

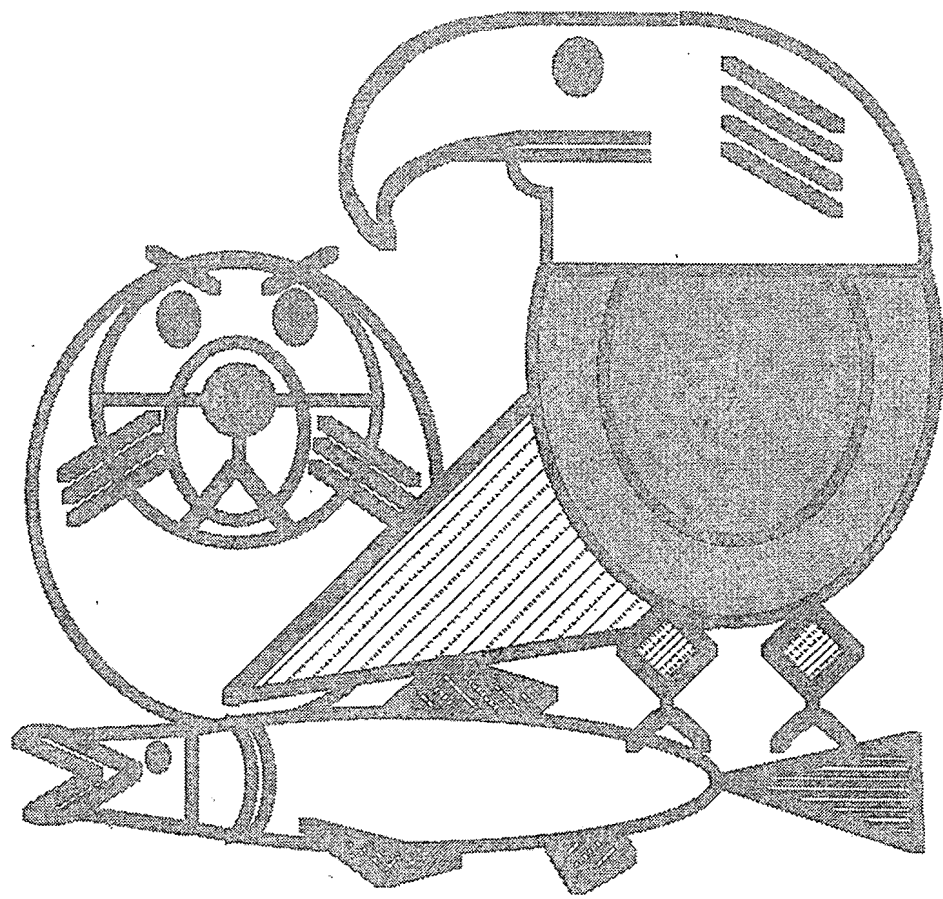
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EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

EXXON VALDEZ OIL SPILL RESTORATION
HABITAT PROTECTION
CURRENT STATUS REPORT



MAY 9, 1994

Habitat Protection Current Status Report

Memo to the Trustees.....1

From: Executive Director

Re: Habitat Protection: Current Status Report

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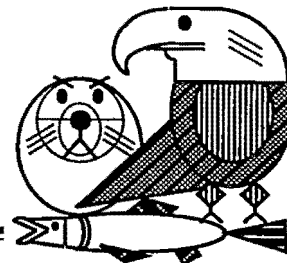
MAY 9, 1994

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



To: Trustee Council
From: Jim Ayers, Executive Director
Date: May 9, 1994
Re: Habitat Protection: Current Status Report

The Trustees requested on April 28, 1994, that I prepare a current status report of habitat acquisition efforts. This is intended to provide you with a detailed update. Further, we will prepare a detailed oral presentation regarding each respective area for our next meeting.

On January 31, 1994 the Trustee Council passed the "*Resolution to Proceed with Habitat Protection Program*" (Appendix 1), that instructed the Executive Director to review The Comprehensive Habitat Protection Process considering public comment, our understanding of injury, and the benefits that may accrue to the injured species and services.

We have completed a review and the Habitat Working Group (HWG) is working with agency negotiators to develop habitat protection packages that provide a broad spectrum of protection for injured resources and services throughout the oil spill area. Habitat protection packages are being developed using an ecosystem based approach, emphasizing protection of injured resources and services as well as regional biophysical patterns and processes.

The following summarizes my review of the Comprehensive Process as well as my strategy for implementation of the Habitat Protection Process.

