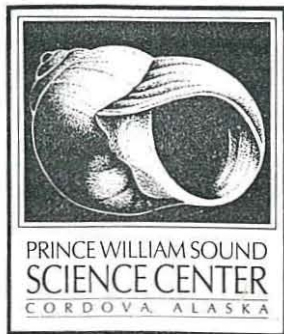


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MAR 30 1993

EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL

300 Breakwater
A June

March 24, 1993

Dave Gibbons
Executive Director
Exxon Valdez Trustee Council
645 G Street
Anchorage, AK 99501

FAX: 907 - 276-7178

RE: MOU between the Trustee Council and the Prince William Sound Oil Spill Recovery Institute

Dear Mr. Gibbons:

Have you and/or Trustee Council members reviewed the draft MOU sent to your office March 5? John Calder, NOAA/Chair of the OSRI Advisory Board, just notified us that Steve Pennoyer would like to see this MOU put on a "fast-track" (see attached memo from Calder).

After reviewing the draft MOU, Dr. Calder sent us these notes:

- 1) He has a question about the intent of the first paragraph under Section VI. He suggests that replacing "all previous interagency agreements" is unnecessary and beyond the reach of this MOU.
- 2) The last item under Section VI seems unenforceable.
- 3) Suggests that there should be a section on responsibilities: What will the Trustees do, what will the OSRI do?

The Executive Committee of the OSRI Board will be meeting April 13 in Seattle (see attached meeting notice). Review of the MOU will be on the agenda.

Please let me know when/if review of the MOU is on the Trustee Council's agenda, or if you have a revised draft for the OSRI Executive Committee's consideration. Thank you.

Sincerely,

G.L. Thomas, Ph.D.
President

Barbara
F F I
Bok

RPWG
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Restoration Planning Working Group

EXXON VALDEZ OIL SPILL RESTORATION OFFICE

645 "G" Street

Anchorage, Alaska 99501

SUMMARY OF ALTERNATIVES: ANALYSIS OF PUBLIC COMMENTS

This paper describes the sources of public comment on alternatives for the Restoration Plan, the purpose for which these comments will be analyzed, and a proposed method of analysis. Attached to this paper is a proposed database design.

SOURCES OF PUBLIC COMMENT

In April 1993, we distributed over 28,000 copies of a brochure on alternatives and held 22 public meetings. The brochure contained a one-page questionnaire. It was mailed to a large mailing list inside and outside the state, inserted into local newspapers in some communities in the spill area, put in all post office boxes in small communities, and made available at local post offices and legislative information offices. In addition, about 3,000 individuals on the mailing list will receive a follow-up letter from the Trustee Council encouraging them to submit their comments and enclosing another copy of the brochure.

There are five major sources of comment:

- Synopses of verbal comments made at 22 public meetings, as recorded by notetakers.
- Responses to the questionnaire in the brochure. Over 400 brochure questionnaires have been returned. We expect over 600 by the time the comment period closes.
- Letters.
- Verbal comments received on our toll-free telephone line and recorded by staff.
- Comments on other Trustee Council documents. For example, some people wrote recommending an endowment for the '94 work plan. That question will not be decided in the '94 work plan but in the Restoration Plan.

PURPOSE FOR ANALYZING PUBLIC COMMENTS

The deadline for receipt of comment on alternatives is August 6. By September we will report to the Trustee Council on public comments received on alternatives and recommend a course of action. Once the Trustee Council sets basic policies regarding restoration, we will draft the Restoration Plan. We would like to report the following kinds of information:

- **Issues and Policies.** For each of the five policy questions raised in the brochure, we would like to report which side of the question respondents favored; if they thought it was a relevant question; if they favored a solution we didn't propose; if they advocated a policy on a subject different than the five we asked about; and the reasons behind their answer.
- **Restoration Categories.** For each of the four categories of restoration activities we propose, we would like to report what people like and dislike and why. In addition, we would like to report recommendations about categories we did not address, e.g., spill preparedness. We also want to report on specific actions people support or oppose, e.g., do this project, clean this beach.
- **Endowments.** Do people favor an endowment? If so, what proportion of the settlement fund should be allocated to it and for what purpose?
- **Spending Allocations.** We would like to report on how the public wants to allocate the settlement fund among the four restoration categories and an endowment. Potential allocations of funds illustrate the emphasis that should be placed on the restoration activity. We do not expect the Trustee Council to adopt budget constraints based on these allocations.
- **Other Concerns and Proposals.** We would like to report any other concerns and proposals expressed by the public. For example, some participants in public meetings expressed particular concerns about what was injured by the spill.

