
AN URGENT APPEAL TO THE E.V.O.S. TRUSTEE COUNCIL
TO IMMEDIATELY PROTECT THREATENED HABITAT
IN PRINCE WILLIAM SOUND

THE COASTAL COALITION

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Eyak Corporation
Honorable H. Russell Holland, U.S. District Court

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This Coastal Coalition paper details an urgent situation concerning the restoration and recovery of Prince William Sound from the Exxon Valdez Oil Spill. The first part provides an introduction and background; pages 8 - 14 explain the current emergency; and the last part summarizes specific problems and proposed solutions.

The Coastal Coalition genuinely and respectfully intends this position paper to serve as a constructive aid for the Trustee Council in fulfilling its responsibility to the Court, the public and the environment injured by the Exxon Valdez Oil Spill.

Because of the emergency at Orca Narrows/Simpson Bay, we ask for a written response to this paper from the E.V.O.S. Trustee Council no later than March 21, 1995.

Prince William Sound should have to make no more sacrifice.

INTRODUCTION

On October 8, 1991, the U.S. District Court, District of Alaska, approved the AGREEMENT AND CONSENT DECREE (Civil Actions No. A91-082 and A91-083) resolving claims of the United States and the State of Alaska against Exxon for damages caused by the Exxon Valdez Oil Spill.

The other document providing legal context to this paper and approved by the Court is the MEMORANDUM OF AGREEMENT AND CONSENT DECREE (Civil Action No. A91-081 CV), between the United States of America and State of Alaska.

Together, these two documents, both approved by the Court, govern the use of monies provided by the civil settlement.

This landmark settlement, providing \$900 million over ten years, was supported by the public and rightfully by the Court primarily because it was to immediately provide the money necessary to attend to the extraordinary damage caused by the spill.

As to the damage caused by the spill, presiding U.S. District Court Judge H. Russell Holland stated in approving the settlement:

"The Exxon Valdez oil spill was a complete, utter disaster, which I previously characterized as being off the chart."

Judge Holland's statement was corroborated by several hundred million dollars worth of scientific research into the impacts of the spill, which proved this to be the most damaging oil spill in human history.

The M.O.A. provides that: "The governments shall jointly use all (*emphasis added*) natural resource damage recoveries for the 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 (reimbursement of certain expenses)."

The Trustees, as defined in the Consent Decree and M.O.A., are charged by the Court with the task of executing this court order.

The Court's approval of the civil settlement initiated by far the most extensive attempt in human history to mitigate environmental damage caused by an industrial disaster.

As such, the trust responsibility of the Trustees is unique, precedent setting, and indeed historic.

Certain recitations were made before the Court in attempts to win approval of the civil settlement and criminal plea agreement:

U.S. DEPT. OF JUSTICE:

- "This Oil Spill was a catastrophe and was also an environmental crime."
- "Today the Court has the opportunity to deal with that environmental consequence immediately."
- "The Court is faced today with the difficult and important task of evaluating the acceptability of this plea agreement and the proposed consent decree, which are both unprecedented in nature..."
- "Unlike other economic crimes in which this court is well aware, we can't simply pay interest 20 years down the road to make up for the losses. In environmental cases, it is crucially important that we address the consequences of the conduct immediately."
- "We believe it is in the public's best interest to settle this case in this matter to get the much needed money into Prince William Sound and Gulf of Alaska now as opposed to years from now."

THE COURT: "Okay. Second question, and this gets to some of the muttering that I heard that has made me uneasy about where the restitution money is gonna go. Are you satisfied, to a reasonable legal certainty, that this restitution money, if I approve that agreement, will get where it is agreed to go – to restoration, rehabilitation, and so forth, of Prince William Sound, as opposed to being drained off?..."

ALASKA ATTORNEY GENERAL: "Is the Court talking about the civil settlement?"

THE COURT: "I'm talking about the civil settlement."

ALASKA ATTORNEY GENERAL: "...I personally represent to this Court...I guarantee that the money will be used for restoration of the Prince William Sound, and it isn't going to be drained."

The asserted intentions of the State of Alaska and the United States in asking for the Court's approval of their settlement agreement with Exxon were honorable – to get money necessary to aid the recovery of the damaged environment.

BACKGROUND ON HABITAT PROTECTION AND ACQUISITION AS THE PRINCIPAL TOOL OF RESTORATION

Of the five categories of restoration activities specified by the Trustee Council in the "Exxon Valdez Oil Spill Restoration Plan" (Nov. 1994) – General Restoration; Habitat Protection and Acquisition; Monitoring and Research; Restoration Reserve; and Public Information, Science Management, and Administration – the category that clearly offers the best chance of achieving the goals of the Consent Decree and M.O.A. referred to above is Habitat Protection and Acquisition.

In fact, the broad consensus among citizens of the oil spill region to quickly settle government claims against Exxon out-of-court was a direct result of the urgent need to secure funds specifically for implementing a comprehensive program of coastal habitat acquisition.

It was widely acknowledged that because it would be virtually impossible to actually restore, in the truest sense of the word, the natural resources and services injured by the oil spill, the most important means of aiding the recovery of the damaged environment to pre-spill condition and of replacing lost resources and services would be the acquisition of yet undamaged habitat in the spill region. This was seen to be best accomplished by the acquisition of certain protections for privately owned coastal habitat threatened by certain industrial activities, primarily unsustainable clearcut logging. As is the first rule in medical treatment, the first rule in ecosystem restoration is seen to be, first, protect the patient (ecosystem) from further injury. Also, the acquisition and intact retention of threatened coastal habitat is the clearest, most direct way to offset and redress other values and services lost or injured as a result of the spill.

This was first formally proposed on behalf of citizens of the region through The Coastal Coalition comprehensive settlement proposal issued July 4, 1990. About 2 1/2 years later, the Trustee Council came to consensus supporting this concept and began to take action (Trustee Council Resolution to Proceed with Habitat Protection Program, January 31, 1993). Finally, in the "Exxon Valdez Oil Spill Restoration Plan" issued November, 1994, five and a half years after the grounding of the Exxon Valdez, the Trustee Council at last had an approved plan with which to implement its comprehensive habitat protection and acquisition program.

The following is part of the Plan's discussion of the issue of habitat protection and acquisition:

Habitat protection and acquisition is one of the principal tools of restoration. It is important in ensuring continued recovery in the spill area.

Resource development, such as harvesting timber or building subdivisions, may alter habitat that supports injured resources or services. Protecting and acquiring land may minimize further injury to resources and services already injured by the spill, and allow recovery to continue with the least interference. For example, the recovery of harlequin ducks might be helped by protecting nesting habitat from future changes that may hamper recovery.

Habitat protection and acquisition may include purchase of private land or interests in land such as conservation easements, mineral rights, or timber rights. Different payment options are possible, including multi-year payment schedules to a landowner. Acquired lands would be managed to protect injured resources and services. In addition, cooperative agreements with private owners to provide increased habitat protection are possible.

Most public comments on the restoration alternatives favored using habitat protection and acquisition as a means of restoration. The following injured resources might benefit from the purchase of private land or property rights: pink and sockeye salmon, Dolly Varden and cutthroat trout, Pacific herring, bald eagle, black oystercatcher, common murre, harbor seal, harlequin duck, marbled murrelet, pigeon guillemot, river otter, sea otter, intertidal organisms, and archaeological sites.

Habitat protection and acquisition is a means of restoring not only injured resources, but also the services (human uses) dependent on those resources. Subsistence, recreation, and tourism benefit from the protection of important fish and wildlife habitats, scenic areas, such as those viewed from important recreation or tourist routes, or important subsistence harvest areas. For example, protecting salmon spawning streams benefits not only the salmon, but also commercial, subsistence, and recreational fishermen.

Habitat protection on existing public land and water may include recommendations for changing agency management practices. The purpose, in appropriate situations, is to increase the level of protection for recovering resources and services above that provided by existing management practices. The Trustee Council may conduct studies within the spill area to determine if changes to public land and water management would help restore injured resources and services. If appropriate, changes will be recommended to state and federal management agencies. Recommendations for special designations, such as parks, critical habitat areas, or recreation areas, may be made to the Alaska legislature or the U.S. Congress.

[from: Exxon Valdez Oil Spill Restoration, November, 1994]

Considering the Trustee's obligation to fulfill the orders of the Court, how is the oil spill region recovering under the Trustees' guardianship? Original injuries from the oil spill continue to manifest in the Sound. Herring populations have crashed, leading to the failure and closure of commercial herring fisheries in Prince William Sound the last three years. Wild stock salmon populations are in jeopardy. Many marine bird populations are severely compromised. By Trustee Council findings, species not recovering include common murre, marbled murrelet, pigeon guillemot, harlequin duck, harbor seal, sea otter, pink salmon and herring.

New injuries that the Trustees have failed to prevent during their tenure at the helm of restoration include the removal by unsustainable clearcut logging of several hundred thousand acres of coastal forest habitat that was critical to restoration and recovery of the oil spill region, in spite of the fact that many of these forests had been made available to the Trustees for acquisition at fair-market value by landowners.

The Trustees, painfully slow to begin their habitat acquisition program, have been sharply criticized by the public and the U.S. government, which in its 1992 GAO report found serious problems with the Trustee Council expenditure process. One problem among many stood out—that Trustee funds essential to emergency mitigation efforts were drained into other, far less urgent ones. For example, of the \$240 million from the first two Exxon payments in December of 1991 and 1992, \$147 million was drained into reimbursing the state and federal governments and Exxon for their pre-settlement expenses, suggesting that the Trustees considered these parties' needs to be more urgent than those of the damaged ecosystem -- this was indeed telling the injured ecosystem to step to the back of the line. And unfortunately, most of the rest of the first two years' expenditure was either unused or spent on an agency "science" program without a clear link to restoration.

On the positive side, in the last year or so the Trustees have begun to acquire habitat essential to restoration and are near closure on significant, comprehensive deals in the Kodiak Archipelago and the Kenai Peninsula. However, Prince William Sound itself, the area of maximum spill impact, has yet to receive any significant habitat protection and continues to experience new injuries devastating to restoration and recovery.

TRUSTEE COUNCIL - EYAK CORPORATION HABITAT NEGOTIATIONS

Due to frequent Trustee Council deliberations in Executive Session, thus excluding the public, it is difficult to know exactly what has transpired throughout the negotiation process. The following is our understanding of the history.

The Eyak Corporation, since 1988, has been engaged in logging operations on some of its lands adjacent to the Copper River Delta, just east of Cordova.

As part of its comprehensive habitat protection program, the Trustee Council has been negotiating or otherwise discussing with the Eyak Corporation a purchase of certain protections on almost all Eyak lands for over three years now. There has been overwhelming public support for the comprehensive protection of Eyak lands as an important component in the Trustee Council restoration program.

However, despite overwhelming public support and the expressed intentions of the Trustee Council and Eyak, the Council was unable until quite recently to secure any protections on any Eyak lands, and clearcut logging continued on the Copper River Delta.

Then in August, 1993, Eyak Corporation began to relocate its logging operation for the first time into Prince William Sound, at Orca Narrows/Simpson Bay about five miles north of Cordova.

In the midst of vehement public protest against Eyak's plan, an emergency meeting was called in Cordova between Trustee representatives and Eyak. At this time, Trustees strongly reaffirmed their desire to protect Orca Narrows/Simpson Bay so as to fulfill their restoration obligations.

In order to keep negotiations alive and to assure protection for the imminently threatened Orca Narrows area, Trustees helped to expedite the emergency conveyance to Eyak of other lands on the Copper River Delta so that Eyak could continue timber harvesting operations to satisfy their financial obligations.

Thus, the Trustees allowed for significant sacrifices to be made in the Copper River Delta—important to Cordova subsistence, recreation, and tourism—in order to protect the Orca Narrows/Simpson Bay area and other Eyak lands in Prince William Sound.

A Trustee Council meeting soon followed in Anchorage on August 6, 1993, at which time Mike Barton, USFS Trustee, proposed on behalf of all Clinton Administration Federal Trustees an offer that would have secured commercial timber rights in perpetuity on Orca Narrows and all other Eyak lands west and

north of Cordova, and additionally would have secured the "Core lands" immediately adjacent to Cordova either in fee or in a highly restrictive easement --the whole deal capped at \$50 million. For the record, the transcript of Mr. Barton's proposal is as follows:

MR. BARTON: Mr. Chairman, I would like to amend the motion in this manner, that the Trustee Council approve -- a counter proposal, if you will, I guess is the right term -- that for fifty million dollars or the appraised fair market, whichever is less, Eyak will convey to the government (a) a restrictive perpetual conservation easement to Power Creek and Eyak Lake lands (*the "Core Lands"*) with the same restrictions contained in the Eyak proposal dated August 5 and that we pursue fee simple through a shareholder vote, that is at minimum, get a restrictive -- a restrictive perpetual easement in their proposal; (b)... a less restrictive perpetual easement to all remaining Eyak lands which at a minimum precludes commercial timber harvesting and grant a right of reasonable public access for non-commercial purposes..." (*italics and emphasis added*)

MR. PENNOYER: All those in favor of the amendment, say aye.

RESPONSE FROM COUNCIL: Aye.

MR. PENNOYER: Opposed?

MR. SANDOR AND MR. COLE: No.

Because two of the State Trustees opposed, the Barton proposal was not adopted. Eyak, however, intended to accept the offer.

About two weeks later, new Federal Trustee George Frampton said:

"...it's also important to note that the Secretary (*of the Interior, Bruce Babbitt*) made some statements yesterday... that he recognized Prince William Sound was the most impacted area and that any program of habitat acquisition ought to look with a very high priority at areas in eastern and western Prince William Sound, and islands in Prince William Sound." (*italics added*)

Shortly thereafter, the Eyak Corporation voluntarily ceased its logging operations, and on September 21, 1993, made a good faith offer to the Trustee Council, stating, among other things, the following:

"This offer extends to a very large tract of lands, from 39,000 to 61,000 acres depending on the status of Eyak's selections in the area. The Board remains willing to convey only commercial timber rights in this area (*apart from the "Core" lands which were offered in fee or with restrictive conservation easements*). Eyak believes that this proposal extends a very high level protection and achieves the restoration goals of the Council in a very extensive area, unavailable in any other way to the Council. (*italics added*)

In analyzing the significance of a commercial timber sale, there has been discussion with the Council concerning whether a Wal-Mart store, or a nuclear waste dump, might be constructed in one of the bays in Prince William Sound. We believe the real environmental threat in the Sound is primarily from commercial timber harvesting. The purchase of commercial timber rights is the most effective way (and indeed, the only way) of serving the restoration goals of the Council on such a large tract of lands."

This Eyak offer was entirely consistent with the Barton/Federal Trustees offer of August, 1993. Clearly, the Eyak Corporation was willing to get out of the timber business for the sake of restoration, but Eyak's offer was rejected by the Trustees. Negotiations continued throughout the winter. By spring, Eyak still could not get a comprehensive deal with the Trustees to protect their coastal habitat and decided they would have to revive their timber harvest plans.

In order to secure protection from the imminent threat of logging, the Council, on May, 1994, finally made their very first (and to this date, only) restoration acquisition in Prince William Sound by signing an agreement to purchase a commercial timber-rights-only conservation easement in perpetuity on 2052 acres at Orca Narrows/Simpson Bay. This was an extremely important acquisition in an area which is the doorway for all travel between Cordova and Prince William Sound. The acquisition, among other things, initiated protection of east Simpson Bay, Cordova's favorite Prince William Sound recreation site and one of the most important nursery sites for eastern Prince William Sound sea otter populations.

Also secured in the agreement was a 10-month Moratorium on all Eyak logging operations until March 1, 1995. The public was genuinely appreciative and greatly relieved, since the purpose of the Moratorium was specifically to provide enough time for the Council and Eyak to come to closure on a comprehensive deal to protect all remaining Eyak lands. This was not accomplished.

Though the deal to protect in perpetuity the 2052 acres at Orca Narrows/Simpson Bay closed in January with the payment of \$3.45 million to Eyak, by February, as the Moratorium expiration date approached, negotiations for comprehensive protection were going badly and the Eyak Corporation and its timber subsidiary, Sherstone, Inc., reasserted their intention to commence logging an area of 14,800 acres near Orca Narrows, known to the Council as "Orca Revised," currently under timber contract to Rayonier, Inc.

The Trustee Council's current acknowledgment of the imminent threat to these lands and the importance of protecting them as part of their legally mandated restoration responsibilities was again stated clearly in the findings of their February 22, 1995 resolution, as follows:

- The Orca Revised lands are threatened with imminent clearcut logging. Although protected under a moratorium on commercial timber harvesting negotiated with Eyak in 1994, the moratorium will expire March 1, 1995. Pre-sale preparation activities by Eyak have begun and Eyak has represented that permits have been secured or are pending for the logging of portions of the Orca Revised lands and that a majority of the commercial timber in the Orca Revised lands is scheduled for harvest by clearcut logging over the next few years.
- The Trustee Council remains desirous of purchasing interests in the Orca Revised lands to alleviate the immediate threat to the injured resources and services that may result from logging activities. Purchasing interests on the Orca Revised lands is important to maintaining water quality and riparian habitats for anadromous fish and maintaining nesting and foraging opportunities for marbled murrelets and bald eagles. The area has a high value for recreation and tourism and is highly visible to the nearby community of Cordova.
- There is widespread public support for the acquisition of interests in the Other Lands and the Orca Revised lands.
- The purchase of the interests in the Other Lands and the Orca Revised lands is an appropriate means to restore a portion of the injured resources and the lost or reduced services in the oil spill area. Acquisition of any interests in these lands is consistent with the Final Restoration Plan. (emphasis added)

Further, the Trustees in their November 1994 Restoration Plan state that:

"any restoration strategy that ...prevents further injuries will assist recovery...."

To the Coastal Coalition, all this language seems remarkably similar to Eyak's September 21, 1993 offer to the Trustees. Both the Trustees and Eyak seem to recognize that logging activities represent the most serious threat in perpetuity to these lands critically needed for restoration purposes, and indeed that logging operations are the only imminent threat to these lands.

Still, in the final week of the Moratorium, a deal did not come together because the Trustees, again in a reversal of their earlier position, now asserted they needed to acquire at Orca Narrows/Simpson Bay certain development rights beyond just timber rights in perpetuity. Attempting to accommodate this concern, Eyak first proposed offering to restrict all development on the 14,800 acre "Orca Revised" parcel to no more than 652 acres (2 acres for each of the 326 shareholders) the first 10 years after closure, and then an additional 652 acres from 11 to 35 years after closure. After 35 years, Eyak would retain industrial development rights on the 9,000 or so acres of the parcel potentially able to be developed. The Trustees, however, still asserted they needed to acquire some additional development restrictions in perpetuity. Subsequently, Eyak further proposed to limit in perpetuity all industrial development to no more than 25% of

the 9,000 developable acres, an amount equal to only 15% of the total 14,800 acre parcel.

Thus, at the Orca Revised lands, 100% of commercial timber rights and 85% of other industrial development rights were offered for sale in perpetuity. Eyak, in taking the notion of perpetuity seriously, felt it very important to retain at least some economic development rights for future generations, though it clearly wished to retire permanently from the commercial logging business.

Eyak's offer seems to us to be a fine and legitimate offer for restoration. The Trustees, again in contradiction to their assertions, stated that this offer was inconsistent with their restoration objectives, and despite overwhelming public support for a deal, including letters from former President Jimmy Carter and actor/director Robert Redford urging the protection of the forests in this area, the negotiations fell apart.

In a final attempt to resolve their differences three days before the Moratorium expired March 1, both parties entered into non-binding mediation.

On the day the Moratorium expired, following two days of mediation, Trustees announced they had entered into a most astonishing "agreement" with Eyak. Backing far, far away from their stated desire to substantially protect the Orca Revised area, the Trustees, in this agreement, would acquire no other industrial development rights whatsoever, and furthermore, would acquire only about 50% of the available timber rights in perpetuity!

