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# **Record of Decision**

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for the  
*Exxon Valdez* Oil Spill  
Restoration Plan

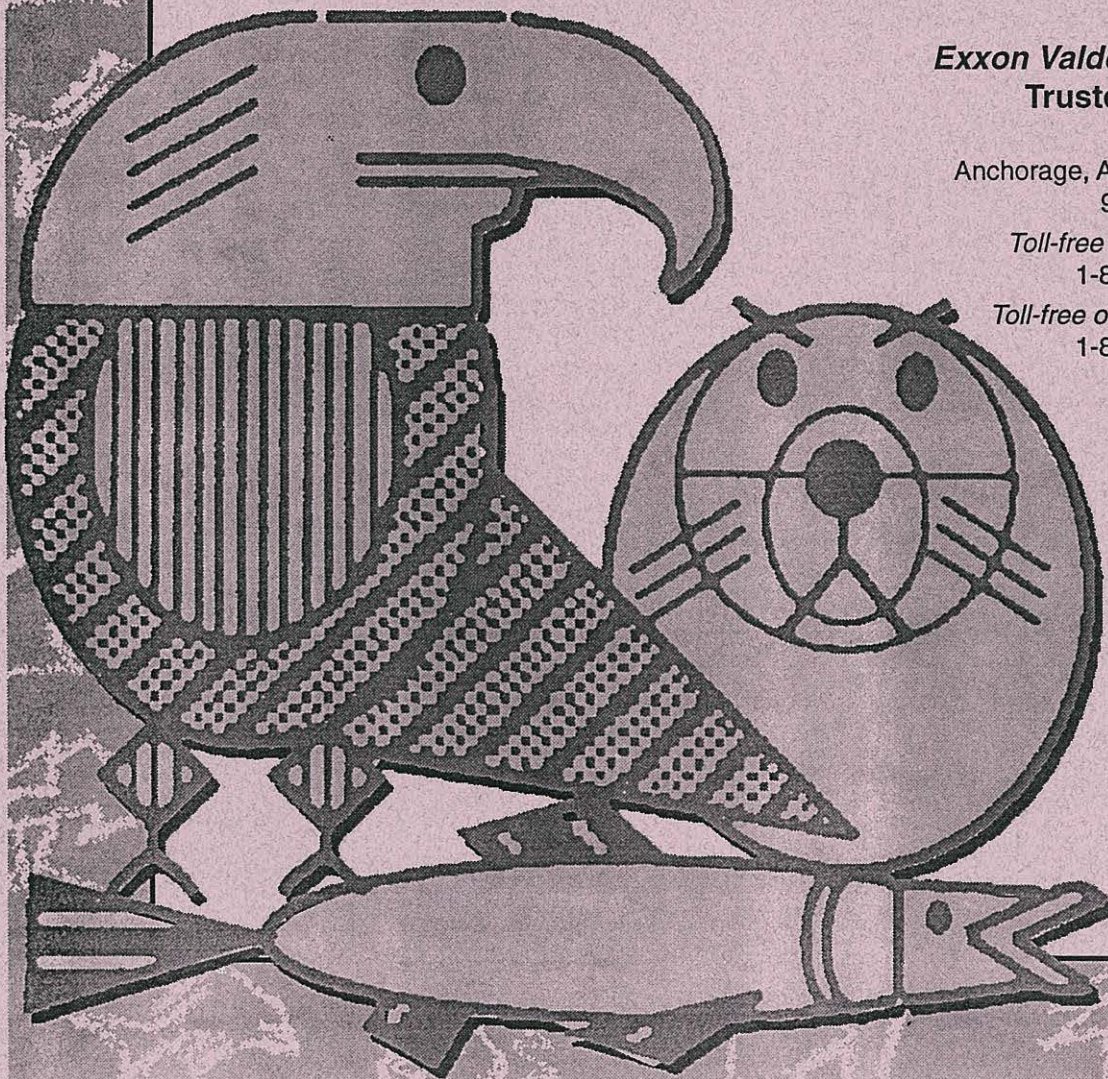
Prepared by:

**Exxon Valdez Oil Spill  
Trustee Council**

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**October  
1994**

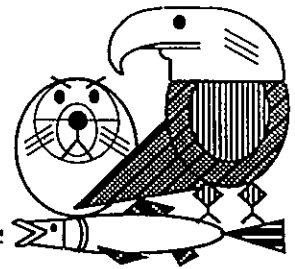


# Exxon Valdez Oil Spill Trustee Council

Restoration Office

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October 1994

Dear Interested Citizen:

This Record of Decision for the *Exxon Valdez* Oil Spill Restoration Plan represents the culmination of the National Environmental Policy Act (NEPA) process. The public involvement and program development, begun soon after the *T/V Exxon Valdez* ran aground in 1989, have provided the Federal Trustees with the information necessary for them to reach their decision. This decision provides the basis for an effective plan to use the civil settlement funds obtained from the Exxon Corporation "for the purposes of restoring, replacing, enhancing, 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." The participation of the public and the Public Advisory Group have been essential to the development of the Restoration Plan.

The Trustee Council approved and released a Draft Restoration Plan for public comment in November 1993. Since that time, the Draft Environmental Impact Statement was released on June 17, 1994 and the Final Environmental Impact Statement was released on September 30, 1994.