PROPOSED METHOD OF ANALYSIS

There would be three different kinds of analysis: 1) analysis of multiple-choice responses, 2) analysis of potential allocations, and 3) analysis of open-ended comments. We envision a single report. The first part of the report would address topics we asked about in the brochure, i.e., injuries to be addressed, enhancement, location, potential allocations, etc.; it would contain results of all three analyses. The second part of the report would address topics initiated by respondents, e.g., spill prevention and concerns about the Trustee Council process.

Analysis of Multiple-Choice Questions

1. Tabulate responses to all multiple-choice questions by location codes. There are 32 location codes. Reporting by location code would overwhelm the reader. Furthermore, it is likely that some of the location codes contain very few responses. Consequently, we propose to routinely aggregate responses as described under #2 below.

2. Aggregate results by the following regions:

- a. Within the spill area
 - 1) Prince William Sound
 - 2) Kenai
 - 3) Kodiak/Alaska Peninsula
- b. Outside the spill area
 - 1) Alaska
 - 2) Outside Alaska
- c. Location unknown

The residents of Prince William Sound were concerned that because of their small population their voice would be drowned out by other more populous regions in the spill area and outside of it. By reporting the views of respondents in each region we hope to be able to give each region an undiluted voice. It would also simplify the report by concentrating responses from 32 locations into 6 regions.

3. Report the following information for each region:

- a. Number of responses
- b. Percentage of total responses
- c. Percentage of respondents who marked a given response

4. Report in text form the comments associated with each question whether the source of the comments was the comment field in each multiple-choice question in the brochure or open-ended comments (e.g., letters or public meetings).

Example 1 illustrates this approach as it would be applied to the first policy question asked in the brochure. All figures are hypothetical.

EXAMPLE 1

Question: Should restoration actions address all injured resources and services, or all except those biological resources whose populations did not measurable decline because of the spill?	ALL	WITHIN SPILL AREA			OUTSIDE SPILL AREA		UNK
		PWS	Kenai	Kod/AP	Alaska	Outside AK	
Number of responses	400	120	100	80	40	40	20
% of total responses	100%	30%	25%	20%	10%	10%	5%
Response							
Target injured resources and services.	37%	10%	20%	8%	47%	63%	60%
Target population declines.	55%	85%	70%	90%	50%	22%	40%
No preference.	8%	5%	10%	2%	3%	15%	--
Total	100%	100%	100%	100%	100%	100%	100%
Comments: 1. <i>You should address all resources because the damage assessment studies only looked at species useful in a lawsuit.</i> 2. <i>If a resource didn't decline in population, why waste money on it?</i> 3. <i>Etc.</i>							

Analysis of Potential Allocations

In the brochure, we asked whether respondents favored any one of the potential allocations of funds we had proposed in the five alternatives. We also provided a blank space for respondents to offer their own allocation, including setasides for an endowment. We would report the results of this part of the questionnaire in either or both of the following ways:

1. The percentage of respondents who favored certain allocation for the categories. For example, 25% of all respondents favored allocating 50%-74% to Habitat Protection, 40% favored 75%-90%, and 25% favored more than 90%. This might be useful, but it doesn't give a sense of tradeoffs among categories.
2. Another approach would be to compile unique distributions. If we receive 600 responses, we would probably have 40 or 50 unique distributions of potential allocations across categories. We would do a frequency count on the unique distributions and cluster them into reasonable combinations.

Example 2 illustrates the approach described under item 2 above. Alternatives 1 - 5 are those we proposed in the brochure. Alternatives 1a - 5a are variations suggested in public comment. All figures except the allocations prescribed under Alternatives 1-5 are hypothetical.

EXAMPLE 2

Alternative	1	1a	2	2a	3	3a	4	4a	5	5a
% of Total Responses	1	3	31	7	6	11	22	13	4	2
Admin/Pub Info	0	2	4	4	6	5	7	7	7	7
Monitor/Research	0	48	5	0	7	5-15	8	8	10	10
General Restor'n	0	0	0	0	12	15-20	35	15-20	48	23-33
Habitat Protection	0	0	91	71	75	60-75	50	40-45	35	20
Endowment	0	50	0	25	0	0	0	20-30	0	30-40
Total	0	100	100	100	100	100	100	100	100	100

All figures are expressed as percentages.

3. With the use of the computer, we could probably do both of these analyses by the broad regions described above, i.e., within the spill area and outside the spill area.

Analysis of Comments

This analysis of open-ended comments would consist of a summary of each issue and a list of all comments for that issue, organized by location.

Attachment
PROPOSED DATABASE DESIGN

There are two different types of comment data. The multiple-choice responses and associated comments on the brochure are discrete comments. They would be entered in the Multiple-Choice Database. Free-ranging written comments on the questionnaire or in letters and verbal comments recorded at public meetings or received on our 1-800 line will be entered on the Comments Database. For ease of data entry, both databases will be in RBASE, but the Multiple-Choice Database can easily be exported to Excel for analysis.