In other words, the Trustees somehow completely failed to protect most of what they and Eyak actually agreed upon. Even more astonishing, the Trustees, in attempting to mitigate certain aspects of the logging which would be visible from Cordova, agreed to relinquish and trade to Eyak over half of the timber rights that the Trustees had just acquired "in perpetuity" in the 2052 acre parcel! This is amazing — the Trustee's only restoration acquisition in Prince William Sound to date was protected, not for perpetuity as promised to the public, but for only two months!

Evidently the Trustees, in holding out for a "perfect" deal, have closed on a disastrous deal completely inconsistent with their own asserted objectives and legal responsibilities. In so doing, the Trustees have abandoned extraordinarily valuable resources and services in the Orca Revised area, including Rude River/Nelson Bay, arguably Eyak's wildest and most pristine property, now scheduled for logging.

We wish to underscore one more time the fallacy of Trustees' logic in this agreement: in stubbornly negotiating to secure a better deal than 100% of the commercial timber rights and 85% of other industrial development rights offered

in perpetuity by Eyak, the Trustees wound up securing no industrial development rights at all, and only half of the available timber rights. And, in a shameful breach of the public trust, the Trustees reneged on half of the only protection they had to date acquired in Prince William Sound in the nearly 6 years since the oil spill.

They have, to borrow an apt and venerable expression, "thrown the baby out with the bath water." Both the public and Eyak are astonished at the Trustee's inability to meet their own clearly-stated restoration objectives. With their first deal in Prince William Sound, the Trustees claimed they wished to set a good precedent for ongoing negotiations with other landowners, but a poorer precedent is hard to imagine.

We applaud the Trustees' desire to protect Prince William Sound from some future threat, but what we cannot understand is that they refuse to protect Prince William Sound from its current and worst imaginable threat – clearcut logging. Instead of preventing new injury, they seem to be facilitating it.

The Trustees, after allowing significant sacrifices to be made on the Copper River Delta solely to protect the Orca Revised land, now are unbelievably asking citizens to accept the sacrifice of the Orca Revised lands. This is a complete abandonment of Trustee restoration commitments. It is ludicrous for the Trustees, in trying to prevent all imagined and imaginary future problems, to completely fail to prevent obvious and greater immediate problems. The public will not condemn the Trustees for failing to acquire, in this case, those development rights that were not for sale from Eyak. But the public most certainly will harshly judge the Trustees' failure to acquire what was for sale—most important of all— the immediate protection of the coastal forest. Apparently the Trustees' fear of looking bad in the future consigns the forests to death today.

In summary, the Trustees have failed to prevent ongoing injury to their patient—the ecosystem—by worrying obsessively about possible future injury. This is like an emergency-room physician who fails to stop the bleeding of her patient's severed artery because she is more concerned with preventing the patient from catching pneumonia 35 years in the future. Both are admirable objectives, but at the very least, the bleeding must be stopped now.

We do not expect the Trustees to foresee and prevent every future threat to Prince William Sound. We find it inexcusable that the Trustees would fail to protect Prince William Sound from the most obvious current threat to its recovery.

The Trustees, who have been given the money and sacred responsibility to protect and restore Prince William Sound, can solve the Eyak problem immediately. Even if, because of the appraisal process, they have to pay 90% or more of the value of all commercial development rights to secure only timber rights in perpetuity, so be it. The people of the region will hardly accuse the Trustees of making a bad bargain.

Unfortunately, the facts are clear -- since the establishment of the Trustee Council in May, 1989, several hundred million dollars have been drained to non-emergency ends while several hundred thousand acres of further injury to the oil spill region has occurred.

In approving the agreement and consent decree referred to above, Judge Holland made the following warning:

"I want you all to know that I, you know, am not able to monitor this kind of thing, but I expect you all to do the monitoring; and quite frankly, I expect to see people back here if the money that flows from these three cases is not going where I expect it to go, based upon the terms of these agreements."

It is our position that the money collected by the Trustee Council as a result of these cases is not being used in the maximum interest of environmental recovery. As such, we believe the Trustee Council has failed to fulfill its obligations to the Court, the public, and the injured resources.

PROBLEMS AND PROPOSED SOLUTIONS

1. PROBLEM: The Trustee Council, by failing to provide any significant protection to coastal habitat in Prince William Sound in the almost six years since the grounding of the Exxon Valdez, has allowed further significant, irreparable injury to occur to an ecosystem already severely stressed by the oil spill, and has relinquished some of the most valuable opportunities to replace lost or injured resource services such as "the appreciation of the aesthetic and intrinsic values of undisturbed areas" (Exxon Valdez Oil Spill Restoration Plan, Nov. 1994). While the Trustees are now doing a good job in acquiring habitat in areas of the oil spill region not immediately threatened, they have clearly failed to offer protection in most areas that are immediately threatened or continue to be injured. The most important responsibility of the Trustees is to first minimize further injury to the oil spill-damaged ecosystem. In this responsibility they have failed tragically.

SOLUTION: We ask that the Trustee Council appoint a Master to review the Habitat Acquisition and Protection Program and to submit within one month a plan to expand and expedite the acquisition and protection of imminently threatened habitat in the oil spill region, particularly Prince William Sound.

In the review, the Master should consult with Trustee Council habitat staff, resource owners in the region, and the public to identify existing problems and to recommend immediate solutions, both administrative and financial.

2. PROBLEM: The Trustee Council's refusal to acquire the highest level of protection offered by Eyak Corporation at Orca Narrows/Simpson Bay has exposed these lands to industrial activities highly detrimental to the restoration and recovery of Prince William Sound. While the Eyak proposal fell somewhat short of the full protections desired by the Trustees, their current rejection of the offer essentially eliminates one of the Trustee's most important restoration opportunities, and is completely inconsistent with the Trustee's oft-stated desire to protect the area.

We find unacceptable the Trustees' excuse that they will protect the area only if the price is a good bargain. The Trustees' job is not to be "bargain shoppers" at the expense of further Prince William Sound habitat destruction.

SOLUTION: We ask the Trustee Council to accept the Eyak Corporation's counter proposal (December 12, 1994) to the Council's Dec. 2, 1994 resolution - referred to as the "Orca Revised Tract Development Rights Offer Concept Change -- with an additional provision that limits industrial development on the Orca narrows Revised parcel in perpetuity to no more than 25% of the total

developable acreage. Rather than allow additional injury to coastal habitat in the region, we ask in this specific case that the Trustees, at a minimum, acquire the highest level of protection that Eyak is willing to sell. This is entirely consistent with the Trustees' Restoration Plan which, again, states: "Any restoration strategy that aids recovery of injured resources, or prevents further injuries (*emphasis added*), will assist recovery..." and is consistent with the Trustee Council Feb. 11, 1995 resolution which, again, states: "Acquisition of any interests in these lands is consistent with the Final Restoration Plan."

URGENT

Because timber harvesting operations at Orca Narrows/Simpson Bay are set to begin any day, we respectfully ask that the Trustees on an emergency basis consider this proposal. We wish to strongly state our desire that this proposal in no way prejudice any other Trustee Council acquisition negotiation. We support these negotiations and applaud the Trustees in their efforts at restoration.

3. PROBLEM: The Restoration Reserve, into which the Trustees have been depositing \$12 million each year from annual Exxon payments, and which would accumulate by the year 2001 to \$108 million, is an illegal encumbrance of funds that were intended to be made available for Restoration as they are paid by Exxon.

It was clearly the intent of the Court's approval of the consent Decree and MOA that these monies were needed for environmental recovery on an expedited basis and should not be arbitrarily withdrawn from their present availability, as long as they are needed for environmental recovery. The Trustee Council must have immediate access to sufficient funds to fulfill their primary restoration obligation of habitat acquisition and protection. Any funds expected from each annual payment by Exxon can remain in an interest-bearing account.

The Court, in its wisdom, has already provided for the availability in the year 2002 of a \$100 million reopener in order to carry on restoration activities beyond the last scheduled payment from Exxon. The Restoration Reserve is clearly duplicative, and is an inappropriate drain on settlement dollars.

SOLUTION: We ask the Trustee Council to abolish the Restoration Reserve account, and to make all monies in the account to date - (\$24 million) - and all proposed future deposits into the account - (\$88 million) - to be made available on an as-needed basis for habitat protection.

4. PROBLEM: The Trustee Council's Science and Monitoring Program has, since its inception, lacked coherence, direction, and a clearly-defined link to Restoration. About \$200 million has been spent to date on science, and the

Restoration Plan envisions an equivalent expenditure on science through the remainder of the settlement. A science program of this magnitude deserves thorough, independent scrutiny and review. Science for science's sake does nothing to actually assist the recovery of the injured ecosystem. While science and monitoring may be important, far too much emphasis has been placed on them in the name of restoration. As Al Gore stated in his book Earth in the Balance, "Research in lieu of action is unconscionable.... We need to act now on the basis of what we already know."

SOLUTION: We ask the Trustee Council to commission the National Research Council to conduct a thorough independent review of the Trustee Science and Monitoring Program from 1989 to date and report within 6 months its findings and recommendations as to:

- a. How best to organize and conduct other NRDA programs in the future.
- b. What size, scope, organization, facilities and administrative management of the existing Trustee Science and Monitoring Program would best support the mandate of the Consent Decree and M.O.A. to restore, replace, rehabilitate and acquire the equivalent of injured resources and services.

5. PROBLEM: The Trustees and their council designates lack current, intimate familiarity with the oil spill region and this unfamiliarity seriously handicaps their ability to make appropriate decisions concerning restoration of the area.

SOLUTION: We ask the Trustees and their Council designates to, within 5 months, conduct thorough site visits in all areas of the oil spill region significant to their Restoration Objectives, and to avail themselves of guides with local knowledge. Trustees should also visit the many coastal areas that, since the establishment of the Trustee Council in May of 1989, have been destroyed and essentially lost as restoration opportunities.

SUMMARY: In light of the foregoing problems, we believe the Trustee Council is in violation of the consent Decree and M.O.A. referred to above.

POST SCRIPT

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by the Consent Decree and MOA approved by this Court is entirely unprecedented in history.

As such, the way in which the Exxon-Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the oil spill region. The Coalition helped create a regional consensus for the notion of settling the natural resource damage case out-of-court and formally proposed such to the State of Alaska, the United States, and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all natural resource damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

Coastal Coalition members Rick Steiner and David Grimes are residents of Prince William Sound, and this paper is written out of love for their home.

PRESS RELEASE

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EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

COURT ACTION FILED AGAINST EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

CITIZEN'S GROUP ASKS COURT TO ESTABLISH SPILL RESTORATION REVIEW COMMISSION

Today, more than 6 years since the disastrous grounding of the Exxon Valdez in Alaska's Prince William Sound, Court action has been filed charging that the Government Trustees have not fulfilled their obligation to the Injured Environment, the Public, and the Court.

The motions were filed in the U. S. District Court, District of Alaska. This is the Court that approved the historic \$1 Billion out-of-court settlement of the Natural Resource Damage claims against Exxon on October 11, 1991.

The motions to intervene in and to compel compliance with this historic settlement were brought by The Coastal Coalition, a group of concerned citizens from the oil spill region.

Today's motions before the Court assert that the Governments have violated the settlement because they have failed to assist in environmental recovery.

Specifically, the motions assert that the Governments have:

- A. Accomplished very little in terms of tangible benefit to the injured Environment.
- B. Diverted enormous financial resources - intended by the settlement to be used in the maximum interest of environmental recovery - into non-essential, wasteful expenditures.
- C. Taken far too long - five and a half years - to develop a restoration plan to be of maximum benefit to the Injured Environment.
- D. Failed to accomplish any significant, comprehensive coastal habitat acquisition and protection, thus allowing further large-scale, significant, irreparable injury to occur to the already stressed coastal ecosystem.

As relief, the motions ask the Court to order the establishment of the Exxon Valdez Oil Spill Restoration Review Commission to conduct, for the first time, an independent, comprehensive, detailed review of all Government policies, expenditures, and activities since March 24, 1989, related to oil spill restoration.

The Commission would review all aspects of Government activities in relation to mitigating the damage caused by this oil spill.

The Coastal Coalition asks that the Commission do two things:

1. Assess what has and has not been accomplished by the Governments to redress the damage caused by the spill;
2. Provide a basis for doing better next time.

In their motion, The Coastal Coalition states:

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States. The level of environmental damage mitigation proposed by the out-of-court settlement is entirely unprecedented in history. As such, the way in which the Exxon Valdez Oil Spill Natural Resource Damage settlement is used for Restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Coastal Coalition member David Grimes says:

For those of us from the spill region who fought with our lives to defend our ocean home after the oil spill, the government Trustees' failure to do all they can to help heal our home is unacceptable. We expected them to act as emergency room physicians, and instead we got hospital administrators.

Not only is the patient still struggling to recover from her oil spill injuries, but the Trustees continue to stand by and watch while enormous new injuries occur. Until the Trustees do their job, the burden of responsibility for healing the spill region falls once again on the shoulders of we who call it home.

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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-082 CIV

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

STATE OF ALASKA,

Plaintiff,

v.

Civil Action No.
A91-083 CIV

EXXON CORPORATION, and EXXON
SHIPPING COMPANY,

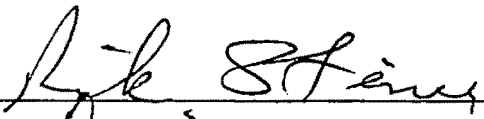
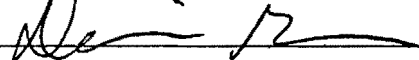
Defendants.

AGREEMENT AND
CONSENT DECREE

MOTION TO INTERVENE

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995

MOTION TO INTERVENE

Pursuant to Federal rule of civil procedure 24B (Permissive Intervention), The Coastal Coalition moves to intervene in the above captioned matter.

Our intervention will not delay or otherwise prejudice the rights of the original parties to this agreement. In fact, it is our specific intent to expedite the effective implementation of this agreement through our intervention.

We find it necessary to intervene on behalf of the injured Environment in this Agreement and Consent Decree because the Government parties have failed to fulfill their obligations to act on behalf of the injured Environment.

STANDING TO ASSERT

The Coastal Coalition, represented in this motion by Rick Steiner and David Grimes, has standing to assert this motion on behalf of the Environment injured by the Exxon Valdez Oil Spill.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the Oil Spill region. The Coalition helped create a regional consensus for the concept of settling the Natural Resource Damage cases out-of-court and formally proposed such to the State of Alaska, the United States and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all Natural Resource Damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

Coastal Coalition members Rick Steiner and David Grimes have been residents of Prince William Sound collectively for almost 30 years, and have been involved in virtually all aspects of the Oil Spill--the emergency response, education in other coastal states, prevention efforts, restoration policy formation, etc. We are entirely confident of our standing to bring this action before this Court on behalf of the injured Environment - our home.

After exhausting all non-judicial avenues to correct the Government's confusion concerning how to implement this Agreement and Consent Decree, we find it our moral responsibility to intervene on behalf of the injured Environment in lieu of the Governments.

The State of Alaska, the United States of America, and their designated Trustees have had several years since this Court approved this agreement to seek this Court's guidance on how to implement this agreement, yet, despite an enormous amount of public criticism of their actions, they have not done so.

Thus, we find it necessary to stand in place of the designated Government Trustees in order to bring this extraordinarily important matter before the Court for judicial review.

Obviously, Prince William Sound and the rest of the coastal ecosystem injured by the Exxon Valdez Oil Spill cannot assert its own case directly to this Court. However, the Courts regularly grant standing to claimants serving as conservators or guardians of entities who cannot assert their own claims. In fact, the corporations, Governments and the T/V Exxon Valdez, as parties to this agreement, all had to have someone to plead their case for them.

With regard to Natural Resources, legal standing has been granted to such by Congress and the Courts in the event that such Natural Resources are damaged or lost as a result of industrial accidents or disasters, such as oil spills.

In their capacity as Trustees, as defined by the agreements approved by this Court, each and every action engaged in by the Governments should have been conducted exclusively in the highest and best interest of the injured Environment. This was the clear intent of Congress in providing for the collection of Natural Resource Damages, and the intent of this Court in approving the Consent Decree, MOA, and Plea Agreement in this case. The Governments in this case were required to act solely "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" (Memorandum of Agreement).

Unfortunately, the Governments have not fulfilled their trust responsibilities to the injured Environment. Even some agency staff have grave concerns regarding the Government's implementation of the terms of this agreement.

In approving this agreement, presiding U.S. District Court Judge H. Russell Holland made the following warning to the parties to this agreement:

I want you all to know that I, you know, I'm not able to monitor this kind of thing, but I expect you all to do the monitoring; and quite frankly, I expect to see people back here if the money that flows from these three cases is not going where I expect it to go, based upon the terms of these agreements.

It is the primary assertion of this motion that the money collected by the Governments as a result of this agreement is not being used as expected--in the maximum interest of environmental recovery--and the parties to the agreement are either unable or unwilling to correct the situation themselves. As such, we believe judicial review is necessary to redress the failure of the Governments to fulfill their obligations to this Court, the public, and the injured resources.

Footnote on position on standing to assert:

In the event that this Court finds that we should not have standing to intervene in this agreement, even though as long-standing and loving residents of the region, we would respectfully and vigorously disagree, then we ask this Court to sua sponte grant the relief we seek in order to compel compliance.

NOTE: This is one of four motions we have filed with this Court, and we respectfully ask that the Court consider all four motions collectively, as listed below:

1. Motion to Intervene - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
2. Motion to Intervene - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)
3. Motion to Compel Compliance - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907)424-5509
(907)346-4071

CERTIFICATE OF SERVICE

We hereby certify that on March 29, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

Exxon Pipeline Company
Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-081 CV

STATE OF ALASKA,

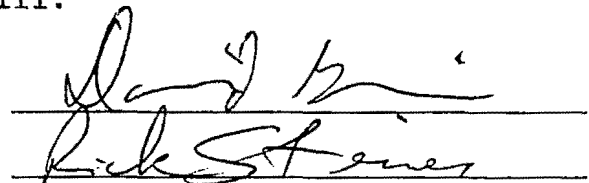
Defendant and
Counterclaimant.

MEMORANDUM OF AGREEMENT
AND CONSENT DECREE

MOTION TO INTERVENE

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995



Rick Steiner

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STANDING TO ASSERT

The Coastal Coalition, represented in this motion by Rick Steiner and David Grimes, has standing to assert this motion on behalf of the Environment injured by the Exxon Valdez Oil Spill.

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After exhausting all non-judicial avenues to correct the Government's confusion concerning how to implement the Memorandum of Agreement and Consent Decree, we find it our moral responsibility to intervene on behalf of the injured Environment in lieu of the Governments.

The State of Alaska, the United States of America, and their designated Trustees have had several years since this Court approved this agreement to seek this Court's guidance on how to implement this agreement, yet, despite an enormous amount of public criticism of their actions, they have not done so.

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In their capacity as Trustees, as defined by the agreements approved by this Court, each and every action engaged in by the Governments should have been conducted exclusively in the highest and best interest of the injured Environment. This was the clear intent of Congress in providing for the collection of Natural Resource Damages, and the intent of this Court in approving the Consent Decree, MOA, and Plea Agreement in this case. The Governments in this case were required to act solely "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."

Unfortunately, the Governments have not fulfilled their trust responsibilities to the injured Environment. Even some agency staff have grave concerns regarding the Government's implementation of the terms of this agreement.

It is the primary assertion of this motion that the money collected by the Governments as a result of this agreement is not being used as expected--in the maximum interest of environmental recovery--and the parties to the agreement are either unable or unwilling to correct the situation themselves. As such, we believe judicial review is necessary to redress the failure of the Governments to fulfill their obligations to this Court, the public, and the injured resources.

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In the event that this Court finds that we should not have standing to intervene in this Memorandum of Agreement and Consent Decree, even though as long-standing and loving residents of the region, we would respectfully and vigorously disagree, then we ask this Court to sua sponte grant the relief we seek in order to compel compliance.