The Federal and State Trustees believe it is necessary to maintain flexibility in the Restoration Program to deal with the uncertainties embodied in future restoration needs. A comprehensive approach to restoration that balances the needs of the injured resources is required for effective restoration. The decision of the Federal Trustees is comprehensive in dealing with *all injured resources and services* and *all geographic regions* of the oil spill area. It is balanced in that it considers all restoration categories for the restoration needs of all resources and services.

The public's continued involvement in the restoration process is critical to the ultimate successful restoration of the resources and services injured by the *Exxon Valdez* oil spill. We appreciate your interest.

Sincerely yours,

*Exxon Valdez* Oil Spill Trustee Council

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EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

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

# **Record of Decision**

## ***Exxon Valdez* Oil Spill Restoration Plan**

**1994**



# Record of Decision

## *Exxon Valdez* Oil Spill Restoration Plan

### Introduction

The Department of Agriculture—with the Departments of the Interior and Commerce—prepared an Environmental Impact Statement (EIS) for the *Exxon Valdez* Oil Spill Restoration Plan pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969. The EIS (1) describes five alternatives to restore the injured natural resources and services through implementation of a Restoration Plan and examines the environmental consequences of these alternatives, (2) describes the major issues associated with restoration of the injured natural resources and services identified through public meetings and staff analysis, and (3) addresses comments made during the public review process.

This Record of Decision (ROD) documents the decision of the Federal Natural Resources Trustees regarding the *Exxon Valdez* Oil Spill Restoration Plan. It presents reasons for selecting the course of action and the alternatives considered. The record briefly discusses elements considered in reaching a final decision and supporting rationale. It summarizes the views expressed by the government agencies, organizations, special interest groups, and the general public. The format was selected to provide a concise summary of the decision and the options considered, and to present any divergent points of view. The ROD consists of this introduction, a summary decision sheet, and extensive background material. The decision and the EIS consider the estimated environmental consequences to biological resources, sociocultural resources, economy, subsistence uses, and commercial and sport fishing.

The Federal and State governments, acting as Trustees for natural resources are responsible for taking actions necessary to restore resources and the services they

## Record of Decision

provide that were injured by the *Exxon Valdez* Oil Spill (EVOS). The Federal Water Pollution Control Act (Clean Water Act) ( 33 U.S.C. § 1321[f]) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9607[f]) provide the legal bases for these responsibilities.

The EVOS contaminated approximately 1,500 miles of Alaska's coastline. In 1991, Exxon agreed to pay the United States and the State of Alaska \$900 million in civil settlement funds to restore the resources injured by the spill and the reduced or lost services (human uses) they provide. Of that amount, approximately \$620 million remained available to fund restoration activities as of February 1994.

The EVOS Restoration Plan will provide long-term guidance for restoring the resources and services injured by the oil spill.

### Litigation and Settlement

After the spill, President George Bush and Alaska Governor Steve Cowper both declared their intent to restore the affected ecosystem and the local economy. Both the United States and the State of Alaska filed civil complaints against the Exxon Corporation and other parties and separate criminal complaints also were filed.

A settlement between the Exxon companies and the United States and the State of Alaska was approved by the Federal District Court in Civil Actions A91-082 (*United States v. Exxon Corp.*) and A91-083 (*State of Alaska v. Exxon Corp.*) on October 9, 1991. As part of this settlement, the Exxon companies agreed to pay the United States and the State of Alaska \$900 million over a period of 10 years. Civil Action A91-081 (*United States v. State of Alaska*) resolved the claims that the United States and the State of Alaska had against each other as a result of the spill. Under the Memorandum of Agreement and Consent Decree, the United States and the State act as co-trustees in the collection and joint use of the restoration funds.

The Memorandum of Agreement (MOA) provides that the six Trustees are responsible for making all decisions regarding funding, injury assessment, and restoration. Six individuals have been designated to serve as Trustees: three represent the State of Alaska and three represent the Federal Government. The individuals currently serving in this capacity are the Commissioner of the Alaska Department of Environmental Conservation (ADEC), the Commissioner of the Alaska Department of Fish and Game (ADF&G), the State Attorney General, the Secretary of the U.S. Department of the Interior (USDOI), the Secretary of the U.S. Department of Agriculture (USDA), and the Administrator of the National Oceanic and Atmospheric Administration (NOAA). In accordance with a subsequent Memorandum of Understanding (MOU) executed by the six Trustees, an Alaska-based EVOS Trustee Council was formed to coordinate and oversee the development and implementation of the restoration program. The State Trustees serve as members of the Trustee Council. Each of the Federal Trustees appointed a representative to the Trustee Council. The Regional Forester of the Forest Service represents USDA, the Assistant Secretary for Fish and Wildlife and Parks represents USDOI, and the Regional Director of the National Marine Fisheries Service (NMFS)

represents NOAA. All decisions regarding the use of the settlement funds—including the planning, evaluation, and implementation of restoration activities—require the unanimous agreement of the Trustee Council.

### **Public Involvement and Response to Public Comment**

The *Exxon Valdez* Oil Spill Restoration Program is considered a "major Federal action having a significant impact on the quality of the human environment" under the National Environmental Policy Act (NEPA). For this reason, the Trustee Council concluded that an EIS on the Restoration Plan should be published.

