

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9367 HOUSE RESOURCES

**EXXON  
OIL SPILL  
TRUSTEE  
COUNCIL  
HEARING**

# Exxon Valdez Oil Spill Trustee Council

645 G Street, Suite 401, Anchorage, AK 99501-3451 907/278-8012 fax: 907/276-7178



FEB 23 1998

*H. Hudson*

February 20, 1998

The Honorable Bill Hudson  
House of Representatives  
Alaska State Legislature  
State Capitol, M/S 3100  
Juneau, Alaska 99801-1182

~~Dear Representative Hudson:~~

I appreciated the opportunity to speak before the House Resources Committee last week. I hope the information provided by myself and the State Trustees was useful. As you requested, I am enclosing a list of the slides used in my presentation, and their location, if known. I have also added both yourself and co-chair Representative Scott Ogan to our mailing list for newsletters and annual reports, as well as notification regarding the planning process for the Restoration Reserve.

Please let me know if I can be of any further assistance.

Sincerely,

Molly McCammon  
Executive Director

Enclosure

cc: Co-chair Representative Scott Ogan

mm/raw

# Exxon Valdez Oil Spill Trustee Council

645 G Street, Suite 403, Anchorage, AK 99501-3451 907/278-8012 fax: 907/276-7178



*Exxon Valdez Oil Spill Trustee Council slides presented to the House Resources Committee, February 12, 1998.*

## Slide descriptions and locations

- 1) Otolith marking from Prince William Sound pink salmon.
- 2) Coded wire tags imbedded in snouts of salmon fry. ADF&G file photo.
- 3) ADF&G biologist taking genetic samples from Kenai River.
- 4) Hydroacoustic surveys in Prince William Sound.
- 5) Alaska SeaLife Center in Seward.
- 6) Port Dick Creek (before and after reconstruction) taken at Port Dick, southern Kenai Peninsula.
- 7) Harbor seal sampling, ADF&G file photo, location unknown.
- 8) Sport fisherman, ADNR file photo, Kenai River.
- 9) Gratewalks or fishwalks, ADNR file photo, Kenai River.
- 10) Outside Alutiiq Museum, Kodiak.
- 11) Inside Alutiiq Museum, Kodiak.
- 12) 1997 oil spill cleanup, Sleepy Bay, Latouche Island, Prince William Sound.

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### **Federal Trustees**

U.S. Department of the Interior  
U.S. Department of Agriculture  
National Oceanic and Atmospheric Administration

### **State Trustees**

Alaska Department of Fish and Game  
Alaska Department of Environmental Conservation  
Alaska Department of Law

Alaska State Legislature

*Handwritten initials*

MAR 19 1997

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DEVELOPMENT  
ALASKA COURT SYSTEM

Representative Joe Green  
District 10

TO: Representative Scott Ogan, Co-Chairman  
Representative Bill Hudson, Co-Chairman  
House Resources Committee

FR: Representative Joe Green *Joe*

RE: Resources Committee Schedule

DATE: March 19, 1997

*Handwritten notes:*  
OK -  
When?  
INTERIM?

During a recent hearing in the House Resources Committee on the topic of restricting the use of state land I suggested that the committee might dedicate a meeting to this topic so that the next time we consider such legislation, we would be better informed.

Please consider this memo a formal request for such a hearing.

*Shirley Jane Arisquell*

I would like someone from DNR, and possibly the Department of Law, to address the committee with detailed maps showing where the state has land, how it is classified or restricted, any plans they have for re-classification; lands for which we have applied, but have not yet received patent under the statehood act, whether or not there are disputes surrounding these lands, and how the division plans to classify or restrict the use of these lands after the state receives patent; land that has been selected and/or patented by native corporations; land selections that have been disputed by the state, native corporations, or the federal government; and a review of mental health and university lands. In this context I believe it would be important for them to discuss the regional plans being developed around the state, and any restrictions anticipated or planned for the use of the land.

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Representative Scott Ogan, Co-Chairman  
Representative Bill Hudson, Co-Chairman  
March 19, 1997  
Page 2

In addition it seems incumbent that the committee hear from the Exxon Valdez Oil Spill Trustees Council. As you know, this organization is directed by a board of three federal members and three state members. The three state members are Attorney General Bruce Botelho, Department of Fish and Game Commissioner Frank Rue, and Department of Environmental Conservation Commissioner Michelle Brown. The Council has a staff, headed by an Executive Director, Mollie McCammon. We should have at least one board member (preferably all three) and the executive director address the committee on the topic of the Council's land acquisition program. As you may know, the Council is buying large parcels of land in the so-called "spill area" and restricting the use of that land to "habitat restoration" which may or may not be the highest and best use for the state.

Finally, Mr. Jack Chenowith, of the Legislative Affairs Agency, Division of Legal Services, should be requested to discuss the process, and potential legal problems, of the Oil Spill Council restricting the use of state land. As you know, only the legislature can restrict the use of state land.

I believe it is important for the Resources Committee to have all of this background so we can make a more informed decision the next time we consider legislation to restrict the use of state land.

Thank you for your consideration.

cc: Members, House Resources Committee

November 20, 1997

Representative Scott Ogan, Co-Chairman  
House Resources Committee  
600 E. Railroad Avenue, #1  
Wasilla, Alaska 99654

Scott,

Enclosed please see a copy of a memorandum I sent you last March 19, along with a recent news article, both on the subject of the Exxon Valdez Oil Spill Restoration Council. The memo addresses the need for oversight of the Council's land acquisition activities in Alaska. The article describes Senator Frank Murkowski's effort to restrict those activities.

I think we're on to something here.

I would respectfully request that you schedule a meeting, early in the session, as described in the memo. Additionally, I would request that House Resources Committee staff work with Senator Murkowski's staff in preparation for such a hearing. It may even be appropriate, at the chairman's discretion, to have a member of the Senator's staff on teleconference to voice the Senator's concern.

While Mr. Jack Chenowith is no longer with Legislative Legal Services, I'm sure that, with enough lead time, someone from Legal Services could alert us to the potential legal problems of restricting the use of state land absent legislative approval.

Thank you for your consideration.

Sincerely,

Joe Green

# METRO

SUNDAY, November 9, 1997 ★

ANCHORAGE DAILY NEWS

SECTION B

## Spill-funds battle stalls in Congress

By DAVID WHITNEY

Daily News Washington Bureau

WASHINGTON — A tussle between Alaska Sen. Frank Murkowski and state and federal trustees over the investment of proceeds from the Exxon Valdez oil spill settlement ended in a stalemate Saturday.

The consequence is that some \$280 million Exxon Corp. has yet to pay — and more than \$100 million the trustees want to sock away as

a kind of permanent spill-recovery endowment — cannot be invested to earn the highest possible interest rates for spill recovery work in Prince William Sound.

The trustee council, made up of federal and state repre-



Murkowski

sentatives appointed to determine how Exxon Corporation's \$900 million settlement of civil and criminal claims will be spent, had appealed to Congress for legislation allowing a more aggressive investment strategy.

Although the issue could be revived in the 1998 congressional session, the money now must be deposited in a court-administered fund that earns only about 5 percent interest. In compensation for

its costs, the court gets about 10 percent of the interest proceeds, effectively reducing the trustee council's return to only about 4.5 percent.

While Murkowski thought it was a good idea for the money to be freed from the court's control, the Republican senator was worried that higher interest income would mean more money for the council to use buying up private lands for protection.

More than a third of the to-

tal settlement proceeds, or roughly \$380 million, will have been spent on land purchases by the time the deals now on the table are wrapped up.

In total, the trustee council will have purchased title or conservation easements to about 700,000 acres, including about 1,000 miles of coastline in the area effected by the 1989 spill.

Insistent that enough land already had been bought by

the trustee council, Murkowski drew up a spending-bill rider that would have permitted the trustee council to invest the money but use the interest only on marine research and economic restoration projects sought by the fishing industry.

Murkowski's position drew strong objections from the council. Molly McCammon, executive director of the

Please see Page B-3, EXXON

## EXXON: Panelists' patience was running thin, and tempers were running hot

Continued from Page B-1

council, said last month that she would prefer to see no legislation rather than have Murkowski tying the council's hands.

The council's biggest concern is over the investment of about \$108 million it wants to set aside as an endowment for use after Exxon makes its last settlement payment in 2002.

McCammon said the council wants a higher rate of return on those funds because the plan is to spend only the investment interest. By investing the money at a higher rate, McCammon said the council could earn at least 9 percent, giving it several million dollars more annually to finance priorities that will

be determined following a public process.

Native corporations and environmentalists rallied behind the trustee council in opposition to Murkowski.

"Language restricting the uses of the interest to marine research and fishing industry projects could downgrade or eliminate many projects of great importance to our corporation, our shareholders and our community," wrote Uwe Gross, chief executive officer of Koniag Inc.

"Projects such as research on archaeological resources, subsistence and habitat acquisition would be restricted," Gross said in an Oct. 22 letter to the senator.

"If the (Murkowski) amendment passes, the losers would be the fish

and wildlife injured by the oil spill as well as those Americans who care strongly about conservation," wrote David Cline, chairman of the Kodiak Brown Bear Trust.

But Murkowski, despite efforts to strike a compromise with the council, persisted with his rider and counted on the help of Sen. Ted Stevens, chairman of the Senate Appropriations Committee, to attach it to a spending bill for the Commerce Department and other federal agencies.

The spending bill went to a House-Senate conference committee Friday, but the panel broke in the midst of angry exchanges involving other items without making any progress toward working out a compromise bill.

With time running out and sev-

eral federal agencies already technically operating without any money since midnight Friday, Stevens pulled the plug on the conference.

He convened the appropriations committee Saturday afternoon to fold several spending bills into a single pared-down package to send to the House in hopes that it would go along.

Murkowski's amendment was left on the cutting room floor, and Murkowski seemed miffed with his Alaska colleague.

"I was assured it was going to be brought up. ... but I'm not even a member of the committee," was all the senator had to say about Saturday's development, according to his press aide, Chuck Kleeschulte.

John Raffetto, spokesman for the Stevens' appropriations panel,

said there was no way controversial items such as Murkowski's were going to make it through in the closing bargaining sessions of the 1997 congressional session.

Patience was running thin and tempers were running hot, Raffetto said.

"It fell victim to a desire to break a logjam and get these spending bills moving," Raffetto said of Murkowski's provision. "It's unfortunate."

McCammon said in a telephone interview that she, too, is disappointed — but for different reasons.

"The council went to the congressional delegation for help," she said. "We're disappointed that it got politicized like this. We'll just keep plugging away at it and see where we go from here."

BARRY M. HARTMAN  
Acting Assistant Attorney General  
Environment & Natural Resources  
Division

Lodged

AUG 28 1991

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Attorney for the State of Alaska

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant and  
Counterclaimant.

Civil Action No.  
A91-081 CV

MEMORANDUM OF AGREEMENT AND CONSENT DECREE

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

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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 of natural resources resulting from the discharge of oil or the release of hazardous substances or both and provides for the appointment of State and Federal Trustees;

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 (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 C.F.R. § 300.615(a), and the Natural Resource Damage Assessment Regulations, 43 C.F.R. § 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 (the Federal 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

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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 Environmental Conservation and Fish and Game 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 predesignated 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 C.F.R. § 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 responsibility for litigation

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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 ensure that all injuries, loss or destruction to state and federal natural resources are fully compensated and to ensure that such compensation is used in accordance with law;

WHEREAS, the United States has brought this action against the State, and the State has asserted counterclaims in this action against the United States, with respect to their respective shares in any recoveries for compensation for natural resource damages resulting from the Oil Spill;

WHEREAS, recognizing their mutual desire to maximize the funds available for restoration of natural resources, the United States and the State have determined that entering into this MOA is the most appropriate way to resolve their claims against one another in this action, and that the terms of this MOA are in the public interest and will best enable them to fulfill their duties as trustees to assess injuries and to restore, replace, rehabilitate, enhance, or 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

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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 United States' Complaint and in the State's Counterclaim and over the parties to this MOA 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. § 1321(f).

II.

**DEFINITIONS**

For purposes of this MOA, the following terms shall have the meanings specified in this paragraph:

A. "Base Allowed Expenses" means (1) reasonable, unreimbursed costs obligated or incurred by either the United States or the State on or before March 12, 1991, for the planning, conduct, evaluation, and coordination, and oversight of natural resource damage assessment and restoration pursued by the Governments with respect to the Oil Spill, and (2) reasonable, unreimbursed costs obligated or incurred by the State on or before March 12, 1991, for experts and counsel in connection with the preparation of the Oil Spill Litigation.

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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 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376, 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 IV of this MOA.

E. "National Contingency Plan" means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. 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 any award, judgment, settlement or other payment to either Government which is received as a result of a claim or demand for Base Allowed Expenses or for damages for injury, destruction, or loss of natural resources arising from the Oil Spill and for costs incurred by the State for experts and counsel in connection with the Oil Spill Litigation. The term includes, without limitation, all recoveries upon claims for natural resource damages under the Clean Water Act, the Trans-Alaska Pipeline Authorization Act,

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state and federal common law, state statutes, admiralty law, state and federal right-of-way lease covenants and any recoveries for natural resource damages obtained from or in connection with a civil proceeding or criminal restitution, unless the parties otherwise agree that criminal restitution recoveries can be separately managed by either government consistent with this MOA. The term also includes all interest accrued on any such recoveries. Natural resource damage recovery excludes any reimbursement or other recovery by either Government for response and cleanup costs, lost royalty, tax, license, or fee revenues, punitive damages, federal or state civil or criminal penalties, federal litigation costs and attorney fees.

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 relating to or arising out of the Oil Spill.

J. "Response and cleanup costs" means actual, unreimbursed response and/or cleanup costs incurred by either Government in connection with the Oil Spill, as certified for payment by the Federal On-Scene Coordinator or the State On-Scene Coordinator.

K. "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 resource injured, lost, or destroyed

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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 all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

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.

#### EFFECT OF ENTRY OF MOA

Upon approval and entry of this MOA by the Court, this MOA shall constitute a final judgment between the United States and Alaska in accordance with its terms. The MOA is entered for the sole and exclusive benefit of the Governments and does not create any rights or privileges in any other parties.

### IV.

#### CO-TRUSTEESHIP

A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries 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,

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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, the Oil Spill Litigation, or the settlement of claims relating to the Oil Spill, 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 relating to such Alaska Native villages and the entities or persons referred to in subparagraph 2 above.

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V.

#### 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. 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

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matter or dispute to non-binding mediation or other means of conflict resolution.