NOTE: This is one of four motions we have filed with this Court, and we respectfully ask that the Court consider all four motions collectively, as listed below:

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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

CERTIFICATE OF SERVICE

We hereby certify that on March 29, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
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Washington, D.C. 20530

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907-346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-082 CIV

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

STATE OF ALASKA,

Plaintiff,

v.

Civil Action No.
A91-083 CIV

EXXON CORPORATION, and EXXON
SHIPPING COMPANY,

Defendants.

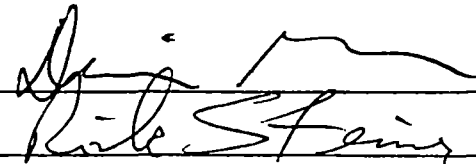
AGREEMENT AND
CONSENT DECREE

MOTION TO COMPEL COMPLIANCE

OF THE UNITED STATES OF AMERICA, THE STATE OF ALASKA, AND
THEIR DESIGNATED TRUSTEES WITH THE ABOVE-CAPTIONED AGREEMENT
AND CONSENT DECREE TO WHICH THEY ARE PARTIES.

BROUGHT BY: The Coastal Coalition, on behalf of the
Environment injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995



Rick Steiner

JURISDICTION

The United States District Court, District of Alaska, has jurisdiction over this motion in that it approved the Agreement and Consent Decree, with which we are seeking to compel compliance.

PARTIES

The United States of America, the State of Alaska, and their designated Trustee Council are named as non-compliant in implementing this agreement.

The Coastal Coalition, on behalf of the injured Environment, is bringing this motion before the Court in lieu of the non-compliant governments.

BACKGROUND

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by this Consent Decree approved by this Court, is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Because the United States of America and the State of Alaska, as parties to the agreement, and their designated Trustees and Trustee Council (herein after referred to as "the Governments"), have been incapable of substantively aiding the recovery of the injured Environment - the clear and unequivocal intent of this Court in approving this agreement - they have failed to comply with the agreement and have betrayed their historic public trust responsibility.

CAUSE OF ACTION

The United States and the State of Alaska and their designated Trustees are in violation of this Consent Decree.

The Governments have failed to exercise the orders of this Court, failed to honor their unique trust responsibilities, and failed to act solely on behalf of the resources and services injured by the Exxon Valdez Oil Spill.

Also, Section 1006 (Natural Resources) (g) (Compliance) of the Oil Pollution Act of 1990, Public Law 101-380, provides the authority for any person to seek judicial review of the actions of Federal officials acting as Natural Resource Trustees as follows:

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred.

And, the legal concept of "trustee" and "public trust" are, we believe, derived from common law doctrine which has evolved throughout history to give citizens recourse to judicial relief in such significant circumstances. (For a further discussion of our cause of action, please see our "Urgent Appeal" position paper of March 14, 1995, attached below.) The United States of America, the State of Alaska and their designated Trustee Council have failed tragically in fulfilling their legally mandated trust responsibility and the terms of this Consent Decree. In their Restoration efforts, the Governments have:

- A. Accomplished very little in terms of tangible benefit to the injured Environment.
- B. Diverted enormous financial resources - intended by this agreement to be used in the maximum interest of environmental recovery - into non-essential expenditures.
- C. Taken far too long - five and a half years - to develop a Restoration Plan to be of maximum use to the injured Environment.

- D. Failed to accomplish any significant, comprehensive coastal habitat acquisition and protection, thus allowing further large-scale, significant, irreparable injury to occur to the already severely stressed coastal ecosystem.

To date, this historic, precedent-setting \$900 million program has not been subjected to any comprehensive, independent oversight. The Former GAO investigation was limited in scope and duration, covering a period of less than 2 years of Trustee Council operation (Oct. 8, 1991 - August 20, 1993) and only examined certain aspects of Trustee activity. No pre-settlement activity has been reviewed, and no activity subsequent to August, 1993 has been reviewed, including the Restoration Plan. None of the expenditures from the Restitutionary payments have been reviewed. As such, society has yet to adequately chronicle and learn the valuable lessons offered by this historic Restoration effort.

RELIEF

We ask this Court, in the public interest, to order the establishment of the Exxon Valdez Oil Spill Restoration Review Commission to conduct an independent, comprehensive, detailed review of all Government policies, expenditures, and activities since March 24, 1989, related to the mitigation of injuries caused by this Oil Spill. This review should include all issues concerning the functioning of the Governments in relation to these agreements, including but not limited to, the following:

- A. All phases of the Natural Resource Damage Assessment (NRDA) program and the subsequent Science and Monitoring program - the size, scope, cost, necessary facilities, and scientific quality of the programs, and their link to Restoration.
- B. Legitimacy of all reimbursements taken by Trustee agencies and Exxon, including a complete audit of the equipment inventory.
- C. All phases of the Restoration Planning process, including public involvement.
- D. All Restoration Policy decisions - funding priorities and the link between all expenditures and environmental damage mitigation and recovery.

- E. A thorough review of the Habitat Acquisition and Protection program, including the habitat evaluation process, the relative severity of threat to the habitat, and the appraisal process.
- F. A general analysis of how to effectively structure Natural Resource Damage Settlements, using EVOS as an example - what terms, conditions, and dollar amounts would best mitigate injury in future disasters.

In its charge by this Court, the Commission should:

- A. Have subpoena powers and be able to depose, under oath, all past and present Trustees, Trustee Council members, and Trustee Council staff.
- B. Have access to all documents, confidential or otherwise, produced by the Governments regarding the Oil Spill.
- C. Consult with Trustee Council staff, other agency staff, the Public Advisory Group, the public at large, and land owners in the region as appropriate.
- D. Conduct field hearings throughout the Oil Spill region to hear directly from the public.

The Commission should consist of the following representation:

Government Accounting Office
National Research Council
Natural Resources Defense Council
The Nature Conservancy
Trustees for Alaska
First Nations Development Institute (as indigenous people's advocate)
Other institutions or individuals deemed appropriate by this Court.

The Commission should be funded out of settlement monies, but should otherwise be strictly independent and autonomous. In selecting individuals to serve on the Commission, great care must be exercised to select individuals or institutions that will be able to act strictly objectively, autonomously, and with exclusive focus on what is best for the injured Environment, without regard to political consequences.

The Restoration Review Commission should report to this Court by October 8, 1995 (the fourth anniversary of the Court's approval of the settlement), its findings and recommendations concerning how best to redirect the Government process to more effectively comply with its legal responsibilities and how to better conduct such a process in future disasters. At such time, we ask that this Court order the implementation of recommendations of the Commission that the Court deems appropriate, in consultation with The Coastal Coalition, the Public Advisory Group, and the Governments. The Court could then either terminate the Commission, or order the continuation of its independent oversight and monitoring authority over the Trustee Council.

The basic charge for the Commission should be: (1) to assess what has been accomplished by the Governments compared to what has not and could have been done to mitigate the damage caused by this Oil Spill, and (2) to provide a basis for doing a better job next time.

ALTERNATIVE RELIEF

Should the Court prefer to order relief short of the above, we ask that the Court order the Governments to come before it and satisfy that they have done everything possible to fulfill their obligations to the Court, the public, and the injured Environment.

CONCLUSION

Because of the historic, precedent-setting nature of this process, we feel this review is essential not only to provide direction to the remaining expenditure of funds from this settlement, but also to establish a more effective framework within which to conduct such future efforts.

NOTE: This is one of four motions we have filed with this Court, and we respectfully ask that the Court consider all four motions collectively, as listed below:

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The Coastal Coalition
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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-081 CV

STATE OF ALASKA,

Defendant and
Counterclaimant.

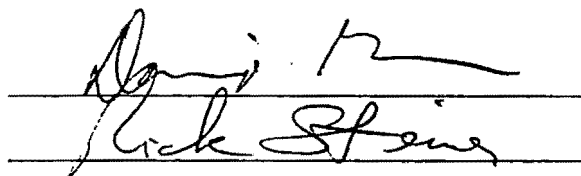
MEMORANDUM OF AGREEMENT
AND CONSENT DECREE

MOTION TO COMPEL COMPLIANCE

OF THE UNITED STATES OF AMERICA, THE STATE OF ALASKA, AND THEIR
DESIGNATED TRUSTEES WITH THE ABOVE-CAPTIONED MEMORANDUM OF
AGREEMENT AND CONSENT DECREE TO WHICH THEY ARE PARTIES.

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill

Dated: March 29, 1995



Rick Steiner

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The level of environmental damage mitigation proposed by this agreement approved by this Court is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Because the United States of America and the State of Alaska, as parties to the agreement referenced above, and their designated Trustees and Trustee Council (herein after referred to as "the Governments"), have been incapable of substantively aiding the recovery of the injured Environment - the clear and unequivocal intent of this Court in approving this agreement - they have failed to comply with this agreement and have betrayed their historic public trust responsibility.

CAUSE OF ACTION

The United States and the State of Alaska and their designated Trustees are in violation of the Memorandum of Agreement and Consent Decree.

The Governments have failed to exercise the orders of this Court, failed to honor their unique trust responsibilities, and failed to act solely on behalf of the resources and services injured by the Exxon Valdez Oil Spill.

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Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred.

And the legal concept of "trustee" and "public trust" are, we believe, derived from common law doctrine which has evolved throughout history to give citizens recourse to judicial relief in such significant circumstances. (For a further discussion of our cause of action, please see our "Urgent Appeal" position paper of March 14, 1995, attached below.)

The United States of America, the State of Alaska and their designated Trustee Council have failed tragically in fulfilling their legally mandated trust responsibility and the terms of this Memorandum of Agreement and Consent Decree. In their Restoration efforts, the Governments have:

- A. Accomplished very little in terms of tangible benefit to the injured Environment.
- B. Diverted enormous financial resources - intended by this agreement to be used in the maximum interest of environmental recovery - into non-essential expenditures.
- C. Taken far too long - five and a half years - to develop a Restoration Plan to be of maximum use to the injured Environment.

- D. Failed to accomplish any significant, comprehensive coastal habitat acquisition and protection, thus allowing further large-scale, significant, irreparable injury to occur to the already severely stressed coastal ecosystem.

To date, this historic, precedent-setting \$900 million program has not been subjected to any comprehensive, independent oversight. The Former GAO investigation was limited in scope and duration, covering a period of less than 2 years of Trustee Council operation (Oct. 8, 1991 - August 20, 1993) and only examined certain aspects of Trustee activity. No pre-settlement activity has been reviewed, and no activity subsequent to August, 1993 has been reviewed, including the Restoration Plan. None of the expenditures from the Restitutionary payments have been reviewed. As such, society has yet to adequately chronicle and learn the valuable lessons offered by this historic Restoration effort.

RELIEF

We ask this Court, in the public interest, to order the establishment of the Exxon Valdez Oil Spill Restoration Review Commission to conduct an independent, comprehensive, detailed review of all Government policies, expenditures, and activities since March 24, 1989, related to the mitigation of injuries caused by this Oil Spill*. This review should include all issues concerning the functioning of the Governments in relation to these agreements, including but not limited to, the following:

- A. All phases of the Natural Resource Damage Assessment (NRDA) program and the subsequent Science and Monitoring program - the size, scope, cost, necessary facilities, and scientific quality of the programs, and their link to Restoration.
- B. Legitimacy of all reimbursements taken by Trustee agencies and Exxon, including a complete audit of the equipment inventory.
- C. All phases of the Restoration Planning process, including public involvement.
- D. All Restoration Policy decisions - funding priorities and the link between all expenditures and environmental damage mitigation and recovery.
- E. A thorough review of the Habitat Acquisition and Protection program, including the habitat evaluation process, the relative severity of threat to the habitat, and the appraisal process.

*Including those specified by the Plea Agreement (No. A90-015 CR), in that this MOA provides additional direction and context to the expenditure of such funds.

- F. A general analysis of how to effectively structure future Natural Resource Damage Settlements, using EVOS as an example - what terms, conditions, and dollar amounts would best mitigate injury in future disasters.

In its charge by this Court, the Commission should:

- A. Have subpoena powers and be able to depose, under oath, all past and present Trustees, Trustee Council members, and Trustee Council staff.
- B. Have access to all documents, confidential or otherwise, produced by the Governments regarding the Oil Spill.
- C. Consult with Trustee Council staff, other agency staff, the Public Advisory Group, the public at large, and land owners in the region as appropriate.
- D. Conduct field hearings throughout the Oil Spill region to hear directly from the public.

The Commission should consist of the following representation:

Government Accounting Office
National Research Council
Natural Resources Defense Council
The Nature Conservancy
Trustees for Alaska
First Nations Development Institute (as indigenous people's advocate)
Others deemed appropriate by this Court.

The Commission should be funded out of settlement monies, but should otherwise be strictly independent and autonomous. In selecting individuals to serve on the Commission, great care must be exercised to select individuals or institutions that will be able to act strictly objectively, autonomously, and with exclusive focus on what is best for the injured Environment, without regard to political consequences.

The Restoration Review Commission should report to this Court by October 8, 1995 (the fourth anniversary of the Court's approval of the Consent Decree and Plea Agreement), its findings and recommendations concerning how best to redirect the Government process to more effectively comply with its legal responsibilities and how to better conduct such a process in future disasters. At such time, we ask that this Court order the implementation of recommendations of the Commission that the Court deems appropriate, in consultation with The Coastal Coalition, the Public Advisory Group, and the Governments. The Court could then either terminate the Commission, or order the continuation of its independent oversight and monitoring authority over the Trustee Council.

The basic charge for the Commission should be: (1) to assess what has been accomplished by the Governments compared to what has not and could have been done to mitigate the damage caused by this Oil Spill, and (2) to provide a basis for doing a better job next time.

ALTERNATIVE RELIEF

Should the Court prefer to order relief short of the above, we ask that the Court order the Governments to come before it and satisfy that they have done everything possible to fulfill their obligations to the Court, the public, and the injured Environment.

CONCLUSION

Because of the historic, precedent-setting nature of this process, we feel this review is essential not only to provide direction to the remaining expenditure of funds from this settlement, but also to establish a more effective framework within which to conduct such future efforts.

NOTE: This is one of four motions we have filed with this Court, and we respectfully ask that the Court consider all four motions collectively, as listed below:

1. Motion to Intervene - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
2. Motion to Intervene - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)
3. Motion to Compel Compliance - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
4. Motion to Compel Compliance - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)

The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

CERTIFICATE OF SERVICE

We hereby certify that on March 29, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

Exxon Pipeline Company
Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

With the following documents:

1. Motion to Intervene - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
2. Motion to Intervene - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)
3. Motion to Compel Compliance - Agreement and Consent Decree (Civil Actions No. A91-082 and A91-083)
4. Motion to Compel Compliance - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)

ATTACHMENTS

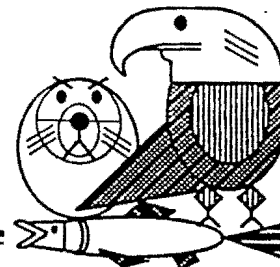
- 1) The Coastal Coalition letter of July 17, 1992
- 2) U.S. District Court reply, July 21, 1992
- 3) The Coastal Coalition Position Paper of March 14, 1995
- 4) Trustee Council Response, March 22, 1995

Exxon Valdez Oil Spill Trustee Council

Restoration Office

645 G Street, Suite 401, Anchorage, Alaska 99501-3451

Phone: (907) 278-8012 Fax: (907) 276-7178



March 22, 1995

Mr. Rick Steiner
Mr. David Grimes
The Coastal Coalition
PO Box 2424
Cordova, Alaska 99574

Dear Mr. Steiner and Mr. Grimes:

This letter responds to your appeal dated March 14, 1995, in regard to efforts by the *Exxon Valdez* Trustee Council to secure habitat protection for restoration purposes on lands owned by the Eyak Corporation in eastern Prince William Sound.

As you know, the Trustee Council-Eyak/Sherstone negotiations have been lengthy. The Trustee Council shares your interest in seeing the lands of eastern PWS safeguarded. This letter is intended to help clarify the record regarding the Council's efforts to secure habitat protection in the spill area to date, and specifically those lands owned by Eyak Corporation.

Habitat Protection/Acquisition as a Part of the Restoration Effort

The Trustee Council is strongly committed to habitat protection. The *Restoration Plan* specifically identifies Habitat Protection and Acquisition as one of the principal tools of restoration. The other elements of the restoration effort include Monitoring and Research; General Restoration; Public Information/Science Management/Administration; and allocations to the Restoration Reserve for long-term restoration purposes. Together they form the basis of the Trustee Council's comprehensive and balanced approach to restoration. The *Restoration Plan* was the product of an extensive public process that demonstrated the need and support for each of these elements.

As indicated by the summary of past and estimated future expenditures included in the *Restoration Plan* (Table 1, page 6), habitat protection efforts will by far account for the largest portion of expenditures from the settlement, although not to the exclusion of other important elements of the restoration program as your appeal urges.

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation
United States: National Oceanic and Atmospheric Administration, Departments of Agriculture and Interior

Habitat Evaluation Process

Your appeal also suggests that the Trustee Council has been slow to address habitat protection needs. A review of the record shows that this is not the case. To ensure responsible allocation of trust funds consistent with the terms of the settlement, habitat protection efforts have proceeded with a systematic analysis of opportunities for habitat protection throughout the spill area. At the same time, the Council's efforts have, to the extent possible, been responsive to the need to protect habitat threatened with imminent injury.

Almost immediately following the settlement in late 1991, the Trustee Council undertook an "imminent threat" study process to identify those lands in the oil spill area that were imminently threatened with significant habitat degradation.¹ As a result, the Trustee Council approved funds to purchase inholdings in Kachemak Bay State Park² and lands surrounding Seal Bay³ on Afognak Island (lands subsequently designated a State Park by the Alaska Legislature) and initiated negotiations with Eyak.⁴ The Trustee Council continued and completed its comprehensive evaluation of large habitat parcels (> 1,000 acres) potentially available for protection and/or acquisition with the publication of the *Comprehensive Habitat Protection Process; Large Parcel Evaluation and Ranking Volumes I and II* (November 30, 1993). The evaluation process identified lands with High, Moderate and Low restoration values with specific regard to the injured resources and services identified in the *Restoration Plan*. On the basis of the comprehensive evaluation — which included more than 850,000 acres of land in the spill area — the Trustee Council moved forward with multiple, geographically balanced negotiations,⁵ focused on those lands identified as having high restoration value. A small parcel (< 1,000 acres) process was also undertaken and the results have recently been published.⁶ Preliminary negotiations with more than 20 small parcel owners are now underway.

In addition to the Kachemak and Seal Bay purchases, important accomplishments include action by the Trustee Council to pursue a number of other large parcel acquisitions throughout the spill area. These include offers to purchase lands involving Afognak Joint Venture (48,728 acres); Akhiok Kaguyak (119,885 acres); Chenega (74,554 acres); Kodiak Island Borough (26,665); Koniag (115,739); Old Harbor (32,100 acres); and Tatitlek

¹ *Opportunities for Habitat Protection/Acquisition*, prepared by the Exxon Valdez Oil Spill Restoration Team, Habitat Protection Work Group (February 16, 1993).

² Trustee Council Resolution dated December 11, 1992.

³ Trustee Council Resolution dated June 6, 1993.

⁴ The Trustee Council also authorized negotiations with English Bay Corporation regarding lands in the vicinity of Port Chatham. These negotiations were terminated when English Bay indicated it was not a willing seller of its lands.

⁵ Trustee Council action as part of the FY 94 Work Plan approved January 31, 1994. Attachment B.

⁶ *Comprehensive Habitat Protection Process: Small Parcel Evaluation and Ranking Volume III*, prepared by the Exxon Valdez Oil Spill Restoration Office, Habitat Work Group (February 13, 1995).

(56,785 acres) as well as Eyak (28,500 acres). Appraisals and negotiations with landowners continue throughout the spill area and are progressing steadily, with some very close to completion.

