

# Restoration

N O T E

B O O K

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EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

## **HABITAT PROTECTION A SUCCESSFUL RESTORATION STRATEGY**

The protection of habitat has been a significant component of the *Exxon Valdez* oil spill (EVOS) restoration program. The acquisition of private lands, or partial interests in private lands, is intended to promote natural recovery of spill-injured resources and associated services by removing the threat posed by additional development impacts. By purchasing land throughout the spill area, the Trustee Council (Council) ensured that key habitats for injured resources would not be further damaged by the impacts of development activities such as speculative real estate development and clear cut logging, which were significant threats at the time of the spill. The Council felt that in an area already severely impacted by the spill, protecting land could go a long way toward helping the ecosystem recover.



For example, restoration efforts in the Pacific Northwest have shown that healthy riparian habitat -- those areas along streams where salmon spawn, feed and rear their young -- is essential to the health of the fishery. If the habitat required for these life stages is compromised, depleted salmon populations cannot rebuild. This lesson extends to other injured birds, fish, and mammals that nest, feed, molt, over-winter, and seek shelter in the spill area. The services impacted by the oil spill that are dependent on these

resources and ecosystems also benefit from the protection of important habitat.

Habitat acquisition as a restoration strategy received overwhelming support by the scientific community and the public. In response to a request for comments on restoration alternatives, more than 90% of the respondents said that habitat protection and acquisition should be part of the Restoration Plan.<sup>16</sup>

A systematic process was developed to help ensure that habitat protection actions would provide restoration benefits. Habitat protection proceeded in three stages: Imminent Threat, Large Parcel and Small Parcel. Initial

Trustee Council efforts focused on three areas considered imminently threatened by logging that contained habitat deemed critical to the recovery of a variety of species injured by the spill. The Imminent Threat program resulted in the protection of lands within Kachemak Bay State Park, and the Seal Bay and Tonki Cape parcels located on Northern Afognak Island which have since become Afognak Island State Park. Work on five other identified parcels identified in the Imminent Threat process continued under the Large Parcel program.<sup>3</sup>

### **LARGE PARCEL PROGRAM**

Following these initial efforts, ninety owners of large parcels (those greater than 1,000 acres) located within the spill area were contacted to determine their interest in participating in the Trustee Council's efforts. Thirty-two landowners expressed an interest in having their lands considered. Eighty-one parcels were identified for further evaluation. Over 850,000 acres were then evaluated to determine their potential to benefit the recovery of resources and services injured by the Exxon Valdez oil spill.<sup>12</sup>

The following Threshold Criteria were, and with slight modifications continue to be, applied to all parcels:

1. There is a willing seller of the parcel or property right;
2. The parcel contains key habitats that are linked to, replace, provide the equivalent of, or substitute for injured resources or services based on scientific data or other relevant information;
3. The seller acknowledges that the governments can purchase the parcel or property rights only at or below fair market value;
4. Recovery of the injured resource or service would benefit from protection in addition to that provided by the owner and applicable laws and regulations; and
5. The acquired property rights could reasonably be incorporated into public land management systems.<sup>2</sup>

Eligible parcels were delineated based upon ecological considerations, injured resource and service concerns, and land status. Because of the status of state and native corporation land selections, land status was an important factor in the configuration of evaluation parcels. Native corporations are major private landowners in the spill area. At the time, only those lands that were conveyed, or were expected to be conveyed were evaluated and ranked based upon entitlement and priority information provided by the Bureau of Land Management.



Parcels were then subjected to a more extensive evaluation designed to determine:

- The degree of linkage for injured resources and services to specific parcels; and
- The potential for benefit that habitat protection on each parcel would have for each linked resource and service.<sup>2</sup>

A list of injured resources and services linked to upland and nearshore habitats was developed from the Draft Restoration Plan, Summary of Injury, and recommendations of the Trustee Council's Chief Scientist. Injured resources were considered linked to a parcel if they were dependent on upland and nearshore habitats during critical life stages, such as reproduction, feeding, molting, or migration. Services were linked to a parcel if the parcel included habitat for injured species upon which the services depended. An example of linkage for services is recreational salmon fishing. The process also considered the susceptibility of injured resources/services to adverse impacts from human activities and the probability that these impacts would occur within or adjacent to the parcel.



