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RESTORATION PLANNING WORK GROUP MEETING

DATE: October 16, 1991  
10:00 A.M.

Attendees:

RPWG

M. Brodersen	<u>X</u>
R. Yender	<u>      </u>
S. Rabinowitch	<u>X</u>
K. Rice	<u>X</u>
S. Senner	<u>X</u>
J. Strand	<u>X</u>
A. Weiner	<u>X</u>
K. Klinge	<u>      </u>
B. Iseah	<u>X</u>

MANAGEMENT TEAM

D. Gibbons	<u>      </u>
J. Montague	<u>      </u>
B. Morris	<u>      </u>
S. MacMullin	<u>      </u>
C. Roy	<u>      </u>
R. Spies	<u>      </u>

LEGAL TEAM

G. Belt	<u>      </u>
G. Fisher	<u>      </u>
M. Fox	<u>      </u>
B. Freedman	<u>      </u>
M. Lisowski	<u>      </u>

C. O'Connor	<u>      </u>
A. Swiderski	<u>*X</u>
R. Sleater	<u>      </u>
D. Street	<u>*X</u>
R. Jacobsen	<u>      </u>

OTHERS

<u>Donna McCready</u>
<u>      </u>
<u>      </u>
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TELECONFERENCE

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Folders containing the following information were distributed:

- Agenda for October 16-17th RPWG meeting
- October and November calendars
- List of Peer Reviewers
- Memorandum of Agreement and Consent Decree Summary
- Plea Agreement Summary
- Restoration Options Rejected
- Comments Received Re: Evaluation of Restoration Options
- Memorandum from Art Weiner Re: Data Catalog

Issues Discussed:

Settlement Documents:

Stan - should direct public inquires for settlement documents to OSPIC

Restoration Document:

Stan - restoration document well received; restoration and damages studies should be merged; need to adapt document by adding section that describes proposed studies (1992 Restoration Work Plan); as far as a timetable, if we are serious about getting public comment before carrying out, document needs to be in the mail by March if not sooner

Sandy - notion of separate volumes has great appeal to him

Mark - should be looking at volume I and II; conceptualize that document has two separate pieces

Sandy - the public suffers the most when documents are not ready on time; should go forward and then have a decision point

Mark - should be considered interconnected but two separate entities

Stan -

**Volume I - 1992 Work Plan**  
Science Studies  
Restoration, Damage, Monitoring  
Planning, Economics, Response

**Volume II - Restoration Framework**  
Injury  
Criteria  
Endpoints/Options  
Process

Art - need a volume that discusses how everything relates to everything else

John - volume I might be the list of studies, and volume II should be where you are going

Sandy - the above outline is similar to past NRDA reports

Mark - agrees with Art

Stan - should have the more generic document out first

David - has gone through the material; cannot find draft outline

Stan - will fax a copy immediately

#### Restoration Endpoints and Options:

Stan - has considered all species in the context of restitution; a number of items do not have the endpoints identified; may need to write an abstract of what they mean for the public to understand

#### Process for Further Evaluation and Decision Making:

Stan - it is conceivable that a document going out in March could be presented; asked Alex if it is necessary to have public input for the decision making process

Alex - doesn't think the agreement calls for public input

Art - proposes a section that tells how everything conceptually fits

Mark - it should be in volume I because he suspects we will not have volume II

Stan - might use some clever graphics

John - had a diagram in the first progress report

Art - need an explanation of the difference between an endpoint and an option

Stan - never has been told that the blue book was unintelligible; doesn't want volume I to be another pink book

Sandy - got positive responses about blue book being easy to understand; can framework be simultaneous with study?

Stan - has a problem with deadline if we can't deliver because of other distractions

Mark - promising both will come out at once is "frocked with peril"

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Stan - throwing more bodies in at the 11th hour does not always help because they are not up to speed; if we gather restoration proposals as they come in and turn them over to the Management Team, it could free RPWG of a lot of headaches

David - has to leave because of a family emergency; will be available for tomorrow's meeting; has been asked to look into a number of things, can do those then

Ken - is calling him at home a viable option?

David - gave his home number and can be called in about an hour and a half at (703) 620-1347

Sandy - suggested Carol Gorbics could run the review process, deadlines and turnover times

Ken - his impression is that she is still in that role

Stan - want to get around having he and Barbara have to do the logistics

Art - where does Ruth Yender fit it? maybe this is something she could do; is the new hire position coming out of Forest Service?

Stan - need to find out what Carol's involvement will be

Ken - person doing NRDA will probably do it for our studies

Sandy - doesn't think Carol has been formally assigned this task; she did a good job last time, is very diligent and would like to see her assigned again

Mark - has gotten the impression we are to shut down state expenses

Art - are we going to continue to analyze all of the chemistry?

Alex - this will need to be revisited; it is a lot of money and this work group needs to determine if we need that kind of analysis for the purposes of restoration; feels it is "funny money" as you spend out of your budget but then are reimbursed

Stan - volume I needs to be conceptual document and volume

II the work plan

Sandy - need to put into print what we are doing and will do a tremendous service to the public if we can get document out as soon as possible

Stan - need a document that presents restoration plan to the public; should be a priority

Alex - need to resolve issues to publish document

Stan - gives us a vehicle for identifying the criteria and serves a useful purpose; have a window where the public will give us a grace period but soon expect us to tell them what is going on; price is we will make less progress on restoration options already developed but will gain in that everything is up to the same process for all of the resource and services; need to suggest some names of entities to direct responsibility to present to the next Management Team meeting (Oct. 30); may conflict with state trustees meeting; need to prepare a revised outline along with names

Ken - need to put some page estimations on what different sections should be in length

Sandy - has done this; and it pretty much worked

Stan - gives an indication of how much effort is anticipated

Sandy - suggests a smaller group work on who should do what

Alex - will there be pressure to get projects on the ground and running by next spring?