I. Public Comment

The public's response to habitat protection as an oil spill restoration strategy has been very positive.¹ Public comment recently received on the Large Parcel Element of the Comprehensive Habitat Protection Process indicates continuing support for habitat protection. The public clearly supports a balanced comprehensive program that includes habitat protection in conjunction with research and monitoring programs.

II. Linkage to Injury

The Draft Restoration Plan allows restoration activities to be considered for any injured resource or service. Nineteen resources and services were identified as injured and determined to be linked to upland and nearshore habitats throughout the oil spill affected area. This list of injured resources and services was developed based on Damage Assessment studies and recommendations of

¹ Public comment on EVOS Restoration Brochure, 1993.

the Chief Scientist. Linkage for injured resources means that they are dependent on distinct upland or nearshore habitat(s) during key life history stages. Scientists have identified key habitats/sites essential for the restoration of injured species and services. Linkage for services is related to the location of species habitats but also includes documented use areas for recreation and subsistence. The Large Parcel Evaluation/Ranking criteria provide an estimate of the degree of linkage for injured resources and services to specific parcels.

III. Extent of Injury

The oil spill affected the area's biota at all organizational and trophic levels, but in a disproportionate manner. In addition, both the economies and social fabric of the towns and villages within the area were adversely affected by the spill. Consequently, it is difficult to choose a metric that allows for a comprehensive measurement of injury effects. For example, if we chose shoreline oiling as the metric for injury, injury to those resources affected by oil in the water column would be left out of the equation, as would the economic and social impacts experienced by the commercial fishing industry and local communities from fisheries closures.

Prespill data is lacking for most resources and services and NRDA studies generally do not allow injury data to be widely extrapolated. Bob Spies, Chief Scientist addressed this issue in a memo (2/7/94) to Jim Ayers, Executive Director. Dr. Spies stated that: *The damage assessment studies on which most of our knowledge of injury and recovery is based generally established injury over a wide geographic area within the spill zone.* He goes on to say that: *The extent of oiling could be used in conjunction with the results of injury studies to make some guesses on where in particular oil injury was greatest. However, many of the most injured species, e.g., sea otters and birds, have ranges that would render this approach imprecise.* A third source of information on injury, carcass collection data, that would appear to shed light on this relationship, in fact, does not. Dr. Spies points out that carcass collection data does not necessarily relate to the place of death because: *...the carcass typically having been carried across the water for some distance before being washed up on a beach where it was collected.* Dr. Spies concludes by stating his opinion that: *Habitat protection should be carried out throughout the spill region in order to aid the injured populations on the scale of the spill area.*

IV. The Comprehensive Protection Process

The Comprehensive Habitat Protection Process (as depicted in the flow chart found in Appendix 2), evaluated over 850,000 acres in three general areas: Prince William Sound, Kenai Peninsula, and the Kodiak/Afognak Archipelago. Habitat protection measures must be implemented throughout the oil spill area to ensure a balance of restoration benefits for the 19 injured resources and services.

Negotiating teams have met with landowners and identified preliminary negotiating terms and conditions. The Trustee Council has authorized the Executive Director and negotiation teams to proceed with detailed negotiations. As part of the negotiation process, an appraisal process (Appendix 3) utilizing standardized appraisal specifications, has been developed. A copy of the standardized appraisal specifications has been forwarded to each of the land managing agencies. Appraisals are being conducted for packages that were developed by the negotiation teams with the technical support of the HWG.

Prince William Sound

In Prince William Sound, the comprehensive process evaluated 30 parcels totaling 184,700 acres; of those, six parcels totaling 48,400 acres were rated high. The six high value parcels are located throughout the Sound. Landowners include Eyak, Chenega, Tatitlek, and Chugach Alaska Corporations.

Seventeen injured resources and services received at least one high benefit score associated with high value parcels in Prince William Sound. Marbled murrelets and common murrees were the only injured resources that did not receive high benefit scores within high value parcels. Cutthroat trout only occur in Prince William Sound. Eshamy Bay contains the only high value Sockeye salmon run in the high value parcels and represents one of the few significant Sockeye runs in the region.

- Eyak Corporation: On May 3, 1994 the Trustee Council approved the purchase of perpetual timber rights on a portion of the Orca Narrows parcel. The council also negotiated a one-year moratorium on all timber harvests on Eyak Corporation lands to allow negotiations to proceed on a more comprehensive habitat protection package. The Trustee Council is especially interested in the core parcel containing Eyak Lake, Eyak River and Power Creek, and areas of Special Biological Significance in Sheep, Gravina and Windy Bays.
- Chenega Corporation: The U.S. Forest Service/DOL negotiating team met with HWG to develop a habitat protection package for the Jackpot and Eshamy Bay areas. The HWG evaluated various protection options. The package currently includes fee title acquisition and less than fee timber rights for the remainder of Chenega Corporation lands.
- Tatitlek Corporation: Negotiators have recently met with Tatitlek to discuss the habitat protection process.

