

SCOMM

77:70

SPECIAL COMMITTEES ON EXXON SETTLEMENT

SENATE

Eliason, Chairman 4916

Kerttula 3771

Jones 3743

Rodey 3793

Halford 4958

Cotten 3711

Pearce 4993

HOUSE

Gruenberg, Chairman 4968

Donley, Vice Chr. 3892

Davidson 3715

Navarre 3779

Kubina 4853

Hudson 3744

Ulmer 4947

Barnes 3438

Gail Phillips 2689

WORK ORDER REQUEST FORM

W.O. [17] LS-1053

KEYWORDS: COURTS ASSIGNED: Finley

LITIGATION

OIL/GAS

REQUEST FOR: Research/OP TAKEN BY: Barnes

SUBJECT: Exxon Settlement

REQUESTED FOR: SEN ELIASON BY: Sen. Eliason PHONE: 465-4916

DELIVER TO: Sen. Eliason, Cap 111

INSTRUCTIONS: Review the Exxon agreement to ascertain whether it is complete and appropriate from a legal and technical standpoint, and identify what matters are left open under the terms of the settlement.

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <u> X </u> DIRECTOR, LEGAL SERVICES</p>
<p>REVIEWED _____ IN <u>03/19/91</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for FINAL</p>

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON
DOMESTIC & INTERNATIONAL
COMMERCIAL FISHERIES




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SITKA ALASKA 99835

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JUNEAU ALASKA 99811
(907) 465-4916

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M E M O R A N D U M

TO: Tamara Cook, Director
Legal Services Division
Legislative Affairs Agency

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

DATE: March 18, 1991

RE: Exxon Settlement

The recently signed Agreement and Consent Decree between the federal government, the State of Alaska, and Exxon is now before the Legislature for approval or disapproval. The House and Senate have each formed special committees to review the agreement and to make recommendations to their respective bodies regarding the question of approval. I am chairing the Senate's special committee.

On behalf of the Senate special committee, I would like to make the following request of the Legal Services Division: Please review the Exxon Agreement to ascertain whether it is complete and appropriate from a legal and technical standpoint, and identify what matters are left open under the terms of the settlement to some discretionary action by the State of Alaska and therefore might be subject to influence or recommendation by the Legislature.

The special committees will be meeting separately and jointly during the next several weeks. We would appreciate your response as soon as possible so that the committees will be able to consider your comments along with the other evidence and testimony we will be hearing.

Thank you.

FIRST MEETING OF THE SENATE EXXON SETTLEMENT COMMITTEE

I. Approach to review of settlement

Legal and financial analysis of settlement
How to handle questions that arise?

Public Testimony

Who does committee want to hear from?
Specific people to invite for testimony?
Statewide teleconference for general public
How many, how long?
Joint with House committee?

Timeline for committee's work

Resolution establishing committee requires
recommendation back to full Senate by April 22
So have 4 and a half weeks, with Easter in middle

Set tentative meeting schedule at least for the next
week plus any teleconferences

II. Legal overview

Call attention to memos in folders

Overview by Pam Findley (Assistant Revisor) and
Tam Cook (Director) of Legislative Legal Services.

Ask Doug Bailey about Rike Steiner's comments re: Exxon's willingness to pay \$550M plea bargain 1yr ago (He met w/Frank Jorrosi - their prob. was that they wanted it for restoration not all as a fine - no tort write-off)

Draft bill to require that Trustees only meet in public

Senate Teleconference Testimony:

Asst. Prof. of Ecology - can't we divide data into what has to be kept secret for lawsuits & release the rest so good science can go on?
Is there \$ for long-term monitoring & research?

Joe Sonneman is a "public interest litigant regarding dedicated funds." - related to the spill settlement??

Rike Steiner - w/Sea Grant (on sabbatical)

Had asked for 2 b. up front - as endowment
Should approve settlement, release the data,
hold state trustee feet to the fire, spend \$ on equivalent ^{restoration or} habitat, etc., not on more clean-up (use 470 fund for clean-up).

\$50 M penalty should be appropriated immediately:

Buy Fish Bay right away, Kachemak Bay state park, area around Kitoi Hatchery, etc

Give legal direction to Trustees -

use most of \$ for acquisition of equiv. resources

Citizens?
Community?
Emergency Response Committees

Possible bills:

- • Trustees must meet in public, not private
- • Leg. must confirm or OK the Gov's appointments to the Trustees
- • Appropriately the \$ to avoid const. problem
- • Trustees must bring their spending plans before the leg. for approval before they sign off on them.

