

April 25, 1991

Mr. Dan Addison
Office of General Counsel
National Oceanic and Atmospheric Administration
14th and Constitution Avenue NW
Room 2830
Washington, DC 20230

Re: Exxon Valdez
Comments on the Proposed Consent Decree
Second Supplement to Comments Package (Comments 71-77)

Dear Mr. Addison:

Enclosed is the second supplement to the "Comments Package" sent on April 23 to the Trustees, Trustee Council, Washington Policy Group, Management Team and Legal Team (Comments 59-70 were forwarded yesterday). This incorporates information from seven additional comments forwarded to CACI on April 25.

The comments package consists of:

1. Inventory of Comments on the Proposed Consent Decree (Sorted by Comment Number and Comment Date).

An updated inventory lists the comments received by CACI to summarize. A total of 77 comments have been received to date. The inventory lists the comment number, the comment date, the date the comment was received by CACI, the number of pages, the author's name and associated organization (if any), and the addressee and associated organization (if any). The comment number referenced in the first column is found in the lower right hand corner of the first page of the document.

2. Summary of Comments on the Proposed Consent Decree (Sorted by Comment Number).

This updated report provides a summary of the comments on the proposed consent decree (**new comments are #s 71-77**). It includes the comment number, comment date, author and associated organization (if any), author's address, author's position on the settlement (favors, opposes, or no view), referral (government agency, general, or science). Please note that the organization(s) represented by the author(s) of a comment are included in the "Organization" column. This is often the case

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where an attorney is the author of a comment submitted on behalf of an organization or group.

3. Comments (71-77).

If you have any questions concerning this package, please contact me at (202) 737-7805.

Sincerely,

Camille L. Henry
Camille L. Henry
Deputy Project Director

Attachment: Comments Package

cc: 4/24 Comments Distribution

OLS (2)

G. Belt

B. Brighton

G. Cecil

G. Fisher

C. Gardner

D. Hutchinson

R. Jacobson

S. Lattin

D. Moorehous

J. Nicoll

C. Plisch

G. Van Cleve

new

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INVENTORY OF COMMENTS ON THE PROPOSED CONSENT DECREE
(Sorted by Date)

Page 1

COMMENT NUMBER	COMMENT DATE	RECEIVED BY CACI	NBR PGS	AUTHOR NAME	AUTHOR ORGANIZATION	ADDRESSEE NAME	ADDRESSEE ORGANIZATION
1	UNDATED	4/15/91	4	CELEY, JERRY		CAMPBELL, THOMAS A	NOAA
2	3/04/91	4/15/91	5	LUTTRELL, W MARK		CAMPBELL, THOMAS A	NOAA
3	3/04/91	4/15/91	5	LUTTRELL, W MARK		HERMAN, BARBARA	ALASKA DEPT OF LAW
76	3/04/91	4/25/91	3	KONIGSBERG, JAN	ALASKA CONSERVATION FOUND	HICKEL, WALTER	GOVERNOR OF ALASKA
4	3/21/91	4/15/91	1	SANDERS, ROBERT B OPSTAD, ERIC	AMER INST PROF GEOLOGISTS AMER INST PROF GEOLOGISTS	CAMPBELL, THOMAS A	NOAA
5	3/24/91	4/15/91	2	FULLER, FLETCHER G		HOLLAND, H RUSSEL	US DIST COURT ALASKA
6	3/25/91	4/15/91	1	MOERLEIN, GEORGE A		HOLLAND, H RUSSEL	US DIST COURT ALASKA
7	3/26/91	4/15/91	2	GIGLER, ROBERT A	GREENPEACE ACTION INTL		ALASKA LEGISLATURE
8	3/27/91	4/15/91	4	MARTIN, TIM		CAMPBELL, THOMAS A	NOAA
9	3/27/91	4/15/91	5	MARTIN, TIM		HOLLAND, H RUSSEL	US DIST COURT ALASKA
10	3/28/91	4/15/91	1	HOROWITZ, ALAN		HERMAN, BARBARA	ALASKA DEPT OF LAW
11	3/28/91	4/15/91	2	HANSBERRY, STEVE		CAMPBELL, THOMAS A	NOAA
12	3/29/91	4/15/91	1	FOSTER, JERRY		HOLLAND, H RUSSEL	US DIST COURT ALASKA
13	4/02/91	4/15/91	1	SARGENT, NEIL A		CAMPBELL, THOMAS A	NOAA
14	4/03/91	4/15/91	1	FULLETON, CHARLES A		CAMPBELL, THOMAS A	NOAA
58	4/07/91	4/23/91	2	MCKAY, THOMAS W		CAMPBELL, THOMAS A	NOAA
15	4/08/91	4/15/91	1	BECK, MICHAEL E		CAMPBELL, THOMAS A	NOAA
71	4/08/91	4/25/91	37	MILLER, GEORGE	US CONGRESS	HOLLAND, RUSSEL	US DIST COURT ALASKA
17	4/09/91	4/18/91	1	KNODELL, JOHN D		CAMPBELL, THOMAS A	NOAA
18	4/09/91	4/18/91	2	MALCHOFF, MARY		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
19	4/09/91	4/18/91	2	WYSONG, RICHARD J		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
20	4/09/91	4/18/91	2	MCMULLEN, ELENORE	PORT GRAHAM VILLAGE	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
21	4/10/91	4/18/91	1	MCELROY, MARY JOE		CAMPBELL, THOMAS A	NOAA
22	4/10/91	4/18/91	2	JOHNSON, JIMMY		CAMPBELL, THOMAS A	NOAA
16	4/11/91	4/15/91	3	NICHOLS, AGNES N FAULKNER, PATRICIA A	NATIVE VILLAGE OF EYAK NATIVE VILLAGE OF EYAK	CAMPBELL, THOMAS A	NOAA
23	4/11/91	4/18/91	7	FORTIER, SAMUEL J	FORTIER & MIKKO CHENAGA CORP PORT GRAHAM CORP ENGLISH BAY CORP	CAMPBELL, THOMAS	NOAA
33	4/11/91	4/19/91	14	PARKER, GEOFFREY Y	ADLER, JAMESON & CLARAVAL ALASKA SPORT FISHING ASSN RECREATIONAL PLAINTIFFS AREA BUSINESS CLASS CIVIL PLAINTIFFS (500)	HOLLAND, RUSSEL	US DIST COURT ALASKA
						SPORKIN, STANLEY	US DIST COURT DC

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24	4/12/91	4/18/91	3	MCCOWAN, BRENT W		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
59	4/12/91	4/23/91	1	SMITH, CARYN		CAMPBELL, THOMAS A	NOAA
60	4/12/91	4/23/91	1	BERGLAND, LAWRENCE		CAMPBELL, THOMAS A	NOAA
61	4/12/91	4/23/91	2	MEGANACK, WALTER R			LEGISLATORS
69	4/12/91	4/24/91	1	PARSONS, GAIL		HOLLAND, RUSSEL	US DIST COURT ALASKA
72	4/12/91	4/25/91	13	HERTEL, DENNIS M STUDDS, GERRY E HUGHES, WILLIAM J	US CONGRESS US CONGRESS US CONGRESS	HOLLAND, RUSSEL	US DIST COURT ALASKA
62	4/13/91	4/23/91	2	NISHIMOTO, MIKE		CAMPBELL, THOMAS A	NOAA
25	4/14/91	4/18/91	2	WORKMAN, WILLIAM	UNIV OF ALASKA ANCHORAGE	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
26	4/14/91	4/18/91	2	WERNER, HOLLY L		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
34	4/14/91	4/19/91	2	FISHER, JAMES E		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
27	4/15/91	4/18/91	2	MORIARTY, MICHELE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
28	4/15/91	4/18/91	2	MUNDY, DAVE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
29	4/15/91	4/18/91	2	VIERGUTZ, HERBERT A		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
35	4/15/91	4/19/91	4	HOLT, KATHLEEN		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
36	4/15/91	4/19/91	2	MOBLEY, CHARLES M		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
37	4/15/91	4/19/91	3	COOK, JOHN P	AK ANTHROPOLOGICAL ASSN	CAMPBELL, THOMAS A	NOAA
63	4/15/91	4/23/91	3	ARUNDALE, WENDY H	UNIV OF ALASKA FAIRBANKS	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
64	4/15/91	4/23/91	2	HARRISON, DAVID	CHICKALOON VILLAGE	HOLLAND, RUSSEL	US DIST COURT ALASKA
65	4/15/91	4/23/91	1	PETTY, CLARENCE		CAMPBELL, THOMAS A	NOAA
30	4/16/91	4/18/91	2	JONAS, JULIE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
31	4/16/91	4/18/91	7	SONNEMAN, JOSEPH A		CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
38	4/16/91	4/19/91	3	ELI, TARA W		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
55	4/16/91	4/19/91	71	FORTIER, SAMUEL	FORTIER & MIKKO CHENAGA BAY CORP PORT GRAHAM CORP ENGLISH BAY CORP		US DIST COURT ALASKA
56	4/16/91	4/19/91	10	MCCALLION, KENNETH F PERSKY, BERNARD JOHNSON, JAMES W GARGAN, TERENCE KENDE, CHRISTOPHER B PETUMENOS, TIMOTHY J FORTIER, SAMUEL	SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN HILL BETTS & NASH HOLTZMANN WISE & SHEPARD BIRCH HORTON FORTIER & MIKKO CHUGACH ALASKA CORP CHENAGA CORP PORT GRAHAM CORP ENGLISH BAY CORP TATITLEK CORP EYAK CORP	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL

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66	4/16/91	4/23/91	1	MACK, NADINE V		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
70	4/16/91	4/24/91	1	JANKA, DAVID P		HERMAN, BARBARA CAMPBELL, THOMAS A	ALASKA ATTORNEY GENERAL NOAA
73	4/16/91	4/25/91	75	MASON, GARY E HAUSFELD, MICHAEL D COHEN, JERRY S MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS CHENEGA BAY PORT GRAHAM ENGLISH BAY LARSEN BAY KARLUK ALASKA NATIVE CLASS		US DIST COURT DC
32	4/17/91	4/18/91	3	DEROOS, CAROLYN		CAMPBELL, THOMAS A	NOAA
39	4/17/91	4/19/91	3	SCHLEICH, LEY		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
40	4/17/91	4/19/91	4	GRISCO, MARY	NATL PARKS & CONSERV ASSN	CAMPBELL, THOMAS A	NOAA
41	4/17/91	4/19/91	3	SABLOFF, JEREMY A RICE, PRUDENCE	SOCIETY AMER ARCHAEOLOGY SOCIETY AMER ARCHAEOLOGY	CAMPBELL, THOMAS A	NOAA
57	4/17/91	4/19/91	4	RAYNOR, TED POIROT, PATRICE POIROT, STEVE FAUSSETT, THOMAS P ROME, JONATHAN K PARKHURST, DAVE DAY, VERENA DAY, ROBERT A LIBENSON, SUE WOOD, KAREN WOOD, RUTT EAMES, CLIFF MONTESANO, PETER JETTMAR, KAREN LAWSON, CAROLE HENRY, HAROLD CANADY, SHER L DEAN, SHERYL		CAMPBELL, THOMAS A	NOAA
42	4/18/91	4/19/91	4	DETTLOFF, GRETCHEN JM		CAMPBELL, THOMAS A	NOAA
43	4/18/91	4/19/91	13	MARTIN, TIM		HOLLAND, RUSSEL	US DIST COURT ALASKA
44	4/18/91	4/19/91	1	PAVIA, CLARE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
45	4/18/91	4/19/91	2	TOTEMOFF, DARRELL J	CHENEGA BAY IRA COUNCIL	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
46	4/18/91	4/19/91	6	DOHENY, DAVID A	NATL TRUST HIST PRESERVAT	CAMPBELL, THOMAS A	NOAA
47	4/18/91	4/19/91	3	GUARINI, FRANK J	U.S. CONGRESS	HOLLAND, RUSSEL	US DIST COURT ALASKA
48	4/18/91	4/19/91	25	FLYNN, CHARLES P OLSON, RONALD L	BURR, PEASE, & KURTZ MUNGER, TOLLES, & OLSON ALYESKA	HERMAN, BARBARA	US DIST COURT ALASKA ALASKA ATTORNEY GENERAL
49	4/18/91	4/19/91	23	WOLF, DOUG OLSON, ERIK	NATL WILDLIFE FEDERATION	CAMPBELL, THOMAS A	NOAA

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50	4/18/91	4/19/91	41	CHASIS, SARAH	NAT RESOURCES DEF COUNCIL DEFENDERS OF WILDLIFE GREENPEACE NATL AUDUBON SOCIETY AK CENTER FOR ENVIRONMENT SIERRA CLUB SIERRA CLUB LEG DEF FUND TRUSTEES FOR ALASKA		
51	4/18/91	4/19/91	11	CHASIS, SARAH ADLER, ROBERT JORGENSEN, ERIC	NAT RESOURCES DEF COUNCIL NAT RESOURCES DEF COUNCIL SIERRA CLUB AK CENTER FOR ENVIRONMENT DEFENDERS OF WILDLIFE GREENPEACE NATIONAL AUDUBON SOCIETY N AK ENVIRONMENTAL CENTER PWS CONSERVATION ALLIANCE TRUSTEES FOR ALASKA		
52	4/18/91	4/19/91	5	JEFFREYS, KENT	COMPETITIVE ENTERPRISE IN		NOAA STATE OF ALASKA
53	4/18/91	4/19/91	117	COHEN, JERRY S OESTING, DAVID W COWLES, MACON BERGER, HAROLD MONTAGUE, H LADDIE SIEGEL, JANICE KAHANA, PETER R	COHEN MILSTEIN DAVIS WRIGHT TREMAINE TRIAL LAWYERS PUB JUSTICE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE SONOSKY CHAMBERS DICKSTEIN SHAPIRO CASEY GERRY STOLL STOLL BERNE LOKTING ALASKA NATIVE CLASS COMMERCIAL FISHING CLASS AREA BUSINESS CLASS PROPERTY OWNER CLASS CANNERY AND SEAFOOD EMPLOY	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
54	4/18/91	4/19/91	22	HAUSFIELD, MICHAEL D MASON, GARY E MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS ALASKA NATIVE CLASS	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
74	4/18/91	4/25/91	6		PESTICIDE ACTION NETWORK INTL INDIAN TREATY CNCL ABALONE ALLIANCE COALITION FOR OUR EARTH WEST COUNTY TOXICS COAL S & MESO AMER INDIAN CTR ALASKA ACTION GROUP	HOLLAND, RUSSEL SPORKIN, STANLEY	US DIST COURT ALASKA US DIST COURT DC
67	4/19/91	4/23/91	7	LAKOSH, THOMAS A			US DIST COURT ALASKA
68	4/19/91	4/24/91	6	LEGHORN, KEN S	ALASKA DISCOVERY	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
75	4/19/91	4/25/91	2	MARLOW, KERRIE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
77	4/19/91	4/25/91	2	SHERIDAN, RUTH		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL

new

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1	UNDATED	4/15/91	4	CELEY, JERRY		CAMPBELL, THOMAS A	NOAA
2	3/04/91	4/15/91	5	LUTTRELL, W MARK		CAMPBELL, THOMAS A	NOAA
3	3/04/91	4/15/91	5	LUTTRELL, W MARK		HERMAN, BARBARA	ALASKA DEPT OF LAW
4	3/21/91	4/15/91	1	SANDERS, ROBERT B OPSTAD, ERIC	AMER INST PROF GEOLOGISTS AMER INST PROF GEOLOGISTS	CAMPBELL, THOMAS A	NOAA
5	3/24/91	4/15/91	2	FULLER, FLETCHER G		HOLLAND, H RUSSEL	US DIST COURT ALASKA
6	3/25/91	4/15/91	1	MOERLEIN, GEORGE A		HOLLAND, H RUSSEL	US DIST COURT ALASKA
7	3/26/91	4/15/91	2	GIGLER, ROBERT A	GREENPEACE ACTION INTL		ALASKA LEGISLATURE
8	3/27/91	4/15/91	4	MARTIN, TIM		CAMPBELL, THOMAS A	NOAA
9	3/27/91	4/15/91	5	MARTIN, TIM		HOLLAND, H RUSSEL	US DIST COURT ALASKA
10	3/28/91	4/15/91	1	HOROWITZ, ALAN		HERMAN, BARBARA	ALASKA DEPT OF LAW
11	3/28/91	4/15/91	2	HANSBERRY, STEVE		CAMPBELL, THOMAS A	NOAA
12	3/29/91	4/15/91	1	FOSTER, JERRY		HOLLAND, H RUSSEL	US DIST COURT ALASKA
13	4/02/91	4/15/91	1	SARGENT, NEIL A		CAMPBELL, THOMAS A	NOAA
14	4/03/91	4/15/91	1	FULLETON, CHARLES A		CAMPBELL, THOMAS A	NOAA
15	4/08/91	4/15/91	1	BECK, MICHAEL E		CAMPBELL, THOMAS A	NOAA
16	4/11/91	4/15/91	3	NICHOLS, AGNES N FAULKNER, PATRICIA A	NATIVE VILLAGE OF EYAK NATIVE VILLAGE OF EYAK	CAMPBELL, THOMAS A	NOAA
17	4/09/91	4/18/91	1	KNOELL, JOHN D		CAMPBELL, THOMAS A	NOAA
18	4/09/91	4/18/91	2	MALCHOFF, MARY		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
19	4/09/91	4/18/91	2	WYSONG, RICHARD J		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
20	4/09/91	4/18/91	2	MCMULLEN, ELENORE	PORT GRAHAM VILLAGE	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
21	4/10/91	4/18/91	1	MCELROY, MARY JOE		CAMPBELL, THOMAS A	NOAA
22	4/10/91	4/18/91	2	JOHNSON, JIMMY		CAMPBELL, THOMAS A	NOAA
23	4/11/91	4/18/91	7	FORTIER, SAMUEL J	FORTIER & MIKKO CHENAGA CORP PORT GRAHAM CORP ENGLISH BAY CORP	CAMPBELL, THOMAS	NOAA
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26	4/14/91	4/18/91	2	WERNER, HOLLY L		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
27	4/15/91	4/18/91	2	MORIARTY, MICHELE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
28	4/15/91	4/18/91	2	MUNDY, DAVE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
29	4/15/91	4/18/91	2	VIERGUTZ, HERBERT A		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
30	4/16/91	4/18/91	2	JONAS, JULIE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL

COMMENT NUMBER	COMMENT DATE	RECEIVED BY CACI	NBR PGS	AUTHOR NAME	AUTHOR ORGANIZATION	ADDRESSEE NAME	ADDRESSEE ORGANIZATION
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33	4/11/91	4/19/91	14	PARKER, GEOFFREY Y	ADLER, JAMESON & CLARAVAL ALASKA SPORT FISHING ASSN RECREATIONAL PLAINTIFFS AREA BUSINESS CLASS CIVIL PLAINTIFFS (500)	HOLLAND, RUSSEL	US DIST COURT ALASKA
34	4/14/91	4/19/91	2	FISHER, JAMES E		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
35	4/15/91	4/19/91	4	HOLT, KATHLEEN		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
36	4/15/91	4/19/91	2	MOBLEY, CHARLES M		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
37	4/15/91	4/19/91	3	COOK, JOHN P	AK ANTHROPOLOGICAL ASSN	CAMPBELL, THOMAS A	NOAA
38	4/16/91	4/19/91	3	ELI, TARA W		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
39	4/17/91	4/19/91	3	SCHLEICH, LEY		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
40	4/17/91	4/19/91	4	GRISCO, MARY	NATL PARKS & CONSERV ASSN	CAMPBELL, THOMAS A	NOAA
41	4/17/91	4/19/91	3	SABLOFF, JEREMY A RICE, PRUDENCE	SOCIETY AMER ARCHAEOLOGY SOCIETY AMER ARCHAEOLOGY	CAMPBELL, THOMAS A	NOAA
42	4/18/91	4/19/91	4	DETTLOFF, GRETCHEN JM		CAMPBELL, THOMAS A	NOAA
43	4/18/91	4/19/91	13	MARTIN, TIM		HOLLAND, RUSSEL	US DIST COURT ALASKA
44	4/18/91	4/19/91	1	PAVIA, CLARE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
45	4/18/91	4/19/91	2	TOTEMOFF, DARRELL J	CHENEGA BAY IRA COUNCIL	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
46	4/18/91	4/19/91	6	DOHENY, DAVID A	NATL TRUST HIST PRESERVAT	CAMPBELL, THOMAS A	NOAA
47	4/18/91	4/19/91	3	GUARINI, FRANK J	U.S. CONGRESS	HOLLAND, RUSSEL	US DIST COURT ALASKA
48	4/18/91	4/19/91	25	FLYNN, CHARLES P OLSON, RONALD L	BURR, PEASE, & KURTZ MUNGER, TOLLES, & OLSON ALYESKA	HERMAN, BARBARA	US DIST COURT ALASKA ALASKA ATTORNEY GENERAL
49	4/18/91	4/19/91	23	WOLF, DOUG OLSON, ERIK	NATL WILDLIFE FEDERATION	CAMPBELL, THOMAS A	NOAA
50	4/18/91	4/19/91	41	CHASIS, SARAH	NAT RESOURCES DEF COUNCIL DEFENDERS OF WILDLIFE GREENPEACE NATL AUDUBON SOCIETY AK CENTER FOR ENVIRONMENT SIERRA CLUB SIERRA CLUB LEG DEF FUND TRUSTEES FOR ALASKA		

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51	4/18/91	4/19/91	11	CHASIS, SARAH ADLER, ROBERT JORGENSEN, ERIC	NAT RESOURCES DEF COUNCIL NAT RESOURCES DEF COUNCIL SIERRA CLUB AK CENTER FOR ENVIRONMENT DEFENDERS OF WILDLIFE GREENPEACE NATIONAL AUDUBON SOCIETY N AK ENVIRONMENTAL CENTER PWS CONSERVATION ALLIANCE TRUSTEES FOR ALASKA		
52	4/18/91	4/19/91	5	JEFFREYS, KENT	COMPETITIVE ENTERPRISE IN		NOAA STATE OF ALASKA
53	4/18/91	4/19/91	117	COHEN, JERRY S OESTING, DAVID W COWLES, MACON BERGER, HAROLD MONTAGUE, H LADDIE SIEGEL, JANICE KAHANA, PETER R	COHEN MILSTEIN DAVIS WRIGHT TREMAINE TRIAL LAWYERS PUB JUSTICE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE SONOSKY CHAMBERS DICKSTEIN SHAPIRO CASEY GERRY STOLL STOLL BERNE LOKTING ALASKA NATIVE CLASS COMMERCIAL FISHING CLASS AREA BUSINESS CLASS PROPERTY OWNER CLASS CANNERY AND SEAFOOD EMPLY	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
54	4/18/91	4/19/91	22	HAUSFIELD, MICHAEL D MASON, GARY E MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS ALASKA NATIVE CLASS	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
55	4/16/91	4/19/91	71	FORTIER, SAMUEL	FORTIER & MIKKO CHENAGA BAY CORP PORT GRAHAM CORP ENGLISH BAY CORP		US DIST COURT ALASKA
56	4/16/91	4/19/91	10	MCCALLION, KENNETH F PERSKY, BERNARD JOHNSON, JAMES W GARGAN, TERENCE KENDE, CHRISTOPHER B PETUMENOS, TIMOTHY J FORTIER, SAMUEL	SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN HILL BETTS & NASH HOLTZMANN WISE & SHEPARD BIRCH HORTON FORTIER & MIKKO CHUGACH ALASKA CORP CHENAGA CORP PORT GRAHAM CORP ENGLISH BAY CORP TATITLEK CORP EYAK CORP	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL

COMMENT NUMBER	COMMENT DATE	RECEIVED BY CACI	NBR PGS	AUTHOR NAME	AUTHOR ORGANIZATION	ADDRESSEE NAME	ADDRESSEE ORGANIZATION
57	4/17/91	4/19/91	4	RAYNOR, TED POIROT, PATRICE POIROT, STEVE FAUSSETT, THOMAS P ROME, JONATHAN K PARKHURST, DAVE DAY, VERENA DAY, ROBERT A LIBENSON, SUE WOOD, KAREN WOOD, RUTT EAMES, CLIFF MONTESANO, PETER JETTAR, KAREN LAWSON, CAROLE HENRY, HAROLD CANADY, SHER L DEAN, SHERYL		CAMPBELL, THOMAS A	NOAA
58	4/07/91	4/23/91	2	MCKAY, THOMAS W		CAMPBELL, THOMAS A	NOAA
59	4/12/91	4/23/91	1	SMITH, CARYN		CAMPBELL, THOMAS A	NOAA
60	4/12/91	4/23/91	1	BERGLAND, LAWRENCE		CAMPBELL, THOMAS A	NOAA
61	4/12/91	4/23/91	2	MEGANACK, WALTER R			LEGISLATORS
62	4/13/91	4/23/91	2	NISHIMOTO, MIKE		CAMPBELL, THOMAS A	NOAA
63	4/15/91	4/23/91	3	ARUNDALE, WENDY H	UNIV OF ALASKA FAIRBANKS	CAMPBELL, THOMAS A HERMAN, BARBARA	NOAA ALASKA ATTORNEY GENERAL
64	4/15/91	4/23/91	2	HARRISON, DAVID	CHICKALOON VILLAGE	HOLLAND, RUSSEL	US DIST COURT ALASKA
65	4/15/91	4/23/91	1	PETTY, CLARENCE		CAMPBELL, THOMAS A	NOAA
66	4/16/91	4/23/91	1	MACK, NADINE V		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
67	4/19/91	4/23/91	7	LAKOSH, THOMAS A			US DIST COURT ALASKA
68	4/19/91	4/24/91	6	LEGHORN, KEN S	ALASKA DISCOVERY	HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
69	4/12/91	4/24/91	1	PARSONS, GAIL		HOLLAND, RUSSEL	US DIST COURT ALASKA
70	4/16/91	4/24/91	1	JANKA, DAVID P		HERMAN, BARBARA CAMPBELL, THOMAS A	ALASKA ATTORNEY GENERAL NOAA
71	4/08/91	4/25/91	37	MILLER, GEORGE	US CONGRESS	HOLLAND, RUSSEL SPORKIN, STANLEY	US DIST COURT ALASKA US DIST COURT DC
72	4/12/91	4/25/91	13	HERTEL, DENNIS M STUDDS, GERRY E HUGHES, WILLIAM J	US CONGRESS US CONGRESS US CONGRESS	HOLLAND, RUSSEL	US DIST COURT ALASKA
73	4/16/91	4/25/91	75	MASON, GARY E HAUSFELD, MICHAEL D COHEN, JERRY S MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS CHENEGA BAY PORT GRAHAM ENGLISH BAY LARSEN BAY KARLUK ALASKA NATIVE CLASS		US DIST COURT DC

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INVENTORY OF COMMENTS ON THE PROPOSED CONSENT DECREE

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COMMENT NUMBER	COMMENT DATE	RECEIVED BY CACI	NBR PGS	AUTHOR NAME	AUTHOR ORGANIZATION	ADDRESSEE NAME	ADDRESSEE ORGANIZATION
74	4/18/91	4/25/91	6		PESTICIDE ACTION NETWORK INTL INDIAN TREATY CNCL ABALONE ALLIANCE COALITION FOR OUR EARTH WEST COUNTY TOXICS COAL S & MESO AMER INDIAN CTR ALASKA ACTION GROUP	HOLLAND, RUSSEL SPORKIN, STANLEY	US DIST COURT ALASKA US DIST COURT DC
75	4/19/91	4/25/91	2	MARLOW, KERRIE		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL
76	3/04/91	4/25/91	3	KONIGSBERG, JAN	ALASKA CONSERVATION FOUND	HICKEL, WALTER	GOVERNOR OF ALASKA
77	4/19/91	4/25/91	2	SHERIDAN, RUTH		HERMAN, BARBARA	ALASKA ATTORNEY GENERAL

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SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE

Prepared by CACI, Inc. - COMMERCIAL

Submitted: April 25, 1991

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
(Sorted by Comment Number)

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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
1	UNDATED	CELEY, JERRY		6766 DOUBLE TREE COURT ANCHORAGE, AK 99516	FAVORS	GENERAL

SUMMARY:

BELIEVES ALASKA DEC WAS MORE AT FAULT THAN EXXON AND THAT PROPOSED SETTLEMENT SHOULD BE ACCEPTED BECAUSE STATE AND FEDERAL GOVERNMENTS "MADE OUT LIKE BANDITS."

2	3/04/91	LUTTRELL, W MARK		BOX 511 SEWARD, AK 99664	OPPOSES	GENERAL SCIENCE
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SUMMARY:

BELIEVES FINANCIAL PROVISIONS FOR RESTORATION SETTLEMENT ARE INADEQUATE AND FINES IMPOSED ON EXXON ARE TOO LOW TO BE A SUFFICIENT PENALTY; AGREES WITH PROVISION FOR REOPENING SETTLEMENT IF ADDITIONAL DAMAGES ARE DISCOVERED BUT BELIEVES MAXIMUM (\$100 MILLION) IS TOO LOW; BELIEVES NO DOLLAR LIMIT ON THESE DAMAGES SHOULD BE SET, BUT A TIME LIMIT IMPOSED INSTEAD; EMPHASIS SHOULD BE ON RESTORATION AND NOT ON CLEANUP; REIMBURSEMENT FOR CLEANUP SHOULD BE IN ADDITION TO AND SEPARATE FROM RESTORATION MONEY; BELIEVES STATE SHOULD RELEASE SCIENTIFIC STUDIES ON DAMAGES TO NATURAL RESOURCES (NOT ADDRESSED IN PROPOSED SETTLEMENT), IF THE STATE WAS IN ERROR IT SHOULD BE HELD ACCOUNTABLE; 30 DAY PUBLIC COMMENT PERIOD IS INSUFFICIENT; STATE AND FEDERAL GOVERNMENTS SHOULD BE REQUIRED (NOT MERELY PERMITTED) TO WITHDRAW THEIR CONSENT TO THE AGREEMENT IF THE ALASKA STATE LEGISLATURE HAS NOT APPROVED THE AGREEMENT AS WRITTEN; BELIEVES TRUSTEES SHOULD BE REQUIRED TO ESTABLISH A PUBLIC ADVISORY GROUP TO ASSIST IN THE INJURY ASSESSMENT AND RESTORATION PROCESS; FEELS A REOPENER CLAUSE SHOULD BE ADDED ALLOWING THE GOVERNMENTS TO SUE IF UNKNOWN DAMAGES ARE DISCOVERED OR CRIMINAL OR CIVIL EVIDENCE ARISES IN THE FUTURE.

3	3/04/91	LUTTRELL, W MARK		BOX 511 SEWARD, AK 99664	OPPOSES	GENERAL SCIENCE
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DUPLICATE OF #2 SENT TO BARBARA HERMAN

4	3/21/91	SANDERS, ROBERT B OPSTAD, ERIC	AMER INST PROF GEOLOGISTS AMER INST PROF GEOLOGISTS	11661 ROCKRIDGE DRIVE ANCHORAGE, AK 99516	OPPOSES	SCIENCE
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SUMMARY:

THE ALASKA SECTION OF THE AIPG OPPOSES THE SETTLEMENT AGREEMENT'S PROVISION NOT TO RELEASE SCIENTIFIC STUDIES REGARDING THE OIL SPILL TO THE PUBLIC. THE AIPG WOULD LIKE THE PROVISION DELETED FROM THE SETTLEMENT BECAUSE: 1) THE STUDIES WERE UNDERTAKEN IN THE INTEREST OF THE PUBLIC AND THE FUTURE SAFETY OF THE ENVIRONMENT. 2) THE STUDIES ARE SUBJECT TO DISCLOSURE THROUGH FOIA SINCE THEY WERE MOSTLY FUNDED OR SUPPORTED BY THE FEDERAL GOVERNMENT. 3) THE RESULTS OF SOME OF THE STUDIES ARE CONTRACTUALLY REQUIRED TO BE PUBLISHED BECAUSE THEY WERE CONDUCTED UNDER NSF AND PRIVATE GRANTS. 4) THE DISCOVERY PROCESS SHOULD EFFECTIVELY UNMASK THESE STUDIES IN THE EVENT OF A LAWSUIT.

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SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
(Sorted by Comment Number)

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COMMENT NUMBER	DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
5	3/24/91	FULLER, FLETCHER G		6630 ASKELAND DRIVE ANCHORAGE, AK 99507	OPPOSES	GENERAL

SUMMARY:

OPPOSED TO PROPOSED SETTLEMENT, BELIEVES EXXON'S ACTIONS ARE MOTIVATED SOLELY BY ECONOMIC CONSIDERATIONS, BELIEVES CASE SHOULD GO TO TRIAL.

6	3/25/91	MOERLEIN, GEORGE A		7300 O'MALLEY ROAD ANCHORAGE, AK 99516	FAVORS	GENERAL
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SUMMARY:

SEES NO USEFUL PURPOSE IN CONTINUING THE EXXON CASE, BELIEVES THAT THE SETTLEMENT SHOULD BE ACCEPTED.

7	3/26/91	GIGLER, ROBERT A	GREENPEACE ACTION INTL	7447 O'BRIEN STREET ANCHORAGE, AK 99507	NO VIEW	GENERAL
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SUMMARY:

DOES NOT COMMENT ON PROPOSED SETTLEMENT; BELIEVES THE GROUNDING WAS DELIBERATE AND INTENTIONAL.

8	3/27/91	MARTIN, TIM		7100 LAKE OTIS #37 ANCHORAGE, AK 99507	OPPOSES	GENERAL
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SUMMARY:

BELIEVES THAT THE GROUNDING WAS INTENTIONAL AND THAT FAR MORE OIL WAS LOST THAN REPORTED, WANTS TO "POSTPONE" THE PROPOSED SETTLEMENT.

9	3/27/91	MARTIN, TIM		7100 LAKE OTIS #37 ANCHORAGE, AK 99507	OPPOSES	GENERAL
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DUPLICATE OF #8 SENT TO JUDGE RUSSEL HOLLAND

10	3/28/91	HOROWITZ, ALAN		RURAL FREE DELIVERY AMCHITKA ISLAND, AK 98796	OPPOSES	GENERAL
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SUMMARY:

REQUESTS THAT THE STATE AND FEDERAL GOVERNMENTS WITHDRAW FROM THE NEGOTIATED SETTLEMENT AND RE-NEGOTIATE A SETTLEMENT WHICH WILL ASSURE IMMEDIATE PAYMENT OF THE ENTIRE SUM, FEELS THAT THE AGREED AMOUNT OF THE SETTLEMENT IS TOO SMALL AND THAT ALASKANS WILL NOT BENEFIT FROM THE PAYMENTS.

11	3/28/91	HANSBERRY, STEVE		5909 NORTH MICHIGAN GLADSTONE, MO 64118	NO VIEW	SCIENCE
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SUMMARY:

DOES NOT COMMENT ON PROPOSED SETTLEMENT; WANTS NOAA TO RELEASE RESULTS OF ITS RESEARCH ON SPILL.

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SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
12	3/29/91	FOSTER, JERRY		4241 BRIDLE CIRCLE ANCHORAGE, AK 99517	FAVORS	GENERAL

SUMMARY:

FULLY FAVORS THE SETTLEMENT, IS DISAPPOINTED IN THE WAY THE EXXON VALDEZ PROCEEDINGS HAVE PROGRESSED SINCE THE OIL SPILL, PARTICULARLY THE ROLE OF THE ALASKA STATE LEGISLATURE.

13	4/02/91	SARGENT, NEIL A		303 WILSON STREET KODIAK, AK 99615	NO VIEW	DOI NOAA
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SUMMARY:

EXPRESSES CONCERN ABOUT THE EFFECT OF THE OIL SPILL ON HIS PROPERTY (LOCATED ON SHUYAK ISLAND) AND SURROUNDING AREAS, FEELS THAT THE OIL SPILL HAS CONTRIBUTED TO THE DIMINISHING BIRD POPULATIONS (LOONS, SWANS, AND PIGEONS) IN THE AREA, AND THAT THE OIL SPILL'S CONTAMINATION OF THE LAND HAS AFFECTED THE MIGRATORY PATTERN OF BIRDS THAT STOP AT SHUYAK ISLAND WHILE TRAVELING THROUGH THE GULF OF ALASKA, ALONG THE SOUTHERN KENAI PENINSULA.

14	4/03/91	FULLETON, CHARLES A		HC 80 BOX 210 CHUGLAK, AK 99567	OPPOSES	GENERAL
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SUMMARY:

FINDS THE AMOUNT OF THE SETTLEMENT SATISFACTORY; STRONGLY OPPOSES THE SETTLEMENT BECAUSE IT BENEFITS EXXON AND NOT THE STATE OF ALASKA, FEELS THE NATIVES OF ALASKA SHOULD HAVE FINAL SAY IN HOW THE MONEY IS USED, DOES NOT WANT ALASKA'S LEGISLATORS INVOLVED IN THE SETTLEMENT BECAUSE HE MISTRUSTS THEM WITH ANY AMOUNT OF MONEY, FEELS THAT THE FEDERAL GOVERNMENT SHOULD BE INVOLVED ONLY TO THE EXTENT OF ENSURING THAT LAWS AND DECISIONS WHICH PROTECT FEDERAL PROPERTY, MARINE MAMMALS, AND BIRDS ARE UPHELD.

15	4/08/91	BECK, MICHAEL E		3210 WYOMING DRIVE ANCHORAGE, AK 99517	FAVORS	GENERAL
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SUMMARY:

BELIEVES THAT THE SETTLEMENT IS ACCEPTABLE, AND THAT THE STATE AND FEDERAL GOVERNMENTS WOULD GAIN NOTHING BY TAKING EXXON TO COURT. HIS MAIN CONCERN IS WHO SPENDS THE MONEY ALLOCATED IN THE SETTLEMENT. HE DOES NOT WANT THE STATE OF ALASKA'S LEGISLATURE TO HAVE ANYTHING TO DO WITH DISPENSING THE MONEY STIPULATED IN THE SETTLEMENT BUT ACCEPTS THE IDEA OF A COMMITTEE OF SEVEN MEMBERS, CONSISTING OF THREE STATE REPRESENTATIVES, THREE FEDERAL REPRESENTATIVES, AND ONE EXXON REPRESENTATIVE, WHO WOULD HANDLE THE SETTLEMENT, FEELS THAT RESIDENTS OF ALASKA SHOULD BE ABLE TO PROVIDE INPUT INTO THIS COMMITTEE.

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SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
(Sorted by Comment Number)

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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
16	4/11/91	NICHOLS, AGNES N FAULKNER, PATRICIA A	NATIVE VILLAGE OF EYAK NATIVE VILLAGE OF EYAK	BOX 1388 CORDOVA, AK 99574	OPPOSES	DOI SCIENCE

SUMMARY:

COMMENTS FAXED TO NOAA BY LLOYD MILLER OF THE LAW FIRM OF SONOSKY, CHAMBERS, SACHSE, MILLER AND MUNSON. OBJECTS TO PROPOSED SETTLEMENT BECAUSE IT DID NOT PROVIDE COMMUNITIES DIRECTLY AFFECTED BY SPILL AN OPPORTUNITY TO ASSESS THEIR DAMAGES AND HAVE ACCESS TO SCIENTIFIC DATA. SETTLEMENT INADEQUATE IN SCOPE AND MONETARY VALUE, DOES NOT ADDRESS SOCIAL, CULTURAL, COMMUNITY DAMAGES.

17 4/09/91 KNOELL, JOHN D 617 BELLEVUE WAY SE BELLEVUE, WA 98004 OPPOSES GENERAL

SUMMARY:

RETIRED FROM EXXON AFTER 30 YEARS OF SERVICE; IS PROUD OF EXXON'S IMMEDIATE ACCEPTANCE OF RESPONSIBILITY FOR OIL SPILL AND VIGOROUS WAY IN WHICH IT UNDERTOOK CLEANUP AND VOLUNTARY PAYMENT OF DAMAGES; BELIEVES SETTLEMENT IS UNFAIR TO EXXON; BELIEVES CRIMINAL CHARGES ARE DEVOID OF MERIT AND WERE CALCULATED TO COERCE EXXON TO SETTLE; BELIEVES SETTLEMENT IS "EXTORTION BY GOVERNMENT."

18 4/09/91 MALCHOFF, MARY P.O. BOX PGM PORT GRAHAM, AK 99603 OPPOSES GENERAL
DOI

SUMMARY:

OPPOSED TO THE PROPOSED SETTLEMENT; BELIEVES SETTLEMENT MONIES SHOULD BE USED TO CLEAN THE AFFECTED AREAS AND TO RESTORE SUBSISTENCE FISH, RATHER THAN ON STUDIES; BELIEVES SOMETHING SHOULD BE DONE TO RETRACT THE MAPS THAT IDENTIFY ARCHAEOLOGY ON NATIVE LANDS; BELIEVES ANY MONIES THAT WERE COLLECTED ON LANDS STILL PENDING OWNERSHIP SHOULD BE PUT IN ESCROW.

19 4/09/91 WYSONG, RICHARD J P.O. BOX 992 GIRDWOOD, AK 99587 OPPOSES GENERAL

SUMMARY:

OPPOSED TO THE PROPOSED SETTLEMENT; BELIEVES IT LETS EXXON OFF TOO EASILY, ALLOWS EXXON AND STATE OF ALASKA TO FORGET THAT THERE WAS A SPILL.

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
20	4/09/91	MCMULLEN, ELENORE	PORT GRAHAM VILLAGE	P.O. BOX PGM PORT GRAHAM, AK 99603	OPPOSES	DOI SCIENCE

SUMMARY:

OPPOSED TO THE PROPOSED SETTLEMENT; REPRESENTS NATIVE SUBSISTENCE USERS OF THE VILLAGE; CONCERNED ABOUT THE ADEQUACY OF THE \$900 MILLION WHEN PAID OVER TIME AND ABOUT THE LACK OF PUBLIC DISCLOSURE OF THE SCIENTIFIC DATA AND ECONOMIC STUDIES; NATIVE SUBSISTENCE USERS WERE NOT GUARANTEED INVOLVEMENT IN THE RESTORATION EFFORTS; THE STATE AND FEDERAL GOVERNMENTS FAILED TO PROTECT NATIVE AMERICANS' INTERESTS BY NOT INCLUDING THEM IN THE SETTLEMENT PROCESS AND BY NOT PROTECTING THE VICTIMS OF THE SPILL; CRITICISM OF NATIVES' LEGAL RIGHT TO SUE FOR NATURAL RESOURCE DAMAGES SHOULD NOT BE INCLUDED IN CONSENT DECREE; THE SETTLEMENT IS REALLY "HUSH MONEY" IF SCIENTIFIC STUDIES ARE HELD BACK; OBJECTS TO LACK OF DUE PROCESS PROTECTION IN DECISIONS REGARDING HOW RESTORATION FUNDS ARE SPENT AND LACK OF CLEAR MECHANISM FOR MEMBERS OF THE PUBLIC TO APPEAL TRUSTEES' RESTORATION DECISIONS; OBJECTS TO INADEQUACY OF \$100 MILLION REOPENER PROVISION.

21	4/10/91	MCELROY, MARY JOE		HC 2 BOX 705 KASILOF, AK 99610	NO VIEW	GENERAL
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SUMMARY:

BELIEVES MUCH OF THE DAMAGE TO THE ENVIRONMENT CAUSED BY THE SPILL COULD HAVE BEEN PREVENTED IF OIL COMPANIES HAD PROVIDED EQUIPMENT TO CONTAIN THE SPILL WITHIN THE FIRST SIX TO TWELVE HOURS; OIL INDUSTRY SHOULD BE REQUIRED TO INSTALL EQUIPMENT THAT CAN BE MOVED RAPIDLY TO ANY SPILL AREA; PLANS SHOULD BE READY TO IMPLEMENT IMMEDIATELY WHEN A SPILL OCCURS; BELIEVES THAT EXXON SPENT A LOT OF MONEY ON CLEANUP WHICH DID NOT IMPROVE THE ENVIRONMENT, BUT CAUSED CONFLICTS BETWEEN THOSE EMPLOYED IN CLEANUP AND THOSE WHO WERE NOT.

22	4/10/91	JOHNSON, JIMMY		P.O. BOX 368 PALMER, AK 99645	OPPOSES	GENERAL NOAA
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SUMMARY:

NATIVE ALASKAN AND COMMERCIAL FISHERMAN; BELIEVES PROBLEMS MAY SHOW UP IN THE FUTURE BECAUSE OF THE SPILL; HAS DOUBTS ABOUT THE RECOVERY OF SOME FISHERIES AS WELL AS SUBSISTENCE PROBLEMS; THERE SHOULD BE NO SETTLEMENT UNTIL "THE LITTLE PEOPLE" ARE TAKEN CARE OF, THEY WILL HAVE A HARD TIME WORKING OUT THEIR CLAIMS AGAINST EXXON ONCE THE LARGE PARTIES HAVE SETTLED.

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
23	4/11/91	FORTIER, SAMUEL J	FORTIER & MIKKO CHENEGA CORP PORT GRAHAM CORP ENGLISH BAY CORP	2550 DENALI STREET #604 ANCHORAGE, AK 99503	OPPOSES	DOI AGR SCIENCE

SUMMARY:

VILLAGE CORPORATIONS OBJECT TO DEPARTMENT OF INTERIOR (DOI) DELEGATING TO NOAA ITS DUTY TO CONSULT WITH VILLAGE CORPORATIONS AND OBJECT TO DOI ENTERING INTO SETTLEMENT AGREEMENT BEFORE CONSIDERING THEIR VIEWS; DOI'S FAILURE TO INVOLVE VILLAGE CORPORATIONS IN SETTLEMENT DISCUSSIONS CONCERNING LANDS WITHIN INTERIM JURISDICTION AS WELL AS NATURAL RESOURCES DAMAGED BY EXXON VIOLATES FEDERAL LAWS; OBJECTS TO THE STATE OF ALASKA'S INVOLVEMENT IN ALLOCATION OF RESOURCES RECOVERED IN SETTLEMENT AND TO STATE OF ALASKA'S INVOLVEMENT IN THE SETTLEMENT PROCESS; VILLAGE CORPORATIONS REQUESTED TO BE KEPT ADVISED AS TO PROGRESS OF SETTLEMENT, AND WERE IGNORED UNTIL SETTLEMENT WAS COMPLETED; VILLAGE CORPORATIONS ARE UNABLE TO DETERMINE WHETHER SUMS RECOVERED ARE SUFFICIENT TO COMPENSATE FOR DAMAGE TO NATURAL RESOURCES, WHETHER LOSS IS TEMPORARY OR PERMANENT, WHETHER ECOSYSTEMS POLLUTED BY SPILL ARE ABLE TO RECOVER, AND WHEN; CONSULTATION IS INADEQUATE BECAUSE IT DID NOT INCLUDE SCIENTIFIC STUDIES CONCERNING THESE ISSUES; ATTORNEY GENERAL FOR THE STATE OF ALASKA HAS CONFLICT OF INTEREST BECAUSE OF ONGOING BUSINESS RELATIONSHIP WITH DEFENDANTS AND MAY GAIN MONETARILY FROM SETTLEMENT; PARAGRAPH 13(C) OF AGREEMENT COMPROMISES RIGHTS OF VILLAGE CORPORATIONS BY IGNORING OBLIGATIONS OF FEDERAL GOVERNMENT TO THEM (PROPOSED AMENDMENT OF PARAGRAPH 13(C) IS INCLUDED); LIMITATIONS STATED AT PARAGRAPH 13(B) ARE TOO NARROWLY DEFINED; VILLAGE CORPORATIONS ARE HOLDERS OF THE SURFACE ESTATE, AND ARE CONCERNED WITH PRESERVING USE OF LANDS FOR TRADITIONAL LIFESTYLES AND SUBSISTENCE ECONOMIES; ANCSA SECTION 14(F), WITH 1976 AMENDMENT, MUST BE CONSTRUED TO PLACE IN THE VILLAGE CORPORATION THE RIGHT TO PRESERVE THE USE OF THE LANDS AND ITS RESOURCES FOR TRADITIONAL LIFESTYLES AND SUBSISTENCE ECONOMY; THE VILLAGE CORPORATIONS HAVE SUFFERED ENORMOUS LOSSES: 70% OF CHENEGA CORPORATION'S COASTLINE IS OILED, HIGHLY TOXIC OILING OCCURRED ON PORT GRAHAM AND ENGLISH BAY CONVEYED LANDS; CONGRESSIONAL EXPECTATION IS THAT THE SECRETARY OF THE INTERIOR WOULD PROTECT SUBSISTENCE USERS THROUGH EXISTING AUTHORITY (INCLUDES PROPOSED AMENDMENT TO PARAGRAPH 13(B) OF SETTLEMENT AGREEMENT); OBJECTS TO DEFINITION OF NATURAL RESOURCES; SCIENTIFIC STUDIES ARE ESSENTIAL TO ASCERTAIN THE EXTENT OF THE DAMAGES; THE STATE OF ALASKA HAS INFORMED VILLAGE CORPORATIONS THAT IT WILL NOT BE UNDERTAKING ANY FURTHER OIL REMOVAL WORK, WHICH MEANS RESOURCE RESTORATION MUST DEPEND ON SPECIES HARDY ENOUGH TO WITHSTAND OIL POLLUTION; DAMAGED ECOSYSTEMS APPURTENANT TO VILLAGE CORPORATIONS' PROPERTY INTERESTS PREVENT THEM FROM SAFEGUARDING SUBSISTENCE LIFESTYLES, ECONOMIES, AND CULTURAL VALUES; AGREEMENT FAILS TO ADDRESS FEDERAL GOVERNMENT'S OBLIGATION WITH REGARD TO ESCROW OF DAMAGES MONEY, AND DOES NOT PROVIDE ANY METHODOLOGY FOR RESTORATION WITH REGARD TO LANDS AND RESOURCES IN THE INTERIM JURISDICTION, EXCEPT IN CONJUNCTION WITH THE STATE, WHICH HAS BECOME ADVERSE TO OIL RECLAMATION AND PRESERVATION OF THE NATIVE LIFESTYLES; THERE IS NO MEANINGFUL PARTICIPATION BY VILLAGE CORPORATIONS WITH REGARD TO PRESENT OR FUTURE RIGHTS AND LEGAL OBLIGATIONS; STATE CANNOT ACT AS TRUSTEE WITH REGARD TO LANDS SELECTED NOT CONVEYED TO VILLAGE CORPORATIONS; SETTLEMENT AGREEMENT AND MOA IGNORE REQUIREMENTS OF CERCLA AS IT RELATES TO THE CLEAN WATER ACT; MOA FAILS TO ADDRESS DUTIES OF FEDERAL AND STATE TRUSTEES TO SETTLE CLAIMS FOR "IMPACTED ECOSYSTEMS;" DOI SHOULD NOT ENTER INTO SETTLEMENT AGREEMENT UNTIL ADEQUATE CONSULTATION HAS OCCURRED; DEPARTMENT OF AGRICULTURE, AS HOLDER OF INTERIM JURISDICTION LANDS AND RESOURCES SELECTED BY CHENEGA CORPORATION, HAS FAILED TO ACKNOWLEDGE CHENEGA'S LETTER, AND HAS NOT CONSULTED WITH CHENEGA.