4. Within 90 days after their receipt of any natural resource damage recovery, the Trustees shall agree to an organizational structure for decision making under this MOA and shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which shall include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph V.A.1.

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 43 C.F.R. Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from transferring, pursuant to applicable law, trustee status from one official to another official of their respective Governments; provided that, in no event shall either Government designate more

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than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such substitute or 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.

VI.

DISTRIBUTION OF 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 acquiring the equivalent of natural resources injured as a result of the Oil Spill and the reduced or lost services provided by such resources, except as provided in paragraph B of this Article. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. Except as provided in paragraph B of this Article, 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. Nothing in this MOA creates a right in or entitlement of

any person not a party to the MOA to share in any of the natural resource damage recoveries.

B. Reimbursement of Certain Expenses

1. The Governments agree that the following costs shall be advanced or reimbursed to each Government, at its election, out of any natural resource damage recoveries related to the Oil Spill and shall not be placed in the joint trust fund referred to in paragraph A: (1) Base Allowed Expenses; (2) reasonable unreimbursed costs jointly agreed upon by the Governments and incurred by either or both of them after March 12, 1991 for the planning, conduct, coordination, or oversight of natural resource damage assessment and restoration planning with respect to the Oil Spill or for restoration activities conducted under this MOA; and (3) other reasonable unreimbursed costs incurred by the State after March 12, 1991 for experts and counsel in connection with the Oil Spill Litigation provided that the total amount, in aggregate, deducted for such purposes shall not exceed \$1,000,000 per month and a total of \$40,000,000, and provided further that no such costs shall be deducted from any natural resource damages recovered as restitution in a criminal proceeding.

2. Solely for the purposes of the allocation of monies received by either or both of the Governments pursuant to any settlement(s) of the Governments' claims arising out of the Oil Spill, \$67 million shall be reimbursed to the United States for Base Allowed Expenses and for response and cleanup costs incurred by it before January 1, 1991, and \$75 million shall be reimbursed

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to the State for Base Allowed Expenses and for response and cleanup costs incurred by it before January 1, 1991; provided that this subparagraph shall not affect or impair in any way the rights of either Government to recover any costs, damages, fees, or expenses through litigation.

3. The Governments further agree that any monies received by either or both of them pursuant to a settlement of claims arising from the Oil Spill that remain after the costs referred to in subparagraphs 1 & 2 have been reimbursed shall be allocated as follows: (1) first, to reimburse the Governments for their respective response and cleanup costs incurred after December 31, 1990, and for their respective costs of natural resource damages assessment (including restoration planning) obligated or incurred after March 12, 1991 and; (2) second, to the joint trust fund for natural resource damage recoveries referred to in paragraph A of this Article.

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 V, 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

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Governments to expend any monies except to the extent funds are appropriated or are otherwise lawfully available.

VII.

**LITIGATION AND SETTLEMENT OF CLAIMS  
RELATING TO THE OIL SPILL**

A. Agreement to Consult and Cooperate. The Governments, through the Departments of Law and Justice, agree to act in good faith to consult and cooperate with each other to develop a common approach to the Oil Spill Litigation, to the settlement of civil claims and restitution claims in connection with criminal proceedings: provided, however, that this MOA shall not in any way limit or otherwise affect the prosecutorial discretion of the State of Alaska or the United States.

B. Legal Work Product and Privileged Information. The Governments, through the Departments of Law and Justice, agree that, except as may otherwise be provided by separate agreement of the parties, they may in their discretion share with each other or with private and/or other public plaintiff litigants scientific data and analyses relating to the injury to natural resources resulting from the Oil Spill, the products of economic studies, legal work product, and other confidential or privileged information, subject to the following terms and conditions:

1. Each Government will take all reasonable steps necessary to maintain work product and other applicable privileges and exemptions available under the Freedom of Information Act, 5 U.S.C. § 552 et seq., the Rules of Civil Procedure, and AS 09.25.110 et seq.

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2. No Government may voluntarily share with another party information jointly prepared or prepared by the other Government without the prior express written consent of the other Government's legal counsel.

#### VIII.

##### SCIENCE STUDIES

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

#### IX.

##### 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

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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 ascertainment, 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; provided that, in any such proceeding, neither Government may dispute that it is a co-Trustee with the other over the natural resources injured, lost, or destroyed as a result of the Oil Spill.

D. If the Governments become adverse to each other in the

- 18 -

course of the Oil Spill Litigation, this MOA shall nevertheless remain in effect.

E. Notwithstanding the covenants contained in this Article, 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 this Article, 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 that 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.

G. Notwithstanding Paragraphs E and F above, the Governments may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability between the Governments. Any such actions shall be solely for the purpose of allocation of liability, if any, and neither Government shall

ACE 7339842

- 19 -

enforce any judgment obtained against the other Government pursuant to this paragraph.

X.

#### RETENTION OF JURISDICTION

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.

XI.

#### 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. This MOA shall be effective as of the date it is signed by all the parties hereto.

XII.

#### INTEGRATION AND MERGER

A. This MOA constitutes 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.

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XIII.

TERMINATION

This MOA shall terminate when the Governments certify to the Court, or when the Court determines on application by either Government, that all activities contemplated under the MOA have been completed.

XIV.

JUDICIAL REVIEW

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

XV.

MISCELLANEOUS

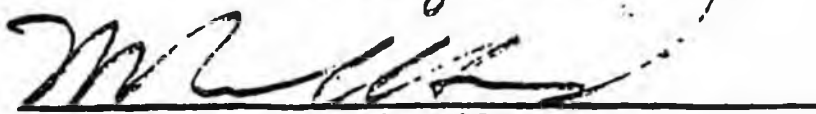
A. This MOA can be modified only with the express written consent of the Parties to the MOA and the approval of the Court, except that the Parties may correct any clerical or typographic errors in writing without court approval.

B. Each undersigned representative of a Party to this MOA certifies that he or she is fully authorized to enter into this MOA and to execute and legally bind such Party to this MOA.

ACE 7339844

- 21 -

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 28 DAY OF August, 1991.

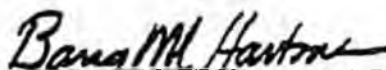


Honorable H. Russel Holland  
United States District Judge  
District of Alaska

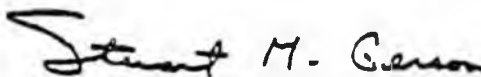
cc: J. Bottini (AUSA)  
B. Herman (AAG-K)

FOR THE UNITED STATES OF AMERICA

Date: Aug 27, 1991



Barry M. Hartman  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice



Stuart M. Gerson  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

FOR THE STATE OF ALASKA

Date: Aug 27, 1991



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

FRANK H. MURKOWSKI, Alaska, Chairman

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 BEN NICHYTHORSE CAMPBELL, Colorado  
 CRAIG THOMAS, Wyoming  
 JOHN KYL, Arizona  
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 GORDON H. SMITH, Oregon  
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GREGG D. RENKES, STAFF DIRECTOR  
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 SAM E. FOWLER, CHIEF COUNSEL FOR THE MINORITY

# United States Senate

COMMITTEE ON  
 ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

December 18, 1997

James F. Hinchman  
 Acting Comptroller General of the United States  
 General Accounting Office  
 Room 7125  
 441 G Street, NW  
 Washington, D.C. 20548

Dear Mr. Hinchman:

In October of 1991, the U.S. District Court for the District of Alaska approved settlements between Exxon, the federal government and the state of Alaska to resolve civil claims and criminal charges for damages caused by the 1989 grounding of the supertanker Exxon Valdez in Alaska's Prince William Sound. Under the civil settlement, Exxon agreed to pay a total of \$900 million in 11 annual payments. Under the criminal settlement, Exxon was fined \$150 million, \$125 million of which was forgiven, and required to pay \$50 million each to the federal government and to the state of Alaska as remedial and compensatory payments to be used exclusively for restoring natural resources damaged by the oil spill.

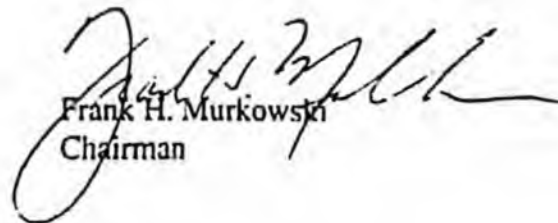
Guidelines for the use of the \$900 million civil settlement funds are set forth in a Memorandum of Agreement (MOA) between the federal government and the state of Alaska, which was approved by the U.S. District Court in August 1991. The MOA established a federal / state trusteeship--known as the Exxon Valdez Oil Spill Trustee Council--to review and approve the expenditures of civil settlement funds for such things as damage assessment and restoration projects. The MOA also mandated that the funds "must be used to restore, replace, rehabilitate, enhance, or acquire the equivalent of the natural resources injured, lost, or destroyed as a result of the oil spill and the reduced or lost services provided by such resources." Lastly, the MOA required the funds to be spent on the restoration of natural resources in Alaska unless the trustees unanimously agree otherwise.

Concerns have been raised regarding the implementation and administration of this historic settlement and whether or not the terms of it have been met. Concerns such as the amount of past, present, and future expenditures on administration and habitat acquisition vs enhancement appear to be legitimate issues to review as well as the relationship of the purchase price of acquisitions to the appraised value. Additionally, a review of the Council's actions could shed some light on the issue of the Secretary of the Interior fulfilling his trust responsibility to Alaska Natives while at the same time encouraging the purchase of their land.

I therefore would request the GAO to review the Council's operations and expenditures to date, as well as its future plans to ensure that all its actions have been consistent with the terms and conditions of the MOA. I would also request that in outlining the issues to be explored in this review that you take the time to meet with staff from the Energy and Natural Resources Committee. Brian Malnak of my staff would be the appropriate person to contact regarding this at 224-8119. Upon completion of your review it is possible the Senate Committee on Energy and Natural Resources may hold an oversight hearing to examine these issues further and additional assistance from you may be required at that point.

Thank you for your consideration of this request.

Sincerely,



Frank H. Murkowski  
Chairman

## Spill land bill likely to top appraisals

By NATALIE PHILLIPS  
Daily News reporter

Government officials plan to vote next week to spend millions of dollars to buy 67,000 acres of land and easements in Prince William Sound, the seventh in a series of large government land purchases.

And as in the previous land deals, the price that the Exxon Valdez Oil Spill Trustee Council members plan to pay for the Chenega Corp. land is a lot more than what their own appraisers say the land is worth, according to Molly McCammon, the council's executive director.

McCammon would not say what that price is.

She said that the council is scheduled to vote on the final

Please see Back Page, TRUSTEES

## TRUSTEES: Cour

Continued from Page A-1

deal Friday, but negotiations are still going on. The council didn't plan to release the appraisals until after the vote, but the Anchorage Daily News obtained them last week through a Freedom of Information Act request. Late last week, McCammon said the council also may vote to buy about 49,000 acres of land owned by English Bay Corp.

Government appraisers say the Chenega land and easements are worth \$8.8 million.

An appraisal done by Chenega Corp., a Native corporation that owns the land, did not specify a figure, but McCammon said Chenega officials were asking \$60 million to \$70 million.

"I don't know how they came up with it," she said.

Chenega Corp. president Chuck Totehoff said he could not comment on the deal because negotiations were still under way.

McCammon said trustees considered the government's appraisals in negotiations, but have found them lacking. Appraisers must calculate the land's value based on its development potential, such as how much its timber is worth, but Trustee Council members are willing to pay restoration value, or how well the land serves to provide good habitat for different species injured by the 1989 Exxon Valdez oil spill.

Restoration value has no upper limit, but is kept in check through tough negotiations and the requirement that the Trustee Council's six members agree unanimously on every council expenditure, said Deborah Williams, a trustee representing the Department of the Interior.

The Trustee Council, created to spend \$900 million in oil spill settlement money, is made up of three federal and three state government agency representatives. About two years ago, council members identified a dozen large parcels of land in the spill area, and the top price they would pay for each. Trustee Council biologists then spent months evaluating the land for its restoration value. The council's final offers would depend on what the government appraisers found.

The biologists ranked about two-thirds of the Chenega land as having moderate-to-high restoration value; the rest was rated low. The Trustee Council approved spending up to \$48 million for the land.

# Council ready to buy

Since then, nearly all of the government appraisals have come in much lower than the benchmark figures the council set. In most cases, the council has paid two to three times the appraised values. In one, though, the council paid well under what government appraisers said the land was worth.

For the most part, Trustee Council members have not released the government appraisals or information about how they reached the negotiated final purchase prices until they were ready to vote on the purchases. Last year, the Anchorage Daily News filed a dozen public information requests and obtained the appraisals and some of the correspondence on five of the land deals. Those documents are now available to the public in the Oil Spill Public Information Center downtown.

As in the other land deals, information on the Chenega deal will be presented at the time of the final vote, said Craig Tillery, a trustee representing the Alaska attorney general's office.

That's not how the Trustee Council handles its other expenditures. For example, last year when the Trustee Council considered spending \$177,000 on a whale study, the proposal was put out for public comment two months before the council's final vote.

"They have been playing (the deal) pretty close to the vest, which is what they always do," said Pam Brodie, a Sierra Club spokeswoman and member of the Trustee Council's public advisory group. Brodie said the citizen's group has been briefed on the Chenega deal "in a general way, but nothing specific." The group was not given appraisals.

Brodie said the Sierra Club supports the Chenega acquisition, which she views as important in the Trustee Council's overall plan for spending the settlement money. She said she, too, has found the government appraisals unreliable and "very short-sighted."

But Becky Gay, vice chairwoman of the Heritage Land Bank, which manages Anchorage's inventory of vacant land, questioned why details of the council's land deals are not released for public review before a final vote.

"This would never fly with the Heritage Land Bank," Gay said. "Our process has come under great scrutiny by the non-development groups. I don't believe they haven't demanded more public process."



KEVIN POWELL / Anchorage Daily News

Malcolm Ford, an associate director of the Alaska Center for the Environment, said, "I would imagine the environmental community is very much in favor (of the Trustee Council's land deal), so there may be less of a move to press them on this."