<i>Resources</i>		<i>Services</i>
Sockeye Salmon	Harbor Seal	Recreation
Pink Salmon	Harlequin Duck	Wilderness
Dolly Varden	Intertidal/Subtidal	Subsistence
Cutthroat Trout	Marbled Murrelet	
Pacific Herring	Pigeon Guillemot	
Bald Eagle	River Otter	
Black Oyster-catcher	Sea Otter	
Common Murre	Cultural Resources	

Following parcel evaluations and initial negotiations, the Trustee Council passed a series of resolutions in December 1994 committing to conceptual acquisition packages with eight large parcel landowners.<sup>10</sup> Further negotiations with landowners resulted in creative habitat protection measures that include fee simple purchases, conservation easements, timber easements, retained development sites and shareholder home sites, and protection of culturally important areas. The negotiated protection packages provide a high level of benefit for injured resources and services, native shareholders, and the public. Most agreements provide for public access for purposes of camping, hunting, and fishing; restrict development; and provide for continued subsistence uses while providing economic benefits to native corporations and local communities. Native corporation shareholder approval, required before sale, ranged from 81 to 88 percent.

## **SMALL PARCEL PROGRAM**

The Small Parcel Program<sup>4</sup> was designed to recognize the special qualities and strategic values of smaller tracts of land. Small parcels, which are usually less than 1,000 acres, are often located in coves, along important stretches of rivers, at the mouths of streams, adjacent to tidelands or other important habitat, adjacent to or within parks and refuges, and may be located close to spill-area communities. This program allows the Council to focus on the strategic nature of these small parcels in the context of larger areas, considering such attributes as access, special resource values such as haulouts for rookeries, and benefits to management that would accrue with consistent oversight and compatible land use activities.

Over four hundred and eighty parcels were nominated for Council consideration by willing sellers.<sup>12</sup> These nominations were also screened for compliance with the Threshold Criteria and then further evaluated to determine the parcel's linkage to key habitats of injured resources and/or services, the potential for benefit that habitat protection would have on each linked resource or service, and the benefits to management of public lands that would be derived from protection of the parcel. The small parcel program continues to attract nominations from interested parties.

## **PRINCE WILLIAM SOUND**

In the Eastern region of the Sound the Eyak and Tatitlek Corporations nominated a suite of parcels. In early 1995, negotiations with Eyak Corporation resulted in the purchase of approximately 2,000 acres of timber rights along the north shore of Orca Narrows, an area slated for timber harvest located close to the town of Cordova. Subsequent negotiations with the Eyak Corporation resulted in the protection of an additional 76,138 acres involving a combination of fee simple acquisition and the acquisition of timber rights to protect habitat important to many of the resources and services injured by the oil spill.

Negotiations with the Tatitlek Corporation resulted in the protection of over 70,000 acres; 33,981 acres were acquired as a fee simple purchase and 38,148 acres were protected using a variety of conservation easements that allowed Tatitlek shareholders to retain ownership and use of Bligh Island, an area valued for its cultural significance and subsistence value.

In the western portion of the Sound, negotiations with the Chenega Corporation resulted in the protection of 60,000 acres managed by the US Forest Service and the





State of Alaska. A combination of fee simple acquisitions and conservation easements were used to achieve the Council's objectives yet provide opportunities for Chenega to develop ecotourism and lodge sites in the immediate area.

In total, agreements with the Chenega, Tatitlek and Eyak corporations resulted in protection of over 200,000 acres, 48% through fee simple protection. Approximately 40% of the area is protected through conservation and timber easements managed primarily by the U.S. Forest Service. The State of Alaska acquired smaller areas of these packages as well as several small parcels that complement the popular State Marine Park System. In addition, 175 acres were protected in strategically located small parcels located in or near the City of Valdez.

### **KENAI PENINSULA**

Two protection packages that received strong public support are located on the Kenai Peninsula. The first acquisition occurred in 1993, when the state acquired 23,000 acres within Kachemak Bay State Park, across the bay from Homer, to prevent logging of the old-growth maritime forest. The Trustee Council provided \$7.5 million for the purchase, and the State of Alaska contributed \$7 million from the Exxon criminal settlement and another \$7.5 million from its civil settlement with Alyeska Pipeline Service Company.