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
24	4/12/91	MCCOWAN, BRENT W		560 N GOWER STREET LOS ANGELES, CA 90004	OPPOSES	SCIENCE GENERAL

SUMMARY:

BELIEVES THAT IT WAS UNWISE AND IRRESPONSIBLE FOR THE STATE OF ALASKA NOT TO RELEASE SCIENTIFIC AND ECONOMIC DAMAGE INFORMATION REGARDING THE SPILL; RELEASE WOULD PROVIDE ANSWERS FOR A COMPREHENSIVE PUBLIC EVALUATION OF THE PROBLEM; CALLS FOR A PUBLIC ADVISORY GROUP WITH MEMBERS FROM THE ENVIRONMENTAL COMMUNITY AND SPILL-AFFECTED COMMUNITIES TO PARTICIPATE IN DISCUSSIONS WITH THE TRUSTEES TO INSURE PROPER SPENDING OF SETTLEMENT MONIES; ANY DETERMINATION ON THE SETTLEMENT SHOULD BE SUSPENDED UNTIL SCIENTIFIC DATA HAS BEEN RELEASED AND THE PUBLIC AND LEGISLATURE HAVE HAD TIME TO REVIEW IT.

25	4/14/91	WORKMAN, WILLIAM	UNIV OF ALASKA ANCHORAGE	3310 E 41ST AVENUE ANCHORAGE, AK 99508	OPPOSES	GENERAL
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SUMMARY:

REQUESTS THAT ARCHAEOLOGICAL SITES BE INCLUDED IN THE DEFINITION OF NATURAL RESOURCES (SECTION 6C) IN THE SETTLEMENT AGREEMENT. FEELS THAT NO FUNDS GENERATED BY THE AGREEMENT WILL BE USED FOR THE RESTORATION OF ARCHAEOLOGICAL SITES BECAUSE THEY HAVE BEEN EXCLUDED AS NATURAL RESOURCES.

26	4/14/91	WERNER, HOLLY L		1500 RUSSIAN JACK DR #40 ANCHORAGE, AK 99508	OPPOSES	SCIENCE
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SUMMARY:

REQUESTS THAT JUDGE HOLLAND SUSPEND THE SETTLEMENT UNTIL SCIENTIFIC AND ECONOMIC DATA ARE RELEASED TO THE PUBLIC; BELIEVES THAT THE SETTLEMENT WILL NOT BENEFIT THE STATE AND PEOPLE OF ALASKA.

27	4/15/91	MORIARTY, MICHELE		HC 64 BOX 26 COOPER LANDING, AK 99572	OPPOSES	SCIENCE GENERAL
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SUMMARY:

BELIEVES SCIENTIFIC AND ECONOMIC DATA SHOULD HAVE BEEN RELEASED. WANTS THE PUBLIC AND THE LEGISLATURE TO PARTICIPATE IN HOW THE MONIES OF THE PROPOSED SETTLEMENT ARE SPENT. SUGGESTS THE SETTING UP OF A LEGISLATIVE-APPOINTED PUBLIC ADVISORY GROUP WITH MEMBERS FROM THE ENVIRONMENTAL COMMUNITY AND SPILL-AFFECTED COMMUNITIES WHOSE COMMENTS LEGALLY BIND THE TRUSTEE COUNCIL.

28	4/15/91	MUNDY, DAVE		HC 64 BOX 26 COOPER LANDING, AK 99572	OPPOSES	SCIENCE GENERAL
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SUMMARY:

BELIEVES SCIENTIFIC AND ECONOMIC DATA SHOULD HAVE BEEN RELEASED. WANTS THE PUBLIC AND THE LEGISLATURE TO PARTICIPATE IN HOW THE MONIES OF THE PROPOSED SETTLEMENT ARE SPENT. SUGGESTS THE SETTING UP OF A LEGISLATIVE-APPOINTED PUBLIC ADVISORY GROUP WITH MEMBERS FROM THE ENVIRONMENTAL COMMUNITY AND SPILL-AFFECTED COMMUNITIES WHOSE COMMENTS LEGALLY BIND THE TRUSTEE COUNCIL.

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29	4/15/91	VIERGUTZ, HERBERT A		P.O. BOX 201522 ANCHORAGE, AK 99520	OPPOSES	SCIENCE GENERAL

SUMMARY:

OPPOSES THE SETTLEMENT BECAUSE SCIENTIFIC AND ECONOMIC DATA HAVE NOT BEEN RELEASED TO THE PUBLIC. FEELS THE SETTLEMENT SHOULD BE REJECTED BECAUSE IT IS A VERY POOR DEAL FOR THE STATE OF ALASKA. SUGGESTS THE SETTING UP OF A LEGISLATIVE-APPOINTED PUBLIC ADVISORY GROUP WITH PARTICIPATION FROM THE ENVIRONMENTAL COMMUNITY.

30	4/16/91	JONAS, JULIE		P.O. BOX 772 GIRDWOOD, AK 99587	OPPOSES	SCIENCE GENERAL
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SUMMARY:

BELIEVES SCIENTIFIC AND ECONOMIC DATA SHOULD HAVE BEEN RELEASED. WANTS THE PUBLIC AND THE LEGISLATURE TO PARTICIPATE IN HOW THE MONIES OF THE PROPOSED SETTLEMENT ARE SPENT. SUGGESTS THE SETTING UP OF A LEGISLATIVE-APPOINTED PUBLIC ADVISORY GROUP WITH MEMBERS FROM THE ENVIRONMENTAL COMMUNITY AND SPILL-AFFECTED COMMUNITIES WHOSE COMMENTS LEGALLY BIND THE TRUSTEE COUNCIL.

31	4/16/91	SONNEMAN, JOSEPH A		324 WILLOUGHBY JUNEAU, AK 99801	OPPOSES	GENERAL
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SUMMARY:

OPPOSES THE SETTLEMENT FOR SEVERAL REASONS: 1) IT IS NOT IN THE PUBLIC INTEREST; IT CREATES A ONE-BRANCH FORM OF GOVERNMENT IN WHICH ONLY THE EXECUTIVE BRANCH HAS POWER; BELIEVES THAT GOVERNOR HICKEL AND OTHERS ACTIVELY CREATED A LARGE SUM OF MONEY SUBJECT ONLY TO EXECUTIVE BRANCH CONTROL; 2) THE BENEFITS OF THE SETTLEMENT ARE ILLUSORY: IT WILL NOT END LITIGATION THE WAY A PROPERLY STRUCTURED SETTLEMENT WOULD, INSTEAD THE CONTINUED EXISTENCE OF OUTSTANDING LITIGATION MEANS THAT THE PROPOSED SETTLEMENT DOES NOT ACHIEVE THE ENDS FOR WHICH IT WAS CREATED. 3) BELIEVES ALYESKA RECEIVED TOO GREAT A RELEASE FROM LIABILITY; 4) FEELS THE SETTLEMENT VIOLATES THE STATE'S RIGHT TO APPROPRIATE FUNDS WITHOUT RESTRICTION. INCLUDES FACT SHEET CALENDAR OF SETTLEMENT TALK EVENTS.

32	4/17/91	DEROOS, CAROLYN		14 EUBANK COURT COLUMBIA, MO 65203	FAVORS	SCIENCE
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SUMMARY:

FUNDAMENTALLY AGREES WITH PROPOSED SETTLEMENT; IT SHOULD SAVE PARTIES FURTHER LITIGATION EXPENSES WHILE PROVIDING FUNDS NECESSARY TO DETERMINE LONG-TERM EFFECTS OF SPILL ON PUBLIC RESOURCES; DISAPPOINTED THAT EXXON DID NOT CONTRIBUTE THEIR RESEARCH CONCERNING IMPACTS OF SPILLS TO OSPIC (DEROOS WROTE TO DAVID BUENTE, CHIEF OF ENVIRONMENTAL ENFORCEMENT SECTION, DOJ, IN MAY 1990, EXPRESSING CONCERN THAT SCIENTIFIC DATA HAD NOT BEEN RELEASED TO THE PUBLIC); IS PLEASED THAT THE "OPEN ACCESS DATA STOREHOUSE" WHICH SHE SUGGESTED IN THE MAY 1990 LETTER IS NOW AVAILABLE FOR GOVERNMENT DATA, AND HOPES THAT EXXON IS ENCOURAGED TO CONTRIBUTE THEIR INFORMATION AS WELL; URGES THAT FUNDS BE SET ASIDE FOR ACCUMULATION OF BASELINE DATA ALONG OIL ROUTES IN ALASKA; EXXON SHOULD BE ENCOURAGED TO PARTICIPATE IN FUNDING SUCH A PROJECT; CONCERNED THAT DAMAGE DISCOVERED AFTER THE 10-YEAR RESTORATION PERIOD MAY REMAIN UNCOMPENSATED, CURRENT COMPENSATION MAY NOT BE SUFFICIENT FOR THE IMPACT OF A LOSS OF A PARTICULAR HABITAT.

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33	4/11/91	PARKER, GEOFFREY Y	ADLER, JAMESON & CLARAVAL ALASKA SPORT FISHING ASSN RECREATIONAL PLAINTIFFS AREA BUSINESS CLASS CIVIL PLAINTIFFS (500)	2525 BLUEBERRY ROAD #206 ANCHORAGE, AK 99503	OPPOSES	SCIENCE GENERAL

SUMMARY:

BELIEVES THE DISTRICT COURT SHOULD NOT ALLOW THE FEDERAL AND STATE GOVERNMENTS TO SETTLE WITHOUT ENCOURAGING THE GOVERNMENTS TO PROVIDE AN OPPORTUNITY FOR PUBLIC INTEREST LITIGANTS, AND PROBABLY ALSO PRIVATE CLASS LITIGANTS, TO PARTICIPATE IN SETTLEMENT NEGOTIATIONS. INFORMED PUBLIC COMMENT ON THE SETTLEMENT HAS BEEN THWARTED BY THE WITHHOLDING FROM THE PUBLIC OF THE SCIENCE STUDIES AND THE DAMAGE CALCULATIONS. THE ACT OF WITHHOLDING DESTROYS CONFIDENCE AND WARRANTS THE REJECTION OF THE SETTLEMENT. BELIEVES THE COURT SHOULD APPLY THE ALTERNATIVE FINES ACT (18 USC SECTION 3571(D)), WHICH PERMITS THE COURT TO IMPOSE A FINE UP TO TWICE THE PECUNIARY LOSS RESULTING FROM THE OFFENSE. URGES THE COURT NOT TO ACCEPT THE PLEA AGREEMENT UNTIL THE COURT HAS RECEIVED A SUMMARY OF THE DAMAGE CALCULATION STUDIES. URGES THAT ANY ACCEPTANCE OF THE PLEA AGREEMENT BE CONTINGENT UPON THE SCIENTIFIC AND ECONOMIC STUDIES BEING MADE PUBLIC AND BEING CONTINUED. BELIEVES THE SETTLEMENT REPRESENTS A GROSS VIOLATION OF THE STATE AND FEDERAL GOVERNMENTS' FIDUCIARY OBLIGATIONS AS TRUSTEES FOR THE NATURAL RESOURCES INJURED BY THE OIL SPILL: THE AMOUNT OF THE SETTLEMENT IS NOT BASED ON THE DAMAGE ASSESSMENT DEVELOPED BY THE SCIENTISTS AND ECONOMISTS; WHEN REDUCED TO PRESENT VALUE TERMS, THE AMOUNT OF THE SETTLEMENT "IS GROTESQUELY OUT OF PROPORTION TO ANY REASONABLE ESTIMATE OF THE DAMAGES"; AND THE "GROSS IMBALANCE" BETWEEN THE PRESENT VALUE OF THE SETTLEMENT AND ANY REASONABLE ACCOUNTING OF THE DAMAGES "MAKES A MOCKERY OF THE REOPENER CLAUSE." BELIEVES THE COURT SHOULD STRIKE OUT PARAGRAPH IV B, WHICH ALLOWS THE STATE OF ALASKA TO SPEND MONIES FROM THE CRIMINAL PLEA WITHOUT PUBLIC CHALLENGE, OR JUDICIAL OR ADMINISTRATIVE REVIEW. BELIEVES THE MERITS OF ANY CRIMINAL CASE OR CIVIL PENALTIES AGAINST ALYESKA CANNOT BE DETERMINED WITHOUT COURT PROCEEDINGS, AND THEREFORE EXCULPATION OF ALYESKA SHOULD BE STRICKEN.

34	4/14/91	FISHER, JAMES E		633 HARRIS STREET JUNEAU, AK 99801	OPPOSES	GENERAL
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SUMMARY:

FINDS DEFICIENCIES IN THE SETTLEMENT BECAUSE IT DOES NOT PROVIDE ENOUGH MONEY IN A TIMELY FASHION; IT ALLOWS THE STATE OF ALASKA TO BE SUED; IT APPEARS TO BE POOR PUBLIC POLICY, LEAVING INDIVIDUALLY DAMAGED ALASKAN COMMUNITIES AND PEOPLE TO FEND FOR THEMSELVES AGAINST EXXON. QUESTIONS WHETHER PROCEEDINGS UNDER ALASKA LAW, AND NOT THE CLEAN WATER ACT IN FEDERAL COURT, WOULD GARNER A SUM CLOSER TO THE ACTUAL DAMAGES.

35	4/15/91	HOLT, KATHLEEN		P.O. BOX 794 KASLOF, AK 99610	OPPOSES	GENERAL
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SUMMARY:

QUESTIONS WHY STATE OFFICIALS DID NOT MAKE PUBLIC THE RESULTS OF THE ECONOMIC STUDIES IN ORDER TO ESTABLISH, TO SOME DEGREE, THE DAMAGES DONE TO PRINCE WILLIAM SOUND. BELIEVES COMPLACENCY AND NEGLIGENCE CAUSED THE EXXON VALDEZ OIL SPILL, AND THAT A "WHOPPING FINE" IS NECESSARY TO PROVIDE EXXON (AND THE OTHER OIL COMPANIES) WITH THE INCENTIVE TO ACT RESPONSIBLY IN THE FUTURE. IN REGARD TO THE SETTLEMENT, URGES PUBLIC OFFICIALS TO "THINK THIS OVER AGAIN."

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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
36	4/15/91	MOBLEY, CHARLES M		200 W 34TH STREET #534 ANCHORAGE, AK 99503	OPPOSES	GENERAL

SUMMARY:

REQUESTS THAT CULTURAL RESOURCES, I.E., ARCHAEOLOGICAL RESOURCES, BE INCLUDED IN THE DEFINITION OF NATURAL RESOURCES AS IT IS
DEFINED IN THE SETTLEMENT.

37 4/15/91 COOK, JOHN P AK ANTHROPOLOGICAL ASSN P.O. BOX 230032 ANCHORAGE, AK 99523 OPPOSES GENERAL

SUMMARY:

OPPOSES HOW NATURAL RESOURCES ARE DEFINED IN THE AGREEMENT BECAUSE CULTURAL RESOURCES ARE EXCLUDED. SUGGESTS THAT
ARCHAEOLOGICAL RESOURCES ARE NATURAL RESOURCES AND SHOULD BE EXPLICITLY RECOGNIZED IN THE SETTLEMENT AGREEMENT.

38 4/16/91 ELI, TARA W 4101 UNIVERSITY DRIVE ANCHORAGE, AK 99508 OPPOSES GENERAL
SCIENCE

SUMMARY:

BELIEVES THAT PUBLIC HAD NO MEANINGFUL PARTICIPATION IN THE "ASSESSMENT OF INJURIES, AND DISCUSSION OF RESTORATION", AND
THAT SETTLEMENT AMOUNT WAS "PUNY". PUBLIC SHOULD HAVE ACCESS TO ECONOMIC AND SCIENTIFIC DATA AND HAVE INPUT ON SPENDING
OF FUNDS.

39 4/17/91 SCHLEICH, LEY P.O. BOX 874216 WASILLA, AK 99687 OPPOSES GENERAL
SCIENCE

SUMMARY:

AUTHOR URGES THE SUSPENSION OF SETTLEMENT DECISION FOR LACK OF "PUBLIC STUDY AND INPUT," THE RELEASE OF ECONOMIC AND
SCIENTIFIC STUDIES, AND BETTER PUBLIC PARTICIPATION IN DISBURSEMENT OF SETTLEMENT FUNDS. BELIEVES THAT THE SETTLEMENT IS NOT
IN THE BEST INTERESTS OF ALASKAN CITIZENS FOR THREE REASONS: 1) MONETARY DAMAGES NOT ENOUGH TO COVER COSTS OF CLEAN-UP, LITIGATION,
AND RESEARCH, AS WELL AS ADEQUATE COMPENSATION AND PENALTY; 2) PLAN FOR DECISIONS ON FUND DISBURSEMENT EXCLUDES ADEQUATE PUBLIC
PARTICIPATION; 3) INADEQUATE PROVISION FOR DISASTER PLANNING AND AVOIDANCE.

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40	4/17/91	GRISCO, MARY	NATL PARKS & CONSERV ASSN	P.O. BOX 202045 ANCHORAGE, AK 99520	OPPOSES	DOI SCIENCE

SUMMARY:

NPCA EXPRESSES CONCERN ABOUT "THE FINANCIAL SETTLEMENT, THE EXTENT OF PUBLIC PARTICIPATION, THE EXTENT OF CULPABILITY[,] AND THE PROTECTION AND RESTORATION OF THE NATURAL (INCLUDING ARCHAEOLOGICAL) RESOURCES." BEFORE SETTLEMENT, PUBLIC SHOULD HAVE ACCESS TO FINANCIAL, ECONOMIC, AND SCIENTIFIC DATA, AND OPPORTUNITY TO COMMENT. WITHOUT THIS DATA, PUBLIC HAS NO MEANS TO ASSESS ADEQUACY OF DAMAGES; HOWEVER, THE SCHEDULE OF PAYMENTS WILL EFFECTIVELY REDUCE EXXON'S BURDEN. ASSURANCES OF MEANINGFUL PUBLIC PARTICIPATION HAVE NOT BEEN MET; NEED SPECIFIC GUIDELINES. EXXON AND ALYESKA MUST BE HELD ACCOUNTABLE; NEED FOR "CREATIVE", EFFECTIVE SENTENCES AND INQUIRY REGARDING ALYESKA'S CULPABILITY. "STATE AND FEDERAL AGENCIES MUST ALSO BE HELD ACCOUNTABLE" FOR ANY NEGLIGENCE; NEED TO SEND A "CLEAR MESSAGE" TO INDUSTRY AND GOVERNMENT. "ANY SETTLEMENT SHOULD INCLUDE A STRUCTURE FOR ALLOCATING FUNDS AND CRITERIA FOR WHAT IS TO BE FUNDED."

41	4/17/91	SABLOFF, JEREMY A RICE, PRUDENCE	SOCIETY AMER ARCHAEOLOGY SOCIETY AMER ARCHAEOLOGY	808 17TH STREET NW #200 WASHINGTON, DC 20006	OPPOSES	GENERAL
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SUMMARY:

SAA BELIEVES THAT THE SETTLEMENT SHOULD DEFINE CULTURAL RESOURCES "IN THE SAME CATEGORY AS NATURAL RESOURCES," THAT "CULTURAL RESOURCES SHOULD BE ELIGIBLE FOR...SPECIFIC FUNDING," AND THAT THE EXCLUSION OF CULTURAL RESOURCES FROM THE PROPOSED SETTLEMENT SETS A "DANGEROUS PRECEDENT." IT ASSERTS THAT THE SPILL AND CLEAN-UP HAVE SIGNIFICANTLY DAMAGED ARCHAEOLOGICAL SITES AND ARTIFACTS.

42	4/18/91	DETTLOFF, GRETCHEN JM		2224 EAST CORK STREET KALAMAZOO, MI 49001	OPPOSES	GENERAL
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SUMMARY:

OBJECTS TO VAGUENESS OR INADEQUACY (OR BOTH) OF SEVERAL PROVISIONS AND URGES THE INCLUSION OF AN "OUTRIGHT PENALTY IN THE FORM OF SUBSTANTIAL MONEY DAMAGES, WHICH GOES BEYOND THE 'RESTORATION' PAYMENTS," TO AVOID SENDING THE "WRONG MESSAGE" TO OIL COMPANIES. SPECIFICALLY, BY PARAGRAPH NUMBER: 11(A) NEITHER SPECIFIES RATE AND EXTENT OF CLEAN-UP NOR ASSESSES INTEREST ON EXXON'S OUTSTANDING PAYMENTS, AND IT PROTECTS EXXON TOO BROADLY AGAINST LIABILITY; 11(B) SHOULD ONLY ALLOW CREDITS DIRECTLY RELATED TO CLEAN-UP AND SHOULD GIVE GOVERNMENTS DISCRETION FOR THESE CREDITS; 15 SHOULD ALLOW FOR FUTURE EVIDENCE OF EXXON'S FAULT OR WILLFULNESS; 17 SHOULD SPECIFY NO BURDEN FOR GOVERNMENT IN PROVING CAUSATION OF LOSS, AND LOSS OR DECLINE SHOULD BE "MEASURABLE" NOT "SUBSTANTIAL"; 17(A) SHOULD SPECIFY METHODOLOGY AND PARTY RESPONSIBLE FOR DETERMINING PROPORTION OF RESTORATION COSTS TO BENEFITS; 17(B) VOIDS "POSSIBILITY OF ADDITIONAL PAYMENTS" BY ITS VAGUENESS. OTHER PROVISIONS DESIRED: DISPOSAL PROCEDURES FOR OIL AND CONTAMINATED MATERIALS; FUNDS FOR DEVELOPMENT OF BETTER CLEANUP TECHNOLOGIES; ADDITIONAL PAYMENT FOR ANY FUTURE SPILLS; HIGHER AND CLEARER STANDARD OF CARE.

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43	4/18/91	MARTIN, TIM		7100 LAKE OTIS #37 ANCHORAGE, AK 99507	NO VIEW	GENERAL

SUMMARY:

ADDENDUM TO PREVIOUS COMMENTS (3/27/91). AUTHOR CLAIMS TO HAVE "INDISPUTABLE EVIDENCE THAT THE EXXON VALDEZ WAS INTENTIONALLY GROUNDED," AND THAT "FAR MORE OIL" SPILLED FROM THE TANKER (PERHAPS, THREE TIMES AS MUCH AS BELIEVED). ATTACHES COPIES OF LOADMASTER REPORTS TO SUPPORT LATTER CLAIM.

44	4/18/91	PAVIA, CLARE		BOX 2251 VALDEZ, AK 99686	OPPOSES	GENERAL SCIENCE
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SUMMARY:

BELIEVES THAT, WITHOUT KNOWING THE RESULTS OF ECONOMIC AND SCIENTIFIC STUDIES, THE SUFFICIENCY OF MONETARY DAMAGES CANNOT BE JUDGED. STUDY DATA SHOULD BE RELEASED AND PUBLICLY CONSIDERED BEFORE SETTLEMENT. EXXON SHOULD BE FULLY PENALIZED FOR THE SPILL; OTHERWISE, SENDING "WRONG MESSAGE" TO CORPORATE POLLUTERS. MONEY FROM EXXON SHOULD BE SPENT ON RESTORATION, RATHER THAN CLEAN-UP OR GOVERNMENT EXPENSES; EXXON SHOULD CONTINUE TO PAY LATTER COSTS.

45	4/18/91	TOTEMOFF, DARRELL J	CHENEGA BAY IRA COUNCIL	P.O. BOX 79 CHENEGA BAY, AK 99574	OPPOSES	GENERAL SCIENCE
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SUMMARY:

COUNCIL PRESENTS SEVERAL, GENERAL OBJECTIONS: MONETARY DAMAGES ARE "POCKET CHANGE" AND SEND THE "WRONG MESSAGE" TO POLLUTERS; CANNOT JUDGE FAIRNESS OF SETTLEMENT WITHOUT ACCESS TO SCIENTIFIC AND ECONOMIC STUDIES; NATIVE VILLAGES MUST HAVE "STRONG SAY" IN RESTORATION EFFORTS; GOVERNMENT CRITICISM OF CITIZENS' SUITS FOR NATURAL RESOURCE DAMAGES IS "INSULTING"; MOST IMPORTANTLY, "GOVERNMENT IS KEEPING TRUE FACTS HIDDEN FROM THE PUBLIC," PROPOSED DAMAGES REPRESENT "HUSH MONEY."

46	4/18/91	DOHENY, DAVID A	NATL TRUST HIST PRESERVAT	1785 MASSACHUSETTS AVE, WASHINGTON, DC 20036	OPPOSES	GENERAL
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SUMMARY:

NTHP URGES A SINGLE AMENDMENT TO THE SETTLEMENT THAT WOULD "EXPRESSLY INCLUDE CULTURAL RESOURCES WITHIN THE DEFINITION OF 'NATURAL RESOURCES' ELIGIBLE FOR SETTLEMENT FUNDS." THE AMENDED SETTLEMENT WOULD "PERMIT [THESE] FUNDS TO BE APPLIED TO THE RESTORATION OF CULTURAL AND ARCHAEOLOGICAL RESOURCES ON PUBLIC LANDS" DAMAGED BY THE SPILL AND CLEAN-UP. WHILE FEDERAL LAW SUPPORTS THE INCLUSION OF THESE RESOURCES IN THE MEANING OF "NATURAL RESOURCES", THIS INCLUSION SHOULD BE MADE EXPLICIT.

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47	4/18/91	GUARINI, FRANK J	U.S. CONGRESS	RAYBURN HOUSE OFFICE BLDG WASHINGTON, DC 20515	OPPOSES	GENERAL

SUMMARY:

AUTHOR ASKS "WHETHER AND TO WHAT EXTENT THIS AGREEMENT COULD IMPAIR THIRD PARTY CLAIMS" AND URGES THE COURT TO MODIFY SETTLEMENT AS NEEDED "TO PROTECT THE RIGHTS OF THIRD PARTIES." EXTENSIVE DEFINITIONS IN PARAGRAPH 4 APPEAR TO LIMIT DAMAGE RECOVERY TO GOVERNMENT OFFICIALS ACTING ON BEHALF OF THE PUBLIC; THIS AMBIGUITY IS NOT CLEARED BY PARAGRAPH 6(D), WHICH STATES INTENTION NOT TO AFFECT THIRD PARTY CLAIMS. AMBIGUOUS DRAFTING WILL SERVE AS POOR PRECEDENT FOR ANY FUTURE AGREEMENTS.

48	4/18/91	FLYNN, CHARLES P OLSON, RONALD L	BURR, PEASE, & KURTZ MUNGER, TOLLES, & OLSON ALYESKA	810 N STREET ANCHORAGE, AK 99501	FAVORS	GENERAL
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SUMMARY:

RESPONDS TO CONGRESSMAN GEORGE MILLER'S LETTER; STATES THAT (1) "THE LIMITATIONS ON ALYESKA'S [SPILL] RESPONSE CAPABILITY WERE PLAINLY DESCRIBED AND WELL KNOWN TO THE REGULATORS" AS DETAILED IN THE 1987 OIL SPILL CONTINGENCY PLAN (OSCP); (2) "ALYESKA'S RESPONSE AND ITS EQUIPMENT AVAILABLE FOR RESPONSE WERE IN ACCORDANCE WITH THE OSCP;" AND (3) THERE WAS NO DECISION BY ALYESKA NOT TO RESPOND TO THE SPILL. CITES THE NTSB REPORT, P. 150, IN SUPPORT OF THE ABOVE. IN SUPPORT OF STATEMENT (1) ABOVE, CITES THE OSCP AS STATING THE LIMITATIONS ON RECOVERY IN THE EVENTS OF HYPOTHETICAL 4,000- AND 200,000-BARREL SPILLS, AND POINTS OUT THE NECESSITY FOR TIMELY DISPERSANT APPLICATION, ALSO AS STATED IN THE OSCP. SECTIONS OF THE OSCP DETAILING HYPOTHETICAL RESPONSES TO THESE TWO SPILLS ARE INCLUDED AS ATTACHMENTS A AND B. ALSO IN REGARD TO STATEMENT (1), CITES PAUL O'BRIEN'S INTERVIEW TESTIMONY BEFORE THE OIL SPILL COMMISSION. IN REGARD TO STATEMENT (2), ABOVE, CITES THE LIST OF EQUIPMENT IN THE OSCP AND ASSERTS THAT THIS EQUIPMENT WAS AVAILABLE AT THE TIME OF THE GROUNDING. STATES THAT ACTUAL CIRCUMSTANCES (TIME OF DAY, WEATHER, VULNERABILITY OF THE VESSEL) DIVERGED MARKEDLY FROM THOSE SUPPOSED IN THE OSCP AND CITES OIL SPILL COMMISSION, VOL. 11 AT 34-35 AND NTSB REPORT AT 145 IN SUPPORT. IN ADDITION, CITES NTSB REPORT AT 145 STATING THAT THE 10-HOUR LOSS [OF RESPONSE TIME] HAD NO MATERIAL IMPACT ON THE CLEANUP. IN SUPPORT OF STATEMENT (3) ABOVE, STATES THAT THE FACT OF ALYESKA'S SPILL RESPONSE REFUTES MILLER'S ALLEGATION THAT THEY (ALYESKA) HAD DECIDED NOT TO RESPOND TO PRINCE WILLIAM SOUND INCIDENTS. STATES THAT THE ISSUES OF DISPERSANTS AND TRANSFER OF RESPONSIBILITY TO THE SHIPPER WERE DISCUSSED DURING THE 1988 RE-EVALUATION OF SPILL RESPONSE CAPABILITIES.

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49	4/18/91	WOLF, DOUG	NATL WILDLIFE FEDERATION	1400 16TH STREET NW WASHINGTON, DC 20036	OPPOSES	SCIENCE GENERAL

SUMMARY:

OPPOSES ON THE GROUNDS THAT (I) "WITHOUT FULL DISCLOSURE OF SCIENTIFIC DATA, THE PUBLIC CANNOT EVALUATE THE SETTLEMENT." IN SUPPORT OF STATEMENT (I), ABOVE, CITES (A) THE SIZE AND TIMING OF THE DISASTER, TOGETHER WITH NON-AVAILABILITY OF PUBLICLY-FUNDED RESEARCH AND THE PRESENCE OF EXXON PUBLIC-RELATIONS EFFORTS; AND (B) THE ISSUE OF PUBLIC TRUST AND THE OBLIGATION OF GOVERNMENTS TO PROTECT PUBLICLY-OWNED RESOURCES. (C) SUGGESTS THAT SIGNIFICANT CONFLICTS OF INTEREST EXIST FOR BOTH GOVERNMENTS INVOLVED IN THE SETTLEMENT. CITING THE NOTION THAT NOT ONLY EXXON AND ALYESKA, BUT BOTH GOVERNMENTS ARE ARGUABLY AT FAULT, THE GEORGE MILLER LETTER, THE OIL SPILL CONTINGENCY PLAN (OSCP)'S INADEQUACY, AND THE STATE OF ALASKA'S PURSUIT OF A COVENANT NOT-TO-SUE WHICH WOULD BE TIED TO RELEASE OF DATA, ASSERTS THAT A DEAL HAS BEEN CUT WITH EXXON TO LIMIT GOVERNMENTAL LIABILITY. ASSERTS THAT THE RELEASE OF DAMAGE-ASSESSMENT SUMMARIES IS NOT SUFFICIENT, CITING (1) THE EXCLUSION OF RAW DATA OR ACTUAL SCIENTIFIC ANALYSES, (2) VAGUENESS WHEN STUDY RESULTS ARE DISCUSSED, (3) ABSENCE OF ACTUAL MEASURES OR COSTS REQUIRED FOR RESTORATION OF DAMAGED RESOURCES, (4) ABSENCE OF DATA CONCERNING METHODOLOGY USED IN THE STUDIES, AND (5) FAILURE TO IDENTIFY THE PRINCIPAL INVESTIGATORS INVOLVED (ALSO LISTS INDIVIDUALS IDENTIFIED AS INVESTIGATORS AND REQUESTS COURT SUBPOENA THEIR TESTIMONY). REQUESTS THAT THE COURT ORDER THE RELEASE OF ALL INFORMATION CONNECTED WITH THE SETTLEMENT AND EXTEND THE PUBLIC COMMENT PERIOD UNTIL ALL INFORMATION HAS BEEN RELEASED AND ANALYZED. SUGGESTS THE APPOINTMENT OF A MAGISTRATE, SPECIAL MASTER OR INDEPENDENT COUNSEL TO REVIEW THE DATA AND ASSIST IN ASSESSING THE ADVISABILITY OF APPROVAL OF THE SETTLEMENT. (II) QUESTIONS THE ADEQUACY OF THE SETTLEMENT. ASSERTS THAT THE CONTENTS OF THE TRUSTEES' RESTORATION WORK PLAN (RWP) AND THE PLANNED TERMINATION OF SCIENTIFIC STUDIES SUGGEST THAT THE SETTLEMENT DOES NOT "PROVIDE SUFFICIENT FUNDS TO PERMIT THE TRUSTEES TO CARRY OUT THEIR PUBLIC TRUST OBLIGATIONS..." CITES THE CONGRESSIONAL RESEARCH SERVICE AND ASSOCIATED PRESS VALUATION IN SUPPORT OF AN ASSERTION THAT THE SETTLEMENT WILL ACTUALLY COST EXXON HALF OF THE \$1 BILLION FACE VALUE. ASSERTS THAT EXXON PREVIOUSLY SET ASIDE \$1.68 BILLION, SUGGESTING THAT THE SETTLEMENT FALLS SHORT OF EXXON'S OWN VALUATION OF THE DAMAGE CAUSED. SUGGESTS THAT TRUSTEE AND EXXON RESISTANCE TO RELEASE OF ECONOMIC STUDIES INDICATES THAT THESE STUDIES SHOW THE GREATEST AMOUNT OF DAMAGE. CITES NEWSPAPER REPORTS INDICATING ESTIMATES OF \$3-8 BILLION FOR ECONOMIC DAMAGE, AND SUGGESTS THAT A SPECIAL MASTER COULD HELP EVALUATE THE VALIDITY OF LEAKED DATA. CITES THE DOJ SUMMARIES IN SUPPORT OF AN ASSERTION OF LONG-TERM OR PERMANENT DAMAGE, ESPECIALLY TO THE MURRE POPULATION AND THE INTERTIDAL ZONE. SUGGESTS THAT THE SETTLEMENT IS NOT ADEQUATE TO PROVIDE FOR THE STATE'S PREVIOUS GOAL OF PREVENTION OF CLEAR-CUT LOGGING IN THE PRINCE WILLIAM AREA. (III) ASSERTS THAT THE SETTLEMENT "LETS ALYESKA OFF THE HOOK." REPEATS THE SUGGESTION OF A SPECIAL MASTER TO DETERMINE THE FAIRNESS OF THE SETTLEMENT IN THIS REGARD. (IV) ASSERTS THAT PROVISIONS FOR PUBLIC INPUT [IN THE RESTORATION PROCESS] ARE INADEQUATE. URGES THAT A PUBLIC ADVISORY GROUP BE REQUIRED AND THAT THE TRUSTEES BE REQUIRED TO PARALLEL THE PUBLIC PARTICIPATION APPROACH CONTAINED IN THE SUPERFUND STATUTE. (V) ASSERTS THAT THE REOPENER IS INADEQUATE BY VIRTUE OF BEING UNREASONABLY NARROW AND ILLEGAL (CITING CWA AND CERCLA, ALONG WITH IN RE ACUSHNET RIVER AND NEW BEDFORD HARBOR: PROCEEDINGS RE: ALLEGED PCB POLLUTION, 712 F.SUPP. 1019, 1037-38 (D.MASS. 1989)). URGES THAT THE REOPENER BE REVISED TO ALLOW THE GOVERNMENT TO REOPEN IN THE EVENT OF ANY UNEXPECTED DAMAGES AT ANY TIME, WITHOUT THE \$100 MILLION CAP. APPENDICES REFERENCED (NOT INCLUDED): APPENDIX 1: "COMMENTS OF THE NWF ON THE 1991 RESTORATION WORK PLAN." APPENDIX 2: DOJ SUMMARIES. APPENDIX 3: CONGRESSIONAL RESEARCH SERVICE VALUATION. APPENDIX 4: ASSOCIATED PRESS VALUATION. APPENDIX 5: ANCHORAGE DAILY NEWS ARTICLE ON CLEAR-CUT LOGGING. APPENDIX 6: MEMORANDUM FROM NWF TO ASS'T ATTORNEY GENERAL RICHARD STEWART AND ALASKA ATTORNEY GENERAL CHARLES COLE IN RE: AN ENDOWED TRUST FOR RESTORATION.

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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
50	4/18/91	CHASIS, SARAH	NAT RESOURCES DEF COUNCIL DEFENDERS OF WILDLIFE GREENPEACE NATL AUDUBON SOCIETY AK CENTER FOR ENVIRONMENT SIERRA CLUB SIERRA CLUB LEG DEF FUND TRUSTEES FOR ALASKA		OPPOSES	SCIENCE GENERAL EPA

SUMMARY:

BELIEVES NO DETERMINATION OF FAIRNESS OF SETTLEMENT CAN BE MADE WITHOUT SCIENTIFIC DATA; ASKS FOR RELEASE OF SCIENTIFIC DATA AND THEN ALLOW PUBLIC COMMENT BEFORE FINALIZING SETTLEMENT; FEELS THAT EVEN WITHOUT DATA, AMOUNT OF MONEY IS TOO LOW IN COMPARISON WITH ESTIMATED DAMAGES AND FUTURE COSTS OF RESTORATION; SCHEDULING OF PAYMENTS COULD LEAD TO INADEQUATE MONIES IN ANY ONE YEAR; CONCERNED ABOUT \$100 MILLION CAP ON FUTURE RECOVERY OF UNKNOWN DAMAGES AND "IMPOSSIBLE" STANDARD GOVERNMENT MUST MEET TO OBTAIN FUTURE RECOVERY; ALSO CONCERNED THAT FUTURE RECOVERY IS LIMITED TO A FOUR YEAR PERIOD (2002 - 2006); CONCERNED ABOUT RELEASE OF ALYESKA FROM LIABILITY FOR NATURAL RESOURCE DAMAGES; FEELS EXTENT OF SPILL MADE WORSE BY ALYESKA'S LACK OF READINESS TO RESPOND TO A SPILL; REQUESTS CLARIFICATION AS TO WHETHER EXXON IS OBLIGATED TO CONTINUE WITH CLEANUP; FEELS EXXON SHOULD NOT BE EXCUSED FROM LIABILITY BECAUSE OF CLEANUP IF CLEANUP IS PERFORMED NEGLIGENTLY.

51	4/18/91	CHASIS, SARAH ADLER, ROBERT JORGENSEN, ERIC	NAT RESOURCES DEF COUNCIL NAT RESOURCES DEF COUNCIL SIERRA CLUB AK CENTER FOR ENVIRONMENT DEFENDERS OF WILDLIFE GREENPEACE NATIONAL AUDUBON SOCIETY N AK ENVIRONMENTAL CENTER PWS CONSERVATION ALLIANCE TRUSTEES FOR ALASKA		OPPOSES	SCIENCE GENERAL EPA
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SUMMARY:

COMMENTS ON MEMORANDUM OF AGREEMENT REGARDING "MEANINGFUL PUBLIC PARTICIPATION IN THE INJURY ASSESSMENT AND RESTORATION PROCESS." FEELS PUBLIC PARTICIPATION SHOULD NOT BE LIMITED TO AN ADVISORY ROLE ONLY; SUGGESTS PUBLIC MEMBERS AS CHAIR AND VICE-CHAIR OF TRUSTEE COUNCIL AS WELL AS PUBLIC ADVISORY COMMITTEE; PUBLIC ADVISORY COMMITTEE SHOULD NOT INCLUDE ANY REPRESENTATIVES OF ANY OIL COMPANY, THERE SHOULD BE A SMALL PAID STAFF, AND COVERAGE OF MEMBERS' TRAVEL AND PER DIEM; PUBLIC COMMITTEE SHOULD DEVELOP ANNUAL COMPREHENSIVE PLAN FOR REVIEW AND DECISION BY TRUSTEE COUNCIL; BELIEVES CREATION OF PUBLIC ADVISORY COMMITTEE IS MEANINGLESS WITHOUT DATA ON LOSSES TO DATE, AND ONGOING STUDIES; REQUESTS FOR PUBLIC COMMENT SHOULD COME EARLY ENOUGH IN PROCESS TO ENSURE IMPACT ON STUDIES AND PROJECTS; PUBLIC COMMENTS SHOULD BE INTEGRATED INTO THE MEMORANDUM OF AGREEMENT ITSELF; QUESTIONS WORKABILITY OF TRUSTEE COUNCIL IF ALL DECISIONS MUST BE UNANIMOUS; NO STANDARD SET FOR JUDICIAL REVIEW; QUESTIONS EPA'S ABILITY TO BE LEAD AGENCY FOR LONG TERM RESTORATION IF IT IS NOT A TRUSTEE; REQUESTS THAT REIMBURSEMENT OF PRIOR EXPENSES BE DEFERRED TO MAXIMIZE AVAILABLE MONEY FOR RESTORATION; SUGGESTS THAT TRUSTEES CONDUCT STUDIES TO ASSESS LONG TERM CHRONIC EFFECTS OF THE SPILL; ASKS FOR ENDOWMENT OF A FOUNDATION, WITH EMINENT PERSONS ON ITS BOARD, TO PROVIDE EXPERTISE IN A NON-POLITICAL ATMOSPHERE ON CLEANUP OF PRINCE WILLIAM SOUND.

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52	4/18/91	JEFFREYS, KENT	CEI	233 PENNSYLVANIA AVE SE WASHINGTON, DC 20003	OPPOSES	GENERAL

SUMMARY:

FINDS THE SETTLEMENT AGREEMENT "INAPPROPRIATE, IMPROPER AND GROSSLY EXCEEDS THE REQUIREMENTS OF ADEQUACY IN REGARD TO ECOLOGICAL RESTORATION." BELIEVES THE SETTLEMENT AGREEMENT WOULD WASTE ECONOMIC RESOURCES BECAUSE NO EXPENDITURES CAN BE ANTICIPATED TO PRODUCE A NET ENVIRONMENTAL BENEFIT IN THE LONG TERM. SHUNS THE IDEA OF A PUBLIC ADVISORY GROUP PARTICIPATING IN THE INJURY ASSESSMENT AND RESTORATION PROCESS; THIS GROUP "WILL BE LITTLE MORE THAN A HAND-PICKED RUBBER STAMP FORUM FOR FURTHER ENVIRONMENTAL RESEARCH FUNDING." FINDS THE APPROPRIATIONS PROCEDURES OF THE SETTLEMENT INADEQUATE IN PROTECTING THE APPROPRIATION POWER OF CONGRESS; IT APPEARS TO "CONTEMPLATE JUDICIAL DETERMINATIONS OF SPENDING OBLIGATIONS." BELIEVES THE AGREEMENT IS BASED MORE ON POLITICAL ASSUMPTIONS THAN ON ANY POSSIBLE ECOLOGICAL OR ECONOMIC ONES.

53	4/18/91	COHEN, JERRY S OESTING, DAVID W COWLES, MACON BERGER, HAROLD MONTAGUE, H LADDIE SIEGEL, JANICE KAHANA, PETER R	COHEN MILSTEIN DAVIS WRIGHT TREMAINE TRIAL LAWYERS PUB JUSTICE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE BERGER & MONTAGUE SONOSKY CHAMBERS DICKSTEIN SHAPIRO CASEY GERRY STOLL STOLL BERNE LOKTING ALASKA NATIVE CLASS COMMERCIAL FISHING CLASS AREA BUSINESS CLASS PROPERTY OWNER CLASS CANNERY AND SEAFOOD EMPLOY	1401 NEW YORK AVE NW WASHINGTON, DC 20005	OPPOSES	GENERAL SCIENCE
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SUMMARY:

TRANSMITS THE FOLLOWING DOCUMENTS: COMMENTS BY CIVIL PLAINTIFFS IN FEDERAL AND STATE COURT ON PROPOSED SETTLEMENT: PROPOSED SETTLEMENT NOT SUBJECT TO MEANINGFUL REVIEW BECAUSE SCIENTIFIC AND ECONOMIC DATA AND ANALYSES THAT COMPRISE ITS UNDERPINNINGS ARE BEING WITHHELD FROM PUBLIC SCRUTINY, REOPENER PROVISION IS NOT SUBJECT TO REVIEW AND IS UNSATISFACTORY ON ITS FACE BECAUSE IT FAILS TO ESTABLISH OBJECTIVE STANDARDS TO TRIGGER ITS APPLICATION, AGREEMENT IS NOT SUSCEPTIBLE TO REVIEW BECAUSE VALUE HAS NOT BEEN DISCLOSED, "RESERVATION OF RIGHTS" PROVISIONS ARE UNCLEAR AND APPEAR TO THREATEN THE RIGHTS AND CLAIMS OF ALASKAN NATIVES AND OTHER THIRD PARTIES, SETTLEMENT INAPPROPRIATELY RELEASES THE ALYESKA PIPELINE SERVICE COMPANY FROM ALL GOVERNMENT CLAIMS FOR NATURAL RESOURCES DAMAGES, SETTLEMENT IMPAIRS THE RIGHTS OF PRIVATE PLAINTIFFS; AFFIDAVIT OF DR. JUDITH M. CAPUZZO: SECRECY CAUSED BY OIL SPILL LITIGATION CREATES A STRANGLEHOLD ON IMPORTANT LONG-TERM SCIENTIFIC RESEARCH; AFFIDAVIT OF ANNE E. MCELROY: CONCERNED WITH THE CURRENT REGIME OF SECRECY IMPOSED BY TRUSTEES AND DEFENDANTS; AFFIDAVIT OF DR. JOHN M. TEAL: CONCERNED ABOUT THE CURRENT REGIME OF SECRECY IMPOSED BY THE PARTIES TO THIS LAWSUIT; AFFIDAVIT OF BRUCE TRIPP: CONCERNED ABOUT THE CURRENT REGIME OF SECRECY IMPOSED BY PARTIES TO THIS LAWSUIT.

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54	4/18/91	HAUSFIELD, MICHAEL D MASON, GARY E MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS ALASKA NATIVE CLASS	1401 NEW YORK AVE NW WASHINGTON, DC 20005	OPPOSES	DOI GENERAL

SUMMARY:

IN THEIR MEMORANDUM IN SUPPORT OF MOTION FOR REFORMATION AND STAY OF IMPLEMENTATION OF SETTLEMENT, THE ALASKA NATIVE CLASS ARGUES THAT THE LANGUAGE OF THE AGREEMENT IS INCONSISTENT WITH AND CONTRADICTORY TO, THE RIGHTS OF THE ALASKA NATIVES; THAT THE AGREEMENT DENIES THE ALASKA NATIVES AN OPPORTUNITY FOR IMMEDIATE AND NECESSARY RESTITUTIONS; AND THAT THE AGREEMENT IMPAIRS THE RIGHTS OF THE ALASKA NATIVES TO BE TREATED AS A CO-EQUAL TO THE UNITED STATES AND ALASKA WITH RESPECT TO NATURAL RESOURCES

55	4/16/91	FORTIER, SAMUEL	FORTIER & MIKKO CHENEGA BAY CORP PORT GRAHAM CORP ENGLISH BAY CORP	2550 DENALI ST, STE 604 ANCHORAGE, AK 99503	OPPOSES	NOAA DOI SCIENCE
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SUMMARY:

NOAA AND THE STATE ARE IMPROPER PARTIES TO RECEIVE COMMENTS CONCERNING INTERIM JURISDICTION LANDS; BOTH THE CONSENT DECREE AND MOA AFFECT RIGHTS AND OBLIGATIONS OF VILLAGE CORPORATIONS (HEREAFTER CORPORATIONS), CONTRARY TO ORDER OF JUDGE SPORKIN ENTERED MARCH 12, 1990; PARAGRAPH 13(C) SHOULD REFER TO "RIGHTS, OBLIGATIONS, AND CLAIMS" (NOT "IF ANY") OF CORPORATIONS, "IF ANY" REDUCES RIGHTS TO A MATTER OF PROOF FROM A MATTER OF LAW, AND SHIFTS BURDEN TO THE CORPORATIONS; PARAGRAPH 13(B) OF CONSENT DECREE AND PARAGRAPH 11(C) OF MOA SHOULD BE RESTATED BY STRIKING "IF ANY" WHERE IT APPEARS AND BY INSERTING A REFERENCE TO THE RIGHTS OF ALASKAN NATIVE VILLAGES TO ACT AS TRUSTEES AND CORPORATIONS TO EXERCISE LEGAL RIGHTS TO ASSERT CLAIMS FOR INJURY TO NATURAL RESOURCES BELONGING TO SUCH VILLAGES AND CORPORATIONS; QUESTIONS WHY ALYESKA IS RECEIVING "PREFERENTIAL TREATMENT" AND WHY EXXON PIPELINE COMPANY IS RECEIVING BENEFITS STATED AT CONSENT DECREE PARAGRAPHS 14, 15, 16, 20 AND 22-24; DEFINITIONS CONCERNING "NATURAL RESOURCES" AND "NATURAL RESOURCE DAMAGE" (CONSENT DECREE PARAGRAPHS 6(C) AND 6(D), MOA PARAGRAPHS 11 F AND G) INCLUDE RIGHTS AND INTERESTS OF THE CORPORATION; CONSENT DECREE AND MOA ARE SILENT ON FEDERAL OBLIGATION REGARDING ESCROW OF DAMAGES PROCEEDS; NO MEANINGFUL PARTICIPATION BY CORPORATIONS REGARDING LEGAL OBLIGATIONS OWED THEM BY U.S.; STATE OF ALASKA CANNOT ACT AS TRUSTEE WITH REGARD TO RESOURCES OR LANDS SELECTED BUT NOT YET CONVEYED TO CORPORATIONS; CONSENT DECREE AND MOA IGNORE REQUIREMENTS OF CERCLA AND CLEAN WATER ACT REGARDING ABILITY OF POLLUTED ECOSYSTEMS TO RECOVER; CONSENT DECREE AND MOA PERMIT CONCEALMENT OF SCIENCE AND ASSESSMENTS NECESSARY FOR PRIVATE LITIGANTS TO ADEQUATELY PROSECUTE THEIR CASES; SETTLEMENT AGREEMENT FAILS TO ADDRESS FUTURE RIGHTS AND INTERESTS AS WELL AS FUTURE DAMAGES, AND THEREFORE COMPROMISES THE RIGHTS OF THE CORPORATIONS; AGREEMENTS FAIL TO PROVIDE FOR CONTINUATION OF SCIENTIFIC ASSESSMENT STUDIES, AND FAIL TO REQUIRE RELEASE OF STUDIES ALREADY COMPLETED; AGREEMENT SHIFTS BURDEN TO USER GROUPS TO ESTABLISH THAT SETTLEMENT AGREEMENT DID NOT DISPOSE OF THEIR CLAIMS; SETTLEMENT AGREEMENT FAILS TO PROVIDE FOR COMMON FUND; SETTLEMENT AGREEMENT FAILS TO PROVIDE OBJECTIVE METHODS FOR DETERMINING A REOPENER; WITHOUT SCIENCE AND ASSESSMENT WORK ALREADY COMPLETED, CORPORATIONS LACK SUFFICIENT INFORMATION TO DETERMINE WHETHER FUNDS RECOVERED ARE FAIR, REASONABLE, OR ADEQUATE; REQUESTS THAT GOVERNMENTS WITHDRAW FROM THE AGREEMENT WITHIN 15 DAYS FOLLOWING CLOSE OF PUBLIC COMMENTS UNTIL CORPORATIONS RENEGOTIATE THE AGREEMENT SO AS NOT TO COMPROMISE THEIR RIGHTS AND CLAIMS.