For more detailed information on negotiations with specific landowners please refer to Appendix 4.

Kenai Peninsula

On the outer Kenai Peninsula, the comprehensive process evaluated 24 parcels totaling 237,100 acres; of those, two parcels totaling 15,300 acres were rated high. The two high ranked parcels are located in the east arm of Nuka Bay. Landowners are Pt. Graham, English Bay and Chugach Alaska Corporations.

Eleven injured resources and services received at least one high benefit score associated with high value parcels. Resources and services that did not score high within high value parcels include: common Murre, Pacific herring, Dolly Varden, cutthroat trout, harbor seal, subsistence, cultural resources and recreation/tourism.

- Pt. Graham and English Bay Corporations: The National Park Service/DOL negotiation team met with the HWG on May 4, 1994 to discuss package reconfigurations within the Kenai Fjords National Park. The HWG has evaluated and scored five packages within the Kenai Fjords National Park. The NPS package currently includes lands owned by English Bay and Pt. Graham.

For more detailed information on negotiations with specific landowners please refer to Appendix 4.

Kodiak Island

On Kodiak Island, the comprehensive process evaluated 20 parcels totaling 274,100 acres; of those, nine parcels totaling 111,900 acres were rated high. One parcel is located on Shuyak Island, two are located on Afognak Island, and six are located on southern Kodiak Island. Landowners are Kodiak Island Borough, Afognak Joint Venture, Koniag and Akhiok Kaguyak Corporations.

Eighteen injured resources and services received at least one high benefit score associated with high value parcels. Cutthroat trout is the only resource that did not score high since it does not exist in this region. The only highly ranked parcel benefiting common murre is located on southern Kodiak.

The U.S. Fish and Wildlife Service/DOL negotiation team met with the HWG twice concerning development of a habitat protection package for south Kodiak. The HWG has evaluated and scored 11 packages on southern Kodiak. The USFWS plans a multi-year acquisition process using funds from several different sources. The USFWS package includes lands owned by Old Harbor, Koniag and Akhiok Kaguyak Corporations.

- Old Harbor: One package containing all of Old Harbor's properties was evaluated and scored.
- Koniag: Four packages in various configurations containing all of Koniag's lands were evaluated and scored.
- Akhiok Kaguyak: Five packages in various configurations containing

all of Akhiok Kaguyak's lands were evaluated and scored.

For more detailed information on negotiations with specific landowners please refer to Appendix 4.

Afognak and Shuyak Islands

The DOL/DOI negotiation team met with the HWG in December 1993 to discuss various protection options for Afognak Island. Seven parcels totaling 167,200 acres were evaluated. Of those, three parcels totaling 68,400 acres rated high. The Shuyak Island parcel will be negotiated with boundaries as defined in the Comprehensive Habitat Protection, Large Parcel Evaluation document. The protection packages include lands owned by Afognak Joint Venture and Kodiak Island Borough.

- Afognak Joint Venture: Four different packages were evaluated and scored for the northern Afognak parcels.
- Kodiak Island Borough: One parcel containing all Kodiak Island Borough lands on Shuyak Island was evaluated for negotiators. Negotiators have requested that an appraisal proceed on this parcel.

For more detailed information on negotiations with specific landowners please refer to Appendix 4.

V. Private Landowner Habitat Protection

There are a number of options available to private landowners that will assist in the restoration of injured resources and services. The expertise for specific restoration actions exists within the Trustee agencies and includes principal investigators involved in the restoration program and existing agency programs. We are currently reviewing four general classes of options:

- Modification of development plans to provide better protection for injured resources (harvest schedules, road alignment, logging or mining locations, etc.)
- Direct restoration of injured resources through habitat modification and enhancement using proven methods and techniques (e.g. egg incubation boxes, spawning channels, fish ladders, instream improvements, bird nest boxes, etc.).
- Rehabilitation of habitats that have been impacted by previous forms of development (e.g. revegetation, culvert removal, landscape recontouring, erosion control, second growth management, etc.).
- Assessment of benefits of acquisition of additional buffers.

The Habitat Work Group will develop a protection package for the FY95 workplan.

VI. Strategic Habitat Protection Packages/Benefit Analyses

The objective of this process is to create a suite of habitat protection packages that provide the broadest level of restoration benefit for the 19 injured resources and services throughout the oil spill area. The Large Parcel Element of the Comprehensive Habitat Protection Process is the foundation for the development of this habitat protection package.