Trustee Council - Eyak/Sherstone Negotiations

Efforts to negotiate habitat protection on lands owned by Eyak/Sherstone are part of a much larger Trustee Council effort. Nevertheless, the Eyak/Sherstone negotiations have been a top priority. Several key points are essential to understanding the Trustee Council's efforts to secure habitat protection on the Eyak lands:

- **It is incumbent upon the Trustees to seek protection of those lands with the highest value to the recovery and restoration of injured resources and services.** As documented by the comprehensive Large Parcel evaluation process, the so-called "Other Lands" (Sheep Bay/Port Gravina/Windy Bay) are the Eyak lands with the highest restoration values and are of particular interest to the Trustee Council. The Trustee Council also recognizes that there are certain important restoration values on the "Core Lands" and "Orca Narrows-Orca Revised" lands along Nelson Bay, especially for recreation/tourism and subsistence services, although these lands were generally identified as moderate or low value parcels.
- **The Trustee Council has not been successful at reaching agreement with Eyak concerning large-scale protection of its other lands because of fundamentally conflicting land use objectives.** Although willing to sell the "Core Lands" in fee, Eyak has chosen to retain wide-ranging and essentially unspecified development rights on the lands along Orca Narrows/Nelson Bay as well as the Other Lands. Development other than commercial timber harvest can jeopardize the very resources and services the Trustee Council is seeking to protect.
- **The Trustee Council can only work with willing sellers to protect habitat.** As owners of the land, the Eyak Corporation has the right to retain development rights on the lands it offers for sale; if Eyak chooses to pursue alternative uses of its lands, it is free to do so.
- **The purchase of commercial timber rights-only on significant portions of Eyak's lands is not sufficient to safeguard critical restoration values.** On a limited scale, in a specific instance, or as part of a larger comprehensive protection effort, commercial timber rights-only could be adequate for certain areas. However, in most instances, commercial timber rights-only purchases have been deemed insufficient to safeguard many of the critical restoration values the Trustee Council is seeking to protect.

- The Trustee Council's large parcel program is designed to secure restoration benefits from the protection of large tracts of lands with "greater ecological integrity that contain more linked habitats and services."⁷ Because Eyak has chosen to retain certain portions and/or development rights on its lands the Trustee Council and Eyak have been unable to reach mutually acceptable terms that will assure restoration of injured resources and services on the high value lands of particular interest to the Trustee Council.
- The Trustee Council lacks funds to purchase all lands from all willing sellers. Limited funds require that the Trustee Council focus its acquisition efforts on those lands with the greatest value to restoration. In the case of Eyak, the Trustee Council has attempted to reach agreement on the purchase of lands that will safeguard high restoration values.
- The Trustee Council continues to negotiate with Eyak in good faith. The Trustee Council remains hopeful that comprehensive habitat protection involving Eyak's lands — especially the high value Other Lands — can be successfully negotiated.

Response to Perceived Problems and Proposed Solutions

With specific regard to the "Problems and Proposed Solutions" described in your appeal beginning in page 15:

1. You have recommended the Trustee Council appoint a Master to review the Habitat Acquisition and Protection Program and develop a plan to expand and expedite the acquisition and protection of imminently threatened habitat in the oil spill region.

We do not believe such action is necessary or appropriate. The Trustee Council has completed a three-year process to develop the information, policies and public and scientific review that form the foundation for the existing habitat protection program (see above). The Trustee Council has adopted a clear policy for its habitat program of dealing only with willing sellers. All landowners were contacted early in the process, and periodically, contact is renewed to ensure that all willing sellers continue to be identified. The Trustee Council has taken action that has resulted in the protection of approximately 65,000 acres of habitat to date. Also, the Trustee Council has offers pending that would protect another several hundred thousand acres. These efforts are all in various stages of implementation and represent a comprehensive approach to habitat

⁷ Working Document, *Comprehensive Habitat Protection Process; Large Parcel Evaluation and Ranking Volume I*, prepared by the Exxon Valdez Oil Spill Restoration Team, Habitat Protection Work Group (November 30, 1993).

protection that is scientifically sound, geographically diverse, and reflects the priorities of the Trustee Council.

2. You have asked the Trustee Council to accept the Eyak Corporation's December 12 "Concept Change" with additional provisions to limit development rights.

As noted earlier, the Trustee Council attempted to reach agreement with Eyak on the issue of development rights, but was not able to do so within the time constraints the Council was given by Eyak. The Council offered numerous alternatives to deal with the development issue, including one recommended by the Public Advisory Group last summer and expressed its willingness to look at other alternatives. None was acceptable to Eyak, nor did Eyak propose other alternatives. For that reason, the Council offered to purchase a moratorium on commercial timber harvest in the form of a limited conservation easement to provide time to continue further negotiations. That offer also was rejected by Eyak. At this time the Council is focusing on protection of the area within the "viewshed" of Orca Narrows (along Nelson Bay) because of its importance to the community of Cordova and its high value for the restoration of recreation and tourism. The Council remains interested in further Eyak acquisitions. Once again it should be emphasized that the areas of greatest restoration value are those "high" ranked parcels located in Sheep Bay, Port Gravina and Windy Bay.

3. You have asked the Trustee Council to abolish the Restoration Reserve because it is illegal.

We believe establishment of the Restoration Reserve is a prudent action because it sets aside funds to be invested in a manner that will generate higher interest income, yet still provide a great deal of liquidity and flexibility for future restoration needs. The Trustee Council has indicated an intent to add up to \$12 million per year to the Restoration Reserve. The level of funding allocated to the Reserve in any one year will be made only after consideration of the other needs for restoration at that time.

4. You have asked the Trustee Council to commission the National Research Council to conduct an independent review of the Trustees' Science and Monitoring Program, including the NRDA process, which you believe to lack coherence, direction, and a clearly-defined link to Restoration.

This recommendation actually deals with two issues. The first is the Council's annual Research and Monitoring Program; the second is the earlier NRDA process. If you read the *Restoration Plan* adopted by the Council last November, you will find the Council has adopted goals, objectives and strategies for all injured resources and services. The

Restoration Plan was subject to an extensive public review process and an Environmental Impact Statement. Any project approved by the Council must be clearly linked to the restoration goals, objectives and strategies described in the plan. Restoration proposals submitted to the Trustee Council are thoroughly scrutinized by the Council's Chief Scientist and some of the top scientists in the country. Council staff is releasing for public review this week a projection of research and monitoring needs for the next three years.

The second issue is a review of the NRDA process from 1989 through the settlement. Various Council members have discussed during the past year the possibility of commissioning a historical review of the *Exxon Valdez* Oil Spill NRDA process and development of the Trustee Council. Such a review would be conducted both from the perspective of "process" and "science" in order to document the lessons learned in the event of another oil spill. This is especially appropriate given the length of time since the spill and the potential for losing much of our historical knowledge. A question has been raised about whether this is a legally permissible use of settlement funds. An options paper for Council consideration is being developed.

5. You have asked that the Trustee Council visit sites in the oil spill region significant to their Restoration Objectives.

This is a valid recommendation and one that has been taken to heart by past and current Council members. Last summer, Trustees visited sites within the Kodiak region, the Kenai Peninsula and Prince William Sound. The two new state Trustees on the Council are very familiar with the spill area, and I am sure will be availing themselves of future opportunities to visit sites throughout the spill area.

Finally, in your concluding postscript, you note that the "way in which the *Exxon Valdez* Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters."

I believe all the Trustees would agree with this statement. The Trustees all take their trust responsibilities very seriously.

Sincerely,



Molly McCammon
Executive Director

Additional Notes

Although the following notes are not intended as an exhaustive review of the appeal dated March 14, 1995, these additional comments are provided :

- The argument that several hundred million dollars “worth of scientific research into the impacts of the spill... proved this to be the most damaging oil spill in human history” (on p. 3) is inconsistent with the later criticism (on p. 7) that early Exxon payments were “... drained into reimbursing the state and federal governments ... for their pre-settlement expenses... .” It was these very pre-settlement expenses — primarily for damage assessment and research studies — that provided the basis for asserting the damages that led to the settlement. Moreover, the Consent Decree specifically recognized reimbursements for the damage assessment and previously approved restoration work as a priority use of the settlement funds.
- Criticisms about the progress of the habitat protection program (on p. 5) are unfounded. The Trustee Council as we know it now did not come into existence until after December 1991. The Trustee Council took action to protect habitat (e.g., Kachemak Bay) within the first year of the Council’s existence.
- The GAO “report” was replete with baseless conclusions. As noted in the report itself, the GAO specifically did *not* obtain written agency comments on the draft report before it was finalized as it was only a briefing report, not an audit report.
- The suggestion that a proposal by Mike Barton would be accepted by Eyak is not correct. First, the so-called “Barton proposal” (on p. 9) was not specific enough to constitute an offer (i.e., no definition of value; no definition of a restrictive easement; no definition of reasonable public access) that could be accepted, nor is there substantial evidence that Eyak “... intended to accept the offer.” Indeed, the so-called “Barton proposal” was nothing more than a concept with numerous undefined elements yet to be worked out.
- The statement that the Trustee Council reversed its position (on p. 11) is not accurate.
- The appeal fails to acknowledge that Eyak withdrew its approval for appraisal work to be done during 1994 and that this delay contributed significantly to the failure to reach agreement with Eyak within the time frame imposed by Eyak.

- The statement that logging operations (on p. 11) are the only imminent threat to the Eyak lands is not accurate. At various times, discussion with Eyak concerned the landowner's interest in various types of residential development, lodge development, homesite disposals and other forms of commercial or industrial development that could be detrimental to restoration values in key, high-value areas.
- While the possibility of a 25% limitation on development (p. 11-12) was raised by Eyak and discussed briefly by the Council, no formal proposal regarding restrictions in this regard has been presented to the Trustee Council.

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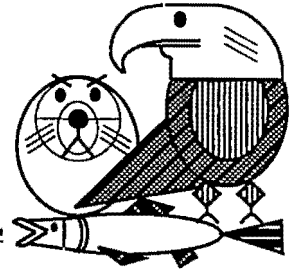
**EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD**

Exxon Valdez Oil Spill Trustee Council

Restoration Office

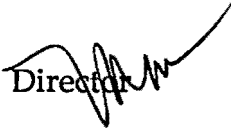
645 G Street, Suite 401, Anchorage, Alaska 99501-3451

Phone: (907) 278-8012 Fax: (907) 276-7178



MEMORANDUM

TO: Trustee Council

FROM: Molly McCammon, Executive Director 

DATE: April 2, 1995

SUBJ: Revised Court Filings Submitted by Rick Steiner and David Grimes (United States District Court, District of Alaska)

On Friday March 31, 1995 a *revised* set of Motions to Intervene and Motions to Compel Compliance was delivered to the Anchorage Restoration Office. On the envelope in which these documents were delivered there was the following hand written note:

"At Court Request, slight changes have been made in the format of these motions filed originally on 3/29/95."

A set of those revised motions are attached:

1. Motion to Intervene
United States v. State of Alaska
Civil Action A91-081 CV
Memorandum of Agreement and Consent Decree
2. Motion to Intervene
United States v. EXXON Corporation, EXXON Shipping Co., EXXON Pipeline, and the T/V *Exxon Valdez*
Civil Action A91-082 CIV
Agreement and Consent Decree
3. Motion to Intervene
State of Alaska v. EXXON Corporation and EXXON Shipping Co.
Civil Action No. A91-083 CIV
Agreement and Consent Decree

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation

United States: National Oceanic and Atmospheric Administration, Departments of Agriculture and Interior

4. Motion to Compel Compliance
United States v. State of Alaska
Civil Action A91-081 CV
Memorandum of Agreement and Consent Decree
5. Motion to Compel Compliance
United States v. EXXON Corporation, EXXON Shipping Co., EXXON Pipeline, and the *T/V Exxon Valdez*
Civil Action A91-082 CIV
Agreement and Consent Decree
6. Motion to Compel Compliance
State of Alaska v. EXXON Corporation and EXXON Shipping Co.
Civil Action No. A91-083 CIV
Agreement and Consent Decree

Four attachments were cited (although not submitted to the Anchorage Restoration Office) as part of the revised motion packet:

- Coastal Coalition letter of July 17, 1992
- U.S. District Court Reply, July 21, 1992
- The Coastal Coalition Position Paper of March 14, 1995
- Trustee Council Response, March 22, 1995

A set of these attachments has also been included for your reference.

To try and reduce confusion regarding prior versions of the court filings, I am providing these most recent, current materials to you in their own separate binder.

cc: Bill Brighton (w/ attachments)
Barry Roth (w/ attachments)
Gina Belt (w/ attachments)
Maria Lisowski (w/ attachments)
Craig O'Conner (w/ attachments)
Alex Swiderski (w/ attachments)
Trustee Agency Liasons (w/ attachments)
Restoration Work Force (w/o attachments)

The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant and
Counterclaimant.

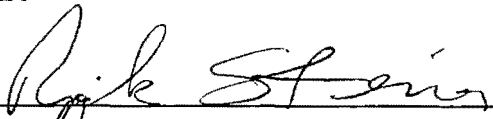
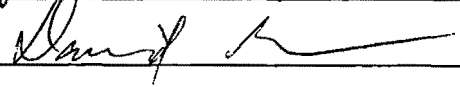
Civil Action No.
A91-081 CV

MEMORANDUM OF AGREEMENT
AND CONSENT DECREE

MOTION TO INTERVENE

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995 —

MOTION TO INTERVENE

Pursuant to Federal rule of civil procedure 24B (Permissive Intervention), The Coastal Coalition moves to intervene in the above captioned matter.

Our intervention will not delay or otherwise prejudice the rights of the original parties to the agreement. In fact, it is our specific intent to expedite the effective implementation of the agreement through our intervention.

We find it necessary to intervene on behalf of the injured Environment in this Memorandum of Agreement and Consent Decree because the Government parties have failed to fulfill their obligations to act on behalf of the injured Environment.

STANDING TO ASSERT

The Coastal Coalition, represented in this motion by Rick Steiner and David Grimes, has standing to assert this motion on behalf of the Environment injured by the Exxon Valdez Oil Spill.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the Oil Spill region. The Coalition helped create a regional consensus for the concept of settling the Natural Resource Damage cases out-of-court and formally proposed such to the State of Alaska, the United States and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all Natural Resource Damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

Coastal Coalition members Rick Steiner and David Grimes have been residents of Prince William Sound collectively for almost 30 years, and have been involved in virtually all aspects of the Oil Spill--the emergency response, education in other coastal states, prevention efforts, restoration policy formation, etc. We are entirely confident of our standing to bring this action before this Court on behalf of the injured Environment - our home.

After exhausting all non-judicial avenues to correct the Government's confusion concerning how to implement the Memorandum of Agreement and Consent Decree, we find it our moral responsibility to intervene on behalf of the injured Environment in lieu of the Governments.

The State of Alaska, the United States of America, and their designated Trustees have had several years since this Court approved this agreement to seek this Court's guidance on how to implement this agreement, yet, despite an enormous amount of public criticism of their actions, they have not done so.

Thus, we find it necessary to stand in place of the designated Government Trustees in order to bring this extraordinarily important matter before the Court for judicial review.

Obviously, Prince William Sound and the rest of the coastal ecosystem injured by the Exxon Valdez Oil Spill cannot assert its own case directly to this Court. However, the Courts regularly grant standing to claimants serving as conservators or guardians of entities who cannot assert their own claims. In fact, the corporations, Governments and the T/V Exxon Valdez, as parties to this agreement, all had to have someone to plead their case for them.

With regard to Natural Resources, legal standing has been granted to such by Congress and the Courts in the event that such Natural Resources are damaged or lost as a result of industrial accidents or disasters, such as oil spills.

In their capacity as Trustees, as defined by the agreements approved by this Court, each and every action engaged in by the Governments should have been conducted exclusively in the highest and best interest of the injured Environment. This was the clear intent of Congress in providing for the collection of Natural Resource Damages, and the intent of this Court in approving the Consent Decree, MOA, and Plea Agreement in this case. The Governments in this case were required to act solely "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."

Unfortunately, the Governments have not fulfilled their trust responsibilities to the injured Environment. Even some agency staff have grave concerns regarding the Government's implementation of the terms of this agreement.

It is the primary assertion of this motion that the money collected by the Governments as a result of this agreement is not being used as expected--in the maximum interest of environmental recovery--and the parties to the agreement are either unable or unwilling to correct the situation themselves. As such, we believe judicial review is necessary to redress the failure of the Governments to fulfill their obligations to this Court, the public, and the injured resources.

Footnote on position on standing to assert:

In the event that this Court finds that we should not have standing to intervene in this Memorandum of Agreement and Consent Decree, even though as long-standing and loving residents of the region, we would respectfully and vigorously disagree, then we ask this Court to sua sponte grant the relief we seek in order to compel compliance.

NOTE: This is one of six motions we have filed with this Court, and we respectfully ask that the Court consider all six motions collectively, as listed below:

1. Motion to Intervene - Agreement and Consent Decree (Civil Action No. A91-082)
2. Motion to Intervene - Agreement and Consent Decree (Civil Action No. A91-083)
3. Motion to Intervene - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)
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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

CERTIFICATE OF SERVICE

We hereby certify that on March ³¹~~29~~, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

Exxon Pipeline Company
Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

With the following documents:

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The Coastal Coalition
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(907)424-5509
(907)346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-082 CIV

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

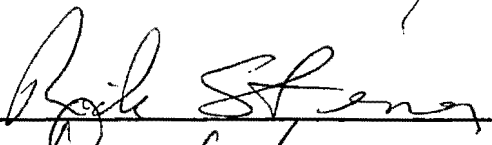
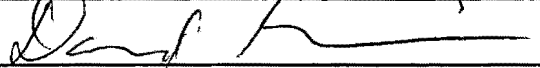
AGREEMENT AND CONSENT DECREE

Defendants.

MOTION TO INTERVENE

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995

MOTION TO INTERVENE

Pursuant to Federal rule of civil procedure 24B (Permissive Intervention), The Coastal Coalition moves to intervene in the above captioned matter.

Our intervention will not delay or otherwise prejudice the rights of the original parties to this agreement. In fact, it is our specific intent to expedite the effective implementation of this agreement through our intervention.

We find it necessary to intervene on behalf of the injured Environment in this Agreement and Consent Decree because the Government parties have failed to fulfill their obligations to act on behalf of the injured Environment.

STANDING TO ASSERT

The Coastal Coalition, represented in this motion by Rick Steiner and David Grimes, has standing to assert this motion on behalf of the Environment injured by the Exxon Valdez Oil Spill.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the Oil Spill region. The Coalition helped create a regional consensus for the concept of settling the Natural Resource Damage cases out-of-court and formally proposed such to the State of Alaska, the United States and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all Natural Resource Damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

Coastal Coalition members Rick Steiner and David Grimes have been residents of Prince William Sound collectively for almost 30 years, and have been involved in virtually all aspects of the Oil Spill--the emergency response, education in other coastal states, prevention efforts, restoration policy formation, etc. We are entirely confident of our standing to bring this action before this Court on behalf of the injured Environment - our home.

After exhausting all non-judicial avenues to correct the Government's confusion concerning how to implement this Agreement and Consent Decree, we find it our moral responsibility to intervene on behalf of the injured Environment in lieu of the Governments.

The Government party to this agreement has had several years since this Court approved this agreement to seek this Court's guidance on how to implement this agreement, yet, despite an enormous amount of public criticism of their actions, they have not done so.

Thus, we find it necessary to stand in place of the designated Government Trustees in order to bring this extraordinarily important matter before the Court for judicial review.

Obviously, Prince William Sound and the rest of the coastal ecosystem injured by the Exxon Valdez Oil Spill cannot assert its own case directly to this Court. However, the Courts regularly grant standing to claimants serving as conservators or guardians of entities who cannot assert their own claims. In fact, the corporations, Governments and the T/V Exxon Valdez, as parties to this agreement, all had to have someone to plead their case for them.

With regard to Natural Resources, legal standing has been granted to such by Congress and the Courts in the event that such Natural Resources are damaged or lost as a result of industrial accidents or disasters, such as oil spills.