On April 10, 1992, a Notice of Intent to prepare an EIS for the development of a restoration plan following the March 24, 1989, *Exxon Valdez* oil spill was published in the Federal Register (57 FR 12473). On January 14, 1994, a Revised Notice of Intent to prepare an EIS was published in the Federal Register (59 FR 2352). An opportunity to submit additional comments was opened through February 1994.

The draft EIS was filed with the Environmental Protection Agency (EPA), and its availability was announced in the Federal Register on June 17, 1994 (59 FR 31191 and 31243). A 45-day public comment period followed the release of the draft EIS. During this period, six public meetings and at least one hearing were held, and oral and written comments were received from the public. Specific dates and locations for the meetings were announced in the Federal Register. The final EIS incorporated public comments and revisions and modifications made to the EIS. Specific comments and their responses were included in Chapter 5 of the final EIS.

The overwhelming majority of comments received on the draft EIS addressed funding levels for the five restoration categories. There was only limited comment on the five alternatives. The most significant group of comments focused on the Habitat Protection and Acquisition category. Many of those commenting wanted the Trustee Council to commit a larger amount to Habitat Protection and Acquisition than was assumed for analysis purposes in Alternative 5—the Proposed Action. In this regard, it is important to understand that the budget ranges included in the EIS do not represent a funding commitment. These ranges were illustrative only for purposes of environmental analysis.

The funding levels in each of the alternatives illustrated a likely program emphasis for that alternative but are not a commitment of settlement funds. The restoration program must be able to respond to changing conditions and new information about injury, recovery, and the cost and effectiveness of restoration projects. When making annual funding decisions, the Trustee Council will consider the public comments—including those from the Public Advisory Group—received on the restoration alternatives as well as comments that may be received on proposed Annual Work Plan activities in the future.

## Record of Decision

### Decision Sheet

Based on a consideration of the analysis contained in the Final EIS and the attached decision information, the following is our decision regarding the *Exxon Valdez* Oil Spill Restoration Plan. The listing below contains all the policies considered in the alternatives analyzed in the EIS.

#### Alternatives

##### Alternative 1: No Action

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##### Alternative 2: Habitat Protection

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- Habitat of injured resources and the services they provide within the spill area will be protected from degradation or disturbance.
  - Restoration actions will address all injured resources and the services they provide.
  - Restoration actions for recovered resources will continue even after a resource has recovered.
  - The location of restoration actions will be limited to the spill area.
  - Habitat Protection will be used to protect or increase existing human use of the spill area.
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##### Alternative 3: Limited Restoration

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- The most effective actions will be taken within the spill area to protect and restore all injured resources and thereby the services they provide, except those biological resources whose populations did not measurably decline. The existing character of the spill area will be maintained.
- Restoration actions would address all resources *except* those biological resources whose populations did not measurably decline.
- Restoration actions for recovered resources will cease once a resource has recovered.



- Restoration actions will be conducted that provide substantial improvement over natural recovery.
  - The location of restoration actions will be limited to the spill area.
  - Restoration actions will be used to restore injured resources and thereby protect existing human use of the spill area.
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**Alternative 4: Moderate Restoration**



- The most effective actions to protect and restore all injured resources and thereby the services they provide will be taken. Opportunities for human use of the spill area will be increased to a limited extent.
  - Restoration actions will address all injured resources.
  - Restoration actions for recovering resources will cease once a resource has recovered.
  - Restoration actions will be conducted that provide substantial improvement over natural recovery.
  - Restoration actions could occur anywhere there is a link to injured resources.
  - Restoration actions would be used to restore injured resources and thereby protect or increase existing human use of the spill area.
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**The Proposed Action**

**Alternative 5: Comprehensive Restoration**



**Establish Restoration Reserve**

**Injuries Addressed by Restoration**

- Restoration activities may be considered for any injured resource or service.

## Record of Decision

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

### Location of Restoration Actions

- Restoration activities will occur primarily within the spill area. Limited restoration activities outside the spill area, but within Alaska, may be considered under the following conditions:
  - 1) when the most effective restoration actions for an injured population are in a part of its range outside the spill area, or
  - 2) when the information acquired from research and monitoring activities outside the spill area will be significant for restoration or understanding injuries within the spill area.

### Restoring a Service

- Projects designed to restore or enhance an injured service:
    - 1) must benefit the same user group that was injured, and
    - 2) should be compatible with the character and public uses of the area.
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**Policies Common to  
All Action  
Alternatives**

**An Ecosystem Approach**

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

**Restoring a Service**

- Projects designed to restore or enhance an injured service must have a sufficient relationship to an injured resource.

**Competition and Efficiency**

- Competitive proposals for restoration projects will be encouraged.
- Restoration will take advantage of cost-sharing opportunities where effective.
- Restoration should be guided and re-evaluated as information is obtained from damage assessment studies and restoration actions.
- Proposed restoration strategies should state a clear, measurable, and achievable end point.
- Restoration must be conducted as efficiently as possible, reflecting a reasonable balance between costs and benefits.
- Priority shall be given to strategies that involve multidisciplinary, interagency, or collaborative partnerships.

**Scientific Review**

- Restoration projects will be subject to open, independent scientific review before Trustee Council approval.
- Past performance of the project team should be taken into consideration when making funding decisions on future restoration projects.
- Restoration will include a synthesis of findings and results, and will also provide an indication of important remaining issues or gaps in knowledge.