Ken - has asked his agency to come up with restoration projects within the money limits

Mark - think there will be incredible pressure to do something and will meet with public indignation regarding lack of their input before proceeding with these projects

Mark - is there any reading on the 5-year pay back on reimbursement?

Alex - has not talked to Craig yet

Mark - thinks 20 percent will go to reimbursement

Alex - will ask Craig to talk with Charlie

Sandy - will have to rejoin meeting this afternoon

Stan - can work issues around his absence

Meeting adjourned at 12:00

#### Housekeeping Issues:

Art - where does the move stand for he and Slocomb to move over?

Stan - Susan talked with Sue Lattin regarding CACI move; everything is okay for Art and Slocomb to move in; there is only one office until the buildout is complete

Barbara - Susan stated that Sue Lattin said if things get very noisy, alternate space would be provided for Art and Slocomb

Art - will find out what the possibility and cost effectiveness are for an internal E-mail system

Mark - will look into Micro-Soft mail; can hook John in with a modem

#### Lit. Synthesis Review:

Stan - has now invited the Management Team and any PI's from their agency and invited six restoration peer reviewers; Peer Reviewer Charles Peterson has responded in the affirmative to attending; need to send a copy of literature synthesis agenda to John Armstrong

John - outlined how to split phase I activities into tasks; one major activity dealt with the monitoring planning committee; task II would be to hire a consultant (about four months), get a list of possible contractors; develop and review an RFP and design some evaluation procedures; form a small committee to evaluate proposals and should hold workshop sometime in March; we are looking at something we can live with around August; develop final conceptual plan

Art - must have plan conceptualized by the end of the field season; must have something identified or lose the field season

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Mark - asked John if he envisions taking this in December 1992 to develop the 1993 monitoring program

John - yes; consultant will still write the first draft of the technical monitoring plan and will not be cheap

Stan - suggested changing solicit nominations and stated it will be a matter of sitting down with the Management Team to figure out who we want; need to determine needs and the types of individuals who would make them work and then may later make substitutions; suggested using develop candidate list on outline

John - doesn't think it will take long to develop a list of possible contractors; wouldn't take long to develop an RFP but might take a month to review it

Ken - might want a 45-day advertisement period

Art - should keep the review group tight

Stan - feels better about March for workshop

John - wants consultant on board to help with workshop

Mark - design workshop January through March

John - change workshop to April

Stan - need to do an abbreviated schedule; goal should be by the end of December 1992 to have a draft of a plan

Stan - all of this is presuming we have a contractor we are happy with to carry out these plans; met with Bob Spies and encouraged him to think of development of the monitoring plan as one of his more important tasks and investing more energy

John - Spies could chair the workshop and organize peer review

Mark - might want to discuss Bob Spies being the contractor

Stan - might get the Trustees to make the conceptual plan a responsibility of the chief scientist; should proceed as John has outlined

John - is everyone comfortable with the timeline?

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Mark - outline helps immensely

John - should tasks be broken down further? has articulated the specifics; do we want to put together a list of possible people to be on committee?

Stan - after revisions, indicate the types of expertise to be filled and then we can react to that; then follow up with names from each RPWG member to compare to John's list; if confidentiality restraints are behind us, we can consider getting scientific help from the university

John - the model he has in mind includes members of the public

Stan - may include one person from the community and one science center person

Stan - asked Alex once post-settlement is in place, will future meetings have to be noticed to the public?

Alex - not sure

Ken - should publish in Federal Register when you have advisory counsel meetings but is hesitant that working meetings such as this would be open to the public

John - his monitoring meetings would be open to public but would have a working meeting with the committee which the public could not take part in

**Note: Team members started reviewing criteria found in Attachment A - draft NRDA criteria**

Stan - requested we get David on the line; discussed the criteria for selecting restoration options; based on meetings with Justice, does DOJ think we should have new standards for implementation of settlement?

David - does not have any feedback; are we operating under what is spelled out under the NRDA regs; wouldn't think we need to add any criteria; there is nothing in the Consent Decree or Memorandum of Agreement that would require us to go beyond the NRDA regs; is it necessary to follow all NRDA criteria?

Alex - does not think we are bound to follow them according to the MOA



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David - requirement for cost benefit analysis may make good sense to Trustees but doesn't think legally there is a requirement to include cost benefit analysis among criteria; in his view doesn't think there would be any requirement to follow cost benefit analysis

Stan - can we agree language in settlement which indicates any natural resource is our linkage to spill; need something about the linkage to injury and return stuff regarding natural recovery; technical feasibility obviously makes sense; potential for injury

Mark - would like to get away from looking at natural recovery as the period of time we have to recover, whether it is cost effective or not

Alex - the regs contemplate this; look at lost use value of the species from engaging in natural recovery as opposed to some other process; even though the MOA says we are not bound by them, the definition of restoration does come from those regs; suggests beginning the process with a presumption that we will apply the regs and will deviate when there is a need

Stan - shares that prospective; start with NRDA and only deviate when necessary; one that has never made sense is acquisition of equivalent land; it is an option if you can't do anything else

Mark - would like to get rid of this one

Alex - take this list and put asterisks by areas which we perceive appropriate to deviate

David - in context of Consent Decree and MOA, is there an argument because of the insertion of the word enhancement that one may be given the impression of restoring to better than pre-spill condition?