MULTIPLE-CHOICE DATABASE

This database would record all multiple-choice responses and associated comment fields from the brochure. However, it would not record comments noted in the open-ended comment field.

<u>No.</u>	<u>Field Name</u>	<u>Description</u>
1	INDEX#	Index number of the brochure. Each brochure must be numbered with a unique number so we can make sure it was entered correctly.
2	Person	Person's name on the brochure if available.
3	Organ	Organization person represents (if they have one).
5	Location	Location code -- where did the person live? This will be taken from return address, public meeting location, or failing either of those, from the postmark. See preliminary list of location codes. If location cannot be determined, enter "Unknown."
6	BroType	Source of response, i.e., received at public meetings, mailed in, telephoned, or other.
8	EntDate	Date form is entered (computer will fill this in by itself).
9-72	Various Names	Each box gets a field (Yes/No) and each comment gets a 30-letter note field. For the Potential Allocation Box, each alternative gets a Yes/No field to note if people circled it, and then each entry under "Your Alternative" gets a numeric field, e.g., one for Habitat Protection.

COMMENTS DATABASE

This database would record verbal comments presented at public meetings or phoned in on our toll-free lines, as well as written comments submitted in the form of letters or entries in the open-ended comment field in the brochure. Each comment would be entered individually and assigned an issue code. In that way, we can group all comments on one issue.

Comments presented verbally at public meetings were recorded electronically on a computer by a notetaker at the meeting. Consequently, they can be entered electronically into the database without being retyped.

All other comments will be entered into the database by the staff by paragraph or group of paragraphs addressing a single issue. The planning staff would assign each entry up to three issue codes if it addresses up to three issues. If an entry is assigned more than three issues, it can either be repeated or divided.

<u>No.</u>	<u>Field Name</u>	<u>Description</u>
1-8	Various	Same as for the Multiple-Choice Database. That is, these six fields are identical between the two databases.
9	Comment	The comment is written in. This field is quite large and can handle a number of typed pages for each comment, if necessary.
10	Issue	Up to three issues are assigned to each comment. See preliminary list of issue codes. We will add issue codes as we read letters and brochures that suggest new issues. (Also, please do not suggest issues without reading the comments. The comments should determine the issues rather than force them in to our a-priori organization.)

CODES

Preliminary List of Location Codes

Field number 5 in each database is location.

<u>Location</u>	<u>Code</u>	<u>Comments</u>
<i>Spill Area Communities</i>		
Akhiok	Akh	
Chenega Bay	Chb	
Chignik Lagoon	Clg	
Chignik Lake	Clk	
Chignik Village	Cvg	
Cordova	Cdv	
Homer	Hmr	
Ivanof Bay	Ivf	
Kenai/Soldotna	Ksd	
Kodiak	Kdk	
Larsen Bay	Lsn	
Nanwalek	Nan	
Ouzinkie	Ouz	
Other Kenai Boro	Okb	
Perryville	Pry	
Port Graham	Ptg	
Port Lions	Ptl	
Seldovia	Sdv	
Seward	Sew	
Tatitlek	Tat	
Valdez	Vdz	
Whittier	Wht	
<i>Outside Spill Area</i>		
Anchorage	Anc	Entire borough, e.g, Girdwood, Chugiak
Mat-Su Borough	Mat	All of Mat-su Borough
Copper River-Interior	Int	Anywhere in Alaska outside the spill area and not included in another code
Fairbanks	Fbk	
Juneau	Jno	
Southeast Alaska	SE	
Other US States	USA	
Canada	Cda	
Other Countries	Frn	
<i>Unknown</i>	<i>Unk</i>	

Source of Response

Field number 6 in each database is the source of the response. that is, whether it was received at a public meeting, mailed in, or received by telephone.

M = Mailed in
P = Public Meeting
T = Telephoned
O = Other

Preliminary List of Issue Codes

Field number 10 on the Comments Database is for the issue code associated with each comment.

<u>Title</u>	<u>Code</u>	<u>Explanation</u>
Oiling	Oil	People speaking of continuing oiling, oil remaining on beaches, etc.
Cleanup	Cln	Comments about the clean-up
Injury	Inj	General injury comments
General Resources	Res	General Resource injury comments
General Services	Svc	General Service injury comments
Individual species	Various	Many people discussed individual species or services. We need to code each one (so we can see at a glance, what people said about, say, Herring.) We also include species we didn't list that people talk about such as clams, mussels, and bottomfish.
Issues & Policy Quest'ns	Iss	General comments about issues & policy questions
Injuries Addressed	Ads	Comments about addressing population-level versus all injuries
Enhancement	Enh	Enhancement, ceasing restoration once recovery has occurred
Location	Loc	General location comments
Perryville	Pvl	Perryville outside spill area
North	Nor	Extending spill area north
Effectiveness	Eff	Our effectiveness question
Opportunities for H.Use	HU	General comments about opportunities for human use.
Don't build	Bld	Don't build facilities
Public use cabins	PU	Public use cabins
Habitat Protection & Acq	Hab	General habitat protection comments
Pro Hab	Phb	Comments pro habitat protection
Con Hab	Chb	Comments against habitat protection

