

23.02.05

Womac, Cherri G (EVOSTC)

From: Ian Dutton [ian_dutton@alaskasealife.org]
Sent: Friday, July 16, 2010 12:13 PM
To: Womac, Cherri G (EVOSTC)
Subject: ASLC Submission on Final Draft SEIS

Dear Cherri,

Further to our previous submission, we offer the following brief comments on the Draft Supplemental Environmental Impact Statement (DSEIS) outlining environmental impacts of the Council's proposal to narrow the scope of their work to five clearly-defined restoration categories.

We appreciate the good work that has been done by the Council to date and the importance of the work that will be done under these priority areas. We also appreciate the intent to make program administration more efficient by shifting current Council responsibilities to "the entity responsible for the funded focus area" (p. 12).

However, we remain concerned that there is still a lack of clarity about how that disbursement process will occur and a lack of explicit recognition of the role played by local research and education organizations in the spill area (PWSSC, ASLC, UAF-SFOS, etc.), particularly in terms of promoting local and visitor understanding of the status of impacts and recovery. As the current Deepwater Horizon spill has so vividly demonstrated, there is a high level of ongoing public interest in the impacts of the Exxon Valdez spill and much that should be shared over the longer-term with the public via improved outreach. We reiterate the concern we made in our original submission that public education and outreach phase of research and restoration work funded to date has been inadequate. We believe that the proposed lessons learned/outreach described in the final draft SEIS (2.4.4c, p. 16) remains inadequate in both description and scope and that a more directed effort is needed as future restoration efforts proceed (see ASLC submission, March 30th, p.6-7).

We are also disappointed that the detailed comments that we and several other public submissions provided on the alternatives addressed within the Draft SEIS were not discussed in meaningful detail in this final draft. Specifically, we believe that there is inadequate consideration given in this draft to alternatives 2.5.2 (transfers to other agencies, including use of an NPRB fiscal agent model), 2.5.3 (reallocation of habitat funds) and 2.5.4 (use of funds for an endowment). From both a NEPA process perspective and from a public accountability perspective, we question whether it reasonable to dismiss the idea of an endowment in just one sentence (2.5.4, p.18) ...*"using the remaining funds for a permanent endowment was rejected without detailed consideration due to legal issues which could hinder a permanent endowment?"*. We believe that at the very least, those issues and barriers should be described.

From an environmental justice perspective (as you describe in section 1. (p.10), the lack of description of how those alternatives were treated also limits the opportunity to adequately consider the wider social impacts of various strategies and to adequately describe the potential impacts of the five proposed restoration programs. For example, in section 4.2.4.2.2 there is brief acknowledgement of how the proposed marine debris proposal might "offer long-term employment opportunities". However, there is no equivalent discussion of how alternative funding mechanisms such as the use of an endowment might benefit communities (e.g. by providing a longer term and predictable flow of funding to undertake these five key restoration activities) that were adversely affected, and continue to be affected, by the spill.

Please do not hesitate to contact me if you would like further information on our concerns and recommendations, or to discuss further how the Alaska SeaLife Center, as a leading positive legacy of the work of the Council, may contribute to the next steps in this process.

Thank you again for the opportunity to provide comment.

*Ian M. Dutton, PhD.
President and CEO*

1-907-224-6349 (o)
1-907-863-4416 (c)

From: Womac, Cherri G (EVOSTC) [mailto:cherri.womac@alaska.gov]

Sent: Wednesday, June 30, 2010 11:55 AM

To: pfree@northwestern.edu; alaskalaughingbear@mac.com; chris@alaska.net; richbrenner.alaska@gmail.com; mrostdad@hotmail.com; rakenscrape@hotmail.com; weingart@ims.af.edu; dwinmar@gci.net; comatkin@gmail.com; Clarence Pautzke; dphillips@chugach-ak.com; bluefoxbay@hotmail.com; mdraskovich@kodiak.alaska.edu; len.schw@gmail.com; tcroyer@gmail.com; pj.anderson@usa.net; seth@ims.uaf.edu; glennelison@alaska.com; bill@mcbi.org; jkozub@aol.com; bud_rice@nps.gov; coho2@ak.net; dominick@nccsp.org; tom@nveyak.org; fitzhugh@u.washington.edu; tirs@erols.com; deb@kodiak.org; ericknudsens@gci.net; hopcroft@ime.uaf.edu; rmacintosh@gci.net; clworton@gmail.net; GMATE_PAC@hotmail.com; tws@wildlife.org; jillwitt@gmail.com; A96lynn@aol.com; KRAA@gci.net; Putney.nok@ak.net; Molly Mccammon; alutiiqpride1@crccalaska.org; bcassidy@kodiakak.us; shuyakland@yahoo.com; Peter Armato; kris.holderied@noaa.gov; vage_chaos2003@yahoo.com; Erika.ammann@noaa.gov; chris@goak.com; tedraynor@ak.net; ebrann@fs.fed.us; iaedwardson@gmail.com; heather_coletti@nps.gov; tazdudeman@hotmail.com; randy@kniklake.com; info@oitenergy.com; timothyjoyce@yahoo.com; joy.landalluce@gmail.com; alaskafishman@hotmail.com; marinabriggs@hotmail.com; mbishop@pwssc.org; suefarzam@yahoo.com; rcampbell@pwssc.org; andersenpatc@ctcak.net; nbird@pwssc.org; rjkopchak@gmail.com; citymanager@cityofcordova.net; mhalverson@pwssc.org; cdfu@ak.net; dzastrow@fs.fed.us; abryson@nveyak.org; ks@copperriver.org; joe.l@gci.net; Chip Arnold; iandutton@alaskasealife.org; dkoliver@alaska.edu; Richard Hocking; joann@alaskasealife.org; Lori Polasek; Pam Tuomi; Tara Riemer Jones; Brett Long; akhaddow@gmail.com; kanderson@cityofseward.net; poates@cityofseward.net; pesa@gci.net; tuula_holliman@alaskasealife.org; fklasner@gmail.com; Howard Ferren; wilnbev@ak.net; Nancy Anderson; jeff_mow@nps.gov; lorna.arndt@att.net; kent_sundseth@fws.gov; rgifford@kodiak.us; pj.anderson@usa.net; tidepool@ak.net; Kodiakowen@gmail.com; deediepearson@hotmail.com; tscheezy@yahoo.com; rowkodiak@gmail.com; cjanz@ptialaska.net; V34@gci.net; pforman@gci.net

Subject: DSEIS available for public comment

The National Oceanic and Atmospheric Administration and the *Exxon Valdez* Oil Spill Trustee Council are seeking public comment on the Draft Supplemental Environmental Impact Statement (DSEIS) outlining environmental impacts of the Council's proposal to narrow the scope of their work to five clearly-defined restoration categories. Comments on the DSEIS will be accepted on or before July 19, 2010. For copies of the DSEIS, to comment on, or for more information call (800) 478-7745 or on the web at www.evostc.state.ak.us

23.02.05

From: [Rich Brenner](#)
To: dfg.evsnepacomments@alaska.gov
Subject: Comments for DSEIS
Date: Monday, July 19, 2010 11:52:02 AM

Hello,

The following are my comments pertaining to DSEIS for the Exxon Valdez Oil Spill Restoration Plan:

(1) It is unclear from reading this draft plan what organization would be responsible for the future administration of EVOS funds for any of the alternative plans. If it was mentioned within this document, it is certainly not clear. At the same time, this document completely rejects the transfer of funds to a "agency" without ever defining what it means by an agency: "Transferring the remaining funds to agencies to be expended as limited and required by the Exxon Valdez settlement, was rejected as unnecessary and inhibits the opportunity to allow nongovernmental organizations to propose creative collaborations and participation that could result in an efficient and creative use of resources."