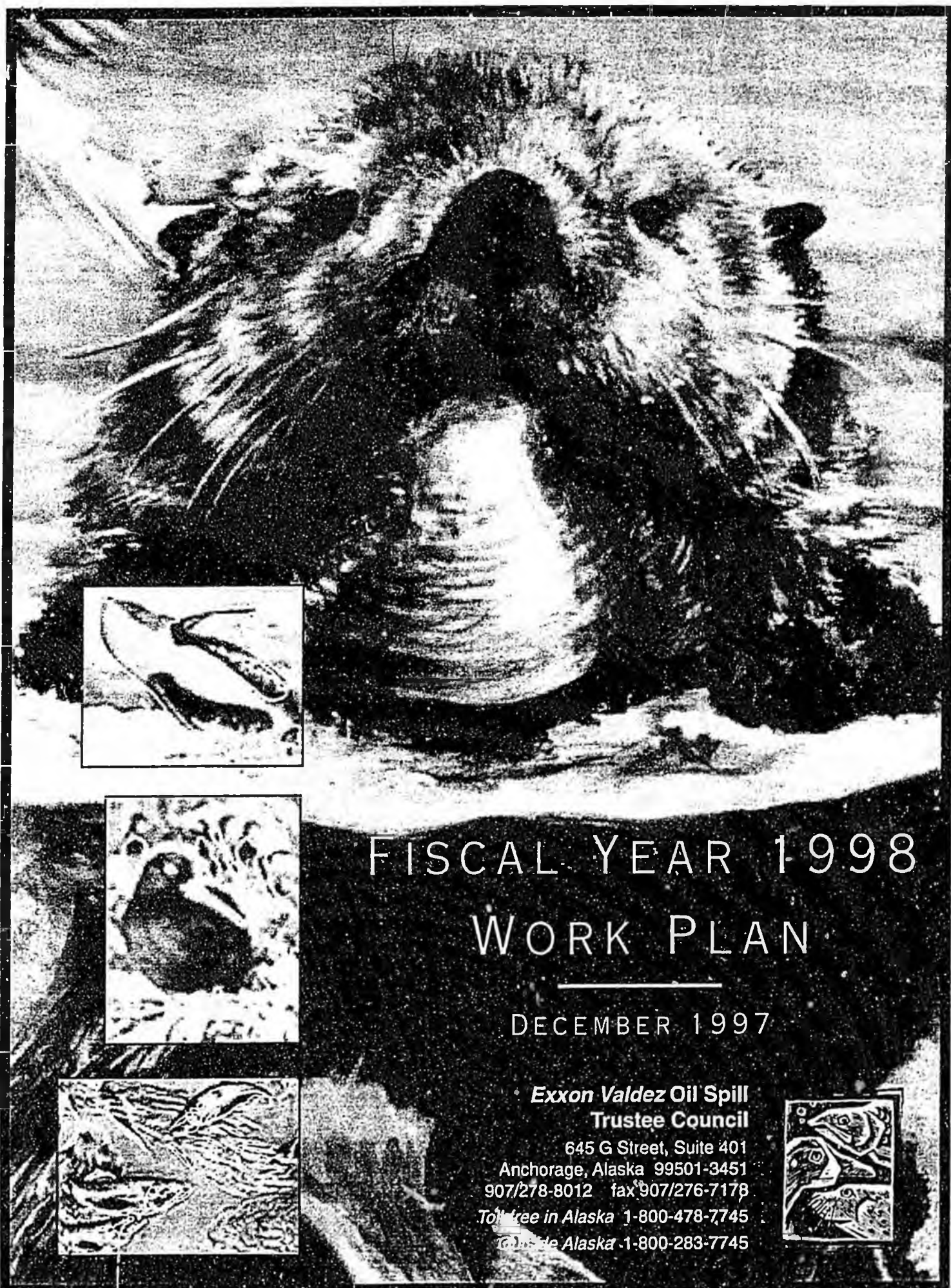
The appraisals released last week give some hint as to what is being negotiated. They were based on an earlier stage of negotiations, and the total acreage has gone up to 67,000 since the appraisals were done.

The documents said 37,000 acres of Chenega land would be purchased outright. Appraisers valued it at \$7.2 million. The parcel includes Jackpot Bay, Paddy Bay, Ewan Bay, Eshamy Bay, Eshamy Lake and Eshamy Lagoon, which are considered pristine coastal lands and which are surrounded by Chugach National Forest. The deal allows the corporation to select 40 acres of that land for development.

An additional 26,000 acres would be purchased as easements that the appraisers said are worth \$1.6 million. Most of the easements, including areas on Chenega, Knight, Latouche and Bainbridge islands, are largely aimed at stopping any timber harvesting. The public will have access to most of the land, but Chenega Corp. will be allowed to charge an access fee.

The public will be barred from about 3,000 acres of the easement land on South Chenega Island because, McCammon said, the area holds an old village site. Also, the corporation will get to pick three development sites of not more than 40 acres each in that area.

*Interesting  
May want to explore  
why this is case  
why Sierra Club  
was lulled!*



# FISCAL YEAR 1998 WORK PLAN

DECEMBER 1997

**Exxon Valdez Oil Spill  
Trustee Council**

645 G Street, Suite 401  
Anchorage, Alaska 99501-3451  
907/278-8012 fax 907/276-7178  
Toll free in Alaska 1-800-478-7745  
Outside Alaska 1-800-283-7745



## Summary of Fiscal Year 1998 Projects

For FY 98, the Trustee Council received 119 research, monitoring, and general restoration proposals requesting a total of \$23 million. In August and December 1996, the Council authorized 66 projects totaling \$14,098,100. The table on the following page summarizes the Trustee Council's funding decisions by "resource cluster," as well as the expected cost of completing the projects authorized in FY 98. (Note: Regarding future year costs, a "\$0" in the table means that no funding is expected. A blank space means that the estimated funding level is not known or that a tentative decision on future funding has not been made.)

Many of the projects funded are the continuation of efforts funded in FY 97. As illustrated in Table 2, several new projects also were funded.

**Table 2. New and Continuing Projects**

	Number of Projects Funded	Total Cost of Projects Funded
New Projects	17	\$1,977,700
Continuing Projects	49	\$12,120,400

In addition to funding research, monitoring, and general restoration projects, the Trustee Council authorized funds for the administrative costs of the restoration program (\$2.8 million, primarily for public information, independent scientific review, and operating expenses), habitat protection support (\$851,400, for services such as negotiations, land surveys, and appraisals), and the fifth \$12 million payment to the Restoration Reserve.

**Table 3. Summary of Funding by Resource Cluster**

<b>Resource Cluster</b>	<b>FY 98 Approved</b>	<b>FY 99 Estimate</b>	<b>FY 00 Estimate</b>	<b>FY 01-02 Estimate</b>	<b>Total FY98-02</b>
Pink Salmon	\$1,202.3	\$606.9	\$234.0	\$0.0	\$2,043.2
Pacific Herring	\$735.3	\$80.6	\$0.0	\$0.0	\$815.9
SEA and Related Projects	\$2,669.6	\$841.0	\$53.7	\$62.8	\$3,627.1
Sockeye Salmon	\$11.7	\$0.0	\$0.0	\$0.0	\$11.7
Cutthroat Trout, Dolly Varden, Rockfish, and Pollock	\$357.9	\$271.8	\$272.0	\$571.0	\$1,472.7
Marine Mammals	\$739.3	\$390.1	\$262.8	\$91.4	\$1,483.6
Nearshore Ecosystem	\$2,249.1	\$626.6	\$0.0	\$0.0	\$2,875.7
Seabird/Forage Fish and Related Projects	\$2,992.1	\$2,364.5	\$1,395.0	\$360.1	\$7,111.7
Archaeological Resources	\$206.6	\$161.5	\$0.0	\$0.0	\$368.1
Subsistence	\$1,481.9	\$354.1	\$343.7	\$491.1	\$2,670.8
Habitat Improvement	\$631.1	\$359.7	\$0.0	\$0.0	\$990.8
Ecosystem Synthesis	\$261.1	\$265.5	\$0.0	\$0.0	\$526.6
Project Management	\$560.1				\$560.1
<b>Total Research, Monitoring, and General Restoration Projects:</b>	<b>\$14,098.1</b>	<b>\$6,322.3</b>	<b>\$2,561.2</b>	<b>\$1,576.4</b>	<b>\$24,558.0</b>
Habitat Protection/Acquisition Support	\$851.4				\$851.4
Public Information/Science Mgt./ Admin.	\$2,796.3	\$2,500.0			\$5,296.3
Restoration Reserve	\$12,000.0	\$12,000.0	\$12,000.0	\$24,000.0	\$60,000.0
<b>Total All Activities:</b>	<b>\$29,745.8</b>	<b>\$20,822.3</b>	<b>\$14,561.2</b>	<b>\$25,576.4</b>	<b>\$90,705.7</b>

## HABITAT PROTECTION AND ACQUISITION

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The *Exxon Valdez* Trustee Council funds the acquisition and protection of land in order to protect the habitat of injured resources. Project 98126 continues the support services necessary for these land acquisitions, such as negotiations staff, appraisals, title reports, on-site inspections, and hazardous materials surveys.

### Funding Approved for Fiscal Year 1998

Project Number and Title		FY 98 Approved	FY 99 Estimate	FY 00 Estimate	FY 01-02 Estimate	TOTAL 98-02
98126	Habitat Acquisition Support	\$851.4				\$851.4

As of December 1997, the Council has committed \$269.6 million to protect 597,490 acres of land in large parcels, including inholdings in Kachemak Bay State Park, land adjacent to Seal Bay/Tonki Cape on Afognak Island, commercial timber rights on land along Orca Narrows, a parcel on Shuyak Island, and lands owned by Akhiok-Kaguyak, Inc., Old Harbor Native Corporation, Koniag, Inc., Chenega Corporation, Eyak Corporation, English Bay Corporation, and Tatitlek Corporation. Final acceptance of the offer from the Tatitlek Corporation depends on a vote of the shareholders. Negotiations continue with Afognak Joint Venture and Koniag, Inc. to protect additional habitat.

The Council also has authorized offers to purchase 44 small parcels of land at appraised fair market value, a contribution of \$4 million to acquire a package of lands owned by the Kenai Natives Association, and up to \$1 million to acquire key waterfront parcels that were forfeited to the Kodiak Island Borough for tax delinquency. If all of the offers result in land acquisitions, about 7,500 acres of habitat on small parcels will have been protected for about \$20 million. Fourteen additional small parcels are under active consideration.

Interests in the lands protected by the Council range from acquisition of fee simple title to various forms of conservation easements.

**PUBLIC INFORMATION/SCIENCE  
MANAGEMENT/ADMINISTRATION**

---

The cost of the administrative functions necessary to efficiently implement the restoration program (project 98100) continue to decline, from a high of \$4.1 million in FY 94 to \$2.8 million in FY 98. Further reductions are expected through FY 2002, consistent with the planned transition to the Restoration Reserve in FY 2003.

Project 98100 includes funds for the independent scientific review of project proposals and results, the Trustee Council's 17-member Public Advisory Group (PAG), the Oil Spill Public Information Center which at the end of FY 97 merged with Alaska Resources Library and Information Services (ARLIS), the Council's Annual Restoration Workshop, public meetings and other communication efforts such as the Council's newsletter and radio program, operations and staff support for the Trustee Council itself, an annual financial audit, and a variety of smaller items.

**Funding Approved for Fiscal Year 1998**

Project Number and Title		FY 98 Approved	FY 99 Estimate	FY 00 Estimate	FY 01-02 Estimate	TOTAL 98-02
98100	Public Info/Science Mgt/ Administration	\$2,796.3	\$2,500 0			\$5,296.3

## RESTORATION RESERVE

---

In recognition of the fact that complete recovery from the oil spill may not occur for decades, the Trustee Council established the Restoration Reserve to hold funds to be used for restoration after the last annual payment is received from Exxon Corporation in September 2001. For FY 98, the Trustee Council deposited \$12 million in the reserve account. This deposit, the Council's fifth, brings the total in the account to \$60 million. Annual deposits of \$12 million in each of the next four years would provide a reserve of \$108 million plus interest.

Funds in the Restoration Reserve will be used for restoration activities, but allocation of the funds to specific activities has not yet been made. During FY 98, the Trustee Council will solicit public input from throughout the spill area on possible uses of the funds. The Council is scheduled to make a decision on the future of the Restoration Reserve by October 1998.

### Funding Approved for Fiscal Year 1998

Project Number and Title		FY 98 Approved	FY 99 Estimate	FY 00 Estimate	FY 01-02 Estimate	TOTAL 98-02
98424	Restoration Reserve	\$12,000.0	\$12,000.0	\$12,000.0	\$24,000.0	\$60,000.0

NOTE: During the fiscal years 1994 through 1997, the Trustee Council deposited \$48 million in the Restoration Reserve. The additional \$12 million deposited in FY 98 and the \$48 million in deposits projected for FY 99-02 would bring the total in the year 2002 to \$108 million plus interest.

