a comprehensive understanding of the impacts of oil spills.

Third, the settlement should require ongoing scientific research to assess the long-term ecological impacts of the oil spill. Oil spills and other disasters generally have received inadequate study over the long-term because of a lack of public funding and commitment. It would be a tragedy if that were to happen once again with respect to this critically-important spill.

Fourth, it is critical that the money obtained from Exxon be used in accordance with the following principles. The money should be used to study the short- and long-term impacts of the Exxon Valdez spill and to pay for restoration, replacement and acquisition of natural resources equivalent to resources injured or destroyed as a result of the spill. It is crucial that the money not be used for development projects that would degrade the environment, nor should it be used to fund ongoing industry or government programs. Acquisition of timber rights to protect lands adjacent to Prince William Sound and other affected areas, and acquisition of pupping areas, staging areas and other critical habitat for species adversely affected by the spill should be a high priority. The money should also be used to promote protection of Alaska's ecosystems and natural resources from future environmental insults that may adversely affect the recovery or health of Alaskan species and ecosystems, with special emphasis on those affected by the Exxon Valdez spill.

Fifth, it is centrally important who decides how the money is to be spent. We strongly urge that the settlement establish an independent not-for-profit foundation with a board made up of eminent and respected scientists, conservationists, community leaders, natives, and others whose function would be to administer the money received from Exxon in accordance with the principles enumerated above. This model has worked well in the settlement of other major litigation: namely, the Kepone case in the James River which led to the creation of the Virginia Environmental Endowment; in the Hudson River Power Plant case, settlement of which led to the creation of the Hudson River Foundation; and in the Platte River whooping crane case, in which

a trust fund was established to protect whooping cranes. Such a model has the advantage of insulating the fund from political pressures and ensuring that the public has the highest confidence in the expertise and credentials of the individuals administering the fund.

Regardless of the mechanism for disbursement of funds, there should be a significant role in the governance of the fund provided to environmental and other interests. Conservation, native and fishing organizations all have been very active in the clean up, damage assessment and litigation against Exxon. They have a real stake in ensuring that the money is spent wisely and well. These interests can provide important expertise and credibility to the process. They should be given a vote in how the money is spent, not simply an advisory role.

Exxon should be given no role, formal or informal, in decisions about how the money should be spent. To allow a criminal defendant to help oversee how a criminal fine or payment is spent would set an unconscionable precedent. Moreover, Exxon has a definite and continuing interest in minimizing the public's perception of the damage resulting from the spill -- for public relations reasons and because of other pending litigation. To give Exxon a role would be to create an inherent conflict of interest in the decisionmaking body. Rather than providing Exxon with a role in spending the money, the settlement should require Exxon to take specific steps to prevent and to improve their response to future oil spills.

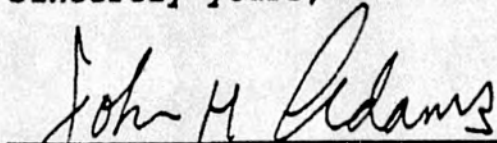
Sixth, in addition to the civil settlement, there should be a criminal guilty plea and a substantial criminal payment in restitution for the damage suffered. To have the appropriate deterrent effect, the amount should not only be significant, but the payment should be non-tax-deductible.

Finally, there should be a reopener provision in the settlement to ensure that if unknown conditions arise at some future time, the settlement may be reopened. Because it is too early to predict the long-term impacts of the spill, such a provision is crucial in order to fully protect the public interest.

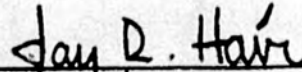
The Honorable Walter J. Hickel
February 8, 1991
Page 4

We appreciate your attention to our concerns. We would like the opportunity to meet with you as soon as possible to discuss this extremely important matter.

Sincerely yours,



John Adams
Executive Director
Natural Resources Defense Council



Jay Hair
President
National Wildlife Federation



Frederic Sutherland
President
Sierra Club Legal Defense Fund

STATE OF ALASKA

ROUTE SLIP

TO: Mail Station 3100	Department Senate	Division
Attention Sen. Dick Eliason R111		
☐ Approval ☐ Signature ☐ Comment ☐ Contact Me ☐ Prepare Reply ☐ For Your File		
☐ Note & Return ☐ Initial & Return ☐ Return as Requested ☐ Return for Approval ☐ Necessary Action ☐ For Your Information		
Remarks: Here's some Federal mumbo-jumbo published today		
FROM: Mail Station 0300	Department Law	Division
By Charles Cole		Date 3/19

02-002 (REV 3-84)

Dick - The settlement
was published in the
federal register today
so now the 45 day
clock is ticking
(pls return to Mary
for file)

federal register

Tuesday
March 19, 1991

Dick Saw

Part III

Department of Commerce

National Oceanic and Atmospheric
Administration

Settlement Agreement Concerning Exxon
Valdez Oil Spill and Memorandum of
Agreement Between the United States
and the State of Alaska and Exxon
Corp., et al.; Notice of 30 Day Comment
Period

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Settlement Agreement Concerning the Exxon Valdez Oil Spill—Between the United States, the State of Alaska and the Exxon Corp., Exxon Shipping Co. and Exxon Pipeline Co.

ADDRESSES: National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior, Department of Justice, Department of Transportation, the Environmental Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska and the United States reached agreement on March 12, 1981, with Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company (Exxon) on a settlement resolving all civil claims of the respective governments arising from the March 24, 1980 Exxon Valdez oil spill. Comment is sought concerning the proposed civil settlement, which is published together with this Notice. Comments must be received no later than April 18, 1981.

ADDRESSES: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, Room 5816, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1081 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone (202) 377-1600.

SUPPLEMENTARY INFORMATION: The grounding on the night of March 23-24, 1980 of the tanker Exxon Valdez resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The Exxon Valdez Oil Spill affected the

environment and natural resources in the Sound and along the coasts of Kodiak Island, Lower Cook Inlet, the Kenai Peninsula and the Alaska Peninsula.

The State of Alaska has filed an action, *State of Alaska v. Exxon Corporation, et al.*, Civil No. 3AN-80-0881, and Exxon has asserted counterclaims against the State. The U.S. Government filed a civil claim against Exxon on March 12, 1981 and at the same time, together with the state, lodged an Agreement and Consent Decree resolving both the U.S. and Alaska civil claims. This agreement represents the largest natural resource damage settlement in U.S. history and is designed to provide for the restoration of the natural resources affected by the spill. The Agreement also addresses full recovery of past and necessary future costs incurred by the State of Alaska and the United States to complete the clean-up activities and to determine the breadth of injury, loss or destruction of natural resources. When completed, the restoration of areas affected by the spill will be the largest commitment of resources to restore the environment in U.S. history.

The Settlement Agreement provides that \$900 million will be paid to the United States and the State over an 11 year period. These funds will be used to design, implement and monitor restoration activities; to continue the necessary scientific studies deemed necessary to determine the full extent of natural resource injury, loss or destruction due to the spill; to conduct any further cleanup activities deemed necessary by the United States Coast Guard or by the State; and to recover past costs incurred during the natural resource damage assessment process. To address the possibility of currently unknown injuries to the environment, the Settlement Agreement also contains a reopening clause committing Exxon to pay up to an additional \$100 million for restoration projects for natural resources and habitats that are later discovered to be injured as a result of the spill.

A separate Memorandum of Agreement (MOA) between Alaska and the Federal Government was also executed at the same time. The MOA will govern the relationship between the governments in administering the fund created with this settlement. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. This State/Federal MOA will be published in a separate Federal Register notice.

Comment is sought from the public concerning the proposed Settlement Agreement. The Agreement provides that the governments can withdraw from the Settlement Agreement within 15 days of the close of the comment period if the comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate, or if, before the end of the 15th day following the close of the comment period, the Alaska State Legislature has not approved the Agreement as written.

Dated: March 14, 1981.

Onyiah R. Cook,

Special Counsel for Natural Resources,
Proposed Consent Decree and
Settlement Agreement

Richard B. Stewart, Assistant Attorney
General, Environment & Natural
Resources Division.

Stuart M. Gerson, Assistant Attorney
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United States District Court, District of
Alaska

*United States of America, Plaintiff, v.
Exxon Corporation, Exxon Shipping
Company, and Exxon Pipeline Company, in
personam, and the T/V Exxon Valdez, in
rem, Defendants. Civil Action No.*

*The State of Alaska, Plaintiff, v. Exxon
Corporation, Exxon Shipping Company, and
Exxon Pipeline Company, in personam, and
the T/V Exxon Valdez, in rem, Defendants.
Civil Action No.*

Agreement and Consent Decree

This agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V Exxon Valdez, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1980, the T/V Exxon Valdez, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation

spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as *State of Alaska v. Exxon Corporation, et al.*, Civil No. JAN-88-0013 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On or before the lodging of this Agreement with the Court, the United States and the State will each have filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted or will assert counterclaims against the United States and the State in their responses to the Federal Court Complaints. Exxon Corporation and Exxon Shipping Company have also filed administrative demands against the United States Coast Guard, with the U.S. Coast Guard, Coast Guard Maintenance & Logistics Command—Pacific at Alameda, California under date of September 21, 1990.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under section 311(f) of the Clean Water Act, 33 U.S.C. 1231(f).

Exxon represents that, during the period from the Oil Spill through the end of 1990, it expended in excess of \$2 billion for clean-up activities and reimbursements to the Federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

Now, Therefore, The Parties agree, and it is hereby Ordered, adjudged, and decreed As follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. 1231(f).

This Court also has personal jurisdiction over Exxon and Exxon Pipeline, which, solely for the purposes of this Agreement, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

Parties

2. "United States" means the United States of America, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Exxon" means Exxon Corporation, a New Jersey corporation, Exxon Shipping Company, a Delaware corporation, and the T/V Exxon Valdez, Official Number 88888 (now the T/V Exxon Mediterranean).

5. "Exxon Pipeline" means Exxon Pipeline Company, a Delaware corporation.

Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) *Alyeska* means Alyeska Pipeline Service Company, a Delaware corporation, its shareholders and owner companies, and its present and former shareholder representatives.

(b) *The TAPL Fund* means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation organized and existing under the laws of the State of Alaska.

(c) *Natural Resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq.) and/or the State.

(d) *Natural Resource Damages* means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. 1231, et seq., the Trans-Alaska Pipeline Authorization Act, 48 U.S.C. 1651, et seq., or any federal or state statute or maritime or common law relating to the

environment, including (1) costs of damage assessment; (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources; and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) *Party or Parties* means Exxon, Exxon Pipeline, the United States, and the state, or any of them.

(f) *Trustees* means the Secretaries of the U.S. Departments of Agriculture and Interior, the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Alaska Attorney General.

(g) *The Oil Spill* means the occurrence described in the first paragraph of the Introduction above, and all consequences proximately caused by or arising from the Oil Spill, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) *Effective Date* shall mean the earliest date on which all Parties have signed this Agreement.

(i) *Final Approval* shall mean the earliest date on which all of the following have occurred: (1) the Agreement has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the period for withdrawal of consent by the Governments under Paragraph 27 has expired; (3) the Court has approved and entered the Agreement as a judgment, without modification and without interpreting a material term of the Agreement, prior to or at the time of approval, in a manner inconsistent with the Parties' intentions; and (4) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

7. Upon approval and entry of this Agreement by the District Court, this Agreement and Consent Decree shall constitute a final judgment between the Governments and Exxon and Exxon Pipeline in accordance with its terms.

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of \$600 million, discharged as follows:

- (a) Exxon shall pay, within 10 days after the Effective Date, \$80,000,000.
 (b) Exxon shall pay on September 1, 1982 the amount determined by the following formula:

amount payable = \$180,000,000 minus X, where "X" equals Exxon's expenditures for work done from January 1, 1981 to the Effective Date, in preparation for and conduct of clean-up of the Oil Spill in accordance with directions of the Federal On-Scene Coordinator, up to a maximum of \$4,000,000, plus expenditures made by Exxon for clean-up work after the Effective Date in accordance with Paragraph 11.

(c) Exxon shall pay each of the amounts specified in the following schedule by the dates set forth in that schedule:

September 1, 1980 \$100,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 8 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

9. If Final Approval has not occurred by the date a payment required under Paragraph 8 is due, Exxon shall, on or before that date, deposit the amount of the payment into an interest-bearing trust account (the "Escrow") in a federally chartered bank ("Escrow Agent"). The Escrow agreement between Exxon and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Alaska in connection with any litigation arising out of that Escrow agreement. Exxon shall notify the Governments promptly in writing of any deposit of a payment due under this Agreement into the Escrow. Upon Final Approval and within five (5) business days of receipt of written instructions as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal

to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H-15 (819) weekly releases published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless one of the following events occurs: (1) The United States or the State withdraws its consent to entry of the Agreement pursuant to Paragraph 27; or (2) any Party terminates the Agreement pursuant to Paragraph 28. If one of these events occurs, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline, the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1980 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them prior to the Effective Date in connection with the Oil Spill; (3) to reimburse the State for attorneys' fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it prior to the Effective Date in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of

them after December 31, 1980 in connection with the Oil Spill; and (5) after the Effective Date, to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or services; provided, however, that the aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed \$65 million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs (under items 1-3 above) shall not exceed \$75 million. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which the Governments have submitted or will submit to this Court to resolve claims of the Governments against one another with respect to their respective shares in recoveries for Natural Resource Damages resulting from the Oil Spill. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed by the FOSC or with federal law, in accordance with the directions of, and subject to prior approval of costs by, the State OSC. If Exxon concludes that work directed by the State OSC would interfere or affirmatively conflict with work directed by the FOSC, or with federal law, it shall promptly notify the State OSC and the FOSC of the potential conflict and shall not be required to proceed with the work directed by the State OSC until the FOSC or the Court determines that there is no conflict or that any potential

conflict has been eliminated, and directs Exxon how to proceed. Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOBC or the State OGC.