Given that governmental and non-governmental can apply for grants from organization such as NPRB (an agency?) the reader cannot determine what is meant by the quote above. Does "agency" mean government agency? Does "agency" mean private-nonprofit agency? I strongly suggest that this entire section be re-written and made more clear. The term "agency" must be better defined within this document. Also, discussion needs to be given on why this idea was reject. It is entirely unclear how competition, high standards and a clear and consistent vision can be maintained (see section 2.2) without rigorous oversight by some "agency". All of these have been long-standing criticisms of the current EVOS administration of funds which as vacillated among areas of interest (herring, pink salmon, back to herring) and not maintained high standards of science.

(2) The section on the causes of herring decline in PWS needs to be re-written. First, no mention is made on the crash and lack of recovery of herring stocks in Cook Inlet. How are Cook Inlet stocks related to those in PWS? I certainly do not know, but given the proximity and lack of recovery, this needs to be mentioned. Second, there was no mention of hypotheses concerning hatchery salmon production in PWS as a potential cause of the herring crash or lack of recovery. The authors of this DSEIS should note that this hypothesis that was put forth in 1999 by Pearson et al within the Canadian Journal of Aquatic Science (56: 711-737). At the very least, the authors of this DSEIS definitely need to mention the analysis published by Deriso et al. in 2008 within Ecological Applications (18(5): 1270-1286).

I realize that it is not the intention of this DSEIS to assess the validity of all hypotheses concerning the crash or lack of recovery of herring in PWS. However, linking the decline of herring (1992-1993) with a major increase in hatchery pink salmon production in PWS (1988) is just as probable as linking the herring crash with oil, which was mentioned in this DSEIS. This section needs to re-written to include mention of hatchery salmon production in PWS and large-scale oceanic changes in the North Pacific as possible causes for the decline or lack of recovery of herring in PWS.

Thank you,
Rich Brenner

23.02.05



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JUL 14 2010

**EXXON VALDEZ OIL SPILL
TRUSTEE Council**

March 17, 2010

Laurel Jennings
Exxon Valdez Oil Spill Trustee Council
441 West 5th Avenue, Suite 500
Anchorage, AK 99501

and via email to dfg.evos.nepacomments@alaska.gov

Re: Notice of Intent to prepare Supplemental EIS for EVOS Restoration Efforts.

Dear Trustee Council:

These comments on the above-referenced Notice of Intent to prepare a Supplemental EIS (the "SEIS") are submitted on behalf of Chugach Alaska Corporation ("Chugach"), the Alaska Native Regional Corporation for the Chugach Region established pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, 43 U.S.C. § 1601, *et seq.* ("ANCSA"). *All* of the Native Villages in the Chugach Region (Tatitlek, located a mere seven miles from Bligh Reef and the nearest of any community to the catastrophe, Chenega, Eyak, Nanwalek and Port Graham) were devastated by the 1989 Exxon Valdez Oil Spill. In addition, *all* of the incorporated municipalities within the Chugach Region (Cordova, Valdez, Seward and Whittier) were severely impacted by the Spill.

Under ANCSA, Chugach owns or has valid selection rights to nearly 600,000 acres of surface estate and subsurface estate within the spill affected area as its land settlement for aboriginal claims. Under ANCSA, Chugach also owns or has applied for conveyance of numerous cultural/historical sites, including prehistorical and cemetery sites, in the spill affected area. All of Chugach's 2,459 shareholders are from or have traditional and ancestral connections to the area. Today, 557 Chugach shareholders live in the Chugach Region.

The impact of the Oil Spill on Chugach, as the Alaska Native Regional Corporation with a unique, federally created social and economic corporate mission, and the Chugach Region, cannot be overstated.

Scanned/mailed to Laurel J. 07/14/10

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EXXON VALDEZ OIL SPILL
Trustee Council

General Statement Regarding the proposed SEIS

Chugach strongly objects to the proposed narrowing of the scope of the Council's restoration efforts in that it excludes mitigation of the Spill's continuing adverse social and economic impacts on Alaska Natives, and in that it includes further acquisitions of Native lands. Instead, if any change in restoration focus is warranted, remaining funds should be used to mitigate the impacts on the people and communities most adversely affected by the Spill, and to assess the impacts of acquiring Native lands of the corporations, communities and shareholders in the spill affected area.

According to the NOI, approximately \$600 Million has been spent on studies, restoration projects, habitat acquisition and administration. Review of the projects funded by the Trustee Council to date does not show a meaningful effort to directly help the people most affected by the Spill to deal with the clearly identified adverse social and economic impacts. Studies undertaken since 1990 clearly establish significant impacts involving individual, family, and community psychological and social distress. While not a comprehensive list, studies by Impact Assessment's study for the Oiled Mayors (1990, 1993), Picou et al (1990, 1992, 1993, 1996, 1997, 2000, 2007), Dyer (1992), Araj (1992, 1993), US Department of Interior (1992, 1993, 2009), Jorgensen (1993), and Arata et al. (2000), have been funded by cooperative research plans and federal grants. All agree there were significant economic, cultural, psychological and social traumas caused by the spill, cleanup and litigation. Impact Assessment's 1993 report states, "... *the oil spill's impact on the psychosocial environment was as significant as its impact on the physical environment*" (Palinkas et al, 1993). The Trustee Council's proposed action continues its failure to provide the resources necessary to mitigate these impacts.

Individual Impacts

Large scale technological disasters, such as the Exxon Valdez Oil Spill, cause much greater stress and dysfunction among affected individuals in comparison to natural disasters. Impact Assessment Inc.'s 1990 and 1993 studies, along with Picou et al (1990-2007), determined there were

definite, measureable impacts to the more remote and directly impacted residents and communities than to more urban or less affected populations. The studies show there were significantly increased levels of collective and mental stress, disruptions to daily life and family life, feelings of helplessness, betrayal and anger, increased mental disorders including depression, anxiety and Post Traumatic Stress Disorder, fear, drug and alcohol abuse/dependency, increased divorce and domestic violence. Picou and Martin (2007) found these conditions to be chronic since the Spill. The most recent study by the Minerals Management Service, May 2009, also noted persistence of these long-term mental health impacts to the residents of the impacted communities.

The deleterious community impacts of the EVOS, one of the worst technological disaster(s) in U.S. history, were both immediate and long-term. Many communities suffered a variety of social structural, cultural and individual impacts that have persisted from 1989 to present. (*Synthesis of Research on Alaska OCS Socioeconomic Effects*, Minerals Management Service, Alaska OCS Region, May, 2009).

Marshall, Picou and Schlichtmann reported intrusive stress scores more than double for litigants of the spill than non-litigants in 2004.