Stan - thinks he has a solution to working in enhancement that doesn't do harm; look at criteria as sequential but still has to pass a final hurdle in that does it benefit multiple species

Alex - confusing enhancement with the holistic effect

Stan - dangerous to link enhancement; can see that becoming a loop hole

Ken - can propose whatever we want the criteria to be; if the Trustee Council buys off on it, we can proceed

Stan - enhancement terminology has to be linked to injury

Art - doesn't want to open up loop hole for abuse of criteria

Stan - need to put in an item which addresses the enhancement issue, flagging I. for possible deletion - didn't seem to be a criterion; it is an option; doesn't understand what letter C does that B doesn't; just establishes what the natural recovery period is

Mark - feels that B is not appropriate

Stan - could take out B and leave in C

Alex - removing natural recovery will raise eyebrows

Stan - not removing it just rewriting it; maybe any document in which we are presenting this criteria is in two pieces:

#### Criteria

- I. Selecting resource
  - A. Sufficient evidence of consequential injury
  - B. Adequacy of natural recovery
- II. Selecting option  
A, B, C, D, E, F1, F2, G, H, J, K

Ken - subjective criteria is applied later on; trying to be as objective as possible

Sandy - end up shortening the list of options; more things will fall out; seems backdoorish but should deal with through J

Alex - do we value the species? should be valued in view of the process

Stan - do we need another criterion that says something about public interest

Alex - can view it as being in F and G

Mark - thinks F needs some more wordsmithing

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Stan - do we need to put in something for cosmetic purposes?

Mark - put something in parenthesis to make it explicit, namely for Chenega Bay (will be covered under the no option analysis)

John - might have to write up a process in applying these criteria

Stan - need to be concise so that people will come away with the right impression; could possibly footnote it

Sandy - if we lift this out of regulation, once you start corrupting you get into no man's land about how much corruption is enough

Stan - this language may already be corrupted; should stick to original language as much as possible

Alex - given there is some paraphrasing, we should have the original language; there is quite a bit of explanation in the regs

Sandy - there are ways to try to deal with that such as putting page 1 of 3

John - have to be rewritten if there is a possibility of being misconstrued

Sandy - still have to present original language

Ken - will have ample opportunity to explain; not concerned with Attachment A getting out to the public

Alex - this is a moving target considering that they are proposed regs

Stan - all in favor of preserving language but comes down on the side of clarity to the public; asked David if he had anything to add

David - not on this particular issue

Stan - is there anything else to go over in short order? will start at 8:30 in the morning; David will report on some of the things he was researching; Art and I are trying to develop for a field project a survey of some of the habitat programs; may include a team of biologist to go to previous-

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ly identified areas based on mapping to do some preliminary review of Harlequins on private land with permission

Ken - need to start coordinating

Stan - need to lay out what are the needs and what might be accomplished in 1992

Art - has a concept and can bring everyone up to speed

Sandy - is this premature?

Stan - should have been started last year and is not remotely premature; we do not have the luxury of waiting and should move now to prepare a field capability to carry out this evaluation

Art - bringing in some new technology

Stan - has to be inter-department and inter-agency to make sure we cover our bases; we will have to set some priorities because we won't be able to do everything

Meeting adjourned at 4:40.

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RESTORATION PLANNING WORK GROUP MEETING

DATE: October 17, 1991  
8:30 A.M.

Attendees:

RPWG

M. Brodersen	<u>X</u>
R. Yender	_____
S. Rabinowitch	<u>X</u>
K. Rice	<u>X</u>
S. Senner	<u>X</u>
J. Strand	<u>X</u>
A. Weiner	<u>X</u>
K. Klinge	<u>X</u>
B. Iseah	<u>X</u>

MANAGEMENT TEAM

D. Gibbons	_____
J. Montague	_____
B. Morris	_____
S. MacMullin	_____
C. Roy	_____
R. Spies	_____

LEGAL TEAM

G. Belt	_____
G. Fisher	_____
M. Fox	_____
B. Freedman	_____
M. Lisowski	_____

C. O'Connor	_____
A. Swiderski	<u>*X</u>
R. Sleater	_____
D. Street	<u>*X</u>
R. Jacobsen	_____

OTHERS

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Donna McCready  
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Issues Discussed:

Note: Missed initial 30 minutes of discussion

Stan - all in agreement that proposed NRDA regs are used as a baseline, only deviation is to cover what is in the settlement and as necessary

Mark - how do we determine what is necessary?

Alex - may find there are sound reasons to deviate

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David - asked Alex if he saw any value in situations where there is a perceived need to restore a resource and the cost benefit analysis that the group uses is found to be problematic for that particular resource, if group saw it was appropriate to expend money

Alex - the regs give the Trustees discretion in how they balance those factors and deviate from those guidelines

David - answers another question he had about cost benefit

Mark - asked for a summary of what was just said

Sandy - {volunteered to summarize} as long as you can articulate a sound reason to deviate from the regs, then basically it is okay

Alex - you end up with quite a bit of latitude about what option to take and the weight to be given to it

Stan - will we have to proceed in the same way as if we were going to court (value the damages)

Alex - may require somewhat less rigorous analysis, looking at cost analysis rather than the value of the injuries

Sandy - seems in the new proposed regs that the damage would not so much be the value but the cost of restoration

Stan - major thrust was to bring the cost to fore, but you value the damaged resource

David - will have to have some money values on both sides; more latitude than if you were in litigation

Stan - has a copy of the regs; should all consider these more carefully and talk about them later and not try to resolve it all today

Alex - has the preparatory language; should look at more carefully and come back

Stan - might be an appropriate topic to spend some time on in Econ Meeting; Alex should do some thinking about this and give us some guidance then

Ken - need to rethink date as Peterson is not available on the 29th

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Alex - Peterson will be in Mexico

Stan - John, let Lou Corella know, and get a sense of what his schedule might be like

Art - are we looking at regs as guidance?

