

RPCWG
SF

RECEIVED

AUG 29 1991

Lodged

AUG 28 1991

BARRY M. HARTMAN
Acting Assistant Attorney General
Environment & Natural Resources
Division

Office of
United States Attorney
Anchorage, Alaska

FILED

STUART M. GERSON
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

AUG 29 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
PPP Deput

JOSEPH W. BOTTINI
Assistant United States Attorney
222 W. Seventh Street
Anchorage, Alaska 99513
(907) 271-5071

Attorneys for the United States of America

CHARLES E. COLE
Attorney General
State of Alaska
Pouch K, State Capitol
Juneau, Alaska 99811
(907) 465-3600

Attorney for the State of Alaska

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA,)
)
Defendant and)
Counterclaimant.)

Civil Action No.
A91-081 CV

MEMORANDUM OF AGREEMENT AND CONSENT DECREE

This Memorandum of Agreement and Consent Decree (MOA) is made and entered into by the United States of America (United States)

and the State of Alaska (State) (collectively referred to as the Governments).

INTRODUCTION

WHEREAS, Section 311 of the Clean Water Act, 33 U.S.C. § 1321, establishes liability to the United States and to States for injury, loss, or destruction of natural resources resulting from the discharge of oil or the release of hazardous substances or both and provides for the appointment of State and Federal Trustees;

WHEREAS, the United States and the State are trustees and/or co-trustees for natural resources injured, lost or destroyed as a result of the EXXON VALDEZ Oil Spill (Oil Spill);

WHEREAS, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, the National Contingency Plan, 40 C.F.R. § 300.615(a), and the Natural Resource Damage Assessment Regulations, 43 C.F.R. § 11.32(a)(1)(ii), provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources;

WHEREAS, the Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce, have been designated trustees (the Federal Trustees) for purposes of the Clean Water Act, 33 U.S.C. § 1321, and CERCLA, 42 U.S.C. § 9607, and otherwise have statutory responsibilities related to the natural

resources injured, lost or destroyed as a result of the Oil Spill, and the United States Environmental Protection Agency (EPA) has been designated by the President of the United States to coordinate restoration activities on behalf of the United States;

WHEREAS, the Commissioners of the State Departments of Environmental Conservation and Fish and Game and the Attorney General of the State of Alaska have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. § 1321, and CERCLA, 42 U.S.C. § 9607, and otherwise have statutory responsibilities relating to the natural resources injured, lost or destroyed as a result of the Oil Spill;

WHEREAS, the United States Coast Guard, an agency of the United States Department of Transportation, is the predesignated Federal On-Scene Coordinator (FOSC) to direct response efforts and to coordinate all other efforts at the scene of the Oil Spill, pursuant to the Clean Water Act, 33 U.S.C § 1321, and the National Contingency Plan, 40 C.F.R. § 300, and is coordinating its efforts with the Federal Trustees in accordance with the National Contingency Plan;

WHEREAS, the State Department of Environmental Conservation is the State On-Scene Coordinator (SOSC) to direct containment and cleanup of discharged oil pursuant to AS 46.04.020;

WHEREAS, the United States Department of Justice (Justice) and the Department of Law for the State of Alaska (Law) have constitutional and statutory responsibility for litigation

management and specifically for prosecuting claims for damages for injury, loss or destruction to the natural resources affected by the Oil Spill;

WHEREAS, all of the above state and federal entities have determined that it is in furtherance of their statutory and trust responsibilities to ensure that all injuries, loss or destruction to state and federal natural resources are fully compensated and to ensure that such compensation is used in accordance with law;

WHEREAS, the United States has brought this action against the State, and the State has asserted counterclaims in this action against the United States, with respect to their respective shares in any recoveries for compensation for natural resource damages resulting from the Oil Spill;

WHEREAS, recognizing their mutual desire to maximize the funds available for restoration of natural resources, the United States and the State have determined that entering into this MOA is the most appropriate way to resolve their claims against one another in this action, and that the terms of this MOA are in the public interest and will best enable them to fulfill their duties as trustees to assess injuries and to restore, replace, rehabilitate, enhance, or acquire the equivalent of the natural resources injured, lost, or destroyed as a result of the Oil Spill;

NOW THEREFORE, in consideration of their mutual promises, the United States, acting through the United States Departments of

EPA, and the State of Alaska, acting through the State Departments of Fish and Game, Environmental Conservation, and Law (together "the Governments") have agreed to the following terms and conditions, which shall be binding on both Governments, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

The Court has jurisdiction over the subject matter of the claims set forth in the United States' Complaint and in the State's Counterclaim and over the parties to this MOA pursuant to, among other authorities, 28 U.S.C. §§ 1331, 1333, and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

II.

DEFINITIONS

For purposes of this MOA, the following terms shall have the meanings specified in this paragraph:

A. "Base Allowed Expenses" means (1) reasonable, unreimbursed costs obligated or incurred by either the United States or the State on or before March 12, 1991, for the planning, conduct, evaluation, and coordination, and oversight of natural resource damage assessment and restoration pursued by the Governments with respect to the Oil Spill, and (2) reasonable, unreimbursed costs obligated or incurred by the State on or before March 12, 1991, for experts and counsel in connection with the preparation of the Oil Spill Litigation.

B. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. as amended.

C. "Clean Water Act" means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376, as amended.

D. "Joint use" means use of natural resource damage recoveries by the Governments in such a manner as is agreed upon by the Governments in accordance with Article IV of this MOA.

E. "National Contingency Plan" means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

F. "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State.

G. "Natural resource damage recovery" means any award, judgment, settlement or other payment to either Government which is received as a result of a claim or demand for Base Allowed Expenses or for damages for injury, destruction, or loss of natural resources arising from the Oil Spill and for costs incurred by the State for experts and counsel in connection with the Oil Spill Litigation. The term includes, without limitation,

state and federal common law, state statutes, admiralty law, state and federal right-of-way lease covenants and any recoveries for natural resource damages obtained from or in connection with a civil proceeding or criminal restitution, unless the parties otherwise agree that criminal restitution recoveries can be separately managed by either government consistent with this MOA. The term also includes all interest accrued on any such recoveries. Natural resource damage recovery excludes any reimbursement or other recovery by either Government for response and cleanup costs, lost royalty, tax, license, or fee revenues, punitive damages, federal or state civil or criminal penalties, federal litigation costs and attorney fees.

H. "Oil Spill" means the grounding of the T/V EXXON VALDEZ on Bligh Reef in Prince William Sound, Alaska on the night of March 23-24, 1989, and the resulting oil spill.

I. "Oil Spill Litigation" means any past, present, or future civil judicial or administrative proceeding relating to or arising out of the Oil Spill.

J. "Response and cleanup costs" means actual, unreimbursed response and/or cleanup costs incurred by either Government in connection with the Oil Spill, as certified for payment by the Federal On-Scene Coordinator or the State On-Scene Coordinator.

K. "Restore" or "Restoration" means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-

as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

L. "Trustees" means the officials now or hereafter designated by the President of the United States and the Governor of the State of Alaska to act as trustees, for purposes of CERCLA and the Clean Water Act, of natural resources injured, lost or destroyed as a result of the Oil Spill.

III.

EFFECT OF ENTRY OF MOA

Upon approval and entry of this MOA by the Court, this MOA shall constitute a final judgment between the United States and Alaska in accordance with its terms. The MOA is entered for the sole and exclusive benefit of the Governments and does not create any rights or privileges in any other parties.

IV.

CO-TRUSTEESHIP

A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries for the benefit of natural resources injured, lost or destroyed as a result of the Oil Spill.

B. Nothing in this MOA shall be deemed an admission of law

or interest in or management or control authority over natural resources or the right to recover for injury to such resources. Except in matters concerning or relating to enforcement of this MOA, the Oil Spill Litigation, or the settlement of claims relating to the Oil Spill, the Governments agree that this MOA may not be used by one Government against the other for any reason.

C. Nothing in this MOA shall be construed to affect or impair in any manner the rights and obligations, if any, of any entities or persons not parties to this MOA, including without limitation:

1. The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources affected by the Oil Spill and expending any proceeds derived therefrom;

2. The rights and obligations, if any, of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

3. The rights and obligations, if any, of the United States relating to such Alaska Native villages and the entities or persons referred to in subparagraph 2 above.

V.

ORGANIZATION

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of the natural resource damage recoveries obtained by the Governments, including all decisions regarding the planning, evaluation, and allocation of available funds, the planning, evaluation, and conduct of injury assessments, the planning, evaluation and conduct of restoration activities, and the coordination thereof, shall be made by the unanimous agreement of the Trustees. Such decisions, on the part of the Federal Trustees, shall be made in consultation with EPA.

2. The Governments shall cooperate in good faith to establish a joint trust fund for purposes of receiving, depositing, holding, disbursing and managing all natural resource damage recoveries obtained or received by the Governments. The joint trust fund shall be established in the Registry of the United States District Court for the District of Alaska or as otherwise determined by stipulation of the Governments and order of the court.

3. If the Trustees cannot reach unanimous agreement on a decision pursuant to paragraph A.1. of this Article, and either Government so certifies, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any

the Governments shall, in mutual agreement, submit any such

matter or dispute to non-binding mediation or other means of conflict resolution.

4. Within 90 days after their receipt of any natural resource damage recovery, the Trustees shall agree to an organizational structure for decision making under this MOA and shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which shall include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph V.A.1.

B. Injury Assessment and Restoration Process

1. Nothing in this MOA limits or affects the right of each Government unilaterally to perform any natural resource injury assessment or restoration activity, in addition to the cooperative injury assessment and restoration process contemplated in this MOA, from funds other than natural resource damage recoveries as defined in paragraph G of Article II.

2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by the Natural Resource Damage Assessment Regulations codified at 43 C.F.R. Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from transferring, pursuant to applicable law, trustee status from one official to another official of their respective Governments;

but in no event shall either Government designate ...

than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such substitute or successor Trustees by either Government shall not affect the enforceability of this MOA.

C. Role of the Environmental Protection Agency

The Governments acknowledge that the President has assigned to EPA the role of advising the Federal Trustees and coordinating, on behalf of the Federal Government, the long-term restoration of natural resources injured, lost or destroyed as a result of the Oil Spill.

VI.

DISTRIBUTION OF MONIES

A. Joint Use of Natural Resource Damage Recoveries

The Governments shall jointly use all natural resource damage recoveries for purposes of restoring, replacing, enhancing, rehabilitating or acquiring the equivalent of natural resources injured as a result of the Oil Spill and the reduced or lost services provided by such resources, except as provided in paragraph B of this Article. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. Except as provided in paragraph B of this Article, all natural resource damage recoveries shall be placed in the joint trust fund for use in accordance with the terms and conditions of this MOA. Nothing in this MOA creates a right in or entitlement of

any person not a party to the MOA to share in any of the natural resource damage recoveries.

B. Reimbursement of Certain Expenses

1. The Governments agree that the following costs shall be advanced or reimbursed to each Government, at its election, out of any natural resource damage recoveries related to the Oil Spill and shall not be placed in the joint trust fund referred to in paragraph A: (1) Base Allowed Expenses; (2) reasonable unreimbursed costs jointly agreed upon by the Governments and incurred by either or both of them after March 12, 1991 for the planning, conduct, coordination, or oversight of natural resource damage assessment and restoration planning with respect to the Oil Spill or for restoration activities conducted under this MOA; and (3) other reasonable unreimbursed costs incurred by the State after March 12, 1991 for experts and counsel in connection with the Oil Spill Litigation provided that the total amount, in aggregate, deducted for such purposes shall not exceed \$1,000,000 per month and a total of \$40,000,000, and provided further that no such costs shall be deducted from any natural resource damages recovered as restitution in a criminal proceeding.