Check out what **DEC** has said recently
re: not pursuing more clean-up or whatever

Oil-spill answers raising questions

NEW INFO: New questions

4.10.91
Settlement's OK still appears likely

By CHARLES WOHLFORTH
Daily News reporter

New information about the damage and cause of the Exxon Valdez oil spill released Monday and Tuesday created more questions about the pending \$1 billion settlement of state and federal lawsuits against Exxon, and more doubt about whether it will be approved.

Some legislators who will vote on the settlement said they have new questions and doubts, but they still predicted the legislature will approve it.

Tuesday, Rep. George Miller, D-Calif., said in a letter to the judges considering the settlement that Alyeska Pipeline Service Co. decided a year before the 1989 Exxon disaster not to prepare for a spill of its kind. That is relevant to the settlement because the agreement drops most state and federal claims against Alyeska with no compensation from the company.

And Monday, the federal government released a summary of oil-spill studies by federal and state scientists that showed the oil caused

worse and longer-lasting damage than had been publicly acknowledged. Alaska Attorney General Charlie Cole had resisted releasing the information because he said it could hurt the state in court.

Legislators were not surprised by the new scientific information as were environmentalists and other outside experts, probably because lawmakers had confidential briefing on the subject a couple of months ago. But the public release did influence some legislators.

"I imagine there are some people out there who are going to be asking some questions now about if the settlement is a good deal for the state," said Rep. Gene Kubina, D-Valdez, who has said it is not. "I predicted before that the settlement would pass. Now, it's up in the air. More people are asking questions, for sure."

Rep. Mike Navarre, D-Kenai, said he still expects the settlement to be approved, although he hasn't decided

Please see Page B-2, NEW INFO

Continued from Page B-1

how he will vote. He said the legislature must first have the state's economic data on the damage of the spill, which have not been released. He expects to get the information in a confidential session.

"We have to," he said. "If we can't... it would make it more suspect."



The state resisted the release of the information, but the federal government did it anyway.

Lloyd Miller, an attorney for Alaska Natives in the spill cases, said the private litigants would have gotten the data anyway in the trial discovery process. But he said the information would "make a lot of difference in the settlement approval" by federal judges.

The judges — Russel Holland and Stanley Sporkin — have authority to allow or reject the settlement. For either to turn it down would be unusual, but Lloyd Miller said it could happen.

"The whole thing is unprecedented, so I think Judge Holland and Judge Sporkin are operating in new territory, and it's quite dangerous to predict what they might do," Miller said.

Holland asked for public comment before making his decision on the Exxon criminal plea bargain, and the federal government is collecting comments on the civil settlement. After the new information was released, some of the comments were bound to be negative.

"The Sound is not healthy," said Miller, the Natives' attorney. "Our clients have been saying that for months and months and months and no one has been listening and no one has been believing it."

Deb Donahoe, an attorney for the National Wildlife Federation, said her organization at first supported the settlement, but now is strongly against it and plans to tell the judges so.

"Up until now, no data has been available to judge it. Our initial impression was that it was as good as good as we could get, but now the closer we get to it the more flaws we see," Donahoe said.

...the information in a confidential session. "We have to," he said. "If we can't... it would make it more suspect."

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Sam suggests that to avoid prob. of continuing approps (dedicated funds) we could determine present day value of settlement & have Exxon pay that amount this year, make leg. approps of it to Trust Fund

- #10. No further fees agnst Exxon
Have been spending \$1 million/mo. to pursue litigation agnst Exxon.
w/o settlement state will pay approx \$12-15 million annually for next 5-6 yrs. (maybe longer) state could spend \$75-100 million total in litigation costs
to defend agnst recently filed 17 lawsuits

He will provide ^{details} later:
Figures on the \$72 million
Net unreimbursed restoration \$35
Unreimbursed assessment 17.5
" litigation + 20
72.5

He admits to reducing it slightly
at end of negotiations

Currently working on RSA
w/Exxon for clean-up.
How does the settlement change
that arrangement? Better or worse?

Could legisl. set up statute to
establish procedures for appointment
of trustees?

Questions yet to ask:
What does AG see as
pros & cons of this settlement?

4-6-91

Senate Exxon
Comm.

Statewide Teleconf.

Transcript of
Brenberg's question
and A.G.'s response
re: his willingness to
take leg.'s suggestions
back to Exxon & feds.

