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October 10, 1990

MEMORANDUM

SUBJECT: Federal Register Notice Review

FROM: Susan MacMullin *Susan MacMullin*
Alaska Restoration Task Force
Environmental Protection Agency

TO: Washington Policy Group
Trustee Council
Management Team

Attached are two Federal Register notices for your review. Please have your comments to me by noon Friday, October 12, 1990.

The editorial and substantive comments that were received on the last version are incorporated in most cases. However, there is one outstanding issue. On page 3 of the Notice of Intent, I have highlighted an addition requested by USDA. This addition is the definition of "restoration" found in the NRDA regulations. I had come away from yesterday's meeting with the impression that the Washington Policy Group had agreed to leave this out because of the problems of defining the baseline. Payson Peabody (USDA) and I talked about this and he did not remember such a definite resolution but thought it was open for further discussion. Accordingly, I have included the language and am requesting your comments on whether or not to include the definition in the final document.

I will not be in on Thursday, but please feel free to call me with comments on Friday. My phone number is 202/245-4373 or 202/382-7166 and my fax number is 202/475-6689.

Attachments

cc: Nancy Jones
Charles Openchowski

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TITLE: Restoration Following the Exxon Valdez Oil Spill

AGENCY: Environmental Protection Agency

ACTION: Notice of Intent

SUMMARY: EPA, on behalf of the Federal trustees and the Alaska Department of Fish and Game (ADF&G) as the State's Trustee agency, is announcing the Federal and State governments' intent to prepare a draft restoration work plan for Prince William Sound and the Gulf of Alaska, and to propose a restoration program for the 1991 field season.

DATES: The Federal and State of Alaska governments intend to jointly publish a draft restoration work plan and a restoration program for the 1991 field season on or about December 28, 1990, and will accept comments on the draft plan and proposed projects for 30 days after the draft work plan is published.

For further information contact: Susan MacMullin - EPA, Washington, DC (202/382-7166) or Stan Senner - ADF&G (907/271-2461).

I. **BACKGROUND.** The March 24, 1989, grounding of the tanker Exxon Valdez in Alaska's Prince William Sound caused the largest oil spill in U.S. history. A slick containing about 11 million gallons of North Slope crude oil covered the western portion of the Sound and moved to Cook Inlet and along the Gulf of Alaska. More than 1,000 miles of shoreline were moderately to heavily coated, including State and national forests, wildlife refuges, and parks. The spill damaged areas extremely rich in natural resources. It injured fish, birds, mammals, intertidal and subtidal plants and animals and their associated habitats. The area's important historical and archaeological resources also were injured as a result of oiling and cleanup activities. The oil also adversely affected recreational uses and aesthetic, social and cultural values.

Soon after the spill occurred, President Bush and Alaska Governor Cowper expressed the desire that the environment and economy of Prince William Sound and the Gulf of Alaska be fully restored. Responsibility for full restoration of these natural resources and the services they provide rests with Federal and State agencies. Federal law authorizes the State and Federal governments to present claims to the responsible parties for

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damages for injury, loss or destruction of natural resources and their uses. The funds received from these claims must be used to restore, replace or acquire the equivalent of the natural resources and services injured, lost or destroyed by the spill.

Both Federal and State law provide authority for response, damage assessment, and restoration actions undertaken following the Exxon Valdez oil spill. Under Federal law, Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 311(f) of the Federal Water Pollution Control Act (Clean Water Act) provide for Federal and State officials to act as trustees on behalf of the injured, lost and destroyed natural resources and to pursue recovery of damages for injury, loss or destruction of these resources.

CERCLA applies to releases of hazardous substances other than oil, while the Clean Water Act applies to oil spills. Both laws are supplemented by the National Contingency Plan (40 CFR Part 300) and the Natural Resource Damage Assessment (NRDA) regulations (43 CFR Part 11) which set out a suggested but not mandatory process for determining proper compensation to the public for injury, loss or destruction of natural resources. In this case, the natural resource trustees have not made a final decision on whether to follow the NRDA regulations. In combination, these laws and regulations provide the structure for the response, damage assessment, and restoration activities following the Exxon Valdez oil spill.