Cultural Impacts

"Our lives are rooted in the seasons of God's creation. Since time immemorial, the lives of Native people harmonized with the rhythm and cycles of nature. We are a part of nature. We don't need a calendar or clock to tell us what time it is. The misty green of new buds on the trees tell us, the birds returning from their winter vacation tell us, the daylight tells us. The roots of our lives grow deep into the water and land. That is who we are. The land and the water are our sources of life. The water is sacred." From 'The Day the Water Died', Walter Meganack, Chugach and Port Graham Elder, 1989.

"The water is just dead." Chenega Bay resident, interview, 1995.

"I feel like someone has died, like a part inside me is gone." Eyak Elder, interview, 1993.

From *The Exxon Valdez Disaster: Readings on a Modern Social Problem* (Gill, Picou, 1997):

Of all the groups negatively impacted by the EVOS, Alaska Natives were the most devastated. The oil spill destroyed more than economic resources, it shook the core cultural foundation of Native life. Alaska Native subsistence culture is based on an intimate relationship with the environment. Not only does the environment have sacred qualities for Alaska Natives, but their survival depends on the well-being of the ecosystem and the maintenance of cultural norms of subsistence. The spill directly threatened the well-being of the environment, disrupted subsistence behavior, and severely disturbed the sociocultural milieu of Alaska Natives.

Impact Assessment Inc.'s researchers analyzed psychological stress levels among the communities most impacted by the spill, and through various standards and metrics found Alaska Natives within those areas were found to have relatively higher levels of intrusive stress and avoidance behavior than any other group, whether considered by race, occupation or other social strata. Stress scales show that many Alaska Natives directly impacted by the spill to have higher intrusive stress, after 6 months, than clinical patients undergoing therapy for symptoms of bereavement from the death of a parent. Alaska Natives directly impacted also were shown to have higher stress and avoidance behavior scores, after two years, than the average found for rape victims over the same time frame. (Gill and Picou, 1997).

In 2000, Arata et al., found that Alaska Natives and commercial fishers within the spill affected areas continued to manifest high-levels of psychological stress from lost resources "spirals".

They also exhibited inadequate coping skills which further exacerbated chronic patterns of psychological stress.

Alaska Native culture, in large part, revolves around customary traditions and norms centered on subsistence activities, from anticipation and preparation, to harvesting, sharing, frequent gatherings and celebrating. The social and psychological importance of these activities cannot be undervalued. Subsistence is not only about sustenance, because it also involves social interaction, kinship, ritual, ceremony and celebration. In surveys conducted in 1991 through 1995, 77% of the Alaska Natives in Cordova “agreed that sharing subsistence brought them closer to other people and reminded them of what was good about life”. “Further, over 80% percent of the Alaska Natives agreed that collecting local foods was an important activity for them and 84% wanted their children to have the opportunity to participate in subsistence harvests” (Picou and Gill, 1995). When the spill devastated the traditional subsistence resources, the entire culture was put at risk, both as community and individually. The traditions that helped define life for an entire culture were irrevocably damaged.

Sacred waters and sites were damaged through the contamination of oil, the oil recovery practices and by vandalism and theft from the workers. In some instances, grave sites and archeological sites were robbed or desecrated. These types of activities only served to heighten the sense of anger, frustration, depression and anxiety felt by Alaska Natives living in or physically or culturally dependent on the spill affected area.

Discrimination and cultural ignorance by clean-up crews and oil company executives exacerbated the adverse social and economic impacts on Alaska Natives from the Oil Spill. One instance related in Impact Assessment, Inc.’s study “in attempting to assist the village of Tatitlek preserve fish, Exxon sent salt that been chemically treated to de-ice roads”. Another reported Exxon sent a barge of shellfish to Tatitlek. When consumed, many in the village fell sick with food poisoning, only to find out the food was actually intended for rescued sea otters, but shipped to the

village instead. "The villagers were outraged and some perceived this event as demonstrating that Exxon treated people little better than animals" (Impact Assessment, Inc., 1990).

Even before the villages had a chance to collect their thoughts and mourn their loss, they were "invaded" by Exxon officials with the promise of jobs. Out of desperation, there was no other choice but to accept the offers. The villages felt overrun by government workers, cleanup crews, scientists, lawyers and media personnel. This strained many households and created new and additional stressors. Many village residents felt threatened by the influx, especially since many of the interlopers were ignorant to Native ways and culture, showing disrespect and further adding to the animosity. A few villages finally banned the media from travel to their village.

Impact Assessment also reported that racial discrimination was both plainly evident and also subdued. From derogatory racial slurs and remarks to only hiring Alaska Natives for peripheral, more hazardous, or lower paying jobs. Many would not listen to the local knowledge many of the villagers prided themselves on. None were asked about their concerns of the chemicals used for dispersants, though it was the villages that would have to live with this impact.

In light of this record, the Council's failure to include mitigation of adverse social and economic impacts in the final phase of its restoration efforts is inexplicable and unconscionable. At the end of the day, success of the Council's restoration efforts can only be measured by the improved well being of the people most impacted by the Oil Spill. The proposal presented in the NOI utterly fails to acknowledge this simple equation.

Social Structure Impacts

The devastation and stress of the Oil Spill, the inadequate response and the economic desperation the Spill created, became a tremendous burden on families, friends, social and professional groups and entire communities. Work on cleanup crews took parents and spouses away from their family for extended periods of time. Young children didn't understand why their parents

were not around. Fear and panic swept through the villages and communities. There were documented and quantified changes in established and functional social groups. Fisherman turned on their fishing brethren who either felt that by taking a job with Exxon for the cleanup was the right thing to do for the environment, or were panicked on the economic outlook of future fishing. Some saw this as selling out and the term "spillionaire" became a popular derogatory epithet. Further division occurred when those that chose to work on the cleanup crews became much more financially stable than their neighbors, friends and family and tribal members.

It is part of the historic record that public officials and oil industry executives all long promised that the Trans Alaska Pipeline System and the transport of oil through the Prince William Sound was safe as humanly possible, and that industry and government was well prepared in the unlikely event of an oil spill. Indeed, such promises are the very foundation on which ANCSA was enacted and the construction of the Pipeline authorized. The Exxon Valdez Oil Spill proved all such promises hollow, engendering an atmosphere of pervasive distrust of government and industry. The United States Supreme Court's recent 90% reduction in the amount of damages awarded by an Alaskan jury against Exxon for harm arising from the Spill after 20 years of wrenching litigation only reinforced the sense of alienation and hopelessness among the very people most directly impacted by the Oil Spill.

In this context, the Trustee Council's continued focus on the health of animal species to the exclusion of the health and well being of the people directly harmed by the Spill is irresponsible and culturally arrogant. Many continue to feel the Trustee Council has become a group of officials and scientists concerned more with institutional and career preservation than with working in the best interest of the residents of the spill affected area. Some feel it is evident, through the money spent and projects funded, that far greater attention is given to the biological environment rather than to the 20+ communities that were most affected by the Oil Spill. Even though many considered the Prince William Sound and spill affected OCS to be a pristine wilderness, the aboriginal Alaska Natives have inhabited the spill zone for at least 4,500 years. People are as much of a part of the natural environment in this area as the eagles, herring, salmon or numerous other wildlife species.