**Public Participation**

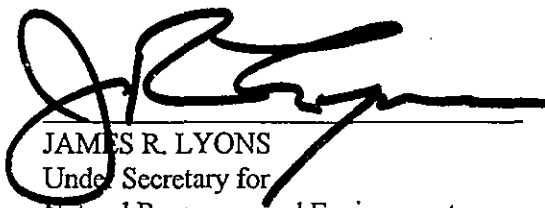
- Restoration must include meaningful public participation at all levels — planning, project design, implementation, and review.
- Restoration must reflect public ownership of the process by timely release of and reasonable access to information and data.

Record of  
Decision

**Normal Agency Activities**

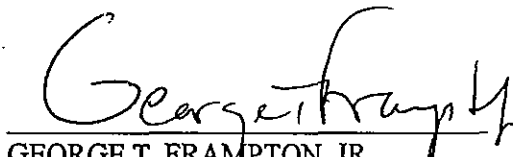
- Government agencies will be funded only for restoration projects that would not have been conducted had the spill not occurred.
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Approved:

  
JAMES R. LYONS  
Under Secretary for  
Natural Resources and Environment  
Department of Agriculture


10-31-94  
Date

Approved:

  
GEORGE T. FRAMPTON, JR.  
Assistant Secretary for  
Fish and Wildlife and Parks  
Department of the Interior

10-31-94  
Date

Approved:

  
DOUGLAS K. HALL  
Assistant Secretary for  
Oceans and Atmosphere  
Department of Commerce

10/31/94  
Date



## Description of the Alternatives

### Introduction

This section includes a brief description of the five alternatives in the EIS. Following the description is a recommendation from the Trustee Council. The recommendations are based on the analysis contained in the EIS and comments received on the document.

### Alternatives

The EIS analyzed five alternatives for the *Exxon Valdez* Oil Spill Restoration Plan. They are as follows:

#### **Alternative 1 - No Action**

The "No Action" Alternative required by the National Environmental Policy Act (NEPA) consists entirely of normal agency management activities. If this alternative were implemented, current management would continue, no new activities or programs would be instituted as a result of the oil spill, and the scope of present activities and programs would not change. Agency monitoring of natural recovery would remain at present levels, and agency responsibilities would remain unchanged. None of the remaining funds from the civil settlement would be spent if this alternative were implemented.

#### **Alternative 2 - Habitat Protection**

The goal of Alternative 2 is to provide maximum protection of strategic lands and habitats important to the long-term recovery of injured resources and the services they provide. Monitoring and Research and Habitat Protection and Acquisition are the only restoration actions included in this alternative. The primary means of protection in this alternative is the acquisition of private land interests or changes in the management of currently held public lands. Monitoring and Research would be conducted to evaluate the effectiveness of protection measures and to track the recovery of injured resources and services. Actions that may be undertaken under this alternative would be confined to the area affected by the oil spill.

#### **Alternative 3 - Limited Restoration**

Alternative 3 focuses on accelerating recovery of the resources and services most severely injured by the oil spill. This alternative targets resources whose populations declined as a result of the spill and that have not yet recovered. Only actions determined to be most likely to produce significant improvements over unaided natural recovery are included in this alternative. All restoration actions included in Alternative 3 will be confined to the spill area. Habitat Protection is a major part of this alternative; none of the proposed actions would substantially increase human use within the spill area. Monitoring and Research are also included in Alternative 3.

## **Record of Decision**

### **Alternative 4 - Moderate Restoration**

This alternative is broader than Alternative 3 in that it aims to aid recovery of all injured resources and the services they provide; not just those with population-level injuries. Restoration actions included in Alternative 4 address only those resources and services that have not yet recovered from the oil spill. It is also broader than Alternative 3 in terms of the resources addressed; in Alternative 4, measures would be taken to aid recovery of resources that sustained sublethal injuries. Actions that are judged to provide substantial improvements over unaided recovery would be implemented. The actions in this alternative would be confined to Alaska but could extend beyond the spill area. Habitat Protection is included in this alternative but to a lesser extent than in Alternatives 2 and 3. This alternative may increase opportunities for human use to a limited extent. Monitoring and Research may be conducted.

#### **The Proposed Action:**

### **Modified Alternative 5 - Comprehensive Restoration**

This represents a modification of the Alternative 5 shown in the Draft *Exxon Valdez* Restoration Plan Summary of Alternatives for Public Comment (EVOS Trustee Council, April 1993). Of the proposed alternatives, Alternative 5 is the broadest in scope. This alternative will help all injured resources and the services they provide within the spill area and, under specific circumstances, in other parts of Alaska. Unlike Alternatives 3 and 4, this alternative will allow actions to enhance resources that have already recovered to promote restoration, as well as those that have not. Actions likely to produce some improvement over unaided recovery will be allowable under this alternative. Habitat Protection is the largest part of this alternative. Alternative 5 also allows for expansion of current human use and for appropriate new uses through the restoration of natural resources. Monitoring and Research will be at the highest levels in this alternative.

Alternative 5 contains an element not present in the other alternatives. In response to public comments that a fund should be set aside for long-term restoration and research activities, the proposed action includes the establishment of a Restoration Reserve. The Restoration Reserve is designed to assure that funds are available if restoration needs persist beyond the year 2001, the date of the final Exxon payment.