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56	4/16/91	MCCALLION, KENNETH F PERSKY, BERNARD JOHNSON, JAMES W GARGAN, TERENCE KENDE, CHRISTOPHER B PETUMENOS, TIMOTHY J FORTIER, SAMUEL	SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN SUMMIT ROVINS & FELDESMAN HILL BETTS & NASH HOLTZMANN WISE & SHEPARD BIRCH HORTON FORTIER & MIKKO CHUGACH ALASKA CORP CHENEGA CORP PORT GRAHAM CORP ENGLISH BAY CORP TATITLEK CORP EYAK CORP	445 PARK AVE NEW YORK, NY 10022	OPPOSES	DOI SCIENCE

SUMMARY:

THESE ALASKA NATIVE CORPORATIONS (CHUGACH ALASKA CORPORATION, CHENEGA CORPORATION, PORT GRAHAM CORPORATION, ENGLISH BAY CORPORATION, TATITLEK CORPORATION, AND THE EYAK CORPORATION) (HEREAFTER CORPORATIONS) ARE PLAINTIFFS IN FEDERAL AND STATE SUITS AGAINST EXXON RESULTING FROM THE SPILL; THESE CORPORATIONS ARE THE LARGEST LANDOWNERS, APART FROM THE STATE OF ALASKA AND U.S. (THE GOVERNMENTS), ADVERSELY IMPACTED BY THE SPILL; THESE COMMENTS ARE BASED ON THE CORPORATIONS' UNIQUE PROPERTY INTEREST IN LANDS WHICH HAVE BEEN SELECTED BY THEM UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA); SETTLEMENT APPEARS TO COMPROMISE CERTAIN OF THE CORPORATIONS' CLAIMS ARISING FROM THE SPILL, IN THE U.S. DISTRICT COURT FOR D.C.; PUB. L. 94-204, 89 STAT. 1146, PROVIDES THAT ANY PROCEEDS OF THE SETTLEMENT OF CLAIMS RELATED TO LAND WITHDRAWN FOR SELECTION BY CORPORATIONS MUST BE HELD IN ESCROW BY SECRETARY OF INTERIOR UNTIL LANDS SELECTED BY THEM DEEMED TO HAVE VESTED IN THE CORPORATIONS; 43 CFR. 2650 PROVIDES THAT CORPORATIONS' VIEWS SHALL BE CONSIDERED PRIOR TO EXECUTION OF ANY CONTRACTS RELATING TO SUCH LANDS; AGREEMENT IS SILENT AS TO WHAT EFFECT EXXON PIPELINE'S EXECUTION OF THE SETTLEMENT WILL HAVE ON ALYESKA, THIS SHOULD BE CLARIFIED; THE DEFINITION OF "NATURAL RESOURCE DAMAGES" SPECIFICALLY INCLUDES RESOURCES "HELD IN TRUST BY" THE GOVERNMENTS, AND DAMAGES OBTAINED BY THE GOVERNMENTS, AS TRUSTEES OF SELECTED LANDS IN INTERIM JURISDICTION, THEREFORE ANY NATURAL RESOURCE DAMAGES OBTAINED BY THE GOVERNMENTS RELATE, IN PART, TO LANDS AND RESOURCES LEGALLY OWNED BY THE CORPORATIONS, AND THEREFORE THE SETTLEMENT PURPORTS TO SETTLE CLAIMS OF THE CORPORATIONS; AGREEMENT PROVIDES THAT THE SETTLEMENT SHALL NOT AFFECT RIGHTS OF ALASKA NATIVE VILLAGES TO ACT AS TRUSTEES FOR PURPOSE OF ASSERTING CLAIMS RELATED TO NATURAL RESOURCES DAMAGES TO VILLAGE LANDS, NO EXPLANATION IS PROVIDED AS TO WHY SETTLEMENT DID NOT EXCLUDE CLAIMS OF CORPORATIONS; THE MOA APPEARS TO EXCLUDE FROM THE SETTLEMENT THE CORPORATIONS' CLAIMS FOR NATURAL RESOURCES DAMAGES FOR LANDS NOT OTHERWISE IN INTERIM JURISDICTION; ALASKAN VILLAGES HAVE NO LEGAL RIGHT IN INTERIM JURISDICTION, SUCH RIGHTS ARE VESTED SOLELY IN CORPORATIONS CREATED UNDER ANCSA; AGREEMENT MUST BE AMENDED TO STATE THAT NATURAL RESOURCE DAMAGES CLAIMS OF CORPORATIONS REMAIN UNAFFECTED BY SETTLEMENT WHETHER OR NOT SUCH CLAIMS AFFECT LANDS IN INTERIM JURISDICTION; GOVERNMENTS SHOULD BE REQUIRED TO SHARE WITH CORPORATIONS ALL SCIENTIFIC MATERIAL THAT RELATES TO CORPORATIONS' LANDS IN PRINCE WILLIAM SOUND AREA; CORPORATIONS PROVIDED GOVERNMENTS ACCESS TO THEIR LANDS IN ORDER TO PERMIT SUCH STUDIES TO BE CONDUCTED; WITHOUT THIS MATERIAL, CORPORATIONS ARE UNABLE TO ASSESS WHETHER SETTLEMENT REGARDING LANDS OWNED BY CORPORATIONS OR IN INTERIM JURISDICTION ARE FAIR; GOVERNMENTS SHOULD BE REQUIRED TO RELEASE THIS INFORMATION IN FULFILLMENT OF DUTIES TO THE CORPORATIONS, AS TRUSTEES OF THEIR LANDS; AGREEMENT SHOULD REQUIRE THE GOVERNMENTS TO CONTINUE FUNDING SCIENTIFIC STUDIES NOW UNDERWAY, TO FULLY ASSESS EXTENT OF DAMAGES TO NATURAL RESOURCES; MOA DOES NOT REQUIRE GOVERNMENTS TO ALLOCATE MONIES RELATING TO CORPORATIONS' LANDS, NOR TO APPROPRIATE THE MONIES IN ANY GIVEN TIME PERIOD; FEDERAL GOVERNMENT PURPORTS TO SETTLE RIGHTS OF THE CORPORATIONS WITH REGARD TO NATURAL RESOURCES DAMAGES TO CORPORATION'S LANDS STILL IN INTERIM JURISDICTION WITHOUT REFERRING TO ESCROW PROVISIONS, IN VIOLATION OF 43 CFR 2650.1; PORTIONS OF SETTLEMENT FUNDS SHOULD BE ALLOCATED TO CORPORATIONS' LANDS WHICH HAVE BEEN OR WILL BE WITHDRAWN FOR SELECTION BY THEM; AFTER FUNDS ARE ALLOCATED, APPROPRIATE ESCROW ARRANGEMENTS SHOULD BE MADE FOR CORPORATIONS; MOA PROVISION, THAT TRUSTEES SHALL ESTABLISH PROCEDURES FOR PUBLIC PARTICIPATION IN THE INJURY ASSESSMENT AND RESTORATION

PROCESS, IGNORES SPECIFIC RECOVERIES OBTAINED BY THE GOVERNMENT AS TRUSTEES FOR CORPORATIONS' LANDS IN INTERIM JURISDICTION: FEDERAL LAW REQUIRES INVOLVEMENT OF CORPORATIONS IN ALLOCATION AND USE OF RECOVERIES AFFECTING LANDS IN WHICH THEY HAVE A PROPERTY INTEREST; IN PROVISION CONCERNING COVENANTS NOT TO SUE, MOA PROVIDES THAT STATE OF ALASKA ACTS AS TRUSTEE OF RESOURCES OF LANDS IN INTERIM JURISDICTION, WHICH VIOLATES ANCSA; PROVISION IN MOA, THAT IT CREATES NO RIGHTS OF ACTION BY PERSONS NOT SIGNATORY TO IT AND SHALL NOT BE SUBJECT TO JUDICIAL REVIEW, IS INAPPROPRIATE IN PURPORTING TO BIND CORPORATIONS AND FORECLOSE THEIR RIGHT TO SEEK LEGAL REDRESS, INCLUDING JUDICIAL REVIEW; SETTLEMENT PURPORTS TO COMPROMISE LEGAL RIGHTS OF NON-PARTIES (THE CORPORATIONS), RAISING CONSTITUTIONAL QUESTIONS WHICH JUSTIFY JUDICIAL SCRUTINY.

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57	4/17/91	RAYNOR, TED POIROT, PATRICE POIROT, STEVE FAUSSETT, THOMAS P ROME, JONATHAN K PARKHURST, DAVE DAY, VERENA DAY, ROBERT A LIBENSON, SUE WOOD, KAREN WOOD, RUTT EAMES, CLIFF MONTESANO, PETER JETTMAR, KAREN LAWSON, CAROLE HENRY, HAROLD CANADY, SHER L DEAN, SHERYL		13801 SCHUBERT CIR ANCHORAGE, AK 99516	OPPOSES	GENERAL SCIENCE

SUMMARY:

AUTHORS OPPOSE THE SETTLEMENT BECAUSE IT IS NOT A DETERRENT TO POLLUTERS; A SLIDING SCALE SHOULD BE ESTABLISHED WHEREBY FINES ARE BASED ON EXXON'S ABILITY TO PAY ACCORDING TO THE AMOUNT OF THE DAMAGE. THEY FEEL THAT THE STATE STUDIES SHOULD BE RELEASED SO THAT ALASKANS CAN MAKE INFORMED DECISIONS ON THE SETTLEMENT. AUTHORS STATE THAT THE DAMAGE FROM THE OIL SPILL IS FAR WORSE THAN PREVIOUSLY BELIEVED, AND IT IS TOO SOON TO KNOW WHAT THE LONG-TERM IMPACT WILL BE. THEY BELIEVE EXXON HAS PROFITED FROM THE SPILL, AND WILL NEVER BE PROSECUTED FOR THEIR CRIME. FUTURE CLEANUP COSTS SHOULD NOT COME OUT OF THE SETTLEMENT MONEY.

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58	4/07/91	MCKAY, THOMAS W		3170 MARATHON CIRCLE ANCHORAGE, AK 99515	FAVORS	GENERAL

SUMMARY:

BELIEVES THE SETTLEMENT IS A POSITIVE RESOLUTION OF THE MATTER. BELIEVES THAT THE ALASKAN GOVERNMENT MISHANDLED THE SPILL IN SEVERAL WAYS: BY DELAYING APPROVAL OF DISPERSANTS AND OIL BURNING; BY APPROVING INADEQUATE CONTINGENCY PLANS AND POOR ENFORCEMENT; BY MAINTAINING AN "ADVERSARIAL" RELATIONSHIP WITH EXXON AFTER SPILL; AND BY PUNISHING THE ALASKA OIL INDUSTRY THROUGH POST-SPILL LEGISLATION AND TAXATION. BELIEVES THAT THE STATE SHOULD ACCEPT SETTLEMENT FOR SEVERAL REASONS: A TRIAL COULD REVEAL STATE NEGLIGENCE; IT IS TIMELY--IMPACT OF DAMAGE WILL SOON "FADE" IN CITIZENS' MINDS; AND, INTENTIONAL SPILL IN PERSIAN GULF WILL OVERSHADOW EXXON VALDEZ SPILL.

59	4/12/91	SMITH, CARYN		P.O. BOX 242013 ANCHORAGE, AK 99524	OPPOSES	GENERAL SCIENCE
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SUMMARY:

AGREES WITH THE SETTLEMENT IN PRINCIPLE, BUT STRONGLY OPPOSES: 1) THAT STATE AND FEDERAL NRDA STUDY DATA HAS NOT BEEN RELEASED TO THE PUBLIC; 2) THE TIMING OF SETTLEMENT WHICH ALLOWS EXXON TO AVOID FINISHING THE CLEANUP OF 6.2 MILES OF THE COASTLINE (FEELS CRITERIA NEEDS TO BE ESTABLISHED FOR WHEN EXXON'S FINANCIAL RESPONSIBILITY FOR CLEANUP ENDS); 3) ALLOWING THE SECRETARY OF THE INTERIOR TO DECIDE HOW SETTLEMENT MONIES WILL BE SPENT (FEELS THAT TRUSTEE AGENCY REPRESENTATIVES WHO WORKED ON THE NRDA STUDIES AND THE PUBLIC SHOULD BE INVOLVED IN DETERMINING HOW THE MONEY IS ALLOCATED; BELIEVES THAT THERE SHOULD BE A STATE LEGISLATIVELY-APPOINTED PUBLIC ADVISORY GROUP WHOSE COMMENTS LEGALLY BIND THE TRUSTEE COUNCIL); AND 4) THE LACK OF PROVISION OF SETTLEMENT MONIES FOR: FUNDING A PRINCE WILLIAM SOUND SCIENCE CENTER, ONGOING STUDIES IN THE SOUND, RESTORATION ACTIVITIES, AND TO BUY BACK TIMBER RIGHTS FROM SPILL-AFFECTED COASTLINES.

60	4/12/91	BERGLAND, LAWRENCE		P.O. BOX 242013 ANCHORAGE, AK 99524	OPPOSES	GENERAL SCIENCE
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SUMMARY:

AGREES WITH THE SETTLEMENT IN PRINCIPLE, BUT STRONGLY OPPOSES SEVERAL ASPECTS OF THE SETTLEMENT: 1) IT DOES NOT SEND A CLEAR AND FORMIDABLE MESSAGE TO POLLUTERS (QUOTES EXXON CHAIRMAN LAWRENCE RAWL "THE AGREEMENT IN MY VIEW AND THAT OF THE BOARD... IS IN THE INTEREST OF THE SHAREHOLDERS... THE SETTLEMENT WILL NOT HAVE A NOTICEABLE EFFECT ON OUR FINANCIAL RESULTS." 2) THE SCIENTIFIC DATA HAS NOT BEEN MADE AVAILABLE TO THE PUBLIC (ALTHOUGH THE AUTHOR COMMENDS THE RELEASE OF THE APRIL 8 "SUMMARY OF EFFECTS OF THE EXXON OIL SPILL ON NATURAL RESOURCES AND ARCHAEOLOGICAL RESOURCES," HE BELIEVES THE PUBLIC NEEDS THE FULL DETAILS TO DETERMINE IF THE SETTLEMENT IS ADEQUATE AND TO "LEARN FROM THIS EXPERIENCE."). 3) THE TIMING OF THE SETTLEMENT HAS REDUCED THE SCALE AND EFFECTIVENESS OF CLEANUP EFFORTS, (POSTPONING THE SETTLEMENT WILL ENSURE AN EARNEST CLEANUP OF PRINCE WILLIAM SOUND BEACHES THIS SUMMER.)

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
61	4/12/91	MEGANACK, WALTER R		P.O. BOX PGM PORT GRAHAM, AK 99603	FAVORS	GENERAL

SUMMARY:

AS A COMMERCIAL FISHERMAN AND LIFETIME RESIDENT OF THE VILLAGE OF PORT GRAHAM, 76-YEAR OLD MEGANACK BELIEVES THE OIL SPILL HAS DAMAGED THE SUBSISTENCE OF HIS FAMILY AND OTHERS. FEELS THE SETTLEMENT OFFER IS INADEQUATE BUT SHOULD BE USED AS A STARTING POINT; ACCEPTS THE SETTLEMENT AS LONG AS IT CAN BE RENEGOTIATED AT THE END OF 11 YEARS.

62	4/13/91	NISHIMOTO, MIKE		407 RANGEVIEW AVE HOMER, AK 99603	OPPOSES	GENERAL
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SUMMARY:

BELIEVES THE SETTLEMENT AMOUNT TOO LOW, BUT SEES LITTLE TO GAIN BY RE-NEGOTIATION. SUGGESTS SEVERAL CHANGES OR ACTIONS: CAREFULLY EXAMINE AGREEMENT FOR "LOOPHOLES" OR AMBIGUITIES (CITES DISPARITY BETWEEN TEXT ON PAGES 3 AND 10, REGARDING APPLICATION OF MONIES FOR PAST EXPENSES) AND MODIFY AS NEEDED; INDEPENDENTLY AUDIT MONIES RECEIVED BY AGENCIES TO PREVENT "WASTE AND ABUSE"; ESTABLISH A PEER REVIEW PANEL TO RECOMMEND AND REVIEW SCIENTIFIC STUDIES, TO KEEP "PURE SCIENTIFIC" DATA FROM "POLITICAL INTERPRETATION."

63	4/15/91	ARUNDALE, WENDY H	UNIV OF ALASKA FAIRBANKS	INST OF ARCTIC BIOLOGY FAIRBANKS, AK 99775	OPPOSES	GENERAL DOI
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SUMMARY:

STRONGLY URGES THAT ARCHAEOLOGICAL RESOURCES BE EXPLICITLY INCLUDED IN DEFINITION OF "NATURAL RESOURCES" (IN TEXT OF SETTLEMENT), FOR SEVERAL REASONS: 1) ARCHAEOLOGICAL SITES ARE COMPOSED OF NATURAL RESOURCES ("LAND" AND "BIOTA"), STUDY OF THESE RESOURCES PROVIDES HISTORICAL DATA, OTHERWISE UNAVAILABLE, AND THEY ARE PUBLICLY-OWNED; 2) DOJ OFFICIALS ARE ATTEMPTING TO RULE OUT ARCHAEOLOGICAL RESOURCES FROM UNDERSTANDING OF "NATURAL RESOURCES"; 3) DAMAGE ASSESSMENT STUDIES OF ARCHAEOLOGICAL RESOURCES HAVE ALREADY BEEN DELAYED--FURTHER ARGUMENT OVER DEFINITION COULD LEAD TO FURTHER DELAY AND ENSUING LOSS; AND, 4) NEED RESTORATION FUNDS TO PROTECT SITES FROM LOOTING--FUNDS NOT OTHERWISE AVAILABLE.

64	4/15/91	HARRISON, DAVID	CHICKALOON VILLAGE	HCO4 BOX 9880 PALMER, AK 99645	OPPOSES	GENERAL SCIENCE
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SUMMARY:

OPPOSES FOR SEVERAL REASONS: LACK OF "FEDERALLY-MANDATED" PARTICIPATION OF TRIBAL COUNCILS IN NEGOTIATIONS; WITHHOLDING OF SPILL DAMAGE INFORMATION FROM PUBLIC; LOW AMOUNT OF MONETARY DAMAGES; LACK OF INFORMATION ABOUT LONG-TERM EFFECTS OF SPILL. REQUESTS INFORMATION ON SPILL EFFECTS. RESERVES RIGHTS TO BRING ACTIONS IN TRIBAL, STATE, OR FEDERAL COURTS, AND TO REVIEW INFORMATION.

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
65	4/15/91	PETTY, CLARENCE		RD 4, BOX 348 CANTON, NY 13617	OPPOSES	GENERAL SCIENCE

SUMMARY:

BELIEVES THAT THE SETTLEMENT WAS MADE IN SECRECY AND WITHOUT PUBLIC PARTICIPATION; THE PUBLIC IS ENTITLED TO INFORMATION AND INPUT BEFORE A SETTLEMENT IS ACCEPTED. THERE SHOULD BE NO SETTLEMENT UNTIL SCIENTIFIC EVIDENCE CLEARLY INDICATES THE EXTENT OF THE DAMAGE OF THE OIL SPILL. THE FULL DAMAGE TO PRINCE WILLIAM SOUND HAS NOT BEEN DETERMINED AND IS ONGOING. COMPARES EXXON'S ROLE IN THE OIL SPILL TO THE SAVINGS AND LOAN SCANDAL; BELIEVES SETTLEMENT IS PRO-OIL COMPANY AND ALLOWS EXXON TO ESCAPE RESPONSIBILITY.

66 4/16/91 MACK, NADINE V 24 DELAFIELD ST, APT 1 NEW BRUNSWICK, NJ 08901 NO VIEW GENERAL

SUMMARY:

DEMANDS "OPPORTUNITIES FOR PUBLIC PARTICIPATION" IN DISBURSEMENT OF SETTLEMENT FUNDS, INCLUDING A PUBLIC ADVISORY GROUP WITH MEMBERS FROM "ENVIRONMENTAL" AND AFFECTED COMMUNITIES. FUNDS SHOULD BE USED TO BUY TIMBER RIGHTS ALONG SPILL AFFECTED COAST, AND TO SUPPORT RESTORATION AND STUDIES OF SOUND.

67 4/19/91 LAKOSH, THOMAS A P.O. BOX 100648 ANCHORAGE, AK 99510 OPPOSES GENERAL

SUMMARY:

"MOTION FOR STAY OF EXXON VALDEZ SETTLEMENT." REQUESTS THAT COURT STAY CONSIDERATION OF SETTLEMENT FOR 30 DAYS, PENDING THE FILING OF QUI TAM SUITS BROUGHT UNDER THE FALSE CLAIMS ACT. ALLEGES FRAUD AND FALSE CLAIMS BY "DEFENDANTS" AGAINST U.S. GOVERNMENT. ASSERTS THAT "SETTLEMENT WILL MATERIALLY AFFECT PLAINTIFFS' CAUSES OF ACTION" AND THAT THE SETTLEMENT CONTAINS LANGUAGE SPECIFICALLY PROTECTING PRIVATE ACTIONS. (ATTACHES ABA JOUR. ARTICLE ON QUI TAM SUITS.)

68 4/19/91 LEGHORN, KEN S ALASKA DISCOVERY 369 SOUTH FRANKLIN ST JUNEAU, AK 99801 OPPOSES GENERAL
SCIENCE

SUMMARY:

ALASKA DISCOVERY, A TOURISM BUSINESS, BELIEVES THAT THE SETTLEMENT SHOULD NOT BE ACCEPTED BECAUSE IT DOES NOT PROTECT THE PUBLIC INTEREST. FINDS THE SETTLEMENT INADEQUATE BECAUSE IT FAILS TO ENSURE RESTORATION OF INJURED NATURAL RESOURCES IN AREAS AFFECTED BY THE OIL SPILL AND BECAUSE IT DOES NOT REQUIRE PAYMENT SUBSTANTIAL ENOUGH TO SERVE AS BOTH COMPENSATION AND ASSURANCE TO ALASKANS THAT OPERATORS SUCH AS EXXON WILL NOT SIMPLY EXTERNALIZE THE COSTS OF SAFETY BY BURDENING THE PUBLIC WITH THE RISK. SUGGESTS TWO FORMS OF COMPENSATION: A MONETARY PAYMENT TO THE STATE OF ALASKA OR CONCRETE MEASURE TO PROVIDE GREATER PROTECTION AGAINST DAMAGE FROM FUTURE SPILLS. BELIEVES THE MOST APPROPRIATE COURSE IS TO REQUIRE THE RENEGOTIATION OF THE PROPOSED AGREEMENT. OFFERS 6 RECOMMENDATIONS FOR CONDITIONS OR STIPULATIONS TO THE AGREEMENT: 1) EXXON SHOULD BE REQUIRED TO FOREGO ANY DEDUCTION OF SETTLEMENT COSTS OR CLEANUP EXPENDITURES FROM ITS STATE AND FEDERAL TAXES; 2) SETTLEMENT PROCEEDS SHOULD BE EXPLICITLY LIMITED TO REIMBURSEMENT OF STATE RESPONSE COSTS, DAMAGE ASSESSMENT, AND RESTORATION; 3) THE ALASKA LEGISLATURE, AND NOT STATE AGENCY HEADS DESIGNATED AS NATURAL RESOURCES TRUSTEES, SHOULD EXERCISE ITS OVERSIGHT AUTHORITY AND STRUCTURE THE ALLOCATION OF THE SETTLEMENT PROCEEDS, AS EXEMPLIFIED BY THE CREATION OF THE CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES WHICH WOULD IMPLEMENT THE KIND OF PUBLIC PROCESS NEEDED FOR DECISIONS ON HOW TO USE THE SETTLEMENT PROCEEDS; 4) LEGISLATURE SHOULD DIRECT THAT HABITAT PROTECTION AND ACQUISITION SHOULD BE GIVEN TOP PRIORITY IN RESTORATION EFFORTS; 5) ALL PARTIES SHOULD RELEASE THEIR SCIENTIFIC AND ECONOMIC STUDIES TO THE PUBLIC; AND 6) THE STATE OF ALASKA SHOULD BE REQUIRED TO HOLD PUBLIC WORKSHOPS TO HELP THE PUBLIC UNDERSTAND THE DATA AFTER IT IS RELEASED.

4/25/91

SUMMARY OF COMMENTS ON THE PROPOSED CONSENT DECREE
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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
69	4/12/91	PARSONS, GAIL		PO BOX 2397 HOMER, AK 99603	OPPOSES	GENERAL

SUMMARY:

REQUESTS THAT JUDGE HOLLAND SUSPEND A DETERMINATION ON THE SETTLEMENT UNTIL SCIENTIFIC AND ECONOMIC DATA HAS BEEN RELEASED AND THE PUBLIC AND LEGISLATURE HAVE HAD THE OPPORTUNITY TO REVIEW IT.

70	4/16/91	JANKA, DAVID P		P.O. BOX 1022 VALDEZ, AK 99686	OPPOSES	GENERAL
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SUMMARY:

A 15 YEAR RESIDENT OF THE PRINCE WILLIAM SOUND AREA, FEELS THAT THE SETTLEMENT SHOULD BE WITHDRAWN AND; DOES NOT FEEL THAT THE SETTLEMENT IS IN THE PUBLIC INTEREST; BELIEVES THE CONCERNS RAISED OVER THE PAST WEEKS CAN BE SATISFIED IN LESS THAN A YEAR WITH A "GOOD, WELL-REPRESENTED SETTLEMENT BASED ON REALITY WITH PUBLIC AND LEGISLATIVE PARTICIPATION THROUGHOUT THE PROCESS."

4/25/91

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COMMENT NUMBER	COMMENT DATE	AUTHOR	ORGANIZATION	ADDRESS	POSITION	REFERRAL
71	4/08/91	MILLER, GEORGE	US CONGRESS	INTERIOR AND INSULAR AFF WASHINGTON, DC 20515	OPPOSES	GENERAL

SUMMARY:

SUBMITS EVIDENCE CONCERNING EXXON'S AND ALYESKA'S CULPABILITY IN SPILL. AS CHAIRMAN OF SUBCOMMITTEE ON WATER, POWER AND OFFSHORE ENERGY RESOURCES, MILLER CONDUCTED INVESTIGATION OF SPILL, INCLUDING CLEANUP, DAMAGE TO NATURAL RESOURCES, AND OPERATION OF TRANS-ALASKA PIPELINE SYSTEM (TAPS). THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS WAS A PRINCIPAL AUTHOR OF TRANS-ALASKA PIPELINE AUTHORIZATION ACT AND HAS JURISDICTION CONCERNING PUBLIC LANDS AND NATURAL RESOURCES IN ALASKA. ALYESKA PROVIDED MILLER WITH DOCUMENTS WHICH INDICATE THAT EXXON AND OTHER COMPANIES WHICH CONTROL ALYESKA: (1) KNEW ALYESKA COULD NOT RESPOND TO SPILL, (2) FAILED TO MAKE IMPROVEMENTS IN ALYESKA'S CAPABILITIES, AND (3) SECRETLY DECIDED THAT ALYESKA WOULD NOT RESPOND TO SPILL AS PRESCRIBED BY CONTINGENCY PLAN. IN 1971, DURING CONSIDERATIONS OF TAPS, ALYESKA PROMISED THAT CONTINGENCY PLAN WOULD BE DRAWN UP WHICH WOULD DEAL PROMPTLY AND EFFECTIVELY WITH ANY SPILL, SO THAT ITS EFFECT ON ENVIRONMENT WOULD BE MINIMAL. ON APRIL 10, 1973, PRESIDENT OF ALYESKA, IN TESTIMONY URGING APPROVAL OF PIPELINE PROJECT PROMISED CONGRESS THAT THE VERY BEST TECHNOLOGY WOULD BE IN PLACE. IN EXCHANGE FOR RIGHT TO BUILD TAPS ON PUBLIC LANDS, ALYESKA SIGNED RIGHT-OF-WAY AGREEMENTS WITH U.S. AND STATE OF ALASKA; IN RIGHT-OF-WAY CONTRACT WITH U.S., ALYESKA PROMISED TO CONTROL AND CLEAN UP ANY OIL SPILL. ACCORDING TO ALYESKA'S OIL SPILL CONTINGENCY PLAN ("PLAN"), IN EFFECT ON MARCH 23, 1989, ALYESKA PROMISED RAPID AND EFFECTIVE RESPONSE TO ANY SPILL USING STATE-OF-THE-ART TECHNOLOGY. ALYESKA PROMISED THAT OWNER COMPANIES' POLICY WAS TO COMPLY WITH LAWS AND TAKE "EVERY REASONABLE ACTION" TO MINIMIZE ENVIRONMENTAL DAMAGES FROM SPILL. ALYESKA PROMISED IN THE PLAN THAT, AS AGENT FOR OWNER COMPANIES, IT WOULD DIRECT AND CONDUCT CLEANUP OPERATIONS. IN ADDENDUM TO PLAN IN 1982, ALYESKA INFORMED ALASKA DEC THAT, IN EVENT OF SPILL, ESTIMATED TIME OF COMPLETION OF CLEANUP FOR 100,000 BARREL SPILL WOULD BE LESS THAN 48 HOURS. AT URGING OF DEC, ALYESKA INCLUDED RESPONSE SCENARIO FOR 200,000 BARREL SPILL IN 1987 PLAN, BUT DOUBTED THAT SUCH A SPILL WOULD OCCUR. PLAN CALLED FOR EQUIPMENT TO BE IN PLACE WITHIN 5 HOURS AFTER SPILL. PLAN PREDICTED THAT 35 PERCENT OF OIL WOULD BE RECOVERED FROM WATER, 30 PERCENT FROM SHORELINE CLEANUP, 30 PERCENT WOULD DISPERSE NATURALLY, ONLY 5 PERCENT WOULD REMAIN IN ENVIRONMENT; YET, AFTER EXXON VALDEZ SPILLED 260,000 BARRELS, CUMULATIVE TOTAL RECOVERED WITHIN FIRST 72 HOURS WAS LESS THAN 3,000 BARRELS. EQUIPMENT MENTIONED IN PLAN WAS DAMAGED AT TIME OF SPILL, DID NOT REACH SPILL SITE FOR MORE THAN 14 HOURS. THERE WERE NOT SUFFICIENT QUANTITIES OF DISPERSANTS OR APPLICATION EQUIPMENT AVAILABLE TO MAKE UP FOR FAILURE OF MECHANICAL RECOVERY EFFORT. ALYESKA DID NOT HAVE EQUIPMENT TO CONTAIN AND COLLECT EVEN A FRACTION OF AMOUNT SPECIFIED IN PLAN. THE FAILURE OF ALYESKA'S RESPONSE IN FIRST 72 HOURS CONTRIBUTED TO ULTIMATE ENVIRONMENTAL IMPACTS OF SPILL. THE SPILL EVENTUALLY SOILED OVER 1,000 MILES OF COASTLINE AND DISRUPTED LIVES OF THOUSANDS WHO DEPENDED ON NATURAL RESOURCES. ALASKA OIL SPILL COMMISSION CONCLUDED THAT PRONOUNCEMENTS BY ALYESKA THAT IT EMPLOYED BEST AVAILABLE TECHNOLOGY AND COMMITTED ADEQUATE RESOURCES TURNED OUT TO BE FALSE. MILLER'S INVESTIGATION REVEALED THAT ALYESKA WAS ON NOTICE IN 1984 THAT ITS OWN PERSONNEL BELIEVED THEY WERE INCAPABLE OF RESPONDING TO SPILL. BY 1988 ALYESKA HAD REACHED THE CONCLUSION THAT IT WAS UNPREPARED FOR SPILL: THEO POLASEK, ALYESKA'S VICE PRESIDENT OF OPERATIONS, LISTED DEFICIENCIES IN ALYESKA'S EQUIPMENT, E.G., NO NEW SKIMMING VESSELS HAD BEEN PURCHASED SINCE 1977. POLASEK TESTIFIED AT HEARING MILLER CHAIRED IN VALDEZ ON MAY 7, 1989, AND ADMITTED THAT EQUIPMENT IN THE PLAN WAS SIMILAR TO THE PLAN IN 1977. HE REFERRED TO PLANNED ACQUISITION OF TANK BARGE, WHICH WAS STORED IN WASHINGTON AND NOT AVAILABLE IN THE CLEANUP, AND A MOBILE CONTINGENCY COMMAND CENTER, TO BE INSTALLED IN 1988, WHICH WAS NOT IN PLACE AT TIME OF THE SPILL. IN 1988, MARINE SERVICES SUBCOMMITTEE MADE FIVE RECOMMENDATIONS TO ALYESKA OWNERS COMMITTEE AS PART OF A COMPROMISE REGARDING IMPROVEMENTS IN THE PLAN. STANLEY FACTOR OF ARCO MARINE OBJECTED TO THESE RECOMMENDATIONS BECAUSE ALYESKA OWNERS HAD ALREADY DECIDED THAT ALYESKA WOULD NOT RESPOND TO SPILLS IN THE MANNER REQUIRED BY THE PLAN. AT MILLER'S SUBCOMMITTEE HEARING IN VALDEZ, POLASEK TESTIFIED THAT ALYESKA HAD FULFILLED ITS PROMISES IN THE PLAN, HOWEVER, EVIDENCE INDICATES THAT ALYESKA BROKE THE LAW AS WELL AS ITS PROMISES TO ALASKA AND U.S. SINCE ALYESKA KNEW IT COULD NOT RESPOND TO SPILL AS REQUIRED BY THE PLANS, ALYESKA AND ANY RESPONSIBLE OFFICER COULD BE EXPOSED TO CRIMINAL PENALTIES. HOWEVER, DEPARTMENT OF JUSTICE HAS NOT FILED ANY CRIMINAL CHARGES AGAINST ALYESKA OR OWNER COMPANIES OTHER THAN EXXON. IN PROPOSED CRIMINAL PLEA AGREEMENT, U.S. WOULD WAIVE RIGHTS TO PURSUE CRIMINAL CHARGES AGAINST ALYESKA OR OWNER COMPANIES AND ALSO WAIVE ITS RIGHT TO PURSUE CIVIL OR ADMINISTRATIVE PENALTIES AGAINST ALYESKA AND OWNER COMPANIES. PROPOSED AGREEMENT PROVIDES GENEROUS PROTECTION FOR ALYESKA: U.S. AND ALASKA WAIVE RIGHTS TO RAISE CLAIMS AGAINST ALYESKA FOR NATURAL RESOURCE DAMAGES; IF EITHER GOVERNMENT RECOVERS ANY AMOUNT FROM ALYESKA, EXXON IS TO BE REIMBURSED FOR 20 PERCENT OF THE GOVERNMENTS' RECOVERY; ALYESKA EXPRESSLY RESERVES THEIR RIGHTS TO SUE U.S. OR ALASKA; INCLUSION OF ALYESKA IN PROPOSED CRIMINAL PLEA AGREEMENT, SETTLEMENT AGREEMENT, AND CONSENT DECREE IS CONTRARY TO PUBLIC INTEREST; PROPOSED SETTLEMENT FAILS TO HOLD ALYESKA ACCOUNTABLE TO PUBLIC AND FAILS TO SERVE AS A DETERRENT FOR SIMILAR CONDUCT. AFTER EXTENSIVE DEBATE ABOUT ENVIRONMENTAL RISKS, TAPS WAS APPROVED IN 1973 BY ONLY ONE-VOTE

MARGIN IN U.S. SENATE. IN EXCHANGE FOR ACCESS TO ENVIRONMENTALLY SENSITIVE PUBLIC LANDS, CONGRESS WAS ASSURED THAT TAPS WOULD BE OPERATED IN ENVIRONMENTALLY SOUND MANNER, USING STATE-OF-THE-ART TECHNOLOGY. THE OIL INDUSTRY BETRAYED ITS PROMISES AND DECEIVED CONGRESS REGARDING OPERATIONS OF ALYESKA AND EXXON VALDEZ SPILL. WITHOUT COMMITMENT BY DEPARTMENT OF JUSTICE TO PROSECUTE INTENTIONAL DECEPTION, MILLER QUESTIONS HOW CONGRESS AND THE STATE OF ALASKA CAN RELY ON SUCH ASSURANCES IN THE FUTURE. EXHIBITS A THROUGH G ATTACHED.

4/25/91

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72	4/12/91	HERTEL, DENNIS M STUDDS, GERRY E HUGHES, WILLIAM J	US CONGRESS US CONGRESS US CONGRESS	MERCHANT MARINE FISHERIES WASHINGTON, DC 20515	OPPOSES	SCIENCE GENERAL EPA

SUMMARY:

THE LETTER RECOMMENDS THREE ACTIONS THAT SHOULD BE TAKEN PRIOR TO THE APPROVAL OF THE SETTLEMENT: 1) DISCLOSURE TO THE COURT OF ENOUGH INFORMATION TO PERMIT A FULLY INFORMED JUDGEMENT ABOUT THE MONETARY SUFFICIENCY OF THE PROPOSED SETTLEMENT. 2) A COMMITMENT BY THE TRUSTEES TO RELEASE ALL DAMAGE ASSESSMENT AND RESTORATION STUDIES AND RELATED DOCUMENTS TO THE PUBLIC AFTER THE SETTLEMENT IS APPROVED; AND 3) CLARIFICATIONS BY THE TRUSTEES CONCERNING THE MANNER IN WHICH THE RECOVERED FUNDS WILL BE SPENT AND THE EXTENT OF PUBLIC PARTICIPATION IN THE RESORATION PLANNING AND DECISION MAKING PROCESS.

73	4/16/91	MASON, GARY E HAUSFELD, MICHAEL D COHEN, JERRY S MILLER, LLOYD B	COHEN MILSTEIN COHEN MILSTEIN COHEN MILSTEIN SONOSKY CHAMBERS CHENEGA BAY PORT GRAHAM ENGLISH BAY LARSEN BAY KARLUK ALASKA NATIVE CLASS	1401 NEW YORK AVE NW WASHINGTON, DC 20005	OPPOSES	DOI GENERAL
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SUMMARY:

IN THE MOTION AND ANNEXED MEMORANDUM IN SUPPORT OF THE MOTION, THE ALASKA NATIVE CLASS (NATIVE VILLAGES OF CHENEGA BAY, PORT GRAHAM, ENGLISH BAY, LARSEN BAY, AND KARLUK) MOVE FOR REFORMATION OF THE SETTLEMENT AND TO STAY IMPLEMENTATION OF THE SETTLEMENT AND MOA FOR 90 DAYS. THE NATIVE CLASS ASKS THE UNITED STATES AND THE STATE OF ALASKA TO ADHERE TO REPRESENTATIONS GIVEN TO THE D.C. DISTRICT COURT THAT THE SETTLEMENT WILL NOT IMPAIR THE NATIVES RIGHT TO SUBSISTENCE AND THEIR ABILITY TO PROSECUTE FULLY LAWSUITS AGAINST EXXON AND ALYESKA. THEY ASSERT: 1) THE LANGUAGE OF THE AGREEMENT IS INCONSISTENT WITH AND CONTRADICTORY TO THE RIGHTS OF THE ALASKA NATIVES; 2) THE PLEA AGREEMENT DENIES THE ALASKA NATIVES AN OPPORTUNITY FOR IMMEDIATE AND NECESSARY RESTITUTION; 3) THE AGREEMENT, EVEN IF NEUTRAL ON ITS FACE, IMPAIRS THE RIGHTS OF THE ALASKA NATIVE CLASS; 4) THE SETTLEMENT IMPAIRS THE RIGHTS OF THE ALASKA NATIVES AS A CO-EQUAL WITH THE UNITED STATES AND ALASKA WITH RESPECT TO NATURAL RESOURCES. THE ALASKAN NATIVE CLASS ASKS THE COURT TO ORDER THAT THE ALASKA NATIVE CLASS BE INCLUDED IN FURTHER SETTLEMENT NEGOTIATIONS SO THAT ALL CLAIMS TO NATURAL RESOURCES CAN BE SETTLED EFFICIENTLY AND EQUITABLY, AND ORDER THAT SUCH REFORMATION OF THE SETTLEMENT PAPERS BE MADE AS DEEMED APPROPRIATE.

4/25/91

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74	4/18/91		PESTICIDE ACTION NETWORK INTL INDIAN TREATY CNCL ABALONE ALLIANCE COALITION FOR OUR EARTH WEST COUNTY TOXICS COAL S & MESO AMER INDIAN CTR ALASKA ACTION GROUP	965 MISSION ST, RM 514 SAN FRANCISCO, CA 94103	OPPOSES	GENERAL SCIENCE

SUMMARY:

COMMENTS FAXED FROM ALASKA ACTION GROUP OFFICE. BELIEVES THE SETTLEMENT IS INADEQUATE IN SEVERAL KEY AREAS: 1) WAIVES RIGHTS TO FILE ANY SUITS, CIVIL OR CRIMINAL, AGAINST ALYESKA; FEELS CRIMINAL CHARGES SHOULD BE FILED AGAINST ALYESKA. 2) NO SETTLEMENT CAN BE MADE UNTIL AN OBJECTIVE VERIFICATION IS MADE OF THE AMOUNT OF OIL WHICH WAS SPILLED; PENALTIES SHOULD BE BASED UPON THE ACTUAL AMOUNT OF OIL SPILLED. 3) WITHHOLDING OF SCIENTIFIC STUDIES DEPRIVES THOSE AFFECTED BY THE SPILL OF NEEDED INFORMATION; ALSO QUESTIONS WITHHOLDING OF STUDIES PAID FOR WITH TAX MONEY. 4) PAYMENT IS INADEQUATE FOR RESTORATION UNDER CURRENT DAMAGE ESTIMATES, AND RELEASE OF STUDIES COULD INDICATE A NEED FOR EVEN MORE RESTORATION MONIES. 5) REOPENER CLAUSE IS OBSOLETE DUE TO RELEASE OF SUMMARY OF EFFECTS REPORT; PROBLEM IS NOT UNKNOWN DAMAGE, BUT LONG-TERM EFFECTS OF KNOWN DAMAGE. 6) SETTLEMENT IS A VIOLATION OF THE ALASKA STATE CONSTITUTION. 7) STATE HAS ABANDONED ITS "MORAL" RESPONSIBILITY TO REPRESENT THE PEOPLE, ESPECIALLY THE NATIVE VILLAGES, OF THE STATE.

75	4/19/91	MARLOW, KERRIE		P.O. BOX 888 GIRDWOOD, AK 99587	OPPOSES	GENERAL SCIENCE
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SUMMARY:

BELIEVES SCIENTIFIC AND ECONOMIC DATA SHOULD HAVE BEEN RELEASED. WANTS THE PUBLIC AND THE LEGISLATURE TO PARTICIPATE IN HOW THE MONIES OF THE PROPOSED SETTLEMENT ARE SPENT. SUGGESTS THE SETTING UP OF A LEGISLATIVE-APPOINTED PUBLIC ADVISORY GROUP WITH MEMBERS FROM THE ENVIRONMENTAL COMMUNITY AND SPILL-AFFECTED COMMUNITIES WHOSE COMMENTS LEGALLY BIND THE TRUSTEE COUNCIL.

76	3/04/91	KONIGSBERG, JAN	ALASKA CONSERVATION FOUND	430 WEST 7TH AVE, STE 215 ANCHORAGE, AK 99501	NO VIEW	GENERAL
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SUMMARY:

BELIEVES IT WOULD MAKE SENSE TO APPORTION SOME OF THE EXXON SETTLEMENT TO THE ALASKA CONSERVATION FOUNDATION'S SUPPORT OF INDIVIDUAL INITIATIVE AND PARTICIPATION IN ADDRESSING QUALITY OF LIFE ISSUES IN ALASKA; TWO MILLION DOLLARS COULD MAKE A DIFFERENCE TO THE FOUNDATION'S EFFORTS TO BENEFIT THE HEALTH OF ALASKA CITIZENS, TO ENSURE A SECURE QUALITY ENVIRONMENT, AND TO EXPAND ENVIRONMENTAL EDUCATION; CITIZEN OVERSIGHT OF RESTORATION AND RECLAMATION EFFORT WILL BE ESSENTIAL; INCLUDES REPLY FROM JOHN A. SANDOR OF ALASKA DEC ON BEHALF OF HICKEL, SANDOR BELIEVES THAT BEST USE OF SETTLEMENT FUNDS WOULD BE TO DIRECTLY ENHANCE, PROTECT AND PRESERVE RESOURCE VALUES OF PRINCE WILLIAM SOUND AND OTHER REGIONS IMPACTED BY SPILL, RATHER THAN FOR OTHER ENVIRONMENTAL INITIATIVES, NOT DIRECTLY RELATED TO SPILL; SANDOR STATES THAT SPECIFIC DECISIONS REGARDING USE OF SETTLEMENT FUNDS WILL BE MADE BY TRUSTEES, WHO ARE CONSIDERING A WIDE RANGE OF OPTIONS.




RPWG

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

Memorandum

To: Trustee Council
Exxon Valdez Oil Spill (EVOS)

From: Thomas A. Campbell 
Chairman Washington Policy Group (WPG) EVOS

Subject: Review of Comments Received on EVOS Settlement

The public comment period on the Settlement Agreement entered into by the United States, the State of Alaska and Exxon Corporation and two of its affiliates ("Exxon") to settle the governments' natural resource damage claims against Exxon arising out of the EVOS closed on April 18, 1991. In paragraph 37 of the Settlement Agreement, each government reserved the right to withdraw from the Agreement within 15 days following close of the public comment period if the comments received disclose facts or considerations which show that the Settlement Agreement is "inappropriate, improper or inadequate". On Friday, April 26, 1991, the WPG will meet, together with representatives of the State of Alaska, to discuss public comments received on the Settlement Agreement and the associated Memorandum of Agreement ("MOA") with the State of Alaska. This discussion will include a discussion of comments received from Alaska Natives and Native organizations. The basic issue, confronting the WPG at this time is whether the comments received disclose facts or considerations which lead to the conclusion that the governments should withdraw from the settlement with Exxon.

Copies of all comments received to date, including comments received from Alaska Natives and Native organizations, are attached for your review and consideration. The WPG will meet on Friday, April 26 to review the comments. We plan to use the morning for review and the afternoon to plan our strategy for response. You are invited to participate in the meeting via telephone conference call beginning at 1:00 PM EDT. Dottie Moorhous of my office will arrange the call. If you desire to participate please call her at (202) 377-1400. If you wish to join the meeting earlier please advise Dottie.



The members of the WPG are interested in hearing your advice and recommendations, based on your expertise and experience in carrying out the natural resource damage assessment and restoration planning activities for the EVOS and in managing resources affected by the spill. Comments which are addressed to issues other than this basic question of whether the government should withdraw from the settlement (for example, public disclosure of assessment data, procedures for public participation in restoration planning, and other aspects of the settlement's and MOA's implementation) will be addressed by the WPG at a later date. For your convenience and to assist you in reviewing the attached comments, there is also attached a copy of a summary of the comments received to date which was prepared by my office and CACI, the Justice Department litigation support contractor. Any comments received after this date will be sent to you as quickly as possible.

Thank you for your prompt attention and assistance.

Attachments

cc: (Members, WPG)

PPWG
U

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Attorneys for ALYESKA PIPELINE SERVICE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION; EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; AMERADA HESS PIPELINE
CORPORATION; ARCO PIPE LINE
COMPANY; EXXON PIPELINE COMPANY;
MOBIL ALASKA PIPELINE COMPANY;
PHILLIPS ALASKA PIPELINE CORPORA-
TION; BP ALASKA PIPELINES, INC.;
UNOCAL ALASKA PIPELINE COMPANY
and the T/V EXXON VALDEZ, in rem,

Defendants.

Case No. A91-082 Civ.

RESPONSE OF ALYESKA
PIPELINE SERVICE COMPANY
TO PUBLIC COMMENTS OF
CONGRESSMAN GEORGE MILLER

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Congressman George Miller has submitted a letter to the Court, we assume as a public comment on the proposed Consent Decree. In it, he makes three principal points: (1) Alyeska Pipeline Service Company ("Alyeska") was aware that it could not prevent environmental damage if a major spill occurred in Prince William Sound, but did not disclose this fact, thereby misleading the State and other regulators; (2) Alyeska did not have the necessary equipment available at the time of the EXXON VALDEZ grounding; and (3) Alyeska had "secretly decided," prior to the EXXON VALDEZ grounding, that it would not respond to an oil spill in Prince William Sound.

We respectfully submit that Congressman Miller is wrong on each count. First, it was clearly stated in Alyeska's 1987 Oil Spill Contingency Plan ("OSCP"), and well known to the State and other regulators, that despite the best efforts of Alyeska and the ship owner, a major oil spill in Prince William Sound would result in significant environmental damage. Second, Alyeska had available all of the equipment identified in the OSCP and responded in accordance with the OSCP. Third, as Alyeska's response to the EXXON VALDEZ grounding demonstrated, there was no decision on Alyeska's part -- secret or otherwise -- not to respond to oil spills in Prince William Sound.

It also is significant that the issues raised by Congressman Miller's letter have previously been aired and fully

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considered in public hearings, including hearings conducted by the National Transportation Safety Board ("NTSB"), the Alaska Oil Spill Commission, the General Accounting Office, and Congressman Miller's own Subcommittee on Water, Power and Offshore Resources of the Committee on Interior and Insular Affairs. For example, the NTSB heard testimony by ADEC Commissioner Kelso that he felt the OSCP contemplated a cleanup of the EXXON VALDEZ oil spill within 72 hours, a position quite similar to that espoused by Congressman Miller. Yet, the NTSB flatly rejected this interpretation. The NTSB correctly observed that the OSCP stated that in the event of a major spill in Prince William Sound, a long-term cleanup of the beaches would be required.¹

1. THE LIMITATIONS ON ALYESKA'S RESPONSE CAPABILITY WERE PLAINLY DESCRIBED AND WELL-KNOWN TO THE REGULATORS.

It has long been known that a major oil spill in Prince William Sound could cause substantial impact on the marine environment. In the 1972 Final Environmental Impact Statement for the Proposed Trans-Alaska Pipeline ("EIS"), for example, the Department of the Interior described the consequences of a major marine oil spill as follows:

¹ National Transportation Safety Board Marine Accident Report, PB90-916405, NTSB/MAR-90/04 ("NTSB Report"), at 150.

Present state-of-the-art equipment and techniques for containing and recovering spilled oil can recover less than 20 percent of oil spilled. Thus, unless extraordinary advances in oil containment and recovery techniques occur, almost all of the oil spilled by the tanker system would constitute an adverse impact on the marine ecosystem.

EIS at 224-25.

In the OSCP, Alyeska reiterated that significant environmental effects would result from a major oil spill in Prince William Sound. For example, under conditions assumed to be ideal for cleanup purposes, Alyeska described the anticipated response to and effect of a hypothetical 4,000-barrel spill in Prince William Sound.² OSCP at 3-50 to 3-53. In this hypothetical scenario, 1/60th the size of the EXXON VALDEZ spill, Alyeska suggested that nearly seven miles of beach would be heavily oiled, that only 1,000 barrels of oil would be collected through the use of skimmers and other oil spill containment equipment, and that the cleanup operation would last for approximately two months. Id. Alyeska also indicated that the

² The portion of the OSCP describing the hypothetical 4,000-barrel spill scenario is attached hereto as Exhibit A.

cleanup efforts would require assistance from private commercial vessels, oil spill cooperatives such as Cook Inlet Response Organization ("CIRO") and Alaska Clean Seas, private oil spill response companies, dispersants contractors, and possibly the U. S. Coast Guard Pacific Strike Team. OSCP at 3-51. Alyeska stated that a crucial element of its response to this hypothetical 4,000-barrel spill would be the use of dispersants, which would require approval of the government's on-scene coordinator before application could begin. OSCP at 3-51 to 3-53. As Alyeska noted, this scenario "presumed a dispersant decision is made soon enough to make application feasible." OSCP at 3-53.