JUL 03 1995

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# **Fiscal Year 1997 Draft Work Plan**

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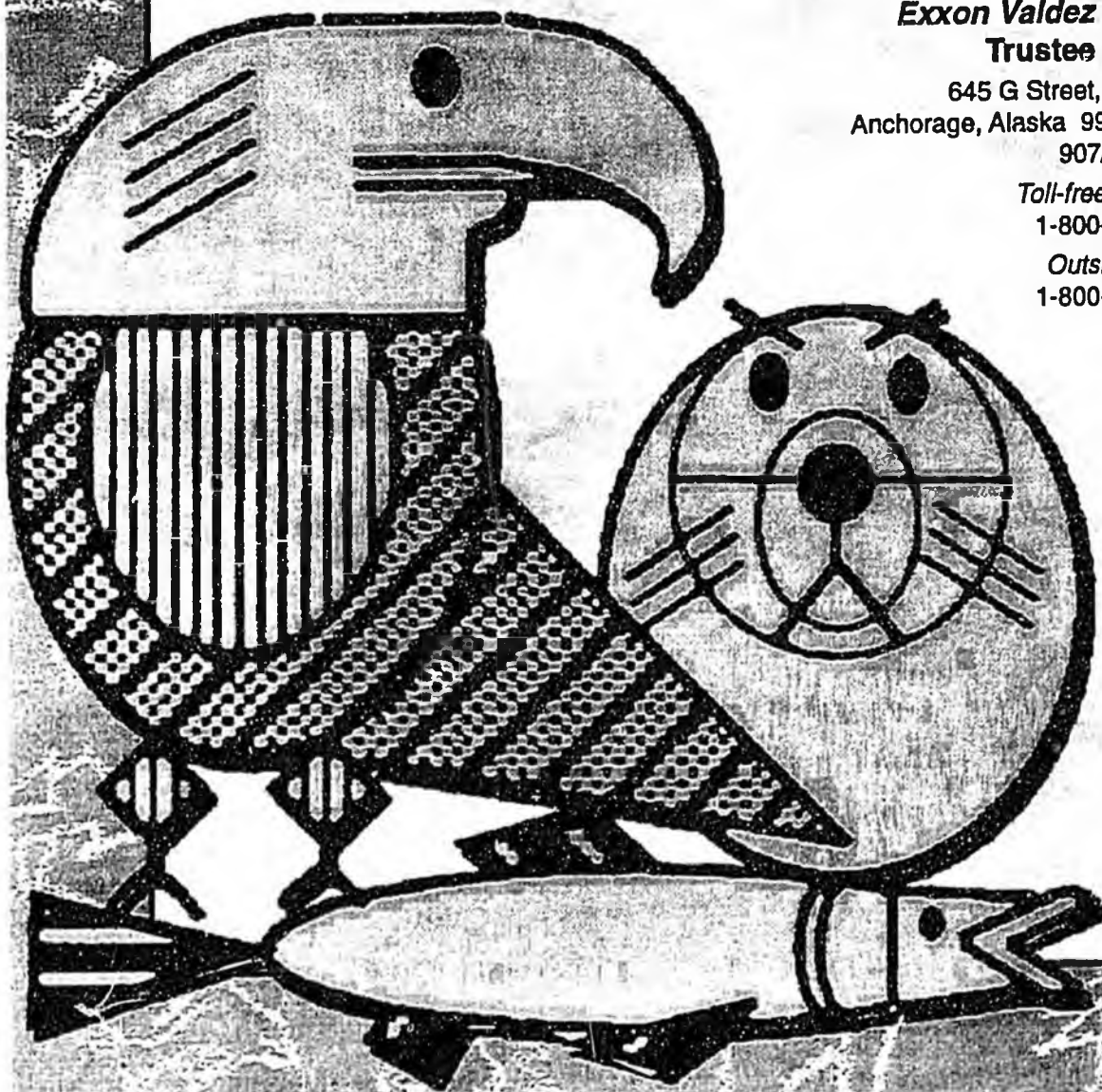
Prepared by:

**Exxon Valdez Oil Spill  
Trustee Council**

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Anchorage, Alaska 99501-3451  
907/278-8012

*Toll-free in Alaska*  
1-800-478-7745

*Outside Alaska*  
1-800-283-7745



**June  
1996**

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# ***Fiscal Year 1997 Draft Work Plan***

---

**June 1996**

**Prepared by:  
Exxon Valdez Oil Spill  
Trustee Council**

**BRUCE BOTELHO**  
Attorney General  
State of Alaska

**MICHELE BROWN**  
Commissioner  
Alaska Department of  
Environmental Conservation

**GEORGE T. FRAMPTON, JR.**  
Assistant Secretary  
U.S. Department of the Interior

**PHIL JANIK**  
Regional Forester  
Alaska Region  
U.S. Department of Agriculture

**STEVE PENNOYER**  
Director, Alaska Region  
National Marine Fisheries Service

**FRANK RUE**  
Commissioner  
Alaska Department of Fish & Game

This draft work plan is presented for public review and comment. It does not reflect a final decision by the Trustee Council. Projects in this draft are also subject to further review by the Trustee Council's Public Advisory Group, Chief Scientist, and legal advisors. The Trustee Council will make funding decisions for most projects in this draft on or about August 28, 1996.



## PLEASE COMMENT

---

You can help the Trustee Council by reviewing this draft work plan and letting them know your priorities for Fiscal Year 1997. To be most useful, your comments should be received by the Trustee Council on or before **August 9, 1996**. However, all comments received prior to final action on the work plan, which is tentatively scheduled for late August, will be reviewed by the trustees. To comment, contact the Trustee Council by:

**Mail:** Exxon Valdez Oil Spill Trustee Council  
645 G Street; Suite 401  
Anchorage, AK 99501  
Attn: Draft Fiscal Year 1997 Work Plan

**Telephone:** Telephone (907) 278-8012  
Toll free in Alaska: 1-800-478-7745  
Toll free outside Alaska: 1-800-283-7745  
Collect calls will be accepted from fishermen and boaters who call through the marine operator.

**Fax:** (907) 276-7178

**E-mail:** sandras@oilspill.state.ak.us  
Attn: Sandra Schubert

**Public Hearing:** 7 PM on August 6, 1996  
Access to the public hearing will be available via teleconference to all communities and villages in the oil spill region. Contact your local Alaska Legislative Information Office or Rebecca Williams at the telephone numbers above if you would like to participate.

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# Fiscal Year 1997 Draft Work Plan

## June 1996

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## **Dear Reviewer,**

Each year the *Exxon Valdez* Trustee Council asks for public comments on its annual plan of work to restore the resources and services injured by the oil spill. This year's draft work plan reflects the fact that FY 97 is seven years after the oil spill and that the 10th anniversary of the spill will be soon upon us.

In general, the collection of projects recommended for funding represents a continued shift from funding routine management actions (such as lake stocking and improved stock assessment capabilities) to funding research that should lead to long-term improvements in resource management (such as the pink salmon genome project and the Sound Ecosystem Assessment). The package of projects recommended for funding also represents a continued emphasis on ecosystem-level analyses and understanding (primarily the Sound Ecosystem Assessment, the Nearshore Vertebrate Predator Project, and the Alaska Predator Ecosystem Experiment), in contrast to an individual species approach (such as population monitoring of sea otters or bald eagles). The ecosystem approach maximizes the efficiency of research and monitoring efforts and should lead to scientific results with wide application and lasting benefits.

Several of the projects recommended for funding are designed to inform the public of the progress of restoration, with efforts culminating in a public symposium to be held at the time of the 10th anniversary of the oil spill in 1999. Such projects range from preparation of a one-hour television program about the restoration and recovery of the spill area to development of a sophisticated ecosystem model that would integrate the data collected by various projects funded by the Trustee Council. In addition, funding is being recommended in FY 97 for a number of researchers to prepare manuscripts on their study results for publication in the scientific literature and to present study results at national scientific conferences.

The Trustee Council's commitment to community involvement in the restoration process remains strong. Projects to involve local youth in ongoing restoration projects and to fund a network of local experts in oil spill communities who serve as liaisons and facilitators are recommended for continuation in FY 97. A number of projects proposed by communities to replace or enhance subsistence resources injured by the oil spill are also recommended for funding again in FY 97. In addition, with encouragement and support from the Council, several projects anticipate hiring local workers or collecting local and indigenous knowledge that may benefit restoration.

Another important trend worth highlighting is the necessary decrease in the size of the research, monitoring, and general restoration program. The Trustee Council has adopted a declining schedule of expenditures through the year 2002 to

coincide with the final payment from Exxon Corporation in 2001. This means that the administrative costs of the program are declining (from \$3.4 million in FY 96 to approximately \$3.0 million in FY 97), as is the amount of money available to fund research, monitoring, and general restoration activities (from \$18 million in FY 96 to \$16 million in FY 97). In an effort to find savings in FY 97 project budgets, the Restoration Office staff took a hard look at proposed activities that may be considered normal agency management. Agency project management costs, which are separately identified for the first time in FY 97, also will decline.

A final comment concerns some activities that are not a part of this work plan, but which help to complete the picture of the Trustee Council's restoration effort.

- The Council's program to protect habitat important to the recovery of injured resources and services is continuing. Recent actions include an agreement with Chenega Corporation for \$34 million to protect 61,000 acres of habitat in Prince William Sound.

- Clean-up of some remaining residual oil on several beaches near the community of Chenega Bay, one of the areas hardest hit by the oil spill, is scheduled to take place in the summer of 1997.

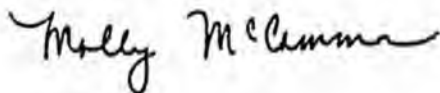
- Preparation of a plan for monitoring and restoring archaeological resources in Prince William Sound and lower Cook Inlet will be completed later this summer. The Council may invite proposals to implement the plan, which may include one or more facilities for storing and displaying artifacts in spill-area communities.

- The Alaska SeaLife Center, which has been funded in part by the Trustee Council and which will provide unique, technologically advanced facilities for research on marine mammals, fish and seabirds, is under construction and should be open for business in Spring 1998.

- The Council plans to make an additional \$12 million deposit into the Restoration Reserve in FY 97, bringing the total in the reserve account to \$48 million plus interest. These funds will be used for restoration activities, but no allocation of the funds to specific activities has yet been made.

As always, I am interested in your thoughts and ideas in regard to the draft work plan, as well as on our restoration efforts in general. Comments on this document will be most useful if they are received by August 9, but I welcome hearing from you at any time. Also contact me if you would like more information on any of the projects discussed in the draft work plan or about the restoration program in general.

Sincerely,



Molly McCammon  
Executive Director

## The Work Plan Process

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Each year the *Exxon Valdez* Oil Spill Trustee Council funds activities to restore the resources and services injured by the 1989 *Exxon Valdez* oil spill. This draft work plan describes restoration activities being considered for federal Fiscal Year 1997 (October 1, 1996 through September 30, 1997).

The Trustee Council has not decided which projects to fund. They will make their decision on or about August 28, 1996, using comments from the public and the Public Advisory Group, evaluations of independent scientific reviewers and legal advisors, and recommendations from the Executive Director.

Milestones in development of the FY 97 work plan are described in Table 1. The work plan process begins each year with a restoration workshop. The Trustee Council usually makes funding decisions in late August so that projects can begin on October 1.

**Table 1. Milestones for FY 97 Work Plan**

Jan. 16-18, 1996	Annual Restoration Workshop discussed results of FY 95 work and directions for FY 97.
Feb. 15, 1996	<i>Invitation to Submit Restoration Proposals for Federal Fiscal Year 1997</i> was issued.
April 15, 1996	Restoration Office received 126 proposals requesting \$38 million for FY 97.
May 16-18, 1996	Chief Scientist and core reviewers met to discuss the scientific and technical merits of proposals.
May 23, 1996	Executive Director discussed proposals with agencies, Chief Scientist, and Public Advisory Group representatives and drafted preliminary recommendations.
June 5, 1996	Public Advisory Group discussed proposals and preliminary recommendations and advised Executive Director.
⇒ June 24, 1996	<i>FY 97 Draft Work Plan</i> is distributed for public comment.
Aug. 6, 1996	Public hearing will be held on <i>FY 97 Draft Work Plan</i> .
Aug. 7, 1996	Public Advisory Group will meet to advise Trustee Council on final work plan.
Aug. 28, 1996	Trustee Council is expected to decide on <i>FY 97 Final Work Plan</i> .
Oct. 1, 1996	Fiscal year 1997 (FY 97) will begin.

## Funding Targets

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After considering the cash flow for restoration funds, the Trustee Council has tentatively set a funding target of \$16 million for the FY 97 work plan, which includes all research, monitoring, and general restoration projects. As illustrated in Table 2, the target for the annual work plan is lower in FY 97 than in FY 96 and will continue to decline through FY 2002, when the final payment from Exxon Corporation will be spent and funding for the restoration program will rely solely on the Restoration Reserve.

**Table 2. Tentative Work Plan Funding Targets FY 96 and Beyond**

	FY 96	\$18.2 million (authorized)
⇒	FY 97	\$16.0 million
	FY 98	\$14.0 million
	FY 99	\$12.0 million
	FY 00	\$10.0 million
	FY 01	\$8.0 million
	FY 02	\$6.0 million
	FY 03 +	Restoration Reserve

## Preliminary Recommendations

This section summarizes the Executive Director's preliminary recommendations for FY 97. These recommendations are made for public review and may be revised before they are provided to the Trustee Council in late August.

For FY 97, the Trustee Council received 126 proposals totaling \$38,078,200. Of these, 120 proposals totaling \$33,195,200 are for research, monitoring, and general restoration projects, which are the subject of this draft work plan. The remaining six projects also will be considered by the Council in August, and are discussed under "other projects" on page 7.

### Research, Monitoring, and General Restoration Projects

The Trustee Council has targeted approximately \$16 million for research, monitoring, and general restoration projects in FY 97. The Executive Director's preliminary recommendation of which proposals should be funded is summarized in Table 3.

**Table 3. Summary of Executive Director's Preliminary Recommendation: Research, Monitoring, and General Restoration Projects**

<b>Category</b>	<b>Explanation</b>	<b>No. Proj.</b>	<b>FY 96 Cost</b>
<b>Fund</b>	Project has high technical merit with significant contribution toward achieving restoration objectives. Project recommended for Trustee Council approval.	13	\$1,882,400
<b>Fund Contingent</b>	Same as above except that certain issues need to be resolved before funding is approved. Project recommended for Trustee Council approval if these issues can be resolved.	43	\$12,732,800
<b>Defer Decision</b>	A decision on whether or not to fund project in FY 97 cannot be made without more information. In many cases, needed information will not be available until after this summer's field season. For such projects, a recommendation will be made to the Trustee Council in November or December 1996.	15	\$2,129,000
<b>Total:</b>		<b>71</b>	<b>\$16,744,200</b>
<b>Do Not Fund</b>	Project not recommended for funding in FY 97. In some cases, it is recommended that a project be re-evaluated in the future. In other cases, the project is not legally permissible, has technical problems, or would not significantly contribute to restoration objectives.	49	\$13,978,200

The sum of the projects in the *fund*, *fund contingent*, and *defer decision* categories is \$16,744,200. This amount is somewhat above the \$16 million target identified by the Trustee Council. To meet the \$16 million target, project budgets will be reviewed further for possible cost reductions. In addition, it is likely that some projects in the *fund contingent* category will not be funded because their issues will not be resolved, and some projects in the *defer* category will not prove feasible or appropriate when additional information is evaluated. Finally, further review may result in some projects currently recommended for funding not being recommended in August, or not being approved by the Trustee Council.

Of the projects in the *fund*, *fund contingent*, and *defer decision* categories, many are continuing efforts also funded by the Trustee Council in FY 96. As illustrated in Table 4, several new projects are also being recommended for funding.

**Table 4. New and Continuing Projects: Fund, Fund Contingent, and Defer**

	Number of Projects Recommended for Funding	Total Cost of Projects Recommended for Funding
New Projects	23	\$2,114,100
Continuing Projects	48	\$14,630,100

## Other Projects

In addition to funding projects through the annual work plan, in FY 97 the Trustee Council will approve funds for the administrative costs of the restoration program (primarily public information, independent scientific review, and administration), habitat protection support (such as negotiations, land surveys, and appraisals), and the Restoration Reserve. The Council will also consider approving funds for five proposals submitted for capital construction projects in FY 97.

Table 5 summarizes these "other projects." If funds are approved for these projects, they will be in addition to the \$16 million work plan. Public comment is being sought on these other projects as well as on the work plan itself.