Stan - strong guidance

Sandy - not required to follow them

Stan - need reason to deviate

Sandy - as long as they work, is probably comfortable with a lot of it; we don't need to redesign the wheel; there are some circumstances where things don't fit, doesn't disagree there is some need for some modification

Art - if we need some better rules, we have some flexibility

Ken - rather than throw them out, go along with them as long as we can use them

Stan - are good to achieve the objectives; protection against silly things being done with the money; better than making something up arbitrarily

Sandy - thinks a lot of interest groups pushed for these regs

Ken - use them until they don't feel comfortable

David - a concern had been raised about keeping internal deliberations of the group out of public view; thinks there is protection but hasn't had a chance to do the necessary research to provide us with the comfort or knowledge we need to know; suggested the State might be in better position to discuss what things we can go public with; Stan suggested the Governor was interested in holding data close until private plaintiffs case is resolved

Alex - with the exception of the Natives, almost everything else the private plaintiffs are interested in is commercial fishing-related

Ken - does Alex have an update of the parties signing?

Alex - does not know the status; knows there were some

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concerns about Chenega Bay and Chugach

Sandy - are there any persons in charge of shepherding those around?

David - as to the agreement between the U.S. and the Natives, figured Susan was running that; doesn't have an indication of what is happening with that; private plaintiffs were trying to get some of the Natives to opt out

Alex - some representatives of Natives may well opt out; senses that everyone anticipates that agreement will go forward

David - is there some agreement between the private plaintiffs and the government?

Alex - there have been discussions last week; thinks Rachel was involved in those discussions as to the Natives; there are a number of copies being circulated to the private plaintiffs

David - what is the gist of the agreement with regard to private plaintiffs?

Alex - they have agreed to dismiss their litigation against the State of Alaska for access to NRDA data and in addition to not file suit against the United States

Sandy - does David have anymore items to get back with us on?

David - will be briefed on the Econ studies at meeting on the 29th

Sandy - will be regrouping to come up with another date to get better participation; who is scheduled to brief us?

David - Diane Connolly

Sandy - if you see her, make her aware that the 29th date is probably not going to happen; but if she is prepared to give us some kind of briefing that could probably occur

David - by the end of next week he will have worked out DOJ's role in the administrative process of trustees; would like to play an active role but does not know if that is possible



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Stan - are there any questions for David? asked if they wanted to stay on the line for next discussions by Forest staff?

David - is going to sign off; will follow up on the things he needs to research and pass along information

Alex - is signing off

Donna - is also signing off

Housekeeping:

Art - was concerned about the availability of support staff after his move to CACI

Barbara - understood that all he needed to do was to express his support needs and they would be filled by CACI staff

Draft of Marine Habitat Protection Summary Report:

John - need to tell Jones and Stokes what it is we want

Stan - they were basically told to integrate the material we provided

Art - needs more analytical work as opposed to reiterating what was said at the meeting

Stan - need to take discussion and materials provided by participants and integrate those into one document

John - where synthesis leaves off, we should use our critical analysis to come up with suggestions

Stan - immediate goal should be to bring this document into shape; should not hold this document hostage for things we need to do

Ken - did not look at synthesis with the critical eye John had

Sandy - a lot of his changes were editorial such as facts that were wrong; tried to shift around some; wasn't real thrilled but thinks the material is basically there but needs quite a bit more work

Stan - will be away next week; if John's comments are pretty

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fundamental, would it be appropriate for John to draft a letter that embodies the major points and give our initial reaction and indicate we are looking at the document editorially but are conveying basic weaknesses in the document

Ken - should have them provide us with the disks and we could fill in some gaps

Stan - we have the disks

John - will draft a letter and wants other members to read document to see if they get the same response

Sandy - would be happy to read a draft and give John a call

Stan - should plug in Ruth Yender because the contract was through EPA

John - asked Stan if he transmitted comments for workshop

Stan - yes; make Monday the 28th date for any editorial comments to Barbara; John, Sandy and Ruth can work on letter

Art - need to revisit this and do the analytical work

Stan - we should have discussion

Art - have to reach some conclusions

Agenda Request for Data Sets for DNR

Art - he and Slocomb are working on the first data set request to start generating some working maps and other digital data information to work toward facilitating restoration options

Stan - decided to pick up this issue later

At this time, we were joined by Gary Lehnhausen and Sarah Bevilacqua to discuss forest plan amendments in the Federal Register Notice and discuss the process Forest Service will go through, the time frame, and public involvement components

Gary - brought a project map for the forest plan amendment study area in Chugach National Forest; History of forest plan - published in 1984 and shortly after that appealed by environmentalist and tourism interest groups; as a settle-

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ment Forest Service agreed to do management area analysis; plan not specific enough; however, has found there is specific direction in the plan

Art - using the term ground, is that wet ground or what?

Gary - plan assumes jurisdiction over tideland; main scope is uplands; this plan will not resolve issue of who has jurisdiction over the tidelands; will be resolved sometime; his objective is to come up with management direction that is consistent with what the public wants in general

Stan - the appeal that was filed in 1984, was that a successful appeal?