Alyeska's OSCP also described the response to a hypothetical 200,000-barrel spill in Prince William Sound.³ OSCP at 3-54 through 3-56. This hypothetical scenario was again premised on ideal conditions for oil containment and cleanup. OSCP at 3-54.⁴ Yet, as Alyeska observed in its

³ The portion of the OSCP describing this hypothetical 200,000-barrel spill is attached as Exhibit B.

⁴ The seas were assumed to be calm, the winds moderate and the weather mild. The spill was assumed to occur at 6:00 a.m. on the longest day of the year, so that maximum daylight would be available during the initial response. OSCP at 3-54. By contrast, the conditions Alyeska encountered in responding to the EXXON VALDEZ spill were much less favorable. The spill occurred in the middle of the night, the days were short, the temperature was cold, and the snow was deep. Moreover, in less than 72 hours, a severe storm struck, forcing the fleet of response vessels to seek shelter.

OSCP, even under these ideal conditions the response would require the use of private commercial vessels and third-party aircraft, and the assistance of the U. S. Coast Guard Pacific Strike Team, all oil spill contractors in the State of Alaska, local oil spill cooperatives such as CIRO and Alaska Clean Seas, the Association of Petroleum Industry Co-op Managers, the International Bird Rescue Research Organization, and others. Id. Furthermore, as Alyeska pointed out, the effectiveness of a response to such a large spill would be largely dependent on the timely and effective application of dispersants. OSCP at 3-54 through 3-56.⁵

Alyeska explained that, even under ideal conditions, all available means of response would not be able to recover most of the oil before it impacted the shorelines. OSCP at 3-56. Alyeska went on to state that a "long-term cleanup of the spill on the various beaches of Prince William Sound" would, of course, be necessary. Id. In sum, the OSCP clearly described that a hypothetical 200,000-barrel spill, even under

⁵ The on-scene coordinator for the EXXON VALDEZ spill withheld approval for the full scale application of dispersants until more than 48 hours after the spill, apparently in response to objections by State officials.

ideal cleanup conditions, would result in significant environmental impact.

Moreover, the State and other regulators were well aware of the limitations of Alyeska's OSCP and understood that a major spill in Prince William Sound would have significant adverse consequences in the marine ecosystem. Although the evidence supporting this conclusion is too voluminous to cite here, one example should suffice to rebut accusation that Alyeska misled the State into believing that it could contain 200,000 barrels within 72 hours and prevent the oil from impacting the beaches.

As part of the Alaska Oil Spill Commission's investigation of the EXXON VALDEZ oil spill, an investigator for the Commission, Allan Adasiak, interviewed Paul O'Brien. From July of 1982 until February of 1989, Mr. O'Brien was the manager in charge of ADEC's oil pollution control program. In that capacity, he was responsible for the review of all contingency plans submitted to the State. Thus, Mr. O'Brien had oversight responsibility for the State's review of Alyeska's 1987 OSCP.

Mr. O'Brien clearly understood that Alyeska's OSCP did not contemplate the capability to eliminate environmental damage from a major oil spill in Prince William Sound as he candidly stated in response to Mr. Adasiak's questions:

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. . . Even in hindsight, I think it is important for people to realize that we never required nor did we ever intend to require that Alyeska have the on-site capability to deal with a catastrophic event. That is an EXXON VALDEZ type of spill. We expected them to have the ability to deal with the more common, smaller operational spills: the 10 barrel, the 100 barrel spills, not the tens of hundreds or tens of thousands of barrels.

. . .

I would not require, even now, Alyeska to have that on-site -- and I keep stressing on-site -- hardware capability to deal with a 10 million gallon spill. No, I would not. Not unless it was a decision, a policy decision made above my level. That should be the place. I would say it is a valid policy call to make as to whether you have an Alyeska with that kind of capability, but you don't, under DEC's current regulations at least, there is no requirement that they have on-site capability to deal with the catastrophic event. So, in retrospect, no, I would still not require that unless it was a policy call made at much higher levels.

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Quite clearly, then, the State of Alaska understood, and any reader of Alyeska's OSCP should have understood, that Alyeska could not prevent environmental harm from occurring in the event of a major spill in Prince William Sound.

2. ALYESKA'S RESPONSE AND ITS EQUIPMENT AVAILABLE FOR RESPONSE WERE IN ACCORDANCE WITH THE OSCP.

The OSCP lists various items of oil spill response equipment that Alyeska would have available in the event of an oil spill. OSCP at 3-57. All of this equipment was available at the time of the EXXON VALDEZ grounding. See, e.g., Testimony of Theo Polasek before the Alaska Oil Spill Commission, Vol. II at 30-46 (August 31, 1989). As Mr. Polasek testified, "We had our equipment deployed, we had our boom out, and we had done what we promised to do." Id. at 41. The contention that Alyeska did not have the required equipment available at the time of the spill is incorrect.

Congressman Miller has also suggested, however, that Alyeska did not deliver its equipment to the scene of the spill as promptly as it suggested it might in one hypothetical scenario. Again, we must respectfully disagree with Congressman Miller.

As noted above, the difference between the actual event and the hypothetical scenario was, literally, the difference between night and day. It is not surprising that the actual delivery of equipment took longer under adverse conditions of winter, cold and darkness than under ideal conditions. Alyeska's performance must be judged in light of the actual circumstances, not against a hypothetical ideal.

Furthermore, in the hypothetical scenario it was assumed that there was no risk of the loss of the tanker or additional cargo and that containment would be the first priority. OSCP at 3-54. In the instant case, however, the Coast Guard and others at the scene quickly determined that the EXXON VALDEZ was potentially unstable and its remaining cargo of some 43 million gallons of oil was in jeopardy of spilling. Thus, the first priority became lightering, not containment. See, e.g., Alaska Oil Spill Commission, Vol. II at 34-35 (August 31, 1989); NTSB Report at 145.

In sum, the time required for Alyeska's response equipment to arrive on the scene was reasonable under the circumstances and consistent with the OSCP.

Furthermore, had Alyeska been able to respond more quickly, as Congressman Miller contends it should have, the consequences of the spill would not have been significantly

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ameliorated. As the NTSB concluded, "The 10-hour loss [of time] had no material impact on the cleanup because of the size of the spill." NTSB Report at 145.

3. ALYESKA NEVER DECIDED NOT TO RESPOND TO
A MAJOR OIL SPILL IN PRINCE WILLIAM SOUND.

Congressman Miller alleges that Alyeska's owners had secretly decided in advance of the EXXON VALDEZ grounding that Alyeska would not respond to spills in Prince William Sound. This contention is most readily refuted by the fact that Alyeska did respond to the EXXON VALDEZ grounding, which of course took place in Prince William Sound. To the extent, the ARCO Marine telex attached to Congressman Miller's letter, may be read as reporting that Alyeska would not respond to spills in Prince William Sound, it is simply wrong. No such decision was ever made.

During 1988, Alyeska was re-evaluating its oil spill response capabilities in an effort to determine how best to respond -- both immediately and long-term -- to various possible types of oil spills, including a significant spill in Prince William Sound. There were many who thought then, as many think now, that the most effective response to a major spill in open water is the application of dispersants. Another factor considered in these discussions was that it was appropriate to expect the shipper, with the assistance of various

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response organizations. It was also understood that the shipper, and not Alyeska, would assume responsibility for the long-term cleanup of the spill.

Alyeska responded to the EXXON VALDEZ oil spill as rapidly and effectively as the situation permitted, and in accordance with the OSCP. Lightering to avoid the possible breakup of the vessel and an even larger spill was the first priority, and containment the second. Within 48 hours the orderly transition of responsibility from Alyeska to Exxon began, and Exxon continued the cleanup efforts initiated by Alyeska.

DATED: April 18, 1991.

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306 SCENARIOS

Valdez Arm Tanker Casualty: Spill Amount 4,000 Barrels

Assumptions

For the purposes of this scenario, the following assumptions have been made. The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. Sea state is less than 5 feet, currents are less than 1.6 knots, waves are less than 2 feet, and visibility is equal to or greater than 2 miles.

Conditions

The simulated weather is sunny to overcast with some light rain, winds are from the southwest at eight knots, high tide is approximately 6 hours after the incident.

An outbound tanker experiences a steering casualty just prior to commencing a turn in the Valdez Narrows, northwest of Entrance Point. This simulated incident occurs on June 22, 1986, at 6:00 a.m. Within 15 minutes, the tanker goes aground on Potato Point. One wing tank is damaged and the loss of oil is approximately 2,000 barrels per hour for the first hour and 500 barrels for the next four hours. The tanker is able to transfer oil to other tanks to prevent further significant losses of oil. The tanker will move off of the shoal under its own power with tug assist with permission of the U.S. Coast Guard. It will then be moved back to the Valdez Marine Terminal where it will be berthed for offloading and inspection. Figure 306-3 is an oil spill trajectory for this scenario.

The purpose of this scenario is to illustrate how we would respond to this spill of approximately 4,000 barrels in Valdez Arm. Actually, the most likely spill volume for vessels underway in trade with the Valdez Marine Terminal during the expected 30-year operating lifetime of the Marine Terminal is 1,000 barrels. No attempt will be made to describe the circumstances responsible for the mechanical failure or the additional considerations of tanker off-loading, inspection or release from the berth for sailing to the Lower 48.

The majority of the oil impact will be at Potato Point. It will impact an area about 6,000 yards either side of the point of impact of the shoreline and will be approximately 600 yards wide. Within 24 hours, there is a slick in Valdez Arm approximately 1/4 mile wide and 2.4 miles long.

Immediate Response Action

The ship and shoreline, which is heavily oiled, will be boomed by 0900 hours and skimming operations will begin. The two mooring launches each with a Vikoma seapack and two 21-foot workboats will boom the ship and shoreline area. A reconnaissance helicopter is on site, originally our security helicopter which is relieved by an ERA helicopter with a crew out of Anchorage. A tug is on standby to assist the ship, if necessary. At the same time (0600-0900 hrs.), one 26-foot workboat and one 21-foot workboat are in the process of booming Shoup Bay.

By approximately 1100 hours, the barge has been moved into close proximity to the spill site by one of the tugs. The barge has on it various oil spill equipment including the sea skimmer, containment boom, sorbent boom, pumps, various hoses and various containers, such as barrels, bags or bladders. The sea skimmer is placed into a heavily oiled contained area next to the Vikoma boom and commences skimming oil and pumping it into the barge. The Class V and Class VII are in position to skim oil in the Vikoma seapack area, having been towed to the area by one of the tugs. One 19-foot workboat and 2 Jon boats are working in the proximity of the barge to begin washing down the beaches and picking up appropriate oil debris on the beach. The shoreline cleanup is initiated by using small pumps with approximately 50 to 100 pounds per square inch (PSI) pressure to wash down the gravelly beach and to skim the oil from the water surface. A Komara skimmer, working off of a 26-foot workboat, is picking up the oil as it is washed back into the water. At 1100 hours, the oil stops flowing from the tanker as the ship has transferred oil to prevent further loss of significant amounts of oil. By 1200 hours, Shoup Bay and Sawmill Bay have been boomed.

The appropriate government agencies will be notified immediately of the spill. It is presumed the regional response team will be organized. Alyeska Pipeline Service Company will make a request to apply dispersants to the spill immediately. Request for burning oil and debris along the contaminated areas of the affected shoreline will be made very soon in the response effort to the Alaska Department of Environmental Conservation. See Sections 404, 405 and 901 in the General Provisions for additional information on government relations.

Private commercial vessels from the Valdez small boat harbor would be employed to respond to the oil spill with booming and logistical support. Aircraft from our direct on-call flight services contractors would be immediately employed to assist in the response with overflights, communication or logistical support. Oil spill cooperatives, such as (CIRO), Cook Inlet Response Organization, or Alaska Clean Seas, and private oil spill response companies would be alerted to provide a backup to our initial response. The dispersant contractors would also be alerted to prepare for movement to Valdez. As an additional contingency, we would request the U.S. Coast Guard Pacific Strike Team to prepare for assisting in the spill response.

If oil was moving differently than the predicted impact area, exclusion booming would be extended to Gold Creek or Mineral Creek. Any change to the scenario weather and/or movement of oil would necessitate exclusion booming to other possible sensitive impact areas in Port Valdez.

By approximately 1800 hours, the high tide, along with an assist from a tug, allows the ship to move off of the shoal. The ship, with the assistance of the tug, returns to the Valdez Marine Terminal and is berthed for off-loading and inspection. The ship is followed back to the berth by the Class VII with 50' of boom, assisted by the one 26-foot workboat and one 21-foot workboat to skim any additional loss of oil. At this time, a fresh crew of contractor personnel are on-scene to replace the majority of Alyeska personnel, along with a relief crew of supervisors to continue the cleanup effort throughout the night.

Preparations are being made for Day 2 operation to be continued with rotating contractor personnel, both laborers and supervisors, from oil spill cooperatives and contractors available in the Anchorage and the West Coast area. Additionally, more boats are brought into the cleanup activity to assist logistically by providing support to run supplies and oil debris to and from the Marine Terminal. Efforts continue primarily on the west shoreline to wash down the gravelly beach and to skim the oil from the water. On Day 2, dispersant approval is given to apply dispersant to the 1/4 mile wide and 2.4 mile long slick in Valdez Arm.

Dispersants

Should a large spill occur in a likely dispersant application area, Alyeska would immediately notify our aerial dispersant applicator contractor, Biegert Aviation, Inc., in Chandler, Arizona to move to Valdez and be prepared to apply dispersants. Concurrently, Alyeska would request the on-scene coordinator to approve the use of dispersants. We would also notify Conair Aviation, Ltd., in Abbotsford, British Columbia to determine its availability and earliest arrival time in Valdez. Preference would be given to the contractor who could arrive in Valdez first. If necessary, we would also contact Air Response, Inc., in Mesa, Arizona. Another alternative is the Biegert Aviation ADDS pack, which could be mounted on a Hercules aircraft and used for dispersant spraying. Again, preference is given to that contractor which could respond in the shortest amount of time. If the Valdez Airport was not available, the base of operations would be Anchorage, Alaska. Various other application equipment could be used depending on the spill size and location; see Figure 306-1.

DISPERSANT APPLICATION EQUIPMENT

EQUIPMENT TYPE	SOURCE/LOCATION	REMARKS
Aircraft - Douglas DC-4	Biegert Aviation, Inc., Chandler, Arizona	9-17 hours response time
Aircraft - Douglas DC-6B	Conair Aviation, Ltd., Abbotsford, B.C., Canada	Must go through U.S. Customs
Vessel - 34-foot workboat	CIRO Raider Cook Inlet Response Organization (CIRO), Kenai, Alaska	Maneuverable, 50' swath
Helo - buckets	Simplex, CIRO, Kenai, Alaska	40' swath, 300 gal. payload
Large boat spraying package	CIRO Kenai, Alaska	40' swath Need large (125-185') vessel

DISPERSANT APPLICATION EQUIPMENT

Figure 306-1

Along with those notifications, a request would be made to Cook Inlet Response Organization and the Alaska Clean Seas Cooperative to move their dispersants to Anchorage or Valdez. We would also alert the following cooperatives, and would request their dispersants, if appropriate: Clean Bay, San Francisco, California; Clean Coastal Waters, Long Beach, California; and Clean Seas, Santa Barbara, California. Depending on the magnitude of the spill, we might also notify Exxon Chemical Americas in Houston, Texas, which produces Corexit 9527, for additional material. See Figure 306-2 for a summary of highway transport times.

DISPERSANT AVAILABILITY AND TRANSPORT BY HIGHWAY			
Location	Amount	Valdez	Anchorage
Valdez	2,475 gal.	0	10 hrs.
Anchorage	3,800 gal.	10 hrs.	0
Kenai	3,840 gal.	15 hrs.	4 hrs.
Deadhorse	550 gal.	28 hrs.	24 hrs.
San Francisco, CA	3,000 gal.	5 days	6 days
Santa Barbara, CA	14,290 gal.	5 days	6 days
Long Beach, CA	4,000 gal.	6 days	7 days
Houston, TX	50,000 gal./day	6 days	7 days

DISPERSANT AVAILABILITY AND
TRANSPORT BY HIGHWAY

Figure 306-2

Assuming that the on-scene coordinator approves dispersant application, Alyeska could have a plane in Valdez prepared to spray dispersants in as little as nine hours. Average response time is estimated to be 17 hours. The variance in time depends upon the contractors' equipment availability at the time of notification. There are 45 drums of Corexit 9527 available in Valdez. It would require approximately 10 hours to transport 160 drums of Corexit 9527 from Anchorage to Valdez, and approximately 15 hours to transport another 160 drums from Kenai to Valdez. We will make the assumption that approximately 1,000 barrels of oil in the Valdez scenario are in position for dispersant spraying. It has spread to an equilibrium thickness of approximately one-tenth of a millimeter (4×10^{-3} inches) and covers approximately 386 acres. This slick would be approximately 2.4 miles long by $\frac{1}{4}$ mile wide. At a dispersant-to-oil ratio (DOR) of 1 to 20 (1:20), 386 acres would require approximately 38 barrels or 2,090 gallons of dispersant. This dispersal could be accomplished by a DC-6 with a swath width of approximately 175 feet, in 8 to 10 passes. Assuming a payload of 3,000 gallons of dispersants, it would require one sortie, with an elapsed time of approximately $1\frac{1}{2}$ hours if based in Valdez, and 2 hours if based in Anchorage. The payload is the amount of dispersant an aircraft can carry depending upon weather, fuel load and the distance the plane must fly to apply the dispersant. The dispersant-to-oil ratio is determined by the thickness of the oil on the water, and, although oil spreads to varied thicknesses, one would use the thickness that is most representative of the oil in the dispersant area.

COMMUNICATION

Communication between Alyeska boats and aircraft will be accomplished by using VHF radios. Communication from the boats to the Valdez Emergency Center will be relayed through the U.S. Coast Guard in Valdez via the Potato Point repeater and telephone. Alyeska will continue to discuss with the USCG the possibility of the Valdez Marine Terminal tying directly into the Coast Guard radio repeater system during emergencies. This will eliminate the need for telephone relay.

Backup communication can be established using an aircraft on station to relay messages from the spill site to the Valdez Marine Terminal using the VHF radios.

A third method is to use a ship positioned near the spill to relay messages from the VHF radios via the satellite ship-to-shore telephone system.

Containing Cleanup Activity

The beaches of the impacted areas are primarily rocky walls and gravelly-type beaches. These can probably be most efficiently cleaned by low to high pressure washing while containing the oil and recovering it with skimmers in the water. We anticipate approximately 10 percent of the lost oil will be consumed by weathering and evaporation. It is estimated we will conservatively collect approximately 1,000 barrels of oil in the skimmers, which will be returned to the Terminal via the recovered oil tanks. Approximately 1,000 barrels will be dispersed. Approximately 1,600 barrels will be deposited on the beaches with approximately 1,500 barrels of that recovered by the cleanup methods of washing, adsorbent use and skimming operations. Approximately 100 barrels of oil would not be recovered and will be naturally dispersed.

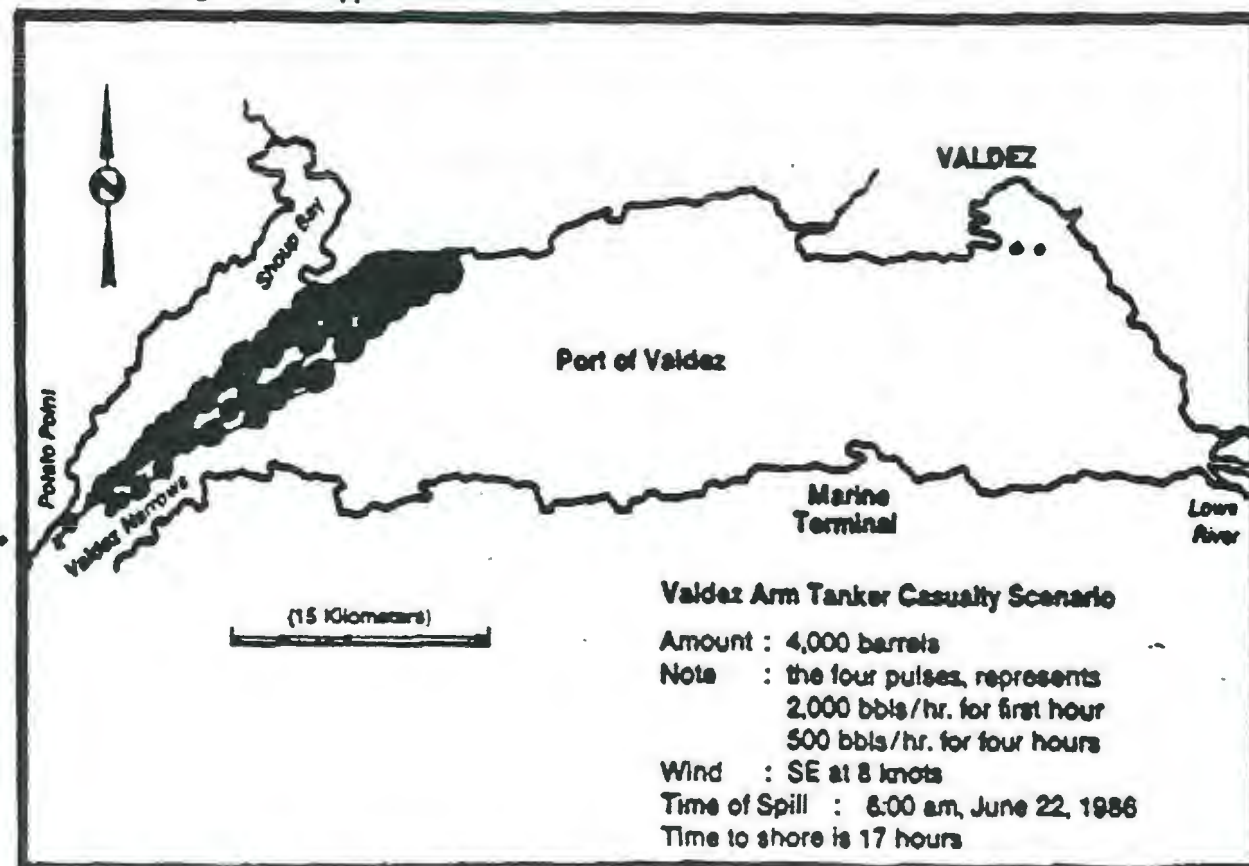
A bird cleaning area would be immediately set up in case there are any significant number of oiled birds affected by the spill. The IBRRC (International Bird Research Rescue Center) would be activated early in the spill to ensure that a facility is available for any oiled birds.

Conclusion

It is anticipated that the cleanup will continue for approximately 2 months. This is primarily to monitor the effects of an extreme high and low tide over a couple of tide changes.

Portions of the cleanup responsibility, for instance, the beach cleanup and/or protection of Sawmill and Shoup Bay, will be given to specific oil spill contractors, so as to release our own personnel back to the operations of the Terminal. Alyeska will supervise the entire cleanup operation. In addition to the above-mentioned resources, members of the Association of Petroleum Industry Co-op managers, a group of West Coast oil spill cooperatives, would be available to provide continuing support in specialized oil spill equipment or supervisory personnel.

The scenario does not address any other aspects of tanker casualties such as fire. It also does not address response during weather conditions which make mechanical recovery impossible. It is presumed a dispersant decision is made soon enough to make application feasible.



VALDEZ ARM OIL SPILL SCENARIO TRAJECTORY

Figure 306-3

Prince William Sound Tanker Casualty: Spill Amount 200,000 Barrels

Alaska Pipeline Service Company has been requested to respond to a scenario of a 200,000-barrel spill in Prince William Sound. APSC believes it is highly unlikely a spill of this magnitude would occur. Catastrophic events of this nature are further reduced because the majority of tankers calling on Port Valdez are of American registry and all of these are piloted by licensed masters or pilots. Nonetheless, should such an incident occur, the following is our overview of the initial response to that scenario. Attached is an oil spill trajectory of the oil movement. A spill of this magnitude would require considerable resources and logistical operations, the minute details of which are not included in this scenario because the details are not useful in long-term response planning. This scenario will not address the circumstances responsible for the loss of cargo or of the fate of the tanker. Once a tanker is immobilized, the U.S. Coast Guard will determine future movement of the vessel.

Assumptions

The following assumptions are made in presenting the response to the scenario: The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. For example, winds less than 15 knots, sea state less than 5 feet, currents less than 1.6 knots, waves less than 2 feet, visibility equal to or greater than 2 miles.

The spill incident occurs through some failure of the tanker crude tanks and does not discuss other disaster possibilities such as collision or fire.

Conditions

In addition to the above assumptions on sea state, the weather is assumed to be conducive to oil spill cleanup and remains in this mode for the response actions. For this particular scenario and trajectory input, the date of June 22 at 6:00 a.m. was chosen for the spill incident with winds from the east at 5 knots. The location is 60° 30' 5" North, and 147° 2' 0" West longitude. The tanker has a cargo amount of 550,000 barrels. The trajectories show two possibilities—one is an instantaneous spill of 200,000 barrels and a second is a 10,000 barrel per hour spill that continues for 20 hours. Figure 306-6 shows the trajectory oil spill movement. It is approximately 30 miles to the site from the Valdez Terminal; an average speed of 12 knots is used to determine the travel time to the area for the Crowley tugs. An approximate speed of 8 knots is used for towed equipment and 20 knots for the workboats without tow. Figure 306-4 is a summary of equipment capacity and response times. Figure 306-5 is a table of equipment in the first response effort.

Immediate Response Actions

On notification of the pollution incident, the following response actions would be simultaneously initiated. The closest empty or light loaded tanker will be directed to the spill site with an estimated maximum arrival time of 12 hours. The initial response would include moving containment booms, skimmer equipment, support equipment and personnel to the site. Additional backup personnel and equipment from the pump stations along the line would be mobilized. Private commercial vessels from the Valdez small boat harbor would be employed to assist in booming and logistical support. Aircraft in Valdez would be employed to assist in the response with overflights, communication or logistics. This would immediately be backed up with air support from our eleven on-call flight services contractors. APSC would request U.S. Coast Guard Pacific Strike Team assistance through the Valdez U.S. Coast Guard office. In addition, all oil spill contractors in the state of Alaska would be asked to mobilize and move to the site as soon as possible to respond to the spill. Also, a request to the local cooperatives, CIRO and Alaska Clean Seas, would be made for any additional equipment that they could supply to this area. See Figure 607-1 for a summary of air transport response times and Figure 607-2 for vessel response times. A request would be made to the Association of Petroleum Industry Co-op Managers to respond with available equipment and personnel that can be located in the West Coast area. The International Bird Rescue Research Organization would be immediately requested to mobilize and prepare for movement to Prince William Sound. A request would be made immediately to the OSC to apply dispersants to the oil slicks. Biggert Aviation and other dispersant contractors would be requested to mobilize in Valdez and be prepared to apply dispersants. A request to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

It is expected the agencies response actions would include the following: The regional response team would be immediately mobilized. The decision process on dispersant application would be begun immediately. There would be a joint meeting between the U.S. Coast Guard, EPA, Alyeska, Alaska Department of Environmental Conservation, U.S. Fish and Wildlife Service and possibly other government entities, to keep all affected parties apprised of the situation and, hopefully, to facilitate the decision making on the response alternatives.

As a result of the initial coordination meeting, it was decided certain response priorities would have to be made as this would be a long-term impact and cleanup situation.

The trajectories indicate that oil will threaten Eleanor Island, Naked Island, Lone Island, Perry Island and the Pigot Bay area, Culross Island and the Main Bay area shorelines. Although it is unlikely oil will reach Main Bay, as a precaution the fish hatchery will be boomed immediately. Some of the exclusion area numbers 79 through 92 may be impacted by the oil movement. The first areas of consideration would likely be exclusion areas 81, 82 and 83.

Second considerations would include areas 79, 80, 89, 90, 91 & 92, and third consideration would likely be sites 84 through 88. These sites are considered sensitive, primarily because they are salmon spawning areas. Additional sites or other areas may have a higher priority, depending on the oil movement and other additional information that may become available. The oil spill trajectory indicates the above priorities are likely to be the most significant. This information is listed in Section 300. One of the oil spill response contractors would be directed to Whittier with the sole task of providing exclusion booming in these areas with the above-listed priority, unless other priorities were agreed to among the agencies and Alyeska at the coordination meeting.

300

PRINCE WILLIAM SOUND SCENARIO RESPONSE TIMES

Vessel	Storage Cap. (bbls)	Recovery Rate (bbls/hr)	Vessel Speed/Prop Time		Travel to Spill with Prop Time (hrs)
			(knts)	(hrs)	
Tugs	N/A	N/A	12	0	2.5
2 Mooring Launches	N/A	N/A	8	0.5	3
Towing:					
Marco Class V	40	428			
Marco Class VII	80	428			
2 Vikoma Seapacks	w/1500' boom each				
2-21' Monarks	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	8	0.25	2.75
Towing:					
1 Vikoma Seapack	w/1500' boom				
Tug & Contingency					
Barge with/	4700	N/A	8	2.5	5.0
Sea Skimmer	N/A	536			
Equipment	1976 (bladders)				
Towing:					
2 Vikomas	w/1500' boom each				

PRINCE WILLIAM SOUND SCENARIO
RESPONSE TIMES

Figure 306-4

Distribution of Oil

It is estimated that approximately 50% of the oil will be recovered at sea, either directly after the spill or at a later time by being washed off of the rocks, contained and skimmed off of the water. Approximately 15 percent of the spill will evaporate during the time it is moving toward the shoreline and prior to removal. Of the oil that remains approximately 15 percent of the oil will be recovered from the shore, primarily by washing the oil off of the rocks and recovering it on the water. Fifteen percent of the oil will naturally disperse and approximately 5 percent will remain in the environment.

Environmental Considerations

Along with the salmon spawning area and the sea bird colony areas there are some porpoise seals and drift gill net areas around Esther Island in the Port Wells area. There is also some ground fish activity on the west side of Naked Island, Elmer Island, Ingot Island and the Port Wells area.

Section 600 of the Prince William Sound Contingency Plan gives us the Sea Bird colony areas that would likely be impacted by a spill of this nature. The Naked Island group, Elmer Island, Bald Head Chin Island, Dutch group, Perry Island, Food Island, Egg Rock, and Esther Rock are likely impact areas of the sea bird colonies. There is a possibility that Smith Island and Little Smith Island sea bird colonies may also be impacted with a slight wind change. The most likely effective protection of the sea bird colonies is to prevent the oil from impacting the shore lines at all. This can be done of course only by dispersing the oil at sea, or allowing an open burn of the oil at sea. Since the timely application of dispersants is so important it is necessary that the decision process for allowing dispersant application be approved prior to an incident such as this. It will allow the oil industry to stockpile the necessary dispersants and application means so that resources such as the sea bird colonies can be protected in the most reasonable manner.

This has been a brief initial response to the spill scenario of a 200,000 barrel catastrophic event. There would, of course, be a long term cleanup of the spill on the various beaches of Prince William Sound. In reviewing the aspects of this size spill it becomes very apparent how important it is to have dispersants approved so that they can be used very effectively to prevent the continuing impact of oil into the small bays and shorelines in Prince William Sound. Burning also has to be looked at as a very good alternative to the cleanup in Prince William Sound on the various inlets and bays in which oil may accumulate.

PRINCE WILLIAM SOUND SCENARIO INITIAL EQUIPMENT

Initial Equipment to Prince William Sound Oil Spill:

2 Terminal Tugs and Two Mooring Launches

Contingency Barge B&R 126-1 with the following:

Vikoma seaskimmer and power unit

Marco power block

Life raft

Inflated fenders

2 Stop systems (Tanker Lightering Systems)

3,000 feet containment boom

1,000 feet sorbent boom

20 bales sorbent pads

1 50,000 gallon bladder

1 20,000 gallon bladder

1 10,000 gallon bladder

1 3,000 gallon bladder

2 3" diesel pumps (Komara skimmer pumps) & 100 feet 3" hose

2 21' Monark workboats

2 26' Monark workboats

Towed: { Marco Class V skimmer
Marco Class VII skimmer
5 Vikoma seapacks (7500' of boom)

Initial Manpower: 15 minimum and tug crews

Supplies:

Radios

Fuel and oil

Anchors and line

Life lines

Life jackets

Rubber gloves

Rain suits

Rubber boots

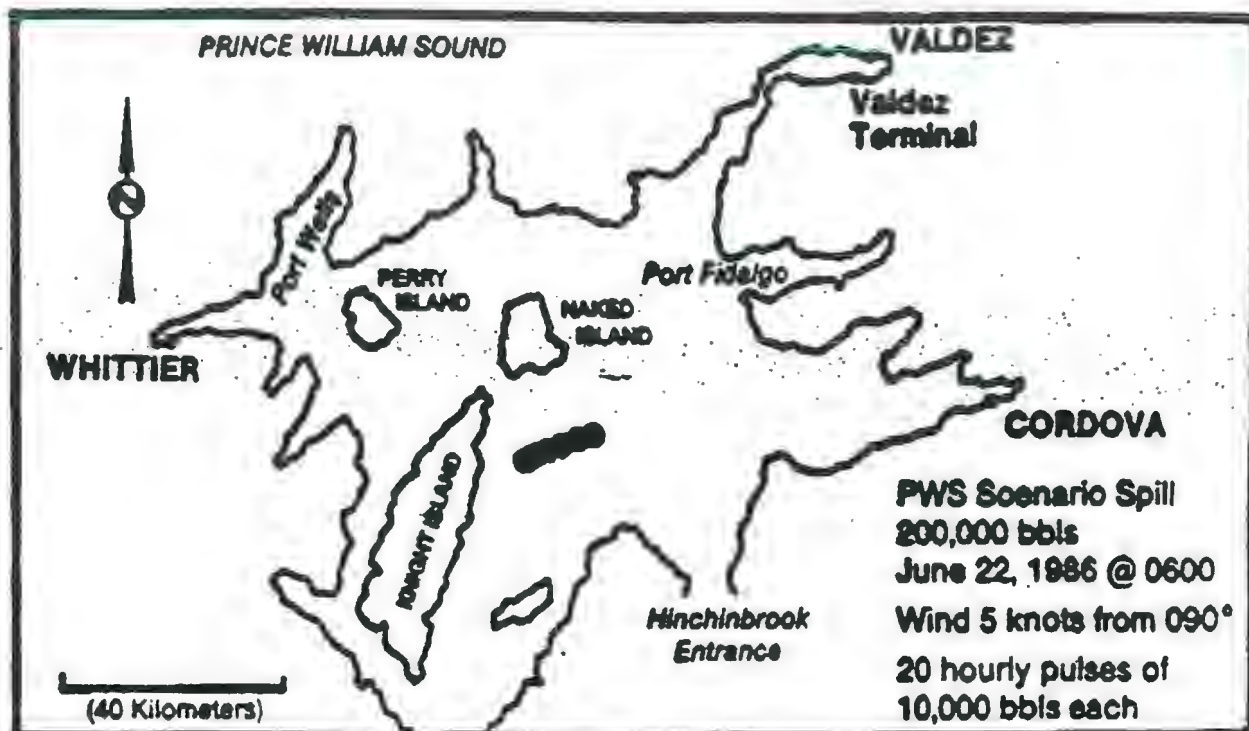
Plastic bags

Cleanup tools

Batteries

PRINCE WILLIAM SOUND SCENARIO
INITIAL EQUIPMENT

Figure 306-5



PRINCE WILLIAM SOUND OIL SPILL SCENARIO

Figure 306-6

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Department of Law

APR 18 1991

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Attorneys for ALYESKA PIPELINE SERVICE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

Case No. A91-082 Civ.

v.

EXXON CORPORATION; EXXON SHIPPING COMPANY; ALYESKA PIPELINE SERVICE COMPANY; AMERADA HESS PIPELINE CORPORATION; ARCO PIPE LINE COMPANY; EXXON PIPELINE COMPANY; MOBIL ALASKA PIPELINE COMPANY; PHILLIPS ALASKA PIPELINE CORPORATION; BP ALASKA PIPELINES, INC.; UNOCAL ALASKA PIPELINE COMPANY and the T/V EXXON VALDEZ, in rem.

AFFIDAVIT OF PERSONAL SERVICE

Defendants.

2373-195
CPF/lsf

STATE OF ALASKA

SS.

THIRD JUDICIAL DISTRICT

**BURR. PEASE
& KURTZ**
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ACE 417694

Linda S. Foley, an employee of Burr, Pease and Kurtz, 810 N Street, Anchorage, Alaska, being duly sworn, states that on April 18, 1991, she personally had served by hand-delivery a copy of the "Response of Alyeska Pipeline Service Company to Public Comments of Congressman George Miller" upon counsel for the parties as follows:

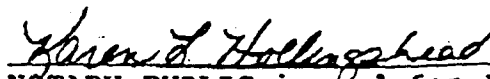
Barbara B. Herman, Esq.
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222 West Seventh Street
Anchorage, AK 99513


Linda S. Foley

SUBSCRIBED and SWORN to before me this 18th day of April, 1991.


NOTARY PUBLIC in and for Alaska
My Commission Expires: July 25, 1993

BURR, PEASE
& KURTZ
A PROFESSIONAL CORPORATION
810 N STREET
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Linda S. Foley
Linda S. Foley

SUBSCRIBED and SWORN to before me this 18th day of April, 1991.

Edmund J. Hollingshead
NOTARY PUBLIC in and for Alaska
My Commission Expires: *July 25, 1993*

BURR, PEASE
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COMMENTS NO. 1 - 25

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MAR 22 1991

CLERK U. S. DISTRICT COURT
ANCHORAGE, ALASKA

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Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	NO. A90-015-1CR
	)	NO. A90-015-2CR
Plaintiff,)	
)	
v.)	
)	
EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	
)	
)	

P1; P3; P8-12; P13-15; P16-18; P19; P21; P22;
P24-28; P30-39; P40-41; P42; P43-44; P46; P48; P50;
P52; P54-62; P64-67; P73; P74-76; P77; P78-80; P81-94; P95;
P96; P97-111; P112; P113; P118; P120; P122; P124; P126; P128;
P130; P132; P135-138; P139-144; P145; P146-147; P165-166; P167;
P168; P170-188; P189; P195-196; P202-206; P246-247; P267; P277

MOTION AND STATEMENT OF REASONS ON SHORTENED TIME FOR LEAVE
TO BE HEARD AT PRESENTATION OF EXXON CORPORATION'S AND
EXXON SHIPPING CORPORATION'S PLEA AGREEMENT

All Plaintiffs in In re Exxon Valdez Oil Spill Litigation,
Case No. A89-095 Civil (Consolidated), United States District

DAVIS WRIGHT TREMAINE
Law Offices
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Anchorage, Alaska 99501
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①

1 Court for the District of Alaska¹, and in In re Exxon Valdez Oil
2 Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated),
3 Superior Court for the State of Alaska, Third Judicial
4 District², make this Motion pursuant to their rights under The
5 Victims' Rights and Restitution Act of 1990, P.L. 101-647
6 (November 19, 1990), 104 STAT 4820 as victims of injuries
7 resulting from the offenses alleged in the indictment being
8 pleaded to by Exxon Shipping Company and Exxon Corporation.
9

10 While all Plaintiffs have received no formal notice or
11 advice of the United States and the Defendants' Joint Notice of
12 Intent to Change Plea dated March 13, 1991, or the March 22,
13 1991 - 9:30 a.m. date at which the Plea Agreement will be
14 presented to this Court, this Court's clerk has informed us of
15 the foregoing. In accordance with the all Plaintiffs' rights as
16 victims under Section 502 of The Victims' Rights and Restitution
17 Act of 1990, P.L. 101-647 (November 19, 1990), 104 STAT 4820, and
18 the Victim and Witness Protection Act ("VWPA") of 1982, Public
19 Law 97-291, 96 Stat. 12.48-58 (October 12, 1982), all Plaintiffs
20

21 ¹Excluding P268-P276 in Case No. A89-095 Civil
22 (Consolidated).

23 ²Excluding all Environmental Plaintiffs (National Wildlife
24 Federation, Wildlife Federation of Alaska, and the Natural
25 Resources Defense Council) in Case No. 3AN-89-2533 Civil
(Consolidated).

1 respectfully request the right to appear and be heard at the
2 March 22, 1991 proceeding at which the Plea Agreement will be
3 presented to this Court and to present the comments set forth in
4 the Motion and Memorandum to Clarify the Pleas, to Defer Decision
5 Until Preparation of a Presentence Report, and to Impound or
6 Otherwise Preserve all Grand Jury Documents, Subpoena and
7 Transcripts filed simultaneously herewith.

8
9 The VWPA set up methods to increase the involvement of crim
10 victims in the criminal justice process, including procedures to
11 consult with victims, before important steps in the process
12 occurred. The Congress mandated "Federal Guidelines for Fair
13 Treatment of Crime Victims and Witnesses in the Criminal Justice
14 System," VWPA § 6. Section 6(a) of the VWPA required the
15 Attorney General to develop guidelines for the Department of
16 Justice consistent with the purposes of the VWPA, which
17 guidelines were required to include:

18 (5) CONSULTATION WITH VICTIM -- The victim of
19 a serious crime . . . should be consulted by
20 the attorney for the Government in order to
21 obtain the views of the victim . . . about
22 the disposition of any criminal case brought
as a result of such crime, including the
views of the victim . . . about (a)
dismissal; . . . (c) plea negotiations.
... (Emphasis added).

23 See § 6(a) set forth in Historical Note, 18 U.S.C.A. § 1512.

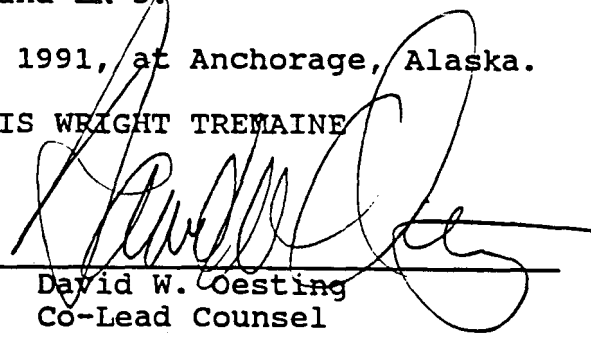
24 The Department of Justice enacted those guidelines which
25 require prosecutors to consult with victims prior to plea

1 negotiations. Here, not only have the prosecutors failed to
2 consult with the victims of the crime in issue, they have
3 rebuffed attempts by counsel for thousands of these victims to
4 communicate on these matters.
5

6 There is no time under the Local Rules of this Court to
7 proceed in accordance with LCR 4 and LR 5.

8 DATED this 21st day of March, 1991, at Anchorage, Alaska.

9 DAVIS WRIGHT TREMAINE

10
11 By: 
12 David W. Oesting
13 Co-Lead Counsel

14 COHEN, MILSTEIN, HAUSFELD & TOLL

15 By: Jerry S. Cohen
16 Co-Lead Counsel
17
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Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	NO. A90-015-1CR
	)	NO. A90-015-2CR
Plaintiff,)	
)	
v.)	
)	
EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

ORDER

All Plaintiffs' Motion and Statement of Reasons on Shortened Time for Leave to Be Heard at Presentation of Exxon Corporation's and Exxon Shipping Corporation's Plea Agreement on March 22, 1991 at 9:30 a.m. is granted.

DATED this ____ day of March, 1991.

THE HONORABLE H. RUSSELL HOLLAND
UNITED STATES DISTRICT COURT JUDGE

27510\1\SHORT.ORD

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Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	NO. A90-015-1CR
)	NO. A90-015-2CR
Plaintiff,)	
)	
v.)	
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EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	
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)	

P1; P3; P8-12; P13-15; P16-18; P19; P21; P22;
P24-28; P30-39; P40-41; P42; P43-44; P46; P48; P50;
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P96; P97-111; P112; P113; P118; P120; P122; P124; P126; P128;
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P168; P170-188; P189; P195-196; P202-206; P246-247; P267; P277

MOTION AND MEMORANDUM TO CLARIFY
THE PLEAS, TO DEFER DECISION UNTIL
PREPARATION OF A PRESENTENCE REPORT,
AND TO IMPOUND OR OTHERWISE TO PRESERVE
ALL GRAND JURY DOCUMENTS, SUBPOENAE AND TRANSCRIPTS

1 All plaintiffs¹ in Case No. A89-095 Civil (Consolidated)
2 before this Court, and all plaintiffs² and the classes they
3 represent in Case No. 3AN-89-2533 Civil (Consolidated) in The
4 Superior Court for the State of Alaska, Third Judicial District
5 (hereinafter referred to as "the Civil Plaintiffs"), pursuant to
6 Rules 6 and 11, Fed. R. Crim. P., hereby move for an order to
7 clarify the pleas of defendants Exxon Corporation and Exxon
8 Shipping Company, to defer decision on acceptance or rejection of
9 the pleas until preparation of a presentence report, and to
10 impound or otherwise to preserve all grand jury documents,
11 subpoenae and transcripts. A proposed order accompanies this
12 motion. In support of this motion, the Civil Plaintiffs state
13 the following:
14

15 1. The Civil Plaintiffs are among the victims of the
16 crimes with which the defendants in these proceedings, Exxon
17 Corporation and Exxon Shipping Company, are charged. In addition
18 to Rules 6 and 11, F.R.Crim. P., they file this motion pursuant
19 to Section 502 of The Victims' Rights and Restitution Act of
20

21 ¹Excluding P268-P276 in Case No. A89-095 Civil
22 (Consolidated).

23 ²Excluding all Environmental Plaintiffs (National Wildlife
24 Federation, Wildlife Federation of Alaska, and the Natural
25 Resources Defense Council) in Case No. 3AN-89-2533 Civil
(Consolidated).

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1 1990, P.L. 101-647 (November 29, 1990), 104 Stat. 4820. Their
2 civil claims are related to the charges against the defendants i
3 the indictment.
4

5 **2. Whether The Pleas Are Guilty Pleas or**
6 **Nolo Contendere Should Be Determined.**

7 The United States has entered into a plea agreement
8 with the defendants which may well be a nolo contendere plea
9 clothed in guilty plea language. While paragraphs I.C. and D. o
10 the Plea Agreement contain recitals that the defendants agree to
11 enter pleas of guilty to specific counts, in contrast paragraph
12 II. C. and D. state that the defendants "agree, solely for the
13 purpose of this plea agreement and for no other purpose, that
14 there is a legal basis with respect to the offense charged in the
15 indictment for the Court to impose the fines agreed to...."

16 Whether the pleas are guilty or nolo contendere has
17 significant consequences. While guilty pleas may be used in
18 civil proceedings for collateral estoppel, Municipality of
19 Anchorage v. Hitachi Cable, Ltd, 547 F.Supp. 633, 641 (D. Alaska
20 1982), citing Hinkle Northwest, Inc. v. S.E.C., 641 F.2d 1304,
21 1309 (9th Cir. 1981), St. Paul Marine & Fire Insurance Co. v.
22 Weiner, 606 F.2d 864, 868 (9th Cir. 1979), and Ivers v. United
23 States, 581 F.2d 1362, 1367 (9th Cir. 1978), thereby reducing the
24 effort Civil Plaintiffs must expend to obtain their remedies
25 against the defendants, a nolo contendere plea may not. See In

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1 the Matter of James Harold Dennis, Sr., Debtor, 78 Bankr. 1012
2 (N.D. Ala. 1987), citing In Matter of Raiford , 695 F.2d 521, 523
3 (11th Cir. 1983).
4

5 Moreover, if the pleas are nolo contendere, the Court
6 must determine, under Rule 11(b), F.R.Crim. P., whether accepting
7 the pleas, particularly as here on the eve of trial, is in "the
8 interest of the public in the effective administration of jus-
9 tice." The public interest determination requires, among others,
10 consideration of whether the deterrent effect of the maritime and
11 environmental laws would be weakened by allowing sophisticated
12 corporate criminals to avoid taking full responsibility for their
13 crimes. See U.S. v. Mapco Gas Products, Inc., 709 F.Supp. 895,
14 899 (E.D. Ark. 1989), and U.S. v. DynaElectric Co., 674 F.Supp.
15 240 (W.D.Ky. 1987), rejecting nolo contendere pleas because they
16 were found not to be in the public interest.

17 Accepting nolo contendere pleas from these defendants would
18 severely weaken the deterrent effect of the marine and environ-
19 mental laws by allowing these corporate defendants to avoid
20 accepting full responsibility for their crime. Lawrence G. Rawl,
21 chairman of the Exxon Corporation, even prior to the company's
22 plea in Court, told the public, in a news conference, that the
23 settlement with the government, of which the plea agreement is a
24
25

1 part,³ would not have any effect on Exxon's finances or its
2 plans and that he believed that the settlement would not affect
3 the company's image, which he described as good. See The New
4 York Times, Thursday, March 14, 1991, page A16.
5

6
7 Accepting nolo contendere pleas would raise questions about
8 the even-handed administration of justice to corporate defendant
9 as compared to all other federal criminal defenants.⁴ This is
10 particularly the case here, where not only would there be nolo
11 contendere pleas but also dismissal of other more serious counts
12 and counts involving the responsibility of parent corporations,
13 as follows:

14 Count IV the Indictment, for willful and
15 knowing violation of Title 33, United States
16 Code, Chapter 25, charges that defendants,
being the owners of the tank vessel Exxon
Valdez, and the master of the Exxon Valdez,

17 3 The Civil "Agreement and Consent Decree"
18 provides in paragraph 38:
19 Any party may elect to terminate this Agreement if: (1
20 any court of competent jurisdiction disapproves or
21 overturns any plea agreement entered into between the
22 United States and Exxon in United States v. Exxon
23 Shipping Co., No. A90-015 CR 1.(D. Alaska)....

24 4 The percentage of nolo contendere pleas ac-
25 cepted from all federal criminal defendants
is extremely low. See Appendix A, from the
U.S. Department of Justice, Sourcebook of
Criminal Justice Statistics - 1987, pp. 442-
43 (1988), revealing that of all federal
criminal defendants, only about 1% were per-
mitted to enter nolo contendere pleas.

1
2 acting as the agent of the defendants, did
3 willfully and knowingly fail to ensure that
4 the wheelhouse of the Exxon Valdez, while
5 underway, was constantly manned by persons
6 who directed and controlled the movement of
7 the vessel, each of whom was competent to
8 perform that duty, all in violation of and
9 contrary to Title 33, United States Code,
10 Section 1232 (b)(1), and Title 33, Code of
11 Federal Regulations, Section 164.11(b).
12 Count IV would be dismissed as to both defen-
13 dants.

14
15 Count V of the Indictment, for willful
16 and knowing violation of a regulation pre-
17 scribed under Title 46, United States Code,
18 Chapter 37, charges that defendants did em-
19 ploy and cause persons to be engaged on the
20 crew of the tank vessel Exxon Valdez, knowing
21 such persons to be physically and mentally
22 incapable of performing the duties assigned
23 to them, all in violation of Title 46, United
24 States Code, Section 3718(b) and Title 46,
25 Code of Federal Regulations, Section 35.05-
20. Count V would be dismissed as to both
defendants.

Count I, for negligent discharge of a
pollutant into navigable waters of the United
States, without a permit, charges that the
Exxon Corporation discharged crude oil from
the tank vessel Exxon Valdez into Prince
William Sound, a navigable water of the Unit-
ed States, without a permit, all in violation
of Title 33, United States Code, Sections
1311(a) and 1319(c)(1). Count I would be
dismissed as to the Exxon Corporation.