In their capacity as Trustees, as defined by the agreements approved by this Court, each and every action engaged in by the Governments should have been conducted exclusively in the highest and best interest of the injured Environment. This was the clear intent of Congress in providing for the collection of Natural Resource Damages, and the intent of this Court in approving the Consent Decree, MOA, and Plea Agreement in this case. The Governments in this case were required to act solely "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" (Memorandum of Agreement).

Unfortunately, the Governments have not fulfilled their trust responsibilities to the injured Environment. Even some agency staff have grave concerns regarding the Government's implementation of the terms of this agreement.

In approving this agreement, presiding U.S. District Court Judge H. Russell Holland made the following warning to the parties to this agreement:

I want you all to know that I, you know, I'm not able to monitor this kind of thing, but I expect you all to do the monitoring; and quite frankly, I expect to see people back here if the money that flows from these three cases is not going where I expect it to go, based upon the terms of these agreements.

It is the primary assertion of this motion that the money collected by the Governments as a result of this agreement is not being used as expected--in the maximum interest of environmental recovery--and the parties to the agreement are either unable or unwilling to correct the situation themselves. As such, we believe judicial review is necessary to redress the failure of the Governments to fulfill their obligations to this Court, the public, and the injured resources.

Footnote on position on standing to assert:

In the event that this Court finds that we should not have standing to intervene in this agreement, even though as long-standing and loving residents of the region, we would respectfully and vigorously disagree, then we ask this Court to sua sponte grant the relief we seek in order to compel compliance.

NOTE: This is one of six motions we have filed with this Court, and we respectfully ask that the Court consider all six motions collectively, as listed below:

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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

CERTIFICATE OF SERVICE

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Washington, D.C. 20530

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Attorney General
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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, and EXXON
SHIPPING COMPANY,

Defendants.

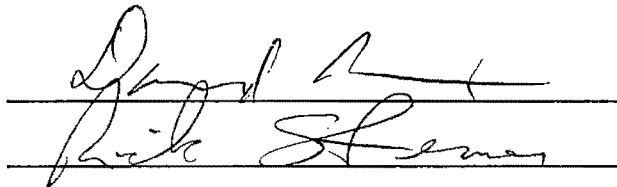
Civil Action No.
A91-083 CIV

AGREEMENT AND
CONSENT DECREE

MOTION TO INTERVENE

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995



MOTION TO INTERVENE

Pursuant to Federal rule of civil procedure 24B (Permissive Intervention), The Coastal Coalition moves to intervene in the above captioned matter.

Our intervention will not delay or otherwise prejudice the rights of the original parties to this agreement. In fact, it is our specific intent to expedite the effective implementation of this agreement through our intervention.

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STANDING TO ASSERT

The Coastal Coalition, represented in this motion by Rick Steiner and David Grimes, has standing to assert this motion on behalf of the Environment injured by the Exxon Valdez Oil Spill.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the Oil Spill region. The Coalition helped create a regional consensus for the concept of settling the Natural Resource Damage cases out-of-court and formally proposed such to the State of Alaska, the United States and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all Natural Resource Damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

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After exhausting all non-judicial avenues to correct the Government's confusion concerning how to implement this Agreement and Consent Decree, we find it our moral responsibility to intervene on behalf of the injured Environment in lieu of the Governments.

The Government party to this agreement has had several years since this Court approved this agreement to seek this Court's guidance on how to implement this agreement, yet, despite an enormous amount of public criticism of their actions, they have not done so.

Thus, we find it necessary to stand in place of the designated Government Trustees in order to bring this extraordinarily important matter before the Court for judicial review.

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Unfortunately, the Governments have not fulfilled their trust responsibilities to the injured Environment. Even some agency staff have grave concerns regarding the Government's implementation of the terms of this agreement.

In approving this agreement, presiding U.S. District Court Judge H. Russell Holland made the following warning to the parties to this agreement:

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It is the primary assertion of this motion that the money collected by the Governments as a result of this agreement is not being used as expected--in the maximum interest of environmental recovery--and the parties to the agreement are either unable or unwilling to correct the situation themselves. As such, we believe judicial review is necessary to redress the failure of the Governments to fulfill their obligations to this Court, the public, and the injured resources.

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NOTE: This is one of six motions we have filed with this Court, and we respectfully ask that the Court consider all six motions collectively, as listed below:

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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907) 424-5509
(907) 346-4071

CERTIFICATE OF SERVICE

³¹
We hereby certify that on March 29, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK 99574
907-424-5509
907-346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-081 CV

STATE OF ALASKA,

Defendant and
Counterclaimant.

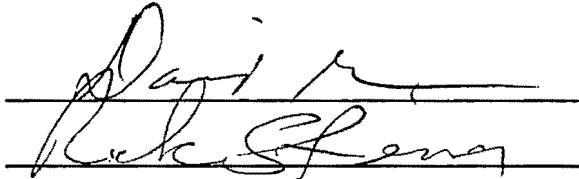
MEMORANDUM OF AGREEMENT
AND CONSENT DECREE

MOTION TO COMPEL COMPLIANCE

OF THE UNITED STATES OF AMERICA, THE STATE OF ALASKA, AND THEIR
DESIGNATED TRUSTEES WITH THE ABOVE-CAPTIONED MEMORANDUM OF
AGREEMENT AND CONSENT DECREE TO WHICH THEY ARE PARTIES.

BROUGHT BY: The Coastal Coalition, on behalf of the Environment
injured by the Exxon Valdez Oil Spill

Dated: March 29, 1995



Rick Steiner

JURISDICTION

The United States District Court, District of Alaska, has jurisdiction over this motion in that it approved the Memorandum of Agreement and Consent Decree with which we are seeking to compel compliance.

PARTIES

The United States of America, the State of Alaska, and their designated Trustee Council are named as non-compliant in implementing this agreement.

The Coastal Coalition, on behalf of the injured Environment, is bringing this motion before the Court in lieu of the non-compliant governments.

BACKGROUND

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by this agreement approved by this Court is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Because the United States of America and the State of Alaska, as parties to the agreement referenced above, and their designated Trustees and Trustee Council (herein after referred to as "the Governments"), have been incapable of substantively aiding the recovery of the injured Environment - the clear and unequivocal intent of this Court in approving this agreement - they have failed to comply with this agreement and have betrayed their historic public trust responsibility.

CAUSE OF ACTION

The United States and the State of Alaska and their designated Trustees are in violation of the Memorandum of Agreement and Consent Decree.

The Governments have failed to exercise the orders of this Court, failed to honor their unique trust responsibilities, and failed to act solely on behalf of the resources and services injured by the Exxon Valdez Oil Spill.

Also, Section 1006 (Natural Resources) (g) (Compliance) of the Oil Pollution Act of 1990, Public Law 101-380, provides the authority for any person to seek judicial review of the actions of Federal officials acting as Natural Resource Trustees as follows:

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred.

And the legal concept of "trustee" and "public trust" are, we believe, derived from common law doctrine which has evolved throughout history to give citizens recourse to judicial relief in such significant circumstances. (For a further discussion of our cause of action, please see our "Urgent Appeal" position paper of March 14, 1995, attached below.)

The United States of America, the State of Alaska and their designated Trustee Council have failed tragically in fulfilling their legally mandated trust responsibility and the terms of this Memorandum of Agreement and Consent Decree. In their Restoration efforts, the Governments have:

- A. Accomplished very little in terms of tangible benefit to the injured Environment.
- B. Diverted enormous financial resources - intended by this agreement to be used in the maximum interest of environmental recovery - into non-essential expenditures.
- C. Taken far too long - five and a half years - to develop a Restoration Plan to be of maximum use to the injured Environment.

- D. Failed to accomplish any significant, comprehensive coastal habitat acquisition and protection, thus allowing further large-scale, significant, irreparable injury to occur to the already severely stressed coastal ecosystem.

To date, this historic, precedent-setting \$900 million program has not been subjected to any comprehensive, independent oversight. The Former GAO investigation was limited in scope and duration, covering a period of less than 2 years of Trustee Council operation (Oct. 8, 1991 - August 20, 1993) and only examined certain aspects of Trustee activity. No pre-settlement activity has been reviewed, and no activity subsequent to August, 1993 has been reviewed, including the Restoration Plan. None of the expenditures from the Restitutionary payments have been reviewed. As such, society has yet to adequately chronicle and learn the valuable lessons offered by this historic Restoration effort.

RELIEF

We ask this Court, in the public interest, to order the establishment of the Exxon Valdez Oil Spill Restoration Review Commission to conduct an independent, comprehensive, detailed review of all Government policies, expenditures, and activities since March 24, 1989, related to the mitigation of injuries caused by this Oil Spill. This review should include all issues concerning the functioning of the Governments in relation to these agreements, including but not limited to, the following:

- A. All phases of the Natural Resource Damage Assessment (NRDA) program and the subsequent Science and Monitoring program - the size, scope, cost, necessary facilities, and scientific quality of the programs, and their link to Restoration.
- B. Legitimacy of all reimbursements taken by Trustee agencies and Exxon, including a complete audit of the equipment inventory.
- C. All phases of the Restoration Planning process, including public involvement.
- D. All Restoration Policy decisions - funding priorities and the link between all expenditures and environmental damage mitigation and recovery.
- E. A thorough review of the Habitat Acquisition and Protection program, including the habitat evaluation process, the relative severity of threat to the habitat, and the appraisal process.

- F. A general analysis of how to effectively structure future Natural Resource Damage Settlements, using EVOS as an example - what terms, conditions, and dollar amounts would best mitigate injury in future disasters.

In its charge by this Court, the Commission should:

- A. Have subpoena powers and be able to depose, under oath, all past and present Trustees, Trustee Council members, and Trustee Council staff.
- B. Have access to all documents, confidential or otherwise, produced by the Governments regarding the Oil Spill.
- C. Consult with Trustee Council staff, other agency staff, the Public Advisory Group, the public at large, and land owners in the region as appropriate.
- D. Conduct field hearings throughout the Oil Spill region to hear directly from the public.

The Commission should consist of the following representation:

Government Accounting Office
National Research Council
Natural Resources Defense Council
The Nature Conservancy
Trustees for Alaska
First Nations Development Institute (as indigenous people's advocate)
Others deemed appropriate by this Court.

The Commission should be funded out of settlement monies, but should otherwise be strictly independent and autonomous. In selecting individuals to serve on the Commission, great care must be exercised to select individuals or institutions that will be able to act strictly objectively, autonomously, and with exclusive focus on what is best for the injured Environment, without regard to political consequences.

The Restoration Review Commission should report to this Court by October 8, 1995 (the fourth anniversary of the Court's approval of the Consent Decree and Plea Agreement), its findings and recommendations concerning how best to redirect the Government process to more effectively comply with its legal responsibilities and how to better conduct such a process in future disasters. At such time, we ask that this Court order the implementation of recommendations of the Commission that the Court deems appropriate, in consultation with The Coastal Coalition, the Public Advisory Group, and the Governments. The Court could then either terminate the Commission, or order the continuation of its independent oversight and monitoring authority over the Trustee Council.

The basic charge for the Commission should be: (1) to assess what has been accomplished by the Governments compared to what has not and could have been done to mitigate the damage caused by this Oil Spill, and (2) to provide a basis for doing a better job next time.

ALTERNATIVE RELIEF

Should the Court prefer to order relief short of the above, we ask that the Court order the Governments to come before it and satisfy that they have done everything possible to fulfill their obligations to the Court, the public, and the injured Environment.

CONCLUSION

Because of the historic, precedent-setting nature of this process, we feel this review is essential not only to provide direction to the remaining expenditure of funds from this settlement, but also to establish a more effective framework within which to conduct such future efforts.

NOTE: This is one of six motions we have filed with this Court, and we respectfully ask that the Court consider all six motions collectively, as listed below:

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.
A91-082 CIV

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

AGREEMENT AND CONSENT DECREE

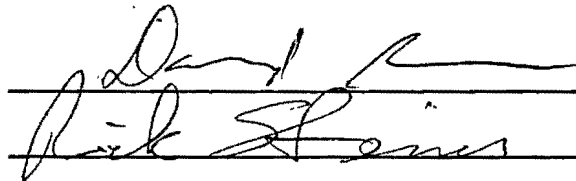
Defendants.

MOTION TO COMPEL COMPLIANCE

OF THE UNITED STATES OF AMERICA AND THEIR DESIGNATED TRUSTEES
WITH THE ABOVE-CAPTIONED AGREEMENT AND CONSENT DECREE TO WHICH
THEY ARE PARTIES.

BROUGHT BY: The Coastal Coalition, on behalf of the
Environment injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995



Rick Steiner

JURISDICTION

The United States District Court, District of Alaska, has jurisdiction over this motion in that it approved the Agreement and Consent Decree, with which we are seeking to compel compliance.

PARTIES

The Government party (plaintiff) is named as non-compliant in implementing this agreement.

The Coastal Coalition, on behalf of the injured Environment, is bringing this motion before the Court in lieu of the non-compliant government.

BACKGROUND

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by this Consent Decree approved by this Court, is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Because the Government has been incapable of substantively aiding the recovery of the injured Environment - the clear and unequivocal intent of this Court in approving this agreement - they have failed to comply with the agreement and have betrayed their historic public trust responsibility.

CAUSE OF ACTION

The Government is in violation of this Consent Decree.

The Government has failed to exercise the orders of this Court, failed to honor their unique trust responsibilities, and failed to act solely on behalf of the resources and services injured by the Exxon Valdez Oil Spill.

Also, Section 1006 (Natural Resources) (g) (Compliance) of the Oil Pollution Act of 1990, Public Law 101-380, provides the authority for any person to seek judicial review of the actions of Federal officials acting as Natural Resource Trustees as follows:

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred.

And, the legal concept of "trustee" and "public trust" are, we believe, derived from common law doctrine which has evolved throughout history to give citizens recourse to judicial relief in such significant circumstances. (For a further discussion of our cause of action, please see our "Urgent Appeal" position paper of March 14, 1995, attached below.) The Government has failed tragically in fulfilling their legally mandated trust responsibility and the terms of this Consent Decree. In their Restoration efforts, the Government has:

- A. Accomplished very little in terms of tangible benefit to the injured Environment.
- B. Diverted enormous financial resources - intended by this agreement to be used in the maximum interest of environmental recovery - into non-essential expenditures.
- C. Taken far too long - five and a half years - to develop a Restoration Plan to be of maximum use to the injured Environment.

- D. Failed to accomplish any significant, comprehensive coastal habitat acquisition and protection, thus allowing further large-scale, significant, irreparable injury to occur to the already severely stressed coastal ecosystem.

To date, this historic, precedent-setting \$900 million program has not been subjected to any comprehensive, independent oversight. The Former GAO investigation was limited in scope and duration, covering a period of less than 2 years of Trustee Council operation (Oct. 8, 1991 - August 20, 1993) and only examined certain aspects of Trustee activity. No pre-settlement activity has been reviewed, and no activity subsequent to August, 1993 has been reviewed, including the Restoration Plan. None of the expenditures from the Restitutionary payments have been reviewed. As such, society has yet to adequately chronicle and learn the valuable lessons offered by this historic Restoration effort.

RELIEF

We ask this Court, in the public interest, to order the establishment of the Exxon Valdez Oil Spill Restoration Review Commission to conduct an independent, comprehensive, detailed review of all Government policies, expenditures, and activities since March 24, 1989, related to the mitigation of injuries caused by this Oil Spill. This review should include all issues concerning the functioning of the Governments in relation to these agreements, including but not limited to, the following:

- A. All phases of the Natural Resource Damage Assessment (NRDA) program and the subsequent Science and Monitoring program - the size, scope, cost, necessary facilities, and scientific quality of the programs, and their link to Restoration.
- B. Legitimacy of all reimbursements taken by Trustee agencies and Exxon, including a complete audit of the equipment inventory.
- C. All phases of the Restoration Planning process, including public involvement.
- D. All Restoration Policy decisions - funding priorities and the link between all expenditures and environmental damage mitigation and recovery.

- E. A thorough review of the Habitat Acquisition and Protection program, including the habitat evaluation process, the relative severity of threat to the habitat, and the appraisal process.
- F. A general analysis of how to effectively structure Natural Resource Damage Settlements, using EVOS as an example - what terms, conditions, and dollar amounts would best mitigate injury in future disasters.

In its charge by this Court, the Commission should:

- A. Have subpoena powers and be able to depose, under oath, all past and present Trustees, Trustee Council members, and Trustee Council staff.
- B. Have access to all documents, confidential or otherwise, produced by the Governments regarding the Oil Spill.
- C. Consult with Trustee Council staff, other agency staff, the Public Advisory Group, the public at large, and land owners in the region as appropriate.
- D. Conduct field hearings throughout the Oil Spill region to hear directly from the public.

The Commission should consist of the following representation:

Government Accounting Office
National Research Council
Natural Resources Defense Council
The Nature Conservancy
Trustees for Alaska
First Nations Development Institute (as indigenous people's advocate)
Other institutions or individuals deemed appropriate by this Court.

The Commission should be funded out of settlement monies, but should otherwise be strictly independent and autonomous. In selecting individuals to serve on the Commission, great care must be exercised to select individuals or institutions that will be able to act strictly objectively, autonomously, and with exclusive focus on what is best for the injured Environment, without regard to political consequences.

The Restoration Review Commission should report to this Court by October 8, 1995 (the fourth anniversary of the Court's approval of the settlement), its findings and recommendations concerning how best to redirect the Government process to more effectively comply with its legal responsibilities and how to better conduct such a process in future disasters. At such time, we ask that this Court order the implementation of recommendations of the Commission that the Court deems appropriate, in consultation with The Coastal Coalition, the Public Advisory Group, and the Governments. The Court could then either terminate the Commission, or order the continuation of its independent oversight and monitoring authority over the Trustee Council.

The basic charge for the Commission should be: (1) to assess what has been accomplished by the Governments compared to what has not and could have been done to mitigate the damage caused by this Oil Spill, and (2) to provide a basis for doing a better job next time.

ALTERNATIVE RELIEF

Should the Court prefer to order relief short of the above, we ask that the Court order the Governments to come before it and satisfy that they have done everything possible to fulfill their obligations to the Court, the public, and the injured Environment.

CONCLUSION

Because of the historic, precedent-setting nature of this process, we feel this review is essential not only to provide direction to the remaining expenditure of funds from this settlement, but also to establish a more effective framework within which to conduct such future efforts.

NOTE: This is one of six motions we have filed with this Court, and we respectfully ask that the Court consider all six motions collectively, as listed below:

1. Motion to Intervene - Agreement and Consent Decree (Civil Action No. A91-082)
2. Motion to Intervene - Agreement and Consent Decree (Civil Action No. A91-083)
3. Motion to Intervene - Memorandum of Agreement and Consent Decree (Civil Action No. A91-081CV)
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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907)424-5509
(907)346-4071

CERTIFICATE OF SERVICE

We hereby certify that on March ³¹~~29~~, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

Exxon Pipeline Company
Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

With the following documents:

1. Motion to Intervene - Agreement and Consent Decree (Civil Action No. A91-082)
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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK 99574
907-424-5509
907-346-4071

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, and EXXON
SHIPPING COMPANY,

Defendants.

Civil Action No.
A91-083 CIV

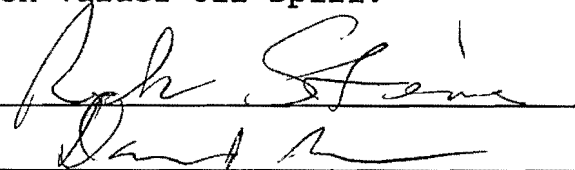
AGREEMENT AND
CONSENT DECREE


MOTION TO COMPEL COMPLIANCE

OF THE STATE OF ALASKA AND THEIR DESIGNATED TRUSTEES WITH THE
ABOVE-CAPTIONED AGREEMENT AND CONSENT DECREE TO WHICH THEY ARE
PARTIES.

BROUGHT BY: The Coastal Coalition, on behalf of the
Environment injured by the Exxon Valdez Oil Spill.