Ken - was successful in that it was resolved but resulted in an amendment to the forest plan with changes in components; one change was management area analysis; settlement was in January of 1986, appeal is dead

Gary - will have to get parties to agree that this approach will meet with what the management area analysis would have accomplished; objective is to spend 70 to 80 percent on public involvement and get a wide cross section of what they would like to see done and have public involvement with 30 minute presentations to whoever will listen; a lot of the plans end up getting appealed; Forest Service takes the position that they are management professionals; hopefully this will result in something the public will be happy with; if they don't like your decision, they say you need more data rather than saying they don't like what Forest Service is trying to accomplish; is trying to get input from PTA and environmental groups; relationship with the state is he has met with DF&G; is trying to find out the scope of the project

Art - how do you propose to resolve the inconsistencies in the two plans (PWS area and Forest Service plans)? is there dialogue between the state and the federal agencies?

Gary - need to respond to all issues; if it is significant, there should be alternatives that resolve issues and then will be up to decision maker to make decision but he will make recommendations

Ken - if forest plan and area plan are different, Gary will identify the issues and make recommendations for two plans to mesh together

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Gary - Forest Service will deal with the state

Sandy - Forest was set aside in 1908; does any enabling language speak to ownership of the waters?

Ken - under ANILCA, Fish and Wildlife Service retained management of those waters for those lands transferred to the Fish and Wildlife Service on Afognak Island

Gary - is a strange issue; nowhere else does Forest Service claim jurisdiction over areas of water; hopes to come up with a coordinated plan; if the public wanted access to lands through tour boats, hopefully they can come up with complimentary management that benefits everyone

Stan - will the Big Island plan be revisited?

Gary - not their plan to revisit but can be revisited; it is everyone's interest to get management nailed down for this area

Art - how good is database?

Gary - database is infantile compared to the Tongass; but has good management done based on experience and professional judgment; doesn't have good population estimates for all species; information will be critical if the preferred alternative has a lot of development associated with it, then you will need a lot of data

Art - there is the chicken and egg problem; how can you make management decisions without appropriate data?

Gary - decisions will be made based on public opinion; alternatives will be based upon public input but which one is chosen will be based on analysis of scientific data

Sarah - if the alternative says one thing, we will have to find out from data if we can support what they want

Gary - someone can appeal saying not enough data to make decision

Ken - what changes in management could benefit resources injured? how would special designations fit within the amendment process?

Gary - timing is perfect to establish marine reserves as

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effort to make people feel better about management or protection of resources; may turn out to be the preferred alternative

Stan - one of our mandates is that we should consider the relationship to state and federal laws and policies; attempt to marry two approaches as much as possible

Gary - some type of environmental document would be done

Stan - what is time frame?

Gary - one year and a half, December 1992

Stan - seems like with amount of aspired public involvement, you can't pull it off

Gary - is in the process of scoping the project, determining issues; after receiving public comment, will development a final set of issues; will send out a final scoping document as required by NEPA; will take comments to the extent that he can incorporate them before they are published; will probably put out a newsletter of what the public consensus was; whole process is open to come up with issues and alternatives; object is not to set time lines on when comments will be accepted but there are points that you can't go back and incorporate

Art - do you already contemplate a plan to address restoration or are you interested in hearing from this group?

Gary - met with 15 groups, objective is to guide restoration activities of resources that may have been damaged; will not identify any projects

Art - should not go forward with anything that is incompatible with Forest Service plan

Ken - the plan amendment will be more of changes in zoning; certain types of activities may fit; there is provision for activities that are in conflict: 1) not do project 2) change project 3) line officer can look at to see if there is a valid reason to change forest plan; see coordination between this group and forest plan as we identify management activities; need to feed this in as where we see resources benefiting and allow for the evaluation within the forest plan

Stan - how long do amendments take?

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Ken - evaluated within the NEPA process; sometimes very fast or if it is a major change to forest plan, could take longer -several years

Stan - in terms of timing, we as individuals may have thoughts that may be guidance

Gary - can probably identify some issues that may need to be considered; what lands should be managed as a marine reserve?

Art - may not be able to go too much beyond that; hopes plan will be flexible enough to address issues

Gary - have to be summarized into a manageable group of alternatives; data will help to assess what ought to be done to restore resources

Sandy - should look for a way to deal with relatively short term restoration activities that will serve an acceptable purpose so that there is a way to build in opportunity for it to occur

Gary - plan could be proposed and get public input; even if Forest Service says yes but the public says not, it stops right there

Stan - Forest Service is permitting authority and if something is deemed inconsistent with their interests, they just say no; there is plenty of protection for the forest

Gary - would like written comments on what scoping letter should look like; has made a few changes; this is the most open and participatory document they have ever done; wants comments within 30 days if letter gets out about November 11

Ken - restoration group would like to be on the mailing list

Gary - if you as individuals want it sooner, let him know

Art - might want to collectively comment

Ken - Sarah, are you handling the public involvement aspect?

Sarah - until they get someone

Gary - would like to conduct as many meetings as possible or have Bruce Van Zee handle some; will have to meet with key

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people as soon as possible and PTA groups as time permits

Sarah - what does RPWG stand for?

Stan - Restoration Planning Work Group

Meeting break at 11:00 at the conclusion of Gary's presentation

Matrix and Restoration Options:

Stan - discussed Simonstad's comments

Art - comment was based on Quinn's work; comment is well taken

Stan - do we have any evidence that would suggest the need to establish new or alternative stocks? answer is no

John - with pinks they stray so much that they would colonize

Ken - are we willing to wait for natural colonization to occur? might want to stock with fish (1) to get it going faster and (2) there may be intertidal spawners that don't move into the upland and into the stream system

John - Glacier Bay studies are classic

Stan - Simonstad thinks pinks will do it naturally; does it make sense to keep enhancement as a potential end point?