Ms. Hess - Whittier
Oil Spill Response Office

Settlement is unacceptable
at their regional level
even if fine for
"the State"

LEGISLATIVE TELECONFERENCE NETWORK



SIGN-IN SHEET

SPONSOR: Senate ~~Finance~~ Special Comm on Exxon Settlement

SUBJECT: Exxon Valdez Settlement

START/END TIME: 10:00a-4:00p DATE: 7-6-91

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE	BILL #
1	Chip Thoma / self	# 2 Marine Way Juneau	—	✓		✓
2	Joe Sonneman / SELF	324 W. CAUGHBY, JUNEAU	463-2624	✓		✓
3	David Vandenberg	Box 22151 Juneau 99802	463-3366	✓		✓
4						
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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

MAR 27 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By [Signature] Deputy

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 EXXON CORPORATION)
)
 and)
)
 EXXON SHIPPING COMPANY,)
)
 Defendants)
)
 _____)

SUPERSEDING
INDICTMENT

Criminal No. A 90-015

Count I: Clean Water Act *
Vio. 33 U.S.C. §§ 1311(a),
1319(c)(1)

Count II: Refuse Act
Vio. 33 U.S.C. §§ 407, 411

Count III: Migratory Bird
Treaty Act
Vio. 16 U.S.C. §§ 703,
707(a)

Count IV: Ports and Waterways
Safety Act *

Vio. 33 U.S.C. § 1232(b)(1)
Count V: Dangerous Cargo Act *
Vio. 46 U.S.C. § 3718(b)

COUNT ONE

The grand jury charges that:

1. Defendant EXXON CORPORATION is a corporation incorporated under the laws of the State of New Jersey.
2. Defendant EXXON SHIPPING COMPANY is a corporation incorporated under the laws of the State of Delaware. At all times pertinent to this indictment, EXXON CORPORATION was the sole shareholder of EXXON SHIPPING COMPANY, and EXXON SHIPPING COMPANY had a single director who reported to Exxon USA, a division of EXXON CORPORATION.
3. EXXON SHIPPING COMPANY was incorporated in 1973.

Superseding
INDICTMENT

In 1982, EXXON SHIPPING COMPANY took over the functions of the Marine Department of Exxon USA, the primary purpose of which was to transport petroleum products for Exxon USA. EXXON CORPORATION or its affiliates were the source of all of EXXON SHIPPING COMPANY's initial assets and personnel, and EXXON CORPORATION continued to be the primary source of capital for EXXON SHIPPING COMPANY at all times pertinent to this indictment.

4. At all times pertinent to this indictment, EXXON SHIPPING COMPANY operated oil tankers for the benefit of EXXON CORPORATION; one such tanker was the Exxon Valdez. EXXON CORPORATION guaranteed the debt issued by EXXON SHIPPING COMPANY to build the Exxon Valdez.

5. At all times pertinent to this indictment, EXXON SHIPPING COMPANY's headquarters were in Houston, Texas, in the same building that housed the headquarters of Exxon Company USA. EXXON CORPORATION provided all of the computer, medical, accounting, administrative, and legal services used by EXXON SHIPPING COMPANY. EXXON CORPORATION set policies for EXXON SHIPPING COMPANY regarding capital expenditures, personnel, employee compensation, alcohol abuse, and contracting.

6. At all times pertinent to this indictment, the president of EXXON SHIPPING COMPANY reported to a vice-president of Exxon Company USA. All major investments by EXXON SHIPPING COMPANY were subject to the approval of EXXON CORPORATION.

7. At all times pertinent to this indictment, EXXON SHIPPING COMPANY was acting for the benefit of EXXON CORPORATION, and within the scope of authority granted it by EXXON

CORPORATION.

8. At all times pertinent to this indictment, EXXON SHIPPING COMPANY employed "able seamen" and officers aboard the Exxon Valdez who were responsible for the operation, direction, and control of the Exxon Valdez.

9. On March 23, 1989, at approximately 9:20 p.m., the Exxon Valdez departed from the Port of Valdez, Alaska carrying 53 million gallons of crude oil owned by EXXON CORPORATION, bound for an EXXON CORPORATION facility in Long Beach, California.

10. On March 23, 1989, shortly before midnight, the Exxon Valdez deviated from the designated shipping lanes in Prince William Sound. These lanes are used by ships entering or leaving the Port of Valdez, Alaska, and establish a route for the passage of ships.

11. After the Exxon Valdez deviated from the designated shipping lanes, the master left the ship's bridge. The ship then proceeded under the direction of an officer who lacked the required Coast Guard certification for pilotage in Prince William Sound, and a helmsman who was known by EXXON SHIPPING COMPANY to be incompetent at performing his assigned duties.