Dated: March 29, 1995





JURISDICTION

The United States District Court, District of Alaska, has jurisdiction over this motion in that it approved the Agreement and Consent Decree, with which we are seeking to compel compliance.

PARTIES

The Government party (plaintiff) is named as non-compliant in implementing this agreement.

The Coastal Coalition, on behalf of the injured Environment, is bringing this motion before the Court in lieu of the non-compliant government.

BACKGROUND

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by this Consent Decree approved by this Court, is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

Because the Government has been incapable of substantively aiding the recovery of the injured Environment - the clear and unequivocal intent of this Court in approving this agreement - they have failed to comply with the agreement and have betrayed their historic public trust responsibility.

CAUSE OF ACTION

The Government is in violation of this Consent Decree.

The Government has failed to exercise the orders of this Court, failed to honor their unique trust responsibilities, and failed to act solely on behalf of the resources and services injured by the Exxon Valdez Oil Spill.

Also, Section 1006 (Natural Resources) (g) (Compliance) of the Oil Pollution Act of 1990, Public Law 101-380, provides the authority for any person to seek judicial review of the actions of Federal officials acting as Natural Resource Trustees as follows:

Review of actions by any Federal official, where there is alleged to be a failure of that official to perform a duty that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred.

And, the legal concept of "trustee" and "public trust" are, we believe, derived from common law doctrine which has evolved throughout history to give citizens recourse to judicial relief in such significant circumstances. (For a further discussion of our cause of action, please see our "Urgent Appeal" position paper of March 14, 1995, attached below.) The Government has failed tragically in fulfilling their legally mandated trust responsibility and the terms of this Consent Decree. In their Restoration efforts, the Government has:

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The Coastal Coalition
Rick Steiner, David Grimes
P.O. Box 2424
Cordova, AK. 99574
(907)424-5509
(907)346-4071

CERTIFICATE OF SERVICE

3'

We hereby certify that on March 29, 1995, we served by registered mail the following parties:

United States of America
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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

Exxon Corporation
General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

Exxon Pipeline Company
Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

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ATTACHMENTS

- 1) The Coastal Coalition letter of July 17, 1992
- 2) U.S. District Court reply, July 21, 1992
- 3) The Coastal Coalition Position Paper of March 14, 1995
- 4) Trustee Council Response, March 22, 1995

The Coastal Coalition

Box 2424, Cordova, Alaska 99574
907-424-5509 FAX 907-424-5248

July 17, 1992

The Honorable H. Russel Holland
United States District Court Judge
United States District Court
222 West Seventh Avenue
Anchorage, AK 99513

RECEIVED
Department of Law

AM JUL 23 1992
7:18, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

Dear Judge Holland,

I am writing to you today to call your attention to a matter of grave concern to thousands of citizens living in the region impacted by the Exxon-Valdez oil spill. We turn to you to help resolve a crippling impasse between the public and the government in the expenditure of the \$100 million criminal restitutionary monies collected as a result of Exxon's plea's of guilty entered in United States v. Exxon Corporation and Exxon Shipping Company, No. A90-015 CR., over which you presided.

The issue is this -- that \$100 million was collected with the understanding that it was needed immediately for restoration, and to date, not one cent has been spent, nor have the governments proposed any sort of plan for expenditure on urgently needed projects, nor are there any good prospects that this will happen in the next few years. Whatsmore, the people of Alaska, through a very deliberate and rather exhaustive public process in the Legislature, passed a bill that would have appropriated the State's share of this money to various restoration projects in need of immediate attention, but the Governor just vetoed all of it. This was truly the people's bill. Worse, the Federal government has undergone absolutely no public process with regard to it's share, has actively avoided answering questions regarding it, and has even come to some form of agreement among their own agencies as to how they plan to spend it, behind closed doors and with no public input.

This does not seem to be what we the people thought you intended when you approved the plea. As to the urgency in collecting and using this money, I'd like to remind you of the following statements by the United States Department of Justice made before you during sentencing:

-- "The environment, as a victim, must be aided quickly through efforts funded by restitutionary payments."

-- "The governments urge that there be restitution now for the areas affected by the oil spill, and it should not await years of legal battles over damages and liabilities. The plea agreement provides an immediate infusion of money needed to continue the work of restoring the Prince William Sound and the Gulf of Alaska, while the consent decree provides money over the long term..."

RECEIVED

JUL 20 1992

UNITED STATES DISTRICT COURT
ANCHORAGE, ALASKA
HONORABLE H. RUSSEL HOLLAND

Judge Holland
Page 2.

- "...We ask that you approve the plea agreement...that will put an end to the criminal and civil complex litigation and getting much needed money to the environment now, as opposed to years of litigation..."
- "...We believe it's in the public's best interest to settle this case in this matter to get the much needed money into the Prince William Sound and Gulf of Alaska now as opposed to years from now.."
- "...Unlike other economic crimes in which this court is well aware we can't simply pay interest twenty years down the road to make up for the losses. In environmental cases, it is crucially important that we address the consequences of the conduct immediately..."
- "...Today the Court has the opportunity to deal with that environmental consequence immediately."

And Judge, you bought it, we the people bought it, and here we all are, almost a year later, and absolutely nothing has happened, and nothing is likely to happen soon. We the people have, as they say, been taken. It is widely acknowledged that this spill caused an overwhelming loss of public faith in government and industry. The settlement that you approved, although it collected only about 150-on-the-dollar for what we thought should have been provided, was deemed acceptable in the region only because it provided money urgently needed to attend to the damaged ecosystem. Although many of us questioned the sincerity of the government's commitment to promptly and genuinely attend to the environmental damage as they had forcefully articulated in their recitations before you, we knew we needed the money and thus were generally appreciative for your approval of the settlement. But now, our greatest fears have been realized -- once the settlement was in the bag, the governments quickly retired to the land of processes, flow diagrams, charts, graphs, meetings, reports, frameworks, scoping, and more meetings and reports.

The governments were obviously entirely disingenuous with the statements made before the Court. Had the State administration truly cared about the region and it's people, they most certainly would have approved the peoples plan for putting the \$50 million to work. In reviewing this plan, the Attorney General provided the Governor with two clearly contradictory positions. On the one hand he states that "these court orders allow the state considerable discretion in choosing which activities will be funded from the restitution monies, so long as these activities are conducted within the State of Alaska and are related to the restoration of resources affected by the Exxon Valdez oil spill or the lost or reduced services provided by such resources." But then, he goes on to conclude that most of the projects proposed by the Legislature are "not lawful".

Judge Holland
Page 3.

That they have proposed placing all of these restitutionary monies into an endowment seems in flagrant disregard of the orders of the Court. These monies are essentially in an endowment now and drawing interest precisely as they would in the administration's proposal. Their proposal then can be summarized in two words -- "do nothing". This is in obvious contradiction to the order of the Court. Their endowment would make restitution monies available through the next millenium and so on. This doesn't seem to "get the much needed money into the Prince William Sound and the Gulf of Alaska now as opposed to years from now", does it?

Similar problems exist with the State/Federal Trustees Council and their handling so far of recoveries in the civil case. For instance, the Trustees decided behind closed doors, with absolutely no public input or oversight, to take the majority of the first payment as reimbursement, making very little available for restoration work this year. And, at least one Trustee agency, the U.S. Forest Service, has made an internal policy decision in opposition of any acquisition of equivalent resources, in complete contradiction to the overwhelming majority of public testimony to the Trustees. This makes a mockery of your order that a meaningful public process be established. Also, the Trustees have proposed placing the civil recoveries into an endowment, in complete contradiction to every single statement by the public. It is particularly ironic that all that the government can think of doing to take care of the ecosystem damaged by the single most disastrous environmental crime in our nation's history, is to set up a bank account.

This is the first environmental crime of such magnitude that we as a society have had to deal with. And Judge, we have blown it! Here we are, three and a half years later, and we have been able to do absolutely nothing substantively in the way of restoration or protection of the region. If humanity is indeed this unwilling or unable to deal in a genuine manner with such technological disasters, then we are most certainly in for a very dark future.

So, here we are, extremely frustrated. Because of the events of the past few days, many people in the region and elsewhere have completely lost faith in not only this process, but the essential ideals of democracy altogether. I don't need to tell you how profound this is.

It is thus after a great deal of thought and out of utter desperation that we the people turn to you once again for help. We respectfully request that you convene a hearing on this matter as soon as possible. I don't think it would be overstated to say that the very integrity of democracy itself hangs in the balance here.

Judge Holland
Page 4.

When you approved the plea, you put forth the following most sincere admonition:

"Quite frankly, I expect to see people back here if the money that flows from the disposition of these three cases is not going where I expect it to go, based on the terms of the agreements."

Judge, the money is most certainly not going where you expected it to go. You, and we, expected it to be put to use -- the governments have done nothing, and have even proposed that all they need to do is to put it in the bank, where, by the way, it already is.

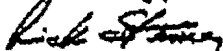
I think a hearing in front of you is necessary in order to break this log-jam and to get this process underway in a more constructive manner. Although I am not an attorney, it is evident to me and many others that, while the defendant, Exxon, has certainly lived up to their end of the deal, unfortunately the government, our government, has not. In fact, because the government seems to be violating the entire basis upon which they collected the restitution monies from Exxon, I would think that Exxon would have more than adequate grounds to ask for the money back. That the money was collected under the fraudulent premise that it was needed "immediately" and that they intended to use it immediately, but haven't, seems to call into question the entire plea agreement.

In addition to a review of progress or lack thereof of the governments in implementing the terms of the settlement, a hearing could also be useful in getting your interpretation of whether or not the restoration projects passed by the Alaska Legislature are consistent with the terms of the plea agreement. The Attorney General has said most do not, legislative counsel and others have said that the provisions do fit the terms of the plea.

Judge Holland, I am just one person, but I am absolutely convinced that I bring these concerns to your attention on behalf of literally thousands of American citizens.

I truly appreciate your kind consideration of this matter.

Sincerely,



Rick Steiner, The Coastal Coalition

UNITED STATES DISTRICT COURT
District of Alaska
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7646

RECEIVED
Department of Law
JUL 23 1992
AM 7:18, 9:10, 11:12, 1:12, 3:45, 5:16 PM

H. Russell Holland
Chief Judge

July 21, 1992

✓ Charles E. Cole, Esq.
Attorney General
State of Alaska
Box K
Juneau, Alaska 99811

Barry M. Hartman, Esq.
Environment & Natural Res. Div.
U.S. Department of Justice
Washington, D.C. 20530

Patrick Lynch, Esq.
O'Melveny & Myers
400 South Hope Street
Los Angeles, California 90071

John R. Rebman, Esq.
P.O. Box 2180
Houston, Texas 77252-2180

Charles A. De Monaco, Esq.
Environmental Crimes Section
Environment & Natural Res. Div.
U.S. Department of Justice
Washington, D.C. 20530

Edward J. Lynch, Esq.
Associate General Counsel
Exxon Corporation
225 E. John W. Carpenter Freeway
Irving, Texas 75062-2298

James F. Neal, Esq.
Neal & Harwell
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, Tennessee 37219

Re: United States v. Exxon, No. A90-015 Criminal
United States v. Alaska, No. A91-081 Civil
United States v. Exxon, No. A91-082 Civil
Alaska v. Exxon, No. A91-083 Civil

Gentlemen:

Enclosed please find a copy of a letter which I have received from Rick Steiner on behalf of the Coastal Coalition of Cordova, Alaska. Also enclosed is my response to Mr. Steiner.

While I do not feel at liberty to so state to Mr. Steiner, I will tell counsel in these cases that I have been somewhat troubled by what I have seen in the newspaper concerning application of the fine and restitution payments toward restoration of Prince William Sound. You know, and I understand, that what appears in the newspaper is likely to have the editorial spin of the particular newspaper which is doing the reporting. Nevertheless, I am concerned that the restoration money which is available be applied in the most effective manner possible to effect restoration where there is recognized damage occasioned by the Exxon Valdez oil spill.

cc: Craig
FAXED TO CHARLIE

Re: **Exxon**
July 21, 1992
Page 2

The purpose of this letter is not in any sense to inject myself into what I trust are ongoing efforts to accomplish restoration of Prince William Sound. I do mean to alert you to the fact that there may be a public perception that the monies generated through the above-referenced cases is not being applied in the fashion which was intended.

Sincerely yours,



H. Russel Holland

HRH:ke

encl.

UNITED STATES DISTRICT COURT

District of Alaska
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7545

H. Russel Holland
Chief Judge

July 21, 1992

Mr. Rick Steiner
The Coastal Coalition
Box 2424
Cordova, Alaska 99574

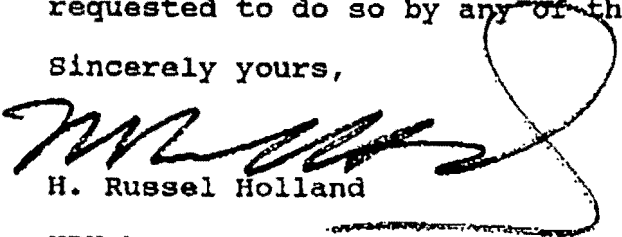
Dear Mr. Steiner:

I am in receipt of your letter of July 17, 1992. I am forwarding copies of your letter to counsel for all of the parties in the several Exxon cases which are the subject of your letter.

I must tell you in all candor that there is very little I can do with your letter. Whereas legislative bodies are entitled by the federal and state constitutions to initiate activity, the judiciary is almost exclusively a reactive institution. The court is not in a position to initiate proceedings on its own. Indeed, the court is not even permitted to take action at the request of a person such as yourself unless prescribed procedures are followed. I have no jurisdiction unless there is a case or controversy which is put before me in the prescribed fashion--through the filing of a complaint with the Clerk of Court, and service of that complaint on all adverse parties.

In consideration of the foregoing, I am not in a position to schedule a hearing such as you have requested. I will certainly give serious consideration to taking the matter up if I am requested to do so by any of the parties to any of the cases.

Sincerely yours,



H. Russel Holland

HRH:ke

cc: ✓ Charles E. Cole, Esq.
Charles A. De Monaco, Esq.
Barry M. Hartman, Esq.
Edward J. Lynch, Esq.
Patrick Lynch, Esq.
James F. Neal, Esq.
John R. Rebman, Esq.

AN URGENT APPEAL TO THE E.V.O.S. TRUSTEE COUNCIL
TO IMMEDIATELY PROTECT THREATENED HABITAT
IN PRINCE WILLIAM SOUND

THE COASTAL COALITION
Rick Steiner, David Grimes
PO Box 2424
Cordova, AK 99574

907-424-5509
907-346-4071
907-424-7491 (Fax)

DATED: March 14, 1995

DISTRIBUTED: E.V.O.S. Trustee Council
Eyak Corporation
Honorable H. Russell Holland, U.S. District Court

Embargoed for press release until March 22, 1995.

This Coastal Coalition paper details an urgent situation concerning the restoration and recovery of Prince William Sound from the Exxon Valdez Oil Spill. The first part provides an introduction and background; pages 8 - 14 explain the current emergency; and the last part summarizes specific problems and proposed solutions.

The Coastal Coalition genuinely and respectfully intends this position paper to serve as a constructive aid for the Trustee Council in fulfilling its responsibility to the Court, the public and the environment injured by the Exxon Valdez Oil Spill.

Because of the emergency at Orca Narrows/Simpson Bay, we ask for a written response to this paper from the E.V.O.S. Trustee Council no later than March 21, 1995.

Prince William Sound should have to make no more sacrifice.

INTRODUCTION

On October 8, 1991, the U.S. District Court, District of Alaska, approved the AGREEMENT AND CONSENT DECREE (Civil Actions No. A91-082 and A91-083) resolving claims of the United States and the State of Alaska against Exxon for damages caused by the Exxon Valdez Oil Spill.

The other document providing legal context to this complaint and approved by this court is the MEMORANDUM OF AGREEMENT AND CONSENT DECREE (Civil Action No. A91-081 CV), between the United States of America and State of Alaska.

Together, these two documents, both approved by the Court, govern the use of monies provided by the civil settlement.

This landmark settlement, providing \$900 million over ten years, was supported by the public and rightfully by the Court primarily because it was to immediately provide the monëy necessary to attend to the extraordinary damage caused by the spill.

As to the damage caused by the spill, presiding U.S. District Court Judge H. Russell Holland stated in approving the settlement:

"The Exxon Valdez oil spill was a complete, utter disaster, which I previously characterized as being off the chart."

Judge Holland's statement was corroborated by several hundred million dollars worth of scientific research into the impacts of the spill, which proved this to be the most damaging oil spill in human history.

The M.O.A. provides that: "The governments shall jointly use all (*emphasis added*) natural resource damage recoveries for the 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 (reimbursement of certain expenses)."

The Trustees, as defined in the Consent Decree and M.O.A., are charged by the Court with the task of executing this court order.

The Court's approval of the civil settlement initiated by far the most extensive attempt in human history to mitigate environmental damage caused by an industrial disaster.

As such, the trust responsibility of the Trustees is unique, precedent setting, and indeed historic.

Certain recitations were made before the Court in attempts to win approval of the civil settlement and criminal plea agreement:

U.S. DEPT. OF JUSTICE:

- "This Oil Spill was a catastrophe and was also an environmental crime."
- "Today the Court has the opportunity to deal with that environmental consequence immediately."
- "The Court is faced today with the difficult and important task of evaluating the acceptability of this plea agreement and the proposed consent decree, which are both unprecedented in nature..."
- "Unlike other economic crimes in which this court is well aware, we can't simply pay interest 20 years down the road to make up for the losses. In environmental cases, it is crucially important that we address the consequences of the conduct immediately."
- "We believe it is in the public's best interest to settle this case in this matter to get the much needed money into Prince William Sound and Gulf of Alaska now as opposed to years from now."

THE COURT: "Okay. Second question, and this gets to some of the muttering that I heard that has made me uneasy about where the restitution money is gone go. Are you satisfied, to a reasonable legal certainty, that this restitution money, if I approve that agreement, will get where it is agreed to go -- to restoration, rehabilitation, and so forth, of Prince William Sound, as opposed to being drained off?..."

ALASKA ATTORNEY GENERAL: "Is the Court talking about the civil settlement?"

THE COURT: "I'm talking about the civil settlement."

ALASKA ATTORNEY GENERAL: "...I personally represent to this Court...I guarantee that the money will be used for restoration of the Prince William Sound, and it isn't going to be drained."

The asserted intentions of the State of Alaska and the United States in asking for the Court's approval of their settlement agreement with Exxon were honorable -- to get money necessary to aid the recovery of the damaged environment.

BACKGROUND ON HABITAT PROTECTION AND ACQUISITION AS THE PRINCIPAL TOOL OF RESTORATION

Of the five categories of restoration activities specified by the Trustee Council in the "Exxon Valdez Oil Spill Restoration Plan" (Nov. 1994) -- General Restoration; Habitat Protection and Acquisition; Monitoring and Research; Restoration Reserve; and Public Information, Science Management, and Administration -- the category that clearly offers the best chance of achieving the goals of the Consent Decree and M.O.A. referred to above is Habitat Protection and Acquisition.

In fact, the broad consensus among citizens of the oil spill region to quickly settle government claims against Exxon out-of-court was a direct result of the urgent need to secure funds specifically for implementing a comprehensive program of coastal habitat acquisition.

It was widely acknowledged that because it would be virtually impossible to actually restore, in the truest sense of the word, the natural resources and services injured by the oil spill, the most important means of aiding the recovery of the damaged environment to pre-spill condition and of replacing lost resources and services would be the acquisition of yet undamaged habitat in the spill region. This was seen to be best accomplished by the acquisition of certain protections for privately owned coastal habitat threatened by certain industrial activities, primarily unsustainable clearcut logging. As is the first rule in medical treatment, the first rule in ecosystem restoration is seen to be, first, protect the patient (ecosystem) from further injury. Also, the acquisition and intact retention of threatened coastal habitat is the clearest, most direct way to offset and redress other values and services lost or injured as a result of the spill.