### **Trustee Council Recommendation**

#### **A Comprehensive Balanced Approach**

The Trustee Council believes that it is necessary to maintain flexibility in the Restoration Program to deal with the uncertainties embodied in future restoration needs. A comprehensive approach to restoration that balances the needs of the injured resources is represented in Alternative 5 of the EIS. The reorganized and restructured policies developed in response to public comments and the establishment of a restoration reserve represent a thorough strategy for restoring the injured resources and services.

It is comprehensive in dealing with *all injured resources and services* and *all geographic regions* of the oil spill area. It is balanced in that it considers all restoration categories for the restoration needs of all resources and services.

### **Restoration Reserve**

It is unlikely that all the effects from the oil spill will be fully understood by the receipt of the final payment from Exxon in the year 2001. With this in mind, the Trustee Council proposed a restoration reserve as part of Alternative 5. One purpose of including a restoration reserve is to provide the Trustees with a means to respond to the restoration needs beyond the final payment.

The restoration reserve may be used to fund actions consistent with the policies contained in the Final Restoration Plan.

### **An Ecosystem Approach**

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

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

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

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

## Record of Decision

Monitoring and Research activities require more than resource-specific investigations to understand the factors affecting recovery from the oil spill. Restoration issues are complex, and research must often take a long-term approach to understand the physical and biological interactions that affect an injured resource or service and that may be constraining its recovery. The results of these efforts could have important implications for restoration, for how fish and wildlife resources are managed, and for the communities and people who depend upon the injured resources.

### Restoring a Service

- Projects designed to restore or enhance an injured service must have a sufficient relationship to an injured resource.

This policy requires that a project to restore or enhance an injured service must be sufficiently related to a natural resource. It can be related to a natural resource in various ways. It could directly restore a resource, provide an alternative resource, or restore access or people's use of the resource. The strength of the required relationship has not been defined by law, regulation, or the courts. However, a connection with an injured resource is necessary. In determining whether to fund a project to restore services, the strength of the project's relationship to injured resources will be considered.

### Competition and Efficiency

- Competitive proposals for restoration projects will be encouraged.

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

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

- Restoration will take advantage of cost-sharing opportunities where effective.
- Restoration should be guided and re-evaluated as information is obtained from damage assessment studies and restoration actions.

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

- Proposed restoration strategies should state a clear, measurable, and achievable end point.



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

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

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

- Priority shall be given to strategies that involve multidisciplinary, interagency, or collaborative partnerships.

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

### **Scientific Review**

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

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

- Past performance of the project team should be considered when making funding decisions on future restoration projects.

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

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

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

### **Public Participation**

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

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

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

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

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

### **Normal Agency Activities**

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

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

### **Injuries Addressed by Restoration**

- Restoration activities may be considered for any injured resource or service.
- Restoration will focus upon injured resources and services and will emphasize resources and services that have not recovered. Restoration actions may address resources for which there was no documented injury if these activities will benefit an injured resource or service.
- Resources and services not previously identified as injured may be considered for restoration if reasonable scientific or local knowledge obtained since the spill indicates a spill-related injury.

As required by the Consent Decrees, restoration must benefit the resources and services injured by the spill. However, an ecosystem approach to restoring

injured resources and services allows restoration to also focus on a resource's prey or predators, or on the other biota and physical surroundings it depends on. In addition, our knowledge of injury changes with each year's research, and new information may identify other injuries and consequences of the spill.

- Priority will be given to restoring injured resources and services that have economic, cultural, and subsistence use value to people living in the oil spill area, as long as this is consistent with other policies.

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

This policy recognizes that waiting for natural recovery may often be the most effective approach, but that the time required for natural recovery can have important adverse consequences for resources and services that the people of the spill area rely upon.

- Resources and services may be enhanced, as appropriate, to promote restoration.
- Possible negative effects on resources or services must be assessed in considering restoration projects.

Restoring one resource or service should not come at the cost of injuring another. An assessment of possible negative effects on nontarget resources or services will be part of the project proposal evaluation process.

### **Location of Restoration Actions**

- Restoration activities will occur primarily within the spill-affected area. Limited restoration activities outside the spill area, but within Alaska, may be considered under the following conditions:
  - 1) when the most effective restoration actions for an injured population are in a part of its range outside the spill area, or
  - 2) when the information acquired from research and monitoring activities outside the spill area will be significant for restoration or understanding injuries within the spill area.

The vast majority of restoration funds will be focused on the spill area, where the most serious injury occurred and the need for restoration is greatest. Simultaneously, the policy provides the flexibility to restore and monitor outside

## Record of Decision

the spill area under limited circumstances. Examples are some restoration and monitoring activities for migratory seabirds and marine mammals.

### Restoring a Service

- Projects designed to restore or enhance an injured service:
  - 1) must benefit the same user group that was injured, and
  - 2) should be compatible with the character and public uses of the area.

This policy ensures that the injured user groups are the beneficiaries of restoration. If the justification for an action is to restore a service, it is important that the injured user group be helped. The last part of the policy addresses a public concern about possible changes in the use of the spill area. It allows improvements in the services without producing major changes in use patterns.



## **Decision**

Based on the analysis contained in the EIS and the recommendation of the Trustee Council, it is our decision to implement Alternative 5 as identified in the Final EIS.