<u>Title</u>	<u>Code</u>	<u>Explanation</u>
Specific areas	Various	We need to individually code comments about specific areas if a bunch of people spoke about them.
General Restoration	GR	General comments about general restoration
Specific options	Various	We need to individually code comments about specific options if a bunch of people spoke about them. For example, the Seward sea life center, etc.
Monitoring & Research	Mon	General comments about monitoring
Recovery/Restoration	Rec	Recovery & Restoration Monitoring
Ecological Monitoring & Research	Eco	Ecological monitoring & research
Research	Res	General research comments
Admin & Pub Info	Adm	General comments about administration & public information
Spill Prevention	Spl	General comments about spill prevention
Pro spill prevention	PSp	Comments pro spill prevention
Local Facilities	Lcl	Need for local spill-prevention facilities
Con spill prevention	CSp	Comments against spill prevention
Endowment	End	General comments about endowment
Pro Endowment	PEn	Comments pro endowment
Con Endowment	CEn	Comments against endowment
Alternatives	Alt	General comments about alternatives
Alt #	Various	Comments about each alternative should be coded individually. If there are enough comments, the sections should be divided into pro, & con.
Education	Ed	General comments about education
Civil Settlement	CS	General comments about the civil settlement
Criminal Settlement	Crm	General comments about the criminal settlement
Process	Pcs	General process comments
Trustee Council	TC	Comments about Trustee Council
Local control	Ctl	Comments about local control or empowerment
Regional Bias	Reg	Comments about region being ignored, etc.
Bro	Bro	Comments about the brochure

Privileged/Confidential
Attorney-Client Communication
Attorney Work Product

EXECUTIVE SUMMARY - Harlequin Duck Life History

The harlequin duck (Histrionicus histrionicus) has a disjunct holarctic distribution. The western population is more numerous with the greatest concentration of birds found in the Aleutian Islands of Alaska. Harlequin ducks breed and winter in relatively inaccessible areas and are therefore one of the least studied ducks in the northern hemisphere. Population estimates are limited and inexact; however, pre-spill wintering populations were estimated at 9,600 birds for the Kodiak Archipelago and 10,000 birds for Prince William Sound.

Harlequin ducks do not begin to breed until their second year. Egg laying is believed to begin between May 10 and May 30; 3-7 eggs are laid and incubated for 28-30 days. Broods would begin hatching in early to mid-July. Breeding birds conduct nesting and brood rearing inland next to turbulent mountain streams. Stream characteristics vary and preliminary information on nest sites found in Prince William Sound imply a considerable difference in preferred streams characteristics than published information from Iceland. Sam Patten found several nests at approximately 1000 feet elevation, next to cascading streams as narrow as 1 meter wide, further information will be available in the 1991 NRDA report. Most harlequin nest on the ground beneath dense vegetation, however, harlequins have been known to nest in tree cavities and rock crevices. Aquatic invertebrates are the primary prey for breeding birds and broods.

Immature birds remain on coastal habitats throughout the summer. Breeding males join the non-breeding birds in early July to form large flocks for the pre-basic molt. Protected bays, with anadromous fish streams, are preferred congregating areas. Marine invertebrates and mussels are the primary food source in winter and spring; once freshwater invertebrates become available within the intertidal zone, feeding behavior shifts to the mouths of the stream. Salmon roe is believed to be the principal food source when it becomes available. Hens with broods will return to coastal habitats in late August and will utilize many of the same molting areas used by the males.

Human impacts on the harlequin population are probably greatest through disturbance and habitat loss. Harvest levels are believed to be low for both subsistence and recreational hunting.

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 Attorney Work Product

HARLEQUIN DUCK

I. TAXONOMIC DESCRIPTION

- A. Common Name: Harlequin Duck
- B. Scientific Name: Histrionicus histrionicus
- C. Races: Currently, there are no races described.

II. RANGE

- A. Worldwide (Figure 1):
 Harlequin ducks have a disjunct distribution with at least two geographically isolated populations. The western population of harlequins breeds in eastern Siberia, north to the arctic circle, east to the Chukchi and Kamchatka Peninsulas. In North America, breeding populations range from the Seward Peninsula, south to the Aleutian Islands, east to the Mackenzie River then south to central California and the northern Rocky Mountains. Wintering populations concentrate along the coast of California to the end of the Aleutian Islands, then south to Korea and central Japan (Delacour 1959, Bellrose 1980).