(b) Upon Final Approval, Exxon shall have no further obligations with respect to clean-up of the Oil Spill except as set forth in this Agreement and in addition Exxon shall be entitled to a credit, to be applied to the next payment due from Exxon to the Governments, as provided in subparagraph 8(b), for all Expenditures incurred by Exxon for clean-up work pursuant to directions of the FOBC or the State OGC in accordance with subparagraph 11(a). As used in this paragraph, and in subparagraph 8(b) and Paragraph 12, "Expenditures" shall include, without limitation, costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

12. If this Agreement is terminated pursuant to Paragraphs 9 or 10 below, or if a final judicial determination is made that this Agreement will not be approved and entered, Exxon shall be entitled to set off against any liability it may have to either Government arising from the Oil Spill the amount of any Expenditures made by Exxon for clean-up work directed by the FOBC or the State OGC under Paragraph 11(a), if the work meets the following criteria:

(a) If total Expenditures incurred by Exxon for clean-up after the Effective Date are \$85 million or less, Expenditures for work shall be set-off if Exxon shows both—

(1) That based on the information available at the time to the FOBC or State OGC who directed the work, the anticipated cost of the work was grossly disproportionate to the net environmental benefits reasonably anticipated from the work, or the work could not reasonably have been expected to result in a net environmental benefit; and

(2) That a reasonable time before beginning to perform the work, Exxon submitted a written objection to the work to the FOBC or State OGC who directed the work, requesting reconsideration of the work directions on one of the grounds set forth in subparagraph 12(a)(1) above; or

(b) If total Expenditures by Exxon for clean-up after the Effective Date exceed \$85 million, Expenditures for work shall be set-off unless the Government or Governments against which Exxon is

seeking to assert the set-off provided by this paragraph show that, based on the information available at the time to the FOBC or State OGC who directed the work, the work was reasonably expected to result in a net environmental benefit, and the anticipated cost of the work was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Release and Covenants Not to Sue by the Governments

13. Effective upon Final Approval, the Governments release and covenant not to sue or to file any administrative claim against Exxon with respect to any and all civil claims, including claims for Natural Resource Damages, or other civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statute and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims alleged in the pending action against Exxon by the State in the State Court Action, (2) any of the civil claims asserted in the Federal Court Complaints, or (3) any other civil claims that could be asserted by either or both of the Governments against Exxon relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall effect or impair the following:

(a) Claims by either Government to enforce this Agreement, including without limitation Exxon's agreement to make additional payments as set forth in Paragraphs 17-18;

(b) The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources, if any, belonging to, managed by, controlled by or appertaining to such villages;

(c) The rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

(d) Claims by the State for tax revenues which would have been or would be collected under existing AS 43.78 (Fisheries Business Tax) but for the Oil Spill, provided that, if the State obtains a judgment for such a claim against Exxon or Exxon Pipeline, the State will enforce against Exxon or Exxon Pipeline only that part of the

judgment that would be refunded to local governments under AS 43.78.130 had the amount recovered been paid as taxes under AS 43.73.

14. Effective upon Final Approval, except insofar as Exxon Pipeline is liable to the Governments, or either of them, for claims relating to or arising from the Oil Spill as a result of its ownership interest in, participation in, or responsibility for Alyeska, each of the Governments provides to Exxon Pipeline covenants not to sue identical to the covenants not to sue provided to Exxon in Paragraph 13. This paragraph shall not be construed as a release or covenant not to sue given by either Government to Alyeska.

15. Effective upon the Effective Date, each of the Governments covenants not to sue any present or former director, officer, or employee of Exxon or Exxon Pipeline with respect to any and all civil claims, including Natural Resource Damages, or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statute and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Exxon or Exxon Pipeline for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Exxon or Exxon Pipeline, personally or through insurance policies purchased by the individual or individuals.

16. Not later than 15 days after Final Approval, each of the claims asserted by the State against Exxon and Exxon Pipeline, except for the claim described in Paragraph 15(d) of this Agreement, and each of the claims asserted by Exxon or Exxon Pipeline against the

State, in the State Court Action will be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Exxon, Exxon Pipeline, and the State shall enter into and execute all stipulations of Dismissal, with prejudice, necessary to implement this paragraph.

Response For Unknown Injury

17. Notwithstanding any other provision of this Agreement, between September 1, 2001, and September 1, 2004, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats, or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

(a) The cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and

(b) The injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the Effective Date.

18. The amount to be paid by Exxon for the restoration projects referred to in Paragraph 17 shall not exceed \$100,000,000.

19. The Governments shall file with Exxon, 90 days before demanding any payment pursuant to Paragraph 17, detailed plans for all such restoration projects, together with a statement of all amounts they claim should be paid under Paragraph 17 and all information upon which they relied in the preparation of the restoration plan and the accompanying cost statement.

Release and Covenants Not To Sue by Exxon and Exxon Pipeline

20. Effective upon Final Approval, Exxon and Exxon Pipeline release, and covenant not to sue or to file any administrative claim against, each of the Governments and their employees with respect to any and all claims, including without limitation claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law, or maritime law, that arise from, relate to, or are based on or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted by either

of them against the State in the State Court Action, (2) any civil claims asserted by Exxon or Exxon Pipeline against either Government in their responses to the Federal Court Complaints, or (3) any other civil claims that have been or could be asserted by Exxon or Exxon Pipeline against either of the Governments relating to or arising from the Oil Spill, except that nothing in this Agreement shall affect or impair the rights of Exxon and Exxon Pipeline to enforce this Agreement. This paragraph shall not be construed as a release or covenant not to sue given by Alyeska (including its shareholders and owner companies other than Exxon Pipeline) to the Governments.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 20 shall not be construed to bar any claim by Exxon against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Exxon or Exxon Pipeline by the TAPL Fund, Exxon agrees to indemnify and hold the Governments harmless from any liability that they have to the TAPL Fund based on such claims. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska by the TAPL Fund, Exxon agrees to indemnify the Governments for 30.34% of any such liability that either Government has to the TAPL Fund based on such claims.

Provisions Pertaining to Alyeska

22. Effective upon Final Approval, the Governments release and covenant not to sue Alyeska with respect to all claims for Natural Resource Damages and with respect to all other claims for damages for injury to Natural Resources, whether asserted or not, that either may have against Alyeska relating to or arising from the Oil Spill. If Alyeska asserts claims against the Governments, or either of them, that are based upon third party contribution or subrogation rights, or any other theory of recovery over against the Governments, or either of them, arising from any liability of or settlement payment by Alyeska to Exxon or Exxon Pipeline for any claims, including without limitation Natural Resource Damages and cleanup costs, relating to or arising from the Oil Spill, Exxon shall indemnify and hold the Governments harmless from any liability that the Governments have to Alyeska based on such claims.

23. In order to resolve as completely as practicable all civil claims of the Governments arising from the Oil Spill

against all Exxon Defendants, including Exxon Pipeline (which has a 30.34% participation in Alyeska), and in consideration of Exxon's obligations hereunder, the Governments agree that if either recovers any amount from Alyeska for any claim of any kind relating to or arising from the Oil Spill (such as asserted in the State Court Action against Alyeska), each Government so recovering shall instruct Alyeska to pay to Exxon, and shall take other reasonable steps to ensure that Exxon receives 30.34% of the amount due to that Government from Alyeska.

24. Exxon and Exxon Pipeline agree that, if Alyeska recovers any amount from the Governments for any claim of any kind relating to or arising from the Oil Spill, except for an amount indemnified by Exxon under Paragraph 21 or 22, Exxon and/or Exxon Pipeline shall promptly pay to the Government against which judgment is entered 30.34% of such amount.

25. If Alyeska successfully asserts claims, if any, against the Governments, or either of them, that are based upon Alyeska's own damages or losses, or upon third party contribution or subrogation rights, or other theories of recovery over, arising from Alyeska's liability to persons other than Exxon or Exxon Pipeline relating to the Oil Spill, Exxon shall indemnify the Governments for any sums paid by either of them to Alyeska based on such claims; provided that the Governments shall assert in good faith all defenses the Governments may have to such claims by Alyeska, and provided further that no indemnity shall be provided under this paragraph if the Governments refuse a good faith proposal for a monetary settlement of such claims agreed to by Exxon and Alyeska, under which Alyeska shall fully release the Governments in exchange for a payment by or other consideration from Exxon, on behalf of the Governments, to Alyeska.

Third Party Litigation

26. If any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Exxon or Exxon Pipeline and the Governments, or against Exxon or Exxon Pipeline and either the United States or the State, each of the sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party.

However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases.

27. Neither Exxon nor Exxon Pipeline shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Exxon or Exxon Pipeline in any action relating to or arising from the Oil Spill where Exxon and Exxon Pipeline, respectively, are not parties, except that either Government may assert against Exxon the rights to indemnification as expressly provided in Paragraphs 21, 22, and 23.

28. Any liability which Exxon incurs as a result of a suit by a Third Party, as described in Paragraphs 26 or 27, shall not be attributable to or serve to reduce the payments required to be paid by Exxon pursuant to Paragraph 8 or any additional payment required under Paragraph 17.

29. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

30. If a Third Party, which has previously reached or thereafter reaches a settlement with Exxon, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Exxon, and shall assert that joinder of Exxon is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Exxon's joinder, the sued Government(s) may institute third-party actions against Exxon solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce or judgment against Exxon.

Interest for Late Payments

31. If any payment required by Paragraphs 8 or 9 of this Agreement is not made by the date specified in those Paragraphs, Exxon shall be liable to the

Governments for interest on the overdue amount(s), from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31 U.S.C. 3717(a) (1) & (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

32. This Agreement does not constitute an admission of fact or law, or of any liability, by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims, or defenses available to it relating to or arising from the Oil Spill. Nothing in this Agreement, however, is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

33. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

34. Nothing in this Agreement shall prevent or impair the Governments from providing program assistance or funding to those not signatories to this Agreement under the programs of their agencies pursuant to legislative authorization or appropriation.

35. Nothing in this Agreement shall affect or impair any existing contract between Exxon or Exxon Pipeline and any entity of either Government, including without limitation the agreement between Exxon and the Environmental Protection Agency dated December 21, 1980, relating to joint conduct of bioremediation studies.

Notice and Submittals

36. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the United States:

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. Attn: DOJ #80-5-1-1-3743.

Chief, Admiralty and Aviation Branch, Civil Division, U.S. Department of Justice, 801 D Street, NW., Washington, DC 20530.

General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20260.

As to the State of Alaska:

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811. Supervising Attorney, Oil Spill Litigation Section, Department of Law, 1031 W. Fourth Street, Suite 800, Anchorage, Alaska 99501.

As to Exxon:

Office of the Secretary, Exxon Corporation, 225 E. John W. Carpenter Fwy., Irving, Texas 75063-2396. General Counsel, Exxon Corporation, 225 E. John W. Carpenter Fwy., Irving, Texas 75063-2396.

Mr. A. Himer, President, Exxon Shipping Company, P.O. Box 1512, Houston, Texas 77251-1512.

As to Exxon Pipeline:

Mr. D. G. Warner, President, Exxon Pipeline Company, P.O. Box 2230, Houston, Texas 77253-2230.

Process for Entry of Agreement

37. Notice of this Agreement shall be published in the Federal Register, and the Agreement shall be subject to public comment for a period of thirty (30) days after such publication. Each Government reserves the right to withdraw its consent to the Agreement, within fifteen (15) days following the close of the public comment period, if comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate or if, before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written. If the United States or the State withdraws its consent to the Agreement in accordance with this Paragraph, the Agreement shall be deemed terminated as of the date of the notice of withdrawal of consent.

38. Any Party may elect to terminate this Agreement if: (1) any court of competent jurisdiction disapproves or overturns any plea agreement entered into between the United States and Exxon in *United States v. Exxon Shipping Co.*, No. A80-015 CR (D. Alaska); (2) a final judicial determination is made by such court that this Agreement will not be approved and entered without modification; or (3) such court modifies this Agreement in a manner materially adverse to that Party, or interprets a material provision of this Agreement in a manner inconsistent with the Parties' intentions, prior to or contemporaneously with a final judicial determination approving the Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the

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preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph and Paragraph 37, "termination" and "terminates" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement, provided, that termination shall not affect or impair Exxon's rights to obtain return of any deposits made into the Escrow pursuant to the final sentence of Paragraph 8, and provided further, that the provisions of Paragraphs 11 and 12, relating to clean-up, shall continue in effect notwithstanding any termination.

Retention of Jurisdiction

38. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

40. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

41. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

The foregoing Agreement and Consent Decree among plaintiffs the United States of America and the State of Alaska and defendants Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, is hereby approved and entered this ____ day of _____, 1991.

Honorable H. Russell Holland,
United States District Judge, District of Alaska.
[FR Doc. 91-2814 Filed 3-15-91; 1:17 pm]
BILLING CODE 9730-10-01

DEPARTMENT OF COMMERCE

Memorandum of Agreement Between the United States and the State of Alaska Concerning the Exxon Valdez Oil Spill

Assistant National Oceanic and Atmospheric Administration,
Department of Agriculture, Department of the Interior, the Environmental

Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska, the United States and Exxon Corporation have reached agreement on a settlement resolving all civil and criminal claims of the respective governments arising from the March 24, 1989 Exxon Valdez oil spill. In addition the United States and the State of Alaska have entered into a Memorandum of Agreement (MOA) implementing certain terms of the settlement agreement. Comment is sought concerning the MOA, which is published together with this Notice. Comments must be received no later than (April 18, 1991.)

Abstract: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, room 5618, 14th Street and Constitution Avenue, NW, Washington, DC 20503, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Hansen, Attorney General's Office, State of Alaska, 1001 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20503, telephone (202) 277-1400.

SUPPLEMENTARY INFORMATION: The March 24-25, 1989, grounding of the tanker Exxon Valdez resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The Exxon Valdez Oil Spill affected the environment and natural resources in the Sound and along the coasts of Kodiak, Kani Peninsula and the Alaska Peninsula.

As indicated in a separate FR notice, representatives of the State of Alaska, United States and Exxon Corporation have entered into a settlement agreement resolving all civil claims between the parties. The settlement provided for Exxon to provide funds to be used to conduct response actions, scientific studies and implement restoration activities for the restoration

of the environment. This proposed MOA resolves claims of the State of Alaska and the United States concerning natural resource recoveries regarding the oil spill and outlines how certain terms of the Settlement Agreement will be implemented by the State of Alaska and the United States. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited regarding the nature and extent of appropriate public involvement in the restoration process.

In summary, the MOA establishes that all monies received through the proposed Settlement Agreement and Consent Decree will be managed jointly by Federal and State natural resource trustees except for certain allowed expenses identified in the MOA. The Federal and State natural resource trustees shall act as co-trustees of the affected environment. As such, all decisions concerning the use of damage recoveries will be made by unanimous agreement of the State and Federal natural resource trustees.

The MOA is not intended to affect or impair the rights and obligations of persons or entities not parties to the MOA.

Dated March 14, 1991.

Guyana E. Cook

Proposed MOA Between State of Alaska and the United States

Richard E. Stewart, Assistant Attorney General, Environment & Natural Resources, Division.

Stuart M. Gerson, Assistant Attorney General, Civil Division, U.S. Department of Justice, Washington, DC 20503.