The alternative we are selecting includes the establishment of a restoration reserve and the following policies:

### **An Ecosystem Approach**

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

### **Competition and Efficiency**

- Competitive proposals for restoration projects will be encouraged.
- Restoration will take advantage of cost-sharing opportunities where effective.
- Restoration should be guided and re-evaluated as information is obtained from damage assessment studies and restoration actions.
- Proposed restoration strategies should state a clear, measurable, and achievable end point.
- Restoration must be conducted as efficiently as possible, reflecting a reasonable balance between costs and benefits.
- Priority shall be given to strategies that involve multidisciplinary, interagency, or collaborative partnerships.

### **Scientific Review**

- Restoration projects will be subject to open, independent scientific review before Trustee Council approval.
- Past performance of the project team should be considered when making funding decisions on future restoration projects.
- Restoration will include a synthesis of findings and results, and will also provide an indication of important remaining issues or gaps in knowledge.

### **Public Participation**

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

## Record of Decision

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

### **Normal Agency Activities**

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

### **Injuries Addressed by Restoration**

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

### **Location of Restoration Actions**

- Restoration activities will occur primarily within the spill area. Limited restoration activities outside the spill area, but within Alaska, may be considered under the following conditions:
  - 1) when the most effective restoration actions for an injured population are in a part of its range outside the spill area, or
  - 2) when the information acquired from research and monitoring activities outside the spill area will be significant for restoration or understanding injuries within the spill area.

### **Restoring a Service**

- Projects designed to restore or enhance an injured service:
  - 1) must have a sufficient relationship to an injured resource,
  - 2) must benefit the same user group that was injured, and
  - 3) should be compatible with the character and public uses of the area.

## Reasons for the Decision

### MOA and Consent Decree

The MOA and consent decree require the State and Federal Natural Resource Trustees to use the settlement funds in the following manner:

- They must use the settlement funds "...for the purposes of restoring, replacing, enhancing, 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 for reimbursements to the state and federal governments in settlement of past costs).
- The settlement funds must be spent on restoration of natural resources in Alaska unless the Trustees unanimously agree that spending funds outside of the state is necessary for effective restoration.
- All decisions made by the Trustees (such as spending settlement funds) must be made by unanimous consent.

The MOA defines *natural resources* as the "...land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State." Examples of natural resources are birds, fish, mammals, subtidal plants and animals, and archaeological resources.

In addition to restoring natural resources, funds may be used to restore reduced or lost *services (human uses)* provided by injured natural resources. For example, subsistence use, commercial fishing, and recreation are services that were reduced by injuries to natural resources. Other reduced services include commercial tourism and the enjoyment that people receive from undisturbed wild areas.

### Environmental Considerations

We are fully aware of the environmental consequences of the alternatives as described in the EIS.

#### Biological

##### **Intertidal Resources**

In Alternative 1 a gradual recovery of intertidal resources would continue to occur; however, because no action would be taken to remove oil that remains in the intertidal area, continued contamination of the ecosystem would occur. The differences in Alternatives 2 through 5 are uncertain because the general restoration techniques for intertidal resources that were possible in Alternatives 3 through 5 are

## **Record of Decision**

still being tested and the results of these techniques are unknown. Habitat protection of upland parcels would provide a moderate benefit to intertidal resources in Alternatives 2 through 5.

### **Marine Mammals**

Alternative 1 describes the potential recovery of harbor seals and sea otters. The lack of prespill information regarding the causes of the prespill population decline in harbor seals made it impossible to predict future population trends. For sea otters, the researched population in Prince William Sound had not begun to increase since the oil spill; however, once the increase begins, the population could recover to prespill numbers in 7 to 35 years. Recovery of sea otters in other regions of the spill area should occur more rapidly.

Alternatives 3 through 5 would provide moderate benefits to harbor seals and sea otters. The benefits to these marine mammals in Alternative 2 were low to moderate because the alternative focused exclusively on upland habitat protection and did not address other factors that may influence recovery.

### **Birds**

Of the four bird species examined, marbled murrelets and harlequin ducks are the most likely to be negatively affected by Alternative 1—No Action. These species use forested areas for nesting, and predicted levels of logging could reduce the reproductive potential of these species through a loss of habitat. Pigeon guillemots in Prince William Sound are expected to gradually recover; however, it is unknown what will happen to populations in other parts of the EVOS area. None of the assumed activities are expected to alter the natural recovery of common murres; however, the estimates of recovery vary widely.

The potential effects on the injured common murre population were low benefits in all Alternatives 2 through 5, and moderate benefits in Alternatives 2 through 5 for pigeon guillemots. Alternatives 2 and 3 provide high benefits for harlequin ducks, with the benefits decreasing to moderate levels in Alternatives 4 and 5. For marbled murrelets, the impacts were high benefits in Alternative 2, moderate benefits in Alternative 3 and low benefits in Alternatives 4 and 5. This decrease in beneficial effects reflects the change in amount of upland nesting habitat that were assumed to be protected in Alternatives 4 and 5.

### **Fish**

None of the fish species analyzed—wild stock pink salmon, sockeye salmon, and Pacific herring—are expected to make improvements towards recovery within one life cycle. Factors other than the oil spill also affected these populations, and it is unknown whether all spawning groups or stocks of pink salmon and herring will fully recover to their prespill populations. It is reasonable to assume that the injured sockeye salmon populations will fully recover. However, recovery may take at least two life cycles at some sites.