The eastern population of harlequins breed³ in Iceland, the southern half of Greenland, southeastern Baffin Island, and parts of Labrador. Wintering birds concentrate on the southern end of Greenland, near coastal areas around Iceland and extend down the coast of N. America to New Jersey (Delacour 1959, Bellrose 1980). The eastern harlequin duck is a casual visitor to the Great Lakes and accidental in Europe (Delacour 1959).

- B. Alaska
 The Aleutian Islands, Alaska Peninsula and the Alexander Archipelago contain the greatest numbers of breeding Harlequin ducks in their North American distribution (Bellrose 1980). The greatest wintering concentration of birds occurs in the Aleutian Islands, but wintering harlequins are also abundant in Prince William Sound and the Alexander Archipelago (Bellrose 1980). Bellrose (ibid.) estimated the wintering population in the Aleutian Islands to be between 600,000 and 1 million birds; however, Patten¹ cautions

¹ Patten, S.M. Jr., Alaska Department of Fish and Game.
 333 Raspberry Road; Anchorage, Alaska 99559.
 Anchorage: (907) 267 - 2179. Fairbanks: 455-6101

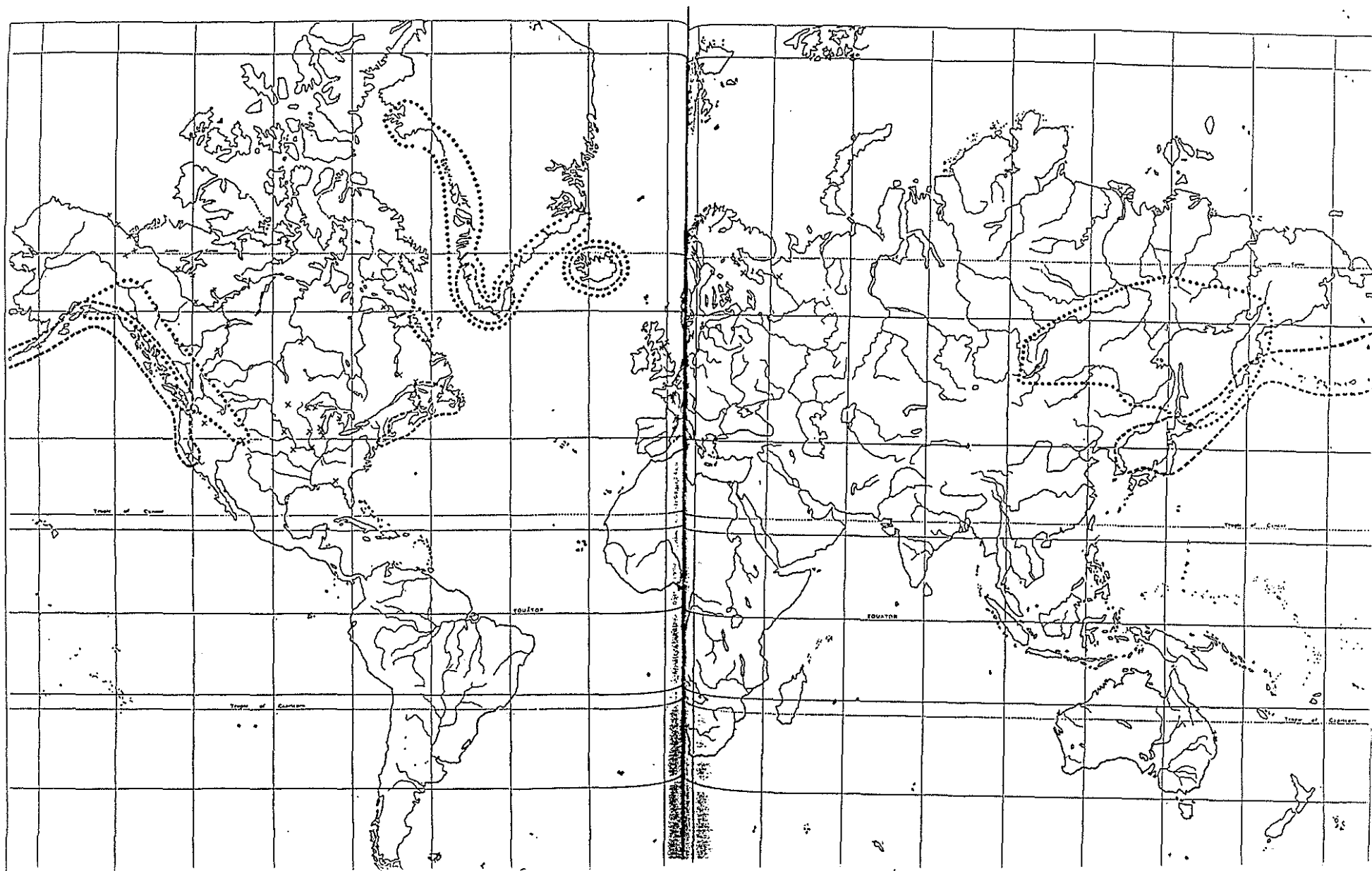


Figure 1. Breeding (...) and wintering (---) distribution of Harlequin ducks (copied from Phillips 1925).