Count II of the Indictment, for unlawful
discharge of refuse matter into navigable
waters of the United States, without a per-
mit, charges that the Exxon Corporation did
throw, discharge and deposit, and did cause,
suffer and procure to be thrown, discharged
and deposited, refuse matter, namely more
than ten million gallons of crude oil, from a
ship, the Exxon Valdez, into Prince William

1 Sound, a navigable water of the United
2 States, without a permit, all in violation of
3 Title 33, United States Code, Section 407 and
4 411. Count II would be dismissed as to the
5 Exxon Corporation.

6 In light of these considerable consequences, the Civil
7 Plaintiffs respectfully ask the Court to cure this ambiguity and
8 determine precisely what the pleas of the defendants are. If
9 they are nolo contendere, they should be rejected.

10 3. The joint request of Exxon and the Government for
11 immediate sentencing based upon a waiver of a
12 presentence investigation and report should be
13 rejected and a sentencing hearing should be held.

14 The plea, if it is a guilty plea, being tendered to
15 this Court is under the provisions of Rule 11(e)(1)(c) of the
16 Federal Rules of Criminal Procedure which provide, in pertinent
17 part, as follows:

18 The attorney for the government and the attorney
19 for the defendant . . . may engage in discussions
20 with a view toward reaching an agreement that, upon
21 entering a plead of guilty . . . the attorney for
22 the government will . . . agree that a specific
23 sentence is the appropriate disposition of the
24 case.

25 More so than any other provision of Rule 11, subsection (e)(1)(c)
"ties the hands of the court" by requiring it to implement the
exact sentence recommended by the government. If the
government's recommendation is not followed, the defendant may
withdraw its plea. Fed. R. Crim. P. 11 (e)(2). For this reason,
the Court is empowered and encouraged to "defer its decision as

1 to the acceptance or rejection [of the plea] until there has been
2 an opportunity to consider the presentence report." Id. (empha-
3 sis added). In essence, an immediate sentencing under Rule 11 is
4 an extremely rare event which cannot be waived by the defendant
5 but requires detailed findings by the Court on the record. See
6 e.g., U.S. Sentencing Commission Guidelines Manual, §6A1.1,
7 Commentary. In a case which the government has trumpeted as the
8 largest environmental criminal case on record, a waiver of the
9 presentence investigation and report would be preposterous.

10
11 Exxon and the government summarily conclude, in §V(C)
12 of the Plea Agreement, "that there is in the record information
13 sufficient to enable the meaningful exercise of sentencing
14 authority" by this Court without the necessity of a presentence
15 investigation. This bare conclusion is completely unsupported.

16 The information required to exist in the record and
17 be considered prior to sentencing includes seven (7) discrete
18 areas identified in the Sentencing Reform Act of 1984, as amend-
19 ed, 18 U.S.C. §3553(a). These areas include, among others: 1)
20 the nature and circumstances of the offense; 2) the history and
21 characteristics of the defendant; 3) the need for deterrence;
22 and, 4) the need for restitution. Id. §3553(a)(1)(2) and (7).
23 Moreover, the Victim and Witness Protection Act of 1982, Public
24 Law 97-291 (October 12, 1982), as amended, requires victims of
25 federal crimes to be included in the plea and sentencing process.

1 See All Plaintiffs' Memorandum in Support of Emergency Motion to
2 Show Cause, filed February 22, 1990, at 7-9. These requirements
3 are reinforced in the recently-enacted Victims' Rights and
4 Restitution Act of 1990, P.L. 101-647 (November 29, 1990), which
5 requires the Department of Justice to use its "best efforts" to
6 see that crime victims, such as plaintiffs, are included in each
7 critical step of the criminal justice process. These steps
8 include the right: (1) to be present at each critical stage; (2)
9 to confer with the prosecuting attorneys; (3) to obtain restitu-
10 tion; and, (4) to obtain information about the conviction and
11 sentencing of the defendant. Id. §501(a) and (b).

12 Based upon these statutes as well as Rules 11 and
13 32(c) of the Federal Rules of Criminal Procedure, two important
14 deficiencies in the imminent plea and sentencing procedure are
15 immediately apparent. First, a large group of victims of this
16 environmental catastrophe have not been given any real opportuni-
17 ty to address this Court about either the proposed Plea Agreement
18 or any of the relevant areas specified in the Sentencing Reform
19 Act of 1984 or the Victim and Witness Protection Act of 1982.
20 For example, Civil Plaintiffs, as victims, should be heard
21 regarding the appropriateness of a criminal fine which is far,
22 far less than even the government believed, less than one month
23 ago, was the statutory maximum of \$600 million. See Government's
24 Response in Opposition to Motion of Exxon Shipping Company for a
25

1 Determination That 18 U.S.C. §3571 Does Not Apply [in Case No.
2 A90-015-2CR], filed February 28, 1991, at 10. Also, the Court
3 will not have the benefit of Civil Plaintiffs' knowledge regard-
4 ing Exxon's prior environmental offenses⁵ or plaintiffs' views
5 regarding the deterrent effect of a sentence which the government
6 concedes would be less than 1/6 of one percent "of Exxon Corpora-
7 tion's 1989 revenues of approximately \$95 billion." Id. Cer-
8 tainly the Court should order a presentence investigation and
9 schedule a future sentencing date to hear from the victims of
10 these crimes before sentence is pronounced.

11
12 Second, very few of the areas mentioned in §3553(a)
13 of the Sentencing Reform Act have been the subject of sufficient
14 public disclosure to allow the exercise of meaningful sentencing
15 discretion by this Court. Indeed, both the government and Exxon
16 seem intent on preventing this information from ever coming to
17 public light by insisting upon an immediate sentencing without
18 all of the relevant facts being disclosed or considered.⁶ Par-
19 ticularly disturbing is §III(A) of the Plea Agreement which
20 exonerates not only Exxon but Alyeska Pipeline Service Company

21 ⁵ Plaintiffs have assembled a series of leads regard-
22 ing such prior offenses. Following up on these
23 leads would serve one of the most basic purposes of
the presentence investigation.

24 ⁶ This rush to judgment is particularly upsetting
25 given the absence of any real urgency in concluding
the criminal case.

1 from any future potential criminal charges even though, unlike
2 Exxon, the role of the Company in the criminal investigation has
3 not been the subject of any public disclosures. Conducting a
4 presentencing investigation, preparing a presentence report,
5 permitting interested third parties to comment and be heard, and
6 holding a sentencing hearing would allow this Court to be fully
7 informed about necessary sentencing information prior to imposin
8 sentence.
9

10 **4. Grand Jury Documents, Subpoenae and Transcripts**
11 **Should be Impounded or Otherwise Preserved.**

12 Substantial evidence that would be of consider-
13 able value to Civil Plaintiffs in pursuing their claims against
14 defendants was amassed for presentation to the grand jury. Some o
15 this evidence is referred to in the recent "Government's Memoran
16 dum in Opposition to Motions of Exxon Corporation to Dismiss
17 Counts One, Two, Three, Four and Five." For instance, in foot-
18 note 2 on page 4, the government reports that a certified state-
19 ment by an Exxon Shipping executive, which was presented to the
20 grand jury, states that Dr. W.R. Nealy of the Exxon Medical
21 Department was responsible for evaluating Joseph Hazelwood's
22 fitness for duty. The government also reports that Ulyesse
23 LeGrange, a vice-president of Exxon, testified before the grand
24 jury that it was the Medical Department's responsibility to
25 evaluate the fitness of all persons returning from alcohol

1 treatment, and that it would have represented a "significant
2 breakdown" in Exxon's alcohol policy if the Medical Department
3 had failed to do so.
4

5 On page 8 of the "United States' Opposition to Motion
6 of Exxon Corporation for Bill of Particulars," the government
7 listed the contents of a large volume of items provided to the
8 grand jury which were disclosed to defendants, including:

- 9 (a) All transcripts of testimony by defendants' employees before the grand jury,
10 which include detailed explanations by
11 officials of Exxon and Exxon Shipping of
the numerous ways in which Exxon controlled the actions of Exxon Shipping;
- 12 (b) More than 150 FBI 302s (reports of interview) of current and former employees of
13 defendants. This included all such 302s
14 in existence, with the exception of 302s
15 for four persons who requested confidentiality. These 302s contain detailed
16 expositions by several employees of Exxon
and Exxon Shipping regarding the extent
17 to which Exxon Shipping relied upon Exxon's
medical department to assess the
18 fitness for duty of Exxon Shipping's
employees;
- 19 (c) All transcripts and exhibits relating to
the inquiry by the National Transportation
20 Safety Board concerning the Exxon
Valdez spill;
- 21 (d) All transcripts of the trial of Joseph
22 Hazelwood;
- 23 (e) All documents and other evidence seized
by the United States Coast Guard from the
24 Exxon Valdez;

- 1
- 2 (f) All documents provided by defendants in
- 3 response to grand jury subpoenas, includ-
- 4 ing documents detailing the structural
- 5 relationship between defendants, the
- 6 management control by Exxon of Exxon
- 7 Shipping, the alcohol abuse policies
- 8 formulated by Exxon and implemented by
- 9 Exxon Shipping, the unified salary struc-
- 10 ture shared by the defendants, the system
- 11 for Exxon's approval of Exxon Shipping's
- 12 capital expenditures, and so on;
- 13
- 14 (g) Transcripts of testimony by defendants'
- 15 employees before Congressional commit-
- 16 tees; and
- 17
- 18 (h) Numerous photographs and scientific re-
- 19 ports relating to the death of migratory
- 20 birds.
- 21

22 The Civil Plaintiffs respectfully ask the Court for

23 an order which would impound or otherwise preserve all grand jur

24 documents, subpoenae, and transcripts. Such impoundment orders

25 are frequently granted for good public policy reasons discussed

below.

26

27 A. The Court Should Impound or Otherwise

28 Preserve the Documents Obtained By the

29 Government For Presentation to the Grand

30 Jury.

31 While considerations of grand jury secrecy may arise

32 in connection with requests for grand jury transcripts,⁷ those

33

34 ⁷ Disclosure of grand jury transcripts to the defen-

35 dants may provide a basis for disclosure to Civil

Plaintiffs. See, e.g., In re Screws Antitrust

Litigation, MDL 443 (D. Mass. 1981).

1 same concerns do not pose obstacles to the release of documents
2 obtained or generated by the government in connection with a
3 grand jury investigation. As Judge Robson explained in In Re
4 Cement-Concrete Block Chicago Area Grand Jury Proceedings, 1974
5 Trade Case ¶75,131 at p. 97053-54 (N.D. Ill. 1974):

6
7 Petitioners do not ask whether the docu-
8 ments they now seek were presented to the
9 grand jury; nor do they ask to know what,
10 if anything, the grand jury decided on
11 the basis of the documents. Petitioners
12 seek the documents for their own sake,
13 rather than to learn what occurred before
14 the grand jury. Under such circumstanc-
15 es, the courts have uniformly held that
16 Rule [F.R. Crim.P.] 6(e) does not restr-
17 ict orders of production. These princi-
18 ples were recently affirmed in Davis v.
19 Romney, 55 F.R.D. 337 (E.D. Pa. 1972)
20 where the court held, at 341:

21 'The [documents] exists as an
22 entity apart from the grand
23 jury; the information contained
24 therein does not reflect upon
25 and is not inextricably inter-
 twined with the deliberation or
 work of the grand jury. Be-
 cause of this, disclosure can
 be accomplished without sug-
 gesting some specific act,
 thought, or focus of the grand
 jury. No one will know what
 happened when this material was
 examined by the grand jury and
 what was culled from it, if
 anything. To say as the defen-
 dants do, that the grand jury
 has a midas like quality in
 that everything it touches
 becomes a secret does not com-
 port with the language of the
 Rule 6(e) which contemplates

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1
2 keeping secret only 'matters
3 occurring before the grand
4 jury.' Since disclosure will
5 not expose or reveal what 'occ-
6 urr[ed]' when the grand jury
7 examined this material we see
8 no reason for the application
9 of Rule 6(e) to the situation
10 at bar.'

11 See also, Consolidated Edison Company of New York v. Di Napoli
12 1971 Trade Cases ¶73,570 (S.D.N.Y. 1970); Commonwealth Edison v.
13 Allis Chalmers, 211 F. Supp. 729, 736 (N.D. Cal. 1962); Davis v.
14 Romney, 55 F.R.D. 337 (E.D. Pa. 1974).

15 Furthermore, the availability of materials generated
16 in a government investigation for use in a related civil action
17 facilitates the public policy of aiding private plaintiffs. In
18 this regard, the United States Supreme Court has reasoned that:

19 "The Government's initial action may aid
20 the private litigant in a number of other
21 ways [than by establishing a prima facie
22 case on liability]. The pleadings, tran-
23 scripts of testimony, exhibits and docu-
24 ments are available to him in most in-
25 stances. * * * The greater resources and
expertise of the [government's attorneys]
render the private suitor a tremendous
benefit aside from any value he may de-
rive from a judgment or decree. Indeed,
so useful is this service that government
proceedings are recognized as a major
source of evidence for private parties."

26 Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 38
27 U.S. 311, 319 (1965).

At an appropriate time, the plaintiffs in the pending private civil suits intend to seek access to certain materials procured or generated by the government in connection with its investigation of defendants. However, a danger exists that the wealth of documentary material obtained or generated by the Government may be lost, damaged, destroyed or suppressed prior to an adjudication of its availability to the private litigants. To prevent the loss of these essential materials, and to aid the plaintiffs in their discovery efforts in the pending private civil cases, Civil Plaintiffs urge the Court to enter an order impounding all such documents as other courts have done in similar circumstances. See e.g., United States v. Darling-Delaware, Inc., 1972 Trade Cases. ¶73,818 (S.D.N.Y. 1971); In Re Grand Jury Proceedings, 68 Cr. 440 (E.D.N.Y., Order entered June 16, 1969); United States v. Automobile Manufacturers Assn., Inc., 307 F.Supp. 617, 620 (C.D. Cal. 1969) aff'd per curiam, 397 U.S. 248 (1970); and United States v. Harper & Row Publishers, Inc., Civil Action No. 67 C 612 (N.D. Ill., Order entered November 20, 1967). See also, United States v. American Oil Co., C.A. No. 370-65 (D.N.J. 1971), appeal dismissed 456 F.2d 1043 (3rd Cir.) cert. den. American Oil Co. v. Philadelphia, 409 U.S. 893, 93 S. Ct. 128 (1972); Illinois v. Harper & Row Publishers, Inc., 1969 Trade Cases ¶72,784 (N.D. Ill. 1968).

1
2 B. The Court Should Order the Grand Jury
3 Transcripts Impounded or Otherwise Pre-
4 served.

5 Furthermore, there is a danger that the grand jury
6 transcripts in this matter may be unavailable if needed. Without
7 question, transcripts (or portions of them) may, at a minimum, be
8 disclosed upon a future showing of "particularized need" in
9 connection with depositions in the private civil case. See,
10 e.g., State of Illinois v. Harper & Row Publishers, Inc., 50
11 F.R.D. 37 (N.D. Ill. 1969). City of Philadelphia v. Westinghouse
12 Elec. Corp., 210 F.Supp. 486 (E.D. Pa. 1962). Moreover, there is
13 a substantial likelihood that some or all of the grand jury tran-
14 scripts in this matter may appropriately be disclosed on a more
15 general basis. For example, in United States v. American Oil
16 Co., C.A. No. 370-65 (D.N.J. 1971), appeal dismissed 456 F.2d
17 1043 (3rd Cir.) cert. denied, American Oil Co. v. Philadelphia,
18 409 U.S. 893, 93 S.Ct. 128 (1972), over objection of both the
19 Government and defendants, Judge Augelli granted private liti-
20 gants access to grand jury transcripts that had already been
21 inspected by the defendants as well as access to documents which
22 the Government had both subpoenaed and received voluntarily,
23 memoranda of interviews conducted by the Justice Department and
24 the F.B.I. and names and addresses of the grand jury witnesses.

25 To prevent the loss of the grand jury transcripts
prior to an adjudication of their availability to the civil

1 plaintiffs, the civil plaintiffs respectfully request that the
2 Court simply impound or otherwise preserve the grand jury tran-
3 scripts in order to safeguard them for possible future inspection
4 upon further showing by the Civil Plaintiffs.⁸

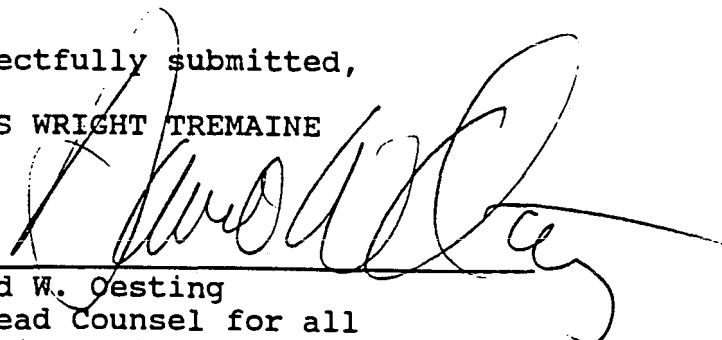
5
6 CONCLUSION

7 For all the foregoing reasons, the Civil Plaintiffs
8 respectfully request that the Court determine whether the defen-
9 dants pleas are guilty pleas or nolo contendere pleas, require a
10 presentence report, and enter an order to impound or otherwise
11 preserve grand jury documents, subpoenae, and transcripts.

12 Dated: March 21, 1991

13 Respectfully submitted,

14 DAVIS WRIGHT TREMAINE

15
16 By: 
17 David W. Oesting
18 Co-Lead Counsel for all
19 Civil Plaintiffs

20 COHEN, MILSTEIN, HAUSFELD & TOLL

21 STOLL, STOLL, BERNE & LOKTING

22 WILLIAMS, TRINE, GREENSTEIN &
23 GRIFFITH

24 ⁸ Any request by the civil plaintiffs in the private
25 civil action for access to grand jury transcripts
will be made pursuant to Douglas Oil Company v.
Petrol Stops Northwest, et al., 441 U.S. 211, 99 S.
Ct. 1667 (1979).

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CASEY, GERRY, CASEY, WESTBROOK,
REID & HUGHES

DICKSTEIN, SHAPIRO & MORIN

SONOSKY, CHAMBERS, SACHSE & MILLER

Macon Cowles
TRIAL LAWYERS FOR PUBLIC JUSTICE

ON THE BRIEF:

H. Laddie Montague, Jr.
Janice Siegel
BERGER & MONTAGUE, P.C.

Steven S. Crandall
MILBERG, WEISS, BERSHAD, SPECTHRIE
& LERACH

MAR 21 1991

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	NO. A90-015-1CR
	)	NO. A90-015-2CR
Plaintiff,)	
)	
v.)	
)	
EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

ORDER

The plaintiffs in Case No. 89-095 Civil (Consolidated) (D. Alaska), and the plaintiffs and the classes they represent in Case No. 3AN-89-2533 Civil (Consolidated) in The Superior Court for the State of Alaska, Third Judicial District having submitted "Motion and Memorandum to Clarify the Pleas, to Defer Decision Until Preparation of a Presentence Report, and to Impound or Otherwise to Preserve all Grand Jury Documents, Subpoenae and Transcripts," the COURT, having been apprised of the premises, HEREBY GRANTS THE MOTION AND ORDERS:

1. The United States and the defendants to clarify the nature of the pleas being tendered to the Court;

2. A presentence investigation be conducted, a presentence report be prepared, and a sentencing hearing take place on _____, 1991 at _____.m.; and

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3. All grand jury documents, subpoenae and transcripts be impounded or otherwise preserved.

Dated: _____, 1991
Anchorage, Alaska

The Honorable H. Russell Holland
United States District Judge

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Jerry S. Cohen
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Suite 600
Washington, DC 20005
(202) 628-3500

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
EXXON CORPORATION AND)
EXXON SHIPPING COMPANY,)
)
Defendants.)

Case No. A90-015 1CR
Case No. A90-015 2CR

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

KIM LAMOUREUX, being first duly sworn, upon oath, deposes and says that she is employed in the offices of Davis Wright Tremaine, 550 West 7th Avenue, Suite 1450, Anchorage, Alaska 99501 and that service of:

MOTION AND STATEMENT OF REASONS ON SHORTENED TIME FOR LEAVE TO BE HEARD AT PRESENTATION OF EXXON CORPORATION'S AND EXXON SHIPPING CORPORATION'S PLEA AGREEMENT; ORDER; MOTION AND MEMORANDUM TO CLARIFY THE PLEAS, TO DEFER DECISION UNTIL PREPARATION OF A

1 PRESENTENCE REPORT, AND TO IMPOUND OR OTHERWISE TO PRESERVE ALL
2 GRAND JURY DOCUMENTS, SUBPOENAE AND TRANSCRIPTS, and ORDER
3 has been made upon the following this 21st day of March, 1991:

4 VIA FACSIMILE

5 Charles DeMonaco
6 Assistant Chief Environmental
7 Crimes Section
8 Environment and Natural Resources Div.
9 U.S. Department of Justice
10 P.O. Box 23985
11 Washington, DC 20026-3985
12 FAX No. (202) 272-9881

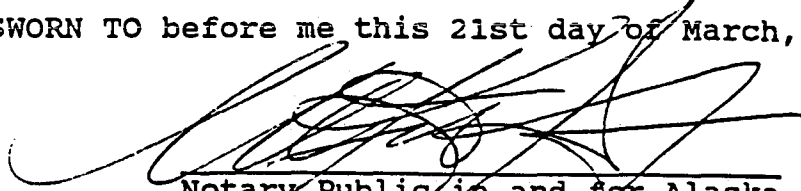
9 VIA HAND DELIVERY BY GEORGE'S COURIER SERVICE

10 Mark Davis
11 U.S. Attorney's Office
12 222 West 7th Avenue, Room C253 #9
13 Anchorage, AK 99513

Robert C. Bundy
BOGLE & GATES
1031 West 4th Ave., #600
Anchorage, AK 99501

14 
15 KIM LAMOUREUX

16 SUBSCRIBED AND SWORN TO before me this 21st day of March,
17 1991.

18 
19 Notary Public in and for Alaska
20 My Commission Expires: 3-10-92

DAVIS WRIGHT TREMAINE
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GEORGE A. MOERLEIN
7300 O'MALLEY ROAD
ANCHORAGE, ALASKA 99516

907-346-3784

March 25, 1991

Judge H. Russell Holland
U.S. District Court
222 West 7th Ave,
Anchorage, AK 99513

Re: EXXON

Dear Judge Holland:

It is my opinion that no useful purpose will be served by continuing the EXXON case. I urge you accept the plea bargain and let all parties get on with directing their efforts to more useful purposes. The spill happened. It cannot be undone. I believed we have all learned a lesson. Further nitpicking is nonproductive.

Yours very truly,



RECEIVED

MAR 26 1991

CHAMBERLAIN DISTRICT JUDGE
H. RUSSEL HOLLAND

24 March 1991

H. Russel Holland
United States District Judge

Honorable Judge Russel Holland,

I am taking the time to write to you regarding imposition of sentence to EXXON, and its reflected impact on my life, my feelings and how it affects my own perceptions of what it means to the future.

First, there is no words strong enough to overcome the grief we as Alaskans feel toward the event that happened at the helm of the EXXON ship, spilling its cargo, operating under a corporate mandate where money rules the sea.

WE are appalled, discouraged, unhappy, outraged, betrayed, lied to, and at the mercy of people who sit in board rooms, isolated from their decisions by layers of accountants. Their decisions are based on how much money is at stake, how much it takes to buy a favorable situation in the form of money, and almost nothing to the effects that those decisions have on people whose lives depend on a sound principle of pure water, clean land and a healthy environment in Alaska...

There is the very possibility in our laws, and our appeals process, that not one of the perpetrators will ever see, or smell the sickness on the beaches of our fisher persons, and that the impact will continue to be one of the accountant's ledger sheets, buried for the future, warranting nothing except another journal entry decimal point.

I would ask for justice...

Pure, and simple...

...The high up, mighty of mighty tycoons, would service the beaches under the supervision of the people who live on these lands, and they would smell the destructive power, and feel the grime of oil misplaced, and they become oily in the process...

...and the justice sought would have nothing to do with the millions of dollars in fines, justly deserved, but rather would be criminal in nature, with the guilty (...or innocent, as the trial may declare) doing a court handed down discipline. I simply don't believe EXXON's bottom line should be the law of the land, nor do I believe corporate America will listen long to court findings that allow cash payments to replace accountable responsibilities...

I recommend, (if this be appropriate...), that this decision, yours to make, do justice for our land in going forward with a

trial, to effect a jury mandated decision, and that we go this extra mile toward bringing a final resting place for the case of the United States of America vs. EXXON Corporation, and EXXON Shipping Company.

Thank you for making the opportunity available to comment, taking the time to listen, and placing some interest in the little people who cannot do media blitz, fight mega-corporations, or even afford the luxury of attending courts...


Fletcher G. Fuller

6630 Askeland Drive
Anchorage, Alaska 99507

907 349 1755 home
265 5639 work

RECEIVED

MAR 27 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

> BILL
re Exxon Co

March 27, 19.

TO: The Honorable Judge H. Russell Holland
U.S. District Court
222 West 7th
Anchorage, Alaska 99513

MAR 28 1991

U. S. DISTRICT COURT

FROM: Tim Martin
7100 Lake Otis #37
Anchorage, Alaska 99507

SUBJECT: Comments concerning the Exxon Settlement

Judge Holland:

I was the first caller to talk with Gov Hickel yesterday on the live statewide call in "Live With The Governor", broadcasted on public radio.

I told Gov Hickel that I received his response to my letter from James Rockwell, the governor's special asst., concerning Exxon's settlement with Alaska.

Mr Rockwell's letter to me stated that he talked with the dive supervisor of the local construction company that handled the underwater work for Exxon on the Exxon Valdez. He confirmed my observation that there were two impacts on the Exxon Valdez. The letter went on to state that the ship's inertia caused the second impact. His explanation was that tankers don't stop on demand and the first outcropping wasn't enough to halt forward movement and that the second and final impact did.

At this point I told Gov Hickel that this letter doesn't address my question. Where is the site of the first impact?

I've studied the depth chart and there is no place close by where the Exxon Valdez could have hit on the starboard side. I said, "The first impact caused more damage to the vessel than the grounding, yet the crew acts like they didn't feel it".

I told Gov Hickel that I was under the impression that Caleb Brett Co gauged the Exxon Valdez and that the gauging process was closely monitored by the Coast Guard and the Alaska Department of Conservation, but found out later that Exxon did all the gauging on the Exxon Valdez and that the DEC and Coast Guard did not monitor the gauging process but that the DEC simply took the figures from Exxon.

I told Gov Hickel that I also discovered that Exxon used the wrong process for determining how much oil was on the Exxon Valdez. They used the loadmaster which only shows how much liquid was in the tanks, but this process doesn't show how much of the liquid is oil or water. I said that the proper way to have gauged the tanker is the "paste and ball method", which shows how much water is below the oil. Because the wrong method was used to figure the loss of oil far more spilled from the Exxon-Valdez than was reported.

At this point my phone line to the governor was cut off.

Gov Hickel went on to say, in effect, that the settlement with Exxon is a done deal.

He wasn't concerned that this settlement is contingent upon a public comment period nor did he care what might be the result of these comments.

Gov Hickel is not representing the interests of Alaskans. He represents the interests of oil.

Though he appears to take a tough stand against the industry, pushing for greater interest penalties on monies owed to the state, his figures don't add up. Gov Hickel said there are monies owed by the industry to the state that go back 14 years and that Alaska could realize hundreds of millions when these debts are paid.

"No Governor, Alaska should see a few billion from past debts owed to the state".

Alaskans have benefited from oil, but where do we draw the line?

If this grounding had been caused by one impact it would have been, literally, impossible to prove that it wasn't accidental. But being that the first impact caused more damage to the tanker than the grounding, and since no one on board seems to have really felt it, the grounding of the Exxon Valdez was intentional and far more oil was lost than was reported.

I'm a 17 year member of the Alaska Piledriver's Union, the Bridge, Dockbuilder's and Diver's Union. I worked on the first piling holes on the first tanker dock at Valdez.

I've talked with divers who worked on the Exxon Valdez. The scrapes on the bottom of the tanker run straight from bow to stern. If the tanker had been in the process of turning these scrapes would have tended to run from port to starboard.

I've also heard from reliable sources that a considerable amount of sea water was pumped off the Exxon Valdez to the on-loading tankers.

Some lawmakers and attorneys have been pushing for Exxon to release data concerning the cause of the spill. Why should they incriminate themselves? If Exxon did release information, could it be trusted?

As a person, not associated with the industry, I believe that I know more about the details of this grounding than anyone.

I could organize a preliminary dive to determine the site of the first impact, on my own, but against industry's efforts to squelch information, how could I reach established channels? Last month's, 'Live With The Governor' was covered in the Anchorage Daily News the next day, but this month's program wasn't covered in either paper. Was it too much truth?

I wrote and had printed a letter in 'Letters to the Editor' in the Anchorage Daily News more than a year ago and had one printed recently, calling for a first impact dive, but no one from the state or media has seen fit to follow it up. Does any of them know where the tanker first hit?

Gregg Erickson, former director of the state's Oil Spill Assessment and Restoration Division was fired from his post on March 1st for making mildly abrasive comments against Exxon, so this is supposed to make him eminently suited for his new position as economist for the House Oil-Spill Settlement Committee that reviews this statement? I agree with Jim Zawacki, R-Girdwood, I don't trust him either. He reminds me of Lee Fisher, Revenue Commissioner, who boldly lashed out at the governor's proposal for collecting oil debts as an "immoral business practice" who announced that he now supports the governor. He's the same person that told me I have no right to oil royalty information.

Though most members of the legislature are beholden to oil, where do they draw the line?

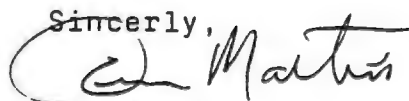
Gov Hickel is no longer pushing his agenda on a few hundred thousand Alaskans. He's now subject to world opinion, as is Alaska's legislature.

If a three day dive will clear up all doubt as to whether or not the grounding was intentional, shouldn't it be performed?

As a certified commercial diver, I want to see for myself the location and take pictures of it. I want to head up this dive.

I'm requesting \$10,000 from the state for divers and the charter of a fully equipped diving vessel with chamber. This amount will also cover a detailed report on the findings of a three day dive. I also extend an offer for Exxon to take part in a coordinated fact finding mission, but they supply their own boat.

Sincerely,



Tim Martin

Inclosures

next page

Thomas A. Cambell NOAA

Barbera Herman Attorney General's Office

Nancy Quinto Senate Special Committee on Exxon Settlement

Cheryl Hinkes Tundra Times

Howard Weaver Anchorage Daily News

Dan Lawn Alaska Department of Environmental Conservation

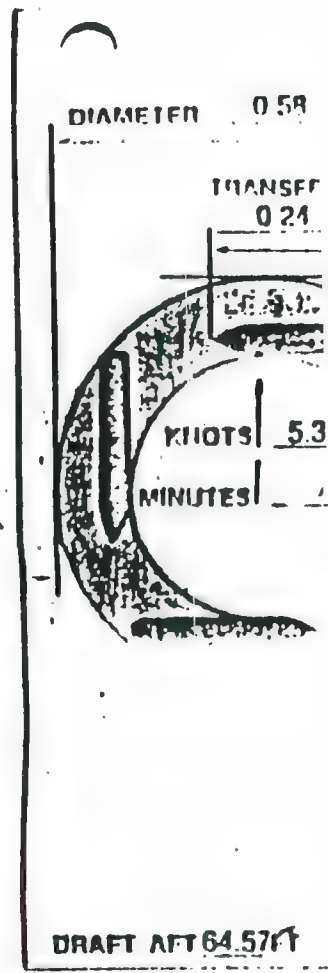
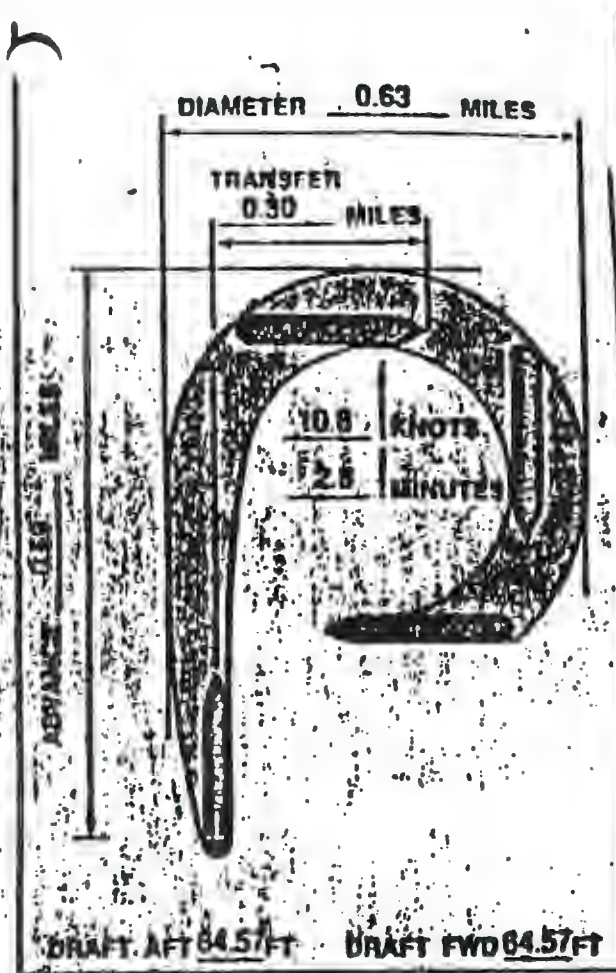
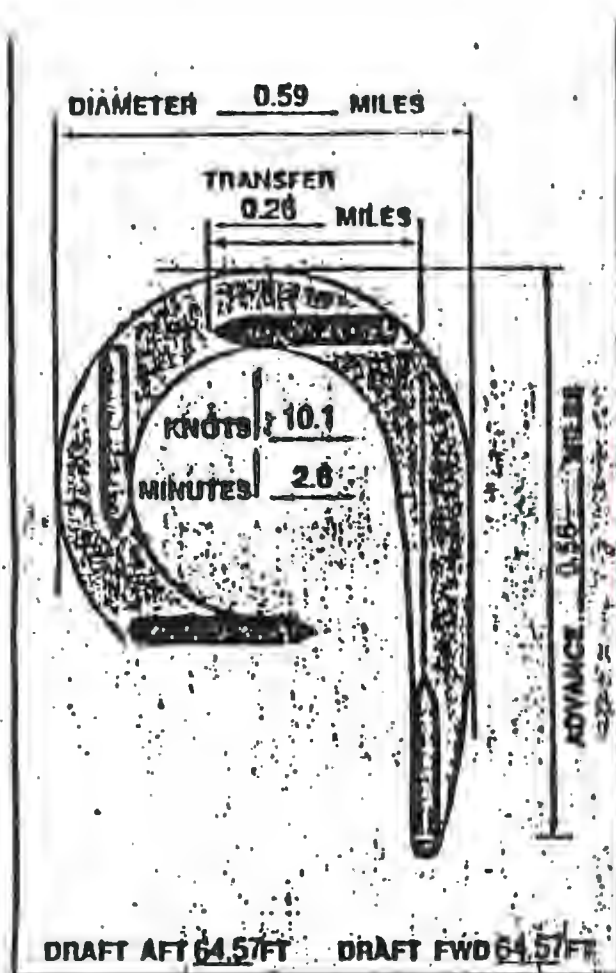
Greg Erikson House Special Committee on Exxon Settlement

Lawrence G. Rawl Exxon

Walter Hickel Governor's Office

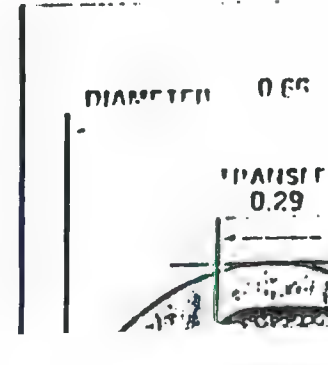
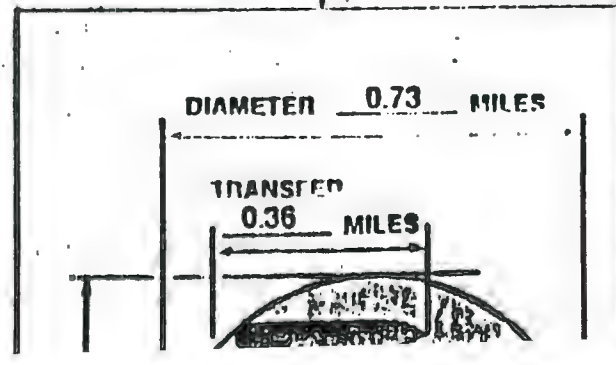
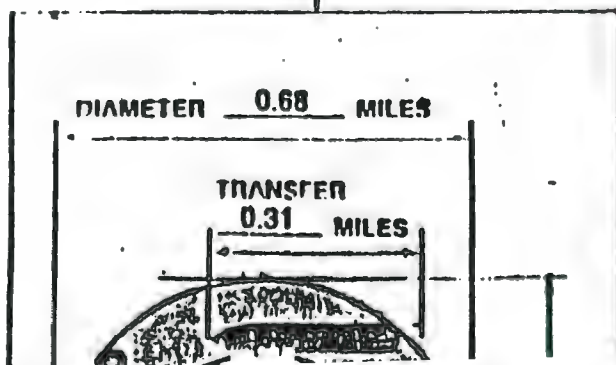
Others

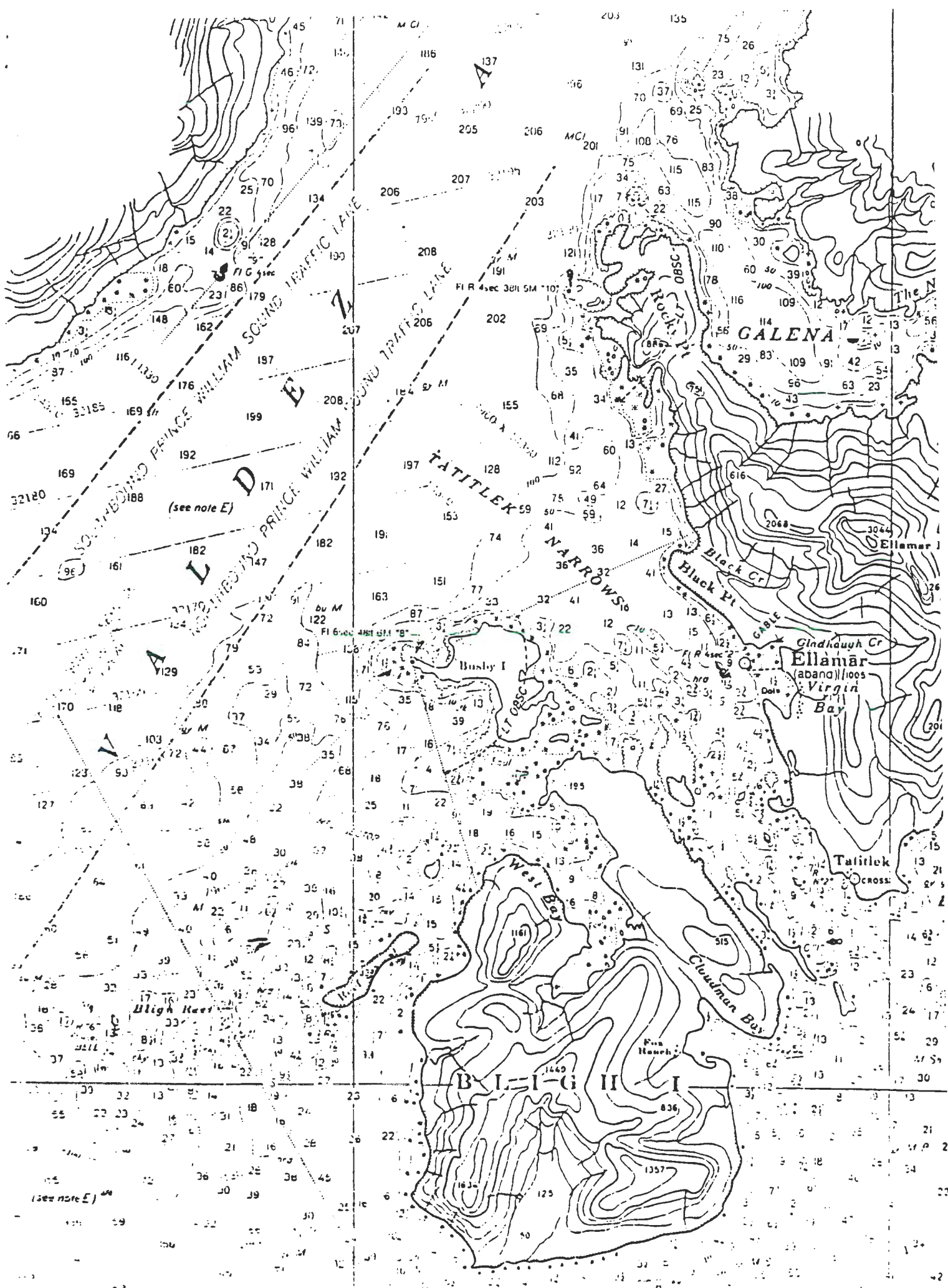
FROM NTS B HEARINGS



FULL SEA SPEED
17.8 KNOTS

BALLAST





RECEIVED

MAR 29 1991

H. Russel Holland
United States District Judge

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Comments concerning plea agreement between the United States of America vs. Exxon Corporation and Exxon Shipping Company

I'm a 32 year resident of Alaska during which time I've lived in both Anchorage and Fairbanks. I'm not sure what the qualifications for a "true Alaskan" really are, however; I certainly qualify as a member of the public who really gives a damn about this state.

By their very nature, negotiations (in this case a plea agreement) are very complicated. I trust that the public officials on both the state (Mr. Charlie Cole) and those representing the federal government represented my interests as an Alaskan and an American more than adequately. Favorable negotiations cannot occur from a position of weakness; clearly the state and federal government held a position of strength.

In essence, I'm fully in favor of the plea agreement between Exxon and the federal government.

My biggest disappointment in the way that the Exxon Valdez proceedings have progressed two years since the spill has been the arrogance and absolute stupidity exhibited by the Alaska State Legislature. The Legislature has levied punitive damage against all those doing business in Alaska's oil industry, they've pointed the finger of guilt at everyone but themselves and they've shown a complete lack of understanding as to how the plea negotiations have transpired or what their ramifications are. The high point of my week recently was when Judge Holland chastised the Alaska Legislature. Good job!

In conclusion, the plea agreement is fair and just . . . let's get on with living our lives again.

Jerry Foster
4241 Bridle Circle
Anchorage, AK 99517



March 26, 1991

RECEIVED

APR 01 1991

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

March 27, 1991

Clerk of Court
United States District Court
222 West Seventh Ave., Room 261
Anchorage, Alaska 99513

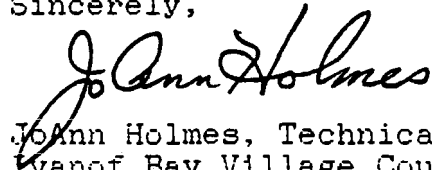
Subject: United States of America v. Exxon Corp and
Exxon Shipping

Attention: Bill Maykoski

Enclosed is a five (5) page comment regarding the plea agreement entered into between the United States of American and Exxon Corporation and Exxon Shipping Company.

Please contact me if you have any questions or wish further information.

Sincerely,



JoAnn Holmes, Technical Assistant
Ivanof Bay Village Council
601 West 18th
Anchorage, Alaska 99503

Phone: (907)258-5523

In the case of the United States of America v. Exxon Corporation and Exxon Shipping the following is submitted on behalf of the village of Ivanof Bay for the court's consideration in rejection of the plea agreement entered into by the parties.

On the south side of the Alaska Peninsula, in a relatively protected bay, lies the small Aleut village of Ivanof Bay. The 45 full-time residents of this community rely on the sea to provide subsistence foods and cash incomes, the sole basis of their economy. The local government has always operated as a traditional council. The village is recognized by state and federal government for the purposes of grants that support local government services. In 1989 the Lake & Peninsula Borough was formed; village leaders felt that it would be to their benefit provided they continued to receive all monies they received as the local governing body. Ivanof Bay was entitled to receive an annual payment directly from the State of Alaska a grant for local government assistance.

There is neither village commerce nor a commercial tax base with which to fund the operation of the community facilities. Diesel power generation system, water and sewer facilities, sanitary landfill, road/trail/runway maintenance, health care, and public safety are either maintained through tenuous state or federal funds or do not exist at all. The problems that exist in village government administration, subsistence and commercial fisheries preservation can be very difficult for a community of this size and are compounded by a lack of a local tax base.

The additional problems created by the grounding of the Exxon Valdez and ensuing spill of 11 million gallons of crude oil during the spring of 1989 are frightening. Ivanof Bay is nowhere

near Prince William Sound and at the time no one realized that the spill would travel 650 miles from Bligh Island in Prince William Sound, down the Kenai Peninsula, across Shelikof Straits to Kodiak and down the Alaska Peninsula to Ivanof Bay. This mindless mass of crude oil closed commercial fisheries, fouled traditional subsistence use areas and sent the Ivanof Bay Council into chaos. Archie Kalmakoff, Council President, stated that several residents, in quiet panic, were preparing to leave to look for work in either Anchorage or Seattle. The people had no money to purchase winter food supplies and did not know if their traditional subsistence resources were contaminated. They disposed of questionable foods gathered and supplemented their diets with caribou from a rapidly-dwindling Caribou herd residing on the lower part of the Alaska Peninsula. This herd, as speculated by the State Dept. of Fish and Game, is extremely small in size and number because of starvation due to overgrazing. It may not continue to be a supplemental food source.

The village residents did not participate in oil-spill clean-up which supplemented the incomes of many of the other villages in the path of the spill. The village also did not participate in any subsistence food exchanges or Exxon's generous donation of unused leftover food from their summer clean-up effort.

During June of 1989, the Village of Ivanof Bay emptied out, as usual, for their annual trek 50 miles northwest to Chignik Bay, another coastal Aleut community on the Alaska Peninsula. The Chignik commercial fishing industry supports 103 fishing boats and one cannery. Its permanent population is less than 200; however, Chignik provides support facilities for an annual

summer influx of approximately 500 people (Chignik Bay Village Profile). In 1982 the salmon fishing industry alone was responsible for a total catch worth over \$22 million, with the average income per boat estimated at \$215,000 gross. The people of Ivanof Bay fish, work in the cannery, or care for children here during the summer months.

The Chignik River drainage produces the largest wild stock of red salmon and the only wild stock king salmon run on the south side of the Alaska Peninsula. The salmon spawn during the summer months, the eggs hatch during the winter, and the fry emerge from their gravel beds in the spring. These communities also rely on halibut, bottom fish, crab and herring as other sources of sustenance and income. The adult fish of all species congregate at great depth, but migrate to near-shore spawning and rearing habitats at various times of the year. The fry spawned by the "humpies" will not return until 1992. The fry spawned from the red salmon will not return until 1993 and 1994. The fry spawned from the silver salmon will also not return until 1993. The total damage is unknown.

Members of the Ivanof Bay Village Council have stated that these critical habitats have been damaged by the Exxon Valdez oil spill. The contamination of these areas could affect the survival of the off-spring of all species in the area-- which include subsistence as well as commercial fishing resources.

The residents believe that it is impossible at this time for anyone to comprehend the magnitude of the damage done during the spring of 1989 and that further damage is occurring. It is their belief that as the storms churn the waters and clean Prince William Sound during the winter months and as the water warms in

the spring that critical habitat is still being polluted. The spring is the time when life emerges anew from all species of sea life. The new-borns are small and easily-harmed. As the habitat was destroyed in areas where sea-otter's thrive, they move on to other areas. On March 24, 1991 the residents of Ivanof Bay counted at least 30 sea-otters in the small sheltered bay where they live. The village residents generally do not see more than two or three at a time. The life-cycles and habitat is changing.

During the peak salmon fishing season the summer of 1989 the area fished by the Ivanof Bay villagers was closed. It opened during the month of September for a very brief period of time. The people of Ivanof Bay did not do well.

Another concern is the affect of the oil spill on the red king crab resource rehabilitation taking place in this area. This resource has been closed to commercial fishing since 1982 due to commercial over-harvesting (Quota Doubles for Bristol Bay King Crab: Other Areas Depressed, King, 18). The effect of the oil spill on this already stressed resource could be devastating and may guarantee that no commercial fishing of red king crab will take place any time soon. The Ivanof Bay Village Council reports that piles of three to four hundred dead crab washed-up on the beaches near the village during the latter part of September, 1989. On the shores of the coast outside Ivanof Bay is Humpback Bay where residents observed a mass of feathers, crude oil, and other unidentifiable matter that was one foot deep and twelve feet wide for as far as they could see.

These people have been deprived of their jobs and of traditional alternatives to provide foods for their families when no jobs exist. The Court must realize what the total impact of

the crime has been, and will continue to be, upon the victims. Remissions of the amounts considered to be appropriate by the parties in the plea agreement are not adequate even though:

(a) defendants recognize their responsibility with respect to the grounding of the "Exxon Valdez" and resulting oil spill. This admission was unnecessary considering its obviousness.

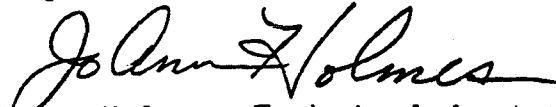
(b) defendants have expended in excess of \$2 billion in response to and clean up of the oil in Prince William Sound. There were no clean-up efforts in Ivanof Bay or its environs.

(c) defendants have paid in excess of \$300 million to claimants allegedly injured by the oil spill. The amount of money actually received by the Ivanof Bay villagers is minuscule regardless of this fact.

(d) defendants cooperated in the federal criminal investigation of the grounding of the "Exxon Valdez" and resulting oil spill. Though cooperation in all criminal investigations is exemplary, little weight can be given to this consideration. Public outcry was such that the defendants had no viable alternative.

Acceptance of the plea bargain by the Court will not ensure the reprehensible conduct of the defendant adequately reflects the level of harm to the victims. Let the punishment fit the crime.

Respectfully submitted,


JoAnn Holmes, Technical Assistant
Ivanof Bay Village Council
601 W. 15th
Anchorage, Alaska 99503

Phone: (907) 258-5523

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Public Comment
Exxon Settlement
John Gram

JOHN J. G. GRAMES,	)	No. 90-35883
)	
Plaintiff-Appellant,	)	DC# CV-90-0371-H
	)	Alaska
vs.	)	(Anchorage)
)	
STATE OF ALASKA, et al.,	)	MEMORANDUM TO SHOW CAUSE
)	
Defendants-Appellees.)	

1. Thank you for a clear and concise order, plus an extension of time to show cause.. Nevertheless, your decision that this case likely is "moot" is an oversimplification and more likely wishful thinking on your part.

2. While my original demand was simple, thereafter it became progressively more complicated when neither defendants, nor Judge Holland, would place my name on the ballot. They stonewalled my pleas to allow this plaintiff to participate in representative democracy and ignored my constitutional rights. This complaint got more involved through no fault of my own.

3. I asked the Clerk of the Court if the Ninth Circuit judges had all of the A-90-371 file to look at since your view was "this case does not present extraordinary circumstances", "that the federal courts cannot give appellant effective relief" and "that election is now over." She showed me the whole file had been sent to appeals.