This was first formally proposed on behalf of citizens of the region through The Coastal Coalition comprehensive settlement proposal issued July 4, 1990. About 2 1/2 years later, the Trustee Council came to consensus supporting this concept and began to take action (Trustee Council Resolution to Proceed with Habitat Protection Program, January 31, 1993). Finally, in the "Exxon Valdez Oil Spill Restoration Plan" issued November, 1994, five and a half years after the grounding of the Exxon Valdez, the Trustee Council at last had an approved plan with which to implement its comprehensive habitat protection and acquisition program.

The following is part of the Plan's discussion of the issue of habitat protection and acquisition:

Habitat protection and acquisition is one of the principal tools of restoration. It is important in ensuring continued recovery in the spill area.

Resource development, such as harvesting timber or building subdivisions, may alter habitat that supports injured resources or services. Protecting and acquiring land may minimize further injury to resources and services already injured by the spill, and allow recovery to continue with the least interference. For example, the recovery of harlequin ducks might be helped by protecting nesting habitat from future changes that may hamper recovery.

Habitat protection and acquisition may include purchase of private land or interests in land such as conservation easements, mineral rights, or timber rights. Different payment options are possible, including multi-year payment schedules to a landowner. Acquired lands would be managed to protect injured resources and services. In addition, cooperative agreements with private owners to provide increased habitat protection are possible.

Most public comments on the restoration alternatives favored using habitat protection and acquisition as a means of restoration. The following injured resources might benefit from the purchase of private land or property rights: pink and sockeye salmon, Dolly Varden and cutthroat trout, Pacific herring, bald eagle, black oystercatcher, common murre, harbor seal, harlequin duck, marbled murrelet, pigeon guillemot, river otter, sea otter, intertidal organisms, and archaeological sites.

Habitat protection and acquisition is a means of restoring not only injured resources, but also the services (human uses) dependent on those resources. Subsistence, recreation, and tourism, benefit from the protection of important fish and wildlife habitats, scenic areas, such as those viewed from important recreation or tourist routes, or important subsistence harvest areas. For example, protecting salmon spawning streams benefits not only the salmon, but also commercial, subsistence, and recreational fishermen.

Habitat protection on existing public land and water may include recommendations for changing agency management practices. The purpose, in appropriate situations, is to increase the level of protection for recovering resources and services above that provided by existing management practices. The Trustee Council may conduct studies within the spill area to determine if changes to public land and water management would help restore injured resources and services. If appropriate, changes will be recommended to state and federal management agencies. Recommendations for special designations, such as parks, critical habitat areas, or recreation areas, may be made to the Alaska legislature or the U.S. Congress.

[from: Exxon Valdez Oil Spill Restoration, November, 1994]

Considering the Trustee's obligation to fulfill the orders of the Court, how is the oil spill region recovering under the Trustees' guardianship? Original injuries from the oil spill continue to manifest in the Sound. Herring populations have crashed, leading to the failure and closure of commercial herring fisheries in Prince William Sound for the last three years. Wild stock salmon populations are in jeopardy. Many marine bird populations are severely compromised. By Trustee Council findings, species not recovering include common murre, marbled murrelet, pigeon guillemot, harlequin duck, harbor seal, sea otter, pink salmon and herring.

New injuries that the Trustees have failed to prevent during their tenure at the helm of restoration include the removal by unsustainable clearcut logging of several hundred thousand acres of coastal forest habitat that was critical to restoration and recovery of the oil spill region, in spite of the fact that many of these forests had been made available to the Trustees for acquisition at fair-market value by landowners.

The Trustees, painfully slow to begin their habitat acquisition program, have been sharply criticized by the public and the U.S. government, which in its 1992 GAO report found serious problems with the Trustee Council expenditure process. One problem among many stood out--that Trustee funds essential to emergency mitigation efforts were drained into other, far less urgent ones. For example, of the \$240 million from the first two Exxon payments in December of 1991 and 1992, \$147 million was drained into reimbursing the state and federal governments and Exxon for their pre-settlement expenses, suggesting that the Trustees considered these parties' needs to be more urgent than those of the damaged ecosystem -- this was indeed telling the injured ecosystem to step to the back of the line. And unfortunately, most of the rest of the first two years' expenditure was either unused or spent on an agency "science" program without a clear link to restoration.

On the positive side, in the last year or so the Trustees have begun to acquire habitat essential to restoration and are near closure on significant, comprehensive deals in the Kodiak Archipelago and the Kenai Peninsula. However, Prince William Sound itself, the area of maximum spill impact, has yet to receive any significant habitat protection and continues to experience new injuries devastating to restoration and recovery.

TRUSTEE COUNCIL - EYAK CORPORATION HABITAT NEGOTIATIONS

Due to frequent Trustee Council deliberations in Executive Session, thus excluding the public, it is difficult to know exactly what has transpired throughout the negotiation process. The following is our understanding of the history.

The Eyak Corporation, since 1988, has been engaged in logging operations on some of its lands adjacent to the Copper River Delta, just east of Cordova.

As part of its comprehensive habitat protection program, the Trustee Council has been negotiating or otherwise discussing with the Eyak Corporation a purchase of certain protections on almost all Eyak lands for over three years now. There has been overwhelming public support for the comprehensive protection of Eyak lands as an important component in the Trustee Council restoration program.

However, despite overwhelming public support and the expressed intentions of the Trustee Council and Eyak, the Council was unable until quite recently to secure any protections on any Eyak lands, and clearcut logging continued on the Copper River Delta.

Then in August, 1993, Eyak Corporation began to relocate its logging operation for the first time into Prince William Sound, at Orca Narrows/Simpson Bay about five miles north of Cordova.

In the midst of vehement public protest against Eyak's plan, an emergency meeting was called in Cordova between Trustee representatives and Eyak. At this time, Trustees strongly reaffirmed their desire to protect Orca Narrows/Simpson Bay so as to fulfill their restoration obligations.

In order to keep negotiations alive and to assure protection for the imminently threatened Orca Narrows area, Trustees helped to expedite the emergency conveyance to Eyak of other lands on the Copper River Delta so that Eyak could continue timber harvesting operations to satisfy their financial obligations.

Thus, the Trustees allowed for significant sacrifices to be made in the Copper River Delta--important to Cordova subsistence, recreation, and tourism--in order to protect the Orca Narrows/Simpson Bay area and other Eyak lands in Prince William Sound.

A Trustee Council meeting soon followed in Anchorage on August 6, 1993, at which time Mike Barton, USFS Trustee, proposed on behalf of all Clinton Administration Federal Trustees an offer that would have secured commercial timber rights in perpetuity on Orca Narrows and all other Eyak lands west and

north of Cordova, and additionally would have secured the "Core lands" immediately adjacent to Cordova either in fee or in a highly restrictive easement --the whole deal capped at \$50 million. For the record, the transcript of Mr. Barton's proposal is as follows:

MR. BARTON: Mr. Chairman, I would like to amend the motion in this manner, that the Trustee Council approve -- a counter proposal, if you will, I guess is the right term -- that for fifty million dollars or the appraised fair market, whichever is less, Eyak will convey to the government (a) a restrictive perpetual conservation easement to Power Creek and Eyak Lake lands (*the "Core Lands"*) with the same restrictions contained in the Eyak proposal dated August 5 and that we pursue fee simple through a shareholder vote, that is at minimum, get a restrictive -- a restrictive perpetual easement in their proposal; (b)... a less restrictive perpetual easement to all remaining Eyak lands which at a minimum precludes commercial timber harvesting and grant a right of reasonable public access for non-commercial purposes..." (*italics and emphasis added*)

MR. PENNOYER: All those in favor of the amendment, say aye.

RESPONSE FROM COUNCIL: Aye.

MR. PENNOYER: Opposed.

MR. SANDOR AND MR. COLE (State Trustees): No.

Because two of the State Trustees opposed, the Barton proposal was not adopted. Eyak, however, intended to accept the offer.

About two weeks later, new Federal Trustee George Frampton said:

"...it's also important to note that the Secretary (*of the Interior, Bruce Babbitt*) made some statements yesterday... that he recognized Prince William Sound was the most impacted area and that any program of habitat acquisition ought to look with a very high priority at areas in eastern and western Prince William Sound, and islands in Prince William Sound." (*italics added*)

Shortly thereafter, the Eyak Corporation voluntarily ceased its logging operations, and on September 21, 1993, made a good faith offer to the Trustee Council, stating, among other things, the following:

"This offer extends to a very large tract of lands, from 39,000 to 61,000 acres depending on the status of Eyak's selections in the area. The Board remains willing to convey only commercial timber rights in this area (*apart from the "Core" lands which were offered in fee or with restrictive conservation easements*). Eyak believes that this proposal extends a very high level protection and achieves the restoration goals of the Council in a very extensive area, unavailable in any other way to the Council. (*italics added*)

In analyzing the significance of a commercial timber sale, there has been discussion with the Council concerning whether a Wal-Mart store, or a nuclear waste dump, might be constructed in one of the bays in Prince William Sound. We believe the real environmental threat in the Sound is primarily from commercial timber harvesting. The purchase of commercial timber rights is the most effective way (and indeed, the only way) of serving the restoration goals of the Council on such a large tract of lands."

This Eyak offer was entirely consistent with the Barton/Federal Trustees offer of August, 1993. Clearly, the Eyak Corporation was willing to get out of the timber business for the sake of restoration, but Eyak's offer was rejected by the Trustees. Negotiations continued throughout the winter. By spring, Eyak still could not get a comprehensive deal with the Trustees to protect their coastal habitat and decided they would have to revive their timber harvest plans.

In order to secure protection from the imminent threat of logging, the Council, on May, 1994, finally made their very first (and to this date, only) restoration acquisition in Prince William Sound by signing an agreement to purchase a commercial timber-rights-only conservation easement in perpetuity on 2052 acres at Orca Narrows/Simpson Bay. This was an extremely important acquisition in an area which is the doorway for all travel between Cordova and Prince William Sound. The acquisition, among other things, initiated protection of east Simpson Bay, Cordova's favorite Prince William Sound recreation site, and one of the most important nursery sites for eastern Prince William Sound sea otter populations.

Also secured in the agreement was a 10-month Moratorium on all Eyak logging operations until March 1, 1995. The public was genuinely appreciative and greatly relieved, since the purpose of the Moratorium was specifically to provide enough time for the Council and Eyak to come to closure on a comprehensive deal to protect all remaining Eyak lands. This was not accomplished.

Though the deal to protect in perpetuity the 2052 acres at Orca Narrows/Simpson Bay closed in January with the payment of \$3.45 million to Eyak, by February, as the Moratorium expiration date approached, negotiations for comprehensive protection were going badly and the Eyak Corporation and its timber subsidiary, Sherstone, Inc., reasserted their intention to commence logging an area of 14,800 acres near Orca Narrows, known to the Council as "Orca Revised," currently under timber contract to Rayonier, Inc.

The Trustee Council's current acknowledgment of the imminent threat to these lands and the importance of protecting them as part of their legally mandated restoration responsibilities was again stated clearly in the findings of their February 22, 1995 resolution, as follows:

- The Orca Revised lands are threatened with imminent clearcut logging. Although protected under a moratorium on commercial timber harvesting negotiated with Eyak in 1994, the moratorium will expire March 1, 1995. Pre-sale preparation activities by Eyak have begun and Eyak has represented that permits have been secured or are pending for the logging of portions of the Orca Revised lands and that a majority of the commercial timber in the Orca Revised lands is scheduled for harvest by clearcut logging over the next few years.
- The Trustee Council remains desirous of purchasing interests in the Orca Revised lands to alleviate the immediate threat to the injured resources and services that may result from logging activities. Purchasing interests on the Orca Revised lands is important to maintaining water quality and riparian habitats for anadromous fish and maintaining nesting and foraging opportunities for marbled murrelets and bald eagles. The area has a high value for recreation and tourism and is highly visible to the nearby community of Cordova.
- There is widespread public support for the acquisition of interests in the Other Lands and the Orca Revised lands.
- The purchase of the interests in the Other Lands and the Orca Revised lands is an appropriate means to restore a portion of the injured resources and the lost or reduced services in the oil spill area. Acquisition of any interests in these lands is consistent with the Final Restoration Plan. (*emphasis added*)

Further, the Trustees in their November 1994 Restoration Plan state that:

"any restoration strategy that ...prevents further injuries will assist recovery.."

To the Coastal Coalition, all this language seems remarkably similar to Eyak's September 21, 1993, offer to the Trustees. Both the Trustees and Eyak seem to recognize that logging activities represent the most serious threat in perpetuity to these lands critically needed for restoration purposes, and indeed that logging operations are the only imminent threat to these lands.

Still, in the final week of the Moratorium, a deal did not come together because the Trustees, again in a reversal of their earlier position, now asserted they needed to acquire at Orca Narrows/Simpson Bay certain development rights beyond just timber rights in perpetuity. Attempting to accommodate this concern, Eyak first proposed offering to restrict all development on the 14,800 acre "Orca" Revised" parcel to no more than 652 acres (2 acres for each of the 326 shareholders) the first 10 years after closure, and then an additional 652 acres from 11 to 35 years after closure. After 35 years, Eyak would retain industrial development rights on the 9,000 or so acres of the parcel potentially able to be developed. The Trustees, however, still asserted they needed to acquire some additional development restrictions in perpetuity. Subsequently, Eyak further proposed to limit in perpetuity all industrial development to no more that 25% of

the 9,000 developable acres, an amount equal to only 15% of the total 14,800 acre parcel.

Thus, at the Orca Revised lands, 100% of commercial timber rights and 85% of other industrial development rights were offered for sale in perpetuity. Eyak, in taking the notion of perpetuity seriously, felt it very important to retain at least some economic development rights for future generations, though it clearly wished to retire permanently from the commercial logging business.

Eyak's offer seems to us to be a fine and legitimate offer for restoration. The Trustees, again in contradiction to their assertions, stated that this offer was inconsistent with their restoration objectives, and despite overwhelming public support for a deal, including letters from former President Jimmy Carter and actor/director Robert Redford urging the protection of the forests in this area, the negotiations fell apart.

In a final attempt to resolve their differences three days before the Moratorium expired March 1, both parties entered into non-binding mediation.

On the day the Moratorium expired, following two days of mediation, Trustees announced they had entered into a most astonishing "agreement" with Eyak. Backing far, far away from their stated desire to substantially protect the Orca Revised area, the Trustees, in this agreement, would acquire no other industrial development rights whatsoever and in addition, would acquire only about 50% of the available timber rights in perpetuity!

In other words, the Trustees somehow completely failed to protect most of what they and Eyak actually agreed upon. Even more astonishing, the Trustees, in attempting to mitigate certain aspects of the logging which would be visible from Cordova, agreed to relinquish and trade to Eyak over half of the timber rights that the Trustees had just acquired "in perpetuity" in the 2052 acre parcel! This is amazing -- the Trustee's only restoration acquisition in Prince William Sound to date was protected, not for perpetuity as promised to the public, but for only two months!

Evidently the Trustees, in holding out for a "perfect" deal, have closed on a disastrous deal completely inconsistent with their own asserted objectives and legal responsibilities. In so doing, the Trustees have abandoned extraordinarily valuable resources and services in the Orca Revised area, including Rude River/Nelson Bay, arguably Eyak's wildest and most pristine property, now scheduled for logging.

We wish to underscore one more time the fallacy of Trustees' logic in this agreement: in stubbornly negotiating to secure a better deal than 100% of the commercial timber rights and 85% of other industrial development rights offered

in perpetuity by Eyak, the Trustees wound up securing no industrial development rights at all, and only half of the available timber rights. And, in a shameful breach of the public trust, the Trustees reneged on half of the only protection they had to date acquired in Prince William Sound in the nearly 6 years since the oil spill.

They have, to borrow an apt and venerable expression, "thrown the baby out with the bath water." Both the public and Eyak are astonished at the Trustee's inability to meet their own clearly-stated restoration objectives. With their first deal in Prince William Sound, the Trustees claimed they wished to set a good precedent for ongoing negotiations with other landowners, but a poorer precedent is hard to imagine.

We applaud the Trustees' desire to protect Prince William Sound from some future threat, but what we cannot understand is that they refuse to protect Prince William Sound from its current and worst imaginable threat -- clearcut logging. Instead of preventing new injury, they seem to be facilitating it.

The Trustees, after allowing significant sacrifices to be made on the Copper River Delta solely to protect the Orca Revised land, now are unbelievably asking citizens to accept the sacrifice of the Orca Revised lands. This is a complete abandonment of Trustee restoration commitments. It is ludicrous for the Trustees, in trying to prevent all imagined and imaginary future problems, to completely fail to prevent obvious and greater immediate problems. The public will not condemn the Trustees for failing to acquire, in this case, those development rights that were not for sale from Eyak. But the public most certainly will harshly judge the Trustees' failure to acquire what was for sale-- most important of all-- the immediate protection of the coastal forest. Apparently the Trustees' fear of looking bad in the future consigns the forests to death today.

In summary, the Trustees have failed to prevent ongoing injury to their patient-- the ecosystem--by worrying obsessively about possible future injury. This is like an emergency-room physician who fails to stop the bleeding of her patient's severed artery because she is more concerned with preventing the patient from catching pneumonia 35 years in the future. Both are admirable objectives, but at the very least, the bleeding must be stopped now.

We do not expect the Trustees to foresee and prevent every future threat to Prince William Sound. We find it inexcusable that the Trustees would fail to protect Prince William Sound from the most obvious current threat to its recovery.

The Trustees, who have been given the money and sacred responsibility to protect and restore Prince William Sound, can solve the Eyak problem immediately. Even if, because of the appraisal process, they have to pay 90% or more of the value of all commercial development rights to secure only timber rights in perpetuity, so be it. The people of the region will hardly accuse the Trustees of making a bad bargain.

Unfortunately, the facts are clear -- since the establishment of the Trustee Council in May, 1989, several hundred million dollars have been drained to non-emergency ends while several hundred thousand acres of further injury to the oil spill region has occurred.

In approving the agreement and consent decree referred to above, Judge Holland made the following warning:

"I want you all to know that I, you know, am not able to monitor this kind of thing, but I expect you all to do the monitoring; and quite frankly, I expect to see people back here if the money that flows from these three cases is not going where I expect it to go, based upon the terms of these agreements."

It is our position that the money collected by the Trustee Council as a result of these cases is not being used in the maximum interest of environmental recovery. As such, we believe the Trustee Council has failed to fulfill its obligations to the Court, the public, and the injured resources.

PROBLEMS AND PROPOSED SOLUTIONS

1. PROBLEM: The Trustee Council, by failing to provide any significant protection to coastal habitat in Prince William Sound in the almost six years since the grounding of the Exxon Valdez, has allowed further significant, irreparable injury to occur to an ecosystem already severely stressed by the oil spill, and has relinquished some of the most valuable opportunities to replace lost or injured resource services such as the appreciation of the aesthetic and intrinsic values of undisturbed areas" (Exxon Valdez Oil Spill Restoration Plan, Nov. 1994). While the Trustees are now doing a good job in acquiring habitat in areas of the oil spill region not immediately threatened, they have clearly failed to offer protection in most areas that are immediately threatened or continue to be injured. The most important responsibility of the Trustees is to first minimize further injury to the oil spill-damaged ecosystem. In this responsibility they have failed tragically .

SOLUTION: We ask that the Trustee Council appoint a Master to review the Habitat Acquisition and Protection Program and to submit within one month a plan to expand and expedite the acquisition and protection of imminently threatened habitat in the oil spill region, particularly Prince William Sound.

In the review, the Master should consult with Trustee Council habitat staff, resource owners in the region, and the public to identify existing problems and to recommend immediate solutions, both administrative and financial.

2. PROBLEM: The Trustee Council's refusal to acquire the highest level of protection offered by Eyak Corporation at Orca Narrows/Simpson Bay has exposed these lands to industrial activities highly detrimental to the restoration and recovery of Prince William Sound. While the Eyak proposal fell somewhat short of the full protections desired by the Trustees, their current rejection of the offer essentially eliminates one of the Trustee's most important restoration opportunities, and is completely inconsistent with the Trustee's oft-stated desire to protect the area.