**Table 5. Summary of Executive Director's Preliminary Recommendation:  
Other Projects**

<b>Project</b>	<b>FY 97 Request</b>	<b>FY 97 Exec. Dir. Recommendation</b>
Public Information/Science Management/Administration	\$3,000.0	Fund, but continue budget review
Habitat Protection Support (97126)	\$1,195.6	Fund, but defer decision on amount of funding
Restoration Reserve	\$12,000.0	\$12,000.0
Research Facilities (97151, 97197)	\$1,282.7	Defer decision
Reduction of Marine Pollution (97115, 97229)	\$2,086.2	Fund 97115 contingent on further budget review; defer decision on 97229
Archaeological Repositories (97277)	\$318.5	Defer decision until archaeology planning project is complete

With respect to archaeological repositories, the Trustee Council is aware that residents of some communities have expressed a strong interest in having archaeological artifacts returned to the spill area. Last year the Council funded Project 96154 to develop a comprehensive plan for monitoring and restoring archaeological resources in Prince William Sound and lower Cook Inlet, including strategies for storing and displaying artifacts at appropriate locations within these areas. Chugach Heritage Foundation, the contractor for this project, has recently completed a draft plan. After considering the draft plan, the Council may issue a separate invitation for proposals to protect archaeological resources through, for example, site stewardship programs or archaeological repositories or artifact displays.

## Highlights of the Preliminary Recommendations

### *Ecosystem Projects*

More than 45% of the \$16 million dollars in FY 97 work plan funding would go to the Trustee Council's three ongoing ecosystem studies:

- The Sound Ecosystem Assessment (SEA, Project 97320) is exploring and developing models of the processes influencing productivity of pink salmon and Pacific herring in Prince William Sound;
- The Nearshore Vertebrate Predator project (Project 97025) is examining whether or not sea otters, river otters, harlequin ducks, and pigeon guillemots are recovering and what factors might be constraining recovery;
- The Alaska Predator Ecosystem Experiment (APEX, Project 97163) is exploring the link between forage fish and seabird productivity.

In addition, Project 97300 would begin the process of synthesizing across projects and among species and habitats the information collected to date on the injury and recovery of injured species.

### *Community Initiatives*

Due in part to the Trustee Council's funding of a network of local facilitators in communities in the oil spill area, a total of 35 restoration proposals were submitted by communities or at the request of communities this year. Although several of the projects proposed were determined to have a weak link to restoration or otherwise not be appropriate for Trustee Council funding, 22 of the projects are in the *fund*, *fund contingent*, or *defer* category and under consideration for funding.

In addition, two community initiatives that are outside of the work plan process also may get underway in FY 97. The Trustee Council has given tentative approval to a plan to clean some of the remaining residual oil on several beaches in western Prince William Sound near the community of Chenega Bay. A process funded in FY 96 (96154) to develop a comprehensive plan for monitoring and restoring archaeological resources in Prince William Sound and lower Cook Inlet is nearing completion. The Council may issue an invitation in the fall of 1996 to implement all or part of the plan.

### *Project Management*

For the first time, in FY 97 the costs of project management are separately identified in Project 97250. Project management is provided by resource managers in the six trustee agencies and provides essential accountability to the work plan process. It includes such functions as tracking the progress of restoration projects; ensuring

that projects meet their stated goals, objectives, and schedules; monitoring project expenditures; and ensuring that all reports and other contract deliverables are properly performed.

Prior to FY 97, project management funds were included in each individual restoration project. The amount of funding to be provided each agency for this function in FY 97 is currently under discussion.

#### *Habitat Protection*

The *Exxon Valdez* Trustee Council funds the acquisition and protection of land in order to protect the habitat of injured resources and services. Project 97126 would continue the support services necessary for these land acquisitions, such as title reports, appraisals, on-site inspections, hazardous materials surveys, land surveys and timber cruises. The estimated cost of these services for FY 97 is \$1.2 million, although the actual cost will depend on specific Council decisions about land acquisitions and the progress of negotiations.

As of June 1996, the Council has committed \$195.3 million to protect 422,000 acres of land in large parcels, including inholdings in Kachemak Bay State Park, land adjacent to Seal Bay/Tonki Cape on Afognak Island, commercial timber rights on land along Orca Narrows, lands owned by Akhiok-Kaguyak, Inc., Old Harbor Native Corporation, Koniag, Inc., and Chenega Corporation, and a parcel on Shuyak Island. Acceptance of the offer to the Chenega Corporation depends on a vote of shareholders. Negotiations continue with six landowners to protect an additional 307,000 acres of land. The landowners are Tatitlek Corporation, Eyak Corporation, Port Graham Corporation, English Bay Corporation, Afognak Joint Venture, and Koniag, Inc.

The Council has also authorized offers to purchase 24 small parcels of land at appraised fair market value, a contribution of \$4 million to acquire a package of lands owned by the Kenai Natives Association, and up to \$1 million to acquire key waterfront parcels that were forfeited to the Kodiak Island Borough for tax delinquency. Twenty-three additional small parcels are under consideration.

#### *Restoration Reserve*

In recognition of the fact that complete recovery from the oil spill may not occur for decades, the Trustee Council established the Restoration Reserve to hold funds to be used for restoration after the last annual payment is received from Exxon Corporation in September 2001. The \$12 million recommended for deposit in FY 97 would be the fourth deposit into the reserve account, and would bring the total in the account to \$48 million. Annual deposits of \$12 million in each of the next five years

would provide a reserve of \$108 million plus interest. These funds will be used for restoration activities, but no allocation of the funds to specific activities has yet been made.

*Public Information, Science Management, and Administration*

The cost of the administrative functions necessary to efficiently implement the restoration program will decline again in FY 97 – from \$4.2 million in FY 95 to \$3.4 million in FY 96 to \$3.0 million in FY 97. Further reductions are expected through FY 2002, consistent with the planned transition to the Restoration Reserve in FY 2003. Table 6 shows projected funding levels for the administrative budget.

**Table 6. Projected Funding Levels:  
Public Information, Science Management and Administration**

	FY 96	\$3.4 million (authorized)
⇒	FY 97	\$3.0 million
	FY 98	\$2.8 million
	FY 99	\$2.5 million
	FY 00	\$1.7 million
	FY 01	\$1.5 million
	FY 02	\$1.5 million

This component includes funds for the independent scientific peer review of project proposals and findings, the Trustee Council's 17-member Public Advisory Group, the Oil Spill Public Information Center, the Council's Annual Restoration Workshop, communication efforts such as the Council's newsletter and radio program, operations and staff support for the Trustee Council itself, and a variety of smaller items.

## Description of Projects and Recommendations

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A project-by-project list of the Executive Director's preliminary recommendations follows.

Spreadsheet A is a summary spreadsheet which shows FY 97 and future years' costs of research, monitoring, and general restoration projects recommended as *fund*, *fund contingent*, or *defer decision*. (Note: A "\$0" in the spreadsheet means that no funding is recommended. A blank space means that the estimated funding level is not known or that a decision on funding has not been made.)

Spreadsheet B describes each project received by the Trustee Council (research, monitoring, and general restoration projects as well as other projects), and contains the text of the Chief Scientist's and the Executive Director's preliminary recommendations. It also indicates who proposed each project, which Trustee agency would be responsible for project management, and whether the project is continuing (i.e., was also funded by the Council in FY 96) or new.

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# **EXXON VALDEZ OIL SPILL RESTORATION PLAN**

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Prepared by:

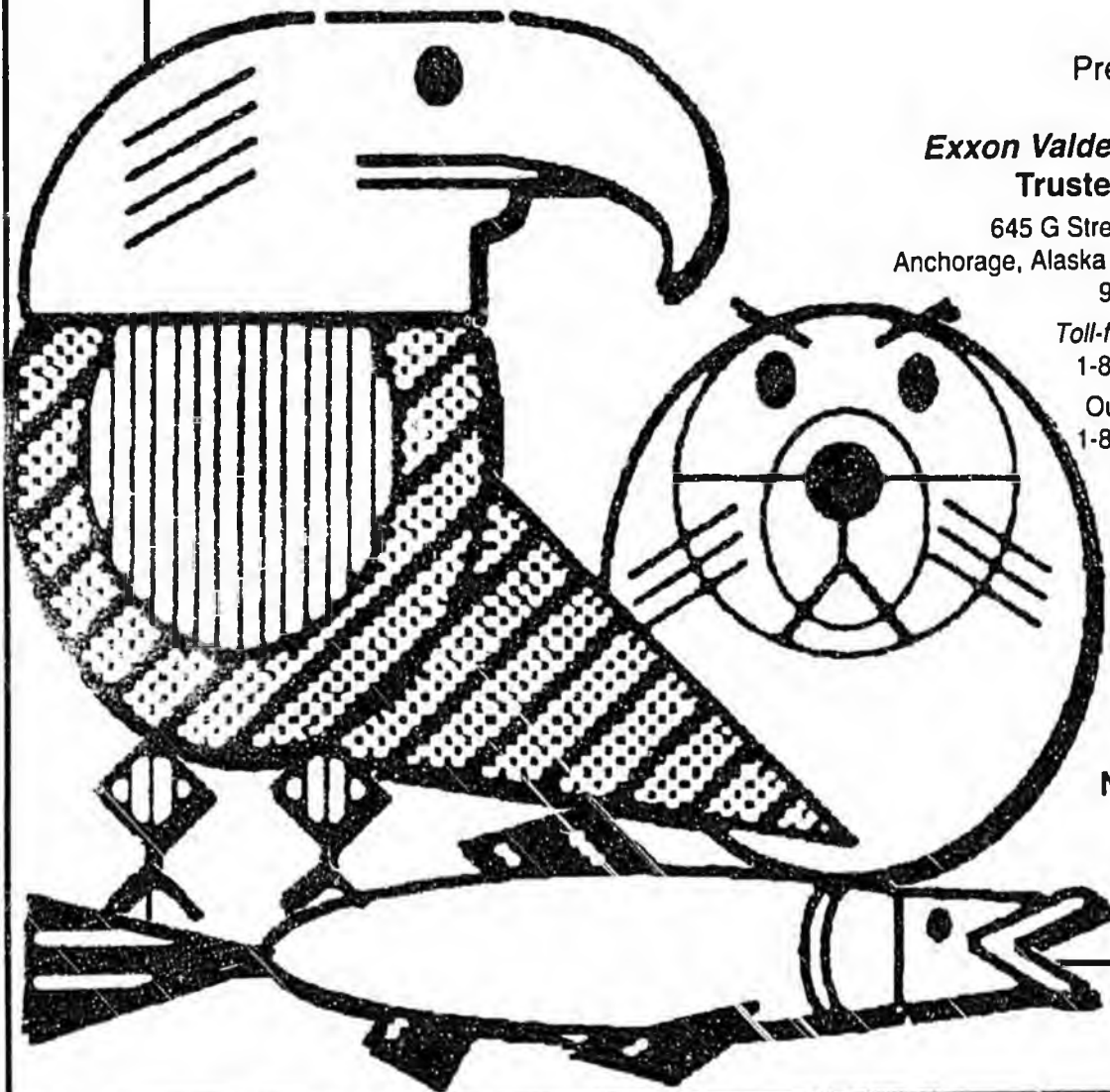
**Exxon Valdez Oil Spill  
Trustee Council**

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**November  
1994**



## Chapter 2 Mission and Policies

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### **Mission Statement**

The mission of the Trustee Council is to efficiently restore the environment injured by the *Exxon Valdez* oil spill to a healthy, productive, world renowned ecosystem, while taking into account the importance of the quality of life and the need for viable opportunities to establish and sustain a reasonable standard of living.

The restoration will be accomplished through the development and implementation of a comprehensive, interdisciplinary recovery and rehabilitation program that includes:

- Natural Recovery
- Monitoring and Research
- Resource and Service Restoration
- Habitat Acquisition and Protection
- Resource and Service Enhancement
- Replacement
- Meaningful Public Participation
- Project Evaluation
- Fiscal Accountability
- Efficient Administration

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## Policies

The policies below reflect a comprehensive, balanced approach to restoration. They give direction to the restoration program while allowing flexibility so that the Trustee Council can respond to changing restoration needs.

### An Ecosystem Approach

1. Restoration should contribute to a healthy, productive and biologically diverse ecosystem within the spill area that supports the services necessary for the people who live in the area.
2. Restoration will take an ecosystem approach to better understand what factors control the populations of injured resources.

These policies recognize that recovery from the oil spill involves restoring the ecosystem as well as restoring individual resources. An ecosystem includes the entire community of organisms, including people, that interact with one another and their physical surroundings. The ecosystem will have recovered when the population of flora and fauna are again present, healthy, and productive; there is a full complement of age classes; and people have the same opportunities for the use of public resources as they would have had if the oil spill had not occurred. Restoration proposals should, as much as practical, reflect an understanding of their impact on ecosystem relationships of related resources and services.

For General Restoration activities, preference is given to projects that benefit multiple species rather than to those that benefit a single species. However, effective projects for restoring individual resources will also be considered. This approach will maximize benefits to ecosystems and to injured resources and services.

Habitat Protection and Acquisition emphasizes protection of multiple species, ecosystem areas, such as entire watersheds, or areas around critical habitats. This approach will be more likely to ensure that the habitat supporting an injured resource or service is protected. In some cases, protection of a small area will benefit larger surrounding areas, or provide critical protection to a single resource or service.

Monitoring and Research activities require more than resource-specific investigations to understand the factors affecting recovery from the oil spill. Restoration issues are complex, and research must often take a long-term approach to understand the physical and biological interactions that affect an injured resource or service, and may be constraining its recovery.

The results of these efforts could have important implications for restoration, for how fish and wildlife resources are managed, and for the communities and people who depend upon the injured resources.

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### **Injuries Addressed by Restoration**

3. Restoration activities may be considered for any injured resource or service.
4. Restoration will focus upon injured resources and services and will emphasize resources and services that have not recovered. Resources and services may be enhanced, as appropriate, to promote restoration. Restoration actions may address resources for which there was no documented injury if these activities will benefit an injured resource or service.
5. Resources and services not previously identified as injured may be considered for restoration if reasonable scientific or local knowledge obtained since the spill indicates a spill-related injury.
6. Priority will be given to restoring injured resources and services which have economic, cultural and subsistence value to people living in the oil spill area, as long as this is consistent with other policies.
7. Possible negative effects on resources or services must be assessed in considering restoration projects.

As required by the Consent Decrees, restoration must benefit the resources and services injured by the spill. Table 2 in Chapter 4 lists resources and services injured by the spill. The table is based on the best available information but may be amended if new information demonstrates additional spill-related injuries. The process for amending the list is described in Chapter 4. In addition, an ecosystem approach to restoring injured resources and services may require restoration activities that address a resource's prey or predators, or the other biota and physical surroundings on which it depends.