Attorneys for Plaintiff United States of America

Charles E. Cole, Attorney General, State of Alaska, P.O. Box 11, Juneau, Alaska 99801.

Attorney for Plaintiff State of Alaska

United States District Court District of Alaska

United States of America, Plaintiff v. State of Alaska, Defendant.

Civil Action No.

The State of Alaska, Plaintiff v. United States of America, Defendant.

Civil Action No.

Memorandum of Agreement and Consent Decree

This Memorandum of Agreement and Consent Decree (the MOA) is made and entered into by the United States of America (United States) and the State of

Alaska (State) (collectively referred to as the Governments).

Introduction

Whereas, Section 311 of the Clean Water Act, 33 U.S.C. 1321, establishes liability to the United States and to States for injury, loss or destruction to natural resources resulting from the discharge of oil or the release of hazardous substances or both;

Whereas, The United States and the State are trustees and/or co-trustees for natural resources injured, lost or destroyed as a result of the Exxon Valdez Oil Spill;

Whereas, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, the National Contingency Plan, 40 CFR 300.81(a), and the Natural Resource Damage Assessment Regulations, 43 CFR 11.32(a)(1)(ii), provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources;

Whereas, The Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce, have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities related to the natural resources injured, lost or destroyed as a result of the Oil Spill, and the United States Environmental Protection Agency (EPA) has been designated by the President of the United States to coordinate restoration activities on behalf of the United States;

Whereas, The Commissioners of the State Departments of Fish and Game and Environmental Conservation and the Attorney General of the State of Alaska have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities relating to the natural resources injured, lost or destroyed as a result of the Oil Spill;

Whereas, The United States Coast Guard, an agency of the United States Department of Transportation, is the pre-designated Federal On-Scene Coordinator (FOSC) to direct response efforts and to coordinate all other efforts at the scene of the Oil Spill, pursuant to the Clean Water Act, 33 U.S.C. 1321, and the National Contingency Plan, 40 CFR 300, and is coordinating its efforts with the Federal Trustees in accordance with the National Contingency Plan;

Whereas, The State Department of Environmental Conservation is the State On-Scene Coordinator (SOSC) to direct containment and cleanup of discharged oil pursuant to AS 46.04.020;

Whereas, The United States Department of Justice (Justice) and the Department of Law for the State of Alaska (Law) have constitutional and statutory responsibilities for litigation management and specifically for prosecuting claims for damages for injury, loss or destruction to the natural resources affected by the Oil Spill;

Whereas, All of the above state and federal entities have determined that it is in furtherance of their statutory and trust responsibilities to assure that all injuries, loss or destruction to state and federal natural resources are fully compensated and to assure that such compensation is used in accordance with law;

Whereas, The United States and the State have entered into an Agreement and Consent Decree ("Agreement and Consent Decree") with Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company (collectively referred to as Exxon) which provides for the recovery of compensation for damages resulting from the Oil Spill, including natural resource damages;

Whereas, The United States and the State have claims against one another with respect to their respective shares in recoveries from Exxon for compensation for damages resulting from the Oil Spill, including natural resource damages, and have determined that entering into this MOA is the most effective means of resolving those claims and will best allow them to fulfill their duties as Trustees;

Whereas, On or before the lodging of this MOA with the Court, the United States and the State will each have filed a complaint in this Court against the other Government asserting civil claims relating to their respective shares in recoveries from Exxon for compensation for damages arising from the Oil Spill (Governments' Complaints);

Whereas, All of these state and federal entities have determined that the procedures set forth in this Memorandum of Agreement (MOA) will best enable them to fulfill their duties as trustees to assess injuries and to restore, replace, rehabilitate, enhance or otherwise acquire the equivalent of the natural resources injured, lost or destroyed as a result of the Oil Spill;

Now Therefore, In consideration of their mutual promises, the United States, acting through the United States Departments of the Interior, Agriculture, Transportation, and Justice, NOAA, and

EPA, and the State of Alaska, acting through the State Departments of Fish and Game, Environmental Conservation, and Law (together "the Governments") have agreed to the following terms and conditions, which shall be binding on both Governments. It is hereby *Ordered, Adjudged, and Decreed* as follows:

I.—Jurisdiction

The Court has jurisdiction over the subject matter of the claims set forth in the Governments' Complaints and over the parties of this MOA pursuant to, among other authorities, 33 U.S.C. 1321, 1323 and 1324, and section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f).

II.—Definitions

For purposes of this MOA,

A. *Allowed Expenses* means reasonable, unreimbursed costs obligated on or before the effective date of the Agreement and Consent Decree for the planning, conduct, evaluation and coordination of natural resource damage assessment and restoration pursued by the Governments with respect to the Oil Spill or by the State for experts and counsel in connection with the preparation of the Oil Spill Litigation and the unreimbursed response and cleanup costs incurred by the Governments on or before December 31, 1990.

B. *CERCLA* means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. as amended.

C. *Clean Water Act* means Federal Water Pollution Control Act, 33 U.S.C. 1321-1378, as amended.

D. *Joint use* means use of natural resource damage recoveries by the Governments in such a manner as is agreed upon by the Governments in accordance with Article V of this MOA.

E. *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300.

F. *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State.

G. *Natural resource damage recovery* means those monies paid to the Governments by Exxon which are received in settlement of natural resource damage claims arising from the Oil Spill and consists of the settlement

monies not reimbursed to the Governments either as (1) allowed expenses or (2) in the case of response and cleanup costs, those unreimbursed costs incurred by either Government after December 31, 1990 and certified by the FOSC with respect to the FOSC directed costs and by the SOSC with respect to SOSC directed costs. The term includes all interest accrued on any such recoveries.

H. *Oil Spill* means the grounding of the T/V Exxon Valdez on Bligh Reef in Prince William Sound, Alaska on the night of March 23-24, 1989 and the resulting oil spill.

I. *Oil Spill Litigation* means any past, present or future civil judicial or administrative proceeding by the Governments against Exxon or by Exxon against the Governments relating to or arising out of the Oil Spill.

J. *Restore or Restoration* means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resources injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes, injury assessment, restoration, replacement and enhancement of resources and acquisition of equivalent resources and services.

K. *Settlement monies* means all monies received from Exxon under the Agreement and Consent Decree between the Governments and Exxon in settlement of the Oil Spill Litigation, exclusive of amounts credited to Exxon for cleanup costs incurred after December 31, 1990.

L. *Trustees* means the officials now or hereafter designated by the President of the United States and the Governor of the State of Alaska to act as trustees, for purposes of CERCLA and the Clean Water Act, of natural resources injured, lost or destroyed as a result of the Oil Spill.

III.—Co-Trusteeship

A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries from Exxon for the benefit of natural resources injured, lost or destroyed as a result of the Oil Spill.

B. Nothing in this MOA shall be deemed an admission of law or fact by either Government concerning ownership, right, title, or interest in or management or control authority over natural resources or the right to recover for injury to such resources. Except in

matters concerning or relating to enforcement of this MOA and the settlement of the Oil Spill Litigation, the Governments agree that this MOA may not be used by one Government against the other for any reason.

C. Nothing in this MOA shall be construed to affect or impair in any manner the rights and obligations, if any, of any entities or persons not parties to this MOA, including without limitation:

1. The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources affected by the Oil Spill and expending any proceeds derived therefrom;

2. The rights and obligations, if any, of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

3. The rights and obligations, if any, of the United States or the State or both relating to such Alaska Native villages and the entities or persons referred to in subparagraph 2 above.

IV.—Organization

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of the natural resource damage recoveries obtained by the Governments, including all decisions regarding the planning, evaluation, and allocation of available funds, the planning, evaluation, and conduct of injury assessments, the planning, evaluation and conduct of restoration activities, and the coordination thereof, shall be made by the unanimous agreement of the Trustees. Such decisions, on the part of the Federal Trustees, shall be made in consultation with EPA.

2. The Governments shall cooperate in good faith to establish a joint trust fund for purposes of receiving, depositing, holding, disbursing and managing all natural resource damage recoveries obtained or received by the Governments in connection with settlement of the Oil Spill Litigation in accordance with paragraph V.A. The joint trust fund shall be established in the Registry of the United States District Court for the District of Alaska or as otherwise determined by stipulation of the Governments and order of the court.

3. If the Trustees cannot reach unanimous agreement on a decision pursuant to paragraph A.1. of this Article, and either Government so

certifies, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any time, the Governments may, by mutual agreement, submit any such matter or dispute to non-binding mediation or other means of conflict resolution.

4. The Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph IV.A.1.

5. The Trustees shall agree to an organizational structure for decisionmaking under this MOA within 90 days from the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

B. Injury Assessment and Restoration Process

1. Nothing in this MOA limits or affects the right of each Government unilaterally to perform any natural resource injury assessment or restoration activity, in addition to the cooperative injury assessment and restoration process contemplated in this MOA, from funds other than natural resource damage recoveries as defined in paragraph G of Article II.

2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by the Natural Resource Damage Assessment Regulations codified at 48 CFR Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from designating, pursuant to applicable law, an official or officials to exercise any or all rights or obligations of their respective Governments under this MOA. Neither Government shall object to any designation of such officials, or to any transfer of Trustee status from one official to another, by the other Government provided that, in no event shall either Government designate more than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such officials or of successor Trustees by either Government shall not affect the enforceability of this MOA.

C. Role of the Environmental Protection Agency

The Governments acknowledge that the President has assigned to EPA the role of advising the Federal Trustees and coordinating, on behalf of the

Federal Government, the long-term restoration of natural resources injured, lost or destroyed as a result of the Oil Spill.

V.—Distribution of Settlement Monies

A. Joint Use of Natural Resource Damage Recoveries

The Governments shall jointly use all natural resource damage recoveries for purposes of restoring, replacing, enhancing, rehabilitating or otherwise acquiring the equivalent of natural resources injured as a result of the Oil Spill and the reduced or lost services provided by such resources. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. All natural resource damage recoveries shall be placed in the joint trust fund for use in accordance with the terms and conditions of this MOA.

B. Reimbursement of Allowed Expenses and Response Costs

Up to 72 million dollars for the State and up to 63 million dollars for the United States shall be available from the settlement monies, at the election of each Government, for reimbursement of allowed expenses. In addition, all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990 and certified by either the POSC or SOBC shall be reimbursed out of the settlement monies. Reimbursements of allowed expenses described in this paragraph shall be paid directly to the Governments by Exxon over a period of 8 years.

C. Except as otherwise provided in this MOA, the Governments agree that all natural resource damage recoveries will be expended on restoration of natural resources in Alaska unless the Trustees determine, in accordance with Article IV, paragraph A.1. hereof, that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska and services provided by such resources.

D. Nothing in this MOA shall be construed as obligating the Governments to expend any monies except to the extent funds are appropriated or are otherwise lawfully available.

VI.—Scientific Studies

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the

scientific studies approved by the Trustees for the 1991 field season.

VII.—Covenants Not To Sue

A. Each Government covenants not to sue or to take other legal action against the other Government with respect to the following matters:

1. The authority of either Government to enter into and comply with the terms of this MOA.

2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities with respect to the Oil Spill in accordance with this MOA.

3. Any and all civil claims (including, but not limited to, cross-claims, counter-claims, and third party-claims) it may have against the other Government arising from any activities, actions, or omissions by that other Government relating to or in response to the Oil Spill which occurred prior to the execution of this MOA, other than claims to enforce this MOA.

B. Solely for purposes of the Oil Spill Litigation and any other proceedings relating to the determination, recovery, or use of natural resource damages resulting from the Oil Spill, each Government shall be entitled to assert in any such proceeding, without contradiction by the other Government, that it is a co-Trustee with the other Government over any or all of the natural resources injured, lost or destroyed as a result of the Oil Spill, and each Government covenants not to sue the other with respect to, or to take any other legal action to determine, the scope or proportionate share of either Government's ownership, rights, title or interest in or management, control, or trusteeship authority over any of the natural resources injured, lost or destroyed as a result of the Oil Spill.

C. Notwithstanding anything in this Article, each Government reserves the right to intervene or otherwise to participate in any legal proceeding concerning the claims of a third party with respect to the scope of either Government's Trusteeship and waives any objection to such intervention or participation by the other Government.

D. If the Governments become adverse to each other in the course of the Oil Spill Litigation, this MOA shall remain in effect.

E. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if both Governments are sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree to cooperate fully in the defense of

such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

F. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if one of the Governments is sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree the non-sued Government shall cooperate fully in the defense of the sued Government, including intervening as a party defendant or consenting to its being impleaded, if necessary. If the non-sued Government thereby becomes a party to the action, the Governments agree not to assert cross-claims against each other, to cooperate fully in the defense of such action, and not to take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

VIII.—Enforcement of Agreement and Governing Law and Venue

A. This MOA shall be enforceable by the United States District Court for the District of Alaska, which Court shall retain jurisdiction of this matter for the purpose of entering such further orders, directions, or relief as may be appropriate for the construction, implementation, or enforcement of this MOA.

B. If this MOA is subsequently and finally determined to be invalid, this MOA shall terminate and the disposition to the Governments of any remaining natural resource damage recoveries shall be determined by further agreement of the Governments or by an allocation of such recoveries by the United States District Court for the District of Alaska, subject to appellate review in accordance with applicable law.

IX.—Multiple Copies and Effective Date

This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Except for the provisions contained in Article VI which shall be effective as of the date this MOA is signed by all the signatories hereto, this MOA shall be effective as of the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

X.—Integration and Mergers

A. This MOA and the Agreement and Consent Decree between the

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Governments and Exxon constitute the entire agreement between the United States and the State as to the matters addressed herein, and there exists no other agreement of any kind which is inconsistent with this MOA with respect to the subjects addressed in this MOA; provided, that the agreement reached among the Trustees as to disbursements of the original \$15 million paid by Exxon in April, 1989 shall remain in full force and effect.

XI.—Termination

The obligations of the parties under this MOA shall terminate sixteen years from the effective date of this MOA, or upon termination of the Agreement and Consent Decree, unless otherwise agreed by the Parties.

XII.—Judicial Review

This MOA creates no rights of action on the part of any persons not signatory to this MOA and shall not, except as provided in Article VII, be subject to judicial review.

This MOA is executed at the time and on the dates set forth below.

XIII.—Miscellaneous

A. This MOA can be modified only

with the express written consent of the Parties to the MOA and the approval of the Court.

B. Each undersigned representative of the Parties to this MOA certifies that he or she is fully authorized to enter into the terms and conditions of this MOA and to execute and legally bind each Party to this MOA.

The foregoing Memorandum of Agreement and Consent Decree among the United States of America and the State of Alaska is hereby Approved and Entered this ____ day of _____, 1991.