2. Solely for the purposes of the allocation of monies received by either or both of the Governments pursuant to any settlement(s) of the Governments' claims arising out of the Oil Spill, \$67 million shall be reimbursed to the United States for Base Allowed Expenses and for response and cleanup costs incurred before January 1, 1991, and \$75 million shall be reimburse

to the State for Base Allowed Expenses and for response and cleanup costs incurred by it before January 1, 1991; provided that this subparagraph shall not affect or impair in any way the rights of either Government to recover any costs, damages, fees, or expenses through litigation.

3. The Governments further agree that any monies received by either or both of them pursuant to a settlement of claims arising from the Oil Spill that remain after the costs referred to in subparagraphs 1 & 2 have been reimbursed shall be allocated as follows: (1) first, to reimburse the Governments for their respective response and cleanup costs incurred after December 31, 1990, and for their respective costs of natural resource damages assessment (including restoration planning) obligated or incurred after March 12, 1991 and; (2) second, to the joint trust fund for natural resource damage recoveries referred to in paragraph A of this Article.

C. Except as otherwise provided in this MOA, the Governments agree that all natural resource damage recoveries will be expended on restoration of natural resources in Alaska unless the Trustees determine, in accordance with Article V, paragraph A.1 hereof, that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska or services provided by such resources.

D. Nothing in this MOA shall be construed as obligating t.

Governments to expend any monies except to the extent funds are appropriated or are otherwise lawfully available.

VII.

LITIGATION AND SETTLEMENT OF CLAIMS
RELATING TO THE OIL SPILL

A. Agreement to Consult and Cooperate. The Governments, through the Departments of Law and Justice, agree to act in good faith to consult and cooperate with each other to develop a common approach to the Oil Spill Litigation, to the settlement of civil claims and restitution claims in connection with criminal proceedings: provided, however, that this MOA shall not in any way limit or otherwise affect the prosecutorial discretion of the State of Alaska or the United States.

B. Legal Work Product and Privileged Information. The Governments, through the Departments of Law and Justice, agree that, except as may otherwise be provided by separate agreements of the parties, they may in their discretion share with each other or with private and/or other public plaintiff litigants scientific data and analyses relating to the injury to natural resources resulting from the Oil Spill, the products of economic studies, legal work product, and other confidential or privileged information, subject to the following terms and conditions:

1. Each Government will take all reasonable steps necessary to maintain work product and other applicable privileges and exemptions available under the Freedom of Information Act, 5 U.S.C. § 552 et seq., the Rules of Civil

2. No Government may voluntarily share with another party information jointly prepared or prepared by the other Government without the prior express written consent of the other Government's legal counsel.

VIII.

SCIENCE STUDIES

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill.

IX.

COVENANTS NOT TO SUE

A. Each Government covenants not to sue or to take other legal action against the other Government with respect to the following matters:

1. The authority of either Government to enter into and comply with the terms of this MOA.
2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities with respect to the Oil Spill in accordance with this MOA.
3. Any and all civil claims (including, but not limited to, cross-claims, counter-claims, and third party-claims) it may have against the other Government arising from any activities, actions, or omissions by that other Government relating to or in response to the Oil Spill

which occurred prior to the execution of this MOA, other than claims to enforce this MOA.

B. Solely for purposes of the Oil Spill Litigation and any other proceedings relating to the ascertainment, recovery, or use of natural resource damages resulting from the Oil Spill, each Government shall be entitled to assert in any such proceeding, without contradiction by the other Government, that it is a co-Trustee with the other Government over any or all of the natural resources injured, lost or destroyed as a result of the Oil Spill; and each Government covenants not to sue the other with respect to, or to take any other legal action to determine, the scope or proportionate share of either Government's ownership, rights, title or interest in or management, control, or trusteeship authority over any of the natural resources injured lost or destroyed as a result of the Oil Spill.

C. Notwithstanding anything in this Article, each Governme reserves the right to intervene or otherwise to participate in any legal proceeding concerning the claims of a third party with respect to the scope of either Government's Trusteeship and waives any objection to such intervention or participation by other Government; provided that, in any such proceeding, neith Government may dispute that it is a co-Trustee with the other over the natural resources injured, lost, or destroyed as a result of the Oil Spill.

D. If the Governments become adverse to each other in th

course of the Oil Spill Litigation, this MOA shall nevertheless remain in effect.

E. Notwithstanding the covenants contained in this Article, if both Governments are sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree to cooperate fully in the defense of such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

F. Notwithstanding the covenants contained in this Article, if one of the Governments is sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree that the non-sued Government shall cooperate fully in the defense of the sued Government, including intervening as a part defendant or consenting to its being impleaded, if necessary. the non-sued Government thereby becomes a party to the action, the Governments agree not to assert cross-claims against each other, to cooperate fully in the defense of such action, and not to take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

G. Notwithstanding Paragraphs E and F above, the Governments may assert any claim or defense against each other necessary matter of law to obtain an allocation of liability between the Governments. Any such actions shall be solely for the purpose of allocation of liability, if any, and neither Government shall

enforce any judgment obtained against the other Government pursuant to this paragraph.

X.

RETENTION OF JURISDICTION

This MOA shall be enforceable by the United States District Court for the District of Alaska, which Court shall retain jurisdiction of this matter for the purpose of entering such further orders, directions, or relief as may be appropriate for the construction, implementation, or enforcement of this MOA.

XI.

MULTIPLE COPIES AND EFFECTIVE DATE

This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute and the same instrument. This MOA shall be effective as of the date it is signed by all the parties hereto.

XII.

INTEGRATION AND MERGER

A. This MOA constitutes the entire agreement between the United States and the State as to the matters addressed herein and there exists no other agreement of any kind which is inconsistent with this MOA with respect to the subjects addressed in this MOA; provided, that the agreement reached among the Trustees as to disbursements of the original \$15 million paid by Exxon in April, 1989 shall remain in full force and effect.

XIII.

TERMINATION

This MOA shall terminate when the Governments certify to the Court, or when the Court determines on application by either Government, that all activities contemplated under the MOA have been completed.

XIV.

JUDICIAL REVIEW

This MOA creates no rights on the part of any persons not signatory to this MOA and shall not, except as provided in Article X, be subject to judicial review.

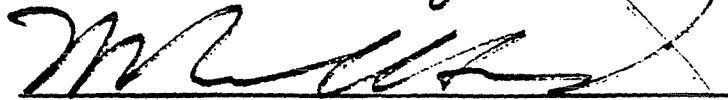
XV.

MISCELLANEOUS

A. This MOA can be modified only with the express written consent of the Parties to the MOA and the approval of the Court except that the Parties may correct any clerical or typographical errors in writing without court approval.

B. Each undersigned representative of a Party to this MOA certifies that he or she is fully authorized to enter into this MOA and to execute and legally bind such Party to this MOA.

THE FOREGOING Memorandum of Agreement and Consent Decree among
the United States of America and the State of Alaska is hereby
APPROVED AND ENTERED THIS 28 DAY OF August, 1991.




Honorable H. Russel Holland
United States District Judge
District of Alaska

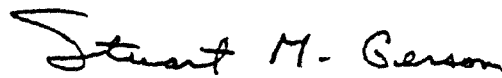
cc: ~~X~~. Bottini (AUSA)
B. Herman (AAG-K)

FOR THE UNITED STATES OF AMERICA

Date: Aug. 27, 1991




Barry M. Hartman
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice



Stuart M. Gerson S.C.S.
Assistant Attorney General
Civil Division
U.S. Department of Justice

FOR THE STATE OF ALASKA

Date: Aug 27, 1991



Charles E. Cole
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

TRWG
31

BARRY M. HARTMAN
Acting Assistant Attorney General
Environment & Natural Resources
Division

~~Lodged~~

SEP 30 1991

STUART M. GERSON
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

FILED

OCT 09 1991

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

CHARLES E. COLE
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Attorney for Plaintiff State of Alaska

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

Civil Action No.
A91-082 CIV

STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, and EXXON
SHIPPING COMPANY,

Defendants.

Civil Action No.
A91-083 CIV

AGREEMENT AND CONSENT
DECREE

AUSA
410

AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V EXXON VALDEZ, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1989, the T/V EXXON VALDEZ, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as State of Alaska v. Exxon Corporation, et al., Civil No. 3AN-89-6852 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On March 13, 1991 and March 15, 1991, respectively, the United States and the State each filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted counterclaims against the

United States and the State in their responses to the Federal Court Complaints.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

Exxon represents that, during the period from the Oil Spill through August, 1991, it expended in excess of \$2.1 billion for clean-up activities and reimbursements to the federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

NOW, THEREFORE, the Parties agree, and it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities,

28 U.S.C. §§ 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f). This Court also has personal jurisdiction over Exxon and Exxon Pipeline, which, solely for the purposes of this Agreement, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

Parties

2. "United States" means the United States of America, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Exxon" means Exxon Corporation, a New Jersey corporation, Exxon Shipping Company, a Delaware corporation, and the T/V EXXON VALDEZ, Official Number 692966 (now the T/V EXXON MEDITERRANEAN).

5. "Exxon Pipeline" means Exxon Pipeline Company, a Delaware corporation.

Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) "Alyeska" means Alyeska Pipeline Service Company, a

Delaware corporation, its shareholders and owner companies, and its present and former shareholder representatives.

(b) The "TAPL Fund" means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation organized and existing under the laws of the State of Alaska.

(c) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801 et seq.), the State, or both the United States and the State.

(d) "Natural Resource Damages" means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources on behalf of the public for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq., or any federal or state statute or maritime or common law relating to the environment, including (1) costs of damage assessment, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any

similar value of Natural Resources, and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) "Party" or "Parties" means Exxon, Exxon Pipeline, the United States, and the State, or any of them.

(f) "Trustees" means the Secretaries of the U.S. Departments of Agriculture and the Interior, the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, the Alaska Attorney General, and the Commissioners of the Alaska Departments of Environmental Conservation and Fish and Game.

(g) The "Oil Spill" means the occurrence described in the first paragraph of the Introduction above, and all consequences proximately caused by or arising from the Oil Spill, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) "Effective Date" shall mean the earliest date on which all Parties have signed this Agreement.

(i) "Final Approval" shall mean the earliest date on which all of the following have occurred: (1) the Court has approved and entered the Agreement as a judgment, without modification and without interpreting a material term of the Agreement, prior to or at the time of approval, in a manner inconsistent with the Parties' intentions; and (2) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the

time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

7. Upon approval and entry of this Agreement by the District Court, this Agreement and Consent Decree shall constitute a final judgment between the Governments and Exxon and Exxon Pipeline in accordance with its terms.

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of \$900 million, discharged as follows:

(a) Exxon shall pay, within 10 days after the Effective Date, \$90,000,000.