Continuing injuries to resources and services with important economic, cultural and subsistence value to people living in or using the oil spill area cause continuing hardship. For example, subsistence users say that maintaining a subsistence culture depends upon uninterrupted use of subsistence resources. The more time users spend away from subsistence activities, the less likely they will return to it. Continuing injury to natural resources used for subsistence may affect the way of life of entire communities. Similarly, each year that commercial fish runs remain below prespill levels compounds the injury to the fishermen and, in many instances, the communities in which they live or work.

The policies recognize that waiting for natural recovery may be the most effective approach in many instances, but that the time required for natural recovery can have important adverse consequences for resources and services upon which the people of the spill area rely.

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Finally, restoring one resource or service should not come at the cost of injuring another. An assessment of possible negative effects on non-target resources or services will be part of the project proposal evaluation process.

### **Location of Restoration Actions**

**8. Restoration activities will occur primarily within the spill area. Limited restoration activities outside the spill area, but within Alaska, may be considered under the following conditions:**

- when the most effective restoration actions for an injured population are in a part of its range outside the spill area, or
- when the information acquired from research and monitoring activities outside the spill area will be significant for restoration or understanding injuries within the spill area.

The vast majority of restoration funds will be focused on the spill area, where the most serious injury occurred and the need for restoration is greatest. At the same time, the policy provides the flexibility to restore and monitor outside the spill area under limited circumstances. Examples include some restoration and monitoring activities for migratory seabirds and marine mammals.

### **Restoring a Service**

**9. Projects designed to restore or enhance an injured service:**

- must have a sufficient relationship to an injured resource,
- must benefit the same user group that was injured, and
- should be compatible with the character and public uses of the area.

The restoration fund may be used to restore reduced or lost services provided by injured resources. The relationship between the proposed activity and the injured resource which caused the reduced or lost service is the subject of the first part of this policy. The policy requires that a project to restore or enhance an injured service must be sufficiently related to a natural resource. The project can be related to a natural resource in various ways: it could directly restore a resource, provide an alternative resource, or restore people's access to or use of the resource. The strength of the required relationship has not been defined by law, regulation, or the courts. However, a clear connection with an injured resource is necessary. In determining whether to fund a project to restore services, the strength of the project's relationship to injured resources will be considered.

A few examples may help explain this relationship. One way to aid commercial fishing is to restore injured salmon runs or to provide alternative runs. However, the restoration fund cannot be used to give cash grants to fishermen to cover spill-related losses. This latter idea is unrelated to an injured resource.

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As a second example, subsistence was injured, in part, because the resources it relies on were injured. Habitat may be purchased to provide alternative areas for subsistence where uninjured resources exist. The restoration fund may also be used to enhance or establish alternate subsistence resources, or provide information about the safety and availability of subsistence resources, or even to provide facilities such as a shelter cabin that provides for easier access to alternate resources. In these cases, the restoration activity has a relationship to injured resources — it provides replacement resources, allows users to make better judgement about use of the resources, or provides easier access to alternative resources. However, the restoration fund could not be used to help subsistence users in general, such as providing a warehouse or generator in a subsistence community, because there is no relationship to an injured resource.

The second part of the principle ensures that the injured user groups are the beneficiaries of restoration. If the justification for an action is to restore a service, it is important that the user group that was injured be helped.

The last part of the principle addresses a public concern about possible changes in the use of the spill area. It allows improvements in the services without producing major changes in use patterns. For example, a mooring buoy may improve boating safety without changing patterns of use. Projects to be avoided are those that create incompatible uses for an area, such as constructing a small-boat servicing facility in an area that is wild and undeveloped.

### **Competition and Efficiency**

#### **10. Competitive proposals for restoration projects will be encouraged.**

Most restoration projects to date have been undertaken by state or federal agencies. However, the number of competitive contracts awarded to nongovernmental agencies has increased each year and will continue to increase.

This policy encourages active participation from individuals and groups in addition to the trustee agencies and may generate innovation and cost savings. This approach may be inappropriate for some restoration projects, but, where appropriate, competitive proposals will be sought for new project ideas and to implement the projects themselves.

#### **11. Restoration will take advantage of cost sharing opportunities where effective.**

#### **12. Restoration should be guided and reevaluated as information is obtained from damage assessment studies and restoration actions.**

Activities should be coordinated to decrease project costs and be designed to assess and incorporate available and late-breaking information to ensure the most effective restoration program.

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- 13. Proposed restoration strategies should state a clear, measurable and achievable endpoint.**

A clear, measurable, and achievable endpoint is necessary to determine whether a strategy is successful.

- 14. Restoration must be conducted as efficiently as possible, reflecting a reasonable balance between costs and benefits.**

This policy reflects the important fact that there is not sufficient money available to complete all useful restoration activities. Implementation of this policy will not be based on a quantified cost/benefit analysis, but on a broad consideration of the activity's direct and indirect costs, and the primary and secondary benefits. It will also take into account whether there is a less expensive method of achieving substantially similar results.

- 15. Priority shall be given to strategies that involve multi-disciplinary, interagency, or collaborative partnerships.**

Projects that use this type of approach are more likely to take advantage of diversity in viewpoints, skills, and strengths and will be more likely to result in cost-effective restoration.

### **Scientific Review**

- 16. Restoration projects will be subject to open, independent scientific review before Trustee Council approval.**

This policy continues an existing practice. Independent scientific review gives an objective evaluation of the scientific merits of the project. It also assures the public that scientific judgements are without bias.

- 17. Past performance of the project team should be taken into consideration when making funding decisions on future restoration projects.**

The ability to complete projects in a timely and effective manner is essential to the restoration effort.

- 18. Restoration will include a synthesis of findings and results, and will also provide an indication of important remaining issues or gaps in knowledge.**

To the extent possible, all restoration actions will take into account other relevant activities to help the Trustee Council conduct an integrated research program. In addition, a synthesis of findings and results will be available for the public, scientists, and agency staff to help understand the status of injured resources and services, and to plan for future restoration.

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## **Public Participation**

- 19. Restoration must include meaningful public participation at all levels — planning, project design, implementation and review.**

Public participation is not a once-a-year government activity limited to commenting on draft documents. Rather, to the greatest extent possible, individual projects should integrate the affected and knowledgeable public in planning, design, implementation, and review. Some projects have a more easily identifiable public, for example those designed to affect services or the resources that support them. However, incorporating public preferences and information into any project is likely to improve its cost-effectiveness, take advantage of available knowledge, and help ensure that the restoration program is understood and accepted by the public.

The Trustee Council has emphasized its commitment to involve the public in all phases of restoration activities. Evidence of meaningful public involvement will be sought as part of the project evaluation process.

- 20. Restoration must reflect public ownership of the process by timely release and reasonable access to information and data.**

Information from restoration projects must be available to other scientists and to the general public in a form that can be easily used and understood. An effective restoration program requires the timely release of such information. This policy underscores the fact that since the restoration program is funded by public money, the public owns the results.

## **Normal Agency Activities**

- 21. Government agencies will be funded only for restoration projects that they would not have conducted had the spill not occurred.**

This policy addresses the concern that restoration funds should not support activities that government agencies would do anyway. It also affirms the practice that has been in effect since the beginning of the restoration process. To determine whether work would have been conducted had the spill not occurred, the Trustee Council will consider agency authorities and the historic level of agency activity.

GAO

Briefing Report to the Chairman,  
Committee on Natural Resources,  
House of Representatives

August 1993

# NATURAL RESOURCES RESTORATION

## Use of *Exxon Valdez* Oil Spill Settlement Funds



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August 20, 1993

ALASKA STATE LIBRARY

The Honorable George Miller  
Chairman, Committee on  
Natural Resources  
House of Representatives

Dear Mr. Chairman:

The March 1989 grounding of the supertanker Exxon Valdez in Alaska's Prince William Sound spilled 11 million gallons of crude oil--the largest oil spill in U.S. history. The spilled oil affected more than 1,200 miles of Alaskan shoreline, killed or injured large numbers of wildlife, and touched off massive cleanup and restoration efforts by Exxon<sup>1</sup> and federal and state of Alaska agencies.

In October 1991, the U.S. District Court for the District of Alaska approved settlements between Exxon and the federal government and the state of Alaska to resolve civil claims and criminal charges for damages caused by the oil spill. Under the civil settlement, Exxon agreed to pay a total of \$900 million in 11 annual payments. Under the criminal settlement, Exxon was fined \$150 million (\$125 million of which was forgiven because of, among other things, Exxon's cooperation during the cleanup) and required to pay \$50 million each to the federal government and to the state of Alaska as remedial and compensatory payments to be used exclusively for restoring natural resources damaged by the oil spill.

Oil from the Exxon Valdez affected the natural resources managed by the state of Alaska and three federal agencies --the Departments of Agriculture; Commerce, through the National Oceanic and Atmospheric Administration (NOAA); and the Interior. Federal and state trustees have been designated to assess the damage to the natural resources

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<sup>1</sup>As used in this report, the name Exxon includes the Exxon Corporation and its subsidiaries: the Exxon Pipeline Company and the Exxon Shipping Company, which owned the Exxon Valdez.

caused by the oil spill and to restore these resources. Currently, the federal trustees are the Secretary of the Interior; the Secretary of Agriculture; and the Administrator, NOAA.<sup>2</sup> The state of Alaska trustees are the Commissioner, Department of Environmental Conservation; the Commissioner, Department of Fish and Game; and the Alaska Attorney General, Department of Law.

In May 1989, the federal government and the state of Alaska established a trustee council to (1) coordinate damage assessment activities and (2) provide the framework to seek funds from responsible parties to restore or replace natural resources damaged by the oil spill. In August 1991, the federal government and the state of Alaska converted the original trustee council into the Exxon Valdez Oil Spill Trustee Council (Trustee Council)<sup>3</sup> to jointly direct the restoration. After the civil claims and criminal charges were settled in October 1991, the Trustee Council became responsible for jointly managing the distribution of the civil settlement funds. (See sec. 1 for additional background information.)

In response to your request and subsequent agreements with your office, this briefing report provides information on

- the amount of money that Exxon has paid through December 1992 under the settlements and the distribution of this money and
- issues surrounding the functioning of the Trustee Council.

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<sup>2</sup>In 1989, the then Secretary of Commerce recused himself of his duties as a trustee in matters related to the Exxon Valdez oil spill because of a potential conflict of interest. Since then, the Administrator, NOAA, has served as Commerce's trustee instead.

<sup>3</sup>The Trustee Council comprises three federal and three state members. The federal members are the Alaska-based representatives of the federal trustees--the Alaska Regional Forester, U.S. Forest Service, Department of Agriculture; a Special Assistant to the Secretary of the Interior; and the Director, Alaska Region of the National Marine Fisheries Service, NOAA. The state members are the state of Alaska trustees.

On March 19, 1993, we briefed your office on the preliminary results of our review. Following that briefing, we provided--at your office's request--two similar briefings: one on May 12, 1993, to senior officials from the Departments of Agriculture, Commerce, and the Interior in Washington, D.C.; and a second, on May 26, 1993, to federal and state members of the Trustee Council in Alaska. As subsequently agreed with your office, this letter and the following sections summarize and update the information provided at these briefings.

EXXON PAYMENTS AND DISTRIBUTION  
OF SETTLEMENT FUNDS

Through December 1992, Exxon paid two annual installments --totaling \$240 million--on the \$900 million to be paid under the civil settlement. As of February 1993, the \$240 million was distributed as follows:

- \$107 million was returned to federal and state agencies as reimbursement for presettlement cleanup and damage assessment costs,
- \$40 million was offset against Exxon's payments, as provided in the settlement, for cleanup costs that Exxon incurred in 1991,
- \$19 million was approved by the Trustee Council for expenditure on damage assessment and restoration projects and administrative costs, and
- \$74 million remained in a joint federal/state trust fund for future use.

Both an August 1991 Memorandum of Agreement between the federal government and the state of Alaska and the civil settlement placed a limit of \$142 million on the amount of presettlement cleanup and damage assessment costs that can be reimbursed--\$67 million for federal agencies and \$75 million for state agencies. Trustee Council members believe that reimbursements will not exceed the \$142 million limit.

About 40 percent of the \$19 million for projects approved by the Trustee Council through February 1993 was used for damage assessment. The remainder was split almost evenly between restoration projects and administrative costs. Furthermore, the \$19 million was divided almost evenly

between federal and state agencies. The Trustee Council has approved a resolution to use \$21.1 million of the \$74 million remaining in the joint trust fund for damage assessment and restoration projects, habitat protection, and administrative costs for 1993. Of the \$21.1 million, about \$7.5 million was allocated for restoration work and habitat protection each.

In accordance with the criminal settlement, Exxon has paid \$25 million of the \$150 million fine, which was deposited into the North American Wetlands Conservation Fund (16 U.S.C. sec. 4401-4413) and the Victim Compensation and Assistance Act (42 U.S.C. 10601-10605) account. Under the terms of the settlement, the \$125 million balance of the fine was forgiven because of Exxon's cooperation during the cleanup. Exxon has also paid \$100 million in remedial and compensatory (restitution) payments--\$50 million each to the federal government and to the state of Alaska. Plans have been proposed or are under way to use these funds for such measures as acquiring land for habitat protection, building a marine mammal rehabilitation center, and restoring subsistence resources or services lost or damaged in rural communities. (See sec. 2.)

#### ISSUES SURROUNDING THE FUNCTIONING OF THE TRUSTEE COUNCIL

Issues surrounding the functioning of the Trustee Council fall into three categories: restoration planning, habitat protection, and overall organization and administration.

#### Restoration Planning

A key ingredient--which the Trustee Council does not yet have--in the transition from the Trustee Council's role of assessing damage to taking action to restore the natural resources affected by the oil spill is an approved restoration plan. The plan is scheduled to be issued in December 1993. At present, however, the Trustee Council's annual work plans are not tied to a comprehensive restoration plan, and some projects do not appear to have a direct link to the oil spill or else appear to duplicate existing agency responsibilities. In addition, some participants in and observers of the Trustee Council's activities believe that the damage assessment and restoration work carried out to date has been dominated by federal and state agencies and that, as a consequence, few nongovernmental organizations have been able to

participate in the process. For example, almost all of the 1992 and 1993 work projects were not open for competitive bid and were carried out by federal and state agency personnel. The Trustee Council's chief scientist believes that open competition would encourage more timely completion of projects at reduced costs. According to Trustee Council members, there was a need for federal and state agencies to do most of the damage assessment work; however, as more restoration projects are undertaken, less use will be made of federal and state agencies and more projects will be subject to bid proposals from nongovernment sources. (See sec. 3.)