In 1997, the Trustees funded the purchase of 32,470 acres within Kenai Fjords National Park and adjacent islands within the Alaska Maritime National Wildlife Refuge owned by the English Bay Corporation. This package includes some of the most valuable coastal habitat within the park, which is the second most popular park in Alaska, behind Denali National Park and Preserve.

Other habitat protection efforts on the Kenai Peninsula have focused on small parcels containing valuable habitat in unique, discrete locations along the Kenai River, Anchor River, Ninilchik, and the shoreline of Cook Inlet. These small parcels are especially important for their riparian habitat and exceptional access opportunities for recreation and sport fishing.

### **KODIAK ARCHIPELAGO**

(including Afognak and Shuyak Islands)

Shuyak Island State Park quadrupled in size in 1997 when 26,958 acres protected by the Trustee Council were added to the park along with other state lands. The habitat on

Shuyak Island was highly valued for restoration benefits and is very popular for recreational purposes.

Afognak Island State Park was created in 1994 after the Council purchased 41,549 acres surrounding Seal Bay and Tonki Bay. This highly productive coastal habitat was threatened by imminent clear-cut logging of the mature spruce forest. Another 41,350 acres were protected on northern Afognak Island, adjacent to the Kodiak National Wildlife Refuge and Afognak Island State Park. This agreement protects some of the most highly ranked habitat in the spill region, including large buffers around the popular Paul's Lake and Laura Lake. The extremely high economic value of the timber resources on Afognak Island make protection of the area the most costly in the spill region. Old growth Sitka spruce, valued as good marbled murrelet nesting habitat, is also highly valued for timber. On-going efforts are focused on lands located between these two previous acquisition packages.



Habitat protected on Kodiak Island includes high-value land around Olga Bay and the very popular and valuable salmon systems of the Karluk and Sturgeon rivers. The Trustees have protected over 260,000 acres on the island, much of it within the Kodiak National Wildlife Refuge. In addition to providing protection for pink and sockeye salmon, harlequin ducks, bald eagles, black oystercatchers, and other injured resources, the Kodiak Island acquisitions also help protect habitat important to Kodiak brown bears.

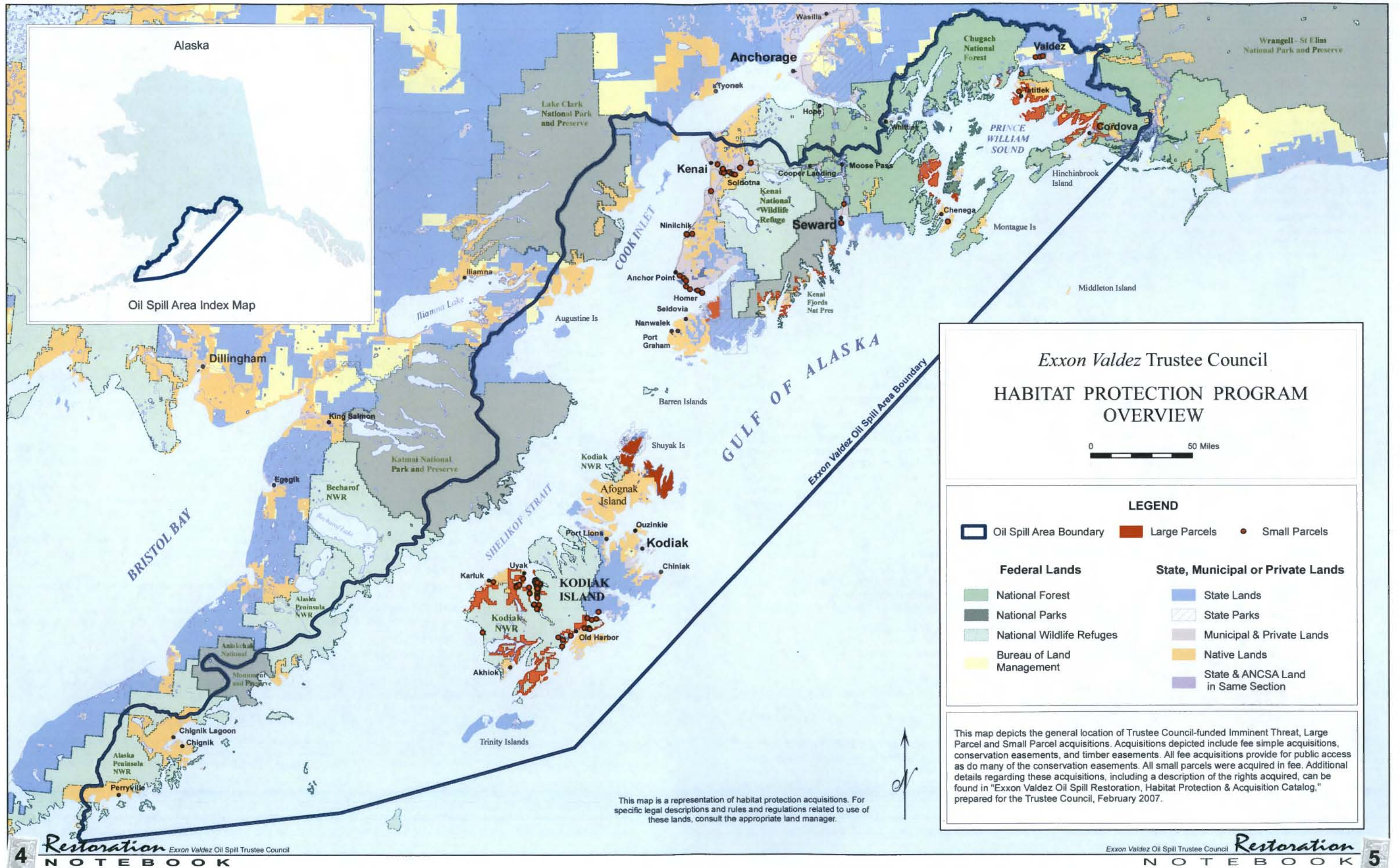
The Karluk and Sturgeon rivers were given temporary protection through a non-development easement that expires in 2011 with an option for extension of protection for 10 more years, or provides for a fee simple purchase by the US Fish and Wildlife Service.