4. In my motion, signed December 12, 1990 (filed January 9), asking for more time and co-counsel, appellant states the appellees

"should be compelled to run a fair and equitable election over again." This was my way of asking for relief--that a special reelection of State Senate Seat H be held--that the Division of Elections, State of Alaska, be ordered to bring my candidacy before the voters so that The People can rule.

5. Plaintiff/appellant has complained in both this case, and a companion obstruction of justice case, A90-370 Civil Grames v. Supreme Court, State of Alaska, before Judge Kleinfeld, that I must argue against the very same judges who dismiss my arguments rather than adversarial lawyers of the defendants, who never have to make an appearance for the other side, in court.

6. At the risk of being redundant, if I received 6% of the vote--which I did (late); then I could easily obtain 1% of the registered voters' signatures. The defendants admitted in State court that the August 1 deadline was "arbitrary," "unconstitutional" and "of no compelling interest." Then, why did they and Judge Holland put me through this ordeal?

7. Because there was no penalty; and they were protecting their vested interest in secret government, of, for and by the judge and lawyer members of the Alaska Bar Association, from any outside opposition like myself: the public is held in contempt and pro se litigants beneath their contempt.

8. Judge Holland also belongs to the private Anchorage Bar Association. The President of the Anchorage Bar Association is Assistant U. S. Attorney Addingham, who suppressed any federal

Bar Association collect moneys from the copiers, in GSA space, in the law library and clerk's office; funds used to propagandize the legal profession and have parties for this powerful, elite group.

9. One man, one vote, his imperial highness, H. Russ Holland, wants to dictate the oil spill cleanup. Enclosed is a newspaper article showing his low opinion of the people's elected representatives, public debate and environmentalists like myself. This judge has already made up his mind. He is what we call an oil company judge, like Judge James Fitzgerald who threw out the well written and strongly perceived State Tanker Insurance Law, which went through the complete Democratic process. His reward was a lifetime federal judgeship, although he single handedly ended up causing the Exxon Valdez disaster when the oil-company-controlled legislature and administration did not pursue an appeal of his decision to a higher court.

10. I am issue oriented; this is my principal political motive. This means that I do not run for office as a politician, to win or lose necessarily, but to increase public awareness--as a good citizen of the Republic. Same in court. My opponent, Rick Uehling, had 60% of the vote and hundreds of thousands of dollars to campaign in the General Election, but I provided another voice for the voters.

11. The point is, it seems judges and lawyers can do anything they want above the law and the governed cannot do anything about

it within the government. I tried to go directly to the electorate, but a Bar Association conspiracy prevented me.

12. In the General election news coverage, the Anchorage Times and Daily News would not even mention my name. I ran on the Green Family ticket. The Green Party of Alaska is now an alternative political party for sensitive change and reform. Family law in this state discriminates against fathers, non-custodial parents, and second families. For the health of the basic unit of society, and the nation, this must be rectified, broken family ills cured by everyone encouraged to work together.

13. Please consider, on the home front, what we fought the Gulf War for: Justice. Rule of Law. Democracy. Due process. Equality. Liberation from oppression. Freedom.

15. Give meaning to these words by our political leaders so that these principles become worthy. Overrule Judge Holland. Call a new election: Including the retention of judges where the Judicial Council gave the voters misinformation and used government funds to perpetrate themselves in the Judicial Branch of government, not mentioning that I was demonstrating and complained against the retention of corrupt judges who break the Law.

DATED this 22nd day of March, 1991, at Anchorage, Alaska.

John Grames

Judge flays Legislature for meddling

By JAY CROFT

TIMES WRITER

U.S. District Judge H. Russel Holland has kept quiet since the Exxon Valdez oil spill, but Friday he lashed out at Alaska lawmakers after Exxon pleaded guilty in his courtroom to environmental crimes stemming from the 1989 disaster.

The Legislature on Thursday asked Holland to delay until May 3 consideration of the plea agreement worked out between Exxon and the government. Lawmakers said they needed time to review the deal.

Holland said he was angered that the Legislature notified him of its action by a telefaxed message and that he was concerned legislators were trying to use the federal criminal case to their advantage in a state lawsuit against the oil giant.

Attorney General Charles Cole quickly tried to distance the Hickel administration from the Legislature's action.

"It wasn't from the state, I guarantee you," Cole said. "Not from the Hickel administration did it come."

Holland later refused to discuss the case or his remarks concerning the Alaska Legislature.

A lawyer who asked not to be identified said Holland was ang-



Russel Holland

ered by the Legislature's meddling in a criminal case to affect the state's lawsuit.

Such manipulation would violate legal ethics, he said.

Holland's words and his later silence were indicative of the quiet jurist, who began his legal career in Anchorage humbly and has gained a solid reputation as a thorough, inconspicuous judge.

He received a bachelor's degree in business administration in 1958 and got his law degree in 1961 from the University of Michigan. He moved to Alaska

and was a clerk with the Alaska Supreme Court.

Holland joined the Alaska Bar Association in 1963 and was an assistant U.S. attorney in Anchorage from 1963 to 1965, when he entered private practice with Ted Stevens.

Holland worked for the firm of Stevens, Savage, Holland, Erwin and Edwards, and later with Stevens alone. The partnership ended when Gov. Walter J. Hickel appointed Stevens to fill the unexpired term of U.S. Sen. Bob Bartlett, who died in 1968.

Holland was recommended to become a U.S. District Court judge in 1983. Mary Kay Hughes, then president of the Alaska Bar, said, "Russ is very competent, very reasonable. He has what I would call a judicious attitude."

In July 1984, at age 47, Holland was sworn in as Alaska's fifth federal judge. He was to handle cases involving Native claims, endangered species preservation, mineral leases and resources management.

At his swearing-in, speakers described Holland as "a sound craftsman who knows his profession" and a man of "compassion, uncanny good sense, courage, who also is free of any arrogance."

When he was appointed, Hol-

land described the federal judgeship as "sort of the ultimate goal" in the career of an attorney. "I'm kind of excited about it," he said.

Before his appointment, he had worked in partnership with George Trefry, and had handled commercial cases.

Of the seven lawyers who applied for the federal post, Holland was ranked third in the "extremely well-qualified" category by nearly 800 members of the Bar. State Superior Court Judges Douglas Serdahely of Anchorage and Thomas Schutz of Ketchikan were ranked higher.

Anchorage lawyer Edgar Paul Boyko described Holland as conservative, cautious and principled.

"He's going to interpret the law and not make national policy," Boyko said.

"If I were a liberal environmentalist, I would feel a little nervous about his natural conservatism. But I think that would be a needless worry because I feel in the end he would be fair to everybody."

"The one comforting thing about him is you can be sure he's not going to go off the deep end on either side. At times (he's) a bit naive about the world, but learning."

My philosophy of life is live and let live: leave alone. Everything begins at home. Alaskans respect each other's privacy-this life long Alaskan, more than most. My sons give drug-free message without criminal records.

Representative Democracy is based on mutual trust between the people and their politicians. People who know me know I'm ready to bring honesty, intensity and sensitivity to my single term.

The greatest expense of government is corruption and abuse of power. Everyday, lay-people will have an open invitation to influence their government and political issues. Citizen oversight and review encouraged everywhere. More Legislative Public hearings, then action taken on the findings, will help all the people involved do something about their testimony. Town meeting get-togethers.

Alaska is one of the wealthiest places on the planet, yet our economy has been on a long, downhill cycle in a fast changing world. We are giving our resources away to uncaring multi-national corporations, with little in return to turn the economy around. We must get a better deal from our share; as well as, keep control of the resources we own. My office will provide the new political leadership to foster in-state business, labor, manufacturing, and consumer interests.

The issues I will bring to Juneau:

- *State comprehensive health plan, with affordable premiums, run by private companies, underwritten by the State of Alaska as the Reinsurance Company.
- *Wilderness and wildlife belong to everyone. Everybody should be able to buy living licenses priced the same as hunting licenses (resident or out of state). All licenses would equally go into a lottery, either to let live or harvest, all proceeds to Democratic Game management.
- *Tribal Native rights and subsistence. A Native Welcome Center downtown Anchorage run by Village Councils.
- *Minority hire on new pipeline work according to Alaska Pipeline Act.
- *Revive AKPIRG for consumers and citizen government.
- *Lower local energy costs, price of gasoline from State in-kind oil.
- *Permanent Fund Checks to permanent residents. Investigation of Election and Voter Registration fraud.
- *DMV substation downtown.
- *Cure social ills rather than dumping them on Fairview.
- *Impeachment trial for Superior Court Judge Carlson based on Senate Family Law Review Task Force evidence.
- *Separation of powers-three branches of government: Judiciary stop making laws, lobbying the Legislature and Executive.
- *Open courthouse to public scrutiny. Audit sweetheart, no-bid copiers contract between Law Library and Bar Assoc. (monies to public libraries.). ISER research price per litigant. UAA seminars on alternatives to court system. More voter information for retention of judges. Citizen law enforcement Boards (i.e. Gressett case). The politicizing of Justice breeds corruption: Judges and lawyers can get away with anything-in-house.
- *Family Commission: Equal rights for fathers, mothers, children and second families. End discrimination against heterosexual males.

Alaska Judicial Council Recommendations

The Alaska Judicial Council, an independent citizens agency created by the Alaska Constitution, has evaluated the judges who will be on the ballot on November 6 and recommends they be **RETAINED**. In making this recommendation, the Council reviewed:

- Peace Officer Surveys
- Attorney Surveys
- Juror Surveys
- Conflict of Interest Statements
- Court Records Check
- Disciplinary Records Check
- Interviews
- Written Public Comments
- Courtwatching
- Anchorage Citizen Retention Advisory Committee Recommendations
- Court Watch Evaluation
- Public Comments at 15 Communities Statewide, including Anchorage, Seward, Homer, Wasilla/Palmer, Valdez, and Kodiak

While there was some controversy about a few of the judges who decided to retire, information about the judges who will be on the ballot (all of those listed below) was overwhelmingly positive. Refer to your Official Election Pamphlet for more information.

Vote YES To Retain

JUSTICE WARREN W. MATTHEWS, Supreme Court

Third Judicial District

JUDGE CHARLES K. CRANSTON, Superior Court

JUDGE J. JUSTIN RIPLEY, Superior Court

JUDGE BRIAN C. SHORTELL, Superior Court

JUDGE ELAINE M. ANDREWS, District Court

JUDGE MARTHA BECKWITH, District Court

JUDGE MICHAEL L. WOLVERTON, District Court

27 5321 John Granne
P.O. Box 190827, Anch. AK 99518
March 29, 1991

Alaska Judicial Council
1029 W. 3rd Ave, 201
Anchorage, AK 99501

Dear Ex. Dir. William T. Cotton:
I called today and asked you directly whether Federal funds were used to buy Ads for the November retention of Judges election? Serious business. Your answer was a firm, "no!" Then I quizzed you if any visitation mediation Project monies were co-ming with the budget of the Judicial Council without a separate accounting? Don't call your reply, except you accused me of being abusive, but did not deny it. This spells the end of any conversation between us, since the ombudsman believes Court officials over a no attorney. Litigants are not allowed on the hand picked Citizens Advisory Board to the Bar Assoc. controlled Council. The women's Commission placed the Project in the Council (from OPA). We could not afford to lobby in Juneau. We could also not afford to buy ads to counter your misinformation to us and to the Governor e.g. Judge Andrew

1,1771
Judge Russel Holland
U.S. District Court
Anchorage, Alaska 907

Dear Judge Holland: ~

Please do not allow the Exxon Corporation to plead guilty to a misdemeanor charge for the oil spill.

Federal felony charges must not be dropped.

The oil spill damaged the water, land, all wild life - plants, animals, fish, birds. The damage will affect the land, water, wild life, people who live there and people who come to work there. Effect them not only now, but long after all people, plants and animals, birds, etc. long after the people now living are gone.

Companies and people must realize that our Earth is fragile and if companies can cause this kind of pollution and not be punished, they will continue to do damage and soon our planet will be like the other planets in our solar system - no living things on it.

Sincerely,

Edwina M. Reed
5743 N. St. Louis
Chicago, Ill. 60659-440

I'm a senior citizen and in my life time I have seen permanent changes that can never be reversed.

8

1632 Beaver Place, Apt. 3
Anchorage, Alaska 99504
April 3, 1991

Honorable Judge Holland
U.S. District Court
222 West Seventh Avenue
Anchorage, Alaska 99513

Dear Judge Holland:

Please reject the proposed State/Federal/Exxon oil spill settlement. The settlement is not in the best interests of Alaska or of the American people. The oil spill was partly the fault of the State government, along with Exxon and Alyeska. It appears that the State's primary motive in negotiating the settlement was to protect itself from damaging lawsuits. The Hickel administration, therefore, sacrificed the public interest.

I urge that you not accept a settlement until the State has released the oil spill damage assessments for public scrutiny.

Grace & peace--

Kenneth Brewster

Kenneth Brewster

cc: Senator Pat Pourchot
Senator Rick Uehling
Representative Terry Martin
Representative David Finklestein

APR 03 1991

U. S. DIST. COURT

9



APR 03 1991

U. S. DISTRICT COURT

AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 10-1093 / Anchorage, Alaska 99510 / (907) 278-3661

March 23, 1991

United States Federal District Court
Judge Russell Holland
222 West Seventh Ave., Room 261
Anchorage, Alaska 99513

Dear Judge Holland:

I am responding to your request for public comment on the proposed plea bargain between Exxon Corporation and Exxon Shipping Company and the United States of America. I will limit my remarks to three related points.

First, in remarks in open court you reminded members of the Alaska State Legislature that criminal law prosecutions should not be used as leverage to induce favorable civil law outcomes, this a violation of the code of professional responsibility as embodied in Alaska court rules and the rules governing the activity of the state and federal bar.

If public accounts, as the attached from the New York Times, are to be believed, the plea bargain before you has precisely that genesis. The proposed fines are part and partial of a process which generated simultaneously the civil law settlement between the defendants and the Federal and state governments and the instant plea bargain.

If, as I believe, you have a deep conviction regarding the use of criminal law prosecution as a prod to induce civil law settlements, you are empowered to determine whether the plea bargain was indeed the fruit of these conjoint negotiations. If your finding is in the affirmative, you can honor the code of professional responsibility and the legal process by rejecting the proposed plea bargain and ordering the parties to trial.

The fundamental purpose of criminal law is to deter future law violations by the defendants and other would-be law violators. In the present instance, the proposed plea bargain does not place such constraints on the defendants or on other similarly situated persons. Instead it telegraphs a different message, that environmental crimes of immense scale may be committed by anyone who can absorb the penalties as another cost of doing business. What may seem to be a penalty of overwhelming significance in the abstract or to a lowly sports hunter is for the defendants far less

significant.

Finally, deterrence and the principle of equal justice under law is served by public trials of defendants. Both victims and would be offenders are served through the ritual of scrutiny of evidence and legal accountability. Alaska has confirmed this point with its unique ban of plea bargains. Although there can be no question that the cost of trial for the Federal government and the defendants would be high, there are few instances in the annals of American law where a public trial would serve the cathartic role envisioned by our founding fathers than in the instant case. The public scrutiny of damages inflicted by the defendants has been denied the public by concealment and termination of efforts to disclose fully the damages inflicted. Such exposure could motivate lawmakers and the public to revise the state of criminal law statutes so as to better address such acts in the future. The plea bargain would deny such a result.

For these reasons, I urge you to reject the proposed plea bargain.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Conn", with a long horizontal flourish extending to the right.

Stephen Conn, Esq.
Executive Director

3/13/91 P.1
**EXXON WILL ADMIT
TO CRIMINAL WRONG
IN '89 ALASKA SPILL**

FINE OF \$100 MILLION SET

**Plea and Payment Included in
\$1.1 Billion Settlement
in Valdez Disaster**

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 12 — The Exxon Corporation has agreed to plead guilty to a criminal charge arising from the 1989 Exxon Valdez oil spill and pay a \$100 million fine, officials of the Environmental Protection Agency said tonight.

The \$100 million would be part of the \$1.1 billion Exxon is to pay over the next 10 years to settle civil and criminal cases arising from North America's largest oil spill, Alaskan and Federal authorities said today.

Final arrangements for the guilty plea were being worked out tonight, the E.P.A. officials said. The arrangements included a review of the agreement by the E.P.A. Administrator, William K. Reilly. It was not clear this evening what charge Exxon would plead to. The company had faced two felony charges and at least three misdemeanor counts stemming from the March 24, 1989, accident and could have been fined up to \$600 million if convicted on all counts, Attorney General Dick Thornburgh said after the company was indicted a year ago.

As for the overall \$1.1 billion settlement, Federal and state officials have agreed to the arrangement. Although a Federal District Court judge at first seemed to raise another hurdle today when he said he would review the settlement to insure that the rights of 5,000 Alaskan villagers were protected, a state official said early this evening that the final obstacles appeared to have been overcome.

Exxon would pay \$100 million immediately to settle criminal charges brought by the Department of Justice. That would be one of the largest, if not the largest, criminal fine ever paid for pollution. A trial on the charges had been scheduled for April 10 in District Court in Alaska.

Effects Would be Studied

The villagers had filed suit last week, asserting that they had been locked out of negotiations between Exxon, the State of Alaska and the Federal Government. The villagers said they feared that a settlement would prevent them from recovering financial damages caused by the spill on March 24, 1989.

The settlement, which has been under negotiations for months, would not end Exxon's legal troubles in Alaska. At last count, 330 separate suits were pending against the company. But the settlement would end the major suits, brought by the State of Alaska and the United States.

In addition, the company would pay

Continued on Page A12, Column 3

Obstacles Cleared, Exxon Is Ready to Pay \$1.1 Billion in Oil

Continued From Page A1

\$90 million this year into a fund administered by three Federal agencies and three state agencies. The money would be used for scientific studies of the Prince William Sound region, which suffered great damage, and for projects to continue scrubbing the shoreline of oil left when nearly 11 million gallons of crude oil spilled from the hull of the Exxon Valdez after the tanker ran aground in the sound.

The tanker's skipper, Capt. Joseph J. Hazelwood, was convicted in April 1990 of the relatively minor charge of negligently discharging oil but acquitted of piloting the vessel while drunk and other charges. He was sentenced to spend 1,000 hours in the cleanup operation and was ordered to make \$50,000 restitution.

Exxon said in April 1990 that it had spent \$2 billion on the cleanup and had paid another \$200 million to settle claims.

The agreement made final today also called for payments into the fund of \$150 million in September 1992, \$100 million in September 1993, and \$70 million annually from 1994 until 2001. The proposed settlement also calls for Exxon to contribute \$100 million more to the fund if additional damage from the oil spill is discovered.

Economists noted that Exxon would be able to claim tax deductions for every payment except for the \$100 million criminal penalty, to be paid this year.

The agreement would not affect some 300 other lawsuits filed by environmentalists, fishermen and Aleuts asking Exxon to pay for damages these groups say they suffered after the spill.

The proposed settlement was applauded by Gov. Walter J. Hickel of Alaska but strongly criticized by environmental groups and some state officials who said, essentially, that Exxon would be paying too cheap a price in settling the case.

Bottom of the Pockets?

"It seems like a good deal for Exxon," said Eric Jorgenson, a lawyer for the Sierra Club Legal Defense Fund in Juneau, which has a separate suit pending against the company in the aftermath of the spill.

But Governor Hickel said: "I am very happy with the settlement. It allows us to get to the bottom of Exxon's pockets."

Lance Lambertson, a spokesman for Exxon in Irving, Tex., declined today to say whether Exxon would sign the agreement and said the company would make no comment about the situation for the time being.

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lambertson.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and



The spill near Valdez fouled much of the Gulf of Alaska.

other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a

stir in Alaska and in Washington. The is litigation. I certainly am negotiators will open the pact to public. think a bird in the hand is worth comment for 30 days after it is signed. the bush. The cost of litigation Officials with the state and two Fed- very substantial." eral agencies said the pact could be altered as a result.

Economists who have studied the spill for the state and Federal government said today that the \$1.1 billion settlement represents only a portion of the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the spill before midnight on March 24, 1989, through 1994.

Several state officials who asked not to be identified today said they had hoped that Exxon would be required to pay \$1 billion in a one-time payment that could generate permanent income through annual interest payments. Thus, the annual payments, spread out over 10 years, are much less valuable to the state's efforts to clean up and study the effects of the spill.

Senator Frank Murkowski, a Republican from Alaska, said today that Alaska was fortunate to have gained a settlement. The alternative was years of litigation that would have cost Alaska millions of dollars in legal fees without any assurances of success.

"I think this agreement, if it is resolved, is going to have to stand the light of day by the Legislature, the Governor and Exxon shareholders," said Senator Murkowski. "The alternative

The settlement also calls for a advisory group made up of men public to help oversee how the settlement is spent. The ment of Justice scheduled a conference for Wednesday provisions in the settlement.

The last obstacles to the were crossed this afternoon. Judge Stanley Sporkin here that prevented the being signed, and a District Alaska, H. Russell Holland the agreement. Judge Holl have presided over the cri next month.

Last week, Judge Spork the settlement from being s the state and Federal Gove sured more than 5,000 Alas villagers that their right to cial damages from Exxon w harmed by the pact.

Today, Judge Sporkin sa satisfied that the rights of villagers to fully prosecute had not been harmed by ment between Exxon, Alas Federal Government and li junction.

"The court shall retain over this matter to ensure fendants' representations out so the plaintiffs' rights ed," Judge Sporkin wrote in

Washington at Work

In Exxon Deal, Transportation Chief Wins Another One for the President

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 20 — A week ago Tuesday, Lawrence G. Raul, the chairman of Exxon, flew to Washington. In an informal ceremony at the Justice Department just before midnight he signed a \$1.1 billion settlement that he hoped would put the nation's worst oil spill, and the two years of civil and criminal cases that followed, behind him and his company.

Standing with Mr. Raul, Gov. Walter J. Hickel of Alaska and the lawyers for the Department of Justice was Transportation Secretary Samuel K. Skinner.

Once again Mr. Skinner had pulled it out for the White House, bringing to a successful conclusion talks that by all accounts could easily have tipped the other way.

"I viewed my job as a facilitator," said Mr. Skinner, a former United States Attorney from Chicago. "You had a huge amount of egos and interests that had to be blended together."

"In my experience I've found that if the principals don't want to settle they look for an opportunity to get out. In this case everybody wanted a deal because they knew the alternatives didn't make sense."

A 52-year-old lawyer and protégé of James R. Thompson, the former Governor of Illinois who at one time was considered as a potential national Republican figure himself, Mr. Skinner has made his career in the capital handling domestic political issues without embarrassing the President. His background as a litigator has helped. So has his instinct for the spotlight and his good feel for the Washington social circuit.

In Response to Disasters

When the tanker Exxon Valdez struck a reef in Prince William Sound in Alaska on March 24, 1989, spilling 11 million gallons of Alaska crude into the sound and turning beaches into a chaos of oil-soaked birds and dying otters, it was Mr. Skinner who was dispatched to supervise the Government's response.

Earlier that month, when machinists at Eastern Airlines went on strike, President Bush tapped Mr. Skinner instead of Elizabeth Dole, then Secretary of Labor, to handle the strike. Mr. Skinner's advice to the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice De-



"I viewed my job as a facilitator," said Transportation Secretary Samuel K. Skinner of Exxon's Justice Department settlement. "You had a huge amount of egos and interests that had to be blended together."

partment, Mr. Raul had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex.

Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion-dollar damage suit."

Mr. Raul and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together, he told them. Mr. Raymond called Mr.

An experienced litigator finds a way to satisfy everybody.

Skinner and told him that the Governor was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years."

The Chairman Cools His Heels

On Feb. 5 Mr. Raul and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators: Mr. Skinner; Manuel Lujan Jr., Secretary of the Interior; William K. Reilly, Administrator of the Environmental Protection Agency; John Knauss, Administrator of the National Oceanic and Atmospheric Administration; Governor

Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Raul, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a sour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Raul became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Raul said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."

Mr. Skinner said that when the Exxon chairman entered the room he lashed out at the negotiators, saying he was sick and tired of how the company had been treated by the Government, the news media and the people of Alaska. Exxon had spent \$2 billion to help clean up Prince William Sound, Mr. Raul said, more than had ever been spent by any company for an environmental restoration project, and had received no credit.

Nobody responded until Mr. Skin-

ner disarmed Mr. Raul, according to participants.

"Look, Larry," said Mr. Skinner, whose department includes the Coast Guard and who has developed a personal relationship with Mr. Raul in the two years since the spill. "Let's not relive it. If we do, we'll never get past it."

'Reopener Clause' Is a Snag

Over the next 90 minutes, participants say, the broad outline of a settlement of the civil claims was established. Following Mr. Hickel's lead, the state and the Federal Government said they were looking for at least \$1 billion. Mr. Reilly insisted that the settlement include \$300 million more to be put into a special fund if more damage was found, a provision that came to be known as the "reopener clause."

Mr. Raul and Mr. Raymond said that they wanted the settlement to make Exxon immune to any more state and Federal claims, that they did not want to pay the money in a lump sum and that they hated the reopener clause.

Three more meetings were held in Washington in February and early March before lawyers were dispatched on March 3 to put the agreement into legal language. With Washington gripped by the Persian Gulf war, the group was able to work undistracted by reporters or environmental groups or other interests.

"This had to be handled by the principals only, and it had to be handled in a short period," Mr. Skinner said.

Through February, the talks were never far from collapse. "We knew the longer the discussions went on the harder it would be to put it together," the Secretary said.

Justice Department lawyers and other participants credit Mr. Skinner with keeping Exxon and government officials at the table.

When Mr. Raul and Mr. Raymond almost walked out because of Mr. Reilly's insistence that the agreement should have a reopener clause, Mr. Skinner told them the E.P.A. administrator's signature on the agreement was vital politically. Without it, the Secretary said, the Bush Administration and Exxon would have a hard time justifying the settlement to environmental groups.

And when Exxon insisted that Mr. Reilly be barred from attending a meeting on Feb. 24, Mr. Skinner assured Mr. Reilly that the Government would not negotiate something the E.P.A. administrator was unable to accept. In the end, Exxon and Mr. Reilly accepted a provision that called for the company to spend up to \$100 million after the year 2001 if more work in the sound was needed.

Mr. Skinner also kept the White House informed. During a meeting at the White House, John H. Sununu, the President's chief of staff, remarked that the \$1.1 billion deal sounded "like

Samuel Knox Skinner

Born: June 10, 1938.

Hometown: Chicago.

Education: B.S., University of Illinois; J.D., DePaul University.

Career Highlights:

1961-68, various positions with I.B.M.; 1968-75,

served in the Office of the United States Attorney for the Northern District of Illinois; 1975-77, United

States Attorney for that district; 1977-89, private

practice with law firm of Sidley & Austin; 1984-88,

chairman, Regional Transportation Authority of

Northeastern Illinois; 1988,

named Secretary of

Transportation.

Hobbies: Flying, golf.

an awful lot of money," Mr. Skinner said. But he assured Mr. Sununu that, the agreement between the Government, Alaska and Exxon would be a good deal for everybody.

Exxon and its shipping subsidiary pleaded guilty to four criminal misdemeanor violations of environmental law and agreed to pay a \$100 million fine. It was the largest penalty ever assessed in a pollution case, more than three times higher than the \$29.7 million that the Government collected in 1990 for all environmental crimes. Even more, from the White House point of view, it makes good on Mr. Bush's campaign promise to penalize polluters.

From the state's point of view, the cost of the settlement, \$1.1 billion, will keep Exxon involved in the restoration of Prince William Sound for at least a decade.

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Raul said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$190 million this year, and then drop to \$70 million each year from 1994 to 2001.

To a corporation with an annual revenue of \$180 billion, the cost of the settlement each year is roughly the same as drilling two difficult offshore wells. "It will not curtail any of our plans," Mr. Raul said.

James Roderick
Box 916
Homer, Ak. 9960
235-4070

Honorable Judge Holland
U.S. District Court
222 West 7th. Ave.
Anchorage, Ak. 99501

Dear Judge Holland:

Thank you for considering the State/Federal/
Exxon Oil Spill Settlement question.

I beleive that no settlement can be honest or
valid intil all damage assessment data has been made available to
the public. At this point, I feel that the public can only make
an emotional judgement on this subject. We cannot function as
a rational and informed electorate making a prudent decision.
I hope that you will not allow this premature settlement to occur.

Sincerely Yours,
James Roderick

James Roderick

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APR 04 1991

H. Russel Holland
United States District Judge
U.S. District Court of Alaska.

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Dear Sir:

May I suggest that in the case of EXXON CORPORTION and
EXXON SHIPPING COMPANY No.A90-015 that you consider imposing the
sentence of, that they must search out and make whole all persons
who suffered losses from the VALDEZ OIL SPILL.

Thank you for your consideration.
Cook's Inlet Drift fisher
James S. Brindley

JSB 3-31-1991
37035 Nicholas Lane
Soldotna, Alaska. 99669
ph. 907 262-4388



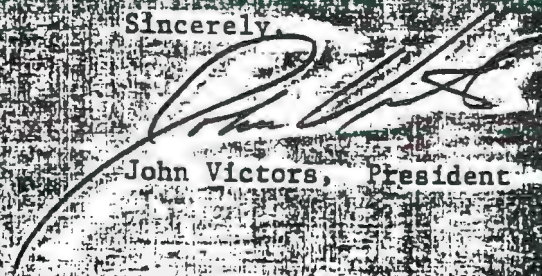
SANCTUARY TRAVEL SERVICES, INC.

4/2/91

Dear Judge Holland,

I am very concerned about the proposed settlement regarding the 1989 oil spill of the Exxon Valdez. The thing that is the most disturbing is the fact that, while public funds were used in assesment of damage done by the spill, those reports are not being made public. That spill had a very negative affect on individuals and businesses alike. The tourism business in general and tourism in the Sound in particular was delt a hard blow and Alaskans will be paying the price for a long time to come. Please take these few thoughts into account when it comes time to make what I'm sure will be some very tough decisions.

Sincerely,


John Victors, President

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APR 5 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Jerry Celey
6766 Double Tree Court
Anchorage, Ak 99516
(907) 346-2800

BILL)

CRIMINAL - DOCKETING -

Holland
Jrt

th Avenue
ANCHORAGE, AK 99513

Dear sir,

I hereby submit my comments concerning the proposed Exxon plea agreement in regard to the Exxon "Valdez" incident.

As you can see by the attached letter, I have always felt that the State of Alaska was more at fault for the spill damage than Exxon was. The Alaska Department of Environmental Conservation is the State's front line defense against, among other things, oil spills.

This Department, under the direction of Dennis Kelso, bungled their responsibilities so badly that it was pathetic. In turn, the lawsuit against Exxon was so ill prepared that it was embarrassing. If you have never read the lawsuit, you should. It will prove to be very enlightening.

Therefore, based on the present condition of Prince William Sound, and based on the terms of the plea agreement, I think the State and the Federal Government "made out like bandits", and should grab the money and run.

Very truly yours,



Jerry Celey

AUGUST 15, 1989

GOVERNOR STEVE COWPER
P.O. BOX A
JUNEAU, AK 99811

IN REGARD TO THE LAWSUIT FILED BY THE STATE OF ALASKA TODAY AGAINST ALYESKA ETAL, THIS IS TO ADVISE THAT IT WAS NOT FILED ON MY BEHALF, IT WAS NOT FILED FOR THE GOOD OF ALASKA, IT DOES NOT HAVE ANY LEGAL MERIT AND IT IS A TOTALLY IRRESPONSIBLE ACT DONE IN AN ATTEMPT TO DRAW ATTENTION AWAY FROM THE STATE'S RESPONSIBILITY. BOB LERESCHE'S TERM 'SHAM' WAS CORRECT BUT IT WAS DIRECTED AT THE WRONG SUBJECT. THIS LAWSUIT IS TRULY A 'SHAM' AND I RESENT BEING NAMED A PARTY TO IT EVEN BY INFERENCE AND DEMAND TO BE SPECIFICALLY EXCLUDED.

THEREFORE, MY FAMILY AND I REQUIRE TO BE IMMEDIATELY AND PROPERLY NAMED AS NOT BEING A PARTY TO THIS LAWSUIT.

THE PARTIES SHOULD BE LISTED AS FOLLOWS:

JERRY C. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SANDRA K. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

JAMES N. PRICE
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

APRIL R. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SIGNED: _____
JERRY C. CELEY

SANDRA K. CELEY

JAMES N. PRICE

APRIL R. CELEY

CC: SEE ATTACHED LIST

10441 Birch Road
Anchorage, Ak 99516

April 5, 1991

Hon. H. Russell Holland
U.S. District Court
Anchorage, AK

Your Honor:

In the matter of the proposed EXXON oil-spill plea bargain, I respectfully urge your rejection thereof.

The magnitude and persistence of the Prince William Sound oil-spill tragedy call for far more legal consideration and severity of penalty than the provisions of the plea bargain allow. Judicial proceedings are clearly in order. I believe that they are imperative.

It is being argued that the plea bargain "beats going to court" and that "we must get (the spill) behind us." Neither view is valid. The fundamental virtue of action through the Court is that of judgement rendered through argument and counterargument ... the educative value of which is foremost and beyond calculation, either numerically or monetarily. Moreover, the level of awareness and sensitivity appropriate to the profundity of the issues can only be nurtured by court proceedings, a forum which cannot be equalled by any other agency of the people or by academic discussion.

I ask that you read the essay on the "Social Function of Catastrophe" which I am enclosing with this letter.

Respectfully,

Charles Konigsberg
Charles Konigsberg

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APR 05 1991

CLERK, U. S. DISTRICT COURT

15

by Charles Konigsberg

The Social Function of Catastrophe

We have been reversing the evolutionary process which made our world safe for life...

We can now understand that — given our nature as the human species — catastrophe serves the function of reawakening us to the fundamentals of our existence, and of placing all else in that crucial perspective. The catastrophic nature and magnitude of the Prince William Sound oil spill thus serves to reveal the shallowness and superficiality of so much in our daily lives — our preoccupation with and enslavement to means, to the neglect of ends — while at the same time exposing the pattern of myths which underlies that cultural malaise and its destructive consequences.

Perhaps the most dominant component of that mythic pattern has been the notion that the economic (how we make our living) factor is the most essential element in our lives, the one with respect to which all other factors must take a subordinate place. But this notion assumes, above all, that the economic factor can be understood as separate from all other important elements of our lives. Clearly, that is not so.

Is the Exxon/Alyeska oil spill (with its antecedents and its consequences) but an economic matter? Or is it really political? Scientific/technological? Psychological? Environmental? Cultural? It is all of these, and more. Each and all are strands of that whole we call life on earth. That we have given these parts different names does not mean that they are separate from the functioning of the whole.

In this perspective, it is clear that we can no longer tolerate the myth that the economics of how we make our living can somehow be separated from the health and integrity of the natural world which makes our very lives, not just our living, possible. It's equally clear, therefore, that neither Exxon/Alyeska nor the oil industry collectively have any right to the power they have so arrogantly assumed and exercised over our lives (and world) under the mythic cloak of economic separability and priority.

We can now see what a profound misconception it has all been. The notion that the power of the industry applies only to and within the economic sector and that it can and should be considered apart from

and unrelated to all other important aspects of our lives has been a subterfuge, a deliberate misconception.

In this light, two related myths of that supposed self-contained economic world have also been exposed for all to see: the notion that private/corporate business activity is inherently more efficient than that of public agencies, and that the private/corporate personnel involved are necessarily socially responsible citizens. Exxon/Alyeska have laid those myths to rest for all time. Not only did they fail in their planning and readiness for such an incident but they also had — in the usual way of those who exercise illegitimate power — carefully concealed their failure and pulled the strings of their governmental allies to deny funding and personnel to our public protection agencies. They hid themselves behind their state and federal surrogates and the hired guns of their PR-hype campaigns.

It seems clear enough that the failure and its concealment were consciously pre-calculated and deliberate. They occurred because of the distortion of perspective from the bottom line... leading to the financial decision to accept any costs of potential errors, human or otherwise, which could then be carried, like any cost, as just another cost of doing business.

To be sure, our public agents also had their responsibilities. These personnel cannot perform as required, however, if the necessary resources are not funded and if the (manipulated) climate of opinion discourages enforcement — and if, in the ultimate sense, the people continue to be blinded and misled by the PR-hype incessantly disgorged by the industry and its camp followers. The crucial consideration in understanding this issue of responsibility is that responsibility and accountability lie, must lie, always, with those who have and use the power which eventuates in the catastrophe.

We can now see that the operative power in our society often rests not with our public institutions and public authority but with those private and corporate holders of power, whose exercise of power is concealed from our view and protected by continuously repeated myth. Because they believed their power to be hidden, Exxon/Alyeska played recklessly with Prince William Sound — not only with the Sound itself but with us, our lives and our world. Their behavior has been irresponsible in its worst sense.

Given the pattern of thought and behavior by Exxon/Alyeska reflected in the oil spill catastrophe, can we ever again afford to take them and their industry at their word? We cannot. Some years ago,

the industry's war cry of "A nation which runs on oil can't afford to run short!" unintentionally defined itself as an essential public utility. Can we afford any longer to entrust the control and management of an energy source so important to our societal well-being to such corporate groups?

These questions lead to the consideration of yet another basic myth exposed by the oil-spill tragedy, a myth which forms the framework which underpins the success of the others. And that is the myth that "numbers-dollars-things" are the language of life. We have allowed that myth to dominate virtually every hour of our waking life and, for many, even the life of dream-fantasy.

Once articulated, and we become aware, the gross absurdity of this myth is readily apparent...which is why those persons and groups whose interests such language serves have ever been quick to turn every issue of public policy and socio-ecological concern into a discussion of numbers-dollars-things: to forestall awareness.

But numbers-dollars-things is not the language of life. It is the language of those who put their economic interests above all else while obscuring and minimizing all other considerations, however important. It is the language of power in our society. It is not surprising, therefore, to observe that Exxon/Alyeska — having allowed time for our most deeply felt reactions to the oil-spill to subside — are pursuing a PR campaign to recapture the terms of discussion of the catastrophe: numbers of people, length of booms, miles of coast, numbers and size of boats, equipment, contracts, hourly rates, calendar dates, etc., etc....all instantly translatable into impressive numbers of dollars. And let's be sure to spotlight that \$1 million penned on the back of a business card. Numbers, dollars, things — and "Hey, enough emotionalism already!"

What is most important to understand in all this is that whoever controls the terms of discourse or discussion of any public issue also controls the outcome. Numbers-dollars-things automatically and instantaneously diverts attention and concern from the cultural and ecological, life-threatening dimension of this tragic catastrophe — while also fostering dissension and conflict among workers, fishermen, businessmen, and others seeking compensation. (And "No talking to the media people!") It's divide and conquer — the industry's expertly-practiced tactic of turning any situation to its advantage.

ne basic power over others lies, however, in reconstituting that attitude of mind in which numbers-dollars-things are the unquestioned perspective in which to view all concerns. Once accomplished — if they are permitted to do so — the industry will have re-established their power over our lives and world.

They do, indeed, know what they must plan for and do. We may contrast Exxon/Alyeska's practiced PR with their failure at spill response. "Damage control" was sought in the word not in containment of the crude.

Once we understand the manner and extent to which myth and language can give illegitimate power to those who wish to control others — to dictate how we shall live and for what purposes — we can then begin to take back that power, our power, and make it visible through public authority... public authority which, as the oil spill catastrophe demands, must rededicate itself to democratic principles, among which it is now clear, the maintenance of cultural and ecological integrity must be given a position of the first rank and priority.

That is the most valuable lesson we can learn from Prince William Sound's tragedy and our own suffering. If we do not, or if we fail to act accordingly, then we are surely the least deserving of species.

— Charles Konigsberg
Anchorage

04/08/91

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APR 8 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Honorable Judge Holland,

4/5/91

I am writing to you concerning the Exxon oil spill settlement - which I strongly protest. Due to the grave damage to our state by the oil spill and Exxon's negligence, I feel that further litigation is preferable to agreeing to this deal (especially in light of the fact that the damage study of the Sound is not available to the public). I feel the deterrent value of the settlement is totally inadequate. Sincerely,
Mary Ellen Donald RN, PhD

Ahead of TIME Consultants
637 "P" Street
Sacramento, CA 95814

April 3, 1991

Judge Russel Holland
United States District Court
222 W. 7th Ave.
Anchorage, AK 99513

RE: Public Notice and Call for Comments
U.S. v Exxon Corp. & Exxon Shipping Co.

Honorable Judge Holland:

I protest the conditions of the plea agreement signed and filed
March 13, 1991 by government officials and counsel for Exxon Shipping
Company and Exxon Corporation.

I do not believe the Public is served well by cutting off a Public
Debate of such importance with a guilty plea by industry to the least
harmful charges. The fine being considered appears to be insignificant
to Exxon's leadership. Lawrence Rawl, Exxon President, had an
opportunity, when the spill first occurred, to display some
sensitivity to the harm done a national treasure. He did not. On the
occasion of the settlement he again displayed a particular hubris in
his comments to the national press.

The message presently out is that Exxon can afford an Exxon Valdez
disaster. This message has been circulated "prime time" to tens of
millions by the media.

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CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Judge Russel Holland
April 3, 1991
Page Two

Leadership in business and government serves the public welfare best when it takes the vast resources of information at its disposal and leads. Given this trust requires that the public be well served and not led down the primrose path of rose-colored scenarios and easy choices.

A public debate (trial) is owed the Nation. People should know the results of the scientific inquiries as to the long term consequences of the March 24, 1989 oil spill disaster.

The billion dollar price tag being proposed in fines is not the point. Nature and her spirit destroyed by the oil is priceless. This point must be made - and the environmental destruction illustrated unquestionably. Industry and the Public should not be left with a message that Nature can be despoiled for a price.

Whether this message is supported depends upon two judges. Please reject this message to our Nation and provide another, setting America on a higher path. Give our children seven generations into the future, the same Alaska you are able to experience now.

Sincerely,

Wayne Moody
Wayne Moody

WM:ss

“Whatever He Does to the Strand, He Does to Himself”

(U.S. vs. Exxon Corporation Through Metaphysical Gateways)

Part I

by Wayne Moody

[Editor's Note: Part II of this feature will appear in next month's WTPE. Wayne wishes to thank S.S. for "atomic fuel" in making this article possible.]

A great statue's symbolism will ring the human soul. Its vibration will carry in the memories of future generations communicating messages on multiple levels, even to the metaphysical/psychic realms. Often these messages can be verbalized and written down in a flood of words. But frequently some things seen with the eyes can only be spoken with the lips with great difficulty. This difficulty suggests that there are metaphysical reasons (having to do with powerful forces) why certain things seen should not be spoken lightly. In truth, symbols have the power to transform.

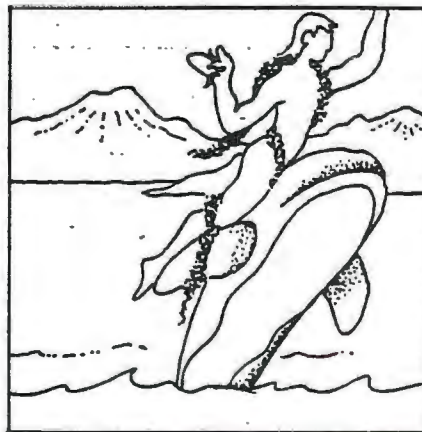
A recent example of how hard it can be to articulate a statue's message involves a memorial statue designed for installation at the site of one of America's greatest environmental calamities, Bligh Reef, Prince William Sound, Alaska. On March 24, 1989 the supertanker, Exxon Valdez, ran aground on Bligh Reef spilling 10 million gallons of crude oil into the Sound.

A public Alaskan debate has broken out over the choice of symbols making up the proposed statue. The debate rages as oil is intentionally spilled as part of the horrors of the War in the Persian Gulf. This war focuses upon one of the key points of the debate, on the symbolism of oil. What human and environmental price are Americans willing to pay for oil energy? The Peace movements around the world opposing this war believe the cause of the Persian Gulf War is because of oil and the struggle over control of essential oil deposits found not just in Alaska but in distant places like the Persian Gulf.

What should a statue erected at the site of this domestic catastrophe say? Almost half of the nation's elected officials and tens of millions of their constituents believe the war is over oil and that the war represents misplaced values. How can the statue not be written in blood when it is joined at the hip to a bloody war?

At stake in this public debate over symbolism are important messages. What memories will the statue's symbolism release in the minds of future generations of Americans? Will we leave messages valuing oil (or any wealth wrested from the Earth) as worth war or the ruination of Earth's environments?

The model of the proposed statue (a 30 foot bronze, Neptune-like figure, astride a killer



whale) will be presented synchronistically with the beginning of the trial (U.S. v. Exxon Corp.). Hopefully this trial will adjudicate responsibility for the oil spill catastrophe and help establish the nation's values in a clear way.

It is my personal hope that this landmark trial's judgment will result in an enlightened America imbued with a new vision of the Earth. These words of wisdom taken from America's original inhabitants epitomize that vision.

“For example, Americans began protecting fur seals with an international treaty in 1911. Limits on whaling and wiser salmon fishing practices have also been acquired over the years. Now we face the oil challenge.”

“Man does not own the Earth, the Earth owns man. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the strand he does to himself.”

Any memorial monument built on Bligh Reef should reflect the internal and external war of values going on within the American and world psyches. At present the people most interested in promoting the symbolic statue come from the Alaskan tourist industry, perhaps motivated only by economic survival. News of the project has not yet reached the world beyond Prince William Sound. However, one religious

group located close to Bligh Reef and claiming to represent other religious philosophies, feels the suggested symbolism inappropriate. They are offended that the Neptunian figure above a killer whale may suggest that man's clean-up efforts of the Sound were the major force for recovery and not nature's thunderstorms during the winter months following the spill. The same hubris, that set up the conditions for the spill, continues to strut arrogantly—boastful in its power. Others feel some creative statement would be appropriate but disagree what form it should take. Additionally, it is their hope that the statue will attract state-wide interest among the 10,000 who participated in the clean-up. They hope to build this statue through public donations. The completed statue is expected to draw an international audience, similar to Copenhagen's “Little Mermaid.”

The greater issue of international oil consumption has drawn dozens of countries into the War in the Persian Gulf.

Returning to the statue's controversial symbolism, it is clear that reading symbols requires great skill. Reading symbols is not usually done in a conscious way. Most people respond to symbols subconsciously, usually speaking out about them as a result of intuitive promptings received or expressed through the emotions. This form of insight is normally considered prophetic and is part of the religious history of many cultures. Symbolism is the stuff of our dreams, reflections and memories capable of releasing energies into the world far greater than that produced by oil. The choice of the statue's symbolism must be done in an informed manner.

Techniques for understanding symbolism can be studied and mastered, as the works of the late Joseph Campbell documented. One technique used by astrologers is called correspondence. These correspondences illuminate relationships between our language symbols revealing startling insights into such things as oil and all those things connected to oil, e.g. the Exxon Valdez oil spill disaster, the upcoming U.S. v. Exxon Corporation trial, the proposed statue for Bligh Reef and the Persian Gulf War. Such insights are valuable and worth pursuing. They can be tremendously helpful when the nation is faced with questions about its values. Our nation's founding fathers knew this and set the country's cornerstone with this knowledge. We should do no less as we build modern day monuments revitalizing our values.

Continued on page 25

"Whatever He Does to the Strand, He Does to Himself"

(U.S. vs. Exxon Corporation Through Metaphysical Gateways)
Part II

by Wayne Moody

[Editor's Note: This is Part II of Wayne Moody's USA Vs. Exxon feature. Part I appeared last month. Wayne's references to March 1991 were written in Jan/Feb 1991.]

The Name Gateways

Prince William Sound (Bay) Gateway

The psychic conditions assigned the Prince William Sound are discoverable in the Sound's history. Unveiling the pattern of America's oil addiction provides very numinous connections to a different age and to some famous historical personalities. There are remarkable synchronicities revealed through the astrological lens. The energy in these stories are talismanic, i.e. capable of focusing the transformative and correspondence energies through symbols.

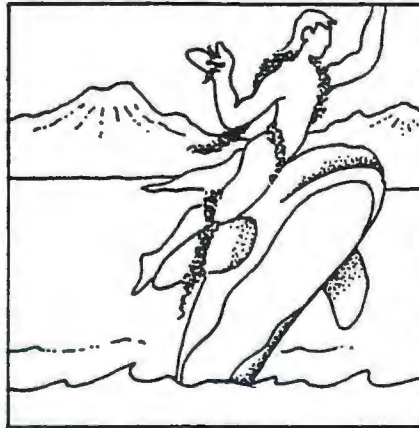
As you metaphorically step through the gateway to the Sound, you find yourself simultaneously amidst the American Revolution, in King George III of England's Court, on board Captain James Cook's ship *Resolution* and in the boardrooms of Exxon Oil Corporation in Houston, Texas, and British Petroleum (BP) in London or on Kuwait's Wall Street. Time is dissolved into an amorphous mass: April, 1778 becomes the day before March 24, 1989, 200 years of time simply lose their distance. The Sound simultaneously becomes linked to: Yorktown, Virginia; Tahiti in the South Pacific; St. Petersburg, Russia; and London, England.

King George III sent Captain Cook to map the Western Coast of America and proceed north in search of the Northwest Trade Passage over the North Pole; Alaska belonged to Russia, England was at war with the newly born United States over the control of North America's people and resources. A Northwest Passage promised to change completely the geopolitical realities of that time. Today one looks at the war over profits from oil and the possible changes in geopolitical realities existing in the Persian Gulf after January 15, 1991.

Captain Cook named the Sound after the third son of George III, Prince William (who was destined to become known as the Sailor King).

There are contrasts and correspondences between Captain James Cook and Captain Joseph Hazelwood. Each was a precocious genius and later garnered a reputation for professionalism. But it is Captain Cook's creed that sets the standard:

"The profession James Cook had chosen did offer one supreme reward. In that reward lies the clue to the remaining mystery. The basic



fact of survival was daily bought at the price of skill. If you learned quickly enough the seaman's arts, you lived. If you didn't or if you grew clumsy or forgetful, you died." (Taken from *Great Sailor* by Vandercook.)

Captain Cook stayed the course of this creed until the end of his illustrious life. Captain Hazelwood, on the other hand, grew clumsy, because he, unlike Captain Cook, abused alcohol. Both grew up in an age which had social problems with consumption of alcohol.

Vandercook wrote:

"Until the supply ran out, usually after a month at sea, Cook like every man aboard was issued one gallon of beer a day. At noon and again at night, he was entitled in addition to one-eighth of a quart of West Indies Rum diluted with half its volume of water, sometimes spiced with a little lemon and dash of sugar. The mixture was called 'Grog'."

"The crews, when their routine duties aboard ship were done, were quietly miserable when sober, and noisily miserable when drunk."

—*Great Sailor* by Vandercook

Despite these cultural temptations Captain Cook chose sobriety. It is noteworthy that Cook instead of falling into this pattern reached deep into the space of himself and chose to study the heavenly bodies through astronomy. He used its teachings on space and time to become a nautical surveyor and master mapmaker of the Earth. It is no small coincidence that alcohol and astronomy both correspond to Neptune.

There are choices, and there are choices.

Captain Cook chose to leave a sterling reputation as a nautical surveyor . . . Captain Hazelwood chose "Grog."

Will America choose oil?

It should be clear that Neptune signatures in Prince William Sound took fortunate and unfortunate forms. Choosing the "Grog" drew Hazelwood in inexorably and magnetically towards his destiny at Bligh Reef.