Conclusion

Without question, the 1989 Exxon Valdez Oil Spill devastated the people and communities in the spill affected area. The effects are real and measureable. Today, 21 years later, the area's residents continue to suffer. According to the NOI, the Trustee Council has spent roughly \$600 Million in its restoration efforts. Two GAO reports have raised questions about the applicability of some projects funded as a part of the restoration effort. With approximately \$180 Million left, we believe the majority of those funds should be directed to assisting the people affected by the Spill and by mitigating the adverse human and cultural impacts created by the Spill, and in assessing the social and economic impacts of the Council's habitat acquisition program over the last 20 years, as well as its effectiveness as a restoration tool. We are aware of no evidence to suggest that natural resources and wildlife on lands not sold to the Trustee Council have suffered any greater effects than on the lands acquired. For these reasons, we object to the proposed narrowing of the Council's restoration focus as outlined in the NOI.

On March 28, 1989, in the Cordova High School gymnasium, Exxon spokesman Don Cornett addressed the town and flatly stated, "We will consider whatever it takes, to make you whole". Seemingly, a significant portion of Exxon's effort to do fulfill that promise has been through the Trustee Council. The Council needs to not only focus on the wildlife and water, but also the most precious resource in the cycle of life this disaster has harmed - the people most affected.

Chugach Alaska Corporation appreciates the opportunity to comment on the SEIS for the EVOS Trustee Council.

Sincerely,



Sheri Buretta, Chairman
Board of Directors

23,02,05

THE CONSERVATION FUND

July 13, 2010

GLENN ELISON
6400 ANDOVER CIRCLE
ANCHORAGE, ALASKA 99516
(907) 868-7974
glennelison@alaska.com

Laurel Jennings
NEPA Coordinator
Exxon Valdez Oil Spill Trustee Council
441 W. 5th Ave., Suite 500
Anchorage, AK
99501

Dear Ms. Jennings:

The Conservation Fund supports the draft supplemental environmental impact statement for the Exxon Valdez Oil Spill Restoration Plan released in May 2010. The draft SEIS provides a more discrete and efficient funding mechanism by which to direct the remaining EVOS settlement funds.

Refining the scope of the Council's restoration efforts to five defined restoration categories: herring; lingering oil; long-term monitoring of marine conditions and injured resources; harbor protection, marine restoration, and lessons learned/outreach; and habitat acquisition and protection should allow for a much more focused restoration program. The SEIS, if fully implemented, should produce a program that is best suited to restoring the resources injured by the EVOS and most effectively using the limited restoration funds that remain.

We encourage the EVOS Trustee Council to continue to keep options open to accomplish its habitat restoration goals by partnering with non-profit organizations as has been done in the past. The non-profits may be able to bring matching funds to some of the habitat restoration projects, thereby increasing the benefits of the EVOS funds. The non-profits can be a very cost effective and timely option to accomplish important restoration projects.

I appreciate the opportunity to provide comments on the SEIS.

Sincerely yours,



Glenn Elison
Alaska State Director

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JUL 15 2010

EXXON VALDEZ OIL SPILL
TRUSTEE Council

Partners in land and water conservation

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

June 10, 2010

Laurel Jennings
Exxon Valdez Oil Spill Trustee Council
441 West 5th Avenue, Suite 500
Anchorage, Alaska 99501

Re: EPA comments on the Exxon Valdez Oil Spill (EVOS) Trustee Council DSEIS for the
Exxon Valdez Oil Spill Restoration Plan, EPA Project # 94-031-NOA

Dear Ms. Jennings:

We have reviewed the draft supplemental environmental impact statement (DSEIS) for the **Exxon Valdez Oil Spill Restoration Plan** (CEQ #20100203) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions and the document's adequacy in meeting NEPA requirements. For further explanation of our EIS review responsibility, please refer to *EPA's Section 309 Review: The Clean Air Act and NEPA*, which is attached.

In general we support the Exxon Valdez Oil Spill Trustee Council's (Council) efforts to narrow and refine the scope of its restoration efforts and to develop a more efficient funding mechanism for the distribution of restoration funds. In particular, we believe the effort to concentrate on the five focus areas (herring, lingering oil, long-term monitoring, lessons learned, and habitat acquisition/protection) is prudent and reasonable given the current status of impacted resources. Based on our review, we do not have any substantial concerns with the proposed action (Alternative 2) and have assigned it a rating of LO (Lack of Objections). A copy of EPA's rating criteria is attached.

We offer several recommendations that we believe will improve the quality of the analysis in the final supplemental programmatic environmental impact statement (SPEIS). First, we recommend that the applicable laws and regulations to which the Council and this analysis are subject be described in the final document. For instance, the Executive Order (EO) 12898 is discussed briefly, but no other EOs (Tribal Consultation, Children's Health, Wetlands, etc.) are mentioned. It is unclear if the Council is subject to the various presidential EOs and other requirements that typically must be considered for major federal actions. Second, although a link to the scoping comments is provided in the document, it would be helpful to have a brief summary of the major issues that were identified by agencies and the public in the document. In the Environmental Consequences section, there is a qualitative description of the impacts associated with the various resources discussed but no explanation of the criteria used to evaluate

these impacts. We suggest that these criteria be defined. Also, there is no discussion of the impacts associated with Alternative 1, the No Action Alternative. We recommend that the impacts associated with the No Action alternative be disclosed to fully inform the public and decisionmaker. Finally, there are numerous references to studies and data throughout the document, but no references or citations are provided. We recommend that this information be provided in the final document.

Thank you for the opportunity to provide comments on the DSEIS. If you would like to discuss these comments, please contact Jennifer Curtis of my staff in Anchorage at (907) 271-6324 or by electronic mail at curtis.jennifer@epa.gov.

Sincerely,



Christine B. Reichgott, Manager
Environmental Review and Sediments Management Unit

Enclosures

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment, February, 1987.



23.02.05

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
NEWPORT BEACH

400 South Hope Street
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July 19, 2010

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VIA E-MAIL (DFG.EVOS.NEPACOMMENTS@ALASKA.GOV)
AND OVERNIGHT MAIL

WRITER'S DIRECT DIAL

(213) 430-8359

Laurel Jennings
NEPA Coordinator
Exxon Valdez Oil Spill Trustee Council
441 W. 5th Ave., Suite 500
Anchorage, AK 99501
(888) 654- 3867

WRITER'S E-MAIL ADDRESS

cchristofferson@omm.com

Re: ExxonMobil Comment on Draft SEIS

Dear Ms. Jennings:

The National Oceanic and Atmospheric Administration ("NOAA"), as a member of the Exxon Valdez Oil Spill Trustee Council (hereinafter "Trustee Council" or "Trustees"), has prepared a draft supplemental Environmental Impact Statement ("DSEIS") under the National Environmental Policy Act ("NEPA") to narrow the scope of restoration efforts for the remaining EVOS funds. Our client, Exxon Mobil Corporation ("ExxonMobil") notified the Trustee Council during the scoping process that the SEIS process would be circumvented if underlying scientific data funded by the Trustees was not released so that the public can fairly assess and comment on the impacts of the proposed action in the DSEIS.