12. On March 24, 1989, shortly after midnight, the Exxon Valdez ran aground on Bligh Reef, a well-known and well-marked navigational hazard, and discharged more than ten million gallons of crude oil into Prince William Sound.

13. From March 24, 1989 through November 9, 1989, crude oil that discharged from the Exxon Valdez migrated more

than 700 miles from Bligh Reef, contaminating the waters and shorelines of Prince William Sound, the Gulf of Alaska, Kenai Fjords National Park, the Katmai National Park and Preserve, the Aniakchak National Monument and Preserve, the Alaska Peninsula National Wildlife Refuge, the Alaska Maritime National Wildlife Refuge, the Becharof National Wildlife Refuge, the Kodiak National Wildlife Refuge, the lower Kenai Peninsula, the Barren Islands, Kodiak Island, Shelikof Strait, and other parts of the Alaska Peninsula, causing the death of more than 36,000 migratory birds, including more than 100 bald eagles, and numerous other varieties of wildlife.

14. On March 24, 1989, in the District of Alaska, and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did negligently cause pollutants, namely more than ten million gallons of crude oil, to be discharged from a point source, namely the tank vessel Exxon Valdez, into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1).

COUNT TWO

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. On March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY unlawfully did throw, discharge and deposit, and did cause, suffer and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the Exxon Valdez, into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

COUNT THREE

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. From on or about March 24, 1989 to on or about September 25, 1989, in the District of Alaska and elsewhere, the defendants EXXON CORPORATION and EXXON SHIPPING COMPANY, without being permitted to do so as required by law, did kill migratory birds, all in violation of and contrary to Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

COUNT FOUR

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. On March 23 and March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did willfully and knowingly violate a regulation prescribed under Title 33, United States Code, Chapter 25, in that defendants, being the owners of the tank vessel Exxon Valdez, and the master of the Exxon Valdez, acting as the agent of the defendants, did willfully and knowingly fail to ensure that the wheelhouse of the Exxon Valdez, while underway, was constantly manned by persons who directed and controlled the movement of the vessel, each of whom was competent to perform that duty, all in violation of and contrary to Title 33, United States Code, Section 1232(b)(1), and Title 33, Code of Federal Regulations, Section 164.11(b).

COUNT FIVE


The grand jury further charges:

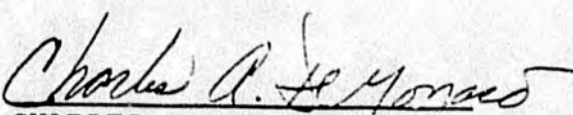
1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. On March 23 and March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did willfully and knowingly violate a regulation prescribed under Title 46, United States Code, Chapter 37, in that defendants did employ and cause persons to be engaged on the crew of the tank vessel Exxon Valdez, knowing such persons to be physically and mentally incapable of performing the duties assigned them, all in violation of Title 46, United States Code, Section 3718(b), and Title 46, Code of Federal Regulations, Section 35.05-20.

A true bill,


Foreperson


MARK R. DAVIS
Acting United States Attorney


CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
U.S. Department of Justice

Budget Summary for the Exxon Valdez Oil Spill Damage Assessment - 1991

Budgeted costs for projects from 3-1-91 through 2-29-92.

STUDY NO.	STUDY TITLE	LEAD AGENCY	BUDGET
Marine Mammals			
2	Killer Whale	NOAA	\$186,000
4	Sea Lion	ADF&G	24,000*
5	Harbor Seal	ADF&G	94,200
6	Sea Otter Injury	DOI	810,800
		subtotal	\$1,115,000
Terrestrial Mammals			
3	River Otter & Mink	ADF&G	\$377,300
4	Brown Bear	ADF&G	76,000
6	Mink Reproduction	ADF&G	8,500*
		subtotal	\$461,800
Birds			
1	Beached Bird Survey	DOI	\$313,000
2	Census/Seasonal Distribution	DOI	220,000
3	Seabird Colony Surveys	DOI	530,000
4	Bald Eagles	DOI	255,000
11	Sea Ducks	DOI	178,900
		subtotal	\$1,496,900

Budget Summary for the Exxon Valdez Oil Spill Damage Assessment - 1991
(continued)

B1

Budgeted costs for projects from 3-1-91 through 2-29-92.