Restoration (including actions to restore, replace or acquire the equivalent of resources) is one component of this process. Combined with response, cleanup and the damage assessment process, these efforts seek to minimize adverse impacts and compensate the public for natural resource injury, loss, or destruction and lost use values, by restoring the resources and the services they provide.

Response activities include the initial emergency measures to contain the spilled oil and minimize adverse impacts, as well as the subsequent efforts to clean up oil from the spill area. The magnitude of and circumstances surrounding the Exxon Valdez oil spill resulted in relatively little of the spilled oil being contained. Consequently, cleanup activity has focused primarily on removing oil from the shoreline areas affected by the spill. Cleanup activities continued through the summer of 1990 and are expected to resume next year.

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In 1989, State and Federal natural resource trustee agencies initiated scientific studies after the oil spill to assess the amount of damage. Most of these studies were continued into 1990, with a number of new studies being initiated as well. This damage assessment process, which is comprised of data collection and analysis components, will continue in 1991. It is designed to identify and quantify the specific resource injury, loss, or destruction and to determine corresponding monetary values. These monetary values include restoration costs, as well as lost-use and intrinsic values. Claims for those damages will be presented to the responsible parties, and under Federal law, the monies received must be used for restoration, replacement or acquisition of equivalent resources.

Restoration supplements the spill response and damage assessment process by planning for, and then implementing, activities to restore the injured, lost or damaged environment.

USDA REQUESTS THAT THE FOLLOWING DEFINITION OF RESTORATION, TAKEN FROM THE NRDA REGULATIONS BE INCLUDED IN THIS DISCUSSION. COMMENT IS REQUESTED.

"Restoration" or "rehabilitation" means actions undertaken to return an injured resource to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided...

Restoration actions generally include direct restoration, replacement, and acquisition of equivalent resources:

- o Direct restoration refers to measures, in addition to responses actions, taken, usually on-site, to directly rehabilitate an injured, lost or destroyed resource.
- o Replacement refers to substituting one resource for an injured, lost or destroyed resource of the same or similar type.
- o Acquisition of equivalent resources includes the purchase or protection of resources to enhance the recovery, productivity, and survival of the ecosystem affected by the oil spill.

The goal of the restoration planning effort is to identify appropriate measures that can be taken to restore natural

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resources affected by the Exxon Valdez oil spill. Specific objectives include:

- o Identify or develop technically feasible restoration options for natural resources and services potentially affected by the oil spill.
- o Determine the nature and pace of natural recovery of injured resources, and identify where direct restoration measures may be appropriate.
- o Incorporate an "ecosystem approach" to restoration (i.e., where appropriate, broadly focus on recovery of ecosystems, rather than on individual components).
- o Identify the costs associated with implementing restoration measures, in support of the overall natural resource damage assessment process.
- o Encourage, provide for and be responsive to public participation and review during the restoration planning process.

The draft restoration work plan will provide the public with information about the restoration plans of the State and Federal trustees and identify a proposed program, including restoration projects, that may be implemented in 1991. The State and Federal governments will request public comment on restoration priorities and methods upon the publication of the draft restoration work plan in the Federal Register. The proposed work plan is one of several restoration planning documents that will describe the full nature and scope of the program needed to restore injured natural resources (see Notice on Opening on Oil Spill Public Information Center in this issue of the FR). This draft restoration work plan will not be the final restoration plan, but an opportunity to invite the public into the process and to begin to articulate a restoration process. This work plan is not undertaken pursuant to the Federal Natural Resources Damage Assessment regulations.

II. NOTICE OF INTENT TO PUBLISH A DRAFT RESTORATION WORK PLAN
 AND A PROPOSED RESTORATION PROGRAM FOR THE 1991 FIELD SEASON

EPA, on behalf of the Federal trustee agencies and the ADF&G, is announcing the intent of the Federal and State of Alaska governments to jointly publish in the Federal Register on or about December 28, 1990 the following:

- o A draft restoration work plan that addresses

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appropriate steps for long-range restoration of Prince William Sound and the Gulf of Alaska.

- o A proposed restoration program for the 1991 field season.

LaJuana S. Wilcher
Assistant Administrator
Office of Water

Date