Honorable H. Russell Holland,
United States District Judge, District of Alaska.

(Memorandum of Agreement and Consent Decree in *United States v. State of Alaska*. (D. Alaska))

For the United States of America

Date: _____

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530.

Stuart M. Gerson,

Assistant Attorney General, Civil Division,

U.S. Department of Justice, Washington, DC 20530.

Thomas L. Sansonetti,

Solicitor, U.S. Department of the Interior.

Alan Charles Raul,

General Counsel, U.S. Department of Agriculture.

Samuel K. Skinner,

Secretary, U.S. Department of Transportation.

John A. Knauss,

Under Secretary for Oceans and Administration, National Oceanic and Atmospheric Administration, United States Department of Commerce.

William K. Reilly,

Administrator, U.S. Environmental Protection Agency.

Date: _____

For the State of Alaska

Walter J. Hickel,

Governor, State of Alaska,

Charles E. Cole,

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811.

Carl Reiser,

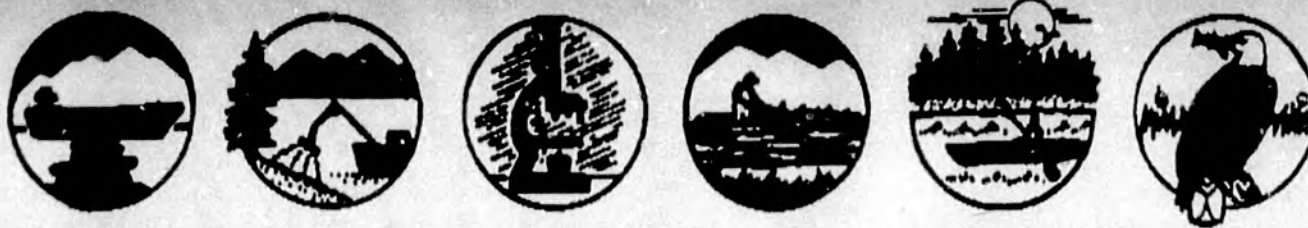
Commissioner, Department of Fish and Game.

John A. Sander,

Commissioner, Department of Environmental Conservation.

[FR Doc. 91-0815 Filed 3-15-91; 1:17 pm]

50106 0000 2010-12-11



OIL SPILL RESTORATION PLANNING OFFICE

437 E Street, Suite 301 Anchorage, Alaska 99501
(907) 271-2461 FAX: (907) 271-2467

March 7, 1991

Dear Concerned Citizen:

Based on your past interest in the planning of restoration following the Exxon Valdez Oil Spill, we are enclosing, for your information, a copy of this recent notice announcing a draft 1991 Restoration Work Plan. The Restoration Planning Work Group is interested in your continued input in this process and look forward to receiving your comments. On behalf of the Work Group, we appreciate your interest.

Sincerely,

Stanley E. Senner
Alaska Department of Fish & Game

Linda R. Comercl
U.S. Environmental Protection Agency

*Federal
Register*

United States Federal Register

Friday
March 1, 1991

Part VII

Environmental Protection Agency

Prince William Sound and Gulf of Alaska;
Draft 1991 Restoration Work Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3910-0]

Prince William Sound and Gulf of Alaska Restoration

AGENCY: Environmental Protection Agency and the Alaska Department of Law.

ACTION: Notice.

SUMMARY

The U.S. Department of the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Department of Law (ADL) are jointly announcing the release of a draft 1991 Restoration Work Plan for the Prince William Sound, lower Cook Inlet, and the Gulf of Alaska from the Exxon Valdez oil spill. The draft 1991 Restoration Work Plan is a comprehensive plan for restoration activities in the areas affected by the Exxon Valdez oil spill. The plan is being developed by the Trustee Council, an Alaska-based intergovernmental group charged by the Trustees with managing the natural resources damage assessment and restoration program for 1991. Restoration activities in 1991 and subsequent years will be undertaken as appropriate, based on the Trustees' increasing understanding of resource injuries and other relevant considerations. Implementation activities in 1991 will not foreclose future restoration options and are not intended to be a complete or comprehensive restoration program. Implementation of all restoration activities will follow appropriate procedures for compliance with applicable State and Federal laws and regulations. The President of the United States has designated EPA to coordinate, on behalf of the Federal Trustees, the long-term restoration of Prince William Sound and other areas affected by the Exxon Valdez oil spill. Accordingly, the EPA Administrator is issuing this document as an action under the Clean Water Act and the Alaska Attorney General is working in concert with the EPA under State authority. Although preparation of the draft 1991 Restoration Work Plan is not required under the Clean Water Act or the laws of Alaska, the Trustees and EPA have chosen to present this document to obtain public comment and to invite suggestions about other restoration activities that should be considered by the State and Federal governments. The public is invited to comment and to suggest other activities that should be considered by the Trustees in preparing this draft 1991 Restoration Work Plan. Notice of intent to take this action was published in the Federal Register in November (55 FR 48160, November 19, 1990).

DATES: The Federal and State of Alaska governments will accept comments through April 15, 1991.

ADDRESSES: Written comments should be submitted to: Secretary, Restoration Planning Work Group, Oil Spill Restoration Planning Office, 437 "E" Street, Suite 301, Anchorage, Alaska 99501, Phone (907) 271-2461.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin at (202) 245-4373.

SUPPLEMENTARY INFORMATION:

I. Introduction

Purpose

The U.S. Departments of Agriculture (DOA) and the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Attorney General, the Alaska Departments of Fish and Game and Environmental Conservation, (hereafter referred to as "the Trustees") and the Environmental Protection Agency (EPA) desire to implement restoration

activities in the areas affected by the Exxon Valdez oil spill as soon as practicable. This Notice contains a draft 1991 Restoration Work Plan comprised of restoration planning and initial implementation activities under consideration by the Trustee Council, an Alaska-based intergovernmental group charged by the Trustees with managing the natural resources damage assessment and restoration program for 1991. Restoration activities in 1991 and subsequent years will be undertaken as appropriate, based on the Trustees' increasing understanding of resource injuries and other relevant considerations. Implementation activities in 1991 will not foreclose future restoration options and are not intended to be a complete or comprehensive restoration program. Implementation of all restoration activities will follow appropriate procedures for compliance with applicable State and Federal laws and regulations. The President of the United States has designated EPA to coordinate, on behalf of the Federal Trustees, the long-term restoration of Prince William Sound and other areas affected by the Exxon Valdez oil spill. Accordingly, the EPA Administrator is issuing this document as an action under the Clean Water Act and the Alaska Attorney General is working in concert with the EPA under State authority.

Although preparation of the draft 1991 Restoration Work Plan is not required under the Clean Water Act or the laws of Alaska, the Trustees and EPA have chosen to present this document to obtain public comment and to invite suggestions about other restoration activities that should be considered by the State and Federal governments. The public is also invited to comment on the overall process the governments intend to follow in enhancing environmental recovery in Prince William Sound, lower Cook Inlet, and the Gulf of Alaska and achieving restoration of affected resources and services after the Exxon Valdez oil spill.

The Trustees expect to complete the assessment of damages, determine liability, and collect funds from the responsible parties before they prepare a final Restoration Plan. Although the Trustees wish to resolve damage assessment and liability issues as promptly as possible, it is not possible to predict when this will occur. Considering this uncertainty, in cases where the nature of the resource injury, loss or destruction (hereinafter referred to as "injury") is reasonably clear, and where no alternatives would be foreclosed, it may be desirable to begin implementation of certain restoration

activities prior to a final Restoration Plan. As a result, the Trustees are considering implementation in 1991 of activities described in section III of this notice. Other activities related to restoration, such as feasibility studies, technical support projects, and monitoring (see sections 2 and 3), will be considered in the following months and will be presented to the public for review and comment. The Trustees also expect to publish a revised 1991 Restoration Work Plan in the Federal Register in Spring 1991. The Trustees also expect subsequently to publish notice of and to solicit public comment on detailed descriptions for each of the restoration projects selected for implementation in 1991.

Organization of this Notice

This notice has three main sections: I. Introduction, II. Restoration Planning, and III. Draft 1991 Restoration Work Plan. The Introduction presents a synopsis of the purpose of this notice and background information. Section II, Restoration Planning, describes the overall approach to restoration and reports on the planning activities conducted in 1990. In Section III, this notice provides information on restoration planning and initial implementation actions under consideration for 1991.

Further Information

Further information about the Exxon Valdez oil spill, the damage assessment studies, and restoration planning activities is contained in the documents referenced at the end of this notice and in the Federal Register published on November 19, 1990 (55 FR 48160). These documents and other information on restoration and damage assessment are available from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501.

II. Restoration Planning

A. The Planning Process

The Trustees' and EPA's restoration planning activities are designed to determine appropriate ways to restore natural resources and services injured by the Exxon Valdez oil spill. Restoration builds upon the spill response and damage assessment process by planning for, and then implementing, activities to restore the environment to its baseline condition.

The Natural Resource Damage Assessment (NRDA) regulations [43 CFR part 11], which implement certain provisions of CERCLA and CWA, define "restoration" or "rehabilitation" as "... actions undertaken [in addition

to response actions], to return an injured resource to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided * * *. This definition of restoration from the NRDA regulations is provided here for informational purposes. The NRDA regulations are not mandatory but do provide a model for restoration planning.

The Trustees have determined that restoration after the *Exxon Valdez* oil spill should be subject to continuing review as information is developed about injuries and possible restoration opportunities. The Trustees expect that each year's work will build on the last, and that all information pertinent to the *Exxon Valdez* oil spill will be examined in the course of the restoration process.

1. Steps in the Planning Process

The restoration planning process is a dynamic and evolving process that will generally include the following steps:

a. Determining the Need for Restoration.

The need for restoration depends on the nature and extent of natural resources injured, lost, or destroyed and the adequacy of natural recovery. The primary information sources regarding resource injury, loss, or destruction are the studies conducted by State and Federal agencies as part of the natural resources damage assessment. These studies are described in the 1989 and 1990 *Exxon Valdez* damage assessment plans (see the documents referenced at the end of this notice). Other sources of information include public comments, data gathered as part of the oil spill response, and other studies conducted by government agencies outside of the damage assessment process.

b. Identifying Potential Restoration Activities.

For any injury, there are three possible types of restoration which may be used singularly or in any combination:

Direct restoration refers to measures in addition to response actions, usually taken on site, to directly restore or rehabilitate an injured, lost, or destroyed resource or otherwise to promote or enhance the recovery of such resources;

Replacement refers to substituting one resource for an injured, lost, or destroyed resource of the same or similar type; and

Acquisition of equivalent resources means to compensate for an injured, lost, or destroyed resource by substituting another resource that provides the same or substantially similar services as the injured resource.

Determining the adequacy of natural recovery is fundamental to the choice of a restoration activity. In some cases the Trustees may determine that it is most appropriate to allow natural recovery to proceed without further intervention by man (i.e., no action alternative). The definition of direct restoration includes any administrative actions that may be taken by the Federal or State agencies, such as limiting certain activities in the affected areas, to promote recovery of injured resources.

c. Evaluating Potential Restoration Alternatives.

Evaluation of potential restoration alternatives will consider such factors as:

- Nature and extent of injury;
- Adequacy of natural recovery;
- Technical feasibility;
- Net environmental benefit (including indirect impacts);
- Cost effectiveness;
- Reasonableness of cost of the restoration project in light of the value or ecological significance of the resource; and
- Results of actual or planned response actions.

Some restoration proposals may be readily evaluated. In other cases additional information, for example, biological, ecological, or resource assessment data, will be gathered to support the evaluation process. The goal of the Trustees and EPA is to conduct restoration planning for the recovery of the injured environment as a whole. In general, priority will be given to alternatives which benefit multiple rather than single species or resources. By necessity, however, individual elements of the restoration program may be species- or resource-specific.

d. Recommending and Implementing Restoration Activities on a Continuing Basis.

As information about injuries, resources recovery, restoration methods or costs becomes available, certain activities may be recommended and carried out in advance of the receipt of funds for restoration from the parties responsible for the oil spill (see Section III, below).

e. Presenting a Damage Claim to Parties Responsible for the Oil Spill and Receiving Funds for Restoration.

The damage assessment process initiated by the Trustees is designed to identify and quantify specific resource injuries and determine restoration costs and other corresponding monetary values. The Federal and State governments will present their claims for these amounts to the parties responsible for the oil spill as required by Federal and State law.

f. Preparing and Implementing a Final Restoration Plan.

When the full amount

of restoration funds that will be recovered has been resolved, final determinations will be made concerning the nature and scope of the remaining phases of restoration.

g. Evaluating the Effectiveness of Restoration Measures, and Recommending Additional Actions.

Implementation of restoration activities and the success of resource recovery will be monitored and evaluated based on standards appropriate to individual projects and resources to verify that restoration goals have been met. Long-term monitoring activities also may be implemented to verify that the affected area is recovering.

Restoration planning, as outlined above, is underway; the overall pace of restoration is dependent on the availability of information to determine injury and the resolution of a claim for damages. Implementation of restoration and monitoring activities may take a number of years. The Trustees and EPA intend to follow the restoration planning process as outlined above in order to accelerate the restoration of the Prince William Sound-Gulf of Alaska ecosystem and the affected natural resources and services.

2. Public Participation

The Trustees and EPA intend to encourage, provide for, and be responsive to public participation and review during the restoration planning process. Carrying out this intent, however, is complicated by the need for confidentiality with respect to damage assessment information due to pending or possible future litigation with the parties responsible for the *Exxon Valdez* oil spill. Notwithstanding these considerations, the Trustees intend to provide an opportunity for meaningful public review and comment on all restoration implementation activities.

In September of 1990, the Oil Spill Public Information Center was opened in Anchorage to provide the public with scientific data and other information related to the 1989 *Exxon Valdez* oil spill. The Trustees will continue to place information in the center as it becomes available.

3. Restoration Planning Activities in 1990

The Trustees and EPA began to solicit public opinion in March 1990 with a symposium on restoration in Anchorage, Alaska. In April and May of 1990, eight public scoping meetings were held throughout southcentral Alaska to ascertain the public's priorities for the restoration program. For a detailed description of these meetings, see the

documents referenced at the end of this notice. In addition to these public meetings, the governments have communicated individually with such constituencies as Native corporations and villages, fishing groups, and environmental organizations.

To gather specific scientific input for the restoration planning process, technical workshops were held in Anchorage in April 1990. Follow-up meetings were held in October and November 1990. Participants included members of the Restoration Planning Work Group (the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources, and the U.S. Departments of Interior and Agriculture, the National Oceanic and Atmospheric Administration, and the U.S. Environmental Protection Agency) Federal and State resource managers, and scientists and technical experts under contract to the governments. Due to the necessary discussion of litigation-sensitive damage assessment information, these workshops were closed to the general public.