If no action (Alternative 1) is taken, there may be a long-term decline in fish resources. Unprotected habitats could be degraded by land use activities unless normal agency protective functions are fully effective. More potential restoration tools could be employed in Alternatives 3, 4, and 5 resulting in a greater likelihood of population recovery.

All three of the fish species considered in the analysis had moderate benefits in Alternative 2. Pacific herring showed no change between effects in Alternatives 2 through 5. Sockeye salmon effects increased to high benefits in Alternatives 3 through 5. Moderate benefits for pink salmon occurred in Alternatives 2 through 4. The effects on pink salmon increased to high benefits in Alternative 5.

### **Sociocultural**

#### **Wilderness**

The effects on designated Wilderness Areas and Wilderness Study Areas were considered along with the impacts to the wilderness values of nondesignated lands. Although the negative impact of Alternative 1—No Action would not occur immediately, development activities (including logging and other developments) would have a high negative effect on wilderness quality within the spill area.

Because large-scale development of uplands has a negative effect on both congressionally designated Wilderness areas and on wilderness qualities, the effects in Alternatives 2 through 5 were closely tied to the potential amount of upland acres that could be protected. Alternative 2 provided high benefits to Wilderness, and Alternative 3 had moderate to high benefits. Effects on wilderness decreased further to moderate benefits in Alternatives 4 and 5.

#### **Archaeological/Cultural Resources**

Under Alternative 1—No Action, archaeological/cultural resources would not be protected, enhanced, or understood better than at present. Over the long term, this would constitute a low negative effect on archaeological and historical sites and on the understanding and appreciation of cultural resource values as they apply to the spill area.

Long-term effects on archaeological/cultural resources increased slightly from moderate benefits in Alternatives 2 and 3 to moderate to high benefits in Alternatives 4 and 5.

#### **Recreation and Tourism**

Alternative 1—No Action does not aid the recovery of resources important to recreation and tourism, and would have a moderate negative effect on recreation and a low negative effect on tourism.

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Of the action Alternatives, 4 and 5 provide moderate to high benefits to recreation and tourism. These alternatives allow for some increased recreational opportunities and for measures to protect and increase the injured resources important to recreation and tourism. Alternatives 2 and 3 provide moderate benefits to recreation and tourism through protective measures that may help maintain the quality of the ecosystem on which these services depend.

### **Subsistence**

In Alternative 1—No Action, the existing trends in subsistence harvest species populations and subsistence use are likely to continue over the long term, although changes are expected to occur gradually. The continued hiatus in subsistence activities has potentially high and potentially permanent—long-term negative effects on the perpetuation of cultural values and subsistence uses within some of the villages in the spill area.

Of the four action alternatives, Alternatives 4 and 5 provide the most benefit for subsistence uses. These alternatives should produce a moderate to high benefit to subsistence through a greater potential to improve the recovery of resources used for subsistence and thereby to increase the users' confidence in the resources' health and ability to withstand subsistence harvest. Alternative 3 provides moderate benefits, and Alternative 2 provides low to moderate benefits to subsistence users.

### **Commercial Fishing**

In Alternative 1—No Action, the three commercially important fish species (pink salmon, sockeye salmon, and Pacific herring) injured by the oil spill would gradually recover their overall population size; however, no recovery is expected within one life cycle, and some stocks or areas may not fully recover.

There were no major differences between the action alternatives on the recovery of commercial fisheries within the spill area. Alternatives 2 through 5 were determined to have moderate benefits on commercial fisheries through moderate benefits to the injured resources.

### **Sport Fishing**

In Alternative 1—No Action, long-term recovery to or near prespill levels of sport fishing can be expected; however, some specific stocks or areas may never fully recover to their prespill levels, and recovery of other areas may take 10 or more years.

The action alternatives provide for protecting upland stream and lake habitats and access to sport fishing areas. These measures are the only restoration tools assumed under Alternative 2, and they provide moderate benefits to sport fishing. In addition to the protection tools in Alternative 2, Alternatives 3 through 5 have the potential to increase or create new salmon and trout sport fisheries and can provide high benefit to the recovery of sport fishing.

### **Economy**

Three aspects of the economy were the focus of the analysis between alternatives. In Alternative 1—No Action, a qualitative assessment shows a moderate negative effect on commercial fishing and recreation aspects of the economy and a slight increase in other economic sectors.

The action alternatives create effects on the economy when compared to Alternative 1—No Action, but there were no major differences between the action alternatives. In Alternatives 2 through 5 there is a moderate negative effect on the forestry-related economy and moderate beneficial impacts on the commercial fishing and recreation aspects of the economy. The adverse effects on forestry may be more than offset, however, by the benefits to the commercial fishing and recreation/tourism sectors of the economy.

### **Factors That Were Balanced**

#### **Environmental**

The EIS analyzed five alternatives, each of which would fulfill the responsibilities of the Secretaries. The effects on biological, sociocultural, subsistence uses, commercial fishing, and economic considerations were all balanced in arriving at this decision.

While Alternative 2 would provide a greater emphasis on habitat protection and acquisition, it would greatly de-emphasize other means that could be beneficial to the restoration of injured resources. Restoration requires that the natural resources, geographic subregions, and methods used be more balanced.