The Bligh Gateway

Captain Hazelwood's sad misadventure corresponds to one that occurred 200 years before. Let's go for this one. Rex E. Bills' correspondence list doesn't include reef, but the mind moves metaphorically to terminus, wall, consequences, conclusion, rude awakening and obstacles as possible correspondences for Bligh Reef. The following gets closest: In 1778 Bligh was the Ship's Master to Captain Cook's ship, *Resolution*, on Cook's third and final voyage. Bligh put ashore in the Cook Inlet at a place Cook named "Turnagain." On June 1, 1778 at 2 AM, after searching for the existence of a Northwest Passage, Bligh made the announcement that was to become the "end" for any faint hope in the matter. Just as the reef named for Bligh (by Captain Cook) was the "end" of the career of Captain Hazelwood, so it seems, that it was the end of the business as usual attitude of the multi-national oil industries.

This gateway further transports one through thousands of miles down the 146-147 West longitude line to the waters slightly east of the Tahitian paradise where 11 years after his voyage through the sound, Bligh became the archvillain (an erroneous label) in the mutiny on the ship *Bounty*. The truth was one of addiction. The *Bounty*'s crew, the dregs of English society at the time, without the experience of beauty in their lives found Tahiti a venerable paradise and mutinied to stay in this paradise. One taste of the lifestyle there had them hooked. This has honest parallels in America's taste for the oil lifestyle which Americans refuse to renounce even in the face of visible destruction of the Earth around them.

At Cook Inlet, June 1, 1778, Bligh simply closed the book on whether there was a Northwest Passage. There was no Northwest Passage. There was not to be a paradise for the mutineers, nor for the Americans in Alaska in the late 20th century.

Good Friday Gateway

This reoccurring symbol corresponds to the anniversary of Christianity's greatest symbol. The crucifixion of Christ is at once a great death and rebirth symbol. The disaster in the

Continued on page 14

W. Findlay Abbott
Yukon Island, Kachemak Bay
P.O. Box 2454
Homer, Alaska 99603

APR 08 1991
FEDERAL U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

EXXON CORPORATION)

and)

EXXON SHIPPING COMPANY,)

Defendants.)

Case No. A90-015 CR

COMMENTS OF W. FINDLAY ABBOTT ON THE PROPOSED PLEA AGREEMENT

1. Because of the magnitude, extent, and continuing damage of the EXXON VALDEZ oil spill, a plea bargain settlement at this time or in the near future would be improper and adverse to the public interest.

2. There should be no linkage with ANWR allowed. "Putting this behind us" quickly, so we can sooner open another wilderness for oil is callous and probably illegal. A few development minded politicians cannot properly assess the effects and legal implications of this accident. A better business climate is not accomplished by quick resolution but rather by a just and fair resolution that motivates industry to prevent such an accident in the future. This Court is the final guardian of the public interest.

3. Because of the complexity and magnitude, something more than an ordinary jury should be empaneled for this case. This special jury should be large, meet periodically not continuously, be structured and empowered to take immediate actions, and operate under rules which require consensus on certain issues and majorities on other issues.

4. The jury or juries must investigate the abundant and growing

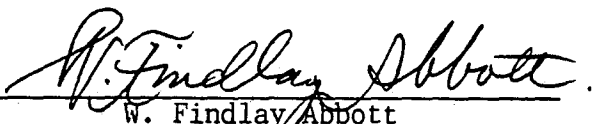
number of allegations against defendants of bribery, fraud, waste, and misrepresentation or suppression of material facts about the oil spill and clean-up. On page five of my own complaint against the defendants (Case No. 3AN91-02280 Civ.) I recount an incident of significant fraud and waste which I observed first-hand. A review of the clean-up by this Court is in order. The excessive secrecy being maintained by defendants over all aspects of the spill and clean-up deprive the public of the right to learn from this tragic mistake.

5. The proposed plea agreement does not encourage industry to improve safety practices. All of the costs of the oil spill are being written off of taxes: the deeply indebted U.S. Treasury is paying the costs of this grossly negligent accident by one of the richest corporations in the world.

6. This criminal case should not be closed until the civil cases are settled or finished. The Court should examine all oil spill expenses and damage payments which defendants write off of income taxes. The criminal fines should be increased by like amounts.

7. The formidable legal resources of the defendants should not be reason to avoid prosecution of this case. In association with State Courts, this Court can require cooperation and compliance from the Defendants. We can prohibit EXXON from operating ships or transporting oil on State waters. The judiciary must oppose with courage the many political forces which are attempting to marshal and direct this case.

Respectfully submitted this 8th day of April, 1991.


W. Findlay Abbott

COMMENTS OF W. FINDLAY ABBOTT ON CASE NO. A90-015 CR

Robert L. Baldwin
700 West 58th Avenue, Suite J
Anchorage, Alaska 99518

April 10, 1991

Judge Russell Holland
United States District Court
222 West Seventh Avenue, Room 261
Anchorage, Alaska 99513

Subject: U.S.A. vs. EXXON, Case No. A90-015 Criminal

Dear Judge Holland:


It is my understanding that the plea agreement in this case will permanently remove from public access, all scientific data taken to evaluate oil spill impacts.

I strongly believe that oil spill data must not be locked away, for the following reasons.

1. Public resources were used to study a disaster involving high value public areas and ecosystems.
2. The scientific data taken is invaluable for oil spill and ecosystem research purposes, in Alaska and elsewhere.
3. This data serves as baseline information for tracking the natural and artificial restoration of damaged areas and ecosystems.
4. Without this data there is no way to for the public to objectively judge adequacy of cleanup efforts.
5. Many will believe a coverup of inadequate cleanup efforts has taken place.

The use of public resources to acquire the data would appear to fundamentally allow public access. The data literally belongs to the public. I object to selling the data to EXXON in exchange for a criminal plea or a consideration in a civil settlement.

Thank you for the opportunity to comment on this vital public issue.

Sincerely,

Robert L. Baldwin

APR 10 1991
U. S. DISTRICT COURT

Teresa E. Deitz
7011 Altoona
Anchorage, Ak 99502

April 10, 1991

Federal Court Clerk's Office
222 W. 7th
Anchorage, Ak 99513

APR 10 1991
CLERK, U. S. DISTRICT COURT

Attention: Judge H. Russel Holland

Dear Judge Holland,

I have been listening to and reading various comments in reference to the proposed settlement between Exxon and various Federal and State agencies since last month. As a matter of fact, the Exxon Valdez Oil Spill has been a major topic of radio, television, newspapers, conversation and controversy since March 24, 1989. I would now like to add my comments to the fray.

I would like to first state that I was born and raised in Alaska, so I feel I can comment on this legitimately. All the people who live Outside, who have not been up here and involved, can not realistically give an opinion on this issue, and should leave it to the people - Alaskans - who are involved.

Yes, I too feel that Exxon has an obligation to Alaskans concerning the Spill. Yet at the same time, I am of the opinion that Exxon has gone out of it's way to make retribution in the last two years, and that a final, negotiated settlement is not out of line.

In all of the articles that give reference to Alaska Natives, there is never any reference to the fact that any of the Councils/Associations that asked were given money, food and equipment (that they probably could not afford on their own). This is in addition to the many Councils/Associations that rented a small piece of wilderness, usually at the top of some distant mountain, at very high prices for Exxon to use for telecommunications sites.

As far as the State and Federal agencies go, they also got their piece of the action. They had a lot of offices set up, equipment bought, flights taken and studies done, just to mention a partial list, all on Exxon money.

And let's not forget about the slump that Alaska was in economically. A lot of people were paid excellent wages to help with the cleanup, and there are quite a few who are still collecting these wages.

Granted, there was damage done, but the most of that has been cleaned up. And it's not like Exxon did the damage on purpose. I don't think that there is a business running that would intentionally bring on the extreme cost, not to mention the extensive bad press, that is associated with any oil spill.

I'm quite sure that they could have found a willing market for the crude versus spilling it throughout Prince William Sound.

If the State and Federal agencies in Alaska don't get their collective stuff together and go ahead and settle with Exxon, there is the chance that they won't get all the money they would now to finance the studies and projects they want to do in regards to this spill.

It's not like Exxon hasn't paid out the nose for this already. And if it were a less financially stable company, who would have been paying for this but the fine residents of Alaska. I think greed is blinding a lot of people on this issue, and that we should take the monies being offered, keep in mind the lessons learned during this period, and move on.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa E. Deitz", with a long, sweeping horizontal stroke extending to the right.

Teresa E. Deitz

cc: Governor Walter J. Hickel
Anchorage Daily News
Anchorage Times

Don Soileau
505 W. 2nd Ave. #104
Anchorage, AK 99501

April 10, 1991

Judge Holland:

I would like to take this opportunity to urge you to reject the Exxon Valdez Oil Spill Settlement. In light of recent revelations, I believe that Exxon is criminally responsible for this catastrophe and should be tried for it in court. The proposed monetary settlement is insufficient for rectifying the damage that was inflicted upon the Prince William Sound - Gulf of Alaska ecosystem, and it has only been in the past couple of days that the true extent of that damage has been revealed. At the very least, I would ask that you extend the comment period since the scientific studies relating to the spill are just now being released to the public. If those of us effected by the spill are expected to make informed comments, we will need some time to examine these studies.

Thank you for accepting public comment on this matter.

Sincerely,



Don Soileau

RECEIVED

APR 10 1991

CLERK, U. S. DISTRICT COURT

April 9, 1991

Honorable Judge Holland
US District Court
222 W. 7th
Anchorage AK 99501

To the Honorable Judge Holland:

I am writing to protest the current State / Federal / Exxon bill settlement. An accurate monetary damage from the spill is not publicly available. However, it is clear that the deterrent value of the settlement is totally inadequate. If any disagreement arises between the state + federal representatives over the fine, Exxon is not required to pay the discrepancy. I strongly urge you not to honor the current proposed settlement. Further litigation is preferable to agreeing to this deal.

Thank you for your consideration of this very important matter.

Sally Schliesmann

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APR 10 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

(22)

RECEIVED

APR 10 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Dear Judge Holland,

4/4/91

I'm writing to urge you not to support the
State + Fed Exxon Oil Spill Settlement.

The proposed \$900 million settlement, when viewed in
light of the tax write offs for Exxon and the no interest
pymnt plan, actually amounts to only \$400 million!

If any disagreement arises between State + Fed. courts,
Exxon is not required to pay the \$100 million criminal
fine!

Also public funds were used to study
damage done to the Pu Sound, and those results
are being withheld from the public by the Hickel
Admin. Alyeska Co. owes the State compensation! Some
Further litigation is preferable to agreeing to this deal. Thank you, Tobiusen

MINUTY

MARCH 2nd 1991

NOON

STOCKTON, CALIFORNIA

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"FINAL ANALYSIS, AND, SYNOPSIS,"
"OF CAPT. JOSEPH, J. HAZELWOOD,"
"S.S. EXXON VALDEZ, TRIAL" AND "EXXON CORP."

HONORABLE U.S. DISTRICT COURT JUDGE, RUSSEL
HOLLAND, & TO WHOM IT MAY CONCERN,
DEARSIRS & GENTLEMEN,

"THIS IS MY FOLLOW UP," FROM JULY 25, 1990
I AM THE SON OF A MARINE ENGINEER WHO IS
DECEASED IN 1963, I WAS BORN IN SAN-DIEGO
CALIFORNIA 12-12-16, I WENT SEA FOR OVER (40) YEARS
MYSELF, IN THE ENGINE DEPT, TO MAKE A LONG
STORY SHORT, IN MY SPARE TIME AT SEA, I
STUDIED ADMIRALTY LAW FOR OVER (11) YEARS.

IT WAS MORE OR LESS, A CORRESPONDENCE COURSE,
IN A ADMIRALTY LAW SCHOOL, IN LONDON, ENGLAND,
I HAD TO RETIRE IN JANUARY, 1975, AS I HAD AN
ACCIDENT WHILE SAILING ABOARD A VESSEL, IN THE
PORT OF BREMER HAVEN, GERMANY.

WHEN THE "EXXON VALDEZ" WENT AGROUND IN MARCH
OF 1989, I DID NOT REALIZE, AT THAT TIME, I KNEW
CAPT. JOSEPH, HAZELWOOD, ALTHOUGH I HAD NOT SEE
HIM FOR MANY YEARS, HE DID BECOME A CASUAL FRIEND
OF MINE, WHAT I KNEW OF HIM, TO ME, IN EVERY WAY,
I WILL EXPRESS MYSELF IN THIS LETTER.

WHEN THE "EXXON VALDEZ" WENT AGROUND, I STUDIED,
AND WROTE ABOUT THE CASE, FOR (10) MONTHS IN THE

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CONFINDS OF MY APARTMENT AND IN A LOCAL LIBRARY HERE IN STOCKTON.

WHEN MY FINDINGS WERE COMPLETE IN EVERY DETAIL AND BEFORE THE TRIAL GOT STARTED IN ANCHORAGE, ALASKA, I SENT LETTERS TO EVERYONE INVOLVED IN THE CASE AS FOLLOWS. THE FOLLOWING GOT MY FINDINGS 7-25-1990 - - COPIES TO:
1/ CAPTAIN, JOSEPH HAZELWOOD'S, ADMIRALTY LAWYER, MICHAEL CHALOS, IN NEW YORK, N.Y.

2

BOARD CHAIRMAN OF EXXON CORP,
NEW YORK, NY
MR. LAURENCE RAWL.

3 EDITOR OF AN ANCHORAGE NEWSPAPER IN ALASKA.

4 MUNICIPAL COURT JUDGE, JOHN STONE, THE PRESIDING JUDGE OF THE TRIAL, AT ANCHORAGE.

THIS IS MY TRUE, AND CORRECT FINDINGS, OF THE CASE, FROM START-TO-FINISH - 7-25-90.

"AS FOLLOWS"

WHEN THE "S.S. EXXON" VALDEZ WAS FULLY LOADED AND READY TO SAIL, CAPT JOSEPH HAZELWOOD CAME ABOARD ON HIS OWN STEAM LONG BEFORE SAILING TIME, HIS FIRST ACTIONS WERE, THE SAFETY OF THE CREW, THE VESSEL ITSELF, AND PROTECTING

THE EXXON SHIPPING COMPANY AND THEIR INSURANCE COMPANY. HE KNEW THE WEATHER CONDITIONS WERE FOUL AND HAZARDOUS IN "PRINCE WILLIAM SOUND" AND THE VISIBILITY WAS NASTY, PLUS THERE WAS ICE FLOATING IN THE SOUND AS WELL, "BERGS" MORE OR LESS. HE THEN CONVENED WITH HIS OFFICERS AT ONCE. HE HAD ORDERS TO SAIL THE VESSEL REGARDLESS OF THE PORT AUTHORITY, COAST GUARD AND PILOT ASSOC; AND WHAT THEY HAD TO SAY ABOUT SAILING THE VESSEL WITH NO PILOT ABOARD.

AT THIS POINT, CAPT. JOSEPH HAZELWOOD WAS A "VICTIM OF CIRCUMSTANCES," IN OTHER WORDS "HE WAS UP AGAINST A BRICK WALL, AND BETWEEN THE DEVIL AND THE DEEP BLUE SEA," AND RESPONSIBLE FOR A LOADED TANKER TO SAIL THE VESSEL WITH ONE MAY SAY, "UNDER PROTEST AS WELL."

AFTER CONSULTATION WITH HIS OFFICERS, HE HAD THREE (3) CHOICES TO MAKE, ALSO, HE HAD NO RIVER PILOT ABOARD THE VESSEL. HIS CHOICES WERE AS FOLLOWS, "HAVE A PILOT TO TAKE THE VESSEL TO A SAFE ANCHORAGE FOR BAD WEATHER CONDITIONS AND HAZARDOUS TO SAIL THE VESSEL. IF NOT THAT, HE COULD HAVE TOLD THE CHIEF MATE, RADIO OPERATOR, AND THE CHIEF ENGINEER, THAT HE IS REFUSING TO SAIL THE VESSEL. ALL HE HAD TO DO, FOR EVERY ONE'S PROTECTION, INCLUDING THE VESSEL ITS CREW, WAS TO ENTER HIS PROTEST IN THE OFFICIAL

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LOG BOOK, SIGN IT, THEN TAKE THE SHIP'S ARTICLES AND HIS MASTERS LICENCE AND NOT SIGN A SAILING ORDER, AND HE HAD A PERFECT RIGHT TO DO SO UNDER MARITIME AND ADMIRALTY LAWS, WITH NO QUESTIONS ASKED.

I HAVE BEEN IN AND OUT OF PRINCE WILLIAM SOUND MANY TIMES AND I KNOW HOW BAD THE WEATHER CAN GET THERE IN THE WINTER MONTHS AND WHEN CAPT. JOSEPH HAZELWOOD WAS UP AGAINST HE ACTUALLY SAILED THE VESSEL UNDER PROTEST, AND AGAINST HIS OWN WILL AND THE CREW OF THE VESSEL ITS SELF.

IT IS ALMOST IMPOSSIBLE TO MANUEVER A VESSEL OF OVER "900 FT. LONG," A FULLY LOADED TANKER" IN A SOUND FULL OF ICE, AND BERGS ALSO, ITS IMPOSSIBLE TO MANUEVER A VESSEL LIKE A MOTOR CYCLE IN AND OUT OF TRAFFIC PLUS, DODGE ICE BERGS, AS WELL.

CAPT. JOSEPH HAZELWOOD KNEW HE WAS TAKING A DIRE CHANCE AS WELL AS SAILING IN THE VESSEL UNDER PROTEST TO GET THE VESSEL OUT OF PRINCE WILLIAM SOUND, INTO DE WATER, ESPECIALLY, WITH NO RIVER PILOT AND FINDING FOUL AND HAZEROUS WEATHER CONDITIONS AS WELL.

IT IS A PROVEN FACT, THAT CAPT. JOSEPH HAZELWOOD KNEW EXACTLY WHAT HE WAS

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DOING, AND WHAT HE WAS UP AGAINST AT THE TIME WHEN HE SAILED THE VESSEL, THEREFORE, THE BLAME FALLS ON THE U.S. COAST GUARD, VALDEZ PORT AUTHORITY, AND THE PILOT'S ASSOCIATION FOR LETTING CAPT. JOSEPH HAZELWOOD SAIL THE VESSEL UNDER THE CONDITIONS THAT HE DID AS MENTIONED IN THIS LETTER.

CAPT. JOSEPH HAZELWOOD, EXXON CORP. AND THEIR SUBSIDIARY, EXXON SHIPPING COMPANY IN HOUSTON, TEXAS ARE NOT TO BLAME FOR ANYTHING AT ALL. THE VESSEL'S R.P.M. AND STEERING MANUEVERING POWER AT THE TIME WAS NOT CAPABLE OF SHIFTING THE VESSEL FROM PORT TO STARBOARD AND VISE-VERSA IN HAZARDOUS WEATHER CONDITIONS AND THE VISIBILITY WAS BAD WHICH DID NOT HELP MATTERS EITHER, CAPT. HAZELWOOD TOOK A CHANCE, AND A GAMBLE AND LOST THROUGH NO FAULT OF HIS OWN OR THE CREW OF THE "EXXON VALDEZ".

HONORABLE RUSSEL HOLLAND, YOU SHOULD UNDER MARITIME AND ADMIRALTY LAWS ACCEPT A CHANGE OF PLEA AGREEMENT AND IMPOSE NO SENTENCE, AND DROP ALL CHARGES THAT EXISTS AGAINST EXXON CORP. AND CAPT. JOSEPH HAZELWOOD.

6

EXXON CORP. HAS ALREADY FULL FILLED THEIR COMMITMENTS AND OBLIGATIONS AND SPENT AN ENORMOUS BUNDLE CLEANING UP THE OIL SPILL, THAT ALONE SHOULD BE SUFFICIENT ENOUGH UNDER MARITIME, & ADMIRALTY LAWS TO DROP THE CASE, ANY MARITIME AND ADMIRALTY LAW JUDGE WOULD HAVE DROPPED THE CASE ON THESE FINDINGS WHICH ARE TRUE FACTS, NOT HERE SAYS OR FALSE FINDINGS OF ANY KIND WHAT SO EVER."

UNDER MY FINDINGS, UNDER MARITIME AND ADMIRALTY LAWS, THIS WHOLE CASE SHOULD HAVE BEEN TRIED IN A MARITIME COURT UNDER ADMIRALTY LAWS, NOT IN A MUNICIPAL COURT IN ANCHORAGE WITH JUDGE JOHNSTONE AND BRET COLE, PROSECUTING THE CASE. THEY BOTH KNOW NOTHING ABOUT MARITIME OR ADMIRALTY LAWS WHAT SO EVER AND THE WHOLE CASE WAS TRIED LIKE IN A CITY TRAFFIC COURT, AS IT WAS, IT TURNED OUT TO BE LIKE A FARCE IN THE CITY OF ANCHORAGE AND THE WHOLE STATE OF ALASKA.

BRET COLE, THE PROSECUTOR IN THE CASE AND THE PRESIDING JUDGE JOHNSTONE WERE USING CAPT. JOSEPH HAZELWOOD AS A SCAPE GOAT AND THE JURY KNEW IT AND SO DID A COUNTY SHERIFF THAT WENT ABOARD THE VESSEL ON THE DAY OF THE GROUNDING AND FOUND CAPT. JOSEPH HAZELWOOD, COOL, CALM, AND COLLECTIVE. AND SOBER AS A JUDGE, NOT WHAT A BUNCH OF FOOLS SAID ABOUT HIM,

M
A RECKLESS AND MALICIOUS DRUNKEN
CAPTAIN, "NOWAY."

EXXON CORPORATION AND THEIR SHIPPING
COMPANY IN HOUSTON TEXAS DO NOT HIRE
THAT KIND OF CAPTAIN IN THE FIRST PLACE.
WHEN THE SHERIFF THAT WENT ABOARD THE
VESSEL AT THE GROUNDING SITE ASK CAP
JOSEPH HAZELWOOD, "WHAT WENT WRONG,
HE SAID, "YOU'RE LOOKING ^{AT} THE WINDOW"
AND I HAVE TO TAKE THE CHAM BACK AT.
THE SHERIFF AGREED WITH HIM ONE HUNDRED
PERCENT, 100%.

CAPTAIN JOSEPH HAZELWOOD IS A FINE
GENTLEMAN AND A SCHOLAR. IF I EVER SA
ONE AND A RELIABLE MERCHANT TANKER
CAPTAIN, YOU MIGHT SAY, AS GOOD AS ANY
AND BETTER THAN MOST IN MY BOOK.

WHEN I FOUND OUT THE TRUE FACTS AND
MY FINDINGS IN THE "EXXON VALDEZ"
CASE, IT TOOK ME ALL OF TEN MONTHS TO SORT
THE TRUE AND PROVEN FACTS OF THE CASE.
I KNEW RIGHT THEN AND THERE THAT CAPT
JOSEPH HAZELWOOD WAS BEING USED
AS A SCAPE GOAT AND I PROVED IT
AND DID MY BEST TO HELP HIM AND HIS
ADMIRALTY LAWYER, MICHAEL CHALOS AS
WELL. IF I COULD HAVE BEEN AT THE TRIAL
IT WOULD HAVE TURNED OUT AN ACQUITTAL,

ON ALL COUNTS, AS IT TURNED OUT, CAPTAIN JOSEPH HAZELWOOD HAD HIS MASTERS LICENCE SUSPENDED FOR NINE MONTHS AND SOME COMMUNITY WORK, THESE TWO PUNISHMENTS. WHAT YOU MIGHT CALL SILLY, AND UNCALLED FOR, ALSO, AND A ADMINISTRATIVE LAW JUDGE, HARRY S. GARDNER, ALSO PLACED CAPTAIN JOSEPH HAZELWOOD ON PROBATION FOR ONE YEAR.

AS IT IS NOW, THE MOST IMPORTANT PART OF THIS CASE, AND AS IT LOOKS TO ME, THE CASE IS UNDER ^{YOUR} JURISDICTION THAT CAPTAIN JOSEPH HAZELWOOD, EXXON SHIPPING CORP, AND THE EXXON SHIPPING COMPANY IN HOUSTON, TEXAS, SHOULD HAVE ALL CHARGES DROPPED, AND CAPTAIN JOSEPH HAZELWOOD SHOULD BE COMPENSATED FOR ALL THE THINGS THAT PEOPLE SAID HE WAS, AND HE IS ABSOLUTELY NOT THAT, AND UNFOUNDED FOR

UNDER MARITIME AND ADMIRALTY LAWS, HE AND THE CREW OF THE "EXXON VALDEZ", ARE ABSOLUTELY INNOCENT OF ALL CHARGES. CAPTAIN JOSEPH HAZELWOOD AND HIS CREW ABOARD THE "EXXON VALDEZ" WERE ABSOLUTELY CONFIDENT AND RELIABLE.

THE U.S. ATTORNEY GENERAL, MR. THORNBURG SHOULD BE QUESTIONED ABOUT ALL THIS. HE TOO SHOULD REVERSE AND DROP AN PLEA AGREEMENT, DROP ALL FELONY CHARGES AND ALL OTHER CHARGES, AND GIVE

7
CAPTAIN JOSEPH HAZELWOOD A CLEAN BILL
OF HEALTH, AS WELL AS EXXON CORP.
EXXON CORP, HAVE FULL FILLED THEIR
OBLIGATION, AND CLEANED UP THE OIL SPILL
FAITHFULLY, AND CAPTAIN JOSEPH HAZELWOOD
WAS THE FALL GUY, FOR A BUNCH OF FOOLS
THAT DON'T KNOW ANYTHING AND ABSOLUTELY
NOTHING ABOUT MARITIME AND ADMIRALTY
LAWS, THIS INCLUDES MUNICIPAL COURT
JUDGE, JOHNSTONE AND THE PROSECUTOR
BRET COLE.

IN WINDING UP THIS LETTER AND UNDER ALL
RESPECTS SHOULD MAKE GOOD SENSE TO YOU.
AND ITS ALL TRUE AND HONEST FACTS, ON
HUNDRED PERCENT 100%, NOT HEAR-SAY.
ALL THE BEST TO YOU,

SINCERLY YOURS
Vern H. Armstrong
MR. VERN. H. ARMSTRONG

U.S. MERCHANT MARINE SERVICE
RETIRED - ADMIRALTY LAW BANNER BY
PROXY FROM THE LONDON SCHOOL OF LAW LONDON
ENGLAND.

("PLEASE TRY AND SET ASIDE
AN APRIL 11 TH. DECISION, AND
CONSIDER MY TRUE FACT
AND FINDINGS, ITS THE HOOK
TO DO")

P. S.

SEATIME, 43 YEARS AND SEVEN MONTHS,
WORLD WAR 2, KOREA AND VIETNAM, AND
FROM THE 1934 SEAMAN'S STRIKE IN SAN-
FRANCISCO, I GUESS I AM ABOUT THE ONLY
ONE LEFT FROM THAT STRIKE.

I HAVE A FINE WIFE FROM ENGLAND
AND MARRIED 40 YEARS.

I STUDIED MARITIME AND ADMIRALTY LAW
BY CORRESPONDENCE SCHOOL, LONDON
UNIVERSITY, LONDON ENGLAND FROM
1947 TO 1958, 11 YEARS IN ALL AND A
FRIEND OF JAKE ERLICH, MARITIME AND
ADMIRALTY LAWYER-DECEASED 1977-
50 YEARS IN LAW. HE WAS THE BEST,
AND NONE OTHER.

V. H. A.

TEL. NO. 1-209-474-6912

RECEIVED

APR 10 1991

CHAS. H. RICHARDSON
DISTRICT JUDGE
H. MICHAEL HOLLAND

Bill

CRIMINAL DOCKETING.

Exxon captain acquitted of major charges

The Associated Press

ANCHORAGE, Alaska — A jury on Thursday acquitted Exxon Valdez skipper Joseph Hazelwood of being drunk and reckless in connection with the nation's worst oil spill but convicted him of a minor charge of negligent discharge of oil.

After deliberating for just 10½ hours, the jurors absolved Hazelwood of one felony and two misdemeanors stemming from the disaster, in which his tanker ran

aground and spilled nearly 11 million gallons of oil into Prince William Sound on March 24, 1989.

The misdemeanor charge on which he was convicted carries a maximum sentence of 90 days in jail and a \$1,000 fine, far less than the 7½ years and \$61,000 fine he could have faced if found guilty on all four charges.

Superior Court Judge Karl Johnstone set sentencing for today at 2:30 p.m. PST.

There were bursts of applause

in the courtroom as the judge read the first three verdicts of "not guilty."

Hazelwood's New York lawyer, Michael Chalos, a former classmate of Hazelwood's at the Maritime Academy at Fort Schuyler, N.Y., clapped the skipper on the shoulder and hit the counsel table with his hand at the first "not guilty" verdict.

The normally taciturn defendant smiled broadly for the first time in the 2-month-long trial

and commented briefly to reporters, saying, "I'm just relieved. I was nervous."

"I'm going to try to get along with my life. ... I'd like to go back to sea," Hazelwood told reporters at a news conference late Thursday. "That's what I do."

His lawyer said he would begin negotiations with Exxon to back the former skipper's job. He would fight expected efforts by the Coast Guard to revoke Hazelwood's captain's license.



AZELWOOD: Wants job back.

Exxon pleads guilty to misdemeanors

The Associated Press

ANCHORAGE, Alaska — Exxon Corp. and its shipping subsidiary pleaded guilty Friday to misdemeanor violations in the nation's worst oil spill under a plea agreement with the federal government.

U.S. District Judge Russel Holland allowed the pleas but delayed sentencing until he gathers public

comment on the plea agreement.

"I will accept a change of plea," he said. "We will not impose any sentence. I will not decide today whether I will or will not accept the plea agreement."

If Holland rejects the agreement, the nation's third-largest corporation can withdraw its pleas. If he accepts it, federal felony charges against the oil company will be dropped.

"I intend to solicit information about the impact of the spill from individual victims," the judge said. The court will advertise for comment in newspapers and accept written remarks from the public until April 11. Holland set sentencing for April 24.

Guilty pleas were entered to misdemeanor violation of the Migratory Bird Treaty Act and three misdemeanor violations of the Refuse and Clean Water acts.

Exxon sues Coast Guard

ANCHORAGE, Alaska — Exxon Corp. and its shipping subsidiary have filed notices of claims against the Coast Guard totaling more than \$2 billion in connection with the Exxon Valdez shipwreck and oil spill.

Exxon spokesman Les Rogers said the Sept. 21 filings satisfy an administrative requirement that preserves options for Exxon and Exxon Shipping Co. to sue the Coast Guard over the spill.



AP photo

SUSPENDED: Former Exxon Valdez Capt. Joseph Hazelwood is surrounded as he leaves a hearing in Long Beach.

Hazelwood blood tests possibly botched

The Washington Post

LONG BEACH — Documents apparently kept secret for more than a year by a California laboratory indicate that blood samples taken from former Captain Joseph Hazelwood were mishandled and that charges of his drunkenness before the disastrous Exxon Valdez oil tanker spill may have had no legal foundation.

Hazelwood's license to operate a ship was suspended Wednesday for nine months after he pleaded no contest to charges of negligently leaving the tanker bridge in dangerous waters and violating a rule against drinking less than four hours before sailing. Administrative law Judge Harry J. Gardner also placed Hazelwood on probation for one year.

In what Hazelwood's attorneys said

was a response to the new evidence, the Coast Guard dropped allegations of drunkenness and improper procedure against Hazelwood and agreed to recommend that his license be suspended for no more than a year.

Hazelwood's attorneys released two 1989 chain-of-custody forms kept by ChemWest Analytical Laboratories Inc. They said the forms suggest a cover-up of vital evidence by the Sacramento-based laboratory, and possibly also by the Coast Guard, the National Transportation Safety Board and Alaska prosecutors.

One form shows that the laboratory noted receiving three "red-stoppered" tubes of Hazelwood's blood on March 28, 1989, not the one red-stoppered and two gray-stoppered tubes prepared by a

Coast Guard health technician on board the oil tanker about 10½ hours after it ran aground on a well-marked Alaska reef.

The different colors suggest a break in the chain of evidence needed to prove the samples were Hazelwood's and cast into question the testing process, because red-stoppered tubes lack a chemical needed to keep blood alcohol from fermenting.

The second form shows that a laboratory employee changed the notation four days later to show two gray-stoppered and one red-stoppered tube, but neither form was given to defense attorneys despite their requests.

Michael A. Peat, director of the laboratory, said, "There was no tampering done with the specimens."

EXXON TRIAL TO AVOID spill trial unsuccessful

The Associated Press

ANCHORAGE, Alaska — A federal judge rejected arguments that Exxon Corp. shouldn't be put on trial for the Exxon Valdez spill and has ordered the oil giant to stand trial in April.

U.S. District Judge H. Russel Holland refused the company's request to dismiss a five-count criminal indictment stemming from the wreck of the tanker in March 1989.

The ship, skippered by former Exxon Capt. Joseph Hazelwood, was sailing through icy waters of Prince William Sound when it struck a charted reef and dumped more than 11 million gallons of crude oil into Alaska waters.

Thousands of birds and marine mammals died, fishing seasons were disrupted and miles of shoreline were oiled. It was the worst spill in U.S. history.

At Friday's hearing, defense lawyers said federal pollution laws weren't intended to be used to prosecute shipowners for the acts of a vessel's captain and crew.

Exxon lawyer Patrick Lynch also argued that because the tanker was owned and operated by Exxon Shipping, it was wrong to name the parent company in the indictment along with the subsidiary.

"It's a case of mistaken identity,"

Lynch said.

Exxon Corp. and the shipping subsidiary are charged with criminal violations of the federal Clean Water Act, the Refuse Act, the Migratory Bird Treaty Act, the Ports and Waterways Act and the Dangerous Cargo Act.

Lynch said Exxon Shipping is a separate company controlled by an independent board of directors. Drawing the parent company into the criminal case would needlessly complicate things, he said.

"It will turn this trial from a straightforward trial on maritime issues ... into a business school seminar on how corporations are managed."

But federal prosecutors say Exxon dominates its subsidiary and makes all the important decisions for Exxon Shipping, which the government called "a corporate puppet on a carefully calibrated string."

Holland denied the motions to dismiss as well as a series of other technical arguments by the companies, including Exxon Shipping's claims that crude oil is not a pollutant under the federal Clean Water Act.



HAZELWOOD

Valdez skipper faces Coast Guard hearing

— LONG BEACH —

Joseph Hazelwood, who was acquitted four months ago of most criminal charges in the nation's worst oil spill, faces a Coast Guard hearing that could strip him of his license as a ship's master.

In a hearing scheduled to start today, an administrative law judge will decide whether the former Exxon Valdez skipper was guilty of negligence and should forfeit his license.



A Garnett Newspaper

35 cents

Exxon captain acquitted of major charges

The Associated Press

ANCHORAGE, Alaska — A jury on Thursday acquitted Exxon Valdez skipper Joseph Hazelwood of being drunk and reckless in connection with the nation's worst oil spill but convicted him of a minor charge of negligent discharge of oil.

After deliberating for just 10½ hours, the jurors absolved Hazelwood of one felony and two misdemeanors stemming from the disaster, in which his tanker ran

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in the courtroom as the judge read the first three verdicts of "not guilty."

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and commented briefly to reporters, saying, "I'm just relieved. I was nervous."

"I'm going to try to get along with my life. ... I'd like to go back to sea," Hazelwood told reporters at a news conference later. "That's what I do."

His lawyer said he would begin negotiations with Exxon to get back the former skipper's job and would fight expected efforts by the Coast Guard to revoke Hazelwood's captain's license.



ZELWOOD: Wants job back.

Valdez gets new name, transfer

The Associated Press

SAN DIEGO — The tanker involved in the nation's worst oil spill will have its name changed from Exxon Valdez to Exxon Mediterranean and be transferred to foreign service in August, the vessel's owners said Friday.

The ship has become a symbol of environmental disaster since it fouled Alaska's Prince William Sound with 11 million gallons of crude oil 16 months ago, but the change in name and duty was presented as a business decision.

"Due to declining Alaskan crude oil, the vessel will enter foreign service, most likely loading crude in the Mediterranean or the Middle East," said Gus Elmer, president of Exxon Shipping Co.

"It is consistent with our policy that the vessels be named according to their location," he said.

Elmer declined to say that the oil spill was a major factor.

"It is strictly an economics decision," he said.

The 987-foot Exxon Valdez ran onto a reef on March 24, 1989, gouging huge holes in its hull. Oil poured out and fouled hundreds of miles of shoreline. Scores of wildlife were killed.

The 30,000-ton ship has been undergoing repairs since last August at the National Steel and Shipbuilding Co. yard where it was built in 1986.

Three thousand tons of new, inch-thick steel were used to replace mangled sections of its hull.

The \$30 million repair in drydock is almost complete and sea trials are expected to begin July 20. A Coast Guard inspector will be aboard to determine if the ship can be certified as seaworthy.

Exxon Shipping Co.'s former president, Frank Iarossi, said last summer the tanker might be renamed and put to work elsewhere in the world but the company kept the final decision secret until Friday.

Elmer said the Exxon Valdez is one of the largest ships in the

company's fleet and was being underutilized because it could only enter two West Coast ports: Los Angeles and San Francisco.

"Its cargo capacity can be more fully utilized in foreign service," he said.

It will remain registered in the United States and carry a U.S. crew.

The Exxon Valdez was built with a single hull and the company said in March that it would not be retrofitted with a double hull.

Environmentalists advocate double hulls to guard against big spills.

In January, Exxon Shipping Co. paid a \$1,000 fine to settle a pollution claim by the Coast Guard concerning a pair of slicks and spillage of about 356 gallons of oil as the ship awaited clearance to enter San Diego Bay.

The company denied any wrongdoing and Exxon said that the discharges from the ship were actually organic material that washed free from cargo holds.

Board spreads blame for Valdez spill

The Associated Press

WASHINGTON — Federal investigators spread blame for the Exxon Valdez oil spill Tuesday, citing the captain, his third mate, the Coast Guard, and local author-

The Stockton Record

Sunday, February 10, 1991 A-9

Judge limits claims from Exxon oil spill

The Associated Press

gal ambiguities he faced in forming

United States Merchant Marine

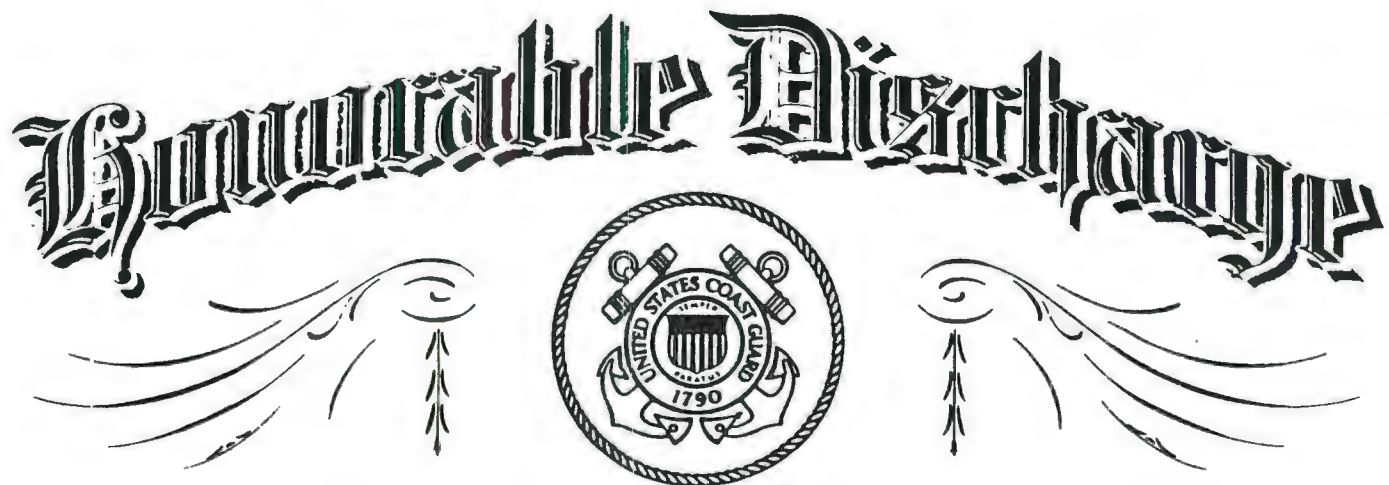
Certificate of Service

This is to certify that

VERN HERBERT ARMSTRONG

U.S. Merchant Marine Veteran
having served aboard oceangoing merchant ships in service to the
United States during World War II.

Captain Warren G. Leback
MARITIME ADMINISTRATOR



from the Armed Forces of the United States of America

This is to certify that

VERN HERBERT ARMSTRONG

was Honorably Discharged from the

United States Coast Guard

on the 02 *day of* AUGUST 1945 *This certificate is awarded*

as a testimonial of Honest and Faithful Service

Frederic J. Grady
Frederic J. Grady

Issued pursuant to P.L. 95-202 for
service in the 'American Merchant
Marine in Oceangoing Service during
the Period of Armed Conflict,
December 7, 1941, to August 15, 1945.'

Captain, U.S. Coast Guard

FROM:

VERN H ARMSTRONG
803 E HAMMER LN APT 155
STOCKTON CA 95210

MARITIME &
ADMIRALTY
LAWYER

and associates

ATTORNEYS

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"H. RUSSEL HOLLAND"
U.S. COURT HOUSE

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April 3, 1991

Judge Russel Holland
U. S. District Court
222 W. 7th Ave. Box #4
Anchorage, AK 99513

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APR 9 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

RE: Public Notice and Call For Comments
U.S. vs. Exxon Corp. & Exxon Shipping Co.

Honorable Judge Holland:

This letter is my personal protest against the proposed settlement in the U.S. vs. Exxon case before your bench - before the Nation.

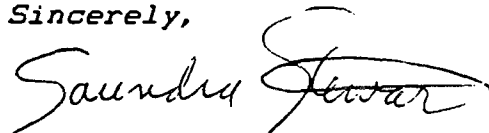
While the disaster initially shocked the country, it has been swept under the carpet, in a sense, by the world crisis situation in the Gulf. Comparisons between the crude spilled as a result of the War conflagration and the Valdez debauchery seemed a tragedy. Being served up to the public as minor in comparison to the War, the Valdez incident became ripe for settlement it appeared.

The most unsettling aspect of the entire scenario seems to be the denial of the facts and figures regarding the devastation delivered Nature. I feel the American public should be allowed the chance to hear the entire story. Cloaking the ever present threat to the environment in this quick and what seems easily resolved monetary settlement for Exxon, is a travesty.

Judge Russel Holland
April 3, 1991
Page Two

"What you don't know can't hurt you", is the strong and dangerous message given here. I strongly urge consideration be given in bringing the case to public view; releasing the real figures regarding the damage caused; and, enlightening the public as to the ever present danger which obviously has not even begun to be dealt with by Exxon.

Sincerely,


Sandra Stewart

COMMENTS NO. 26 - 50

KWG
J

April 7, 1991

Honorable H. Russel Holland
United States District Court Judge

c/o Clerk of Court
Room 261
United States District Court
222 West Seventh Avenue
Anchorage, AK 99513

Re: Exxon Spill Testimony
No. A90-015 Criminal

Dear Sir:

I hereby submit my comments regarding the proposed settlement of the lawsuit involving the Exxon Corporation and the State of Alaska.

As a citizen of Alaska, I have always been extremely frustrated with the manner in which our State Government has handled the Exxon Spill and all subsequent actions. I feel that the current settlement proposed by Governor Walter J. Hickel is the first positive step anyone in Alaskan State Government has taken to resolve this matter and allow the citizens of this State to move forward.

From the very first day the spill occurred, the State has bungled their responsibilities. Recall that the State approved the Oil Spill Contingency Plan that Alyeska was operating under. The State failed miserably to enforce the Plan. Second, recall that the State had "pre-approved" the use of dispersants and open burning of oil as measures to be taken in the event of a major spill problem. When the time came to expeditiously "approve" the use of these techniques during the first few, critical hours of the spill, the State failed miserably again by procrastinating.

From that point on, the State assumed a completely adversarial approach to their working relationship with Exxon. Under the "leadership" of Governor Cowper and Department of Environmental Conservation Commissioner Dennis Kelso, the spill cleanup plodded along with Exxon receiving constant criticism on the front pages of our local, liberal, outside-owned newspaper, with no positive recommendations to Exxon from our State "leaders" regarding spill cleanup activities.

There has been a great deal of anguish and distress expressed by the coastal communities affected by the spill. I believe part of this can be substantiated, but I believe more often than not, much of this "noise" is politically motivated grand-standing.

But there is another group of Alaskans who have suffered in the wake of this spill, and that is the employees and contractors who work in the Alaskan oil industry. We have been subjected to continual media harassment, our children have been "stoned" at schools, and the State has seen fit to raise oil taxes as a punitive measure to "punish" the industry for this unfortunate accident.

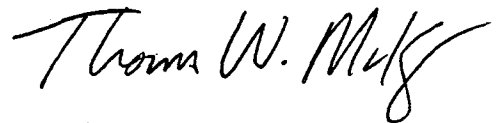
These tax increases (Economic Limit Factor, May 1989) have forced cancellation of numerous industry projects which countless families in this state rely on for jobs and necessary income. Much of the spill legislation which was passed because of the spill is causing many companies to shut down their operations in Alaska and leave the state.

A prime example of this is Chevron's recent announcement to close their Nikiski Refinery because of stringent spill legislation. This type of fallout only hurts our local economy and causes job loss and "brain-drain" from our state since our young people are unable to seek career opportunities in Alaska.

I firmly believe that the State should accept the settlement and resolve this issue promptly. It is entirely possible that the State could end up paying fines itself if the matter were taken to court. A courtroom trial could easily end up revealing gross incompetence in State Government, causing Exxon's fines, etc... to be further reduced, if not completely forgiven. Personally, I would like the State to take the matter to court, but I don't think the outcome would serve the citizens as well as the proposed settlement.

There are other reasons the State should accept this settlement. First, as time passes, the damage caused by the spill will only fade on the beaches of Prince William Sound as well as in the minds of Alaskans and Americans also. Now is the time that the State can gain the most from this situation. Also, the recent intentional spill in the Persian Gulf is estimated to be ten (10) times larger than the Exxon Valdez spill. As more information is revealed by the news media regarding this unfortunate situation, the damage caused by the Valdez accident will pale in comparison to the monstrous environmental crimes committed by one, Saddam Hussein.

In closing, I believe our current Governor, Walter Hickel, deserves special thanks for his assertiveness and initiative in attempting to settle this matter and allow the Alaskans like myself who are interested in moving forward to build our futures in this great state, the chance to do so. I greatly appreciate the opportunity to prepare and submit this testimony to your office.



Thomas W. McKay
3170 Marathon Circle
Anchorage, AK 99515
(907) 265-6890 (W)
(907) 349-9380 (H)

cc: Governor Walter J. Hickel
P.O. Box A
Juneau, AK 99811

Attorney General Charles Cole
P.O. Box K
Juneau, AK 99811

Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Honorable Frank Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

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APR 9 1991

CHAMBERLAIN, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Honorable Donald Young
House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Anchorage Times
P.O. Box 40
Anchorage, AK 99510-0040

Anchorage Daily News
P.O. Box 14-9001
Anchorage, AK 99514-9001

Ronald G. Clarke
P.O. Box 22372
Juneau, AK 99802
(907) 463-5377
(907) 465-4992 (work)

April 3, 1991

Judge H. Russel Holland
United States District Court
222 West Seventh Avenue
Anchorage, AK 99513

Dear Judge Holland:

Thank you for sending me a copy of the proposed plea agreement between the United States of America and Exxon Corporation and Exxon Shipping Company in criminal case No. A90-015. After reviewing this document thoroughly, I have come to believe that you should reject this proposal.

As a biologist (M.S., Zoology, UAF 1984), I feel that sufficient grounds to reject the proposal exist simply because data from investigations into the effects of the oil spill will remain secret under the terms of this agreement. Considering the tremendous damage wrought upon coastal communities, especially those dependent upon subsistence hunting, fishing and gathering, it is unconscionable to me to agree to any settlement without provisions for complete release of biological and socioeconomic data. After wreaking such massive devastation, Exxon could at least allow Alaskans access to information that could lead more quickly to their economic, cultural and psychological recovery.

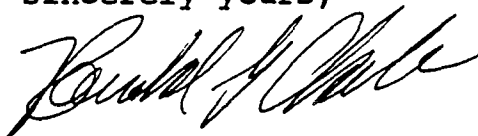
I am puzzled by the fact that the United States chose to prosecute Exxon and Exxon Shipping under the terms of the Migratory Bird Treaty Act, but not the Marine Mammal Protection Act. Surely, the oil killed many protected and/or endangered marine mammals -- those responsible for the spill should not escape punishment for their actions in that regard.

U.S. Attorney General Thornburgh touted the proposed settlement as a major penalty to Exxon, but an Anchorage writer put it into perspective. Exxon cleared \$117 billion in profits last year. Fining them \$100 million is like charging a \$40,000 a year employee \$34.19. Big deal. Considering what they spent on advertising to polish up a soiled public image, money seems to be no object. I'd prefer to see Lawrence Rawl and his boardroom colleagues behind bars. Jail time might constitute a real deterrent to other potential polluters.

Clearly, Exxon and Exxon Shipping want to avoid further public discussion of their actions. As I see it, that's all the more reason to reject the proposal and hold a trial. Don't let them buy their way out of responsibility for their deeds.

Thank you for considering my thoughts. I realize you face a mountainous task in evaluating information concerning such a pivotal event in Alaskan history, and appreciate your careful deliberation. Please send the participants back to the drawing board.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Ronald G. Clarke', written in a cursive style.

Ronald G. Clarke

RECEIVED

APR 9 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

MORRIS K. UDALL, ARIZONA, CHAIRMAN
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U.S. House of Representatives

Committee on Interior and Insular Affairs Washington, DC 20515-6230

April 8, 1991

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DANIEL P. BEARD
STAFF DIRECTOR
RICHARD MELTZER
GENERAL COUNSEL
DANIEL VAL KISH
REPUBLICAN STAFF DIRECTOR

Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 West 7th Avenue No.4
Anchorage, Alaska 99513

Honorable Stanley Sporkin
United States District Judge
U.S. Court House
3rd and Constitution, N.W.
Washington, D.C. 20001

In Re:

United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.)
[Criminal Plea Agreement]

United States of America v. Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem (A91082 Civil) [Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem (A91083 Civil) [Agreement and Consent Decree]

United States of America v. State of Alaska, and The State of Alaska v. United States of America (A91081 Civil) [Memorandum of Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, et al., (3AN-89-6852 Civil)

The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al. (91-483 SS Civil) and Chenega Corporation, et al., v. Manuel Lujan, Jr., et al. (91-484 SS Civil)

Gentlemen:

For purposes of your review of the pending cases cited above and other claims arising from the Exxon Valdez oil spill of March 24, 1989, I want to bring to your attention some significant evidence concerning Exxon Corporation's and the Alyeska Pipeline Service Company's culpability.¹

¹The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arctic Slope Regional Corporation (29.65 percent); and the State of Alaska (0.01 percent).

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U.S. DISTRICT COURT
JULIA HOLLAND
(28)

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
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As Chairman of the Subcommittee on Water, Power and Offshore Energy Resources, I have conducted an investigation of matters related to the Exxon Valdez oil spill, including the cleanup response, damage to natural resources, and operation of the Trans-Alaska Pipeline System.² The Committee on Interior and Insular Affairs was a principal author of the Trans-Alaska Pipeline Authorization Act (P.L. 93-153) and has broad jurisdiction concerning public lands and natural resources in Alaska and a special interest in issues affecting Alaska Natives.