STUDY NO.	STUDY TITLE	LEAD AGENCY	BUDGET
Fish/Shellfish			
1	Salmon Spawning Area Injury	ADF&G	\$288,000
2	Eggs/Pre-emergent Fry Sampling	ADF&G	259,000
3	Coded-wire Tagging	ADF&G	1,075,000
4	Early Marine Salmon Injury	ADF&G NOAA	136,400 172,000
5	Dolly Varden Injury	ADF&G	325,100
7	Salmon Spawning Area Injury, Outside PWS	ADF&G	15,000*
8	Egg & Pre-emergent Fry Sampling, Outside PWS	ADF&G	15,000*
11	Herring Injury	ADF&G	558,000
13	Clam Injury	ADF&G	147,000
15	Injury to Shrimp	ADF&G	moved to Subtidal
17	Injury to Rockfish	ADF&G	moved to Subtidal
18	Trawl Assessment	NOAA	40,000*
24	Injury to Demersal Fish	NOAA	moved to Subtidal
27	Sockeye Salmon Overescapement	ADF&G	334,300
28	Run Reconstruction	ADF&G	175,100
30	Database Management	ADF&G	175,800
		subtotal	\$3,715,700

Budget Summary for the Exxon Valdez Oil Spill Damage Assessment - 1991
(continued)

Budgeted costs for projects from 3-1-91 through 2-29-92.

STUDY NO.	STUDY TITLE	LEAD AGENCY	BUDGET
Technical Services			
1	Hydrocarbon Analysis	DOI NOAA	\$550,000 2,000,000
3	Mapping	DOI ADNR	300,000 656,300
		subtotal	\$3,506,300
Archaeology			
1	Archaeological	ADNR USFS	\$688,600 103,000
		subtotal	\$791,600
SUBTOTAL FOR SCIENCE PROJECTS			\$18,238,800
Peer Reviewers/Chief Scientist			
	Department of Agriculture		\$772,000
	Department of Interior		772,000
	National Oceanic and Atmospheric Administration		772,000
SUBTOTAL FOR PEER REVIEWERS/CHIEF SCIENTIST			\$2,316,000
Economics			
1	Commercial Fisheries Losses	FEDERAL	\$265,500
5	Recreation Uses Damage	FEDERAL	390,400
6	Subsistence Losses	FEDERAL	532,100
7	Intrinsic Value Loss	FEDERAL	1,964,600
8	Research Program Damage	FEDERAL	104,900
10	Petroleum Products Price	FEDERAL	271,300
SUBTOTAL FOR ECONOMICS			\$3,528,800
Restoration Planning			
	State of Alaska		\$2,968,000
	Environmental Protection Agency		1,267,000
	Department of Interior		300,000
	Department of Agriculture		525,000
	National Oceanic & Atmospheric Administration		425,000
SUBTOTAL FOR RESTORATION			\$5,485,000**

Budget Summary for the Exxon Valdez Oil Spill Damage Assessment - 1991
 (continued)
 Budgeted costs for projects from 3-1-91 through 2-29-92.

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STUDY NO.	STUDY TITLE	LEAD AGENCY	BUDGET
Coastal Habitat			
1A	Intertidal Studies	USFS	\$5,100,000
1B	Intertidal Studies	NOAA	68,000
		subtotal	\$5,168,000
Air/Water			
2a	Injury to Subtidal	DEC NOAA	moved to Subtidal moved to Subtidal
2b	Deep Water Benthos	ADF&G	moved to Subtidal
3	Hydrocarbon in Water	DEC NOAA	moved to Subtidal moved to Subtidal
6	Oil Fate and Toxicity	NOAA	moved to Subtidal
Subtidal			
1	Hydrocarbon Exposure, Microbial and Meiofaunal Community Effects (A/W 2a)	DEC NOAA	\$139,800 295,000
2	Injury to Benthic Communities:	ADF&G	592,500
3	Bio-availablity and transport of hydrocarbons (A/W 3)	DEC NOAA	196,200 150,000
4	Sediment Toxicity Bioassays (A/W 6)	NOAA	125,000
5	Injury to Shrimp (F/S 15)	ADF&G	50,000
6	Injury to Rockfish (F/S 17)	ADF&G	120,000
7	Injury to Demersal Fish (F/S 24)	ADF&G NOAA	80,000 235,000
		subtotal	\$1,983,500

OV

Summary for the Exxon Valdez Oil Spill Damage Assessment - 1991
 (continued)
 Budgeted costs for projects from 3-1-91 through 2-29-92.