#### Habitat Protection

The Trustee Council is facing increasing public pressure to acquire land to protect habitat. However, land acquisition is expensive, as is illustrated by the Trustee Council's estimates to acquire land for habitat protection that run as high as \$3 billion. Currently, land acquisition activities are not yet tied to an approved land acquisition plan that is linked to an approved restoration plan. Meanwhile, using interim evaluation criteria approved by the Trustee Council, a habitat protection/acquisition work group classified about 42,000 acres as critical habitat to help the recovery of injured wildlife species. This land was identified as "imminently threatened" because of its vulnerability to activities, such as logging, that would significantly lessen the land's ability to provide habitat protection for wildlife species injured by the oil spill. The Trustee Council has approved over \$60 million to acquire 24,500 acres, which includes the work group's two top-ranked imminently threatened parcels totaling 22,500 acres. The work group classified another 338,000 acres as "opportunity-to-buy" parcels--land that is important as habitat protection but not imminently threatened. (See sec. 4.)

#### Overall Organization and Administration

The Trustee Council's current procedures and practices lead many to view the Trustee Council's objectivity with some skepticism. Among other things, the individuals making up the Trustee Council and its organization, which includes a restoration team and several work groups, are, for the most part, employees of the various federal and state trustee agencies. The same agencies--and sometimes the same individuals--that recommend a project for funding

also approve and carry out the project. Moreover, financial reviews or audits have not been conducted of the federal and state agencies' reimbursement claims or of the use of civil settlement funds.

In addition, required project reports on damage assessment and restoration efforts are frequently submitted late and often require extensive revision because of such problems as incomplete analyses, overreaching conclusions, and imbalanced presentations. Consequently, the Trustee Council has often made decisions on follow-on projects without the knowledge of the final conclusions of earlier, related studies. Also, there are some who believe that the Trustee Council organization has not sufficiently sought meaningful public participation or independent scientific viewpoints in deciding which studies and restoration activities should be undertaken. Because of the importance placed on the public's views, the Trustee Council has held numerous public meetings and has established a 17-member public advisory group to facilitate the gathering of the views of individuals and various interest groups throughout Alaska. (See sec. 5.)

#### CONCLUSIONS

Our review raised a number of issues surrounding the functioning of the Trustee Council. These issues require attention before adequate assurance can be provided that the \$1 billion being received as a result of the Exxon Valdez oil spill civil and criminal settlements are expended as intended. Several of the issues relate to the completion of a comprehensive restoration plan to guide such things as annual work plans and land acquisitions, more timely and better quality project reports, and more open competition for restoration projects. Other issues involve the adequacy of internal controls, including (1) financial reviews and program audits to ensure the propriety of reimbursements and subsequent expenditures of settlement funds and (2) a separation of duties among agency personnel involved in recommending, approving, and carrying out the projects.

#### RECOMMENDATIONS

We recommend that the three federal trustees proactively work with the three state of Alaska trustees to better ensure that the \$1 billion being received as a result of the Exxon Valdez oil spill settlements is expended as

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intended. Among other things, attention should be given to (1) completing restoration and land acquisition plans, (2) requiring more timely and better quality project reports, (3) providing for more open competition for restoration projects, and (4) improving internal controls.

AGENCY COMMENTS

At your office's request, we did not obtain written agency comments on a draft of this report. We did, however, discuss the information in the report with members of the Trustee Council. They generally agreed with the information in the report and provided comments and suggestions, which we incorporated where appropriate.

More specifically, the Trustee Council members suggested that we more clearly distinguish between the role and makeup of the presettlement and postsettlement trustee councils, which we did. They also commented that we had understated the extent of public participation actively sought and used for the Trustee Council's decisions. We revised the report as necessary to more clearly reflect the extent and form of public participation.

The Trustee Council members expressed concern that we had not fully reflected the magnitude of the challenge they faced in establishing a joint federal/state organization, process, and plan for addressing the restoration of resources damaged and services affected by the largest oil spill on record. We believe that the report does recognize the magnitude and complexity of the challenges faced by the trustees and the Trustee Council, and that this is all the more reason for the trustees to address the issues identified in the report to ensure that settlement funds are expended efficiently, effectively, and as intended.

Finally, the Trustee Council members believe that we should have addressed the multiplicity of federal and state procedures and requirements that must be met in developing a restoration plan. Although the scope of our review did not include an in-depth analysis of all the statutes, laws, and regulations affecting the Trustee Council's operations, we believe that the report does provide a fairly comprehensive overview of its operations, including the restoration planning process.

SCOPE AND METHODOLOGY

To determine how much Exxon has paid to date under the settlement and how the money has been distributed, we obtained documents and interviewed officials from federal agencies in Washington, D.C., and their regional offices in Alaska, as well as state of Alaska agencies. The federal agencies we contacted were the Departments of Agriculture, Commerce (NOAA), the Interior, Justice, and Transportation (U.S. Coast Guard). The state of Alaska agencies included the Departments of Environmental Conservation, Fish and Game, and Law.

To identify issues surrounding the functioning of the Trustee Council, we interviewed the six federal and state members of the Trustee Council and various other officials of the Trustee Council organization, including members of the Trustee Council's restoration team, work groups, the public advisory group, and the chief scientist. We also reviewed the Trustee Council's documents, including transcripts of the Trustee Council's monthly meetings; annual budgets and work plans; and analyses prepared by the chief scientist.

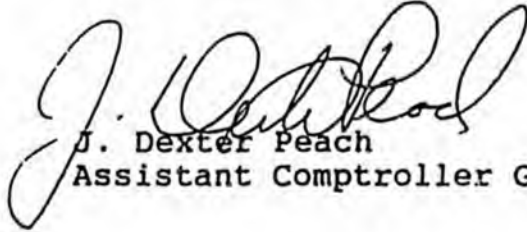
We conducted our review between February and July 1993 in accordance with generally accepted government auditing standards. As agreed, however, we did not verify the accuracy or reliability of the annual budgets or actual distributions of funds.

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As requested, unless you publicly announce its contents earlier, we plan no distribution of this briefing report until 30 days from the date of this letter. At that time, we will make copies available to the Secretary of Agriculture; the Secretary of Commerce and the Administrator, NOAA; the Secretary of the Interior; designated federal and state members of the Trustee Council at Anchorage, Alaska; and other interested parties. Copies will also be made available to others on request.

This work was performed under the direction of James Duffus III, Director, Natural Resources Management Issues, who can be reached at (202) 512-7756 if you or your staff have any questions. Other major contributors to this briefing report are listed in appendix I.

Sincerely yours,



J. Dexter Peach  
Assistant Comptroller General

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ABBREVIATIONS

30	GAO	General Accounting Office
30	NOAA	National Oceanic and Atmospheric Administration
31	NRDA&R	Natural Resources Damage Assessment and Restoration Fund

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## SECTION 1

### BACKGROUND

Shortly after midnight on March 29, 1989, the supertanker Exxon Valdez struck a reef and ran aground in Prince William Sound, off the coast of Alaska, spilling 11 million gallons of crude oil, the largest oil spill in U.S. history. The spilled oil spread to more than 1,200 miles of Alaska's coastline, including portions of one national forest, four national wildlife refuges, three national parks, five state parks, four state critical habitat areas, and one state game sanctuary. This coastline is rich in fish and wildlife, such as herring, salmon, sea otters, whales, bald eagles, and seabirds. The spill killed and injured large numbers of many of these wildlife species. Services dependent upon these natural resources--such as native subsistence, commercial and sport fishing, sport hunting, camping, boating, and tourism--were also reduced or lost.

Oil from the Exxon Valdez affected the natural resources managed by the state of Alaska and three federal agencies--the Departments of Agriculture; Commerce, through the National Oceanic and Atmospheric Administration (NOAA); and the Interior. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. sec. 9607); the Clean Water Act (33 U.S.C. sec. 1321); and implementing regulations provide for the designation of federal and state officials to act as trustees to ensure that responsible parties pay to restore, rehabilitate, or replace natural resources damaged or destroyed by an oil spill. The federal trustees were the Secretary of the Interior; the Secretary of Agriculture; and the Administrator, NOAA. The state of Alaska trustee was the Commissioner, Department of Fish and Game.

Although the response of the state of Alaska and of the various federal agencies to the oil spill was swift, a need soon emerged for a formal interagency structure to coordinate response and damage assessment activities. In May 1989, the trustees established a trustee council to coordinate activities. The council was composed of three Alaska-based representatives of the federal trustees--the Alaska Regional Forester, U.S. Forest Service, Department of Agriculture; the Director, Alaska Region of the U.S. Fish and Wildlife Service, Department of the Interior; and the Director, Alaska Region of the National Marine Fisheries Service, NOAA--and the state's Commissioner, Department of Fish and Game. The U.S. Environmental Protection Agency participated in the council's activities as an adviser on the long-term revival of Prince William Sound.

During 1989, state and federal agency efforts focused on containing and cleaning up the spill and rescuing oiled wildlife. Although winter storms helped in cleaning many beaches,

additional cleanup work was needed in 1990 and 1991. Along with the cleanup effort, the state and federal trustee agencies--under the coordination of the trustee council--also planned and directed natural resources damage assessment studies to determine the nature and extent of injuries sustained in the oil spill area. The results of these studies were to be used as evidence in pending civil and criminal claims against Exxon and to help in the restoration of the damaged resources.

Both the state of Alaska and the federal government filed claims against Exxon seeking to recover damages for injuries to and the restoration and replacement of natural resources affected by the oil spill. In October 1991, the U.S. District Court for the District of Alaska approved agreements that settled the claims of the United States and the state of Alaska against Exxon for civil damages and criminal charges. Under the major terms of the civil settlement, Exxon (1) agreed to pay the federal government and the state of Alaska a total of \$900 million in 11 annual payments (see table 1.1) beginning in December 1991 and ending in September 2001 and (2) might be liable for up to an additional \$100 million between 2002 and 2006 for projects to restore populations, habitats, or species that had suffered a substantial loss or decline not anticipated on the effective date of the settlement.

Table 1.1: Schedule of Exxon's Civil Settlement Payments

Dollars in millions

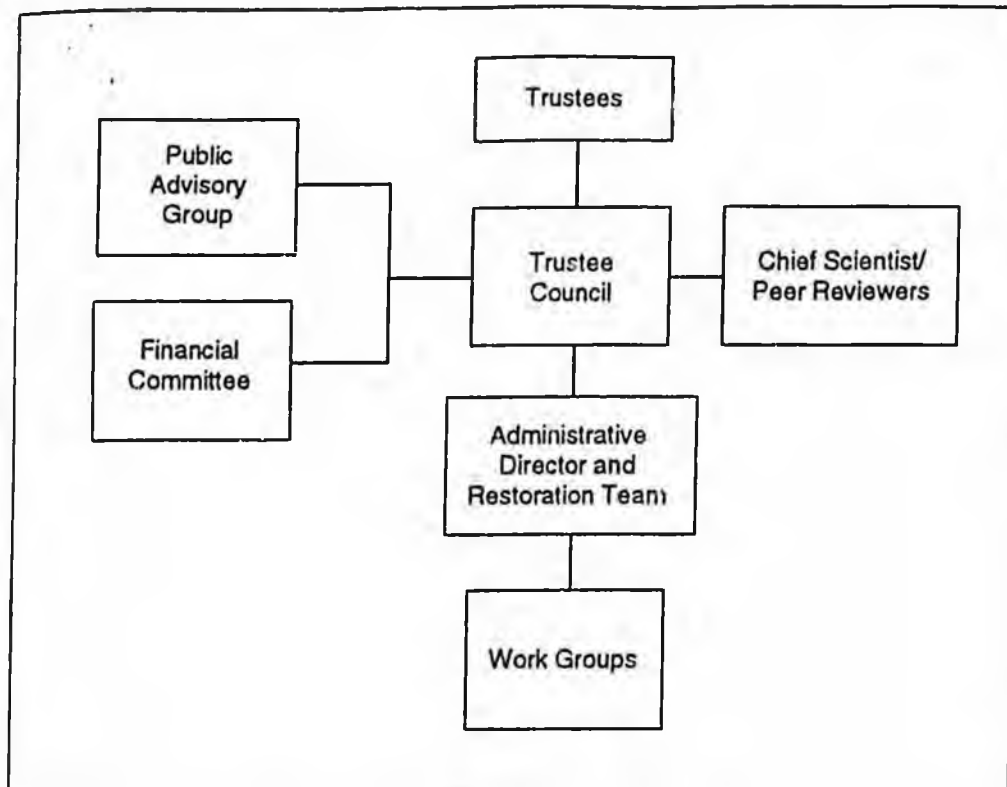
Scheduled payment date	Amount
Dec. 1991	\$90
Dec. 1992	150
Sept. 1993	100
Sept. 1994	70
Sept. 1995	70
Sept. 1996	70
Sept. 1997	70
Sept. 1998	70
Sept. 1999	70
Sept. 2000	70
Sept. 2001	70
Total	\$900

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Under the criminal settlement, Exxon agreed to plead guilty to four criminal charges arising from the oil spill and be fined \$150 million. The \$150 million fine was the largest fine ever imposed for an environmental crime. Of this amount, \$125 million was forgiven because of Exxon's cooperation during the cleanup, timely payment of many small claims, and environmental precautions taken since the spill. The remaining \$25 million was paid into the North American Wetlands Conservation Fund (16 U.S.C. sec. 4401-4413) and the Victim Compensation and Assistance Act (42 U.S.C. sec. 10601-10605) account. In addition, Exxon agreed to pay \$100 million (\$50 million to the federal government and \$50 million to the state of Alaska) as remedial and compensatory (restitution) payments to be used exclusively for the restoration of natural resources damaged by the oil spill.

Guidelines for the use of the \$900 million civil settlement funds are set forth in a Memorandum of Agreement between the federal government and the state of Alaska, which was approved by the U.S. District Court in August 1991. The agreement established a federal/state trusteeship--known as the Exxon Valdez Oil Spill Trustee Council (Trustee Council)--to review and approve the expenditure of civil settlement funds for such things as damage assessment and restoration projects. The federal members of the Trustee Council are the same as those on the earlier trustee council, except that a Special Assistant to the Secretary of the Interior replaced the Director, Alaska Region of the U.S. Fish and Wildlife Service. The Memorandum of Agreement also designated as state of Alaska trustees and as members of the Trustee Council the Commissioner, Department of Environmental Conservation; the Commissioner, Department of Fish and Game; and the Alaska Attorney General, Department of Law. Figure 1.1 shows the postsettlement Trustee Council organization.