The Restoration Planning Work Group completed a preliminary literature search, which identified articles and other published material concerning techniques for ecological restoration following oil spills. Approximately 200 publications were acquired for detailed review and are listed in the August 1990 Progress Report.

The Trustees and EPA initiated several small-scale field studies to evaluate the feasibility of restoration techniques. Results from these studies will help determine the costs and effectiveness of full-scale restoration projects. Several technical support studies were also initiated to provide information needed to evaluate or carry out some potential restoration activities. These studies are described in the "State/Federal Natural Resources Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill," August 1990. The 1990 studies and preliminary results are summarized below.

B. 1990 Restoration Feasibility Studies

1. Reestablishment of *Fucus* in Rocky Intertidal Ecosystems

Agencies: U.S. Environmental Protection Agency, U.S. Forest Service.

Early observations indicated that *Fucus*, a marine plant (rockweed) found on rocky shorelines in the intertidal zone throughout the oil spill area, was extensively damaged by both the spilled oil and cleanup efforts. If the natural recovery of *Fucus* could be significantly accelerated or enhanced it would

benefit the recovery of associated flora and fauna on intertidal rocky shores.

Specific objectives of this study were to identify the causes of variation in *Fucus* recovery at and near Herring Bay, Knight Island in Prince William Sound; to document the effects of alternative cleaning methods on *Fucus*; and to test the feasibility of enhancing the reestablishment of *Fucus*. Although results are preliminary at this time, it appears that *Fucus* recovers most slowly at the sites that were intensively cleaned and that almost no recovery occurs where tar cover persists.

2. Reestablishment of Critical Fauna in Rocky Intertidal Ecosystems

Agencies: U.S. Forest Service, U.S. Environmental Protection Agency.

This feasibility study was designed to compare the rates of faunal recovery in rocky intertidal communities, and to demonstrate the feasibility of restoration of these communities by enhancing recolonization rates for such key species as limpets and starfish. Recolonization rates for these organisms and for the rockweed, *Fucus*, may limit the natural rates of recovery for the entire community.

Parameters examined included the presence or absence of common intertidal species on impacted and reference sites, population dynamics of several species of invertebrates, larval settlement on oiled versus non-oiled surfaces, and differences in algal grazing by limpets between oiled and referenced sites. Preliminary results indicate that heavy predation of several species of transplanted invertebrates was probably due to the lack of cover usually provided by *Fucus*.

3. Identification of Potential Sites for Stabilization and Restoration With Beach Wildrye

Lead Agency: Alaska Department of Natural Resources, United States Forest Service.

This study was designed to identify sites at which damage to beach wildrye grass has occurred and to recommend restoration measures. This species was affected by both spilled oil and subsequent cleanup activities. Beach wildrye grass is important in the prevention of erosion in the coastal environment and is a key component of supratidal habitats in locations throughout the oil spill area. Erosion resulting from loss of beach wildrye can lead to the destabilization and degradation of wildlife habitats and of cultural and recreational sites. Survey work in 1990 in Prince William Sound indicated injury to several beach rye communities. Following confirmation in the 1991 spring shoreline assessment,

restoration activities can be initiated (see Restoration Project 1 summary).

4. Identification of Upland Habitats Used by Wildlife Affected by the Oil Spill

Agencies: U.S. Fish and Wildlife Service, Alaska Department of Fish and Game.

A diversity of birds, mammals, and other animals were killed by the spill or injured by contamination of prey and habitats. Many of these species are dependent on aquatic or intertidal habitats for activities such as feeding and resting, but many also use upland habitats. Protection of upland habitats from further degradation may reduce cumulative effects on injured fish and wildlife populations, and thereby help them recover from the effects of the oil spill. This study focused specifically on marbled murrelets and harlequin ducks, two species known to have been affected by the spill and known to use upland habitats.

Based on surveys of 140 streams, preliminary results of the harlequin duck study indicate that this species nests along larger-than-average anadromous fish streams, with moderate gradients and clear waters. Preliminary results on murrelets suggest that murrelets use slopes facing north or west, and inland areas at the heads of bays as opposed to the outer peninsulas. Open bog meadows, especially at the heads of bays, appear to be used as flight corridors to upper wooded areas.

5. Land Status, Uses, and Management Plans in Relation to Natural Resources and Services

Agencies: Alaska Department of Natural Resources, U.S. Forest Service, U.S. National Park Service, Alaska Department of Fish and Game.

The objective of this study is to locate, categorize, evaluate, and determine the availability of maps, management plans, and other resource documents relevant to restoration planning throughout the oil-spill region. Resource materials identified will assist in planning for and implementing site-specific restoration activities, including direct restoration, replacement, and the acquisition of equivalent resources.

To date, a variety of documents, maps, and management plans have been identified and are being evaluated; other resource materials are being located. This preliminary project will be completed in Spring 1991. A second phase, directly supporting the proposed Restoration Project Number 4, Protection of Strategic Fish and Wildlife

Habitats and Recreation Sites, is under consideration.

C. 1990 Technical Support Projects

1. Peer Reviewer Process for Restoration Feasibility Studies

Agencies: Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency.

This project provided funds to ensure that scientists with expertise on natural resource restoration were available to provide peer review of restoration feasibility projects and other restoration planning studies and activities.

2. Assessment of Beach Segment Survey Data

Agencies: Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, U.S. Forest Service, U.S. Park Service, U.S. Environmental Protection Agency.

The objective of this project is to review and summarize beach survey information (obtained through oil spill response activities) to assist in planning for and implementing site-specific restoration activities, particularly in the area of direct restoration. This study was initiated late in 1990 and continues to date.

A master database is being created from that portion of the beach surveys relevant to restoration. The primary sources of this information are the Alaska Departments of Natural Resources and Environmental Conservation. Data from local and regional governments as well as non-governmental sources will also be reviewed and integrated into the system as appropriate. This preliminary project will be completed in Spring 1991.

3. Development of Potential Feasibility Studies for 1991 Agencies: Alaska Department of Fish and Game, U.S. Environmental Protection Agency, Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, U.S. Forest Service, U.S. Department of Fish and Game, U.S. National Park Service, U.S. National Oceanic and Atmospheric Administration.

This project provided for the orderly development of additional feasibility studies including: (a) Monitoring "natural" recoveries; (b) pink salmon stock identification; (c) herring stock identification/spawning site inventory;

(d) artificial reefs for fish and shellfish; (e) alternative recreation sites and facilities; (f) historic sites and artifacts; and (g) availability of forage fish. Currently feasibility study proposals are under consideration for all of the above themes.

III. 1991 Restoration Work Plan

The Trustees are currently developing and evaluating restoration planning and implementation activities, which will be described in the 1991 Restoration Work Plan to be published in the Federal Register later in the Spring. Planning activities will include feasibility studies, technical support studies, and natural recovery monitoring which will be made available to the public for review and comment. Implementation activities that are now under consideration are presented in this section. The Trustees and EPA are asking, through this notice, for public comment on and additional suggestions for restoration planning and implementation activities for 1991. As noted previously, the Trustees and EPA anticipate publishing later this Spring a notice of the restoration projects identified for implementation in 1991. More detailed descriptions for 1991 restoration projects will be made available to the public for comment.

A. 1991 Restoration Planning Activities

The fundamental purpose of restoration planning is to identify and evaluate potential restoration implementation activities, in consultation with technical experts and the public. The integration of results from the damage assessment and other information into restoration planning is critical to the success of the oil spill program. As damage assessment results are reviewed and evaluated, the Trustees will identify potential restoration implementation activities and related feasibility and technical support projects. This process involves ongoing consultation with principal investigators for damage assessment studies, agency experts, and outside peer reviewers to review the nature and extent of oil spill injuries in relation to the biology and ecology of injured species, habitats, and ecosystems. A key goal is to identify life history requirements, limiting factors, and environmental processes that are especially sensitive or that may be enhanced.

Section II describes five feasibility studies carried out in 1990, some of which may continue in 1991. The Trustees and EPA are considering additional feasibility and technical support projects in 1991 and, following additional review, intend to discuss

them in the Spring 1991 Federal Register Notice. Studies now being considered concern a variety of resources, including pink salmon, tidal marshes, Pacific herring, bald eagles, recreation, and sea otters. Feasibility and technical support studies will be implemented as damage assessment data and funding become available.

The scientific literature and experience from oil spills other than the *Exxon Valdez* will provide background on restoration and information from other oil spills. In 1991, the Restoration Planning Work Group expects to review and evaluate previously identified literature on restoration (see Appendix B, August 1990 Progress Report) and to continue review and evaluation of literature on species and ecosystem recoveries following anthropogenic and natural environmental disturbances.

Information on the adequacy of natural recovery is central to determining whether to implement restoration actions or to allow injured resources to recover on their own. Direct measures of recovery, such as species distribution, abundance, diversity, growth, reproductive success, or other physiological and biochemical properties, may be appropriate monitoring objectives. In some cases, it is appropriate to indirectly determine the degree of recovery by measuring exposure (presence of oil residuals and/or metabolites) and by applying knowledge or toxicological effects derived from the oil spill literature. For these reasons, the recovery of injured resources can best be followed by implementing a balanced program of monitoring. The duration of recovery monitoring will depend on the time necessary to establish a trend for recovery, and this in turn will necessarily depend on the severity and duration of effects resulting from the oil spill.

Some recovery monitoring studies will be considered for implementation in 1991. As with feasibility and technical support projects, these will be discussed in the March 1991 Federal Register document.

Public participation will continue to be an important component of restoration planning in 1991. The Restoration Planning Work Group is interested in and will try to accommodate requests for meetings with individuals or groups. In addition, the Trustees will consider whether and what additional actions, such as publications and workshops, are appropriate and possible in 1991. Requests and suggestions from the public are invited.

B. 1991 Restoration Implementation Activities

Where the nature of the resource injury is reasonably clear, it may be desirable to begin restoration prior to receipt of funds from the parties responsible for the oil spill. There are several reasons why this may be so.

Failure to undertake timely restoration may allow damages initiated by the spill to continue or accelerate, as in the case of the loss of stabilizing vegetation on beaches. In other cases, protection of strategic habitats, subject to land-use changes, can reduce cumulative stresses on injured resources and maintain, in the near term, a full range of restoration options. Finally, the importance of a resource for subsistence, commercial, or recreational purposes may justify prompt restoration action.

The restoration activities being considered by the Trustees for implementation in 1991 are described below. Before making final decisions for the 1991 program, the Trustees are prepared to conduct public meetings in some of the oil spill communities, if requested to do so. Moreover, the Trustees expect to provide further opportunity for public comment on the 1991 restoration projects after detailed descriptions for each project are available. The projects now under consideration for the initial phase of the restoration process are:

1. Restoration of the Beach Wildrye Community

Lead Agencies: Alaska Department of Environmental Conservation, U.S. Forest Service

Need and Objectives:

The high intertidal-supratidal beach wildrye grasses (*Elymus arenarius* and *E. mollis*) communities show signs of localized injury as a result of the Exxon Valdez oil spill and the associated cleanup activities. Injury appears to have resulted from oiling and the stress of mechanical abrasion resulting from oil removal operations carried out by cleanup workers and equipment. Beach wildrye grasses are major contributors to natural beach stability. Injury to this important plant community may result in accelerated erosion of the beaches and adjacent upland plant communities. Also at risk from increased erosion are several nearshore archaeological sites.

Once the beach wildrye root masses are disturbed, natural recovery may be slow, taking several years. Wildrye recolonizes primarily by spreading outward from undamaged plants, and this process can be stopped altogether if the rate of erosion is too great. This may result in a significant loss of intertidal

and supratidal area. Restoration intervention may often stabilize a beach in one growing season.

The objective of this project is to stabilize injured sites where natural or cultural resources are at risk. Specific sites for restoration will be chosen following the 1991 Spring Shoreline Assessment. The Department of Environmental Conservation and the Forest Service are also exploring whether this project may more appropriately be carried out under the State/Federal response program.

Methods:

Replanting beach wildrye for stabilization is a proven technology. Nearby healthy stocks of beach wildrye grass will be used as a source of donor material. After replanting, fertilizer will be applied (20-20-10 fertilizer up to 800 pounds per acre) to help the transplanted beach wildrye grass recolonize. At some locations fertilizer alone may be sufficient to encourage existing injured plant communities to recover without transplanting new stock.

Estimated 1991 Cost: \$180,000

2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead Agencies: U.S. Fish and Wildlife Service, U.S. National Park Service, Alaska, Department of Environmental Conservation

Need and Objectives:

The Exxon Valdez oil spill caused direct and indirect injury to the marine birds and mammals of southcentral Alaska. The purpose of this project is to make users of the area aware of the changes to the ecosystem resulting from the oil spill and to lessen the potential for additional harmful human disturbances.

Methods:

The project's sponsors will publish and distribute information explaining the potential adverse impacts of human activities, and the importance of increased conservation and protection of marine birds and mammals in key habitats in the oil spill area. Print media such as posters, brochures, and possibly books and video tapes will be produced. Consideration will also be given to production of material for school curricula.

Print media will be distributed through traditional outlets including but not limited to refuge, park, and tourist information and visitor centers. Additional distribution will occur at airports, boat harbors, commercial tour operators, and to public agency and private industry training staffs.

Some species identification information will be included but the primary content of the media will emphasize strategies to allow public use and enjoyment of marine birds and mammals while preventing harmful disturbances to these species.

Estimated 1991 Cost: \$100,000

3. Salmonid Stocks and Habitat Restoration

Lead Agencies: Alaska Department of Fish and Game, U.S. Forest Service

Need and Objectives:

Spawning and nursery areas of wild stocks of pink and chum salmon which were impacted by the Exxon Valdez oil spill occur throughout Prince William Sound, lower Cook Inlet, and the Gulf of Alaska. Pink and chum salmon are major components of the ecosystem, serving as important food sources for other fish, birds, terrestrial and marine mammals. Pink and chum salmon are also harvested by man in subsistence, commercial, and sport fisheries. Since salmon return to the individual streams in which they were born, with little straying to other streams, genetically unique wild salmon stocks will be restored through site specific rehabilitation of salmon spawning and rearing habitats.