STUDY NO.	STUDY TITLE	LEAD AGENCY	BUDGET
	Oil Spill Public Information Support		
	Department of Agriculture		\$614,000
	Department of Interior		1,739,000
	National Oceanic and Atmospheric Administration		599,000
	SUBTOTAL FOR OIL SPILL PUBLIC INFORMATION SUPPORT		\$2,952,000
	Overhead		
	State of Alaska		\$1,037,200
	Department of Agriculture		600,000
	Department of Interior		300,000
	National Oceanic and Atmospheric Administration		900,000
	Environmental Protection Agency		200,000
	SUBTOTAL FOR OVERHEAD		\$3,037,200
GRAND TOTAL			\$35,557,800

* These studies are being funded for the completion of data analysis and final report preparation.

** Restoration implementation projects may be conducted this summer depending on resource availability. (See FR 88, 98, March 1, 1991.)

BUDGET SUMMARY FOR THE EXXON VALDEZ OIL SPILL BY AGENCY

State of Alaska	\$10,612,300
Department of Agriculture	7,714,000
Department of Interior	6,268,700
National Oceanic and Atmospheric Administration	5,967,000
Environmental Protection Agency	1,467,000
All Federal Agencies (Economics)	3,528,800

GRAND TOTAL

\$35,557,800

PART V: RESTORATION PLANNING

RESTORATION PLANNING

OBJECTIVES

The goal of the restoration planning effort is to identify appropriate measures that can be taken to restore natural resources injured by the EVOS. Specific objectives are:

- A. Identify or develop technically feasible restoration options for natural resources and services potentially injured by the EVOS;
- B. Determine the nature and pace of natural recovery of injured resources, and identify where direct restoration measures may be appropriate;
- C. Incorporate an approach to restoration that where appropriate, focuses on recovery of ecosystems rather than on the individual components of those systems;
- D. Identify costs associated with implementing restoration activities, in support of the overall natural resource damage assessment process; and
- E. Encourage, provide for, and be responsive to public participation and review during the restoration planning process.

DEFINITION

For any injury, there are three types of possible restoration activities:

1. direct restoration refers to measures in addition to response actions, usually taken on site, to directly rehabilitate an injured, lost, or destroyed resource;
2. replacement refers to substituting one resource for an injured, lost, or destroyed resource of the same or similar type; and
3. acquisition of equivalent resources means to compensate for an injury to a resource by substituting another resource that provides the same or substantially similar services as the resource injured, lost, or destroyed.

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.

1990 RESTORATION ACTIVITIES

The Trustee agencies and EPA initiated several small-scale field studies to evaluate the feasibility of restoration techniques. Results from these studies will help to 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 were described in the 1990 State/Federal Natural Resources Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill, August 1990 (available at the OSPIC) and preliminary results are summarized below.

1990 RESTORATION FEASIBILITY STUDIES

1. Reestablishment of *Fucus* in Rocky Intertidal Ecosystems

Lead Agency: EPA

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 PWS; 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 it appears that *Fucus* recovers most slowly at intensively cleaned sites and almost no recovery occurs where tar cover persists.

2. Reestablishment of Critical Fauna in Rocky Intertidal Ecosystems

Lead Agency: USFS

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 unoiled surfaces, and differences in algal grazing by limpets between oiled and reference sites. One of the preliminary results indicates 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: DNR

This study was designed to identify sites with injury to beach wildrye grass and to recommend restoration measures. 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. Results from survey work conducted in 1990 in PWS indicate injury to several beach wildrye communities.

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

Lead Agency: FWS, ADF&G

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 the effects of the oil on injured fish and wildlife populations, and thereby speed their recovery. 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 north facing slopes, and inland areas at the heads of bays. 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

Lead Agency: DNR

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 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 is under consideration.

1990 Technical Support Projects

1. Peer Reviewer Process for Restoration Feasibility Studies

Lead Agencies: ADF&G, DEC, DNR, DOI, DOA, NOAA, EPA

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

Lead Agency: DNR

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.

A master database is being created from that portion of the beach surveys relevant to restoration. The primary sources of this information are DNR and DEC. 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

Lead Agencies: ADF&G, EPA

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. Feasibility study proposals are currently under consideration including the above topics.

1991 RESTORATION PLANNING ACTIVITIES

The fundamental purpose of restoration planning is to identify, evaluate, and then recommend potential restoration implementation activities, in consultation with technical experts and the public.

The NRDA studies and other sources (e.g., Shoreline Assessment Program, and other agency surveys not connected with the oil spill) provide information on species, habitats, and ecosystems in need of restoration. In 1991, as damage assessment results are synthesized, the RPWG will consult with the principal investigators, agency experts, and outside peer reviewers to review the nature and extent of oil spill injuries in relation to the biology and ecology of the injured resources. A key goal in this process will be to identify life history requirements, limiting factors, and environmental processes that are especially sensitive or that may be enhanced. In turn, this will lead to the identification of potential restoration activities.