Ken - suggests talking with Fish and Game

John - would eliminate for pinks

Mark - would be inclined to leave it for the sake of flexibility and responsiveness to the settlement

Art - leave it

Stan - could it be reworded to preserve flexibility?

John - thinks with the pinks we have done a great injustice with hatcheries

Ken - if you could do it (establish a new run) in 2 or 4 years you would have a better return on investment

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Attorney Work Product

John - could not achieve new run in 2 or 4 years

Ken - is new stock a different genetic strain?

Stan - yes; drop establish new stocks as an end point

Art - has a problem of putting more salmon where they do not already exist

Stan - agrees but does not want to prejudge and eliminate those options

Art - should have controls over how it is done

Stan - should show we have thoughtfully evaluated end points;  
change to enhance natural productivity and access to new habitats through stream improvements; delete new and alternative stocks

Stan - substituted conducting research on status of populations and then to develop restoration measures accordingly to that research

Restoration Options:

Stan - under Dolly Varden letter B put in addition of woody debris, should probably indent responses to be more legible

Karen - under Dolly Varden letter D should be modified to reflect reef

(Due to time constraints, it was agreed that Karen and Barbara would work on matrix and restoration options at a later date)

Karen - will discuss option changes with other RPWG members and will get with Barbara to incorporate the changes, probably Tuesday

More on Data Sets:

Art - on GIS, needs recommendations on data sets or do we think there are more we need to get? they have been adequately QC'd; need to deal with the problems he anticipates; should be a RPWG request rather than an intra-agency request

Stan - needs something done on RPWG letterhead (give to



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Barbara) and someone other than Art needs to sign it, possibly Ken

Sandy - has anyone checked with Fish and Wildlife about data sets?

Art - everything is in residence at DNR

Stan - should go to GIS offices of both DNR and Fish and Wildlife

Art - can Sandy get a data set catalog from his group?

Sandy - Art could probably get it quicker because he speaks the lingo

Stan - memo to Tech Services III needs to request 1) data sets 2) map 3) catalog

Sandy - maps may not show boundaries of specially designated areas correctly, depending on who makes it; you can have two maps that show different information, only one of which shows boundaries correctly as designated by legislative entities; maybe something we can deal with later

Art - should annotate mapping products and reluctant to mess with other people's work

Meeting adjourned at 12:00.

Restoration Planning Work Group  
16-17 October 1991  
Anchorage, Simpson Building (CACI)

Agenda

Wednesday, 10:15 h

- Review outline for restoration "framework" (the outline distributed to Management Team on 11 October)
- Prepare timetable integrating restoration planning and damage assessment documents
- Assignments for completion of framework tasks
- Develop criteria for selecting restoration options
- Develop draft endpoints for injured resources/services not previously addressed
- Shorter Items
  - Jones & Stokes' marine habitat synthesis report
  - Restoration economics meeting - 29 October
  - Literature synthesis review - 5-6 November
  - Development of a Monitoring Plan
  - TNC habitat project
  - set up meeting on habitat survey project (Senner/Weiner)
  - review of upland management practices
  - request of GIS data sets from DNR
  - request for Kodiak/AK Peninsula map from Tech. Serv. No. 3
  - RPWG move to CACI

Thursday, 08:30 h

- Complete initial round of action on matrix options (from mtgs. on 9-10 September)
- Meet with Chugach National Forest staff regarding revisions to forest management plan (10:00 h)
- (optional) meeting with ADF&G fisheries staff at ADF&G's Raspberry Road office

2. Species/habitat manipulation
3. Habitat protection/acquisition

C. Replacement

1. Species/habitat manipulation
2. Habitat protection/acquisition

D. Acquisition of equivalent resources

1. Species/habitat manipulation
2. Habitat protection/acquisition

IV. Application of Criteria from NRDA Regulations

A. The results of any actual or planned response actions

B. Natural recovery period (I.C. above)

C. Ability of resource to recover with or without alternative actions

D. Technical feasibility

E. Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts

F. Potential effects of the action on human health and safety

F<sub>2</sub> The relationship of the expected costs of the proposed actions to the expected benefits

G. Cost-effectiveness

H. Consistency with applicable federal and state laws and policies

I. Acquisition of equivalent land for public (federal/state) management, where restoration, rehabilitation, and/or other replacement of land is not possible

J. Degree to which proposed actions benefit more than one species, communities, or ecosystems<sup>7</sup>

- V. Recommendations
  - A. Selected options
  - B. Justification
  - B. Scope/scale of implementation
  - C. Cost
    - 1. Cost estimates
    - 2. Estimation method

[SES:08/19/91:species.pro]

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<sup>7</sup>Not from NRDA regulations as currently proposed.