The public has not been able to participate in a meaningful way in this process given the failure to disclose data and key reports pertaining to some of the categories that the Trustees have proposed should continue to receive funding. For example, one of the areas identified by the Trustee Council for continuing restoration efforts is lingering oil. Yet the final reports for the lingering oil projects headed by Jacqueline Michel, Michel Boufadel, and Albert Venosa have not been released on the Trustee Council's website, even though the Trustee Council has at least one of these reports in its possession. Similarly, it has been almost four years since the Ballachey and Bodkin final reports related to sea otters and harlequin ducks were drafted, but the Trustee Council has never released these reports. The subject of these reports, sea otters and harlequin ducks, have been identified in the DSEIS as "recovering" and in need of further long-term monitoring, which is another category singled out for continued funding. (DSEIS, at § 4.2.2.)

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ExxonMobil has tried to obtain these reports and the underlying data over the past three years through its Freedom of Information Act ("FOIA") requests, but the federal agencies have repeatedly denied the FOIA requests and administrative appeals or failed to respond. For instance, despite repeated requests, we have received none of the interim or final reports and very little of the scientific data related to the Michel¹ and Boufadel² projects under FOIA, which are purportedly designed to provide information that will allow the Trustee Council to "reach a decision point on further efforts for active remediation." See Notice of Intent to Prepare a Supplemental Environmental Impact Statement on the Exxon Valdez Oil Spill Trustee Council's Restoration Efforts, at 3708 (Jan. 22, 2010). As a result, we were forced to file a complaint on February 18, 2010 asking the U.S. District Court of the District of Columbia to require NOAA and the U.S. Environmental Protection Agency ("EPA") to produce the withheld reports and data.

In addition, EPA has refused to disclose the reports and almost all of the data responsive to our request for records related to the Venosa microcosm study,³ another project that seems pivotal to the Trustee Council's decision to include lingering oil as an area for further restoration efforts. EPA's justification for withholding the reports and data was based on the false assertion that this request is the subject of ExxonMobil's lawsuit regarding the Michel and Boufadel data and that the documents are subject to the FOIA exemption for "pre-decisional" documents. But "[p]urely factual reports and scientific studies cannot be cloaked in secrecy by an exemption designed to protect only those internal working papers in which opinions are expressed and policies formulated and recommended." *Bristol-Myers Co. v. Fed. Trade Comm'n*, 424 F.2d 935, 939 (D.C. Cir. 1970). Moreover, even if EPA could claim this privilege, "the deliberative process privilege does not protect documents in their entirety; if the government can segregate and disclose non-privileged factual information within a document, it must." *Loving v. Department of Defense*, 550 F.3d 32, 38 (D.C. Cir. 2008) (emphasis added); see also *Lahr v. Nat'l Transp. Safety Bd.*, 569 F.3d 964, 983 (9th Cir. 2009) (ordering the agency to release the raw data used in the analysis even if CIA analysts' evaluation of that data, their calculations, and their thought processes were exempt).

Without the reports and underlying data used to support the decision to prepare an SEIS and the proposed action, the public is left with the impression that work toward the objectives of delineating subsurface oil ("SSO"), assessing the potential for further bioremediation, and exploring biomarkers as exposure indicators was encouraging. Yet the Trustee Council is aware that these findings are not factually complete and certainly not entirely accurate. For instance, the Trustee Council's Report on Recent Lingering Oil Studies used to prepare the Notice of Intent to prepare an SEIS stated that previous studies on sea otters to demonstrate ongoing oil exposure were merely "methodologically challenging" and the data not reliable. (Report on

¹ EVOSTC Restoration Project 070801 entitled "Assessment of the Areal Distribution and Amount of Lingering Oil in Prince William Sound and the Gulf of Alaska." The principal investigator is Jacqueline Michel.

² EVOSTC Restoration Project 070836 entitled "Factors Responsible for Limiting the Degradation Rate of Exxon Valdez Oil in Prince William Sound." The principal investigator is Michel Boufadel.

³ EVOSTC Restoration Project 080840 entitled "Microcosm Study on the Biodegradability of Lingering Oil in Prince William Sound." The principal investigator for the project is Albert Venosa.

Recent Lingering Oil Studies, at 17.) In fact, as we alerted NOAA and the Alaska Department of Law over a year ago, the studies measured completely the wrong gene sequence in otters (a point that is indisputable but which has never been acknowledged by the Trustees in public). If the results are not sound, the Trustee Council has a duty to share the data and publicly retract its statements relying on such faulty data.

Moreover, the Trustees fail to address the large body of science that repudiates ongoing oil exposure. The Trustees studied oiled mussel beds (restored and reference) in 1999 (Carls et al. 2004) and showed that "oil concentrations were typically at background levels in restored and oiled reference mussel beds." Oil and particularly the most toxic components, PAHs, are not above background levels in the waters off shorelines where SSO exists. PAH levels in forage species for otters and ducks are the same for oiled and unoled areas, which indicates that SSO is not in their food chain. Despite its absence from the water and the food, Trustee scientists now speculate that the ducks and otters encounter the SSO while foraging and transfer it to themselves while preening. But, with the exception of a claim that a sheen of oil was found in one pit of soft sediment,⁴ no oil has been found in any location where otters and ducks forage. Even the logic of this exposure pathway defies common sense, as it would mean that otters or ducks move the armor of large rocks and boulders that have protected remaining SSO from wave action for the last 20 years. It is then hardly surprising that investigators who sought areas of overlap between where SSO exists and where ducks and otters forage found no such overlap and, without overlap, there is simply no justification for further oil studies.

None of these technical considerations that provide the justification for continued lingering oil studies are addressed in the DSEIS as required under NEPA. See *Sierra Club v. Bosworth*, 199 F. Supp. 2d 971, 980 (N.D. Cal. 2002) (finding that it was insufficient for USFS to provide information in support of its position solely in the administrative record and that mere "consideration" of contrary opinions was insufficient where "EIS fails to disclose or analyze such opinions"); *League of Wilderness Defenders--Blue Mountains Biodiversity Project v. United States Forest Service*, 2004 U.S. Dist. LEXIS 24413, at *43 (D. Or. Nov. 19, 2004) (holding that USFS needed to disclose scientific opinions in support of and against conclusion that proposed logging plan would reduce the risk of future fires in burned areas). If the Trustees have reports and data that refute these technical considerations and support further oil studies, they have refused to share them with the public and, therefore, ExxonMobil and the rest of the public cannot meaningfully evaluate the soundness of funneling funding to this category. Without such reports and data, it is impossible to fully understand the impact of the Trustees' decision to earmark the funds for five specific categories, one of which is the lingering oil projects.

With the initiation of the SEIS process, the Trustee Council can no longer continue to dismiss or ignore the large body of technical presentations and peer-reviewed literature that is at odds with the Trustees' lingering oil findings. Nor can it continue to mislead the public by

⁴ Here again, examination of the data purporting to support this claim is warranted since soft sediments do not support sequestration of oil.

refusing to release the key reports and underlying data. Although the Trustee Council has continued to deny the public these reports and data it is obligated to provide under NEPA both during the initial scoping process and the public comment period that ends on July 19, 2010, we urge the Trustee Council to immediately release all of the scientific reports and data supporting the DSEIS, Notice of Intent, and Lingerin Oil Status Report including, but not limited to, the withheld Michel, Boufadel, Venosa, Bodkin, and Ballachey reports and data that ExxonMobil has been denied under FOIA. Otherwise, the DSEIS is invalid since the public has been prevented from meaningfully participating in the process and the Trustees have not provided sufficient support for their proposed action.