(b) Exxon shall pay on December 1, 1992 the amount determined by the following formula:

amount payable = \$150,000,000 minus X, where
"X" equals Exxon's expenditures for work done from January 1, 1991 through March 12, 1991, in preparation for and conduct of clean-up of the Oil Spill in accordance with directions of the Federal On-Scene Coordinator, up to a maximum of \$4,000,000, plus Expenditures made by Exxon for clean-up work after March 12, 1991 in accordance with Paragraph 11; provided that all such Expenditures shall be subject to audit by the Governments.

(c) Exxon shall pay each of the amounts specified in the following schedule by the dates set forth in that schedule:

September 1, 1993	\$100,000,000
September 1, 1994	\$ 70,000,000
September 1, 1995	\$ 70,000,000
September 1, 1996	\$ 70,000,000
September 1, 1997	\$ 70,000,000
September 1, 1998	\$ 70,000,000
September 1, 1999	\$ 70,000,000
September 1, 2000	\$ 70,000,000
September 1, 2001	\$ 70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 5 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

9. If Final Approval has not occurred by the date a payment required under Paragraph 8 is due, Exxon shall, on or before that date, deposit the amount of the payment into an interest-bearing trust account (the "Escrow") in a federally chartered bank ("Escrow Agent)". The Escrow agreement between Exxon and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Alaska in connection with any litigation arising out of that Escrow agreement. Exxon shall notify the Governments promptly in writing of any deposit of a payment due under this Agreement into the Escrow. Upon Final Approval and within five (5) business days of receipt of written instructions as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal

to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H.15 (519) weekly release published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless any Party terminates the Agreement pursuant to Paragraph 37. If the Agreement is terminated, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline,

the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1990 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them on or before March 12, 1991 in connection with the Oil Spill; (3) to reimburse the State for attorneys fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it on or before March 12, 1991 in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of them after December 31, 1990 in connection with the Oil Spill; and (5) to reimburse or pay costs incurred by the United States or the State or both after March 12, 1991 to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources, natural resource services, or archaeological sites and artifacts injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or services; and (6) to reimburse the State for reasonable Litigation Costs incurred by it after March 12, 1991. The aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed \$67

million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs incurred on or before March 12, 1991 (under items 1-3 above) shall not exceed \$75 million. The amounts allocated for State Litigation Costs incurred after March 12, 1991 (under item 6 above) shall not exceed \$1 million per month. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which this Court entered on August 28, 1991, in United States v. State of Alaska, Civil Action No. A91-081 CV. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed by the FOSC or with federal law, in accordance with the directions of, and subject to prior approval of costs by, the

State OSC. If Exxon concludes that work directed by the State OSC would interfere or affirmatively conflict with work directed by the FOSC, or with federal law, it shall promptly notify the State OSC and the FOSC of the potential conflict and shall not be required to proceed with the work directed by the State OSC until the FOSC or the Court determines that there is no conflict or that any potential conflict has been eliminated, and directs Exxon how to proceed. Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOSC or the State OSC.

(b) Upon Final Approval, Exxon shall have no further obligations with respect to clean-up of the Oil Spill except as set forth in this Agreement and in addition Exxon shall be entitled to a credit, to be applied to the next payment due from Exxon to the Governments, as provided in subparagraph 8(b), for all Expenditures incurred by Exxon for clean-up work pursuant to directions of the FOSC or the State OSC in accordance with subparagraph 11(a). As used in this paragraph, and in subparagraph 8(b) and Paragraph 12, "Expenditures" shall include, without limitation, costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

12. If this Agreement is terminated pursuant to Paragraph 37 below, or if a final judicial determination is made that this Agreement will not be approved and entered, Exxon shall be entitled to set off against any liability it may have to either Government arising from the Oil Spill the amount of any Expenditures made by Exxon for clean-up work directed by the FOSC or the State OSC under Paragraph 11(a), if the work meets the following criteria:

(a) if total Expenditures incurred by Exxon for clean-up after the Effective Date are \$35 million or less, Expenditures for work shall be set-off if Exxon shows both --

(1) that based on the information available at the time to the FOSC or State OSC who directed the work, the anticipated cost of the work was grossly disproportionate to the net environmental benefits reasonably anticipated from the work, or the work could not reasonably have been expected to result in a net environmental benefit; and

(2) that a reasonable time before beginning to perform the work, Exxon submitted a written objection to the work to the FOSC or State OSC who directed the work, requesting reconsideration of the work directions on one of the grounds set forth in subparagraph 12(a)(1) above; or

(b) if total Expenditures by Exxon for clean-up after the Effective Date exceed \$35 million, Expenditures for work shall be set-off unless the Government or Governments against

which Exxon is seeking to assert the set-off provided by this paragraph show that, based on the information available at the time to the FOSC or State OSC who directed the work, the work was reasonably expected to result in a net environmental benefit, and the anticipated cost of the work was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Releases and Covenants Not to Sue by the Governments

13. Effective upon Final Approval, the Governments release and covenant not to sue or to file any administrative claim against Exxon with respect to any and all civil claims, including claims for Natural Resource Damages, or other civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims alleged in the pending action against Exxon by the State in the State Court Action, (2) any of the civil claims asserted in the Federal Court Complaints, or (3) any other civil claims that could be asserted by either or both of the Governments against Exxon relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall affect or impair the following:

(a) claims by either Government to enforce this Agreement, including without limitation Exxon's agreement to make additional payments as set forth in Paragraphs 17-19;

(b) claims by the State for tax revenues which would have been or would be collected under existing AS 43.75 (Fisheries Business Tax) but for the Oil Spill, provided that, if the State obtains a judgment for such a claim against Exxon or Exxon Pipeline, the State will enforce against Exxon or Exxon Pipeline only that part of the judgment that would be refunded to local governments under AS 43.75.130 had the amount recovered been paid as taxes under AS 43.75;

(c) exclusively private claims, if any, by Alaska Native Villages and individual Alaska Natives, other than claims for Natural Resource Damages, seeking damages for private harms to Native subsistence well being, community, culture, tradition and way of life resulting from the Oil Spill, including private claims for private harms to Alaska Native Villages and individual Alaska Natives resulting from the impairment, destruction, injury or loss of Natural Resources caused by the Oil Spill and any other exclusively private claims that are available to Alaska Native Villages and individual Alaska Natives; and

(d) exclusively private claims, if any, by Alaska Native Corporations, other than claims for Natural Resource Damages, seeking damages for private harms resulting from injuries caused by the Oil Spill to lands in which a Native Corporation holds any present right, title, or interest, including private claims for

lost or diminished land values, for preservation, protection and restoration of archaeological or cultural resources and archaeological sites found on the lands described in this subparagraph, for private harms resulting from injuries to Natural Resources found on lands described in this subparagraph, for impairment of riparian or littoral rights, if any, and any other claims that are available to Alaska Native Corporations as private landowners; provided, however, that such claims shall not include any claims based upon injuries to tidelands or submerged lands.

14. Effective upon Final Approval, except insofar as Exxon Pipeline is liable to the Governments, or either of them, for claims relating to or arising from the Oil Spill as a result of its ownership interest in, participation in, or responsibility for Alyeska, each of the Governments provides to Exxon Pipeline covenants not to sue identical to the covenants not to sue provided to Exxon in Paragraph 13. This paragraph shall not be construed as a release or covenant not to sue given by either Government to Alyeska.

15. Effective upon the Effective Date, each of the Governments covenants not to sue any present or former director, officer, or employee of Exxon or Exxon Pipeline with respect to any and all civil claims, including Natural Resource Damages, or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or

state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Exxon or Exxon Pipeline for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Exxon or Exxon Pipeline, personally or through insurance policies purchased by the individual or individuals.

16. (a) Not later than 15 days after Final Approval, each of the claims asserted by the State against Exxon and Exxon Pipeline, except for the claim described in Paragraph 13(d) of this Agreement, and each of the claims asserted by Exxon or Exxon Pipeline against the State, in the State Court Action will be dismissed with prejudice and without an award of costs or

attorneys fees to any Party. Exxon, Exxon Pipeline, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement this subparagraph.

(b) Not later than 15 days after Final Approval, each of the claims asserted by the United States and the State against Exxon or Exxon Pipeline in the Federal Court Complaints, except for the claim described in Paragraph 13(d) of this Agreement, each of the counterclaims asserted by Exxon and Exxon Pipeline against the United States or the State in their responses to the Federal Court Complaints, shall be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Exxon, Exxon Pipeline, the United States, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement this subparagraph.

(c) Each of the claims asserted by Exxon against the Governments or their officials in Exxon Shipping Company, et al. v. Lujan, et al., Civil Action No. A91-219 CIV (D. Alaska) ("Lujan") shall be dismissed with prejudice, and without an award of attorneys fees or costs to any Party, not later than 5 days after United States District Court approval of any agreement(s) between the Governments and the non-Government defendants in Lujan under which all of the non-Government defendants disclaim any right to recover Natural Resource Damages.

Reopener For Unknown Injury

17. Notwithstanding any other provision of this Agreement, between September 1, 2002, and September 1, 2006, Exxon shall pay

to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats, or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

- (a) the cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and
- (b) the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the Effective Date.

18. The amount to be paid by Exxon for the restoration projects referred to in Paragraph 17 shall not exceed \$100,000,000.

19. The Governments shall file with Exxon, 90 days before demanding any payment pursuant to Paragraph 17, detailed plans for all such restoration projects, together with a statement of all amounts they claim should be paid under Paragraph 17 and all information upon which they relied in the preparation of the restoration plan and the accompanying cost statement.

Releases and Covenants Not To Sue by Exxon and Exxon Pipeline

20. Effective upon Final Approval, Exxon and Exxon Pipeline release, and covenant not to sue or to file any administrative claim against, each of the Governments and their employees with respect to any and all claims, including without limitation claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law, or maritime law, that arise from, relate to, or are based on or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted by either of them against the State in the State Court Action, (2) any civil claims asserted by Exxon or Exxon Pipeline against either Government in their responses to the Federal Court Complaints, or (3) any other civil claims that have been or could be asserted by Exxon or Exxon Pipeline against either of the Governments relating to or arising from the Oil Spill, except that nothing in this Agreement shall affect or impair the rights of Exxon and Exxon Pipeline to enforce this Agreement. This paragraph shall not be construed as a release or covenant not to sue given by Alyeska (including its shareholders and owner companies other than Exxon Pipeline) to the Governments.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 20 shall not be construed to bar any claim by Exxon against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising

from any monies paid to Exxon or Exxon Pipeline by the TAPL Fund, Exxon agrees to indemnify and hold the Governments harmless from any liability that they have to the TAPL Fund based on such claims. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska by the TAPL Fund, Exxon agrees to indemnify the Governments for 20.34% of any liability that either Government has to the TAPL Fund based on such claims.

Provisions Pertaining to Alyeska

22. Effective upon Final Approval, the Governments release and covenant not to sue Alyeska with respect to all claims for Natural Resource Damages and with respect to all other claims for damages for injury to Natural Resources, whether asserted or not, that either may have against Alyeska relating to or arising from the Oil Spill. If Alyeska asserts claims against the Governments, or either of them, that are based upon third party contribution or subrogation rights, or any other theory of recovery over against the Governments, or either of them, arising from any liability of or settlement payment by Alyeska to Exxon or Exxon Pipeline for any claims, including without limitation Natural Resource Damages and cleanup costs, relating to or arising from the Oil Spill, Exxon shall indemnify and hold the Governments harmless from any liability that the Governments have to Alyeska based on such claims.