that this estimate is considered to be too high (pers. com.). He also estimated the wintering population of harlequins in Prince William Sound at 10,000 birds. An estimate of 9600 wintering harlequins in the Kodiak Archipelago were extrapolated from winter surveys in 1979 and 1980 (Forsell and Gould 1981). The highest concentrations were found in Sitkaladik Narrows and between Narrow Cape and Ugak Island. There are no estimates for other areas impacted by the oil spill.

C. Population Status

Harlequin ducks are the least studied duck species in North America. There are no good data on population trends before the spill.

III. MIGRATION CHRONOLOGY

Harlequin ducks begin arriving on their wintering grounds in the Aleutian Islands in mid-September and remain there until May (Bellrose 1980). In interior Alaska, the birds begin to arrive on breeding grounds from mid-May, to late May in the Brooks range (Bellrose 1980). Birds which winter and breed in south-central Alaska may begin congregating near the mouths of suitable breeding streams in late April or early May (Patten pers. comm.). In July, males congregate in protected bays, with good feeding areas, for the prebasic molt. They congregate in extremely large flocks (Patten found a flock of 350 males in 1991) during the flightless portion of the molt. Non-breeding and failed-nesting females begin their molts in August and utilize many of the same molting sites as the males. Females with broods migrate to marine habitats in late August (Patten pers. comm.).

IV. BREEDING CHRONOLOGY

Very little is known about breeding behavior and chronology of Harlequins. Most of the information published in the literature are based on studies in Iceland.

Harlequin ducks do not reach maturity until their second year (Delacour 1959, Bengtson 1972, Bellrose 1980). In Alaska, laying is believed to begin between May 10 and May 30 (Bellrose 1980). Harlequins lay a total of 3-7 eggs with a 2 day laying interval, and incubate the eggs for 28-30 days (Bengtson 1966, Bellrose 1980). Males desert the females early in the incubation period.

There is very little information available on the brood rearing period. Given the incubation period, broods would be expected to hatch in early to mid-July. Bengtson (1972) describes a 30-40 percent mortality for ducklings during the first 2 weeks. Patten (NRDA REPORT - 1990) reports seeing 3.1 ducklings per hen in late summer. This is comparable to

the mean of 2.8 fully grown ducklings/breeding female found in Iceland over a 4-year period (Bengtson 1972).

V. HABITAT REQUIREMENTS

Harlequin ducks have unique habitat requirements because they use both marine and inland habitats. In coastal ecosystems, paired birds will be found in the intertidal reaches of mountain rivers and streams before moving inland to nesting habitats. Coastal areas are used throughout the summer by non-breeding birds, breeding males after the pair bonds are broken, and by failed nesting females (Bellrose 1980, Dzinbal and Jarvis 1982). Coastal habitats are used throughout the winter by all sex and age classes of harlequins.

A. Nesting and Brood Rearing Habitats

Harlequin ducks nest along rapidly flowing mountain streams. The width, turbidity and current velocity vary considerably, but most nests are located along shallow rivers and streams (0.5 - 1.0 meters deep) with gravel or rocky substrates (Bengtson 1972). Selection of streams is also related to nest site availability and the abundance of macroinvertebrates (Bengtson 1972). Early results from NRDA Bird Study 11 (Patten 1990) identified 9 streams in Prince William Sound that are used by nesting Harlequins. A list of stream characteristics were developed (see Appendix I for a copy of these characteristics) which varied slightly Bengtson's (1972) findings. The results from the 1991 NRDA study are expected to provide substantially different information from published data. Patten (pers.com.) found more streams used for nesting (approximately 20 in PWS) than documented in 1990. Many of these streams were considerably different than previously identified streams, a complete description of these streams will be provided in the November report.

Published literature describes preferred nesting sites located on islands and islets (Bengtson 1972). Ground nests are usually located beneath shrubs and other dense vegetation. Harlequins will also nest in tree cavities and in rock crevices (Delacour 1959), but these nests have been documented less frequently than ground nests. Bengtson (1972) located 98 nests in Iceland, of these only 7 were more than 5 meters from water. The mean nesting density was 1.3 pairs/km. Although harlequins cannot be considered colonial nesting birds, Delacour (1959) states that several nests may be located close together on islands in high velocity streams. Harlequins appear to have high site tenacity, often returning to within 100 meters of

previous years nesting sites, females may use the same nest site for more than one season (Bengtson 1972).