Once potential restoration implementation activities have been identified, they must be evaluated in terms of technical feasibility, environmental benefit, cost, and other factors. In 1991, the RPWG will continue to evaluate the restoration options identified thus far (e.g., those presented in RPWG's Restoration Planning Following the Exxon Valdez Oil Spill: August 1990 Progress Report), as well as new options that are suggested through public and technical consultations.

While some potential restoration implementation activities are readily evaluated, others require more detailed review and study. In some cases, the RPWG will recommend that restoration science studies (feasibility, monitoring, or technical support) be conducted to test the efficacy of particular options or to gather basic information necessary to evaluate or implement an option (e.g., biological or resource assessment data). Several such studies were carried out in 1990. Subject to additional technical review and availability of funds, some restoration science studies and implementation projects are being considered in 1991. If these studies or projects are carried forward they will be outlined in a Federal Register notice later this spring. Additional information on the Trustees' plan to implement restoration projects in 1991 was provided in the March 1, 1991, Federal Register, (56 FR 8898).

The RPWG also expects to further evaluate restoration approaches. For example, the RPWG will review different management systems for protecting marine habitats (e.g., National Marine Sanctuary Program, Alaska Marine Parks). Another example would be to carry out economic and environmental analyses of restoration alternatives.

As information about injuries becomes available, and as potential restoration actions are evaluated, further implementation activities may be recommended.

Literature Review

The scientific literature and information from other oil spills will provide background information that is helpful in restoration planning. In 1991, the RPWG expects to synthesize previously identified literature on restoration (see Appendix B, August 1990 Progress Report). The RPWG will also complete previously initiated syntheses of literature on species and ecosystem recoveries following natural and human-induced environmental disturbances.

Monitoring

Information on the adequacy of natural recovery is central to determining whether to implement restoration activities or to allow injured resources to recover on their own. The literature reviews described above will provide background information for such considerations, while damage assessment studies will provide current data on the status of resources injured by the EVOS. In 1991 the RPWG expects to recommend several monitoring studies to be carried out in the field in 1991 and to develop protocols for evaluating the effectiveness of any restoration projects that are implemented. The RPWG also will continue efforts to develop a comprehensive plan for long-term ecological monitoring that could be implemented in the oil spill environment following resolution of damage claims.

Public Participation

In 1990, the RPWG emphasized broad scoping activities to invite suggestions from the public about potential restoration activities and priorities. Public participation will continue to be important in 1991, with increased emphasis on evaluating and determining the importance of restoration alternatives. The RPWG is interested in, and available for, meetings with individuals or constituency groups. There also will be consideration of additional activities, such as publications and workshops in 1991. Requests and suggestions from the public are invited.

Scientific Review

Technical review is essential to the scientific integrity of the restoration planning process. As needed, the RPWG draws upon experts from academic institutions, public agencies, and private organizations (e.g., consulting firms, non-profit organizations) as sources of advice and criticism in planning feasibility and technical support studies, and in evaluating and recommending

restoration activities. In 1991, the RPWG will continue to place emphasis on scientific review, including participation by peer reviewers.

BIBLIOGRAPHY

Trustee Council. 1990. 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill; August, 1990. 360pp plus appendices.

Restoration Planning Work Group. 1990. Restoration Planning Following the *Exxon Valdez* Oil Spill; August 1990 Progress Report. 80 pp.

BUDGET

The following restoration planning budget does not include the 1991 costs of any potential restoration implementation projects.

Salaries:	\$835.0
Travel:	250.0
Supplies:	20.0
Equipment/Office:	75.0
Contractual Services:	
Literature Review	125.0
Scientific Review	100.0
Public Participation	30.0
Restoration Options Analysis	200.0
Report Publications	25.0
Restoration Science Studies:	<u>3,875.0</u>
Total Planning Activities Budget:	\$5,485.0

April 2, 1991

MEMORANDUM

TO: Trustee Council Members

FROM: Paul Gertler, Chair Susan MacMullen
Management Team

SUBJECT: Agenda for April 4, 1991 Trustee Council Meeting

Below is a proposed agenda for the Trustee Council Meeting scheduled for April 4th at 10:30 a.m. in Juneau. If you need clarification or have additional items for the agenda, please call me at (786-3579) or fax your comments to me (786-3350).

DRAFT

TRUSTEE COUNCIL MEETING
APRIL 4, 1991
FOREST SERVICE CONFERENCE ROOM
5TH FLOOR -- FEDERAL BUILDING
JUNEAU, ALASKA
10:20 a.m.