23. In order to resolve as completely as practicable all civil claims of the Governments arising from the Oil Spill

against all Exxon Defendants, including Exxon Pipeline (which has a 20.34% participation in Alyeska), and in consideration of Exxon's obligations hereunder, the Governments agree that if either recovers any amount from Alyeska for any claim of any kind relating to or arising from the Oil Spill (such as asserted in the State Court Action against Alyeska), each Government so recovering shall instruct Alyeska to pay to Exxon, and shall take other reasonable steps to ensure that Exxon receives, 20.34% of the amount due to that Government from Alyeska.

24. Exxon and Exxon Pipeline agree that, if Alyeska receives any amount from the Governments for any claim of any kind relating to or arising from the Oil Spill, except for an amount indemnified by Exxon under Paragraph 22 or 25, Exxon and/or Exxon Pipeline shall promptly pay to the Government against which judgment is entered 20.34% of such amount.

25. If Alyeska successfully asserts claims, if any, against the Governments, or either of them, that are based upon Alyeska's own damages or losses, or upon third party contribution or subrogation rights, or other theories of recovery over, arising from Alyeska's liability to persons other than Exxon or Exxon Pipeline relating to the Oil Spill, Exxon shall indemnify the Governments for any sums paid by either of them to Alyeska based on such claims; provided that the Governments shall assert in good faith all defenses the Governments may have to such claims by Alyeska, and provided further that no indemnity shall be provided under this paragraph if the Governments refuse a good

faith proposal for a monetary settlement of such claims agreed to by Exxon and Alyeska, under which Alyeska shall fully release the Governments in exchange for a payment by or other consideration from Exxon, on behalf of the Governments, to Alyeska.

Third Party Litigation

26. (a) Except as provided in subparagraph (b) of this paragraph, if any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Exxon or Exxon Pipeline and the Governments, or against Exxon or Exxon Pipeline and either the United States or the State, each of the sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party. However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases.

(b) If any person or entity, other than the TAPL Fund or Alyeska, asserts claims against the Governments, or either of

them, that are based upon contribution or indemnity or any other theory of recovery over against the Governments arising from any liability of or payment by said person or entity to Exxon or Exxon Pipeline relating to or arising from the Oil Spill, or based upon subrogation rights arising from any monies paid to Exxon or Exxon Pipeline, Exxon shall indemnify and hold the Governments harmless from any liability that the Governments have to such person or entity based on such claims. The foregoing indemnity (i) shall not be enforceable with respect to any amount in excess of value actually received by Exxon or Exxon Pipeline, and (ii) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

27. Neither Exxon nor Exxon Pipeline shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Exxon or Exxon Pipeline in any action relating to or arising from the Oil Spill where Exxon and Exxon Pipeline, respectively, are not parties, except that either Government may assert against Exxon the rights to indemnification as expressly provided in Paragraphs 21, 22, and 25.

28. Any liability which Exxon incurs as a result of a suit by a Third Party, as described in Paragraphs 26 or 27, shall not be attributable to or serve to reduce the payments required to be

paid by Exxon pursuant to Paragraph 8 or any additional payment required under Paragraph 17.

29. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

30. If a Third Party, which has previously reached or hereafter reaches a settlement with Exxon, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Exxon, and shall assert that joinder of Exxon is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Exxon's joinder, the sued Government(s) may institute third-party actions against Exxon solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce any judgment against Exxon.

Interest for Late Payments

31. If any payment required by Paragraphs 8 or 9 of this Agreement is not made by the date specified in those Paragraphs, Exxon shall be liable to the Governments for interest on the overdue amount(s), from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717(a)(1) & (2). Interest on an

overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

32. This Agreement does not constitute an admission of fact or law, or of any liability, by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims, or defenses available to it relating to or arising from the Oil Spill. Nothing in this Agreement, however, is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

33. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

34. Nothing in this Agreement shall prevent or impair the Governments from providing program assistance or funding to those not signatories to this Agreement under the programs of their agencies pursuant to legislative authorization or appropriation.

35. Nothing in this Agreement shall affect or impair any existing contract between Exxon or Exxon Pipeline and any entity of either Government, including without limitation the agreement between Exxon and the Environmental Protection Agency dated December 21, 1990, relating to joint conduct of bioremediation studies.

Notices and Submittals

36. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attn. DOJ #90-5-1-1-3343

Chief, Admiralty and Aviation Branch
Civil Division
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20530

General Counsel
National Oceanic and Atmospheric Administration
Department of Commerce
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

As to the State of Alaska:

Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Supervising Attorney
Oil Spill Litigation Section
Department of Law
1031 W. Fourth Street, Suite 200
Anchorage, Alaska 99501

As to Exxon Corporation:

Office of the Secretary
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

As to Exxon Shipping Company:

Office of the President
Exxon Shipping Company
P.O. Box 1512
Houston, Texas 77251-1512

As to Exxon Pipeline:

Office of the President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

Election to Terminate

37. Any Party may elect to terminate this Agreement if:

(1) any court of competent jurisdiction disapproves or overturns any plea agreement entered into between the United States and Exxon in United States v. Exxon Shipping Co., No. A90-015 CR (D. Alaska); (2) a final judicial determination is made by such court that this Agreement will not be approved and entered without modification; or (3) such court modifies this Agreement in a manner materially adverse to that Party, or interprets a material provision of this Agreement in a manner inconsistent with the Parties' intentions, prior to or contemporaneously with a final judicial determination approving the Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile,

or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement, provided, that termination shall not affect or impair Exxon's rights to obtain return of any deposits made into the Escrow pursuant to the final sentence of Paragraph 9, and provided further, that the provisions of Paragraphs 11 and 12, relating to clean-up, shall continue in effect notwithstanding any termination.

Retention of Jurisdiction

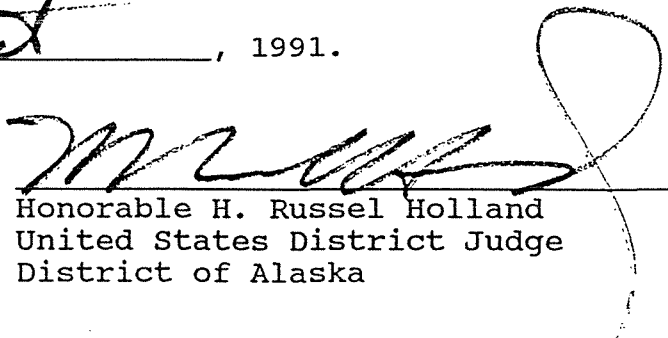
38. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

39. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

40. Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

THE FOREGOING Agreement and Consent Decree among plaintiffs the United States of America and the State of Alaska and defendants Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, is hereby APPROVED AND ENTERED THIS 8 DAY OF Oct, 1991.



Honorable H. Russel Holland
United States District Judge
District of Alaska

cc: O&J 4461
C. Flynn (BURR)
J. Bottini (AUSA)
J. Clough
D. Serdahely (BOGLE)
R. Weddle (FAULKNER)

RAWG
ER

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23985
Washington, D.C. 20026-3985
(202) 272-9879

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
EXXON CORPORATION)
)
and)
)
EXXON SHIPPING COMPANY,)
)
Defendants.)

No. A90-015 CR.

PLEA AGREEMENT

ACE
COPY

I. INTRODUCTION

This document contains the complete plea agreement between the United States of America, plaintiff in the above-captioned action, and the defendants, EXXON SHIPPING COMPANY ("EXXON SHIPPING") and EXXON CORPORATION ("EXXON").

A. The defendant, EXXON SHIPPING, is charged in Counts One, Two and Three of an indictment filed in the District of Alaska with violations of the Clean Water Act, Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A); the Refuse Act, Title 33, United States Code, Sections 407 and 411; and

the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

B. The defendant, EXXON, is charged in Count Three of an indictment filed in the District of Alaska with a violation of the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

C. The defendant, EXXON SHIPPING, agrees to enter a plea of guilty to the Counts in paragraph IA.

D. The defendant EXXON agrees to enter a plea of guilty to the Count in paragraph IB, subject to the factual basis for the plea being that it was oil owned by EXXON, and transported under contract with EXXON SHIPPING, that killed migratory birds, for which EXXON had no permit.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

The defendant, EXXON SHIPPING, is represented by James F. Neal, Esq., James F. Sanders, Esq., and Robert C. Bundy, Esq. The defendant EXXON, is represented by Patrick Lynch, Esq., Edward J. Lynch, Esq., and John F. Clough, III, Esq. The defendants acknowledge that their attorneys have explained all of the elements of each offense charged against them.

A. If EXXON SHIPPING pled not guilty, the United States would have to prove beyond a reasonable doubt each and every one of the following charges to the unanimous satisfaction of a jury:

1. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, did

negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil, from a point source, namely the tank vessel "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A).

2. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant EXXON SHIPPING unlawfully did throw, discharge and deposit, and did cause, suffer, and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

3. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

B. If EXXON pled not guilty, the United States would have to prove the following charge to the unanimous satisfaction of a jury beyond a reasonable doubt:

That on or about March 24, 1989, in the District of Alaska, the defendant EXXON, without being permitted to do so

by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

C. Legal Basis for the Fines

The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis with respect to the offenses charged in the indictment for the Court to impose the fines agreed to in paragraph IIIC.

D. Consequences of the Plea

1. EXXON SHIPPING understands that by pleading guilty to the Counts under paragraph IC, it is admitting the essential elements of the charges in those Counts.

2. EXXON understands that by pleading guilty to the Count under paragraph ID, it is admitting the essential elements of the charge in that Count on the factual basis set forth in paragraph ID.

3. Each defendant understands that by pleading guilty, it gives up the following rights:

- a. The right to be tried by jury;
- b. The right to challenge and object to the composition or procedures of the grand jury; and
- c. The right to confront and cross-examine witnesses.

E. Upon acceptance of the pleas and imposition of sentence by the Court, the United States will immediately move

to dismiss Counts 4 and 5 as to EXXON SHIPPING and Counts 1, 2, 4, and 5 as to EXXON.

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

A. The United States agrees not to seek additional criminal charges or any civil or administrative penalties, except as provided in paragraph IIIB below, against the defendant EXXON, or any of its present or former officers, directors or employees, or any of its wholly-owned subsidiaries, their present or former officers, directors or employees, for any violation of federal law arising out of the grounding of the "EXXON VALDEZ," the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related documents to the federal or state government.

B. The parties agree that nothing in this plea agreement limits the right of any agency of the United States, other than the Department of Justice, to seek and take civil or administrative action against EXXON SHIPPING, EXXON, or any other EXXON subsidiaries, or their employees, including any such action relating to suspension or debarment or listing, but not including the civil or administrative penalties referred to in paragraph IIIA.

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and the acceptance by the Court thereof, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., and

that under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$150 million, as follows:

1. With respect to EXXON SHIPPING, the fine shall be \$125 million.

2. With respect to EXXON, the fine shall be \$25 million.

3. With respect to EXXON SHIPPING, \$105 million shall be remitted, and with respect to EXXON, \$20 million shall be remitted. The remission of these amounts is appropriate in view of the following facts:

(a) The defendants recognized their responsibilities with respect to the grounding of the "EXXON VALDEZ" and the resulting oil spill;

(b) The defendants have expended in excess of \$2.1 billion in response to and clean up of the oil spill in Prince William Sound and its environs;

(c) The defendants have paid in excess of \$300 million to claimants allegedly injured by the oil spill; and

(d) The defendants cooperated in the federal criminal investigation of the grounding of the "EXXON VALDEZ" and the resulting oil spill.