In Prince William Sound, several of the nests located in 1991 were at approximately 1000 feet elevation, in timbered areas next to small, turbulent streams (Patten pers. com.). Patten described these streams as "pocket cascades", sometimes only 1 meter wide.

Slow stretches in oxbows, or lee sides of curves, are used by broods for feeding and resting. Outlets from lakes, beneath waterfalls and turbulent stretches of streams no more than 0.8 meters deep are favorite feeding locations for adults (Bengtson 1972). Young broods (Age classes Ia - IIb) feed mostly on surface insects and on insects from over hanging vegetation; older broods feed in the same areas and manners as the adults (Bengtson 1972).

B. Summer Habitats: Non-breeders and Males

Fjords and bays are used extensively by males and non-breeding females throughout the summer. In spring, harlequins congregate at the mouths of mountain streams, feeding in the bays and intertidal areas. Paired birds feed extensively in the intertidal areas before moving inland to nesting areas.

Dzinbal and Jarvis (1982) studied the summer habitat use and feeding ecology of harlequins at Sawmill Bay in Prince William Sound. They found that intertidal areas within the rivers were used for feeding until the second week of July. At that time, the ducks moved inland and fed in the lower 1 km of the creeks (beyond the intertidal zone). This shift in feeding areas corresponded with an increase in macroinvertebrates and an increase in salmon (Oncorhynchus spp.) spawning. In Sawmill Bay, males and nonbreeders rarely fed beyond the lower 1.5 km of the streams.

Dzinbal and Jarvis (ibid.) compared the relative amount of time harlequin ducks spent in a given habitat type, to the amount of time spent feeding within each habitat type. From these data they determined that the creek habitats were utilized more for feeding. Harlequins spent most of their time near small rock islands in the bays, but spent proportionately less of their time feeding in these areas. The unstated implication from these data are that harlequins use the rock areas for loafing and resting and the creek areas for feeding. Inglis et. al. (1989) found that harlequins preferred to rest on the banks of islands within the rivers, but also used rocks protruding from the water for loafing.

C. Wintering Habitats

Harlequins winter in small flocks (up to 10 birds) along exposed, rocky coasts. Foraging ducks use intertidal and subtidal areas throughout the coast line. They are more evenly distributed throughout the coastal areas during the winter, which shows a wider range of habitat use than during the summer (Patten pers. com.). During severe storms, the flocks will move to sheltered bays which offer protection from rough seas and strong winds.

VI. FOOD WEB INTER-RELATIONSHIPS

A. Predation

Predation is not believed to be a major source of mortality for adult harlequin ducks. Of the 98 nests observed by Bengtson (1972) 9 were depredated by raven (Corvus corax), mink (Mustela spp.), arctic skua (Stercorarius parasiticus), and arctic fox (Alopex lagopus). Ravens were believed to have destroyed 5 of the nests. Very little information is available about brood rearing and mortality. Bengtson (1972) estimated a 30-40 percent mortality for ducklings in the first two weeks after hatch, adverse weather during this time period may be a significant cause of mortality.

B. Feeding Behavior and Diets - Summer

Harlequin ducks feed almost exclusively on animal matter. Breeding birds and broods in Iceland fed mostly on abundant Simuliidae (Diptera), but also fed on Chironomidae larvae and Trichoptera (n=31) (Bengtson 1972). Once salmon begin spawning, harlequins begin eating roe (Delacour 1959, Dzinbal and Jarvis 1982). It is unclear in the literature if brood movement downstream is linked to spawning. It is believed that breeding birds in Coastal ecosystems with short mountain streams may fly from nesting areas to the mouths of the rivers for feeding (Bengtson 1972, Dzinbal and Jarvis 1982). This is apparently linked to shorter streams having lower nutrient quality and therefore less productive invertebrate populations (Bengtson 1972).

It is important to recognize that the information on feeding habits and preferences of harlequins in Alaska is extremely limited. Much of the information that follows is based on small sample sizes and observations.

The summer diets (n=5) of coastal harlequins in Prince William Sound consisted of a variety of crustacea and invertebrates (Dzinbal and Jarvis 1982). Feeding patterns suggest that the birds ate marine

invertebrates until freshwater invertebrates became abundant. Once salmon began spawning, the diets may shift predominantly to salmon roe.