Denying meaningful access to such reports and data, particularly during the scoping process that is designed to encourage public participation, does a disservice to the State of Alaska and violates a primary objective of an environmental impact statement under NEPA. *See, e.g., State of Cal. v. Block*, 690 F.2d 753 (9th Cir. 1982) (holding that supporting data or studies expressly relied upon in EIS could not be utilized to uphold validity of EIS on review where that data and studies were not available and accessible to public); *Life of the Land v. Brinegar*, 485 F.2d 460, 468-69 (9th Cir. 1973) (holding that supporting studies for EIS need to be available and accessible by the public); *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) ("NEPA requires that the public receive the underlying environmental data from which a[n] . . . expert derived her opinion."), *overruled on other grounds by Lands Council v. McNair*, 537 F.3d 981, 997 (9th Cir. 2008); *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 511 F.3d 1011, 1026 (9th Cir. 2008) ("[W]e now adopt this rule: An agency, when preparing an [Environmental Assessment], must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process."); *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989, 996 (9th Cir. 2004) ("NEPA documents are inadequate if they contain only narratives of expert opinions" and the underlying environmental data relied upon to support the expert conclusions must be made available to the public); *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F. Supp. 2d 984, 992-93 (E.D. Cal. 2005) (holding that agency's failure to provide for effective pre-decisional public involvement in preparation of Environmental Assessments is "contrary to law" where, among other things, the agency withheld already-prepared data and analyses "even though the documents were completed before the end of the public comment period").

Even if the Trustees have not proposed a specific percentage of additional funding for lingering oil studies in the DSEIS, the overarching decision to channel funding to this category needs to be justified and supported in the DSEIS. *See Thomas*, 137 F.3d at 1150-51 (holding that failure to disclose underlying scientific information precluded public from having enough information to adequately challenge agency's proposed action); *Weingardt*, 376 F. Supp. 2d at 992 (finding that USFS failed to provide sufficient information regarding environmental impact of proposed projects when it issued its scoping notices). It is insufficient to address these concerns in other "yet-to-be-created plans," which is what the Trustees propose in the DSEIS with respect to lingering oil. *See Seattle Audubon Soc'y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) (invalidating EIS for, among other reasons, stating impact a decrease in spotted owl

viability would have on other old-growth-forest-dependent species would be addressed in future “yet-to-be-created” plans), *overruled on other grounds by McNair*, 537 F.3d at 1001. The decision to include lingering oil as one of only five categories that will be considered for future funding demands further explanation “in support of and in opposition to the NEPA decision” because that decision necessarily impacts any excluded categories or evaluation of alternative funding schemes. *See Bosworth*, 199 F. Supp. 2d at 981 (holding that EIS violated NEPA because it failed to disclose scientific opinion for and against its conclusion that the proposed project would help to reduce wildfires in previously burned areas). A general statement regarding the possible impact a proposal might have on a particular habitat or species is insufficient without meaningful, detailed explanation. *Ecology Center, Inc. v. Austin*, 430 F.3d 1057, 1067-68 (9th Cir. 2005) (holding EIS insufficient for failing to explain the basis for conclusions regarding impact of treating old-growth forests so that public could make “informed comparison of the alternatives”), *overruled on other grounds by McNair*, 537 F.3d at 990-94, 1002. While the DSEIS draws general scientific conclusions related to lingering oil, it fails to provide anything to substantiate such conclusions. *See* DSEIS, at § 2.4.2; *see also Klamath-Siskiyou Wildlands Center v. Bureau of Land Mgmt.*, 387 F.3d 989, 996 (9th Cir. 2004) (finding that a NEPA document is inadequate if it contains only “narratives” of expert opinions); *Thomas*, 137 F.3d at 1150 (holding that production of cursory report of expert’s opinion without disclosing “underlying environmental data” did not satisfy NEPA’s reporting requirements). Not only have the Trustees failed to disclose the data underpinning the DSEIS conclusions, but they have not even released the expert reports that explain what the data reveal about lingering oil prevalence and effects.

To the extent that NOAA and the Trustee Council claim they do not have the underlying reports⁵ and data and the decision to draft an SEIS limiting funding to lingering oil was based *solely* upon a narrative summary by Drs. Michel and Boufadel, this reliance on such cursory information violates the requirements of NEPA. *See* Defendants’ Motion for Summary Judgment, Case No. 1:10-cv-00250-RMU, at 28, filed July 15, 2010 (“NOAA . . . drafted [the] Notice of Intent to Prepare a Supplemental Environmental Impact Statement based upon the [public] summary report [of the work of Drs. Boufadel and Michel], **not upon any data or other reports** generated by Dr. Boufadel or Dr. Michel.”) (emphasis added); *see also Klamath-Siskiyou*, 387 F.3d at 996 (finding that a NEPA document is inadequate if it contains only “narratives” of expert opinions); *Thomas*, 137 F.3d at 1150 (holding that production of cursory report of expert’s opinion without disclosing “underlying environmental data” did not satisfy NEPA’s reporting requirements). The Trustees cannot have it both ways -- either they must release the underlying reports and data that substantiate the DSEIS or the proposed action in the DSEIS is without adequate scientific support.

⁵ This claim by the Commerce Department in ExxonMobil’s FOIA lawsuit is particularly inexplicable given NOAA’s statement over three months ago that it was withholding under FOIA a “courtesy copy” of the Michel final report in its possession and confirmed that it would post the report on the EVOSTC website, which it has not done to date. *See* NOAA’s letter dated April 8, 2010 in response to Request No. NOAA-2010-00157 for “all of the presentations and underlying data for the January 2010 Alaska Marine Science Symposium related to the Spill.”

It is our opinion that the entire SEIS process has been tainted because the Trustees have continuously refused, even at this juncture, to provide the foundational reports and data relied upon for the proposed far-reaching governmental action and failed to adequately explain the bases for its conclusions. This is particularly disturbing since what little is known so far about these studies appears to lend no substantive support for further remediation of lingering oil, even though the Trustees continue to spend millions of dollars to fund these studies. In fact, despite the Trustees failing to publicly disclose the full scientific bases for their SEIS decision pertaining to lingering oil to date, the Trustees recently approved another \$81,000 for additional field work by Boufadel to repeat the tracer delivery testing to confirm his 2009 results. If the Trustees continue the SEIS process without releasing the expert reports and underlying data so that the public can properly assess and fairly comment on it before the SEIS is finalized, ExxonMobil may have no choice but to seek injunctive and declaratory relief to invalidate the SEIS process and any findings under it.⁶

Sincerely,



Carla J. Christofferson
of O'MELVENY & MYERS LLP

cc: John Daum, Esq.
Michael F. Smith, Esq.
Craig O'Connor, Esq.
Craig Tillery, Esq.
William D. Brighton, Esq.
Michael Zevenbergen, Esq.
Richard Myers, Esq.
Elise Hsieh, Esq.