(e) The defendants had earlier adopted and have updated environmental policies, toxic substances policies and safety policies. These policies are attached as Appendix A;

ACE 7646094

(f) The defendants support the environmental codes of conduct adopted by the American Petroleum Institute and the Chemical Manufacturing Association. These codes are attached as Appendix B;

(g) The defendants' environmental expenditures averaged more than \$1 billion per year during the 1980s, and defendant will spend \$1.6 billion in 1991 on capital projects to enhance environmental and safety performance, all apart from the expenditures relating to the oil spill;

(h) The defendants have committed to contribute \$50 million to fund, with contributions from other companies, improvement of the oil industry response capability to deal with large-scale oil spills;

(i) The defendant Exxon's division for U.S. oil and gas operations has created a New Environmental and Safety Department to review and coordinate the management of environmental and safety concerns;

(j) The defendant Exxon Shipping has established a New Environmental Affairs Group and hired as Consultants two former Coast Guard captains with oil spill experience;

(k) The defendants have taken action to prevent recurrence of the offense including actions to improve vessel operating safety, personnel training and oil spill response capability. \$40 million has been spent on these activities since the oil spill.

(1) The defendant are currently spending \$160 million annually on environmental and safety research which is 25 percent of Exxon's total research expenditure.

D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement, and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties referred to in Paragraph IIIA. The payment of \$20 million by EXXON SHIPPING and \$5 million by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.

E. The parties agree that \$7 million of Exxon Shipping's fine and all of Exxon's \$5 million fine be imposed for violation of the Migratory Bird Treaty Act. By operations of law, Title 16, United States Code, Section 4406(b), this fine is to be deposited into the North American Wetlands Conservation Fund to be used solely by the U.S. Department of the Interior to carry out approved wetlands conservation projects in the United States, Canada and Mexico.

IV. RESTITUTIONARY PAYMENTS

A. The defendants, EXXON SHIPPING and EXXON, agree to make payments to the State of Alaska and the United States which total \$100 million, \$50 million of which shall be paid to the State of Alaska and \$50 million of which shall be paid to the United States, within 30 days of the acceptance of this

plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph IVA are remedial and compensatory payments. Such monies are to be used by the State of Alaska and the United States exclusively for restoration projects, within the State of Alaska, relating to the "EXXON VALDEZ" oil spill. Restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills.

B. The parties agree that the administration of the monies to be paid under paragraph IVA shall be under the control of each recipient and that upon payment, such monies and any interest which accrues thereon shall be available for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.

C. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis for the Court to impose the payments agreed to in paragraph IV as damages recoverable for compensatory and remedial purposes.

D. The parties agree that all payments made under paragraph IVA are exclusively remedial, compensatory, and non-punitive and are separate and distinct from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed upon the

defendants.

V. GENERAL PROVISIONS

A. EXXON guarantees payment of the fine imposed on EXXON SHIPPING under this plea agreement. In the event that defendant EXXON SHIPPING fails to make timely payment of the fine, EXXON shall, within thirty (30) days of the date of demand, make payment in EXXON SHIPPING's stead.

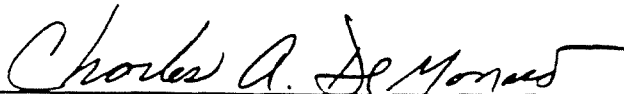
B. The defendants, EXXON SHIPPING and EXXON, understand that the Court has discretion to accept or reject this plea agreement, and that if the Court rejects the plea agreement or does not dismiss the charges referred to in paragraph IIE, each defendant will be permitted to withdraw its plea of guilty.


C. The parties agree, subject to the decision of the Court, that there is in the record information sufficient to enable the meaningful exercise of sentencing authority, pursuant to Rule 32(c) F.R. Cr. P., and agree that waiver of a presentence investigation and report would be appropriate.

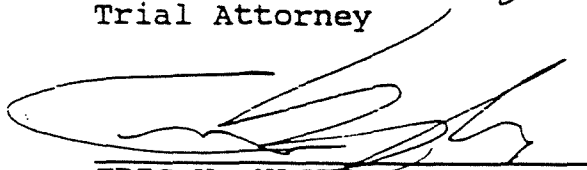
ACE 7648098


The above-stated terms and conditions comprise the entire plea agreement between the United States of America, defendant EXXON SHIPPING and defendant EXXON, and there are no other terms or conditions, express or implied.


FOR THE UNITED STATES
OF AMERICA:


CHARLES A De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural
Resources Division
U.S. Department of Justice

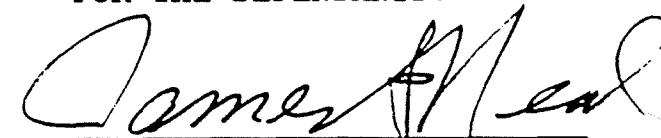

MARK B. HARMON
Trial Attorney



ERIC W. NAGLE
Trial Attorney



MARK R. DAVIS
Special Assistant U.S.
Attorney



GREGORY F. LINSIN
Trial Attorney

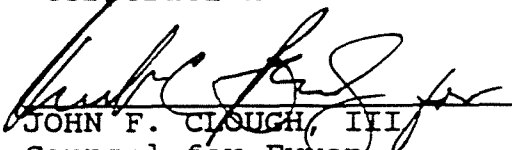
FOR THE DEFENDANTS:


JAMES F. NEAL
Counsel for Exxon Shipping


ROBERT C. BUNDY
Counsel for Exxon Shipping


PATRICK LYNCH
Counsel for Exxon
Corporation


EDWARD J. LYNCH
Counsel for Exxon
Corporation


JOHN F. CLOUGH, III
Counsel for Exxon
Corporation

DATED THIS 26th day of September, 1991

ACE 7646099

FILED *RAWG*

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23985
Washington, D.C. 20026-3985
(202) 272-9879

OCT 08 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Deputy

Attorney for the United States of America

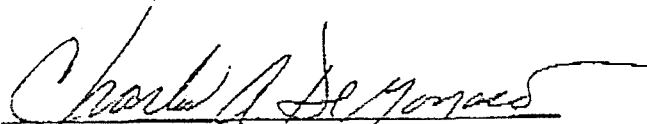
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. A90-015-1CR
)	No. A90-015-2CR
Plaintiff,)	
)	UNITED STATES' MOTION TO
v.)	DISMISS COUNTS AS TO EXXON
)	CORPORATION AND EXXON SHIPPING
)	COMPANY PURSUANT TO PARAGRAPH
EXXON CORPORATION AND)	IIE OF THE PLEA AGREEMENT
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

Comes Now, the United States of America, plaintiff in the above captioned case, by and through its attorneys, to move this Court pursuant to Rule 47 of the Federal Rules of Criminal Procedure to dismiss Counts 1, 2, 4, and 5 as to Exxon Corporation and Counts 4 and 5 as to Exxon Shipping Company as set forth in the Indictment filed March 27, 1990, in accordance with the provisions of Paragraph IIE of the Plea Agreement lodged September 30, 1991.

23

Respectfully submitted this 8th day of October 1991,
at Anchorage, Alaska.



CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Department of Justice

ERIC W. NAGLE
Trial Attorney
Environmental Crimes U.S.
Section

MARK B. HARMON
Trial Attorney
Environmental Crimes Section

MARK R. DAVIS
Special Assistant U.S.
Attorney

GREGORY F. LINSIN
Trial Attorney
Environmental Crimes Section

Having accepted the Plea Agreement filed in the above-captioned case in accordance with Rule 11(e)(3) of the Federal Rules of Criminal Procedure, IT IS HEREBY ORDERED that Counts 1, 2, 4 and 5 of the Indictment filed March 27, 1990 are dismissed as to defendant Exxon Corporation and that Counts 4 and 5 are dismissed as to defendant Exxon Shipping Company in accordance with provisions of Paragraph IIE of the Plea Agreement.

Dated this 8 day of October, 1991 at Anchorage,
Alaska.



United States District Court Judge

cc: M. Davis, R. Bundy, J. Clough, W. Bankston,
Pretrial Services

FILED

OCT 09 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, et al.,

Defendants,

No. A91-083 Civil

JUDGMENT

Judgment is hereby rendered in this action on the terms and conditions set forth in the Agreement and Consent Decree entered as an order of the Court on the 8 day of Oct, 1991.

ENTERED this 8 day of Oct, 1991.

[Signature]
United States District Judge

cc: O & J 4464

B. Herman (AAG-200)

W. Bankston (BANKSTON)

D. Serdahely (BOGLE)

J. Clough, III

JUDGMENT - 1

MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA

vs.

EXXON CORP; EXXON SHIPPING CO.

THE HONORABLE H. RUSSEL HOLLAND

CASE NO. A90-015 CRIMINAL

DEPUTY CLERK Mary Ellen Grohol

RECORDER Mary Ellen Grohol

APPEARANCES:

PLAINTIFF:

Charles De Monaco
Mark Davis

Charles Cole
Barry Hartman

DEFENDANT:

Patrick Lynch
Lawrence Rawl
James Neal

Edward Lynch
Charles Matthews
John Clough

PROCEEDINGS:

Augustus Elmer

Robert Bundy

PROPOSED CHANGE OF PLEA

At 8:41 a.m., Court convened.

The Court stated his hearing will include the agreement and consent decree in the civil cases A91-082 & A91-083.

Lawrence Rawl was sworn and testified for defendant Exxon Corporation re change of plea. Defendant filed a resolution* re plea agreement. The Court advised the defendant of general rights. The Court dispensed with the need for a pre-sentence report because the defendant is a corporation and the report would not be helpful. Defendant pled Guilty to Count III; the Court accepted the plea.

Augustus Elmer was sworn and testified for defendant Exxon Shipping Company re change of plea. The Court advised the defendant of general rights. The Court dispensed with the need for a pre-sentence report. Defendant pled Guilty to Counts I, II, & III; the Court accepted the plea.

Court and counsel heard re agreement & consent decree settlement in civil cases A91-082 & A91-083.

At 10:19 a.m., Court recessed until 10:34 a.m.

The Court accepted and approved both the criminal and civil agreements. The plaintiff presented proposed orders re both the civil and criminal cases. The Court will prepare Judgments in the Criminal case and directed the Clerk to deliver the Civil consent decree to his chambers.

The Court dismissed Counts I, II, IV & V re defendant Exxon Corporation; the court dismissed Counts IV & V re defendant Exxon Shipping Company.

At 11:15 a.m., Court adjourned.

DATE: October 3, 1991

DEPUTY CLERK'S INITIALS: meg

*Court directed the Clerk to attach the resolution re plea agreement to C.F. No. 1 the Plea Agreement.