Many small parcels located within the Kodiak National Wildlife Refuge were acquired in Uyak Bay, Sitkalidak Straits, Kiliuda Bay and other areas on Southern Kodiak Island.

### **THE FUTURE**

Because complete recovery from the oil spill may not occur for decades, and because healthy habitats are essential to the permanent recovery of the spill region, the Trustee Council has taken steps to extend its efforts to protect key habitats. By unanimous resolution in March 1999, the Council set aside \$25 million dollars to continue the habitat protection program. The ongoing habitat program focuses primarily on smaller tracts of







valuable habitat linked to resources and services not yet recovered, such as harlequin ducks, harbor seals, Pacific Herring, pigeon guillemots, intertidal communities, sea otters and others as identified in the updated Injured Resources and Services List.<sup>11</sup> The Council continues to accept small parcel nominations however future efforts will be focused on parcels with exceptional restoration and resource values.

### Ongoing Efforts

In March 2008, the Trustee Council authorized the expenditure of \$10,000,000 as a contribution to the purchase of three parcels on northern Afognak Island as well as the purchase of three small parcels on the Kenai Peninsula, two parcels on Kodiak Island and one parcel in Valdez. These transactions, summarized below, are not yet complete and therefore are not reflected in the Summary by Region table (Page 7).

Location	Acres	Est. Cost
Afognak (3)	5,720	\$10,000,000
Valdez (1)	20	\$125,000
Kenai Peninsula (3)	70	\$804,000
Kodiak (2)	320	\$352,000

Habitat protection efforts continue on Northern Afognak Island, in Kenai Fjords National Park, and within the Kodiak Island Refuge with particular emphasis on parcels or areas that one could characterize as "unfinished." These parcels, previously considered, may not have been ready for Trustee Council action and as title, survey, or other technical issues are resolved, habitat protection actions may again become viable and of interest to the Council.

### Protecting the Trustee Council Investment

It should be noted that parcels acquired using EVOS funds are typically managed by a federal or state land management agency, often within a park, forest, or refuge. In some cases, title is held by a local government. In all cases



a conservation easement is in place to ensure that the lands are managed in perpetuity for the purposes for which they were acquired. For example, the federal government holds a conservation easement, including a right to enforce the terms and conditions described in the easement, on all lands acquired by the State. Likewise, on lands acquired by the federal government, a conservation easement is held by the State. In the case of land held by a local government, both the

State and the federal government hold a conservation easement. In those instances where the Council secured a conservation easement on native corporation lands, rather than full fee, that easement is typically held by the federal

government, with an additional right of enforcement held by the State.