The negotiation process outlined in Appendix 2 allows the Trustee Council to create a balanced habitat protection package for the oil spill area at an affordable price, while considering the adequacy of funds to carry out other restoration activities. The process began with the Trustee agency negotiation teams meeting with the HWG to discuss preliminary terms and conditions of negotiations and potential habitat protection measures within their respective region of the oil spill area. The habitat protection package can be comprised of one or more habitat protection measures, such as fee simple acquisition and less-than-fee agreements such as conservation easements.

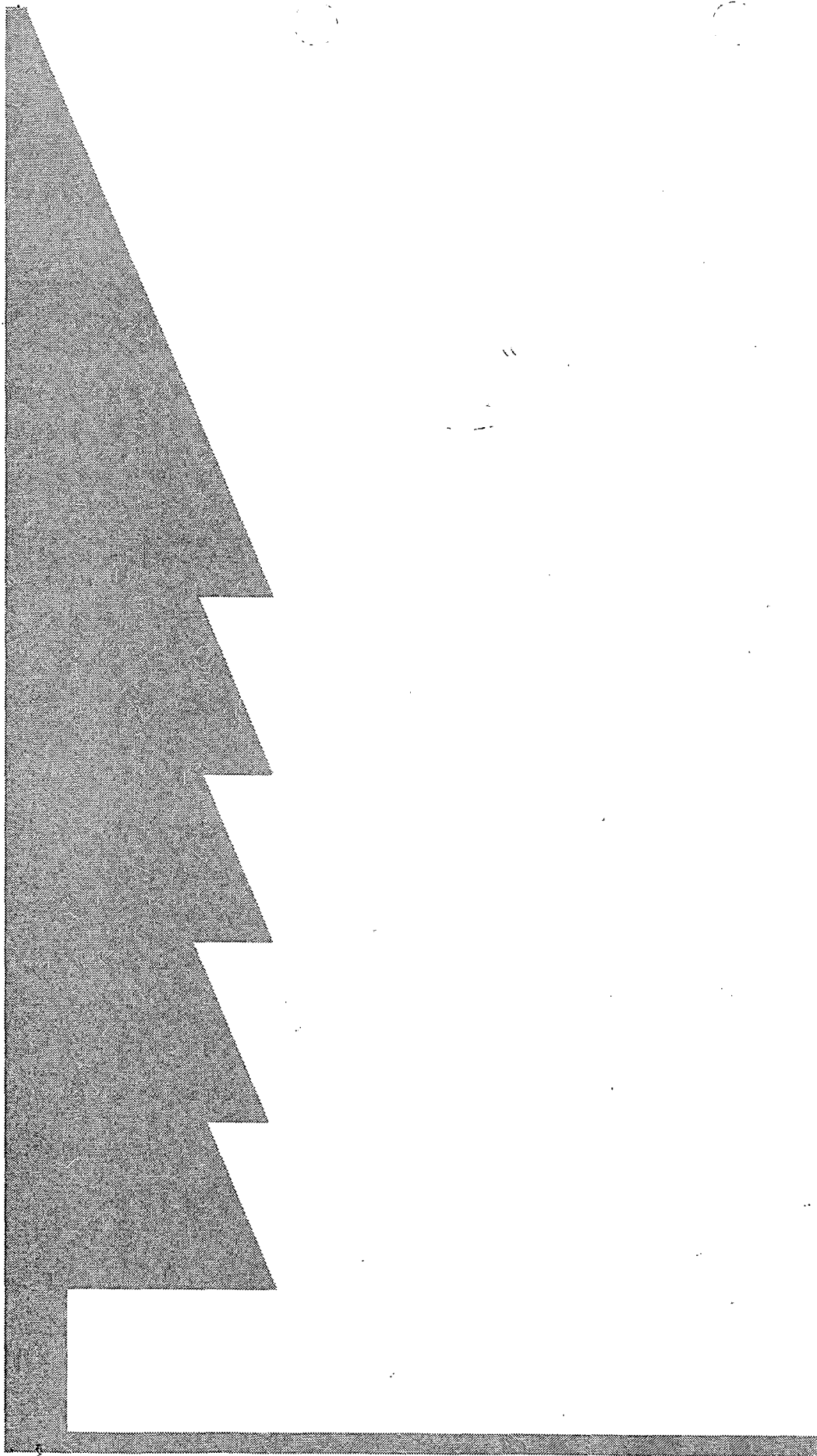
The HWG is assisting the negotiation teams in optimizing the boundaries of their parcels or cluster of parcels in their habitat protection package. This will be accomplished through reconfiguring parcel boundaries or the boundary of a cluster of parcels to ensure that high value habitats/sites are sufficiently protected consistent with the Trustee Council resolution. A package evaluation process has been developed and has been used to evaluate 23 packages.