LA1:1196480.7

⁶ See *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882-83 (1990) (holding that a party can challenge "agency action" that violates NEPA under the Administrative Procedure Act) (quoting 5 U.S.C. § 702); see also *Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 994 (E.D. Cal. 2005) (granting plaintiffs' motion for summary judgment alleging defendant violated NEPA during the Environmental Assessment process); *Sierra Club v. Bosworth*, 199 F. Supp. 2d 971, 993 (N.D. Cal. 2002) (granting plaintiffs' motion for summary judgment and injunctive relief alleging defendant's EIS failed to comply with NEPA); *Seattle Audubon v. Espy*, 998 F.2d 699, 704-705 (9th Cir. 1993) (affirming district court's grant of injunctive relief in favor of plaintiff's challenge that EIS violated NEPA); *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 369 (2008) (noting that declaratory or injunctive relief are remedial tools available in judicial challenges associated with preparation of an EIS).

From: Origin ID: EMTA (213) 430-6000
Carla Christofferson
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071



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Laurel Jennings
Exxon Valdez Oil Spill Trustee Coun
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Anchorage, AK 99501

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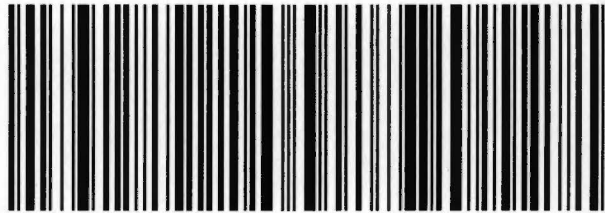
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TRUSTEE Council

23.02.05

James G. (Jim) King
1700 Branta Road
Juneau, Alaska 99801-7918

Laurel Jennings – NEPA Coordinator
Exxon Valdez Oil Spill Trustee Council
441 West 5th Ave. Ste. 500
Anchorage, AK

7/15/10

Dear Coordinator Jennings,

These are comments for consideration in evaluating the DSEIS for the Exxon Valdez oil spill.

I was a member of the EVOS Public Advisory Group for the first 10 years representing conservation and public interests. I am a retired wildlife biologist. My motion to establish a "restoration reserve", supported by Sharon Gagnon and others, is perhaps responsible for the money that is still on the table.

From the start I advocated establishing endowed academic chairs at U of A for long term research and teaching regarding the injured resources specifically in the fields of marine ornithology, marine mammals, commercial fish, and the marine food chain with focus on oil impacts. This could still be done with about 10 million dollars of the restoration reserve, leaving plenty of money for other things.

Having perpetual university presence will provide continuing benefits to the marine resources through application of new ideas, new technology, and new understanding. This would be a continuing asset for other investigators and a permanent credit to the Trustee Council.

The possibility of endowed chairs at UA was supported by a number of professional organizations meeting in Alaska including The American Ornithological Union, The Wildlife Society, The Pacific Seabird Group and various fisheries organizations.

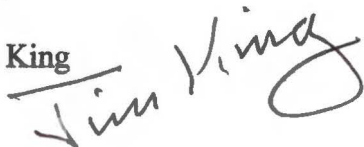
As you suggest in Chapter 2.5.4 endowments are not considered for legal issues. If the purpose of the EIS is to consider what is best for the damaged resources it seems inappropriate to limit good ideas and proposals for undefined legal reasons.

I suggest your EIS is incomplete without consideration of University attention in perpetuity.

Thank you for the opportunity to comment on this subject which has absorbed so much of my attention over the years since the oil spill.

Sincerely,

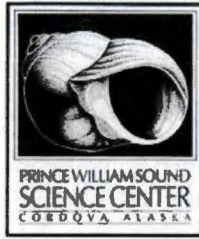
James G. King



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EXXON VALDEZ OIL SPILL
TRUSTEE Council



July 19, 2010

Laurel Jennings
Exxon Valdez Oil Spill Trustee Council
441 West 5th Avenue, Suite 500
Anchorage, AK 99501

Sent via email: dfg.evos.nepacommments@alaska.gov

RE: Comments on draft Supplemental Environmental Impact Statement

Dear Ms. Jennings:

We appreciate the opportunity to comment on the Draft Supplemental Environmental Impact Statement (SEIS). Our earlier comments submitted for the Scoping Process of this SEIS stand as written. While we generally support Alternative Two of the Draft SEIS, we have a number of suggestions. In particular, we want to re-emphasize the following paragraph from our earlier letter:

"We strongly encourage the bulk of the remaining funds to target two of these categories, herring and the long-term monitoring of marine conditions. In order for us to truly understand the complexities of these dynamic ecosystems, we believe it is critical to continue research and monitoring of the Prince William Sound herring population and marine conditions in the broader spill-impacted region. Improved knowledge in this area will be of significant and long lasting benefit to (1) protecting our resource base and (2) directly benefiting resource users in the spill impacted area, and probably beyond. Both of these focus areas deserve sufficient funds set aside to support annual allocations of \$2-3 million for each focus area, ideally for at least 30 years."

We remain supportive of the five targeted categories identified by the SEIS for restoration activities, and concur that decisions on restoration activities should be made in a context that reflects the need to address non-recovered and recovering species and services. Herring is one of only two species recognized as non-recovering. Herring are critically important to the ecosystem of Prince William Sound and have been a significant commercial fishery as well. As an important non-recovering species we feel that additional funding should be put towards the herring program. Any hopes for developing a restoration program or improving our understanding of the fish in order to improve future management requires a mixture of activities from monitoring to research to demonstration projects. While there are, and should be, connections to the monitoring portion of the SEIS, the need for short-term process studies and demonstration projects makes the herring component distinct from a monitoring program. Funding such research also requires greater funding than would be available under the current draft SEIS.

The Trustees identified a desire to fund longer-term integrated programs. We share their opinion that EVOS funds "be expended with an emphasis on producing information to support the future management and natural restoration of the injured species" and that "the information producedcan enable management consistent with long term restoration."

In further considering this issue, we note the importance of archiving data and then utilizing it through the continually improving computer programs available to deliver what we have learned to resource managers, scientists and the general public. One way to help achieve cross-discipline dialogue and collaboration is through real-time sharing of information and data. Our capacity for collection of real-time data improves each year and

data management programs must incorporate methods to effectively and quickly share this data through the Internet.

The responsibility of a proposed new category of **Archive and Informatics** would include both historic information in electronic format, and data for programs funded by the EVOS Trustee Council. This should not only be a library and catalogue function as has been done through ARLIS, representative of the more traditional approach. The Archive and Informatics sector would take advantage of continually improving technology to develop capacity for the "host" to continue supporting (and integrating) diverse information gained through the programs over time. The Request for Proposals (RFP) for this category should include requirements for capacity for archiving and visualization of information in four dimensions, and also comparison of information across various program sectors and disciplines. The RFP should ask how the Archive and Informatics will intersect with and integrate across the funded sectors and remain robust over time.

We note a number of changes made since the scoping process began in the draft SEIS – particularly the change from targeted dollar amounts for the five categories to percentages, including low to high ranges for a few categories. We provide our preference of targeted percentages for the various categories in a table below, and also suggest amounts to assure data management and delivery, as well as for administrative expenses.