AGENDA

Note: see # 3

Decision Item

1. 1991 Restoration Science Program

This is the last piece of the 1991 science program. A budget placeholder number of \$3,875,000 was approved by the Trustee Council and then the State and Federal Trustees in January. This is the number which appears in "Pink Book." The Work Group and the Management Team were asked to return to the Trustee Council with a recommended 1991 Restoration Science Program.

Decision: The Management Team and Work Group are recommending twelve projects for OY3 with a total budget of approximately \$2.3 million. The Trustee Council is asked to approve the package and suggest modification, if any.

Information Items

2. 1991 Injury Assessment Program and Settlement

If the settlement is approved, litigation concerns may no longer be a major factor in study design. Consequently there may be an opportunity for further efficiencies in the injury assessment program. However, as the State is still involved in third party litigation, litigation concerns are still a factor.

3. Status of Information and Data Release

- o Summary of injuries to Congress
- o Information release to the public

Discussion Items

4. Organization for Trustee Council Work

The Council will discuss how to proceed in the interim, before the settlement takes effect and for the three or four months after settlement as the reorganization plan is developed and put into place.

5. Trustee Coordination with State and Federal On Scene Coordinators for OY3 Cleanup

The costs of this year's cleanup will be taken out of the 1992 settlement payment. Accordingly, the Trustees will need to be involved more closely than in past years on the decisions of where, how, and how much to invest in clean up.

cc: Management Team
Legal Team
Restoration Planning Work Group

Exxon and state may pair for suits

By MATT KOHLMAN
The Associated Press

3-27-91

JUNEAU — The state may be forced to join Exxon Corp. to fend off civil lawsuits that have been filed against them over the Exxon Valdez oil spill, Alaska Attorney General Charlie Cole said Thursday.

The possibility means scientific and legal information that could help third-party litigants would be withheld from the public, he said.

Cole spoke before a Senate committee formed to review the \$1 billion settlement signed earlier this month by the oil giant and state and federal officials.

Legislators, environmentalists and others have urged the state to release its scientific and economic studies of the spill to help assess whether the settlement is adequate to pay for the damage.

Cole has said he will not release the information as long as there is a chance it can be used against the state. To do so, he said, would be foolish.

About 18 private plaintiffs, including groups such



as Natives and commercial fishermen, have filed civil claims against the state. Cole said most of the plaintiffs also are suing Exxon, and a judge would probably consolidate the lawsuits.

Exxon faces more than 160 private claims for damages resulting from the March 24, 1989, grounding of the tanker Exxon Valdez in Prince William Sound. Nearly 11 million gallons of crude oil spilled into the scenic waterway, killing marine wildlife and oiling hundreds of miles of shoreline.

"The state now is placed in a position of becoming defendants with Exxon," Cole said. "That wouldn't be our preference. We would prefer to be aligned with Alaska residents other than Exxon in litigation."

The two-year statute of limitations has run out for

Please see Page B-3, SUITS

SUITS: State, Exxon may pair

collected damage assessment and legal work.

"It's safe to say that the state certainly would be willing to lend whatever assistance it could to prosecution of the third-party claims," he added.

Continued from Page B-1

people or groups to sue the state over the spill. And Cole has provided some incentive for lawsuits already filed to be dropped, including the availability of state

State may join ranks with Exxon

By MATT KOHLMAN

THE ASSOCIATED PRESS

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About 16 private plaintiffs, including groups such as Natives and commercial fishermen, have filed civil claims against the state. Cole said most of the plaintiffs also are suing Exxon, and a judge would probably consolidate the lawsuits.

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PHOTO BY BOB TKACZ

AG Charles Cole: 'The state now is placed in a position of becoming defendants with Exxon.'

be our preference. We would prefer to be aligned with Alaska residents other than Exxon in litigation."

The concept of the state sitting side by side with Exxon at the court table does not thrill legislators either.

"It's real difficult to accept that we would side with Exxon," said Sen. Sam Cotton, D-Eagle River and

chairman of the Senate Special Committee on Oil and Gas. "Nobody wants that to happen."

Sen. Jay Kerttula, D-Palmer, said there are always political woes to the state being in court. "If people sue you, you've got to protect yourself."

The two-year statute of limitations has run out for people or groups to sue the state over the spill. And

Cole has provided some incentive for lawsuits already filed to be dropped, including the availability of state-collected damage assessment and legal work.

"It's safe to say that the state certainly would be willing to lend whatever assistance it could to prosecution of the third-party claims," he added.