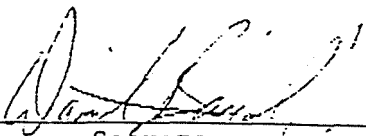
At a meeting of the Board of Directors of Exxon Corporation, duly called and held at 225 East John W. Carpenter Freeway, Irving, Texas, on September 25, 1991, at which a quorum was present and voting, the following resolutions were presented and, on motion made and seconded, duly adopted:

"RESOLVED, That each of the proper officers of and Patrick Lynch, John Clough, III and Edward J. Lynch, counsel for the Corporation, be, and each of them hereby is authorized, in the name and on behalf of the Corporation, to enter into plea agreements, settlement agreements, consent judgments and other related agreements to terminate the pending United States criminal action and United States and State of Alaska civil actions against the Corporation arising out of the 1989 EXXON VALDEZ accident, as well as in representing the Corporation in all matters relating to the change of plea and sentencing process and related suits and counterclaims by the Corporation against the United States and the State of Alaska, all of the foregoing agreements and judgments to be upon such terms and conditions and in such form as such officer or counsel shall determine to be in the best interests of the Corporation, such determination to be conclusively evidenced by execution and delivery thereof.

RESOLVED, That, subject to appropriate action by subsidiaries of the Corporation to authorize agreements and consent judgments substantially similar to the agreements and judgments to which the preceding resolution refers, the Corporation takes no exception to such subsidiaries entering into such agreements or judgments, and that each proper officer of and the aforesaid counsel for the Corporation be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to guarantee any payments to be made by such subsidiaries under agreements and judgments into which they enter."

I HEREBY CERTIFY, That the foregoing is a true record from the minutes of the meeting of the Board of Directors of Exxon Corporation.

WITNESS my hand and the seal of the Corporation at Irving, Texas, this 25th day of September, 1991.


Secretary

RAWG
F3

MEMORANDUM OF AGREEMENT AND CONSENT DECREE SUMMARY

PARTIES: The United States of America and the State of Alaska (heretofore referred to as the Governments). The United States has brought this action against the State and the State counterclaims against the United States, with respect to their respective shares in any recoveries for compensation for natural resource damages resulting from the oil spill.

INTRODUCTION

Section 311 of the Clean Water Act, 33 U.S.C. Section 1321, establishes liability to the United States and to States for injury, loss, or destruction of natural resources resulting from the discharge of oil or the release of hazardous substances or both and provides for the appointment of State and Federal Trustees.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan, and the Natural Resource Damage Assessment Regulations provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources.

<u>Federal/State Entities</u>	<u>Role</u>	<u>Designated by</u>
United States - State	Trustee/co-trustee	CERCLA National Contingency Plan Natural Resource Damage Assessment Regulations
Secretary of Interior " of Agriculture Administrator of NOAA	Federal Trustees	Clean Water Act CERCLA
EPA	coordinates restoration on behalf of U.S.	President
Commissioner of DEC " of Fish and Game Alaska Attorney General	Trustees	Clean Water Act CERCLA
U.S. Coast Guard	Federal On-Scene Coordinator	Clean Water Act National Contingency Plan
State DEC	State On-Scene Coordinator	Alaska Statutes

U.S. Dept. of Justice
AK Dept of Law

litigation
management

U.S. Constitution
Alaska Statutes

In an effort to maximize restoration of natural resources funds, the above-named parties enter into this MOA as the most appropriate method to resolve claims against one another, and that the terms are in the public interest and will enable each to fulfill their duties as trustees.

The United States through the United States Department of EPA and the State of Alaska through the State Departments of Fish and Game, Environmental Conservation, and Law have agreed to the following terms and conditions:

I. JURISDICTION

The Court has jurisdiction over the subject matter in the United States Complaint and the State's Counterclaim and over the parties to this MOA pursuant to the United States Constitution and the Clean Water Act.

II. DEFINITIONS

- A. Base Allowed Expenses - (1) reasonable, unreimbursed cost obligated or incurred by the Governments on or before March 12, 1991 for the planning, conduct, evaluation, coordination and oversight of natural resource damage assessment with respect to the oil spill, and (2) reasonable, unreimbursed costs obligated or incurred by the State on or before March 12, 1991 for experts and counsel in connection with preparation of oil spill litigation.
- B. CERCLA - the Comprehensive Environmental Response, Compensation and Liability Act of 1980
- C. Clean Water Act - the Federal Water Pollution Control Act
- D. Joint Use - use of natural resource damage recoveries as agreed upon in Article IV of this MOA
- E. National Contingency Plan - the National Oil and Hazardous Substances Pollution Contingency Plan
- F. Natural Resources - land, fish, wildlife, biota, air, water, ground water, drinking water supplies and other such resources controlled by the United States and/or the state
- G. Natural Resource Damage Recovery - any award, judgment, settlement or other payment to either Government which is received as a result of a claim for Base Allowed Expenses or for damages for injury, destruction, or loss of natural resources from the oil spill and costs incurred by the State for experts and counsel in connection with oil spill

litigation. The term includes all recoveries upon claims pursuant to state and federal common law, state statutes, admiralty law, state and federal right-of-way lease covenants and any recoveries for natural resource damages obtained from or in connection with a civil proceeding or criminal restitution. Natural resource damage recovery excludes reimbursement for response and cleanup costs, lost royalty, tax, license, or fee revenues, punitive damages, federal or state civil or criminal penalties, federal litigation costs and attorney fees.

- H. Oil Spill - the grounding of the T/V EXXON VALDEZ on Bligh Reef in Prince William Sound on March 23-24, 1989 and the resulting spill.
- I. Oil Spill Litigation - any past, present, or future civil judicial or administrative proceeding relating to the oil spill.
- J. Response and Cleanup Costs - actual, unreimbursed response and/or cleanup costs incurred by either Government in connection with the oil spill and has been certified for payment by the Federal or State On-Scene Coordinators.
- K. Restore or Restoration - any action in addition to response and cleanup activities required by state or federal law which endeavors to restore to their pre-spill condition any natural resource damaged as a result of the spill. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources and acquisition of equivalent resources and services.
- L. Trustees - officials now or in the future designated by the President of the United States and the Governor of Alaska to act as trustees, for purposes of CERCLA and the Clean Water Act, of natural resources injured or destroyed as a result of the spill.

III. EFFECT OF ENTRY OF MOA

This MOA shall constitute a final judgment between the United States and the State of Alaska but does not create any rights or privileges in any other parties, upon approval and entry by the Court.

IV. CO-TRUSTEESHIP

- A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries for natural resources injured or lost as a result of the spill.
- B. Nothing in this MOA shall be deemed an admission of law or fact by either party concerning ownership, right, title or interest in or management or control authority over natural resources or the right to recover for injury to such resources. The Governments agree that this MOA may not be used by one Government against the other for any reason.

- C. Nothing in this MOA shall be construed to affect or impair the rights and obligations of any entities or persons not parties to this MOA, including without limitation:
1. The rights and obligations of Alaska Native villages to act as trustees for purposes of asserting and compromising claims for injury to or lost of natural resources affected by the spill and expending proceeds derived therefrom;
 2. The rights and obligations of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the oil spill;
 3. The rights and obligations of the United States relating to such Alaska Native villages and the entities referred to in subparagraph 2 above.

V.
ORGANIZATION

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of natural resource damage recoveries obtained by the Governments, including all decisions regarding planning, evaluation, and allocation of available funds, the conduct of injury assessments and restoration activities; the coordination shall be made by the unanimous agreement of the Trustees. On the part of the Federal Trustees, the decision shall be made in consultation with EPA.
2. The Governments shall cooperate in good faith to establish a joint trust fund for purposes of receiving, depositing, holding, disbursing and managing all natural resource damage recoveries obtained by the Governments. This joint trust fund shall be established in the Registry of the United States District Court for the District of Alaska or as determined by stipulation of the governments or order of the Court.
3. If the Trustees are unable to reach unanimous agreement on a decision pursuant to paragraph A.1 of this Article, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any time, the Governments may, by mutual agreement, submit any such matter or dispute to non-binding mediation or other conflict resolution.
4. Within 90 days after receipt of any natural resource damage recovery, the Trustees shall agree to an organizational structure for decision making under this MOA and shall establish procedures for meaningful public participation in injury assessment and the restoration process, including establishment of a public advisory

group to advise the Trustees as described in paragraph V.A.1.

B. Injury Assessment and Restoration Process

1. Nothing in this MOA limits the right of each Government unilaterally to perform any natural resource injury assessment or restoration activity from funds other than natural resource damage recoveries.
2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by Natural Resource Damage Assessment Regulations.
3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from transferring, pursuant to applicable law, trustee status from one official to another, with no more than three Trustees designated for the purposes of carrying out the provisions of the MOA.

C. Role of the Environmental Protection Agency

The President has assigned to EPA the role of advising the Federal Trustees and coordinating, on the Federal Government's behalf, the long-term restoration of natural resources injured or destroyed as result of the oil spill.

**VI.
DISTRIBUTION OF MONIES**

A. Joint Use of Natural Resource Damage Recoveries

The Governments shall jointly use all natural resource damage recoveries for purposes of restoring, replacing, enhancing, rehabilitating or acquiring the equivalent of natural resources injured as a result of the oil spill. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. Nothing in this MOA creates a right in or entitlement of any person not a party to the MOA to share in any natural resource damage recoveries.

B. Reimbursement of Certain Expenses

1. The Governments agree that the following costs shall be advanced or reimbursed to each Government out of any natural resource damage recoveries related to the spill and shall not be placed in the joint trust fund: (1) Base Allowed Expenses; (2) reasonable unreimbursed costs jointly agreed upon by the Governments and incurred by either or both after March 12, 1991 for the planning, conduct, coordination, or oversight of natural resource damage assessment and restoration planning; and (3) other reasonable unreimbursed costs incurred by the State after March 12, 1991 for experts and counsel in connection with oil spill litigation

provided the total shall not exceed \$1,000,000 per month and a total of \$40,000,000 and provided that no costs shall be deducted from any natural resource damages recovered as restitution in a criminal proceeding.

2. For the purposes of allocation of monies received by either or both Governments pursuant to any settlement(s) of the Government's claims arising out of the spill, \$67 million shall be reimbursed to the United States for Base Allowed Expenses and for response and cleanup costs incurred by it before January 1, 1991, and \$75 million shall be reimbursed to the State for Base Allowed Expenses and for response and cleanup costs incurred by it before January 1, 1991; provided that this subparagraph shall not affect or impair the rights of either Government to recover costs, damages, fees or expenses through litigation.
 3. The Governments agree that any monies received by either or both pursuant to a settlement of oil spill claims that remain after the costs referred to in subparagraphs 1 & 2 have been reimbursed shall be allocated as follows: (1) to reimburse the Governments for their respective response and cleanup costs incurred after December 31, 1990 and for their respective costs of natural resource damages assessment (including restoration planning) obligated or incurred after March 12, 1991 and; (2) to the joint trust fund for natural resource damage recoveries.
- C. Except as otherwise provided in this MOA, the Governments agree that all natural resource damage recoveries will be expended on restoration of natural resources in Alaska unless the Trustees determine that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska and services provided by such resources.
- D. Nothing in this MOA shall be construed as obligating the Governments to expend any monies except to the extent funds are appropriated or are lawfully available.