The SEIS lacks detail on how the Trustees intend to achieve a reduction in administrative expenses, as is one of their stated goals. We certainly support more dollars going to the programs and again encourage establishment of endowments or dedicated funds set aside to support the research categories of herring and long-term monitoring of marine/ocean conditions. Alternatively, establishment of fixed priced contracts to award these dedicated programs funds may allow greater opportunity and flexibility for those entities implementing the programs.

These contracts should be based at and managed through existing institutions located in the oil spill impacted region with a demonstrated history of conducting research in this region. An annual report and audit would be submitted annually to the Trustees to ensure that the programs funded through these contracts meet the terms of the Council's restoration program.

We encourage the Trustee Council to issue a RFP for administration services. Organizations like the Prince William Sound Oil Spill Recovery Institute (OSRI) have a similar mission to the EVOS Trustee Council and can provide a means to reduce the overall costs for management of EVOS projects. Perhaps, there are other processes being considered that may be beneficial to programs while reducing administrative expenses, but none are described in the draft SEIS.

The remaining restoration funds available are very limited. For that reason, we think major investments in lingering oil should be dealt with through the reopener process. This unanticipated damage needs to be addressed outside the investment of current funds.

We applaud your efforts to focus use of the remaining restoration fund and reiterate our support for additional restoration activities and research to address Herring, still listed as not recovering, and other species and services still in the process of recovery.

Sincerely,



Eric Knudsen, Ph.D.
Chair, PWSSC Board of Directors

Attachment: *Table proposing spending allocations*

Total proposed to allocate
(estimated during the Scoping Process at \$81 million)
for Research, Monitoring & General Restoration (RM&GR)

Categories proposed in Draft SEIS	Percentage of Total for RM&GR (PWSSC preferred)	As proposed in draft SEIS
Herring	35.0%	11-21%
Long-term monitoring of ocean conditions	30.0%	15-25%
a) Recovery of injured resources		
b) Monitoring factors that may inhibit recovery		
Harbor protection, marine restoration & lessons learned		
a) Waste disposal and harbor projects	7.5%	3-13%
b) marine debris removal	7.5%	\$6 mil.
c) Lessons learned/Outreach	5.0%	\$4 mil.
Lingering oil	0.0%	?
<i>New categories proposed for addition</i>		
Data Archive and Informatics	5.0%	
Administration for all programs	10.0%	
TOTALS	100.0%	?

23.02.05



United States Department of the Interior
NATIONAL PARK SERVICE

Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:
L7619 (AKRO-EPC)

JUL 19 2010

Laurel Jennings
Exxon Valdez Oil Spill Trustee Council
Restoration Office
441 West 5th Avenue, Suite 500
Anchorage, Alaska 99501

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JUL 23 2010

**EXXON VALDEZ OIL SPILL
TRUSTEE Council**

Dear Ms. Jennings:

Thank you for the opportunity to make comments on the supplemental draft environmental impact statement (SDEIS) for the Exxon Valdez Oil Spill (EVOS) Trustee Council Restoration Program. We understand the Trustee Council seeks a plan to wisely expend a projected \$81 million (M) over the next 20 years, depending on markets, to end the program. The National Park Service (NPS) made scoping comments on the Notice of Intent (NOI) to issue an EIS to update the Council's 1994 restoration program to focus on five themes: herring, lingering oil, long-term monitoring of marine conditions, harbor protection and marine restoration, and habitat acquisition and protection. We see that the draft EIS took our comments into consideration, and although all of our suggestions were not adopted in full, we see evidence that they were considered. We will not repeat all of those comments here, but we will emphasize parts of the proposed restoration plan we think merit reconsideration.

We reiterate here that the NPS is a cooperating bureau through the Department of the Interior, one of the six Trustees. Three NPS units were directly oiled from the Exxon Valdez Oil Spill: Kenai Fjords National Park, Katmai National Park and Preserve, and Aniakchak National Monument and Preserve. Two of these NPS areas (Kenai Fjords and Katmai) have sequestered oil in armored rock shores and on adjacent state-owned tidelands and waters. We have an interest in what happens both within the NPS units and adjoining tidelands and waters.

Although we recognize the level of impacts from the EVOS to resources and services in park areas may be less than those to areas in Prince William Sound, the impacts remain and recovery is not complete. Resources and services in NPS areas that have not fully recovered or recovery is unknown are: Barrow's goldeneyes, black oystercatchers, harlequin ducks, mussels, sediments, intertidal communities, designated wilderness, pigeon guillemots, Kittlitz's murrelets, marbled murrelets, passive use, and recreation and tourism.

We understand research shows sequestered EVOS oil to be decreasing at a rate of zero to four percent a year and likely less than four percent. For this reason, we think the proposed action to withhold funding to monitor and address lingering oil until the Reopener Case with Exxon is

resolved, could be a grave mistake. Because this oil may persist for decades more, is the primary cause for retarding the full recovery of injured resources, and is of high scientific interest (especially given the recent Gulf of Mexico deepwater spill disaster), we think a portion of the remaining funds should be held aside for monitoring of lingering oil. This could be accomplished by committing to not funding at the high end of the estimates for the other primary restoration focus areas until the Reopener Case is resolved. For example, if the Council decides to fund: herring research at 21% of remaining funds (\$17 M); long-term monitoring of marine conditions and injured resources at 25% (\$20 M); harbor projects at 13% (\$10.5 M); marine debris removal at 7% (\$5.7 M); outreach at 5% (\$4 M); and habitat acquisition and protection at \$25 M – this totals over \$82 million and leaves nothing for monitoring of lingering oil. We therefore recommend restraint on all the levels of funding for these other focus areas until the Reopener Case is resolved and the Trustees know whether it has additional funds to address lingering oil and its ongoing impacts on injured resources and services in the spill-affected area. Restraint in funding should be equitable across the focus areas.

Lastly, we are disappointed the Trustees are not giving full consideration to marine spatial planning in the spill-affected area. Marine spatial planning is a prerequisite for cumulative effects analyses in any future NEPA decision documents within the EVOS affected area and resources. Other ways marine spatial planning could be applied is in helping direct consumptive and non-consumptive resource uses; during times or to areas where resource impacts can be minimized and harvest activities managed by appropriate authorities and therein mitigating post-EVOS recovery concerns.

The National Ocean Policy signed today July 19, 2010, identifies coastal and marine spatial planning as a priority. Marine spatial planning offers a comprehensive, integrated approach to planning and managing uses and activities over the long term. Under the National Policy, coastal and marine spatial planning would be regional in scope, developed cooperatively among Federal, state, tribal, and local authorities, and include substantial stakeholder, scientific, and public input.

The NPS recognizes much excellent work has been accomplished by the Trustee Council's Restoration program over nearly the past two decades. We wish you success in continuing this trend over the next two decades.

Sincerely,



Sue E. Masica
Regional Director

cc:

Kim Elton, USDI EVOS Trustee
Superintendent, Kenai Fjords NP
Superintendent, Katmai NP & Pres & Aniakchak NM & Pres
Lands Program Manager, Alaska Regional Office

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JUL 23 2010

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