Methods:

This project consists of several proven fisheries enhancement techniques that may be applied immediately at specific sites. In addition to those sites and streams at which potential rehabilitation activities already have been identified, a survey of affected salmon spawning habitat within the oil spill area will be conducted in 1991 to determine additional restoration measures. The proposed techniques include fish passage through stream channelization or fish ladders to overcome physical and hydrological barriers and construction of spawning channels. All of these measures provide oil-free spawning areas to replace oil-impacted spawning areas. Additional wild salmon stock restoration measures include remote egg-taking and incubation at existing hatcheries for ultimate fry release in oil-impacted streams. Other measures may include optimal fry release programs that will enhance marine survival of juvenile salmonids.

Estimated 1991 Cost: \$1,300,000

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead Agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture

Need and Objectives:

The marine and intertidal habitats where most oil spill injuries occurred are ecologically linked to adjacent uplands. The water quality in streams and estuaries where salmon spawn depends on the adjacent uplands. Eagles nest and roost in large trees along the coasts and streams, and marbled murrelets nest in association with forested uplands. Harlequin ducks nest in riparian habitats and feed in the streams as well as in nearby intertidal and estuarine areas. Common and thick-billed murres and other seabirds nest on off-shore islands.

Tourism and recreation activities, such as sport fishing and camping, also depend on the quality and accessibility of shorelines and uplands. The diversity, productivity, and uses of intertidal and estuarine habitats, and of freshwater streams along the coast depend on the ecological integrity of the adjacent uplands. Continued productivity in the undamaged parts of the regional ecosystem, including strategic marine, intertidal, and estuarine habitats and adjacent uplands, may be necessary for the recovery of biological communities that were injured.

During the public scoping process the governments received many restoration suggestions that involved the protection and prime fish and wildlife habitats, recreation sites, and adjacent uplands. Suggested approaches to this protection included land acquisition and changes in management practices.

Land-use activities may occur in the oil spill area in 1991 or 1992. These activities may impact important habitats and recreation sites or slow the recovery of spill-injured resources.

The objective of this project is to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the *Exxon Valdez* oil spill. This project will be preceded by a technical support project to identify and evaluate potential properties which if publicly owned will contribute to this objective. Where acquisition of property

rights is determined to be appropriate, they will be acquired on a willing buyer/willing seller basis. Primary considerations in deciding which properties should be acquired during this project will include (1) the nature and immediacy of changes in use that may further affect resources injured by the oil spill and (2) the prospect that failure to act will foreclose restoration opportunities.

The Trustees have developed the following preliminary sequence of steps for use in identifying and protecting strategic fish and wildlife habitats and recreation sites:

1. Identification of key upland habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.

2. Characterization and evaluation of potential impacts from changed land use in relation to their effects on recovery of the ecosystem and its components; comparative evaluation of recovery strategies not involving acquisition of property rights (e.g., redesignation of land use classification), including an assessment of protection afforded by existing law, regulations, and other alternatives.

3. Evaluation of cost-effective strategies to achieve restoration objectives for key upland habitats, identified through steps one and two above. This would include evaluation of other restoration alternatives for these resource injuries.

4. Willing seller/buyer negotiations with private landowners for property rights.

5. Incorporation of acquired property rights into public management.

Habitat and recreation site acquisition proposals that meet the appropriate evaluation factors for restoration (see section 2) will be identified and assigned by priority for implementation in accordance with this preliminary five-step process and applicable State and Federal laws and regulations.

The geographic scope of the 1991 project will be the oil spill area. Subsequent to this initial effort, the

Trustees will continue to survey potential acquisitions, including acquisitions outside the spill area. Estimated Cost: To be determined

C. Funding for the 1991 Restoration Work Plan

Although it is expected that the responsible parties will pay for the costs of the damage assessment and restoration program, there is no certainty about the final amount and when such funds will be forthcoming. It is possible, therefore, that funds to carry out the 1991 Restoration Work Plan, including the proposed planning and implementation activities, will have to be advanced by the State and Federal governments. To date, those funds have not been committed or secured by either government.

D. References

The documents listed below provide additional information on damage assessment and restoration. They are available from the Oil Spill Public Information Center, The Simpson Building, 645 G Street, Anchorage, Alaska, 99501.

1. "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill, Volume I Assessment and Restoration Plan Appendices A, B, C."
2. "State/Federal Natural Resource Damage Assessment Plan for the *Exxon Valdez* Oil Spill," August 1989.
3. "Restoration Planning following the *Exxon Valdez* Oil Spill: August 1990 Progress Report."
4. "Restoration following the *Exxon Valdez* Oil Spill: Proceedings of the Public Symposium," July 1990.

Dated: February 26, 1991.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: February 25, 1991.

Charles E. Cole,

Attorney General, State of Alaska.

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State and Federal Agencies Settle with Exxon

Anchorage — Governor Hickel and U.S. Attorney General Dick Thornburgh on March 13 announced that Exxon Corporation and Exxon Shipping company agreed to settle virtually all federal and state civil claims resulting from the Exxon Valdez oil spill.

With payment of \$900 million in damages and \$100 million in criminal fines, Exxon will provide compensation to the state and federal governments for losses incurred after the Exxon Valdez spilled almost 11 million gallons of crude oil on March 24, 1989, officials said.

The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million ten years from now for natural resources damages not currently foreseen. According to the plea agreement, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"This settlement was the result of a very thorough analysis of the issues," said John A. Sandor, Commissioner of the Alaska Department of Environmental Conservation. "Now we can go on with the business of long-term damage assessment and restoration of Prince William Sound and other coastal areas affected by the spill," he said.

Sandor noted that the settlement terms cover costs incurred to date by DEC as well as the cost of the cleanup activities planned this summer. The settlement also includes expected costs to further assess and restore damaged coastline along the more than 1,200 miles of the spill's path.

The agreement with Exxon states that it is not intended to affect rights and obligations of other parties with oil spill claims, including Alaska natives and other private plaintiffs.

The full settlement is published in today's Federal Register, and will be out for public comment until April 18, federal officials said. State or federal officials have the right to withdraw consent to the settlement agreement within 15 days after the close of the public comment period if it is clear that the agreement is not in the public interest, or if the Alaska legislature does not approve the agreement.

A copy of the settlement may be obtained from any library which subscribes to the Federal Register, or from the Oil Spill Public Information Center, 645 G Street, Anchorage, AK 99501, 907/278-8008.

Written comments on the settlement may be mailed to: Thomas A. Campbell, General Counsel of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Room 5816, 14th Street and Constitution Avenue, NW, Washington D.C., 20250, or to Barbara Herman, Attorney General's Office, State of Alaska, 1031 W 4th Ave., Suite 200, Anchorage, AK 99501.

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State Approves Bioremediation for 1991 Cleanup Season

ANCHORAGE—State of Alaska officials have approved use of fertilizers in the 1991 cleanup season to assist microbial breakdown of oil remaining on beaches fouled by the Exxon Valdez oil spill of two years ago.

Based on recommendations from staff of the DEC office monitoring Exxon Valdez spill response work, John Sandor, Commissioner of the Alaska Department of Environmental Conservation, approved use of the fertilizers during the 1991 field season in a March 5 letter to RADM David E. Ciancaglini, the Federal On Scene Coordinator.

The state grants approval for use of the fertilizers Inipol EAP 22 and Customblen, contingent on the same application rates, delivery systems, and operational guidelines as during the 1990 season, Sandor said. State officials asked Admiral Ciancaglini to request updated operating guidelines from Exxon, allowing five working days for review and comment from state agencies, said Ernie Piper, the State On Scene Coordinator.

The decision followed technical meetings on Feb. 19-22, when researchers and government officials reviewed data on the use of fertilizers to remove oil remaining in Alaska shorelines.

Final approval for use of any

chemicals will come through the Regional Response Team, a federal and state interagency committee which by law must be involved in response to spills of any hazardous substance or application of chemicals in the environment, state officials said.

"Generally, my staff and other independent scientists agree that adding fertilizers to the beaches increases the numbers of microbes that degrade oil,"

Ernie Piper
ADEC.

The State of Alaska and the Environmental Protection Agency both hold veto rights on the RRT regarding use of chemicals in a spill response. The group has conferred on a number of decisions regarding treatment of shorelines oiled after the March 24, 1989 incident when the Exxon Valdez hit Bligh Reef in Prince William Sound and spilled 10.8 million gallons of crude oil.

"Generally, my staff and other independent scientists agree that adding fertilizers to the beaches increases the numbers of microbes that degrade oil," said Ernie Piper,

State On Scene Coordinator. However, Piper pointed out that there are enough gaps in the available data that "we should be cautious and judicious in our use of the chemicals."

The scientists at the conference were unable to come to a consensus about the rate at which bioremediation speeds up natural degradation of oil, but they did agree that fertilizers are speeding things up, Piper said.

"Bioremediation appears to be a useful addition to our cleanup toolbox, but I would caution members of the cleanup community and the public against becoming too giddy about the ability of the bugs to solve a problem of this size and complexity," Piper said in a memo to Commissioner Sandor.

There are too many questions left unanswered when scientists try to apply information gathered in carefully controlled laboratory experiments to what actually happens on a beach in Prince William Sound or the Gulf of Alaska, Piper said.

"We've got an open, dynamic marine system with a wide and changing set of ecological variables," which will not ever exactly equate with a laboratory setting, he said.



The OIL SPILL CHRONICLE is published monthly by the Alaska Department of Environmental Conservation. Comments or inquiries should be addressed to: ADEC, Exxon Valdez Oil Spill Response Center, Attn: L.J. Evans, 4241 B Street, Suite 304, Anchorage, AK 99503. FAX: 907/563-1789. Phone 907/563-1126.

State Experts Contribute to Oil Spill Conference

ANCHORAGE — Alaska Department of Environmental Conservation staff who worked on the Exxon Valdez oil spill cleanup presented papers and spoke on panels at sessions of a major international oil spill conference in San Diego March 4-7, state officials said.

Current and former DEC staff presenting papers or participating in panel discussions included John Bauer, Randy Bayliss, James Gibeaut, John Janssen, Al Kegler, Marshal Kendziorek, Dan Lawn, Gene Pavia, Ernie Piper, Steve Provant, and Clay Robinson. The biennial International Oil Spill Conference and Exposition is an important world symposium on oil spill cleanup technology and science.

The conference is jointly sponsored by the U.S. Coast Guard, Environmental Protection Agency, and the American Petroleum Institute.

"This conference is where the state of the art and the state of the science is discussed and shaped," said DEC Commissioner John A. Sandor.

The last conference took place a couple of weeks before the tanker Exxon Valdez grounded on Bligh Reef and spilled nearly 11 million gallons of crude oil in North America's biggest tanker spill. Of more than 130 sessions at this year's conference, at least 38 were directly related to the Exxon Valdez spill.

Copies of the entire Conference Proceedings may be purchased for \$65 by writing: 1991 International Oil Spill Conference, 655 15th St., NW, Suite 300, Washington, D.C. 20005.

To request copies of the papers presented by State of Alaska personnel, write ADEC Exxon Valdez Oil Spill Response Center, Public Information Office, 4241 B St., Suite 304, Anchorage, AK 99503.

Papers presented at the International Oil Spill Conference by State of Alaska staff:

"Response To the Exxon Valdez Oil Spill By The Alaska Department of Environmental Conservation," Erich R. Gundlach, John Bauer, Randy Bayliss, Steve Provant, and Marshal Kendziorek.

"Trends in Natural Removal of the Exxon Valdez Oil Spill in Prince William Sound From September 1989

to May 1990," Jacqueline Michel, Miles O. Hayes, Walter J. Sexton, James C. Gibeaut, and Charles Henry.

"Shoreline Surveys at the Exxon Valdez Oil Spill - The State of Alaska Response," Erich R. Gundlach, Eugene A. Pavia, Clay Robinson, and James C. Gibeaut.

"Initial State of Alaska Response to the Exxon Valdez Oil Spill" Randy Bayliss, Dan Lawn, Al Kegler, Marshal Kendziorek, and John Janssen.



Operations Steering Committee Public Meeting

The Exxon Valdez oil spill Operations Steering Committee will meet on April 23 at 5:00 p.m. at the Anchorage Alaska Legislative Information Office. The meeting will be sponsored by Representative Cliff Davidson of Kodiak, is open to the public and will be available by teleconference to communities requesting to participate.

The Operations Steering Committee is chaired by RADM David E. Ciancaglini of the U.S. Coast Guard, the Federal On Scene Coordinator and Ernie Piper, State on Scene Coordinator.

The meeting is scheduled for the first floor meeting room of the Anchorage LIO, 3111 C St. To arrange to be included in the teleconference, call the LIO teleconference coordinator at 561-7007.

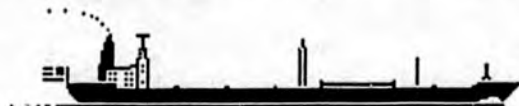
The agenda for the April meeting is not set at this time, but will include topics regarding the 1991 spring shoreline assessment and cleanup plans for the 1991 field season.

New Reports:

NOAA Technical Memorandum NMFS F/NWC-191: Survey of Subsistence Fish and Shelfish for Exposure to Oil Spilled from the Exxon Valdez; First Year: 1989, Usha Varanasi, et al., National Oceanic and Atmospheric Administration/National Marine Fisheries Service, December 1990. This document is available through the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Valdez Oil Spill Technology: 1989 Operations, Exxon Production Research Company, 1990. Copies are available from Exxon Public Relations, Attn: Karsten Rodvik, P.O. Box 240409, Anchorage, AK 99524-0409.

The 1989 Exxon Valdez Cultural Resource Program, Charles M. Mobley, et. al., Exxon Shipping Company and Exxon Company, USA., 1990. Copies are available from Exxon Public Relations, Attn: Karsten Rodvik, P.O. Box 240409, Anchorage, AK 99524-0409.



Water Quality in Prince William Sound and the Gulf of Alaska, Jeff M. Neff, Arthur D. Little, March 1991. Copies can be obtained by writing Arthur D. Little, 20 Acorn Park, Cambridge, MA 02140-2390.

Lessons of the Exxon Valdez, Rick Steiner, et. al., Alaska Sea Grant College Program, University of Alaska Fairbanks, 1990. Copies available for \$4 from Alaska Sea Grant College Program, UAF, 138 Irving II, Fairbanks, AK 99775-5040.

Oil In the Ocean: The Short- and Long-Term Impacts of a Spill, James E. Mielke, Congressional Research Service, July 24, 1990, CRS Report #90-356. Copies may be obtained from the Federal Oil Spill Public Information Center, 645 G. Street, Anchorage, AK 99501, 907/278-8008, or from Senator Ted Stevens office, 222 W 7th Ave., #2, Anchorage, AK 99513.