The Executive Director will review regional habitat protection packages that provide for balanced restoration benefits for the injured resources and services. Appraisals are being conducted according to the standardized appraisal process agreed upon by the Trustee agencies. Appraisal information will be incorporated into parcel analysis in order to identify maximum relative restoration benefit for each region in the spill area. The negotiation process will culminate in the Executive Director providing the Trustee Council with specific recommendations for each respective landowner, based on lead agency negotiations, HWG analyses and appraisal results.

VII. Small Parcel Process

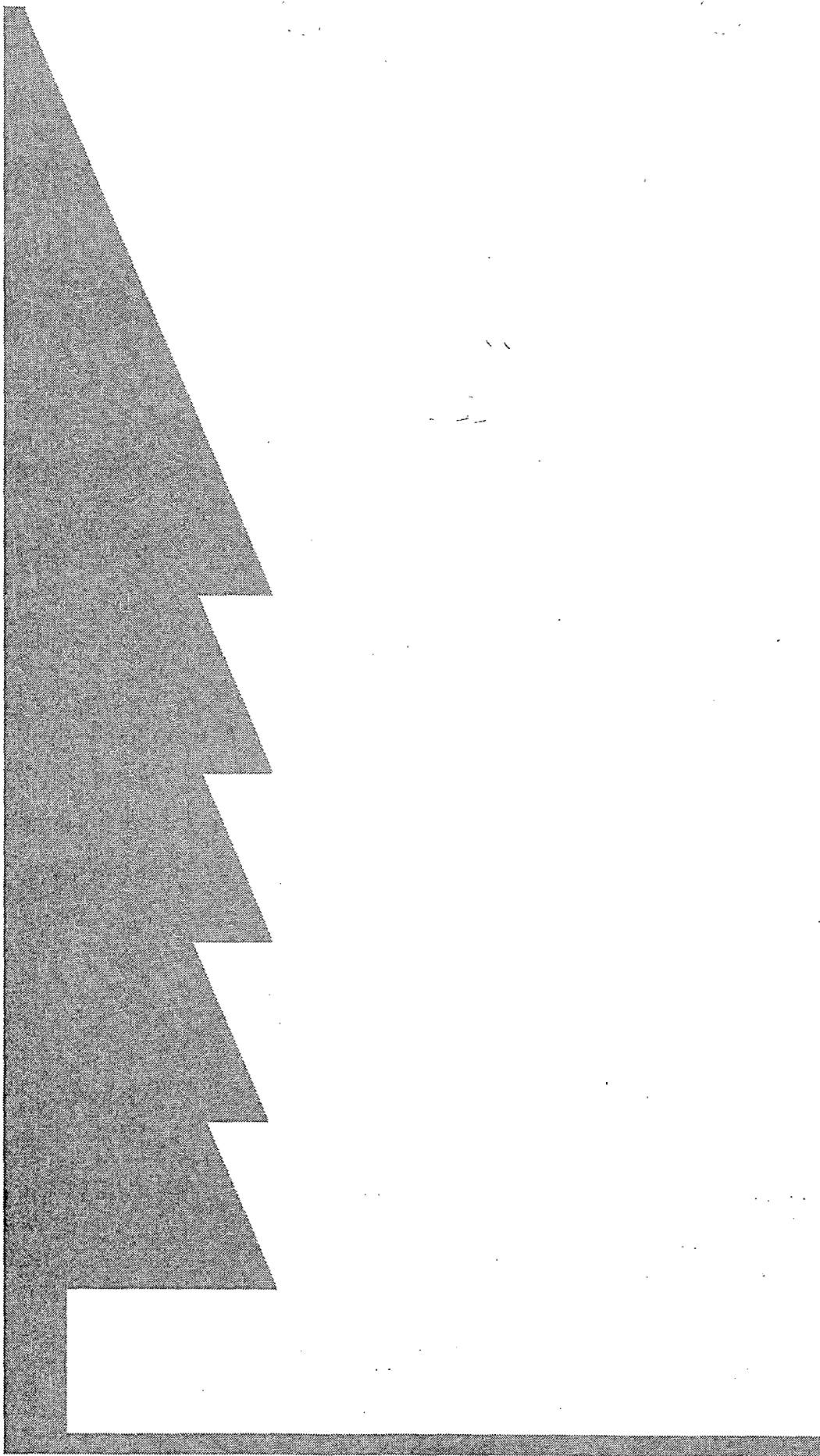
The goal of the small parcel element is to protect lands that are linked to the recovery of injured resources and services. In the large parcel element, parcels were configured to create boundaries around entire ecosystem-level units such as watersheds and key physiographic features in order to protect large areas of linked habitat. In the small parcel element, parcels are too small to encompass entire ecosystems, consequently boundaries are primarily determined by ownership. Emphasis in this evaluation will be placed not only upon the intrinsic resource/service value of a small parcel but also the relationship of the parcel to the surrounding land.