The following activities are prohibited on all EVOS acquired lands: changing the topography; dumping trash; using biocides; removing or destroying plants except for subsistence or medicinal use; altering watercourses; using motorized vehicles with the exception of floatplanes; removing or harvesting timber; introducing non-indigenous plants, and building facilities. Limited facilities such as public use-cabins, weir sites, trails, and campsites may be constructed for research or management purposes.

Lands acquired with EVOS funds are available to the public for recreation, hunting, fishing, and subsistence uses.



### SUMMARY

The Exxon Valdez oil spill Trustee Council has successfully completed habitat protection measures with a variety of landowners including native corporations, the Kodiak Island Borough, the City of Homer, the City of Valdez, native allottees, and many other private individuals. The Council and the various land managing agencies have also partnered with a variety of non-profit organizations such as The Trust for Public Land, the Nature Conservancy, The Conservation Fund, The Rocky Mountain Elk Foundation, The American Land Conservancy, the Kodiak Brown Bear Trust, the Kenai River Sportfishing Association, and the Kachemak Heritage Land Trust to achieve restoration objectives. These efforts have produced many benefits to injured resources and services, local communities, other species that utilize these habitats, landowners, and the public, both residents and visitors. Many of the non-profit organizations working with the Council have contributed additional grant and private sector funds as well as staff resources to further leverage Trustee Council efforts.

To date, the habitat protection program has expended or committed nearly \$400 million dollars to the protection of habitat and protected over 647,000 acres in the spill affected area. The lands and interests in lands acquired with settlement funds have been placed in public ownership. In many cases these lands have become parks or been incorporated into existing parks and refuges. In all cases these lands are being managed in a manner that will support recovery of injured natural resources and services and provide valuable habitat in perpetuity. The habitat protection program has been and continues to be a successful restoration strategy; a strategy with strong public support that leaves a lasting, very visible legacy of the Exxon Valdez oil spill restoration program.

For more information visit the Trustee Council web site at <http://www.evostc.state.ak.us>.

## HABITAT PROTECTION SUMMARY BY REGION<sup>12</sup>

Region	Acres	Cost	EVOS Trust	Other
<b><i>Prince William Sound</i></b>				
Chenega	60,001	\$34,000,000	\$24,000,000	\$10,000,000
Eyak incl Orca Narrows	78,138	\$48,576,704	\$48,576,704	\$0
Tatitlek	72,129	\$34,719,461	\$24,719,461	\$10,000,000
Small Parcels	1,467	\$3,137,300	\$3,137,300	\$0
<b><i>Kenai Peninsula</i></b>				
English Bay	32,470	\$15,156,790	\$14,128,074	\$1,028,716
Kachemak Bay	23,702	\$22,000,000	\$7,500,000	\$14,500,000
Small Parcels	5,963	\$16,947,100	\$16,463,100	\$484,000
<b><i>Kodiak Archipelago</i></b>				
Afognak Joint Venture	41,376	\$73,966,348	\$73,966,348	\$0
Akhiok-Kaguyak	113,338	\$46,000,000	\$36,000,000	\$10,000,000
Koniag Easement	56,823	\$6,854,504	* \$6,704,504	\$150,000
Koniag Fee	59,674	\$26,500,000	\$19,500,000	\$7,000,000
Old Harbor	31,609	\$14,541,000	\$11,291,000	\$3,250,000
Seal Bay	41,549	\$39,549,333	\$39,549,333	\$0
Shuyak	26,958	\$42,000,000	\$42,000,000	\$0
Small Parcels	2,007	\$2,889,050	\$2,889,050	\$0
<b>Total</b>	<b>647,202</b>	<b>\$426,837,590</b>	<b>\$370,424,874</b>	<b>\$56,412,716</b>

\* Represents the cost of the easement through 2012. \$29,000,000 was set aside for the fee purchase of these lands. Annual payments to Koniag are taken from this fund. The balance continues to accrue interest which is payable to Koniag at sale should Koniag choose to sell according to the terms and conditions of the master agreement.



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