VII.
LITIGATION AND SETTLEMENT OF CLAIMS
RELATING TO THE OIL SPILL

- A. Agreement to Consult and Cooperate. The Governments through the Departments of Law and Justice, agree to act in good faith to consult and cooperate with each other to develop a common approach to the oil spill litigation, to the settlement of civil claims and restitution claims in connection with criminal proceedings. This MOA shall not limit or affect the prosecutorial discretion of the State of Alaska or the United States.
- B. Legal Work Product and Privileged Information. The Governments, through the Departments of Law and Justice, agree that they may in their discretion share with each other or with private and/or public plaintiff

litigants scientific data and analyses relating to the injury to natural resources resulting from the oil spill, the products of economic studies, legal work product, and other confidential or privileged information, subject to the following terms and conditions:

1. Each Government will take all reasonable steps necessary to maintain work product and other applicable privileges and exemptions available under the Freedom of Information Act.
2. No Government may voluntarily share with another party information jointly prepared or prepared by the other Government without prior express written consent of the other Government's legal counsel.

**VIII.
SCIENCE STUDIES**

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the oil spill.

**IX.
COVENANTS NOT TO SUE**

- A. Each Government covenants not to sue or to take other legal action against the other Government with respect to the following matters:
 1. The authority of either Government to enter into and comply with the terms of the MOA.
 2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities in accordance with this MOA.
 3. Any and all civil claims it may have against the other Government arising from any activities, actions, or omissions by the other Government relating to or in response to the oil spill which occurred prior to the execution of this MOA.
- B. Solely for purposes of the oil spill litigation and any proceedings relating to the ascertainment, recovery, or use of natural resource damages resulting from the oil spill, each Government shall be entitled to assert in any such proceeding, without contradiction by the other Government, that it is a co-Trustee with the other Government over any and all of the natural resources injured or destroyed as a result of the oil spill.
- C. Notwithstanding anything in this Article, each Government reserves the right to intervene or otherwise participate in any legal proceeding concerning the claims of a third party with respect to the scope of either Government's Trusteeship and waives any objection to such intervention or participation by the other Government.
- D. If the Governments become adverse to each other in the course of the oil spill litigation, this MOA shall nevertheless remain in effect.

- E. If both Governments are sued by a Third Party on a claim relating to the oil spill, the Governments agree to cooperate fully in the defense of such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability as determined in a final judgment.
- F. If one of the Governments is sued by a Third Party on a claim relating to the oil spill, the Governments agree that the non-sued Government shall cooperate fully in the defense of the sued Government.
- G. The Governments may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability between the Governments. Neither Government shall enforce any judgment obtained against the other Government pursuant to this paragraph.

**X.
RETENTION OF JURISDICTION**

This MOA shall be enforceable by the United States District Court for the District of Alaska which shall retain jurisdiction of this matter for the purpose of entering such further orders, directions, or relief as may be appropriate for the construction, implementation, or enforcement of this MOA.

**XI.
MULTIPLE COPIES AND EFFECTIVE DATE**

This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This MOA shall be effective as of the date it is signed by all the parties hereto.

**XII.
INTEGRATION AND MERGER**

- A. This MOA constitutes the entire agreement between the United States and the State as to the matters addressed herein and there exists no other agreement which is inconsistent with this MOA with respect to subjects addressed in this MOA; provided, that the agreement reached among the Trustees as to disbursements of the original \$15 million paid by Exxon in April, 1989 shall remain in full force and effect.

**XIII.
TERMINATION**

This MOA shall terminate when the Governments certify to the Court, or when the Court determines on application by either Government, that all activities contemplated under the MOA have been completed.

XIV.
JUDICIAL REVIEW

This MOA creates no rights on the part of any persons not signatory to this MOA and shall not, except as provided in Article X, be subject to judicial review.

XV.
MISCELLANEOUS

- A. This MOA can be modified only with the express written consent of the Parties to the MOA and the approval of the Court, except that the Parties may correct any clerical or typographical errors in writing without court approval.
- B. Each undersigned representative of a Party to this MOA certifies that he or she is fully authorized to enter into this MOA and to execute and legally bind such Party to this MOA.

RPWG
F-3

PLEA AGREEMENT SUMMARY

I. INTRODUCTION

This is a plea agreement between the United States of America, plaintiff and EXXON SHIPPING COMPANY AND EXXON CORPORATION, the defendants.

- A. Counts One, Two and Three of an indictment filed in the District of Alaska charges EXXON SHIPPING with violations of the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act.
- B. Count Three of an indictment filed in the District of Alaska charges EXXON with a violation of the Migratory Bird Treaty Act.
- C. EXXON SHIPPING agrees to enter a plea of guilty to the Counts in paragraph IA.
- D. EXXON agrees to enter a guilty plea to the Count in paragraph IB, subject to the factual basis for the plea being that it was oil owned by EXXON and transported under contract with EXXON SHIPPING, that killed migratory birds, for which EXXON had no permit.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

EXXON SHIPPING is represented by Attorneys James F. Neal, James F. Sanders and Robert C. Bundy. EXXON is represented by Attorneys Patrick Lynch, Edward J. Lynch, and John F. Clough, III. Defendants acknowledge that their attorneys have explained the elements of each offense charged against them.

- A. If EXXON SHIPPING pled not guilty, the United States would have to prove beyond a reasonable doubt each and every one of the following charges to the unanimous satisfaction of a jury:
 - 1. That on or about March 24, 1989, in the District of Alaska, EXXON SHIPPING did negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil from the tank vessel, "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit.
 - 2. That on or about March 24, 1989, in the District of Alaska, EXXON SHIPPING unlawfully did throw, discharge and deposit, and did cause, suffer, and procure to be thrown, discharged and deposited refuse matter, more than ten million gallons of crude oil, from the "EXXON VALDEZ" into Prince William Sound, a navigable water of the United States, without a permit.
 - 3. That on or about March 24, 1989, in the District of Alaska, EXXON SHIPPING, without a permit to do so by regulation as required by law, did kill migratory birds.

- B. If EXXON pled not guilty, the United States would have to prove the following charge to the unanimous satisfaction of a jury beyond a reasonable doubt:

That on or about March 24, 1989, in the District of Alaska, EXXON, without being permitted to do so by regulation as required by law, did kill migratory birds.

- C. Legal Basis for the Fines

EXXON SHIPPING and EXXON agree, solely for the purpose of this plea agreement and no other purpose, that there is a legal basis with respect to the offenses charged in the indictment for the Court to impose the fines agreed to in paragraph IIIC.

- D. Consequences of the Plea

EXXON SHIPPING understands that in pleading guilty to the Counts under paragraph IC, it is admitting the essential elements of the charges in those Counts.

EXXON understands that in pleading guilty to the Count under paragraph ID, it is admitting the essential elements of the charge in that Count on the factual basis set forth in paragraph ID.

Each defendant understands that in pleading guilty, it gives up the following rights:

- a. The right to be tried by jury;
- b. The right to challenge and object to grand jury composition and procedures; and
- c. The right to confront and cross-examine witnesses.

- E. Upon acceptance of the pleas and imposition of sentence by the court, the United States will move to dismiss Counts 4 and 5 as to EXXON SHIPPING and Counts 1, 2, 4 and 5 as to EXXON.

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

- A. The United States agrees not to seek additional criminal charges or any civil or administrative penalties, except as provided in paragraph IIIB below, against EXXON for any violation of federal law arising out of the grounding of the "EXXON VALDEZ," the resulting oil spill, the containment or cleanup of that spill, or its conduct in connection with the preparation or submission of oil spill contingency plans or related documents to the federal or state government.
- B. The parties agree that nothing in this plea agreement limits the right of any agency of the United States, other than the Department of Justice, to seek and take civil or administrative action against EXXON

SHIPPING, EXXON or any other EXXON subsidiaries, including any action relating to suspension, debarment or listing, but not including the civil or administrative penalties referred to in paragraph IIIA.

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and acceptance by the Court, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e) of the Federal Rules of Criminal Procedure and under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$150 million as follows:

1. EXXON SHIPPING shall be fined \$125 million.
2. EXXON shall be fined \$25 million.
3. EXXON SHIPPING shall be remitted \$105 million. EXXON shall be remitted \$20 million. The remission of these amounts is appropriate in view of the following facts:
 - (a) The defendants recognize their responsibilities with respect to the grounding and the resulting oil spill;
 - (b) The defendants have expended in excess of \$2.1 billion in response to and clean up of the oil spill in Prince William Sound;
 - (c) The defendants have paid in excess of \$300 million to claimants allegedly injured by the spill; and
 - (d) The defendants cooperated in the federal criminal investigation of the grounding and resulting oil spill.
 - (e) The defendants had earlier adopted and have updated environmental policies, toxic substances policies and safety policies;
 - (f) The defendants support the environmental codes of conduct adopted by the American Petroleum Institute and the Chemical Manufacturing Association;
 - (g) The defendants' environmental expenditures averaged more than \$1 billion per year during the 1980s, and defendant will spend \$1.6 billion in 1991 on capital projects to enhance environmental and safety performance, apart from the expenditures relating to the spill;
 - (h) The defendants have committed to contribute \$50 million to fund, with contributions from other companies, improvement of oil industry response capability to deal with large-scale oil spills;
 - (i) EXXON's division for U.S. oil and gas operations has created a New Environmental and Safety Department to review and coordinate the management of environmental and safety concerns;
 - (j) EXXON SHIPPING has established a New Environmental Affairs Group and hired as consultants two former Coast guard captains with oil spill experience;
 - (k) The defendants have taken action to prevent recurrence of the offense including actions to improve vessel operating safety, personnel training and oil spill response capability. \$40 million has been spent on these activities since the spill.

(1) The defendant are currently spending \$160 million annually on environmental and safety research which is 25 percent of EXXON's total research expenditure.

- D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement, and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties. The payment of **\$20 million** by EXXON SHIPPING and **\$5 million** by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.
- E. The parties agree that **\$7 million** of EXXON SHIPPING's fine and all of EXXON's **\$5 million** fine be imposed for violation of the Migratory Bird Treaty Act. This fine is to be deposited into the North American Wetlands Conservation Fund to be used solely by the U.S. Department of the Interior to carry out approved wetlands conservation projects in the United States, Canada and Mexico.

IV. RESTITUTIONARY PAYMENTS

EXXON SHIPPING and EXXON agree to make payments to the State of Alaska and the United States which total **\$100 million**, **\$50 million** of which shall be paid to the State of Alaska and **\$50 million** which shall be paid to the United States, within 30 days of the acceptance of this plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph are remedial and compensatory payments. Such monies are to be used by the State of Alaska and the United States exclusively for restoration projects, with the State of Alaska, relating to the "EXXON VALDEZ" oil spill. Restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills.

- B. The parties agree that the administration of the monies to be paid under paragraph IVA shall be under the control of each recipient. These monies and any interest which accrues shall be available for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.
- C. EXXON SHIPPING and EXXON agree solely for the purpose of this plea agreement and no other purpose that there is a legal basis for the Court to impose the payments agreed to in paragraph IV as damages recoverable for compensatory and remedial purposes.
- D. The parties agree that all payments made under paragraph IVA are exclusively remedial, compensatory, and non-punitive and are separate from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed.

V. GENERAL PROVISIONS

- A. EXXON guarantees payment of the fine imposed on EXXON SHIPPING under this plea agreement. If EXXON SHIPPING fails to make timely payment of the fine, EXXON shall, within thirty (30) days of the demand date, make payment for EXXON SHIPPING.
- B. EXXON SHIPPING and EXXON understand that the Court has discretion to accept or reject this plea agreement, and that if the Court rejects the plea agreement or does not dismiss the charges referred to in paragraph IIE, each defendant will be permitted to withdraw its plea of guilty.
- C. The parties agree, subject to the decision of the Court, that there is in the record information sufficient to enable the meaningful exercise of sentencing authority and agree that waiver of a presentence investigation and report would be appropriate.