Figure 1.1: Exxon Valdez Oil Spill Trustee Council Organization



Under the Memorandum of Agreement, civil settlement funds must be used to restore, replace, rehabilitate, enhance, or acquire the equivalent of the natural resources injured, lost, or destroyed as a result of the oil spill and the reduced or lost services provided by such resources. The funds must be spent on the restoration of natural resources in Alaska unless the trustees unanimously agree that spending funds outside of the state is necessary for effective restoration. The agreement also established a joint trust fund, within the jurisdiction of the U.S. District Court, as a depository for Exxon's payments. The use of the \$100 million restitution funds from the criminal settlement was not covered by the Memorandum of Agreement; however, these funds must be used by the federal government and the state of Alaska for restoration activities, within the state, relating to the Exxon Valdez oil spill.

The six-member Trustee Council receives input and advice from a contracted chief scientist and a peer review group of scientists, a financial committee, a public advisory group, and the public at large. The primary day-to-day activities of the Trustee Council organization are performed by an interim administrative director, a six-member restoration team, and

various work groups. The restoration team reviews and recommends proposed actions to the Trustee Council, and the work groups prepare plans and documents as directed by the restoration team, including annual work plans and a long-term habitat-protection plan. The work groups are staffed by officials from state and federal agencies represented on the Trustee Council or restoration team. The Trustee Council's first of generally monthly meetings occurred in December 1991. All Trustee Council meetings are open to the public under Alaska's open-meeting laws. Teleconferencing is used in many of these meetings as a means of involving individuals from up to 10 communities throughout the state who, otherwise, would be unable to participate. A significant part of each meeting is devoted to the public comments received on the issues being considered by the Trustee Council.

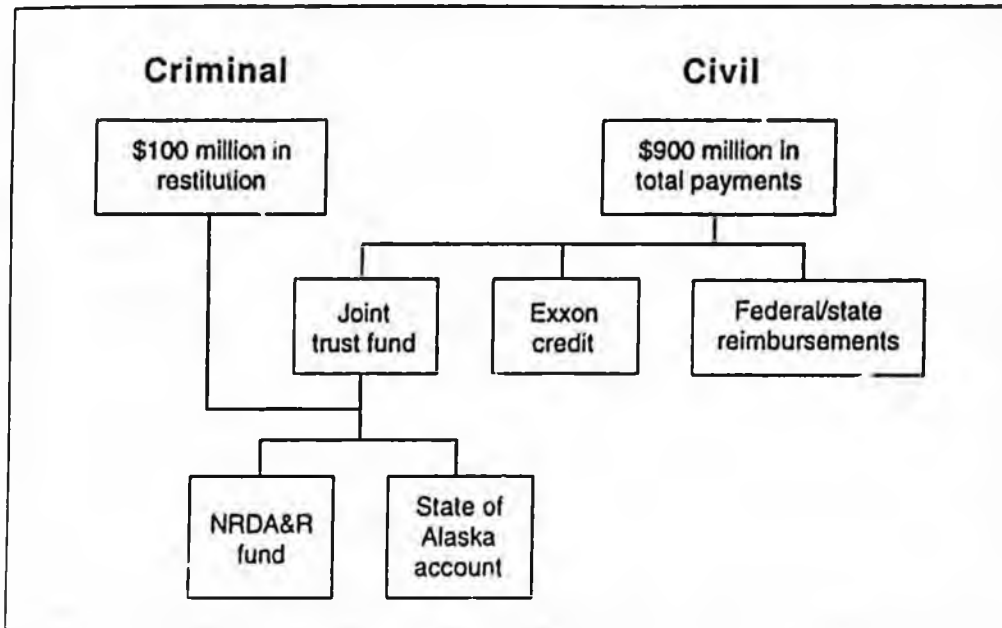
According to Trustee Council members, settlement fund expenditure decisions are made in the following manner. The annual work plan group initially develops a proposed list of damage assessment and restoration projects, including projects proposed by the public. The group then forwards the recommended list of proposed projects to the restoration team. At least five of the six members of the restoration team must approve a proposed project before it is recommended to the Trustee Council. The Trustee Council may also consider projects in addition to those recommended by the restoration team. The chief scientist reviews the proposed projects and provides comments to the Trustee Council. The list of proposed projects is also available for public review and comment. A unanimous vote is required by all six members of the Trustee Council to approve a project's funding. After a project begins, periodic progress reports and a final completion report for the project must be submitted to the chief scientist for review and approval.

SECTION 2

EXXON PAYMENTS AND SETTLEMENT  
FUND DISTRIBUTIONS

Figure 2.1 shows the flow of dollars resulting from the criminal and civil settlements. As mentioned earlier, Exxon owed \$100 million in criminal restitution payments--half to the federal government and half to the state of Alaska. The \$50 million payment to the federal government was deposited into the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDA&R) Fund and the state of Alaska's \$50 million was deposited into a state account.

Figure 2.1: Exxon Payments and Settlement Fund Distributions



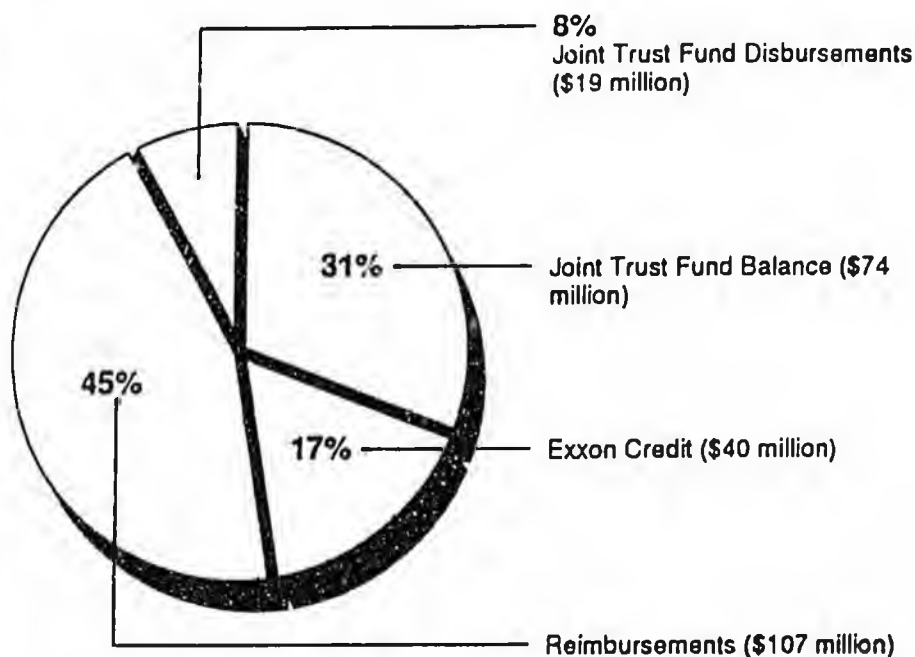
Exxon's payments from the \$900 million civil settlement flow to three areas:

- reimbursements to federal and state agencies of up to \$142 million for past spill-related work,
- a credit of \$40 million to Exxon for the reimbursement of certain agreed-upon cleanup work performed at the direction of a federal on-scene coordinator, and
- deposits of the remaining funds from 11 annual payments from Exxon into the joint federal/state trust fund held in a depository under the jurisdiction of the U.S. District Court.

After the Trustee Council approves damage assessment and restoration projects and the administrative costs of the Trustee Council organization, the U.S. District Court is petitioned to release funds from the joint trust fund to cover these activities. For projects carried out by federal agencies, the funds are transferred from the joint trust fund to the NRDA&R fund. Interior then transfers funds from the NRDA&R fund to the federal agency carrying out the activity. For Alaska agencies' projects, the funds are transferred from the joint trust fund to the state's general fund for subsequent distribution to the various state agencies.

Through December 1992, two civil settlement payments totaling \$240 million were made by Exxon. The next Exxon payment, in the amount of \$100 million, is scheduled for September 1993. Prior to each of Exxon's annual civil settlement payments, the respective federal and state agencies reach agreement on the amount of the payment that will apply toward reimbursements and the amount that will be deposited into the joint trust fund for activities authorized by the federal and state trustees. Figure 2.2 shows the distribution of the \$240 million in Exxon payments through February 1993.

Figure 2.2: Distribution of \$240 Million in Exxon Payments Through February 1993



Most of the funds distributed to date have been used to reimburse various government agencies and Exxon for past cleanup costs; some have been used for the Trustee Council's activities such as administration, damage assessment and restoration projects, and restoration planning; and the remainder resides in the joint trust fund. The \$40 million Exxon credit was provided for in the settlement. The credit was to reimburse Exxon for expenditures it made for cleanup costs incurred at the direction of a federal on-scene coordinator in early 1991 as well as specified cleanup costs performed at a later date. The Coast Guard performed a financial review of Exxon's claims and allowed the \$40 million credit. Additional credits against future Exxon payments may result if federal/state on-scene coordinators direct Exxon to perform additional cleanup work. According to the Trustee Council, cleanup work that met federal and state standards was completed as of August 1992.

Both the Memorandum of Agreement and the civil settlement place a limit of \$142 million on the amount of presettlement cleanup and damage assessment costs that can be reimbursed. The limit is divided into maximums of \$67 million for federal agencies and \$75 million for state agencies. Trustee Council members believe that reimbursements will not exceed the \$142 million limit. Through December 1992, approximately \$107 million was used to reimburse federal and state agencies for

presettlement response, cleanup, and damage assessment costs incurred before January 1991. Certain additional reimbursements, including litigation costs, incurred since then may also be claimed but must be jointly agreed to by the federal and state trustees. Of this \$107 million, federal agencies have been reimbursed \$49 million and state agencies \$58 million. Table 2.1 shows a summary of reimbursements to federal agencies through December 1992. A detailed breakdown of the reimbursements to state agencies was not available at the time of our review.

Table 2.1: Reimbursements to Federal Agencies Through December 1992

Dollars in millions unless otherwise noted

Federal agency	Amount
Department of Army: Corps of Engineers	\$5.5
Department of Agriculture: Forest Service	10.4
Department of Commerce: NOAA	11.7
Department of the Interior	10.2
Department of Transportation: Coast Guard Federal Aviation Administration	7.2 <sup>a</sup>
Environmental Protection Agency	4.2
Total <sup>b</sup>	\$49.2

<sup>a</sup>Less than \$10,000.

<sup>b</sup>Reimbursements do not include about \$226,000 in interest paid by Exxon between the scheduled and actual dates of the first payment under the civil settlement. This amount was distributed proportionately among the federal agencies being reimbursed from the first payment.

Of the \$240 million paid by Exxon through December 1992, about \$93 million was deposited into the joint trust fund to fund activities approved by the Trustee Council. Of this amount, about \$19 million was authorized by the Trustee Council to fund damage assessment and restoration projects included in the restoration work plan approved by the Trustee Council for 1992. Table 2.2 shows how these funds were distributed among damage

assessment projects, restoration projects, and administration through February 1993. The \$19 million was about equally divided between federal and state agencies. On the federal side, the Forest Service received the most funds--about 20 percent--and for the state of Alaska, the Department of Fish and Game received the most--about 40 percent. The balance--about \$74 million--remains in the joint trust fund and is earning interest.

Table 2.2: Distribution of Funds From the Joint Trust Fund Through February 1993

Dollars in millions

Category	Amount
Damage assessment	\$7.5
Restoration	6.6
Administration	5.1
Total	\$19.2

In April 1993, the Trustee Council approved a resolution to draw \$21.1 million from the joint trust fund to finance damage assessment projects, restoration projects, the Trustee Council's administrative costs, and other activities included in the 1993 work plan. (See table 2.3.) The 1993 work plan reflects a phasing out of damage assessment studies and an increase in restoration projects. Overall, about 25 percent of the \$21.1 million will fund federal agencies' work, and 75 percent will fund state agencies' work.

Table 2.3: Planned 1993 Distribution of Funds From the Joint Trust Fund

Dollars in millions

Category	Amount
Damage assessment	\$1.5
Restoration	7.5
Administration	2.8
Other	9.3
Total	\$21.1

Note: Distribution of these funds is for the period March 1, 1993, to September 30, 1993.

Included in the \$9.3 million "other" category is \$1.5 million to fund an archaeological repository on Kodiak Island. The repository will preserve and protect artifacts from about 17 sites on Kodiak Island that were destroyed or discovered as a result of the cleanup following the spill. Also, the Trustee Council approved \$7.5 million to be used by the state, along with about \$14 million from the state's restitution funds from the criminal settlement and another source of state funds, to purchase 7,500 acres of privately owned land within the boundaries of Kachemak Bay State Park on the Kenai Peninsula across from Homer, Alaska. The purchase is intended to provide additional lands to protect habitat from further degradation and to allow recovery of various species. Following the drawdown to fund the 1993 work plan, a balance of about \$52.9 million will remain in the joint trust fund. This balance will increase when Exxon makes its third annual civil settlement payment--in the amount of \$100 million--in September 1993. The actual amount to be deposited into the joint trust fund will depend on how much of Exxon's payment is used for reimbursements.

As of June 1993, none of the \$100 million in criminal restitution funds had been expended. However, as shown in table 2.4, several projects have been proposed by the federal and state governments. In March 1993, the federal trustees proposed that \$25 million be used to acquire private land concentrated within the boundaries of the Chugach National Forest, Kenai Fjords National Park, Kodiak National Wildlife Refuge, and the Maritime Wildlife Refuge Islands. Although the precise use of the remaining \$25 million has yet to be determined, agencies are considering the funds for various habitat acquisition, restoration, and monitoring projects.

Table 2.4: Proposed Use of Criminal Restitution Funds

Dollars in millions

Federal share	\$50.0
Proposed uses:	
Habitat acquisition	25.0
Other (habitat acquisition, restoration, and monitoring)	25.0
State share	\$50.0
Proposed uses:	
Build marine center	12.5
Buy land for habitat protection	7.0
Restore subsistence areas	5.0
Oil spill research programs	5.0
Restore recreation sites	4.8
Enhance hatchery system	4.0
Other smaller projects	11.7

Using its share of the restitution funds, the Alaska state legislature, in May 1993, approved funding for a variety of projects, the larger of which include the following:

- the design and construction of a recreation and marine mammal rehabilitation center for education and research;
- the partial funding of the acquisition of private land within the Kachemak Bay State Park to add habitat for recovering wildlife species;
- the restoration, replacement, or enhancement of subsistence resources or services lost or damaged in rural communities; and
- the development of research programs directed at the prevention, containment, cleanup, and amelioration of oil spills.