We find unacceptable the Trustees' excuse that they will protect the area only if the price is a good bargain. The Trustees' job is not to be "bargain shoppers" at the expense of further Prince William Sound habitat destruction.

SOLUTION: We ask the Trustee Council to accept the Eyak Corporation's counter proposal (December 12, 1994) to the Council's Dec. 2, 1994 resolution - referred to as the "Orca Revised Tract Development Rights Offer Concept Change -- with an additional provision that limits industrial development on the Orca narrows Revised parcel in perpetuity to no more than 25% of the total

development acreage. Rather than allow additional injury to coastal habitat in the region, we ask in this specific case that the Trustees, at a minimum, acquire the highest level of protection that Eyak is willing to sell. This is entirely consistent with the Trustees' Restoration Plan which, again, states: "Any restoration strategy that aids recovery of injured resources, or prevents further injuries (*emphasis added*), will assist recovery..." and is consistent with the Trustee Council Feb. 11, 1995 resolution which, again, states: "Acquisition of any interests in these lands is consistent with the Final Restoration Plan."

URGENT

Because timber harvesting operations at Orca Narrows/Simpson Bay are set to begin any day, we respectfully ask that the Trustees on an emergency basis consider this proposal. We wish to strongly state our desire that this proposal in no way prejudice any other Trustee Council acquisition negotiation. We support these negotiations and applaud the Trustees in their efforts at restoration.

3. PROBLEM: The Restoration Reserve, into which the Trustees have been depositing \$12 million each year from annual Exxon payments, and which would accumulate by the year 2001 to \$108 million, is an illegal encumbrance of funds that were intended to be made available for Restoration as they are paid by Exxon.

It was clearly the intent of the Court's approval of the consent Decree and MOA that these monies were needed for environmental recovery on an expedited basis and should not be arbitrarily withdrawn from their present availability, as long as they are needed for environmental recovery. The Trustee Council must have immediate access to sufficient funds to fulfill their primary restoration obligation of habitat acquisition and protection. Any funds expected from each annual payment by Exxon can remain in an interest-bearing account.

The Court, in its wisdom, has already provided for the availability in the year 2002 of a \$100 million reopener in order to carry on restoration activities beyond the last scheduled payment from Exxon. The Restoration Reserve is clearly duplicative, and is an inappropriate drain on settlement dollars.

SOLUTION: We ask the Trustee Council to abolish the Restoration Reserve account, and to make all monies in the account to date - (\$24 million) - and all proposed future deposits into the account - (\$88 million) - to be made available on an as-needed basis for habitat protection.

4. PROBLEM: The Trustee Council's Science and Monitoring Program has, since its inception, lacked coherence, direction, and a clearly-defined link to Restoration. About \$200 million has been spent to date on science, and the

Restoration Plan envisions an equivalent expenditure on science through the remainder of the settlement. A science program of this magnitude deserves thorough, independent scrutiny and review. Science for science's sake does nothing to actually assist the recovery of the injured ecosystem. While science and monitoring may be important, far too much emphasis has been placed on them in the name of restoration. As Al Gore stated in his book Earth in the Balance, "Research in lieu of action is unconscionable.... We need to act now on the basis of what we already know."

SOLUTION: We ask the Trustee Council to commission the National Research Council to conduct a thorough independent review of the Trustee Science and Monitoring Program from 1989 to date and report within 6 months its findings and recommendations as to:

- a. How best to organize and conduct other NRDA programs in the future.
- b. What size, scope organization, facilities and administrative management of the existing Trustee Science and Monitoring Program would best support the mandate of the Consent Decree and M.O.A. to restore, replace, rehabilitate and acquire the equivalent of injured resources and services.

5. PROBLEM: The Trustees and their council designates lack current, intimate familiarity with the oil spill region and this unfamiliarity seriously handicaps their ability to make appropriate decisions concerning restoration of the area.

SOLUTION: We ask the Trustees and their Council designates to, within 5 months, conduct thorough site visits in all areas of the oil spill region significant to their Restoration Objectives, and to avail themselves of guides with local knowledge. Trustees should also visit the many coastal areas that, since the establishment of the Trustee Council in May of 1989, have been destroyed and essentially lost as restoration opportunities.

SUMMARY: In light of the foregoing problems, we believe the Trustee Council is in violation of the consent Decree and M.O.A. referred to above.

POST SCRIPT

The concept of Natural Resource Damages as a substantial compensable loss in the case of oil spills and other industrial disasters is unique to the legal system of the United States.

The level of environmental damage mitigation proposed by the Consent Decree and MOA approved by this Court is entirely unprecedented in history.

As such, the way in which the Exxon Valdez Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters.

The Coastal Coalition is an informal coalition of concerned citizens that formed in 1989 to assist in expediting restoration of the oil spill region. The Coalition helped create a regional consensus for the notion of settling the natural resource damage case out-of-court and formally proposed such to the State of Alaska, the United States, and Exxon on July 4, 1990. Since the settlement, the Coalition has been concerned that all natural resource damage recoveries be expended in the maximum interest of environmental recovery, and in a timely manner.

Coastal Coalition members Rick Steiner and David Grimes are residents of Prince William Sound, and this paper is written out of love for their home.



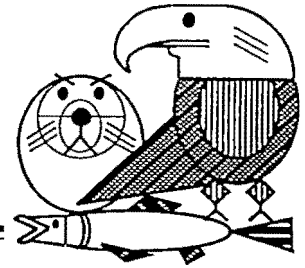
the view from Hawkins Island onto Orca Inlet, Orca Narrows and Nelson Bay near Cordova, Prince William Sound

Exxon Valdez Oil Spill Trustee Council

Restoration Office

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March 22, 1995

Mr. Rick Steiner
Mr. David Grimes
The Coastal Coalition
PO Box 2424
Cordova, Alaska 99574

Dear Mr. Steiner and Mr. Grimes:

This letter responds to your appeal dated March 14, 1995, in regard to efforts by the *Exxon Valdez* Trustee Council to secure habitat protection for restoration purposes on lands owned by the Eyak Corporation in eastern Prince William Sound.

As you know, the Trustee Council-Eyak/Sherstone negotiations have been lengthy. The Trustee Council shares your interest in seeing the lands of eastern PWS safeguarded. This letter is intended to help clarify the record regarding the Council's efforts to secure habitat protection in the spill area to date, and specifically those lands owned by Eyak Corporation.

Habitat Protection/Acquisition as a Part of the Restoration Effort

The Trustee Council is strongly committed to habitat protection. The *Restoration Plan* specifically identifies Habitat Protection and Acquisition as one of the principal tools of restoration. The other elements of the restoration effort include Monitoring and Research; General Restoration; Public Information/Science Management/Administration; and allocations to the Restoration Reserve for long-term restoration purposes. Together they form the basis of the Trustee Council's comprehensive and balanced approach to restoration. The *Restoration Plan* was the product of an extensive public process that demonstrated the need and support for each of these elements.

As indicated by the summary of past and estimated future expenditures included in the *Restoration Plan* (Table 1, page 6), habitat protection efforts will by far account for the largest portion of expenditures from the settlement, although not to the exclusion of other important elements of the restoration program as your appeal urges.

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation
United States: National Oceanic and Atmospheric Administration, Departments of Agriculture and Interior

Habitat Evaluation Process

Your appeal also suggests that the Trustee Council has been slow to address habitat protection needs. A review of the record shows that this is not the case. To ensure responsible allocation of trust funds consistent with the terms of the settlement, habitat protection efforts have proceeded with a systematic analysis of opportunities for habitat protection throughout the spill area. At the same time, the Council's efforts have, to the extent possible, been responsive to the need to protect habitat threatened with imminent injury.

Almost immediately following the settlement in late 1991, the Trustee Council undertook an "imminent threat" study process to identify those lands in the oil spill area that were imminently threatened with significant habitat degradation.¹ As a result, the Trustee Council approved funds to purchase inholdings in Kachemak Bay State Park² and lands surrounding Seal Bay³ on Afognak Island (lands subsequently designated a State Park by the Alaska Legislature) and initiated negotiations with Eyak.⁴ The Trustee Council continued and completed its comprehensive evaluation of large habitat parcels (> 1,000 acres) potentially available for protection and/or acquisition with the publication of the *Comprehensive Habitat Protection Process; Large Parcel Evaluation and Ranking Volumes I and II* (November 30, 1993). The evaluation process identified lands with High, Moderate and Low restoration values with specific regard to the injured resources and services identified in the *Restoration Plan*. On the basis of the comprehensive evaluation — which included more than 850,000 acres of land in the spill area — the Trustee Council moved forward with multiple, geographically balanced negotiations,⁵ focused on those lands identified as having high restoration value. A small parcel (< 1,000 acres) process was also undertaken and the results have recently been published.⁶ Preliminary negotiations with more than 20 small parcel owners are now underway.

In addition to the Kachemak and Seal Bay purchases, important accomplishments include action by the Trustee Council to pursue a number of other large parcel acquisitions throughout the spill area. These include offers to purchase lands involving Afognak Joint Venture (48,728 acres); Akhiok Kaguyak (119,885 acres); Chenega (74,554 acres); Kodiak Island Borough (26,665); Koniag (115,739); Old Harbor (32,100 acres); and Tatitlek

¹ *Opportunities for Habitat Protection/Acquisition*, prepared by the Exxon Valdez Oil Spill Restoration Team, Habitat Protection Work Group (February 16, 1993).

² Trustee Council Resolution dated December 11, 1992.

³ Trustee Council Resolution dated June 6, 1993.

⁴ The Trustee Council also authorized negotiations with English Bay Corporation regarding lands in the vicinity of Port Chatham. These negotiations were terminated when English Bay indicated it was not a willing seller of its lands.

⁵ Trustee Council action as part of the FY 94 Work Plan approved January 31, 1994. Attachment B.

⁶ *Comprehensive Habitat Protection Process: Small Parcel Evaluation and Ranking Volume III*, prepared by the Exxon Valdez Oil Spill Restoration Office, Habitat Work Group (February 13, 1995).

(56,785 acres) as well as Eyak (28,500 acres). Appraisals and negotiations with landowners continue throughout the spill area and are progressing steadily, with some very close to completion.

Trustee Council - Eyak/Sherstone Negotiations

Efforts to negotiate habitat protection on lands owned by Eyak/Sherstone are part of a much larger Trustee Council effort. Nevertheless, the Eyak/Sherstone negotiations have been a top priority. Several key points are essential to understanding the Trustee Council's efforts to secure habitat protection on the Eyak lands:

- **It is incumbent upon the Trustees to seek protection of those lands with the highest value to the recovery and restoration of injured resources and services.** As documented by the comprehensive Large Parcel evaluation process, the so-called "Other Lands" (Sheep Bay/Port Gravina/Windy Bay) are the Eyak lands with the highest restoration values and are of particular interest to the Trustee Council. The Trustee Council also recognizes that there are certain important restoration values on the "Core Lands" and "Orca Narrows-Orca Revised" lands along Nelson Bay, especially for recreation/tourism and subsistence services, although these lands were generally identified as moderate or low value parcels.
- **The Trustee Council has not been successful at reaching agreement with Eyak concerning large-scale protection of its other lands because of fundamentally conflicting land use objectives.** Although willing to sell the "Core Lands" in fee, Eyak has chosen to retain wide-ranging and essentially unspecified development rights on the lands along Orca Narrows/Nelson Bay as well as the Other Lands. Development other than commercial timber harvest can jeopardize the very resources and services the Trustee Council is seeking to protect.
- **The Trustee Council can only work with willing sellers to protect habitat.** As owners of the land, the Eyak Corporation has the right to retain development rights on the lands it offers for sale; if Eyak chooses to pursue alternative uses of its lands, it is free to do so.
- **The purchase of commercial timber rights-only on significant portions of Eyak's lands is not sufficient to safeguard critical restoration values.** On a limited scale, in a specific instance, or as part of a larger comprehensive protection effort, commercial timber rights-only could be adequate for certain areas. However, in most instances, commercial timber rights-only purchases have been deemed insufficient to safeguard many of the critical restoration values the Trustee Council is seeking to protect.

- The Trustee Council's large parcel program is designed to secure restoration benefits from the protection of large tracts of lands with "greater ecological integrity that contain more linked habitats and services."⁷ Because Eyak has chosen to retain certain portions and/or development rights on its lands the Trustee Council and Eyak have been unable to reach mutually acceptable terms that will assure restoration of injured resources and services on the high value lands of particular interest to the Trustee Council.
- The Trustee Council lacks funds to purchase all lands from all willing sellers. Limited funds require that the Trustee Council focus its acquisition efforts on those lands with the greatest value to restoration. In the case of Eyak, the Trustee Council has attempted to reach agreement on the purchase of lands that will safeguard high restoration values.
- The Trustee Council continues to negotiate with Eyak in good faith. The Trustee Council remains hopeful that comprehensive habitat protection involving Eyak's lands — especially the high value Other Lands — can be successfully negotiated.

Response to Perceived Problems and Proposed Solutions

With specific regard to the "Problems and Proposed Solutions" described in your appeal beginning in page 15:

1. You have recommended the Trustee Council appoint a Master to review the Habitat Acquisition and Protection Program and develop a plan to expand and expedite the acquisition and protection of imminently threatened habitat in the oil spill region.

We do not believe such action is necessary or appropriate. The Trustee Council has completed a three-year process to develop the information, policies and public and scientific review that form the foundation for the existing habitat protection program (see above). The Trustee Council has adopted a clear policy for its habitat program of dealing only with willing sellers. All landowners were contacted early in the process, and periodically, contact is renewed to ensure that all willing sellers continue to be identified. The Trustee Council has taken action that has resulted in the protection of approximately 65,000 acres of habitat to date. Also, the Trustee Council has offers pending that would protect another several hundred thousand acres. These efforts are all in various stages of implementation and represent a comprehensive approach to habitat

⁷ Working Document, *Comprehensive Habitat Protection Process; Large Parcel Evaluation and Ranking Volume I*, prepared by the Exxon Valdez Oil Spill Restoration Team, Habitat Protection Work Group (November 30, 1993).

protection that is scientifically sound, geographically diverse, and reflects the priorities of the Trustee Council.

2. You have asked the Trustee Council to accept the Eyak Corporation's December 12 "Concept Change" with additional provisions to limit development rights.

As noted earlier, the Trustee Council attempted to reach agreement with Eyak on the issue of development rights, but was not able to do so within the time constraints the Council was given by Eyak. The Council offered numerous alternatives to deal with the development issue, including one recommended by the Public Advisory Group last summer and expressed its willingness to look at other alternatives. None was acceptable to Eyak, nor did Eyak propose other alternatives. For that reason, the Council offered to purchase a moratorium on commercial timber harvest in the form of a limited conservation easement to provide time to continue further negotiations. That offer also was rejected by Eyak. At this time the Council is focusing on protection of the area within the "viewshed" of Orca Narrows (along Nelson Bay) because of its importance to the community of Cordova and its high value for the restoration of recreation and tourism. The Council remains interested in further Eyak acquisitions. Once again it should be emphasized that the areas of greatest restoration value are those "high" ranked parcels located in Sheep Bay, Port Gravina and Windy Bay.

3. You have asked the Trustee Council to abolish the Restoration Reserve because it is illegal.

We believe establishment of the Restoration Reserve is a prudent action because it sets aside funds to be invested in a manner that will generate higher interest income, yet still provide a great deal of liquidity and flexibility for future restoration needs. The Trustee Council has indicated an intent to add up to \$12 million per year to the Restoration Reserve. The level of funding allocated to the Reserve in any one year will be made only after consideration of the other needs for restoration at that time.

4. You have asked the Trustee Council to commission the National Research Council to conduct an independent review of the Trustees' Science and Monitoring Program, including the NRDA process, which you believe to lack coherence, direction, and a clearly-defined link to Restoration.

This recommendation actually deals with two issues. The first is the Council's annual Research and Monitoring Program; the second is the earlier NRDA process. If you read the *Restoration Plan* adopted by the Council last November, you will find the Council has adopted goals, objectives and strategies for all injured resources and services. The

Restoration Plan was subject to an extensive public review process and an Environmental Impact Statement. Any project approved by the Council must be clearly linked to the restoration goals, objectives and strategies described in the plan. Restoration proposals submitted to the Trustee Council are thoroughly scrutinized by the Council's Chief Scientist and some of the top scientists in the country. Council staff is releasing for public review this week a projection of research and monitoring needs for the next three years.

The second issue is a review of the NRDA process from 1989 through the settlement. Various Council members have discussed during the past year the possibility of commissioning a historical review of the *Exxon Valdez* Oil Spill NRDA process and development of the Trustee Council. Such a review would be conducted both from the perspective of "process" and "science" in order to document the lessons learned in the event of another oil spill. This is especially appropriate given the length of time since the spill and the potential for losing much of our historical knowledge. A question has been raised about whether this is a legally permissible use of settlement funds. An options paper for Council consideration is being developed.

5. You have asked that the Trustee Council visit sites in the oil spill region significant to their Restoration Objectives.

This is a valid recommendation and one that has been taken to heart by past and current Council members. Last summer, Trustees visited sites within the Kodiak region, the Kenai Peninsula and Prince William Sound. The two new state Trustees on the Council are very familiar with the spill area, and I am sure will be availing themselves of future opportunities to visit sites throughout the spill area.

Finally, in your concluding postscript, you note that the "way in which the *Exxon Valdez* Oil Spill natural resource damage settlement is used for restoration is enormously important in assessing society's genuine commitment to redress environmental damage caused by industrial disasters."

I believe all the Trustees would agree with this statement. The Trustees all take their trust responsibilities very seriously.

Sincerely,



Molly McCammon
Executive Director

Additional Notes

Although the following notes are not intended as an exhaustive review of the appeal dated March 14, 1995, these additional comments are provided :

- The argument that several hundred million dollars “worth of scientific research into the impacts of the spill... proved this to be the most damaging oil spill in human history” (on p. 3) is inconsistent with the later criticism (on p. 7) that early Exxon payments were “... drained into reimbursing the state and federal governments ... for their pre-settlement expenses...” It was these very pre-settlement expenses — primarily for damage assessment and research studies — that provided the basis for asserting the damages that led to the settlement. Moreover, the Consent Decree specifically recognized reimbursements for the damage assessment and previously approved restoration work as a priority use of the settlement funds.
- Criticisms about the progress of the habitat protection program (on p. 5) are unfounded. The Trustee Council as we know it now did not come into existence until after December 1991. The Trustee Council took action to protect habitat (e.g., Kachemak Bay) within the first year of the Council’s existence.
- The GAO “report” was replete with baseless conclusions. As noted in the report itself, the GAO specifically did *not* obtain written agency comments on the draft report before it was finalized as it was only a briefing report, not an audit report.
- The suggestion that a proposal by Mike Barton would be accepted by Eyak is not correct. First, the so-called “Barton proposal” (on p. 9) was not specific enough to constitute an offer (i.e., no definition of value; no definition of a restrictive easement; no definition of reasonable public access) that could be accepted, nor is there substantial evidence that Eyak “... intended to accept the offer.” Indeed, the so-called “Barton proposal” was nothing more than a concept with numerous undefined elements yet to be worked out.
- The statement that the Trustee Council reversed its position (on p. 11) is not accurate.
- The appeal fails to acknowledge that Eyak withdrew its approval for appraisal work to be done during 1994 and that this delay contributed significantly to the failure to reach agreement with Eyak within the time frame imposed by Eyak.

- The statement that logging operations (on p. 11) are the only imminent threat to the Eyak lands is not accurate. At various times, discussion with Eyak concerned the landowner's interest in various types of residential development, lodge development, homesite disposals and other forms of commercial or industrial development that could be detrimental to restoration values in key, high-value areas.
- While the possibility of a 25% limitation on development (p. 11-12) was raised by Eyak and discussed briefly by the Council, no formal proposal regarding restrictions in this regard has been presented to the Trustee Council.