RESTORATION PLANNING WORK GROUP  
OCTOBER 1991

October 15 version

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
	1	2	3	4 Comments on Jones and Stokes Summary	5	6
7 Ken in Denver<----- Lit. Synthesis Meeting Invitations	8 ----- Memo to Management Team re: framework	9 ----->	10 Comments due on Jones and Stokes Synthesis 3:00 Economics Committee - RPWG	11 Management Team  Deadline for comments on life history accounts	12	13
14 Federal Holiday	15	16 RPWG meeting - Anchorage<-----	17 ----->	18	19	20 Stan in Wisconsin <-----
21  -----	22  -----	23  ----->	24 Stan on leave  <-----	25  ----->	26	27
28	29 Economics Workshop	30 John Strand in Anchorage - Management Team Meeting	31			

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## MEMORANDUM OF AGREEMENT AND CONSENT DECREE SUMMARY

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

### INTRODUCTION

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

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

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



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

litigation  
management

U.S. Constitution  
Alaska Statutes

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

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

### I. JURISDICTION

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

### II. DEFINITIONS

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

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

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

### III. EFFECT OF ENTRY OF MOA

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

### IV. CO-TRUSTEESHIP

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

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

1. The rights and obligations of Alaska Native villages to act as trustees for purposes of asserting and compromising claims for injury to or lost of natural resources affected by the spill and expending proceeds derived therefrom;
2. The rights and obligations of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the oil spill;
3. The rights and obligations of the United States relating to such Alaska Native villages and the entities referred to in subparagraph 2 above.

V.  
ORGANIZATION

A. General Provisions

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

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

B. Injury Assessment and Restoration Process

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

C. Role of the Environmental Protection Agency

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

VI.  
DISTRIBUTION OF MONIES

A. Joint Use of Natural Resource Damage Recoveries

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

B. Reimbursement of Certain Expenses

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

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

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

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

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

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

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

#### VIII. SCIENCE STUDIES

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

#### IX. COVENANTS NOT TO SUE

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

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

**X.  
RETENTION OF JURISDICTION**

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

**XI.  
MULTIPLE COPIES AND EFFECTIVE DATE**

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

**XII.  
INTEGRATION AND MERGER**

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

**XIII.  
TERMINATION**

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

**XIV.**  
**JUDICIAL REVIEW**

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

**XV.**  
**MISCELLANEOUS**

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



## 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.

RESTORATION OPTIONS REJECTED

<u>SPECIES</u>	<u>OPTION</u>
Sea Otter	B - Supplement winter season foods for stressed animals feeding in intertidal habitats (e.g., deer)
Sea Otter	C - Translocations to augment populations within and outside of oil spill area
Sea Otter	J - Reduce incidental loss of marine mammals by buying back limited-entry gillnet permits
Common Murre	B - Augment natural reproduction through captive breeding (as a source of eggs or young), fostering and related techniques
Harbor Seal	B - Supplement winterseason foods for stressed animals feeding in intertidal habitats (e.g., deer)
Harbor Seal	C - Translocations to augment populations within and outside of oil spill area
Harbor Seal	J - Reduce incidental loss of marine mammals by buying back limited-entry gillnet permits
Harlequin Duck	B - Augment natural reproduction through captive breeding (as a source of eggs or young), fostering and related techniques
Harlequin Duck	D - Mariculture of shellfish to supplement prey base
Pink Salmon	F - Control predators on fish eggs and juveniles
Pink Salmon	N - Buy back limited entry fishing permits to reduce pressure on resources
Marbled Murrelet	B - Augment natural reproduction through captive breeding (as a source of eggs or young), fostering and related techniques
Marbled Murrelet	E - Provide artificial nest sites/substrates to enhance productivity or redirect nest activities to alternative sites

COMMENTS RECEIVED RE: EVALUATION OF RESTORATION OPTIONS

- Sandy - likes what he sees; quite positive, glad to see forms in print
- some amount of duplication
  - could possibly use a large matrix in place of form; has not figured out yet how this would work
  - need a cheat sheet for reference numbers for someone outside the group who may not know what they mean

John - had the following comments on restoration options:

<u>SPECIES</u>	<u>OPTION</u>	<u>COMMENT</u>
Pink Salmon	Q	negligible; should be n/a, most salmon are coastal
Common Murre	L	suggests n/a; too few taken, benefits do not outweigh the cost
Dolly Varden/ Cutthroat Trout	D	suggests further review; could rework stream beds (woody debris)
Dolly Varden/ Cutthroat Trout	I	option for Pink Salmon was approved; may apply to Cutthroat Trout (more valuable); suggests further review
Sea Otter	L	Marine Mammal Act cannot restrict mandated harvest by subsistence of otters; must be a voluntary agreement with Natives; possibly n/a

Karen - had the following comments on restoration options:

<u>SPECIES</u>	<u>OPTION</u>	<u>COMMENT</u>
Marbled Murrelet	B	Natural recovery would probably be faster;
Marbled Murrelet	O	maybe applicable during molting (?)
Harbor Seal	C	needs more clarification
elbt <del>sa</del> <del>an</del> <del>ter</del>	C	need passest?
Pink Salmon	N	need to elaborate

Pink Salmon P need to elaborate  
 Pink Salmon W why is it n/a?

Art - had the following comments on the matrix and options:

<u>SPECIES</u>	<u>MATRIX LETTER</u>	<u>COMMENT</u>
Sea Otter	C	received memo from Siniff dated 10/2
Common Murres	B	received memo from Roby dated 8/20 or is there another memo?
Marbled Murrelet	?	received a memo from Roby dated 8/20 on Marbled Murrelet, which matrix letter does it go with?

<u>SPECIES</u>	<u>OPTION</u>	<u>COMMENT</u>
Harlequin Duck	D	for criteria E - there is abundant available uncontaminated food
Harbor Seal	C	for criteria C - risk of capture losses (some drown)



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**MEMORANDUM****State of Alaska****DEPARTMENT OF NATURAL RESOURCES****DIVISION OF LAND****OIL SPILL PROJECT OFFICE**

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DATE: September 16, 1991

TO: Stan Senner  
ADFG/RPWGFROM: Art Weiner [AWW]  
Natural Resource ManagerTELEPHONE: 907/762-2515  
FAXMODEM: 907/563-7122  
FAX: 907/762-2290**SUBJECT: RPWG Data Request from LRIS[DNR]**

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In order to conduct restoration planning activities pursuant to the current needs of the Litigation Team and for future restoration program purposes, the listed data sets and data catalog are hereby requested from LRIS.