Solicitation for small parcel nominations, from landowners, has just begun.

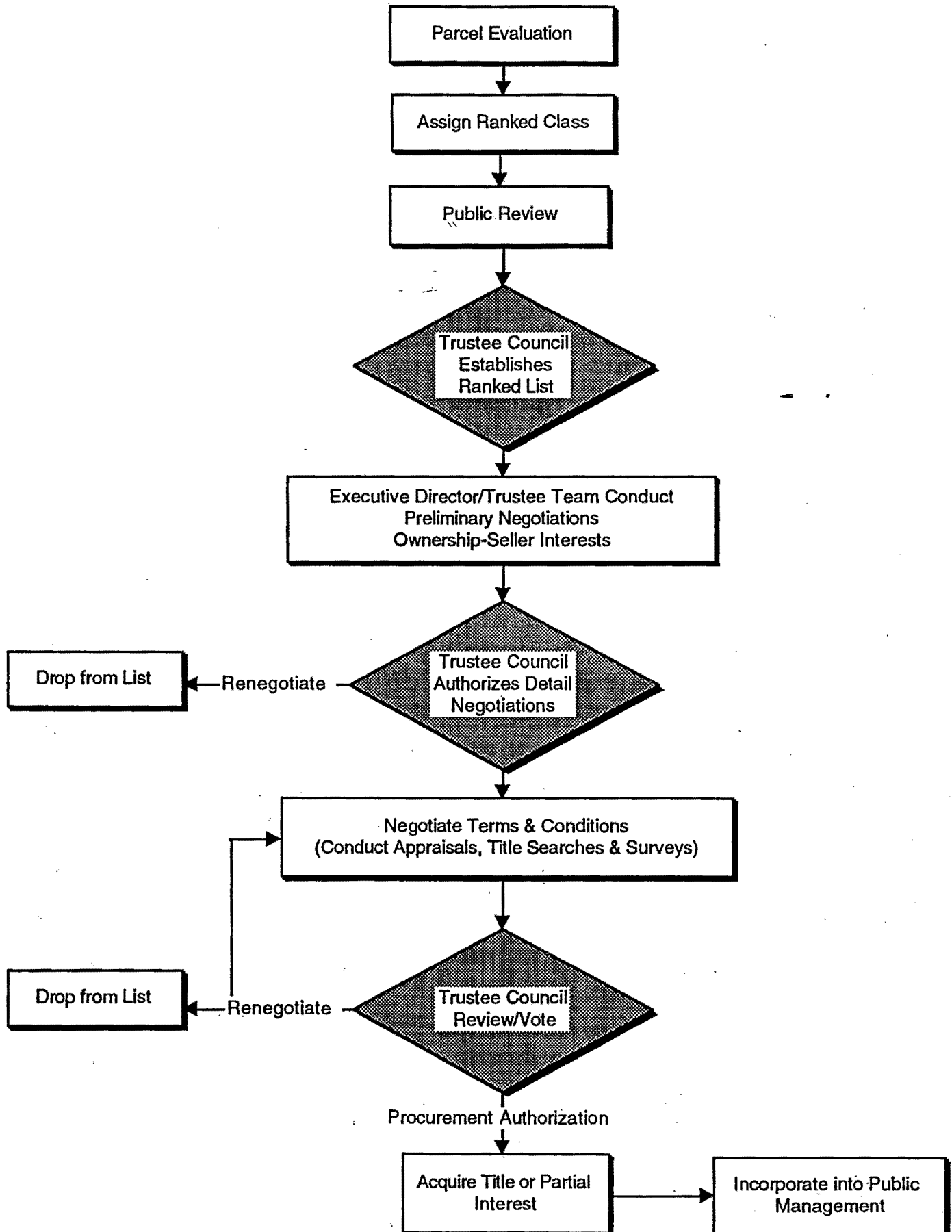


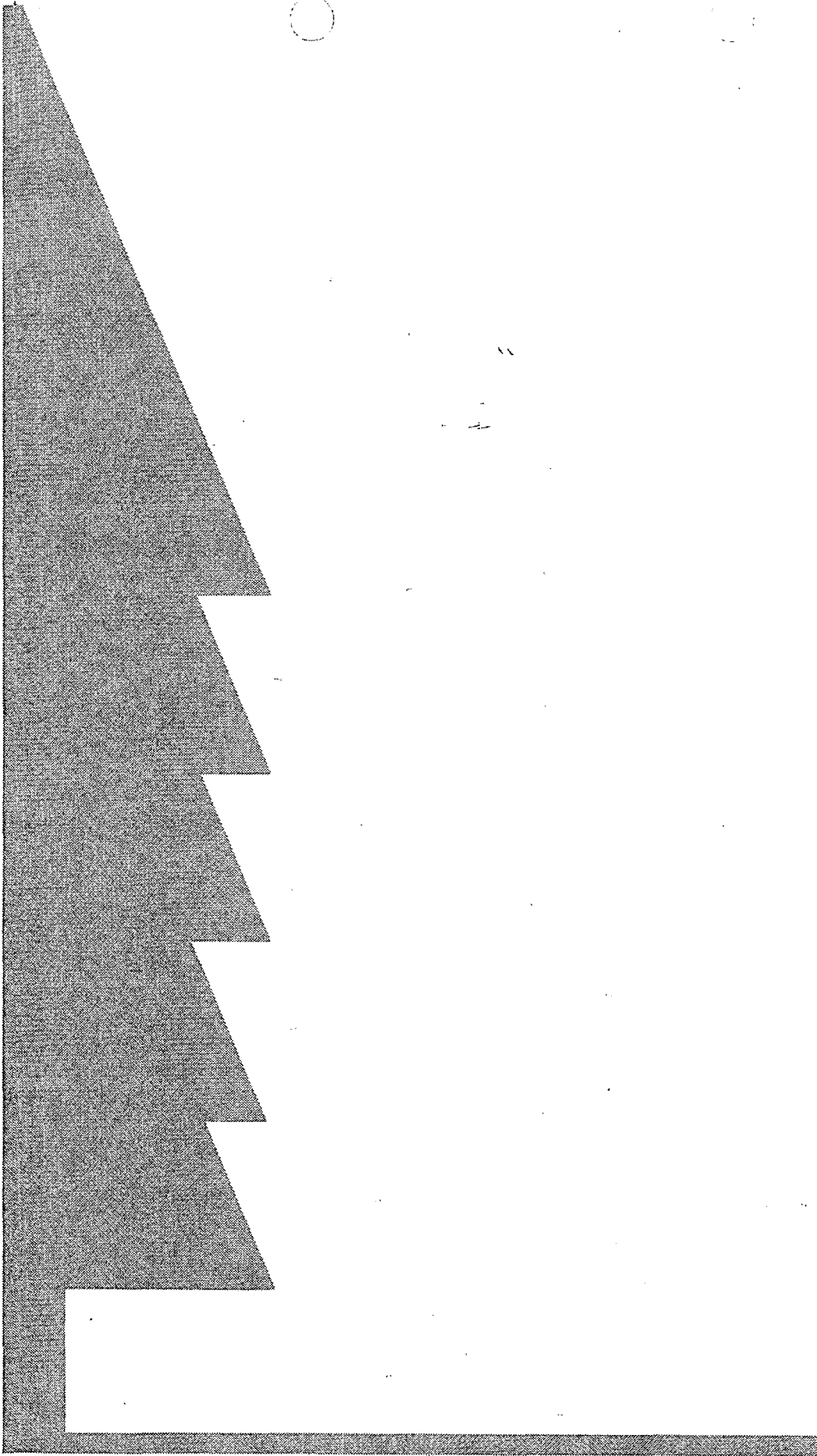
Resolution to Proceed with Habitat Protection Program

1. Habitat Protection needs to move forward as part of an overall restoration strategy.
2. The Executive Director shall work with lead negotiators to develop a standardized appraisal process, including standardized appraisal instructions, which shall be used to appraise the parcels under consideration.
3. The Executive Director shall start negotiations with the landowners of the parcels ranked high in the Comprehensive Large Parcel Evaluation and Ranking. The Executive Director may include additional large parcels as necessary to facilitate development of the list in step 6. These negotiations are to be conducted for the purpose of providing the Trustee Council with proposed terms and conditions for acquisition. Agreement to proposed terms and conditions are discretionary with the Trustee Council. No promises or representations to the landowners to the contrary shall be made.
4. The Executive Director shall review the Comprehensive Large Parcel Evaluation and Ranking based on public comment and Public Advisory Group comment. The document shall also be reviewed to take into account our understanding of where injury actually occurred and the benefits to accrue to the populations actually injured.
5. The Executive Director will develop a rationale for acquisition for each parcel under consideration.
6. Based upon all of the information developed above, the Executive Director will provide the Trustee Council with a recommended list of large parcels to be protected. The recommendation will include considerations such as: 1) the degree of benefit afforded injured resources and services, 2) the need to have a balanced program throughout the spill area, 3) the cost and terms available from the landowner for individual parcels, 4) the adequacy of protection measures available from the landowner, and 5) the adequacy of funds to carry out other restoration activities.
7. Small parcel negotiations will proceed once an evaluation and ranking of small parcels has been completed and approved by the Trustee Council.