Proceedings: 1991 International Oil Spill Conference, sponsored by the U.S. Coast Guard, American Petroleum Institute, and the U.S. Environmental Protection Agency. Copies of the entire Conference Proceedings may be purchased for \$65 by writing: 1991 International Oil Spill Conference, 655 15th St., NW, Suite 300, Washington, D.C. 20005.

OIL SPILL CHRONICLE

State of Alaska

Department of Environmental Conservation

Exxon Valdez Oil Spill Response Center

4241 B Street, Suite 304

Anchorage, AK 99503



Senator Dick Eliason

P.O. Box V

Juneau, AK 99811

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND
TITLE:
ADDRESS: BOX 122
CITY: HAINES, AK
PHONE: 766-2466
BILL NO:

ZIP: 99827

4 parts

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT.1
MESSAGE: ALASKA NATIVES LEFT OUT OF FEDERAL AND STATE DECISIONS DELIBERATELY.
THIS STATE IS NOTORIOUS FOR THIS, UNLESS NATIVES GET TOGETHER AND USE THEIR
POLITICAL MUSCLE. I'M SPEAKING OF RESOURCES THAT ARE WORTH MONEY. I HAVE A
REPORT DONE BY ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEV. 6/80

POMID: 12094112
DATE: 91/03/15
TIME: 09:41:12
LIONAME: SITKA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
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FINKELSTEIN	FOSTER	FRANK
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GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND

TITLE:

ADDRESS: BOX 122

CITY: HAINES, AK

ZIP: 99827

PHONE: 766-2466

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT. 2

MESSAGE: THIS IS QUOTES "ALL QUESTIONS REGARDING LAND OWNERSHIP BY THE NAT
PEOPLES WERE LEFT UNSETTLED BY THE 1867 TREATY OF CESSION UNDER WHICH THE
RUSSIANS SURRENDERED GOVERNMENTAL AUTHORITY IN ALASKA TO THE U.S. ALTHOUGH
TREATY VERY CAREFULLY SPECIFIED THAT LAND OWNERSHIP BY PRIVATE CITIZENS WOU
BE UNAFFECTED BY THE TREATY, THE NATIVE RESIDENTS WERE NOT COVERED BY THIS
PROTECTION. (CONT. PART 3)

POMID: 12094818

DATE: 91/03/15

TIME: 09:48:18

LIONAME: SITKA LIO

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FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
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LEMAN	LINCOLN	PEARCE
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MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEG LAND
TITLE:
ADDRESS: BOX 122
CITY: HAINES, AK
PHONE: 766-2466

ZIP: 99827

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT (PT-2)
MESSAGE: THE TREATY STATES THE INHABITANTS OF THE CEDED TERRITORY WITH THE EXCEPTION OF THE UNCIVILIZED NATIVE TRIBES SHALL BE MAINTAINED AND PROTECTED IN THE FREE ENJOYMENT OF THEIR PROPERTY THE UNCIVILIZED TRIBES WILL BE SUBJECT TO SUCH LAWS AND REGULATIONS AS THE UNITED STATES MAY ADOPT.

POMID: 12095524
DATE: 91/03/15
TIME: 09:55:24
LIONAME: SITKA LIO

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FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBIMA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND

TITLE:

ADDRESS: BOX 122

CITY: HAINES, AK

PHONE: 766-2466

ZIP: 99827

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT 4

MESSAGE: THE UNRESOLVED ISSUE OF LAND OWNERSHIP BY NATIVE ALASKANS, WHICH RUSSIANS PASTED ON TO THE UNITED STATES REMAINED UNSETTLED FOR MORE THAN 10 YEARS AFTER THE TREATY OF CESSION. NON-NATIVES GRABBED EVERYTHING THEY WANTED OF VALUE THE NATIVE LAW SUITES WERE FINALLY SOLVED BY THE ALASKA NATIVE CLAIM SETTLEMENT ACT OF 1971. SINCE THE PIPELINE WAS BUILT THE NATIVES ARE FIGHT AGAIN FOR THEIR RIGHTS UNDER THE OIL SPILL SETTLEMENT.

POMID: 12100014

DATE: 91/03/15

TIME: 10:00:14

LIONAME: SITKA LIO

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MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: JIM WEIDNER
TITLE:
ADDRESS: 5479 CHENA HOT SPRINGS RD
CITY: FAIRBANKS
PHONE: 488-6366

ZIP: 99712

BILL NO:
SUBJECT: EXXON VALDEZ SETTLEMENT
MESSAGE: THIS IS PROBABLY THE BEST POSSIBLE DEAL FOR EXXON THAT THE HIGHEST PRICED LAWYERS IN THE UNITED STATES COULD MAKE. FROM ALASKA'S POINT OF VIEW, IS IT THE BEST POSSIBLE DEAL FOR US? BE SURE AND READ THE FINE PRINT....ONE COMPANY CAN DO US IN. BE SURE AND TAKE PLENTY OF TIME IN MAKING YOUR DECISION.

EOM-FZ

POMID: 07133103
DATE: 91/03/15
TIME: 13:31:03
LIONAME: FAIRBANKS LIO

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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: PEG MENTELE

TITLE:

ADDRESS: 324 E. COOK AVE

CITY: ANCHORAGE

ZIP: 99501

PHONE: 274-9907

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: I URGE YOU TO APPROVE THE EXXON SETTLEMENT. EVEN AN IMPERFECT
SETTLEMENT IS BETTER THAN YEARS OF DIVISIVE LITIGATION AND MILLIONS PAID IN
LEGAL FEES (TO OUTSIDE LAW FIRMS). /BN

POMID: 03080032

DATE: 91/03/15

TIME: 08:00:32

LIONAME: ANCHORAGE LIO

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NAVARRE

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SHARP

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ELLIS

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FISCHER

FRANK

HALFORD

HOFFMAN

JONES

KERTTULA

MENARD

PEARCE

POURCHOT

RODEY

SHULTZ

STURGULEWSKI

UEHLING

ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ALLEN HOWE
TITLE:
ADDRESS: 8869 BOOM CIR.
CITY: ANC ZIP: 99502
PHONE: 267-2387
BILL NO:
SUBJECT: EXXON VALDEZ SETTLEMENT
MESSAGE: REJECT THE EXXON VALDEZ SETTLEMENT UNLESS AT LEAST \$1 BILLION IS P/
BY EXXON IN A LUMP SUM. THE 10 YEAR PAY OUT SELLS ALASKA TOO SHORT. /LD

POMID: 03082316
DATE: 91/03/15
TIME: 08:23:16
LIONAME: ANCHORAGE LIO

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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MR. ROY WICHERS
 TITLE:
 ADDRESS: P.O BOX 670834
 CITY: CHUGIAK
 PHONE: 688-3855
 BILL NO:
 SUBJECT: EXXON SETTLEMENT
 MESSAGE: INCLUDE THE NATIVES IN THE SETTLEMENT AND INDIVIDUAL SUITS AND LEAV
 OPEN FOR LONG TERM DAMAGE. /CMR

ZIP: 99567

POMID: 03121839
 DATE: 91/03/15
 TIME: 12:18:39
 LIONAME: ANCHORAGE LIO

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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MR. ERIC TASKER

TITLE:

ADDRESS: 7724 ARLENE STREET

CITY: ANCHORAGE

ZIP: 99502

PHONE: 243-7245

BILL NO:

SUBJECT: EXON SETTLEMENT

MESSAGE: GOVERNMENT SECRECY IS SUBVERSIVE TO DEMOCRATIC PRINCIPLE PROCEDURE SOCIETY AND IS ALWAYS ABUSED. I FOR ONE WANT THE STATE CONSTITUTION CHANGED SO AS TO TOTALLY PROHIBIT SECRET STATE NEGOTIATIONS IN ANYWAY AND TOTALLY PROHIBIT THE STATE FROM MAINTAINING ANY CONFIDENTIAL STATE INFORMATION FOR ANY REASON. /CMR

POMID: 03101410

DATE: 91/03/15

TIME: 10:14:10

LIONAME: ANCHORAGE LIO

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SHARP	TAYLOR	ZHAROFF
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NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
P.O. BOX A
JUNEAU, ALASKA 99811

WALTER J. HICKEL
GOVERNOR



FOR INFORMATION CONTACT:

ERIC REHMANN
ACTING PRESS SECRETARY

DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE

March 20, 1991

91-54

30 DAY COMMENT PERIOD ANNOUNCED ON EXXON VALDEZ SETTLEMENT AGREEMENT

JUNEAU--Notice of a 30-day comment period was announced Tuesday in the Federal Register concerning the settlement agreement of the Exxon Valdez oil spill. Alaskans, and ~~others~~ wishing to comment on the agreement, must do so no later than April 14, 1991.

Written comments must be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, 16th and Constitution Ave. NW, Washington, DC 20230. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1031 West 4th Ave., Suite 200, Anchorage, Alaska 99501.

For further information, contact Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone 202-377-1400.

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Worth a try 2.5.91

Exxon settlement demands care

Gov. Wally Hickel has spent a lot of his time lately trying to get the feds and Exxon to settle legal disputes stemming from the firm's Alaska oil spill.

For the state, the feds and Exxon, settling the cases soon has definite appeal. All three parties could save millions of dollars that would be wasted on lawyers. And the faster the state gets its damage money, the faster it can protect the rest of Prince William Sound from logging. Gov. Hickel wants to use some of the proceeds to buy out private timber rights.

But whether Gov. Hickel can strike a good deal depends on what Exxon offers. Usually a large corporation facing expensive lawsuits and criminal fines is willing to fight a legal war of attrition. A settlement has to offer Exxon some advantage or it will keep on fighting.

It's imperative that the public has a chance to see any deal before it becomes final. The level of public concern, and the financial stakes, are just too high for Gov. Hickel to hand Alaskans a fait accompli.

There are two things any settlement shouldn't do. First, it shouldn't allow scientific studies of the spill to be kept secret. That information is too valuable to scientists around the world, and to private parties still pursuing their own suits against Exxon.

Second, a settlement shouldn't let Exxon dodge federal criminal charges altogether. Although no one stands to go to jail, criminal fines could total \$600 million or more. A criminal conviction will send an important message that environmental crimes will be severely punished.

Gov. Hickel is unlikely to cut a sweetheart deal. He's always believed in standing up to those he thinks have done Alaska wrong. But he and his negotiators will have to make sure their eagerness to settle doesn't sell the state's interests short.

Exxon deal hangs on Native rights

3.12.91

Judge ties agreement to ability to litigate

By E. MICHAEL MYERS

TIMES WASHINGTON BUREAU

WASHINGTON — Alaska and the federal government can settle their oil spill claims against Exxon Corp. if the deal does not restrict Natives' right to sue the oil giant, a federal judge ruled Monday.

And the deal will be signed, Alaska Gov. Walter J. Hickel said, after the dispute with five Native villages and three Native corporations is settled.

That could be as early as today, Hickel said. "I think it will be worked out soon."

However, not all parties were so confident. Contending attorneys could not agree even on a time or place to meet to settle their differences, possibly delaying indefinitely Hickel's efforts to wrap up an estimated \$1.2 billion Exxon Valdez oil spill settlement.

U.S. District Judge Stanley Sporkin last week issued a temporary restraining order preventing Exxon, Alaska and the federal government from completing the out-of-court settlement. Hickel initiated secret negotiations with the federal government and Exxon on Jan. 28.

Sporkin said Monday he would lift the order and allow the deal to be closed if the attorneys can agree on language saying the Natives' legal rights are not harmed.

"Say precisely 'No third-party rights will be affected,'" Sporkin told Justice Department attorney Letitia Grishaw.

Hickel and Alaska Attorney General Charles Cole were also there.

Exxon

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Natives present for the hearing claimed it a victory but said they were distressed that attorneys for the government did not respond to their efforts to work out the phrasing Sporkin ordered.

"I thought Judge Sporkin made an excellent recommendation that we come together," said Gail Evanoff of Chenega Bay.

Don Emmal, also in Washington representing English Bay Corp., said the judge's ruling was fair.

But the Natives' attorneys said the government did not cooperate.

"The state refuses to meet with us," Anchorage attorney Lloyd Miller said Monday. "The state was unusually hostile this morning."

And the state's continued efforts to shut them out of talks left the Natives insulted, they said.

"I was disappointed to hear our attorney general treat citizens of Alaska, us, in that manner," Evanoff said.

Elenore McMullen, tribal chief of the Port Graham Village Council, said she was pleased with the judge's order but was still confused. "I feel bad as a Native person and as an Alaskan person."

The Natives' chief attorney, Michael Hausfeld, said Natives should be at the bargaining table to ensure their natural resources, damaged by the 11 million-gallon spill in Prince William Sound in 1989, will be restored.

"What you want to do is participate in the negotiations," Sporkin said. "It seems to me that is not the right way to do it. I know what the government has to do. You can't negotiate with 50 people around a table."

Sporkin initially brushed aside Hausfeld's appeal for him to intervene, saying the Natives' complaints could be protected in U.S. District Court in Anchorage where the state suit is filed.

affect the rights of third parties?" Sporkin asked.

"If you agree it is necessary, order us not to impair the rights or claims of Native villages or corporations in the agreement," Grishaw said.

"You people must be Philadelphia lawyers," Sporkin said. "I cannot figure out what you are telling me. I am a very plain guy."

Hausfeld proposed tough language for the judge's order.

He said the proposed Exxon agreement should "not compromise, release or settle any subsistence natural resource injury claims resulting from the Exxon Valdez oil spill" on behalf of Alaska Natives.

But Sporkin denied Hausfeld's request for immediate and continual access to all studies dealing with the impact of the spill. He agreed to Hausfeld's request to retain jurisdiction in the matter and review the agreement to see if it indeed protected the Natives' rights.

Hickel also was present and said the remaining hangup to an Exxon settlement "is right here" in court.

"I think the judge has made it clear. The attorney general has made it clear," Hickel said. "Third parties will be protected."

Sporkin's restraining order was in direct response to a move by five Native villages: Chenega, Port Graham, English Bay, Larsen Bay and Kariak.

Three Native village corporations — Chenega Bay Corp., Port Graham Corp., and English Bay Corp. — filed a similar motion last week.

Hickel later sent Cole to resume negotiations with Exxon and prepared for his appearance before the Senate Energy and Natural Resources Committee today to support a bill allowing oil development on the coastal plain of the Arctic National Wildlife Refuge.

In Juneau, Rep. Max Baucus, D-Anchorage and head of a special committee monitoring the settlement talks, said Cole was to brief the group this morning via telephone.

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Exxon

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But Hausfeld said the principal parties — the state, federal government and Exxon — are negotiating in Washington, D.C., with no direct role for the Natives and only general assurances their concerns will be addressed.

Cole and Grishaw told Sporkin all is well, but the judge wanted more than assurances, too.