- For the EVOS-affected area as far west as the Barren Islands:
1. Shorelines by shoreline type with ESI data, e.g., headland, rocky shore, etc.
  2. Land status.
  3. Land Ownership.
  4. Anadromous Streams.
  5. Vegetation.
  6. Shoreline oiling from ADEC Fall, 1989 beach survey.
  7. Habitat data.

Please provide the data sets in the following format:

- Arc-Info coverages written to 1/4" 150 mb tape cartridges in the Unix "tar" format.
- Township/Range/Section grid, tic's, and survey monumentation in digital format at this time.
- Provide data sets in the largest scale available.
- The data sets listed in the 11/15/90 NRDA update or the ADNR blue book (PFD No. 87-12) are acceptable.

Data Catalog<sup>1</sup>

Please provide RPWG with a current data catalog listing available EVOS and public domain data sets. For the data sets in this catalog, we would like to know the following:

- |                                  |                   |
|----------------------------------|-------------------|
| • Data Layer Type.               | • Digital Format. |
| • Editing Phase (if applicable). | • Coverage Area.  |
| • EVOS Litigation Sensitivity    | • Scale.          |

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<sup>1</sup> The Chugach National Forest catalog entitled *GIS Data Layer Status* is an example of the type of data catalog we are requesting.



# OIL SPILL RESTORATION PLANNING OFFICE

437 E Street, Suite 301 Anchorage, Alaska 99501  
 (907) 271-2461 FAX: (907) 271-2467

DATE: 15 October 1991

[ ]	BRODERSEN, Mark.....	465-2378	✓
[ ]	<del>COMERCI, Linda</del> Susan MacMullin.	<del>271-2467</del>	✓
[ ]	RABINOWITCH, Sandy.....	257-2510	✓
[ ]	RICE, Ken.....	276-7178	✓
[ ]	SENNER, Stan.....	271-2467	
[ ]	STRAND, John.....	789-6608	✓
[ ]	WEINER, Art.....	563-7122	✓
[ ]	<u>David Street</u>	<u>(907) 514-8245</u>	✓
[ ]	<u>Alex Swiderski</u>	<u>278-7022</u>	✓
[ ]	<u>Donna McCready</u>	<u>278-7022</u>	✓
[ ]	_____	_____	

FROM: Stan Senner

Pages (including coversheet) 3

**MEMO**

Here are proposed agenda items for tomorrow's meeting, 16 October, at CACI at 10:15 h.

If you have additional items or want to change something shown here, please let me know this afternoon.

Ken, have you get something nailed down with the Chugach forest staff?

I am hoping that at least a couple of you can join me a ADF&G on Thursday afternoon. I think it might be a helpful and timely exchange.

See you tomorrow.

Restoration Planning Work Group  
16-17 October 1991  
Anchorage, Simpson Building (CACI)

Tentative Agenda

Wednesday, 10:15 h

- Review outline for restoration "framework" (the outline distributed to Management Team on 11 October)
- Prepare timetable integrating restoration planning and damage assessment documents
- Assignments for completion of framework tasks
- Shorter Items
  - Jones & Stokes' marine habitat synthesis report
  - Restoration economics meeting - 29 October
  - Literature synthesis review - 5-6 November
  - Development of a Monitoring Plan
  - TNC habitat project
  - review of upland management practices
  - request of GIS data sets from DNR
  - request for Kodiak/AK Peninsula map from Tech. Serv. No. 3
  - RPWG move to CACI
- Develop draft endpoints for injured resources/services not previously addressed

(tentative?)

- Meeting with Chugach National Forest staff re forest plan review

Thursday, 08:30 h

- Complete initial round of action on matrix options (from mtgs. on 9-10 September)
- Develop draft criteria for selecting restoration options

13:00 h (optional)

- meeting with ADF&G fisheries staff (see attached agenda)

COMMERCIAL FISHERIES RESTORATION PLANNING MEETING

AGENDA

October 17, 1991  
 8:30 am - 4:30 pm  
 Annex Conference Room  
 ADF&G -Anchorage

Morning Session (8:30-12:00) ADF&G COMM FISH STAFF ONLY

I. Restoration Proposals

- A. Salmon Projects (Sam Sharr)
- B. Herring Projects (Evelyn Biggs/Tim Baker)
- C. Shellfish Projects (James Brady/Linda Brannian)

II. Restoration Methodologies ((Ken Chalk)

Afternoon Session (1:00-4:30) ADF&G, OSIAR, RESTORATION, OTHER AGENCY STAFFS

III. Settlement

- A. Update on the terms of the settlement (Stan Senner/Joe Sullivan)
- B. Changes in the way we do business now that we have a settlement
- C. Impact of third party litigants (Joe Sullivan)

IV. Restoration Projects (Stan Senner)

- A. Philosophy
- B. Criteria for submission of proposal
  - 1. Must damage assessment work be complete?
  - 2. Level of damage demonstrated and its relation to acceptance of proposal
- C. Format for project proposals
- D. Damage assessment summaries

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To <i>Stan Senner</i>	From <i>Ken Chalk</i>
Co.	Co. <i>ADF&amp;G</i>
Dept. <i>Restoration</i>	Phone # <i>267-2421</i>
Fax # <i>271-2467</i>	Fax #

*271-2621*