Alternative 5 is not limited to habitat protection and acquisition. It balances habitat protection benefits with the benefits from direct restoration actions. The alternative also places a strong emphasis on monitoring and research as an important restoration category. Very long-term restoration needs are provided for through the establishment of a restoration reserve.

#### **"Environmentally Preferable Alternatives"**

Alternatives 2 and 5 can both be said to be "environmentally preferable alternatives." An "environmentally preferable alternative" is defined in the Council on Environmental Quality Forty Most Asked Questions as the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. While Alternative 2 would be beneficial to several resources, Alternative 5 is also beneficial to these resources and provides the flexibility to respond to the restoration needs of all the resources and the services they provide both now and in the future.

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### **Other Considerations in Balancing**

#### **State of Alaska**

Since officials of the State of Alaska comprise half the Trustees, they support the recommendation of the Trustee Council for the adoption of Alternative 5 from the EIS.

#### **Native Organizations**

Alaska Native organizations commenting on the Draft EIS favored Alternative 2 because they feel that Habitat Protection and Acquisition is the most beneficial action that could be taken. It will "give nature the best opportunity to replenish herself."

#### **Local Governments**

Local governments were divided in their support between Alternatives 2 and 5. The City of Cordova supports Alternative 5 because it "provides a balance of funding for all categories and includes a restoration reserve." The Kodiak Island Borough supports Alternative 2 because they believe that it "best meets the goal of restoration."

### **Mitigation Measures**

All practicable means have been adopted in the selected alternative to avoid or minimize environmental harm. Alternative 5 makes provision for all categories of restoration to be used in restoring the injured resources and thereby the services they provide.

Monitoring and research are a significant component of the selected alternative. A greater emphasis is placed on this category of restoration under Alternative 5 than under any of the other alternatives considered.

## Determinations

### Threatened and Endangered Species

Appendix E of the Final EIS contains the consultation and determinations that the program will not adversely affect listed species, critical habitat, or essential habitat.

### Coastal Zone Management Act

The Federal Coastal Zone Management Act (CZMA) and the Alaska Coastal Management Act were enacted in 1972 and 1977, respectively. Through these acts, development and land use in coastal areas are managed to provide a balance between the use of coastal resources and the protection of valuable coastal resources.

The proposed action is consistent to the maximum extent practicable with approved state management programs.

### ANILCA 810 Evaluation and Finding

This evaluation concludes that the Restoration Program under Alternative 5 would not have any adverse impacts on subsistence uses. The actions proposed under this alternative are beneficial to subsistence uses and would not pose any restriction of subsistence uses.

### Necessary, consistent with sound management of public lands

The alternatives proposed have been examined to determine whether they are necessary, consistent with sound management of public lands to maintain subsistence uses. The Federal Water Pollution Control Act, 33 USC 1321 (f)(5), provides the authority for the civil settlement. The civil settlement includes two documents. The first is a Consent Decree between Exxon and the State of Alaska and the United States that requires Exxon to pay the United States and the State of Alaska \$900 million over a period of 10 years. The second is the Memorandum of Agreement between the State of Alaska and the United States. Both were approved by the U.S. District Court.

Based on the analysis of the information presented in this document, Alternative 5 may have significant positive impact on subsistence uses. Under these alternatives, significant amounts of habitat important for harvestable resources will be better protected from potential degradation than in the existing condition or Alternative 1. Additionally, Alternative 5 would provide for a variety of general restoration actions that are designed to stabilize or enhance harvestable resources. This would result in increased local subsistence resource harvest potential in ways that are consistent with sound management of public lands.

### Amount of public land necessary to accomplish the proposed action

Alternative 5 considers all of the shoreline oiled by the spill, severely affected communities, and uplands adjacent to the watershed divide. None of the alternatives would change subsistence laws or regulations.

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### Reasonable measures to minimize adverse impacts upon subsistence uses and resources

Alternative 5 would not have adverse impacts on subsistence uses and resources used for subsistence. Therefore, no measures are required to minimize adverse impacts on subsistence uses.

Based on the evaluation process contained in Chapter 4 of the EIS, and considering all relevant information, we find that there is no significant possibility of a significant restriction on subsistence uses as a result of the selected course of action.

## Implementation

Implementation of this decision will take place with the adoption of the Final Restoration Plan by the *Exxon Valdez* Oil Spill Trustee Council.

The alternatives analyzed in the EIS were various sets of policies that will be used to evaluate and implement future actions taken by the Trustee Council to restore the injured resources and services. Following this record of decision, those policies will be incorporated into the Final Restoration Plan. The Final Restoration Plan will guide the future restoration activities of the Trustee Council. The plan will assist the decision making process by establishing policy guidelines to help identify restoration needs and select appropriate activities to restore injured resources and services. These activities will be developed as part of the Trustee Council's Annual Work Plan. Each Annual Work Plan will contain descriptions of the restoration activities to be funded that year based on the policies and spending guidelines of the Restoration Plan, public comments, and changing restoration needs.

Prior to reaching the decision documented in this ROD, the Department of Agriculture, the Department of the Interior, and the National Oceanic and Atmospheric Administration in the Department of Commerce have evaluated and considered all public comments that were submitted during the comment period in response to the Draft *Exxon Valdez* Oil Spill Restoration Plan as well as the public comments submitted in response to the Draft EIS for the *Exxon Valdez* Oil Spill Restoration Plan.



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