C. Prey Species - ^Wwinter

Wintering harlequins forage mostly along exposed coasts and in bays (Delacour 1959, Bellrose 1980). They are generally found in small groups, usually less than 10 birds and are seen foraging closer to shore than other sea-ducks (Bellrose 1980). Crustaceans and mollusks (Crustacea and Mollusca respectively) comprise the bulk of the winter diet for harlequins (Delacour 1959, Bellrose 1980, Dzinbal and Jarvis 1982). Other animals which supplement this diet include insects, starfish (Echinodermata), and fishes (Bellrose 1980, Dzinbal and Jarvis 1982).

VII. HUMAN INTERACTIONS

The holarctic distribution and migration patterns of harlequin ducks limits the hunting impacts on the species. The annual take of harlequins in Prince William Sound is unknown, but believed to be small since most harvesting is associated with using males as decorative mounts (Patten pers. comm.). There does not seem to be any significant Native use of harlequins; although, Nelson (1887 cited in Phillips 1925) mentioned that some Native populations killed male harlequins and stuffed them as toys for children.

Patten believes that disturbance to the molting flocks would be one of the greatest human-related impacts, aside from toxic spills, on the harlequin population. He expects to provide a detailed accounting of locations of molting flocks and potential impacts of disturbance in the NRDA report.

VIII. LITERATURE CITED

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Table 2

Characteristics of Harlequin Nesting Streams
in Prince William Sound

Characteristics

30 - 50 ft wide at mouth to estuary

extensive intertidal areas in estuary

moderate gradient

discharge rates of 1.5 - 7.0 cu. m/sec.

.3 -.5 m deep

elevation at onset of stream approx. 750 ft.

clear, not glacial or turbid

substrate of large stones, rocks, boulders

5 - 8 km length (relatively short)

bordered by mature spruce-hemlock forest

salmon spawning stream (chum, humpback)

Harlequin nest areas begin approx. .5 km from mouth (Dzinbal, 1982)

nests found from 2 to 20 m from water (Bengston, 1966)

mean clutch size approx. 5.5 eggs (Bengston, 1966)

mean brood size summer 1990 observed outside oil spill area:
3.1 ducklings per brood

RFWG
12

MEMORANDUM

State of Alaska

TO: John Sandor
Commissioner

Mead Treadwell
Deputy Commissioner

DATE: October 1, 1991

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

*Memo
estimate*

-\$ 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.
<u>-\$ 6 million (wild guess)</u>	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
<u>\$ 70 million</u>	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.
<u>\$ 15 million (guess)</u>	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.
<u>\$ 25 million (guess)</u>	Damage Assessment Costs after 03/13/91.
\$ 93 million Total	

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

- 2 -

* 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.

10708751 10.90 2307 210 7175 CR01, INC. 777 RFWG 0004

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

FILED RFWG
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OCT 08 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Attorney for the United States of America

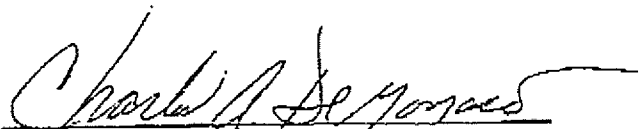
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

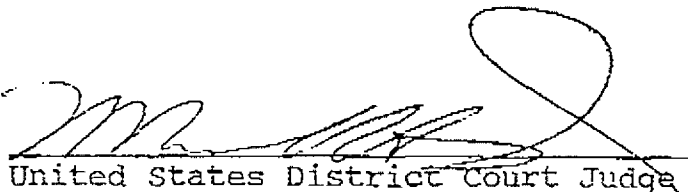
MARK B. HARMON
Trial Attorney
Environmental Crimes Section

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

ck
DEPT

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.


United States District Judge

- cc: O & J 4464
- B. Herman (AAG-200)
- W. Bankston (BANKSTON)
- D. Serdahely (BOGLE)
- J. Clough, III

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 Charles Cole
Mark Davis Barry Hartman
DEFENDANT: Patrick Lynch Edward Lynch
Lawrence Rawl Charles Matthews
James Neal 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 8, 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

①

CONFIDENTIAL *RPWG*
F

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

DRAFT

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

Attorneys for Plaintiff United States of America

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

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. *18 start here*

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 ____ DAY OF _____, 1991.

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

RPWG
F

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 *for 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 believe 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 *leave in* 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 spill and has been certified by the Federal or State On-Scene Coordinators. *oil*
- 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 ^{oil} spill. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources and acquisition of equivalent resources and services. *for payment*
- 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, conduct

At the ✓

✓

of injury assessments, and ~~conduct~~ of 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 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.

under this MOA ✓

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 spill.

oil ✓

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 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. *of 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 Government's 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.

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.
- (l) The defendants 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 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 loss 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.

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.

Sandy's comments

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- Comments - like what he sees - quite positive
- ^{some} amount of duplication
 - large matrix - maybe be used instead of forms
 - reference no's, need ^{cheat}-sheet \rightarrow what codes mean
- for people