COMPREHENSIVE HABITAT PROTECTION PROCESS



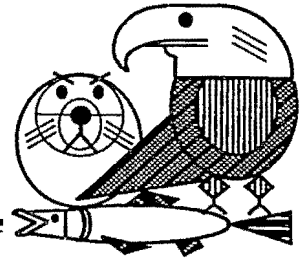


Exxon Valdez Oil Spill Trustee Council

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May 18, 1994

12 STEP PROCESS FOR APPRAISAL/APPRAISAL REVIEW/APPROVAL

1. Lead Negotiating Agency advises Landowner that with Landowner Consent, the Trustee Council is prepared to authorize an appraisal. The Landowner is advised that it should provide all information it believe's is important in determining the value of its interests. The Lead Negotiating Agency informs the Landowner that it may, at its option and expense, procure its own market value appraisal but that it must comply with USPAP and UASFLA in order to be considered by the governments. It is preferable that any such appraisal be completed and submitted in the same time frame as that of the Trustee Council contract appraisal to provide for concurrent review.
2. Lead Negotiating Agency, through the Executive Director, requests that the Forest Service task the Contract Appraiser to conduct an appraisal of Landowner's interests.
3. The Forest Service issues a task order to the Contract Appraiser identifying the scope of work to be conducted. A copy of the standardized appraisal specifications is attached.
4. The Contract Appraiser and representatives of the Lead Negotiating Agency hold a Pre-Work Conference with representatives of the Landowner. If applicable, the Landowner's Appraiser should attend the conference. Purposes of the conference are to: (1) discuss the conduct of the appraisal; (2) establish target dates for completion of the Contract Appraisal and any Landowner Appraisal; and (3) establish an appropriate procedure for the Landowner to provide to the Contract Appraiser all information it believes is important or relevant to determing the value of its property.
5. A site visit of the subject property by the Contract Appraiser is conducted. Representatives from the Lead Negotiating Agency, the Landowner and Landowner Appraiser are encouraged to attend and provide further pertinent information.
6. The Contract and Landowner Appraisers (if a landowner appraisal is expected to be prepared) submit Draft Appraisal Reports, which the Forest Service distributes to the Lead Negotiating Agency Review Appraiser and the State and Federal Review Appraisers for review and

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

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comment (Landowner Appraisal Report is reviewed by Landowner prior to submission). The Lead Negotiating Agency Review Appraiser and State and Federal Review Appraisers review the draft Appraisals .

7. State and Federal Review Appraisers submit comments to Lead Review Appraiser and Forest Service Contract Officer. The Forest Service then provides comments to the respective Contract and Landowner Appraisers (Landowner is copied with comments regarding the Landowner Appraisal).

8. The Contract and Landowner Appraisers consider review comments received and modify their respective Draft Appraisal Reports where appropriate. The Contract and Landowner Appraisers submit final Appraisal Reports to the Forest Service, which then distributes them to the Lead Negotiating Agency Review Appraiser and the State and Federal Review Appraisers. The review appraisers cannot modify the Contract or Landowner Appraisers value determinations, but can request further documentation and clarification as they determine. It is possible that this review process may be repeated.

9. State and Federal Review Appraisers submit comments to the Lead Negotiating Agency Review Appraiser who issues a Review Statement, designating an approved Appraisal or rejecting both Appraisals.

10. The Lead Negotiating Agency submits the Approved Appraisal Report and Review Statement (or the Review Statement for the rejected Appraisal's) to the Landowner for review and the opportunity to comment.

11. Lead Negotiating Agency Review Appraiser receives and transmits Landowner's comments concerning the Approved Appraisal Report and Review Statement to the Appraiser and State and Federal Review Appraisers for consideration.

12 Once all appropriate modifications are made, the Lead Negotiating Agency Review Appraiser specifies the Final Approved Appraisal and issues a Final Review Statement.