"Nothing in this agreement is intended to affect the legal rights of third parties not party to the agreement," Cole said.

Sporkin thanked Cole for his clarity but was dissatisfied with Grishaw's vagueness.

"You are telling me without ambiguity the settlement will not

Diane Sheridan, Gruenberg's administrative assistant, said Cole seemed tired and said he had a headache when he called Monday to set an appointment.

Senate President Dick Eliason, R-Sitka, said he talked with Cole over the weekend. "He said they've reached a point where they either have to fish or cut bait," Eliason said.

House Speaker Ben Grunsford, D-Sitka, said lawmakers were concerned about details that have not been disclosed yet. He also said the 30-day public comment period the government has promised would precede a deal is not enough.

Spill settlement talks back on track

By DAVID POSTMAN
Daily News reporter

JUNEAU — The state's on-again off-again settlement talks with Exxon were on again Tuesday after the oil giant asked Attorney General Charlie Cole to return to the bargaining table in Washington, D.C.

Since serious negotiations began three weeks ago, charting Cole's frequent-flier miles has been as good an indication as any of how the talks are going. When Cole has been in Washington,

Gov. Walter Hickel has been optimistic and claimed a settlement is close. When Cole returned from his last trip, he said there was no substantive agreement on any issue with Exxon.

But administration officials wouldn't say Tuesday what significance, if any, should be put on Cole's third trip to Washington in as many weeks.

"We'll leave the speculation up to you," said Harry Gamble, Hickel's acting press secretary.

Clearly, though, the resumption of talks was a surprise to Cole.

As late as Monday afternoon, he said he had no plans to return to Washington and there was no set date for negotiations to resume. Last week, he said Exxon and the state were far from agreement and said the company had yet to make a serious counteroffer to the \$1.2 billion Hickel wants to settle lawsuits over the Exxon Valdez oil spill.

But late Monday after-

noon, Cole got a call from an Exxon official who asked if the attorney general could come to Washington immediately, according to Gamble. Cole said yes and was on the next jet out of Juneau.

"I think the correct spin on this is that this is the continuation of ongoing negotiations," said Deputy Attorney General Doug Blankenship.

Hickel is also in Washington, although for today's an-

Please see Page B-3, EXXON

EXXON: Talks back on track

Continued from Page B-1

nouncement by President Bush of a national energy policy. Hickel and his spe-

cial assistant, James Rockwell, left Juneau earlier Monday and he is not expected to take part in any settlement talks, according to Gamble.

The Washington Post

DATE: 3/13/91

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Exxon Settles Spill For \$1.1 Billion

\$100 Million in Pact for Criminal Fine

By Michael Weiskopf
Washington Post Staff Writer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hazelwood was acquitted last March on state charges of criminal

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

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

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

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

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

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

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

The New York Times

DATE: 3/13/91

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

Payments Would End Big Claims in Valdez Spill

By KEITH SCHNEIDER

Special to The New York Times

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

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

Effects Would be Studied

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

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

The proposed settlement, which has

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

In addition, the company would pay \$90 million this year into a fund administered by three Federal agencies and three state agencies. The money would be used for scientific studies of the Prince William Sound region, which suffered great damage, and for projects to continue scrubbing the shoreline of oil left when nearly 11 million gallons spilled from the hull of the

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

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

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

lion criminal penalty, to be paid this year.

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

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

Bottom of the Pockets?

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

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

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

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

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

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

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

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



The New York Times

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

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

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

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

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

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

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

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

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

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

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

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

Native groups rebuff Hickel's Exxon settlement plan

By JOHN TEIPON

THESE WRITER

Three Native village corporations Thursday condemned Gov. Walter J. Hickel's plan to settle Alaska's estimated \$1 billion claim against Exxon Corp. for the massive March 1989 Valdez oil spill.

Leaders for Chenega Bay Corp., English Bay Corp., and Port Graham Corp., said in a prepared statement they would block any attempt by Hickel to strike a deal that excluded them. Representatives for the three said they feared Hickel was making his deal in secret by not including them in ongoing settle-

ment talks.

The group said it is contacting Hickel, U.S. Attorney Richard Thornburgh, House Interior Committee Chairman George Miller and Exxon Corp.'s board chairman Lawrence Rawls to demand a full disclosure of the terms of the deal.

"The (state's) deal with Exxon involves our lives and our lands, but no one has talked to us. They can't do the deal without us," Charles Totemoff, president of Chenega Corp., said in the statement.

Don Emmal, president of the English Bay Corp., said Thursday his village corporation has

damage claims in excess of \$80 million.

"The claims are for direct oiling on English Bay lands, oil on the beaches and adjacent lands," he said.

Sam Fortier of Anchorage, an attorney for Port Graham and Chenega, said Thursday both villages are seeking more than \$80 million each for oil damage to their lands and beaches.

Chenega is located on Eyak Island and got direct hits of North Slope crude after nearly 11 million gallons spilled from the Exxon Valdez tanker, Fortier said.

Port Graham and English Bay

are located across Kachemak Bay near Homer.

Hickel spokesman James Rockwell said Thursday the proposed settlement should not affect damage claims or litigation of any other party.

"It's my understanding the governor is not attempting to settle any private claims or in any way injure any private claims," he said.

The Exxon Valdez rammed Bligh Reef on March 24, 1989, and caused the nation's largest oil spill. Crude washed up on more than 1,000 miles of beach and drifted as far south as Kodiak Island.

Subsistence users get special claim status

Alaska Natives and commercial fishermen with oil spill damage claims against Exxon Corp. may sue as groups to win compensation, a state judge ruled Thursday.

Anchorage Superior Court Judge Brian Shortell said Natives and groups relying on subsistence constitute a special class in their claims spurred by the Exxon Valdez oil spill.

The Exxon Valdez spilled nearly 11 million gallons of crude oil into Prince William Sound when it struck Bligh Reef on March 24, 1989.

Shortell granted a special class status to more than 20 villages around the Sound, including the Kenai Peninsula Borough, the Kodiak Island Borough and the Aleutians East Borough.

Shortell also said fishermen and the Sound's business and property owners affected by the spill have special class status to sue Exxon as a group.

Shortell denied the special status to municipal governments around the Sound and sports or recreation users who may have claims against Exxon.

Compiled from Times staff and Associated Press reports.

Oil spill proposal limits Exxon role in future cleanup

By DAVID POSTMAN
Daily News reporter

JUNEAU — Exxon would no longer have to pay for cleaning up Prince William Sound under the legal settlement being pushed by Gov. Walter Hickel.

Hickel told a group of lawmakers

Monday that any future cleanup would be paid for out of a trust fund he wants Exxon to create as part of the deal for the state and federal governments to drop their lawsuits against the oil company.

It was the first indication that future cleanup would not be paid for directly by Exxon.

Hickel also said that the

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federal government's scientific studies into the Exxon Valdez spill put damages at about \$500 million. He said the state is "well covered" by the \$1.2 billion he wants Exxon to pay.

Hickel briefed lawmakers on his trip last week to Washington, D.C., where he met with federal officials to discuss a long list of issues, including settling the government lawsuits over the Exxon Valdez spill.

Rep. Cliff Davidson, D-Kodiak, asked Hickel what would happen if there is cleanup needed in the future, which the state has said is likely.

Hickel, using tar balls in Homer as an example, said cleanup funds would come out of the Exxon trust — a trust that the governor said should be used for



Davidson

SPILL: Oil fund

Continued from Page B-1

ly to make Prince William Sound a world-class recreation area.

Davidson said later he doesn't think it's a good idea to have the trust fund pay for cleanup. An environmentalist agreed.

"I think Exxon ought to be held to the mark," said Eric Jorgensen, managing attorney for the Sierra Club Legal Defense Fund. "If there remains work to be done, Exxon ought to do it."

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Did - Were you notified about this mtg?

Long-Term Damage Seen From Exxon Valdez Spill

Recovery of Some Wildlife May Take Decades

By John Lancaster
Washington Post Staff Writer

Nearly two years after the grounded tanker Exxon Valdez dumped 10.9 million gallons of crude oil into Alaska's Prince William Sound, scientific studies have found new evidence of long-term damage to certain varieties of seabirds, salmon, trout and other marine life.

Although in some respects the sound has proved surprisingly resilient, the available body of scientific evidence, including confidential government documents obtained by the Washington Post, challenges the increasingly widespread assumption that the oil spill was a

transitory event whose worst effects were cosmetic.

Federal scientists have concluded, for example, that some colonies of murres, diving birds common to the North Pacific, have suffered a "total failure" to reproduce as a consequence of the spill, amounting to a loss of "several hundred thousand" chicks, according to sources. Federal scientists estimate that some seabird colonies may require up to 70 years to recover.

Another study suggests that oil may have reduced the populations of rockfish, herring, shrimp, mussels and clams, among other marine organisms, presenting "a considerable risk that some of the species

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VALDEZ, Page A1

may not respond to conventional management actions for decades."

The question of long-term damage to Prince William Sound has taken on renewed importance in light of recent discussions among Exxon and state and federal negotiators on a possible settlement of damage claims stemming from the spill.

Alaska's new governor, Walter J. Hickel (D), has expressed a desire to settle the case for about \$1.2 billion, money that would be placed in trust to help pay for further research and restoration programs in the sound. But environmentalists have raised questions about the proposal given the many unanswered questions about the spill's long-term effects.

"I think there's been a tendency in the public and in the media to think that Exxon Valdez is an old story and it was overblown, and the data suggests that is not really the case," said Erik Olson, an attorney for the National Wildlife Federation. "We are very concerned about the potential of the settlement to fail to account for long-term damage."

An Exxon spokesman declined to comment on the studies.

In general, federal and state agencies investigating the spill have refused to release their findings, saying that the data will be used as evidence against Exxon if the case goes to trial as scheduled in April. But some information has appeared in scientific journals and elsewhere. In addition, official summaries of some key studies were made available to The Post by an individual who asked not to be identified.

State and federal officials cautioned that the summaries—submitted by government scientists seeking funds for "restoration projects" in the sound—may overstate the extent of the damage, and that many of the data are preliminary. Moreover, several noted that some of the news is good, such as the apparent recovery of the sound's vibrant commercial salmon fishery.

"The worst nightmares in terms of salmon resources did not occur—and that's definitely good news," said Alex Wertheimer, a fisheries biologist for the National Marine Fisheries Service. "[But] that's different from saying there is no effect."

Government officials, speaking on condition that they not be iden-

Bush administration plans \$1 billion cleanup of toxic lead. Page A8

New Evidence Points to Long-Term Wildlife Damage From Exxon Valdez Spill

tified, said they were particularly concerned about the spill's effect on murre. While most of the birds escaped harm, about 150,000 perished as a direct result of the spill along a 400-mile stretch of the Gulf of Alaska, according to official estimates.

Even more troubling, sources said, was the apparent failure of murre colonies in the spill area to bear young in the years following the accident. "We've seen two years in a row of total failure," said a source who asked not to be identified. "It's wrong to say we lost all the murre in Alaska (but) . . . certain areas are greatly impacted."

Scientists speculate that the murre, long-lived birds that produce only one egg per year, are not

bearing young because of a shortage of mature adults to help defend the colonies against predators. Sources estimated that if not for the spill, between 200,000 and 300,000 murre chicks would have been born over the last two years.

Scientists have tended to be more cautious in evaluating the spill's effects on fish, but studies indicate there is reason for concern. For example, according to a restoration proposal by marine scientists in the Alaska Department of Fish and Game, "several species of marine fin fish and shell fish may have been damaged by the Exxon Valdez oil spill."

Another restoration proposal by the state agency cited evidence that "populations of Dolly Varden [trout]

have demonstrated signs of exposure to oil. Certain populations in impacted areas may have been reduced by this exposure." A government official described the study of the trout, which are popular with sport fishermen, as "very understated."

But government officials cautioned against drawing too many conclusions from the documents. "What you've got are preliminary documents," one said. "They're doing the best they can on short deadlines with not enough time to do the analysis."

The official expressed concern, however, that possible "sublethal" effects—such as tumors, low body weight and reproductive difficulties—might escape detection

through conventional methods. "I'm not sure how we're going to pick that up in the monitoring," the official said.

In one of the few public disclosures stemming from their inquiries, federal scientists reported last spring that they had found hydrocarbon derivatives of oil in the gallbladders of pollock up to 600 miles from the site of the spill a year after it occurred. Although no fishing or eating restrictions were imposed as a result, scientists said the presence of the contaminants in a deep-water fish so far from the spill indicated that oil had entered the food chain.

Similarly, according to a document prepared by the fisheries service, researchers have discovered

enzymes in salmon associated with the ingestion of oil. "It means the oil got into their food . . . [which] suggests a different and perhaps longer-lasting mechanism of contamination," a government official said.

Another document prepared last September by the same agency cautions that "the record returns to the sound [of pink salmon] do not by any means preclude actual or documentable damage to the resource."

The memo said, however, that last year's large catch is "clear evidence that there was no catastrophic impact" and that "long-term effects will be localized to particular stream systems or littoral areas that were directly and severely impacted by the spill."

State plans to release spill data

By JAY MATHEWS
The Washington Post

Gov. Walter J. Hickel said Thursday that negotiations to settle the Exxon Valdez oil-spill case are near completion, and he promised to release all scientific data buttressing state and federal claims against Exxon Corp.

In an interview, Hickel responded to environmentalists' concerns about the secret negotiations by saying the state has detailed scientific information about costs of the spill in March 1989 and will not allow Exxon to decide how funds might be distributed under the settlement.

Hickel said negotiations with Exxon and federal officials are "going fast" and that he expected a conclusion "in two or three weeks. It can't go much longer."

Hickel has proposed that Exxon pay about \$1.2 billion to settle state and federal damage claims and

that the money be put in trust to create a marine conservation area in Prince William Sound. There, hundreds of miles of beaches were fouled, fishing was disrupted and tens of thousands of animals were killed after nearly 11 million gallons of oil were spilled when the Exxon tanker ran aground.

Hickel said funds from the settlement would be distributed by a trustee, not Exxon.

The plan also would provide money for more research on the impact of the spill and to purchase private timber rights in the thickly forested area to prevent further environmental damage from logging.

Studies funded under the proposal, Hickel said, would allow the state to "tell what basically happened at the spill, and if they have spills in other places in the world we can give them ... information

on how to handle it, what happened, what the long-term effect (is), if any, and make it something of a science center."

Scientists have expressed frustration at orders from government and company attorneys not to share research while settlement negotiations are under way, but Hickel said all information would become public.

"The kind of settlement we're talking about should take care of all the problems," he said. "We're not giving anything away."