MEMORANDUM

State of Alaska

RPWG
FES

TO: John Sandor
Commissioner

DATE: October 1, 1991

Mead Treadwell
Deputy Commissioner

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Settlement Monetary Summary

FROM: Mark Brodersen *mb*
Restoration Chief

CRIMINAL RESTITUTION

\$ 50 million to the State for restoration in Alaska

\$ 50 million to the Federal Government for restoration in Alaska

\$ 12 million to the Federal Government for deposit in the North American Wetlands Conservation Fund for wetlands enhancement in the US, Canada, and Mexico

\$ 13 million to the Federal Treasury

\$ 25 million suspended

\$150 million Total

This results in an additional \$50 million being made available for restoration in Alaska. Under the terms of the previous settlement, the \$50 million to the Federal Government would have been deposited in the Federal Treasury.

CIVIL RESTITUTION (For disbursement by the Trustees.)

\$ 90 million to be paid 10 days after the effective date of the settlement.

\$150 million 12/01/92

- \$ 4 million (max) Exxon cleanup expenses 01/01/91 to 03/12/91.
 - \$40 million (guess) Exxon cleanup expenses 03/13/91 to 12/31/91.
 - \$ 6 million (wild guess) Exxon cleanup expenses 01/01/92 to 12/01/92.
 \$50 million Total (The \$50 million also covers most of the Coast Guard's
 expenses which were and will be covered by Exxon.)

\$100 million remains from the 12/01/92 payment

\$100 million to be paid 09/01/93
 \$ 70 million 09/01/94
 \$ 70 million 09/01/95
 \$ 70 million 09/01/96
 \$ 70 million 09/01/97
 \$ 70 million 09/01/98
 \$ 70 million 09/01/99
 \$ 70 million 09/01/00
\$ 70 million 09/01/01
 \$900 million Total

There is a reopener clause for damages not currently discovered with a cap of \$100 million.

The governments will reimburse themselves out of the civil restitution payments as follows:

State of Alaska

\$ 75 million (max) Cleanup costs through 12/31/90, damage assessment costs through 03/12/91, and litigation costs through 03/12/91.
 \$ 6 million (max) Litigation costs 03/13/91 through 09/12/91. This may run over a longer time period with a resultant higher cost.
 \$ 10 million (guess) Cleanup costs after 01/01/91.
\$ 15 million (guess) Damage Assessment costs after 03/13/91.
 \$106 million Total (Includes economics studies)

Federal Government

\$ 67 million (max) Cleanup costs through 12/31/90, damage assessment costs through 03/12/91.
 \$ 1 million (guess) Cleanup costs after 01/01/91.
\$ 25 million (guess) Damage Assessment Costs after 03/13/91.
 \$ 93 million Total

RPWG
S

MEMORANDUM

State of Alaska DEPARTMENT OF FISH AND GAME

To: Carl. L. Rosier
Commissioner

Date: 14 October 1991

Thru: J. Jerome Montague, Ph.D. File No: REST
Director, OSIAR

COPY

Telephone No: 907-271-2461

From: *Stan Senner*
Stanley E. Senner
Restoration Program Mgr.

Subject: Exxon Valdez
Settlement

Following is a summary analysis of settlement payouts, reimbursements, and spending guidelines from the criminal and civil settlement documents.

Plea Agreement (Criminal)

Criminal fines for Exxon (including Exxon Shipping) total \$150 million, of which \$125 million is "remitted" (i.e., forgiven).

Of the \$25 million which is not remitted, \$12 million is imposed for violations of the Migratory Bird Treaty Act. This sum must be deposited in the North American Wetlands Conservation Fund to be used solely by the U.S. Department of the Interior to carry out approved wetlands conservation projects in the United States, Canada, and Mexico. The remaining \$13 million goes into the U.S. Treasury.

In addition to the criminal fine, Exxon agreed to pay restitution of \$100 million, \$50 million of which is paid to the State of Alaska and \$50 million to the United States. Such payments shall be made within 30 days of the acceptance of the Plea Agreement by the Court.

Both state and federal governments must use the criminal restitution funds "exclusively for restoration projects, within the State of Alaska, relating to the 'EXXON VALDEZ' oil spill." In the context of the Plea Agreement, "restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills."

"Affected resources" are resources affected by the Exxon Valdez oil spill. Note, however, that the agreement does not specify that affected resources must be "natural resources." The Plea Agreement contains no definition of terms.

Unlike the civil settlement, decisions about spending the criminal restitution are made by the individual governments with respect to their \$50 million shares. Such decisions are not matters of joint consideration. There is no requirement to involve the natural resources Trustees who have guided the damage assessment and restoration program to date, nor is there any requirement for public participation.

Agreement and Consent Decree (Civil)

Under the civil agreement, Exxon shall pay \$900 million to the state and federal governments, which are acting jointly under the terms of the Memorandum of Agreement and Consent Decree filed in court on 28 August 1991. An initial payment of \$90 million has been placed in an escrow account, and it will be released to the governments upon final court approval, including of any appeals. The time for appeals expires on 19 December 1991, which, if no appeals are filed, will be the date the first \$90 million is conveyed to the governments.

On December 1, 1992 Exxon shall pay a second installment of \$150 million, less any cleanup expenses incurred by Exxon for work done from January 1, 1991 through March 12, 1991 up to \$4 million. Additional cleanup expenses incurred after March 12, 1991 also may be deducted from the \$150 million subject to restrictions involving the federal and state on-scene coordinators (§ 11). A schedule for subsequent payments is specified in § 8(c): \$100 million on September 1, 1993 and \$70 million annually, 1994 through 2001.

A "reopener" clause provides that between the years 2002 and 2006, Exxon shall pay up to an additional \$100 million as may be required to restore "populations, habitats, or species" which have suffered "substantial" loss or decline (§ 17). To qualify, however, (a) the cost of the restoration project must not be grossly disproportionate to the magnitude of the expected benefits and (b) the injury "could not reasonably have been anticipated by any Trustee" on the effective date of the agreement.

Funds paid to the governments may be used solely to (§ 10):

(1) reimburse both governments for response and clean-up costs incurred on or before December 31, 1990;

(2) reimburse both governments for natural resources damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred on or before March 12, 1991;

(3) reimburse the State for litigation costs incurred on or before March 12, 1991;

(4) reimburse both governments for response and clean-up costs incurred after December 31, 1990;

(5) reimburse or pay costs incurred by both governments after March 12, 1991 to "assess injury" and to "plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources, natural resource services, or archaeological sites and artifacts injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or services;" and

(6) reimburse the state for litigation expenses incurred after March 12, 1991.

Neither the settlement agreement nor the MOA restrict either government's use of funds paid as reimbursements for response and clean-up (§ 10, items 1,4), damage assessment prior to March 12, 1991 (item 2), and litigation (items 3,6). In other words, the governments may use such funds to reimburse themselves for the expenses incurred or for other purposes, including restoration. Moreover, the agreement itself does not address the schedule by which the two governments actually claim the reimbursements to which they are entitled. For example, the governments could elect to reimburse themselves sooner, later, or spread out over the 10-year payout from Exxon.

For the United States, the aggregate amount allocated under items 1 and 2 in § 10 shall not exceed \$67 million. For the State, the aggregate amount allocated under items 1-3 shall not exceed \$75 million. For item 6, amounts allocated for State litigation costs incurred after March 12, 1991 shall not exceed \$1 million per month and a total of \$40 million (MOA, VI.B.1). No cap for reimbursements under item 4 is specified.

The balance of the \$900 million (i.e., \$900 million less the reimbursements in § 10, items 1-6), however, is a "natural resource damage recovery" (MOA, II.G). These funds are deposited in a joint trust fund and are subject to joint management by the two governments.

The governments have agreed that "all natural resource damage recoveries will be expended on restoration of natural resources in Alaska," unless the Trustees determine that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska and services provided by such resources" (MOA, VI.C).

"Natural resources" means "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to" or managed by the United States and/or the State (MOA, II.F).

The definition of "restoration" in the civil documents is more restrictive than in the criminal plea agreement: "Restoration" means actions "which endeavor to restore to their pre-spill condition any natural resource injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services" (MOA, II.K.).

All decisions about the use of natural resource damage recoveries shall be made by unanimous agreement of the Trustees, of which there are three state and three federal. Within 90 days after the receipt of any natural resource damage recovery, "the Trustees shall agree to an organizational structure for decision making ... and shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which shall include establishment of a public advisory group to advise the Trustees" regarding uses of the funds in the joint trust fund (MOA, V.4).

RPWG
F 8

Highlights of Proposed Criminal Plea/
Talking Points on the Settlement in general
(Revision 2)

*We are filing the plea agreement and consent decree today. A hearing will be set for next Monday. We do not know if the Judge will approve this plea agreement, and therefore our comments are limited to factual statements regarding its contents.

Criminal Plea Agreement -

* Assessed fine of \$150 million

-50% higher than the \$100 million assessed in the original plea

-greater than all previous fines assessed in environmental cases put together

-one of the highest criminal fine ever assessed in a federal criminal case (Millken and Drexel Burnham were a combination of forfeitures, civil and criminal penalties)

* \$125 million of this fine is remitted

-represents \$1.00 remission for every \$20.00 paid by Exxon voluntarily as a result of the spill

-still leaves a cash fine of \$25 million, which eclipses by at least 8 times the previous record for criminal environmental sentences

* \$100 million dollars cash for restitution in and around the Sound

-doubles the amount of restitution in the prior plea agreement

-provides for \$50 million to the United States for restitution of the Sound (the previous agreement had no payment of restitution to the United States.)

* cash value is \$125 million - 25% more than prior agreement (while some portion of this additional \$25 million might be deductible, it is still more cash than the earlier agreement)

* 90% of the money paid in the criminal agreement (\$112 of \$125 million) goes to the environment (versus 50% under the earlier deal)

-\$100 million in restitution

-\$12 million to North American Wetlands Conservation Fund

* Comparison to other recent criminal cases against larger companies:

-United Technologies paid a \$3,000,000 criminal fine based on 6 RCRA felonies.

-International Paper paid a \$2,200,000 criminal fine based on five felony counts for illegal treatment and storage of hazardous waste under RCRA.

-Marathon Oil Company pled guilty to one felony and two misdemeanors under the Clean Water Act and paid a fine of \$1,400,000.

* Upon approval of both agreements, over \$202 million will immediately go into the environment:

\$100m	in restitution
12m	into wetlands
<u>90m</u>	into the Joint Use Fund
\$202m	

* \$12 million is specifically directed to carry out approved conservation projects in the US, Canada, and Mexico (pursuant to the the North American Wetlands Conservation Act).

* The MBTA fine totals of \$12 million is almost double the total fines collected since 1984 (\$6.3 million) for 35,000 violations of the Act. This case represents 1 violation by 2 defendants.

* The time period between settlement and the second payment under the civil agreement (approximately \$110 million) has been reduced from 16 months to 13 months.

* The United States is continuing to sue Alyeska pipeline for damages and will seek appropriate remedies; decisions regarding this case will continue to be handled separately from the Exxon negotiations.