In the course of this investigation, Alyeska has provided me with documents which indicate that **Exxon** and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and, (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Alyeska's Promises

Before the Pipeline Was Approved

In 1971, during the consideration of the trans-Alaska pipeline project, Alyeska's pollution control specialist R.L. Benyon promised the public in testimony before the Department of the Interior that:

"The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with any spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through world-wide research. The best equipment, materials and expertise which will be made available as part of

Pipe Line Co. (20.34 percent); Mobil Alaska Pipeline Co. (4.08 percent); Amerada Hess Pipeline Corp. (1.5 percent); Unocal Pipeline Co. (1.36 percent); and Phillips Alaska Pipeline Corp. (1.36 percent).

²"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska," Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs (Serial No. 101-5, Parts I to V) (hereinafter "Investigation of the Exxon Valdez Oil Spill").

the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world. [Emphasis added.]"

On April 10, 1973, the President of Alyeska, E.L. Patten, in testimony urging approval of the pipeline project, promised Congress that the very best technology would be in place:

"In safety [sic] superior American tankers the light traffic between Valdez, Alaska, and the west coast involves hazards of less magnitude than any other tanker run of which I have knowledge. The most modern loading equipment and proposed vessel designs will reduce even these modest risks before pipeline authorization begins."³

In the Right-of-Way Agreements

In exchange for the right to build the Trans-Alaska Pipeline System on public lands, Alyeska signed right-of-way agreements with both the United States and the State of Alaska.

In the section on oil spill contingency plans in the right-of-way contract with the United States, Alyeska promised to control and clean up any oil spill:

"It is the policy of the Department of the Interior that there should be no discharge of Oil or other pollutant into or upon lands or waters. Permittees must therefore recognize their prime responsibility for the protection of the public and environment from effects of spillage.... Permittees shall demonstrate their capability and readiness to execute the [contingency] plans....If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Permittees, regardless of fault. [Emphasis added.]"⁴

³ "Oil and Natural Gas Pipeline Rights-of-Way," Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs (Serial 93-12) at p.526.

⁴Stipulation 2.14 to Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, January 23, 1974, between United States of America and Alyeska owners. As used in Stipulation 2.14, Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

At the time of the Exxon Valdez spill

According to the "purpose" section of Alyeska's Oil Spill Contingency Plan (the "contingency plan") which was in effect on March 23, 1989, Alyeska promised rapid and effective response to any oil spill using state-of-the-art technology:

"The objective of the Alyeska Oil Spill Contingency Plan is to minimize damage to the environment...in the event of an oil spill...the resources of [Alyeska] are organized in a preplanned manner to assure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill cleanup technology. [Emphasis added.]"⁵

In section 102 of the contingency plan, Alyeska promised that it is the policy of the owner companies to fully comply with the laws and to take "every reasonable action" to minimize environmental damage from oil spills:

"It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and, if they occur, to minimize environmental damage. Alyeska will comply with the relevant pollution laws for the protection and conservation of environmental resources. [Emphasis added.]"⁶

Alyeska also promised in section 102 of the contingency plan that it will be fully prepared to implement the contingency plan even in the event of a major oil spill:

⁵ Section 101, Alyeska Pipeline Service Company Oil Spill Contingency Plan General Provisions (January, 1987).

⁶The "relevant pollution laws" according to Alyeska are: "Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, and any revisions thereof, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act [sic], as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectfully. Alyeska Pipeline Service Company will ensure that the National Contingency Plan is followed during any spill event." p.1-1

"Regularly scheduled training programs will be conducted....The objectives of this training program are:....To maintain the Plans as fully operable working documents [and] To update the Plans to reflect state-of-the-art capability....Full scale, company-wide field exercises will be held at least once per year to insure overall readiness for response to large scale oil spills.... [Emphasis added.]"

Alyeska further promised in section 102 of the contingency plan that, as agent for the owner companies, it will effectively direct and conduct cleanup operations, including those related to any spill in Prince William Sound:

"[C]leanup operations within the areas of liability and responsibility [imposed by law] will be conducted by Alyeska as Agent for the Owner companies and will be conducted in a manner as not to require assumption of control of such cleanup operations by federal or state officials....Alyeska will direct cleanup operations of spills resulting from...[O]peration, involving tankers carrying or destined to carry crude oil transported though the Trans-Alaska Pipeline System, occurring at Valdez terminal, in Port Valdez, Valdez arm or Prince William Sound. [Emphasis added.]"

Promises Versus Performance

In an addendum to its Oil Spill Contingency Plan in 1982, Alyeska informed the Alaska Department of Environmental Conservation that, in the event of a spill in Prince William Sound, the "[e]stimated time of completion of spill cleanup of a 100,000 barrel spill would be less than 48 hours."⁷

At the urging of the State of Alaska's Department of Environmental Conservation, Alyeska reluctantly included a response scenario for a 200,000 barrel spill in the 1987 Oil Spill Contingency Plan for Prince William Sound. "Alyeska believes it is highly unlikely a spill of this magnitude would occur."⁸

⁷Letter from B.L. Hilliker, manager, environmental protection and government reports, to Alaska Department of Environmental Conservation, dated June 22, 1982, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 894.

⁸ Oil Spill Contingency Plan Prince William Sound (January 1987), p.3-54. By letter to the Alaska Department of Environmental Conservation dated October 23, 1986, Alyeska predicted that the probability of a 200,000 barrel spill occurring in Prince

This Prince William Sound response scenario assumed that the spill would occur 30 miles from the Valdez terminal and that weather conditions would be conducive to oil spill cleanup. The contingency plan called for equipment, including a barge, to be in place within 5 hours after the spill.

Alyeska's Prince William Sound contingency plan predicted that 35 percent of the oil would be recovered from the water (70,000 barrels), 30 percent recovered from shoreline cleanup, 30 percent to disperse naturally or evaporate, and only 5 percent to remain in the environment.⁹

Yet when the Exxon Valdez spilled some 260,000 barrels on March 23, 1989 the cumulative total of oil recovered within the first 72 hours was less than 3,000 barrels. As one example of the response failure, the equipment barge which the contingency plan relied upon was damaged and unloaded at the time of the spill. The barge did not reach the spill site for more than 14 hours, even though the contingency plan called for it to be on the scene within five hours. Based on my investigation, there were clearly not sufficient quantities of dispersants or application equipment available to make up for the utter failure of the mechanical recovery effort.¹⁰

Even under extraordinarily good weather conditions for the first three days, Alyeska did not have equipment or resources to contain and collect even a fraction of the amount specified in the contingency plan. The failure of Alyeska's cleanup response in the first 72 hours significantly contributed to the ultimate environmental impacts of the spill, since winds of over 70 miles per hour spread the slick completely out of control (more than 40 miles from Bligh Reef) by the fourth day.

The Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflict one of the worst wildlife disasters in our nation's history, and disrupt the lives of thousands of Alaskans who depend on the natural resources of this region.

William Sound would be once in 241 years. "Investigation of the Exxon Valdez Oil Spill," Part I at p. 834.

⁹Oil Spill Contingency Plan Prince William Sound (January 1987) at p. 3-56.

¹⁰"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Part I at p. 303.

As the Alaska Oil Spill Commission concluded, "[p]ublic pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false."¹¹

Exxon and the Alyeska Owner Companies Knew That Alyeska Was Not Equipped to Effectively Respond To An Oil Spill in Prince William Sound.

My investigation revealed that Alyeska was on notice in 1984 that its own personnel believed they were incapable of effectively responding to an oil spill in Prince William Sound. James K. Woodle, former commander of the U.S. Coast Guard's Marine Safety Office in Valdez, and marine superintendent at the Valdez terminal, informed Alyeska's President George M. Nelson that:

"Serious doubt exists that Alyeska would be able to contain and clean-up effectively a medium or large size oil spill....Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel. [Emphasis added.]"¹²

A series of documents, which I have enclosed, reveal that Alyeska by 1988 -- one year prior to the Exxon Valdez oil spill -- had reached the same conclusion as James K. Woodle: it was seriously unprepared for an oil spill in Prince William Sound.

On April 18, 1988, W.D. Howitt, then Alyeska's Valdez Marine Terminal Superintendent, wrote to the Marine Services Subcommittee -- comprised of representatives of the owner companies, including Harvey Borgan of Exxon Shipping -- to inform them of a meeting in Bellingham, Washington on May 18, 1988. "Oil Spill Response Equipment" was listed on the agenda [Exhibit A].

On April 28, 1988, Howitt wrote to the Marine Services Sub-committee members with additional information for the May 18 meeting [Exhibit B]:

"The first part of the information package contains the T.L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on

¹¹Final Report of the Alaska Oil Spill Commission (February 1990) at p.135.

¹²Letter from James K. Woodle dated April 15, 1984 concerning operations of the Marine Department, Alyeska Marine Terminal, Valdez, Alaska, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 179 and 890.

Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. [Emphasis added.]¹³

Theo L. Polasek's (Alyeska's Vice President of Operations) briefing on April 6-7 for the Operations Subcommittee was entitled "Oil Spill Issues -- Status of Action Items from January Owners Meeting." [Exhibit C] The topic of "Alyeska's Response Capability to Spills at midpoint of Prince William Sound" is included under the heading "ARCO/Alyeska Response Equipment Discussions." What follows is a comparison of the equipment available to the "Clean Sound" Cooperative in Puget Sound, Washington. According to the document, Clean Sound's spill cleanup methodology is "immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil."

By contrast to the equipment available to Clean Sound, Polasek's briefing on "Present Alyeska Prince William Sound Capability" notes that "no new skimming vessels purchased since 1977." The list of Alyeska equipment is clearly deficient by comparison to Clean Sound.

Polasek's briefing on Alyeska's Prince William Sound cleanup response equipment includes the following indictment of Alyeska's capability to meet its obligations under its own Oil Spill Contingency Plan:

"Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement." (emphasis added)

Exxon and the Alyeska Owner Companies Failed to Improve Alyeska's Oil Spill Response Capabilities Before the Exxon Valdez Spill on March 23, 1989.

Theo Polasek's briefings to the owner company representatives in April and May 1988 outlined the deficiencies in Alyeska's equipment including the fact that "no new skimming vessels had been purchased since 1977."

¹³Howitt's letter also states that purchases of clean-up equipment for Alyeska, as recommended by Jeff Shaw of Arco, would be discussed at the May 18th meeting. In a document with the heading "Alyeska Equipment Project (for oil spill cleanup)" dated March 22, 1988, Jeff Shaw recommends: 1) a large oceangoing skimmer; 2) a 10,000 barrel barge; 3) an adds pack; 4) fast spill response vessels; 5) a destroil skimmer with power pack; and 6) an additional 5,000 feet of sea quality boom. [Exhibit D] In addition, a separate document indicates that the marine subcommittee members discussed an advanced skimmer recovery system which could operate in open waters, the "Dynamic Inclined Plan Oil Vessel." [Exhibit E]

When Polasek testified, under oath, at a hearing I chaired in Valdez on May 7, 1989, he acknowledged that: "the equipment in this plan was similar to the plan in 1977. We increased the amount of boom and take [sic] other actions, but essentially that was the same equipment decided upon."¹⁴

Polasek's briefing includes a reference to the planned acquisition of a 10,000 barrel tank barge by late 1988. In fact, this oil spill barge -- the "Betty-K" -- was stored in Washington state for the winter of 1989 and was not available in the Exxon Valdez cleanup.

Moreover, Polasek's briefing refers to a "mobile contingency command center with communications repeaters" which would be installed by "mid 1988." In fact, such a system was not in place at the time of the Exxon Valdez spill.

Exxon and the Alyeska Owner Companies Secretly Decided that Alyeska Would Not Respond to an Oil Spill In Prince William Sound in the Manner Prescribed in the Contingency Plan.

According to a June 30, 1988 telex from Roger A. Gale, Manager, Marine Operations, Sohio Oil (now BP) to Polasek of Alyeska, the Marine Services Subcommittee decided to make five recommendations to the Owners Committee as part of an "acceptable compromise" [Exhibit F]:

First, the "current stockpile of clean up equipment is adequate" for spills at the terminal, but "should be maintained to the highest state of readiness."

Second, for spills in Prince William Sound, additional equipment should be purchased of the "type best suited for near shore and beach operations."

Third, a large barge (50-100,000 barrel capacity) equipped with ocean boom and skimmers was needed.

Fourth, a "study of the best and quickest methods of moving the barge around" including predeployment in Prince William Sound.

Fifth, that Alyeska and the owners "press" state and federal officials for "preapproval to use chemicals on a widespread basis."

¹⁴"Investigation of the Exxon Valdez Oil Spill, Prince William Sound," Part I at p. 155.

However, on July 6, 1988, Stanley Factor, Vice President, Chartering and Evaluations, Arco Marine, Inc., objected to Roger Gale's recommendations because the owners had already decided that Alyeska would not respond to spills in Prince William Sound in the manner required by the Oil Spill Contingency Plan [Exhibit G]:

"Arco Marine Inc. does not agree with this telex nor do we concur that this represents the thoughts of the subcommittee.

"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller. [Emphasis added.]"¹⁵

Conclusion

At my subcommittee's hearing on May 7, 1989 in Valdez, Theo Polasek testified under oath on Alyeska's behalf that "[w]e fulfilled our promises in that [oil spill contingency] plan. We have not broken our promises to the people of this State."¹⁶

But the evidence I have set forth indicates that Alyeska broke the law as well as its promises to the State of Alaska and the Congress.

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4)) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.¹⁷ In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.¹⁸

¹⁵The Chairman of the Owners Committee at the time was Darrell Warner, President of Exxon Pipeline Company.

¹⁶"Investigation of the Exxon Valdez Oil Spill," Part I at p. 169.

¹⁷ A fine of up to \$10,000, or a prison term of up to two years or both may be imposed under this section.

¹⁸A fine of up to \$10,000, or a prison term of up to five years, or both, may be imposed under this section.

Thus, since Alyeska knew that it could not and would not respond to an oil spill in Prince William Sound as required by its oil spill contingency plans, Alyeska and any responsible officer could be exposed to substantial criminal penalties.

However, the Department of Justice has not even filed any criminal charges against Alyeska or its owner companies other than Exxon. Furthermore, in the proposed Criminal Plea Agreement, the United States would waive its rights not only to pursue any criminal charges against Alyeska and its owner companies, but also waive its rights to pursue civil or administrative penalties against Alyeska and its owner companies.¹⁹

The proposed Agreement and Consent Decree also provides generous protection for Alyeska. The United States and the State of Alaska both waive their rights to raise claims against Alyeska for natural resource damages in Paragraph 20. In addition, should either government recover any amount from Alyeska for claims of any kind, Exxon is entitled to be reimbursed for 20.34 percent of the governments' recovery (this figure represents the percentage ownership by Exxon of Alyeska). Yet Alyeska, including its shareholders and owner companies other than Exxon Pipeline, expressly reserves their rights to sue the United States or the State of Alaska in Paragraph 19 of the proposed settlement agreement.

In my view, the inclusion of Alyeska in the proposed Criminal Plea Agreement and in the proposed settlement Agreement and Consent Decree is contrary to the public interest. Based on the evidence, it is inconceivable that the Department of Justice would waive its rights to pursue criminal claims, and virtually all civil claims, against Alyeska.

In sum, the proposed Exxon settlement fails to hold Alyeska accountable to the public for its wrongdoing and fails to serve as a deterrent for similar conduct in the future.²⁰

¹⁹ Section III.A. of the Plea Agreement states that "[t]he United States agrees not to seek additional criminal charges or any civil or administrative penalties.... against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the 'EXXON VALDEZ,' the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related, by Alyeska Pipeline Service Company to the federal or state government...." p.5.

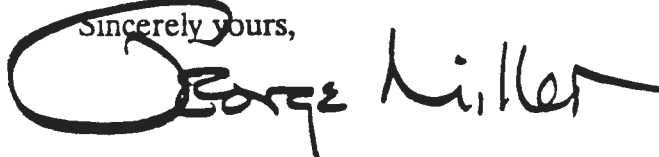
²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

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Honorable Stanley Sporkin
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After extensive debate about the environmental risks, the Trans-Alaska Pipeline System was approved in 1973 by only a one-vote margin in the U.S. Senate. In exchange for access to environmentally sensitive public lands, the Congress was assured by Alyeska and the owner companies that the pipeline system would be operated in a safe and environmentally sound manner, using state-of-the-art technology.

The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez oil spill. Without a commitment by the Department of Justice to prosecute this intentional deception, how is it that Congress and the people of the State of Alaska can rely on such assurances in the future?

Sincerely yours,

A handwritten signature in dark ink, appearing to read "George Miller". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

GEORGE MILLER
Vice Chairman

cc:

The Honorable Walter J. Hickel, Governor, State of Alaska
The Honorable Ben Grussendorf, Speaker, Alaska House of Representatives
The Honorable Richard Eliason, President, Alaska Senate
The Honorable Senator Ted Stevens
The Honorable Senator Frank Murkowski
The Honorable Representative Don Young
The Honorable Richard L. Thornburgh, Attorney General, U.S. Department of Justice
The Honorable Manuel Lujan Jr., Secretary, U.S. Department of the Interior
The Honorable Samuel K. Skinner, Secretary, U.S. Department of Transportation
The Honorable Edward R. Madigan, Secretary, U.S. Department of Agriculture
The Honorable William K. Reilly, Administrator, U.S. Environmental Protection Agency
The Honorable John A. Knauss, Undersecretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce
Members, Committee on Interior and Insular Affairs

Alyeska pipeline

SERVICE COMPANY

ALYESKA PIPELINE SERVICE COMPANY, P.O. BOX 288, VALDEZ, ALASKA 99686 TELEPHONE (907) 426-4225

April 18, 1988

ATTN: CAPT.
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Clean Sound Co-op.
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Theo L. Polasek
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1835 South Bragaw
Anchorage, Alaska 99512

Gentlemen:

A meeting of the Marine Services Sub-Committee will be held May 18, 1988, in Bellingham, Washington.

Present agenda items are:

- Oil Spill Response Equipment (including a demonstration of large skimmer vessel by John Weichert of Clean Sound Co-op.)
- Port Information Manual status.
- Berth Equipment and Repair and Upgrade Schedule.

An information package will be mailed to confirmed attendees for review prior to the meeting.

The meeting will be held at Nendel's Hotel in Bellingham, the Compass Room, commencing at 8:00 am. The skimmer demonstration will commence at 1:00 pm, departing from the small boat harbor.

Roger Gale has informed me that there will be a joint meeting of the Operations Sub-Committee and the Marine Services Sub-Committee on the previous day, May 17th, at the same location. The agenda for this meeting will be advised separately.

Rooms have been blocked for May 17th at Nendel's Hotel, (206)671-1011 and must be confirmed by individual attendees. Arrangements have been made for a continental breakfast and luncheon buffet to be served in meeting room on May 18th.

For travel planning; Bellingham is approximately 2 hours North of Sea-Tac airport by car or is served by commuter airlines, PSA, Horizon Air, and San Juan Air.

Please reply to C. F. (Chuck) O'Donnell (907)835-6526, indicating attendance or additional agenda items.

Regards,



W. D. Howitt
Valdez Marine Terminal Superintendent

Alyeska pipeline

SERVICE COMPANY

April 28, 1988

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3400 East Second Avenue
Benicia, CA 94510

Subject: Meeting Agenda and Information Package

Gentlemen:

As referenced in my April 18, 1988 meeting notification, an information package is enclosed concerning the agenda items for the upcoming Marine Service Subcommittee Meeting in Bellingham, Washington on May 18, 1988.

The first part of the information package contains the T. L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. The specific concern stated was the use of the Terminal tugs for the response effort, thereby directly affecting the Terminal's ability to continue vessel loading operations. Alyeska and ARCO personnel visited the Clean Sound Oil Spill Cooperative because of the similarities/comparability of Puget Sound and Prince William Sound operating environments. The briefing summarizes the group's findings.

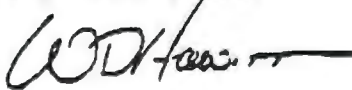
You will note that the briefing makes no recommendations with regard to additional equipment purchases. Mr. Jeff Shaw, ARCO, is prepared to discuss his specific recommendations during the meeting.

The Marine Services Subcommittee has been requested to review the alternatives, and recommend a course of action to the Operations Subcommittee.

The second agenda item covers the present status of the revised Port Information Manual. Enclosed you will find the financial responsibility statements that were presented to the Owners Committee and the Legal Subcommittee for incorporation into the revised manual. A final version of the statement that will be used in the manual will be issued before our meeting, and a distribution schedule of the new manual will be discussed at that time.

The third agenda item covers the Berths and Ballast Water Treatment Plant repair and upgrade schedule for this coming summer. Enclosed you will find a definition of scope and a implementation schedule for each of these projects.

Very truly yours,



W. D. Howitt
Superintendent
Valdez Marine Terminal

CFOD/WDH/pkk

cc: C. F. O'Donnell
L. D. Shier
T. L. Polasek

enclosures

— EXHIBIT C

OIL SPILL ISSUES

T. L. Polasek
April 6-7, 1988

OIL SPILL ISSUES

Status of Action Items from January Owners Meeting

- **Pursue Advance Approval for Dispersant Use**
 - **Regional Response Team (RRT) has issued first Draft of "Prince William Sound Guidelines" for review.**
 - **Most of Port Valdez and all of Tanker Lanes included in "Zone 1" where dispersant is approved for use, with consent of senior Federal official, USCG Captain of Port.**
 - **Follow up meetings scheduled.**

- **Expedite "ADDs Pack" AFE**
 - **AFE sent to Owners on March 4, 1988.**
 - **Approvals received from ARCO, Exxon, and Mobil.**
 - **Procurement package being prepared.**

OIL SPILL ISSUES

- **Conduct Survey of Commercial Ships Available for Oil Spill.**
 - **Preliminary Survey completed.**
 - **Several Hundred fishing vessels, fleet tenders, and supply boats available in Valdez and Cordova (45 ft. to 120 ft. lengths)**
 - **Several "Rig Tender" oil platform supply and service boats available in Kenai/Homer area (18 to 25 hours travel).**
 - **Four tour boats in Valdez (85' to 100') available for personnel support.**
 - **Availability of all dependent on season.**
 - **Private operators.**
 - **Will pursue negotiating rates for "on season" and "off season".**

OIL SPILL ISSUES

- **Desk Top ARCO/Alyeska Drill**
 - **Drill scheduled for May 3 and 4, 1988.**
 - **Located at Valdez Civic Center and other contingency sites in area.**
 - **Federal/State agencies will participate.**
- **Expeditious Clean-up Cost Reimbursement Procedures.**
 - **Proposed language and section revisions to the Port Information Manual sent to Legal Subcommittee.**
- **USCG Spill Take Over if Responsible Party Unwilling.**
 - **Informal discussions held with Valdez Coast Guard.**
 - **Coast Guard has no problem with concept**
 - **Would continue to use Alyeska as prime "Contractor".**
 - **Discussions with Alaska DEC will be necessary and revision to approved contingency Plan may be required.**
- **Discuss Oil Spill Response Equipment List with ARCO.**
 - **Discussions held.**
 - **Joint tour of "Clean Sound" facilities and equipment during March**
 - **Report follows in this presentation.**

ARCO/Alyeska Response Equipment Discussions

**T. L. Polasek
April 6-7, 1988**

Response Equipment Discussions

- **Alyeska Response Capability to Spills at midpoint of Prince William Sound.**
 - **Amount/Type of containment of boom.**
 - **Oil skimming vessels.**
 - **Fast response boats.**
- **Equipment and Operating Plan Developed by "Clean Sound" Cooperative for Puget Sound.**
- **Similarities/Comparability of Puget Sound and Prince William Sound Operating Environments.**
 - **Weather**
 - **Sea states and currents**
 - **Environmental sensitivity**
 - **Distances and access**
 - **Spill volume history/exposure**

Response Equipment Discussions

Clean Sound

- **Non-profit, unincorporated organization of Oil and Oil Transportation Companies.**
- **All expenditures by Co-op funded wholly by the member companies.**

ARCO	Union	SPC Shipping
Mobil	US Oil & Refining	Olympic Pipeline
Shell	Foss Maritime	Trans-Mountain Pipeline
Texaco	Chevron	Four others
- **Clean Sound owns equipment and employs small staff.**
- **Contractors utilized for equipment maintenance and operation.**
- **Agreements with contractors assure supply of qualified operators and maintenance personnel**
- **Equipment staged at commercial facilities in five locations:
Bellingham, Anacortes, Seattle, Port Angeles, and Tacoma.**

Response Equipment Discussions

Clean Sound

- Major Equipment and Materials

- 6 each fast response boats (27' to 34'): Each equipped with 1000 foot "Zoom" Boom, sorbent materials, and radar. May be equipped with small, portable hydraulic skimmers.**
- 1 each 42' fast response boat: Equipped with "Destroll" skimming system and 600 gallons recovered oil storage. Has bow door and is capable of beach landing.**
- 3 each 30' work boats: Medium speed response with 1000 foot "Zoom" boom and portable disk skimming units.**
- 1 each tank barge: 12,000 BBL capacity with 60' reach deck crane, 2 diesel powered pumps and tankerman's office/shelter.**
- 10 each highway trailers/vans (32' to 40'): Stocked with booms, sorbents, tools, skimmers, bird scare cannons.**
- 1 each Mobile Command Post: 34' Traller with charts, maps, contingency plans and communications equipment.**

Response Equipment Discussions

Clean Sound

Major Equipment (continued)

- 3 each "Belt Type" skimmer vessels (34' to 40'): Self-powered, twin hull units rated at 300 to 350 gpm recovery rates.
- 1 each 60' skimmer vessel: Catamaran hull with two each 3 foot belt recovery units rated at 600 gpm total. Designed for all weather operations in all areas of Puget Sound.
- 1 each 75' skimmer vessel: Seagoing vessel designed for sustained operations with minimum crew. Has debris recovery and handling devices. Recovery is 500 gpm with 12,000 gallons on board storage.
- 6000 feet of Kepner "Sea Curtain".
- 30,000 feet of Bennett "Zoom Boom" compactable boom.

Response Equipment Discussions

Clean Sound

- Spill Cleanup Methodology

- Immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil.**
- After boom deployment, immediately begin light skimming operations with small units carried on response boats.**
- Follow up with large, self-propelled, high efficiency skimmers as required.**
- If necessary, deploy land-based support equipment to spill site for continued work.**
- Use contracted helicopters for spill recon and direction of vessel operations.**

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- **All equipment and material staged at Valdez Terminal.**
- **Alyeska employees are prime operators with back-up manpower from Northland Maintenance.**
- **Alyeska equipment maintenance contractor performs maintenance.**
- **Expenditures funded by Owner Companies.**
- **Mission: To immediately respond and perform initial cleanup of oil spills from vessels in the TAPS trade in Prince William Sound.**

Exposure magnitude: Approximately 940 tankers per year, from 30,000 to 265,000 DWT, transiting and loading in a non-congested area with high environmental concern.

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- No new skimming vessels purchased since 1977.
- Work boat upgrade/replacement program in progress.
- Response Complement:
 - Fast response boats with sorbent boom and light duty skimmers.
 - Medium capacity self-propelled skimmer vessels.
 - Deck barge with sea skimmer and boom.
 - 10,000 BBL tank barge (late 1988)
 - Airborne dispersant delivery (late 1988)
 - Contracted tug boats.
 - Mobile contingency command center with communications repeaters (mid-1988).

Response Equipment Discussions

Alyeska

- **Present Major Equipment and Materials.**
 - **5 each fast response boats (21' to 26'):** Equipped with sorbent booms. May be equipped with portable hydraulic skimmers.
 - **2 each 26' work boats:** For support and supply delivery.
 - **2 each "Belt Type" skimmer vessels (36' and 45'):** Self-powered, twin hull units, rated at 300 GPM recovery.
 - **5 each Vikoma Sea Pack units:** 8000 total feet inflatable boom. Units must be towed to site by tugs.
 - **1 each deck barge:** 16,000 foot harbor boom packed in containers and Vikoma 240 EBL/hr sea skimmer. Must be towed to site by tugs.
 - **3 each 19' work platforms:** Powered by small outboards for calm water use.

Response Equipment Discussions

Alyeska

- **Prince William Sound Cleanup Methodology**
 - **Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement.**
 - **Dispatch available aircraft for recon and spill cleanup direction.**
 - **Dispatch equipment sets pulled by Crowley tugs and line boats.**
 - **Obtain additional USCG and commercial resources to continue cleanup and relieve Crowley tugs.**
 - **Turn over spill to responsible party or USCG after initial activities complete.**

ALYESKA EQUIPMENT PROJECT
(for oil spill cleanup)

RECOMMENDED PURCHASES

1. LARGE OCEAN GOING SKIMMER, SIMILAR TO THE CLEAN SOUND VESSEL THE NORTH SOUNDER. THIS VESSEL SHOULD BE LARGE ENOUGH TO KEEP THE CREW OUT OF THE WEATHER. THE VESSEL SHOULD HAVE RADAR, BUNKS, GALLEY AND A HEAD, CAPABLE OF A FEW DAYS OF OPERATION WITHOUT RETURNING TO PORT.

THE NORTH SOUNDER IS A BELT TYPE SKIMMER WHICH EVIDENTLY WORKS WELL. I SUGGEST THE SYSTEM THAT McLORI MAKES BE INVESTIGATED.

2. 10000 BARREL BARGE IS NEEDED TO HANDLE OIL THAT IS PICKED UP DURING A SPILL. A SPILL > 5000 bbls, ADDITIONAL BARGES WOULD BE REQUIRED. THE ADDITIONAL BARGES COULD COME FROM SEATTLE, AND BE ON SCENE IN 96 HOURS.

THE DESIRED BARGE SHOULD HAVE CLEAR WORKING SPACE SIMILAR TO CLEAN SOUNDS, CLEAN ONE. ROOM FOR A HELICOPTER PAD WOULD BE USEFUL. SOME "BUNK HOUSE" SHELTERS WOULD BE HANDY FOR EXTENDED CLEANUPS TO HOUSE THE CREWS.

3. ADDS PACK NEEDED, I UNDERSTAND THAT ALYESKA HAS ALREADY STARTED THIS PURCHASE.
4. FAST SPILL RESPONSE VESSELS ARE NEEDED, SUCH AS SEEN AT THE MUNSON BOAT YARD. ALSO, IT IS IMPORTANT TO HAVE A SHELTERED CABIN AND RADAR.
5. DESTROIL SKIMMER WITH POWER PACK, TO BE ABLE TO QUICKLY GET A SKIMMER ON SCENE OR SET UP IN AREAS WHERE THE VESSEL SKIMMERS CANNOT APPROACH. THIS HAS THE CAPABILITY TO USE FROM THE FAST SPILL RESPONSE VESSELS.
6. ADDITIONAL 5000 FEET OF SEA QUALITY BOOM.

JEFF SHAW 3/22/88

JBF DIP MODEL 5001A

DYNAMIC INCLINED PLANE
OIL RECOVERY VESSEL

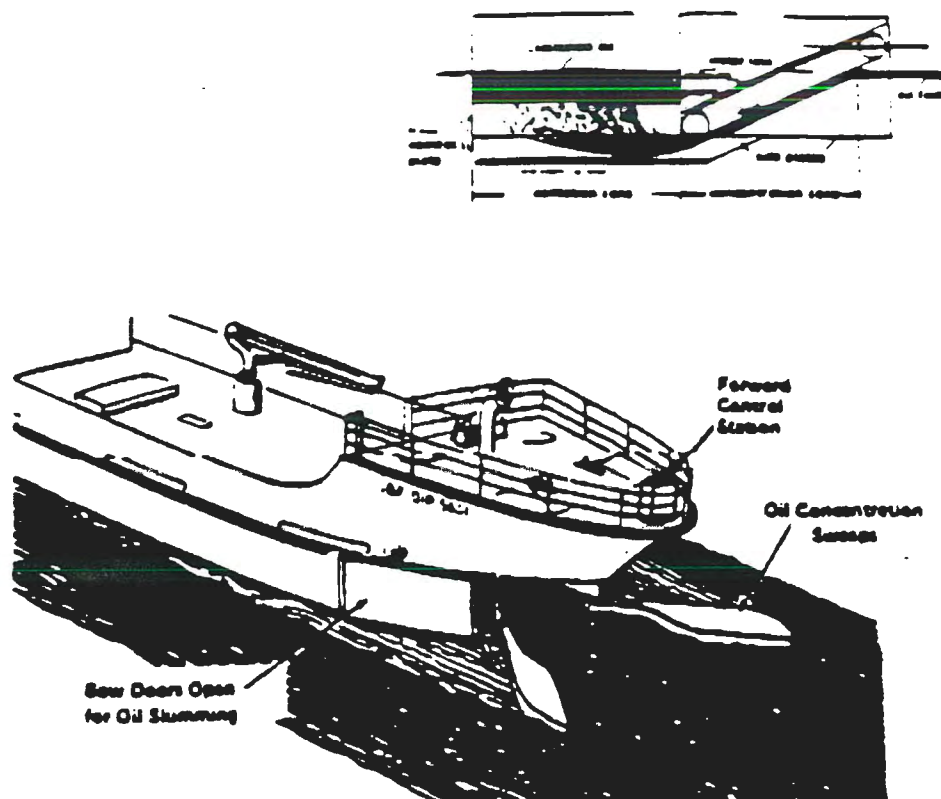


Figure 1-1. JBF DIP Concept and Oil Concentration Sweeps

1-1 PURPOSE OF SYSTEM/DIP CONCEPT

The JBF Model 5001A recovery system is designed to pick up spilled oil and debris from the water's surface. A conveyor forward of the oil recovery system first removes floating debris while water and oil flow through the open-mesh conveyor belt. The oil collection system then collects the oil, separates it from the water, and collected oil can then be pumped into on-board storage tanks from which it can subsequently be pumped to barges or to deckside receiving tanks. The cargo pump and valving system are also designed to allow collected oil to be pumped directly from the collection well to a barge or tank alongside. The vessel is self-propelled and is equipped with a complete and independent power system to drive all collection and pumping systems.

The DIP Model 5001A system is based on the concept (Figure 1-1) of collecting oil under the surface of the water, thus reducing the effect of waves. As the system moves through the water, the oil is forced to follow the surface of a moving inclined plane to a collection well underneath the hull. Buoyant forces cause the oil to surface in the well, forcing water out the bottom. When a sufficiently thick oil layer has collected, it is pumped into storage tanks. Separation occurs automatically and no water is collected.

The vessel can be used in both protected waters and in the more open waters. It can be used in a wide variety of operating modes that require stationary or self-propelled oil-skimming capability. The wide aperture formed by the sweep system makes it extremely effective against oil slicks in open waters. The skimmer can also be used successfully as a float in boom harvesting systems or as a means of picking up oil contained within a boomed-off area.

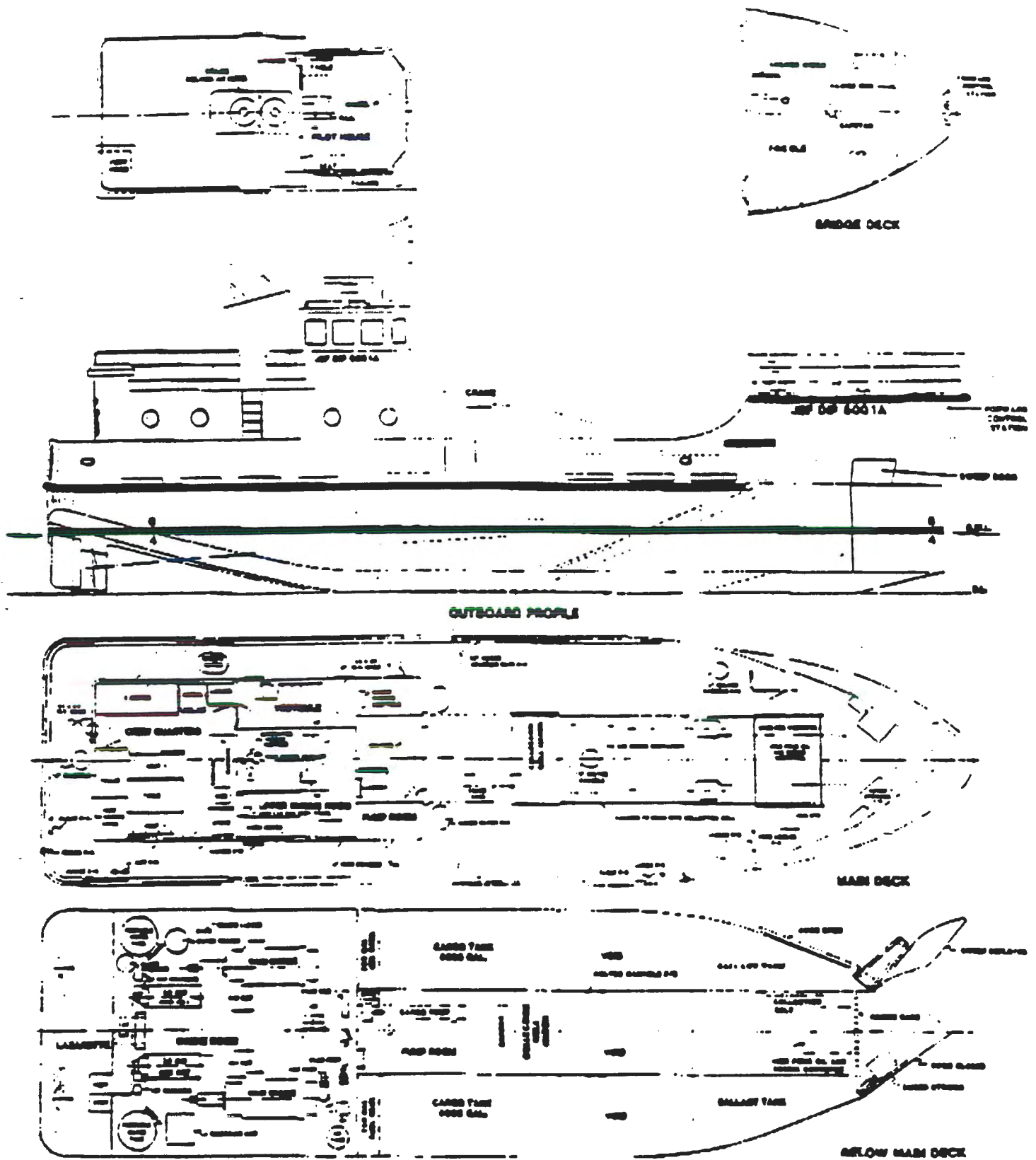


Figure 1-2. DIP 5001A Profile and Arrangements

BP AMER HQ 1 CH
9452

EXHIBIT F

BT

MR. THEO POLASEK
ALYESKA
ANCHORAGE, ALASKA

RE: ALYESKA OIL SPILL EQUIPMENT

::::::::::::::::::::::::::::

AS YOU KNOW THE MARINE SUBCOMMITTEE WAS ASKED TO PROVIDE THE OWNERS COMMITTEE WITH ITS THOUGHTS AND RECOMMENDATIONS REGARDING THE UPGRADING OF ALYESKA'S OIL SPILL RESPONSE EQUIPMENT FOR USE BOTH AT THE TERMINAL AND IN PRINCE WILLIAM SOUND.

A REVIEW OF THE HISTORY OF OIL SPILLS AT THE VALDEZ TERMINAL LEADS THE COMMITTEE TO THE CONCLUSION THAT THE CURRENT STOCKPILE OF CLEAN UP EQUIPMENT IS ADEQUATE. FROM THAT CONCLUSION. THE MARINE SUBCOMMITTEE'S FIRST RECOMMENDATION SHOULD BE THAT THE CURRENT STOCKPILE OF EQUIPMENT MUST BE MAINTAINED TO THE HIGHEST STATE OF READINESS. AND SHOULD BE REPLACED WITH SIMILAR EQUIPMENT AS AND WHEN APPROPRIATE. PRIOR TO ANY ACTUAL EQUIPMENT RENEWALS. A CAREFUL REVIEW OF ALL TECHNOLOGICAL IMPROVEMENTS SHOULD BE UNDERTAKEN. APPROPRIATE REPLACEMENT EQUIPMENT SHOULD THEN MEET BEST AVAILABLE TECHNOLOGY STANDARDS.

WHEN CONSIDERING ADDITIONAL EQUIPMENT FOR THE PURPOSES OF IMPROVING SPILL RESPONSE AND RECOVERY IN PRINCE WILLIAM SOUND. THE TOTAL LACK OF PRIOR SPILL EXPERIENCE IN THE SOUND IS BOTH A CURSE AND A BLESSING. WHAT SORT OF CASUALTY AND SIZE OF SPILL SHOULD BE PLANNED FOR? ANY SPILL IN PRINCE WILLIAM SOUND IS MOST LIKELY TO RESULT FROM EITHER A COLLISION OR A STRANDING. THE RELATIVELY LOW LEVEL OF TRAFFIC. THE TRAFFIC SEPARATION SCHEME AND THE U.S. COAST GUARDS VESSEL TRAFFIC SERVICE ALL CONTRIBUTE TOWARD LOWERING THE POSSIBILITY OF A COLLISION. A STRANDING AS A RESULT OF THE TOTAL LOSS OF POWER OR STEERING. IS IN THE COMMITTEE'S VIEW MUCH THE MORE LIKELY EVENT TO TRIGGER A SPILL.

WHILE THE ISSUE OF WHETHER A SPILL IS MORE LIKELY TO OCCUR AS A RESULT OF EITHER A COLLISION OR STRANDING IS A VEXING ONE. IT IS QUITE CLEAR THAT A DIFFERENT TYPE OF CLEAN UP EQUIPMENT WOULD BE REQUIRED IN EITHER CASE.

IT IS NOT UNREASONABLE TO ASSUME THAT ANY COLLISION LIKELY TO RESULT IN AN OIL SPILL WOULD MOST PROBABLY OCCUR IN MID-CHANNEL AND, THEREFORE. BE IN RELATIVELY OPEN WATER. WHEREAS A STRANDING BY DEFINITION WOULD PROBABLY BE ON A LEE SHORE. WHERE EQUIPMENT DESIGNED PRINCIPALLY FOR OPEN WATER WOULD BE OF LIMITED VALUE. THEREFORE. THE MARINE SUBCOMMITTEE'S SECOND RECOMMENDATION SHOULD BE THAT ANY ADDITIONAL EQUIPMENT PURCHASED BY ALYESKA FOR THE PURPOSE OF ENHANCING SPILL RESPONSE AVAILABILITY IN PRINCE WILLIAM SOUND SHOULD BE OF THE TYPE BEST SUITED FOR NEAR SHORE AND BEACH OPERATIONS.

THE MARINE SUBCOMMITTEE'S THIRD RECOMMENDATION SHOULD BE THAT A BARGE (50-100 MBLS.) OUTFITTED WITH VARIOUS LENGTHS AND TYPE OF BOOM (INCLUDING OPEN WATER BOOM), SKIMMERS (LARGE, SMALL AND VISCOUS), CRANE AND WORKABOUTS BE ACQUIRED. DEPLOYMENT AND/OR PRE-STAGING OF THE BARGE ARE REALLY SEPARATE ISSUES, BUT ISSUES THAT SHOULD BE ADDRESSED AT THIS TIME IF A PURCHASED BARGE IS TO BE EFFECTIVE. OUR FOURTH RECOMMENDATION SHOULD BE THAT ALYESKA UNDERTAKE A STUDY OF THE BEST AND QUICKEST METHODS OF MOVING THE BARGE AROUND AND WHETHER THE BARGE SHOULD BE PRE-DEPLOYED IN A SAFE COVE SOMEWHERE BETWEEN ROCKY POINT AND THE NARROWS. THE STUDY SHOULD ALSO DETERMINE WHETHER OR NOT PERSONNEL FROM MIDDLE ROCK, INC. (THE PILOT BOAT SERVICE) COULD BE EFFECTIVELY AND ECONOMICALLY EMPLOYED IN MAINTAINING THE PRE-DEPLOYED BARGE.

I BELIEVE THE FOREGOING REPRESENTS AN ACCEPTABLE COMPROMISE OF THE SLIGHTLY DIFFERING VIEWS EXPRESSED BY THE TASK GROUP MEMBERS. THE OPERATIONS COMMITTEE IS DUE TO MEET ON JULY 6 AND THEREFORE I WOULD APPRECIATE YOUR ADVISING ME BY TELEX, COPIED TO THEO POLASEK (TELEX: 09025127 -- ANSWER BACK: TRANSPIPEAHG) AT ALYESKA. NO LATER THAN JULY 5 THAT YOUR COMPANY CAN SUPPORT ALL FIVE RECOMMENDATIONS.

CC: F. G. GARIBALDI
J. P. G. CROXSON

FILE	DATE	TIME	BY	AM	CH
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680	JUN 20 1988				700
700	Z. L. POLANSKI				720
720			GARY		740
740			LAWSON		760

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ARCOMAR 8 LGB
1515 PDT 07/06/88

ROGER A. GALE
SOHIO OIL.
CLEVELAND. OHIO

MSG NR 016

EXHIBIT G

REF: YOUR TELEX 6/30/88 - ALYESKA OIL SPILL EQUIPMENT

ARCO MARINE, INC. DOES NOT AGREE WITH THIS TELEX NOR DO WE
CONCUR THAT THIS REPRESENTS THE THOUGHTS OF THE SUB-
COMMITTEE.

AT THE OWNERS COMMITTEE MEETING IN PHOENIX. IT WAS DECIDED
THAT ALYESKA WOULD PROVIDE IMMEDIATE RESPONSE TO OIL SPILLS
IN VALDEZ ARM AND VALDEZ NARROWS ONLY. FURTHER EFFORTS IN
THE PRINCE WILLIAM SOUND WOULD BE LIMITED TO THE USE OF
DISPERSANTS AND ANY ADDITIONAL EFFORT WOULD BE THE
RESPONSIBILITY OF THE SPILLER. THE DELAY IN PURCHASING
THE AODS PACK IS INEXCUSABLE; NO FURTHER APPROVAL WAS
REQUIRED.

THE OWNERS ALSO DIRECTED ALYESKA TO REVIEW ITS ADMINIS-
TRATIVE AND EQUIPMENT PLANS TO MEET THE INITIAL RESPONSE.
IN OUR OPINION THE ADMINISTRATIVE PLAN MEETS ALL CRITERIA
FOR A SUCCESSFUL CLEANUP. ON THE OTHER HAND, THE
FINDINGS WERE THAT SOME ADDITIONAL EQUIPMENT WAS NEEDED
TO MEET THE INITIAL NEEDS OF SPILL CLEANUP. IN PARTICULAR
ADDITIONAL LARGER WORK BOATS. ALYESKA HAS REVIEWED THEIR
EQUIPMENT NEEDS AND SUBMITTED A PROPOSAL. ARCO MARINE, INC.
SUPPORTS ALYESKA'S RECOMMENDATION AND NOT THOSE AS
OUTLINED IN THE TELEX.

STANLEY FACTOR,
VICE PRESIDENT, CHARTERING & EVALUATIONS
ARCO MARINE, INC.

CC: THEO POLASEK

ARCOMAR 8-LGB

TRANSPIRE AHG

cc
Copied
JUL 6 1988

TL	PH	NEW	RM	ATS	GMN
CP		RECEIVED			END
NR		JUL 6 1988			TCN
NR		T. L. POLASEK			Action
NR				Govt. Reports	Future

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

Honorable H. Russel Holland
United States District Judge
District of Alaska
222 West 7th Avenue #4
Anchorage, Alaska 99513

Dear Judge Holland:

The House Special Committee on the Exxon Valdez Oil Spill Settlement has received and reviewed a copy of Congressman George Miller's letter to you dated April 8.

The matters raised in the letter present significant new issues regarding the propriety of the Plea Agreement pending in your court. The allegation by Congressman Miller that Alyeska knowingly disregarded the requirements of its own contingency plan indicates a level of culpability on the part of both Exxon and Alyeska that could go well beyond the criminally negligent conduct previously alleged against Exxon.

The Committee believes that the Plea Agreement must be considered, not solely in light of its impact on Exxon and Alyeska, but also with respect to its impact on the State of Alaska. Our report to the House, scheduled to be issued prior to April 24, will reflect that aspect of the case.

We respectfully renew our request, embodied in HCR 19, that you delay final action on the Plea Agreement until after May 3, when the legislature will have considered this issue and the remainder of this committee's report.

APR 10 1991

LEK. U. S. DISTRICT COURT

Sincerely,

Max F. Gruenberg, Jr.
Rep. Max F. Gruenberg, Jr.
Chairman

cc: John F. Clough III, Counsel for Exxon Corporation
Charles A. DeMonaco, United States Department of Justice

April 10, 1991
P.O. Box 3476
Seward, AK

Judge R. Holland
U.S. District Court
222 W. 7th Avenue
Anchorage, AK 99513

Honorable Judge,

I am absolutely opposed to the Exxon settlement. Such a plea bargained arrangement "sells us down the river". Residents of this area were violated at many levels by Exxon's corporate greed. Accepting the proposed settlement would mean that corporate negligence/misconduct can be overlooked - at the expense of the environment and the average citizens. They ought to face punishment; we ought to be protected!

Sincerely
Sonya S. Smith

APR 11 1991

U.S. DISTRICT COURT

ROBERT A. GIGLER
7447 O'Brien Street
Anchorage, Alaska 99507

Dear Member of The Alaska Legislator:

On March 15, 1991, I met with Governor Walter Hickel and Special Assistant James Rockwell to discuss public concerns regarding the EXXON Valdez Oil Spill.

Mr. Rockwell said he spoke with the underwater survey company contracted by EXXON to assess vessel damage. He gained information which suggested that the EXXON Valdez struck Bleigh Reef twice. If this is true, the public was misinformed by the initial report released by EXXON's underwater construction company.

Based on their report the following article appeared on Page A-8 of the March 27, 1989 Anchorage Times. The Starboard side of the EXXON Valdez collided with a pinnacle rock following this the tanker turned westward while sliding toward the South. Afterwards it struck the second pinnacle, at midship. Both strikes occurred approximately 2 miles apart. The President of the EXXON Corporation said the tankers speed was unknown at this time. (This is another inconsistent fact).

Page A-10 of the March 27, 1989 Anchorage Daily News. Spill Archives Reference said this collision occurred at 11:50 p.m. and the vessels speed was estimated at 8 knots. The impact ruptured three holes in the starboard side causing the tanker to turn to the west. Inertia kept it moving in the southerly direction of the first Pinnacle. This forced the vessel to travel more than a mile from the shipping lane and ground on the second pinnacle of Bleigh Reef at 12:03 a.m. on March 24, 1989.

RECEIVED

APR 11 1991

31

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

National Transportation Safety Board hearings on May 16-19, 1989 identified the following. From the Archives of the Anchorage Daily News May 17, 1989, page A-10 included the following comments from the May 1989 NTSB hearing

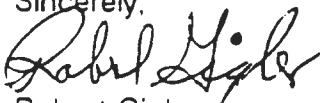
The EXXON Valdez left the shipping lanes to allegedly possibly avoid impact with ice bergs. The tanker headed west 200° at 12 knots with speed increasing to 15 knots. The course was changed to 180° and the tanker was placed on auto pilot. Afterwards the Captain left the bridge. At 11:57 p.m. March 23, 1989 Constat calls from New Jersey EXXON Valdez began and continued for 33 minutes. Captain Hazelwood did not report the new heading to the Coast Guard radio operator. After the collision, the vessel's main engine was shut down at approximately 1:45 a.m., according to engine log.

The impact was identified by Gregory Cousins in the National Transportation Safety Board hearing room in his testimony May 17, 1989. Deck watch observed the following: The Busby Island red light was viewed from the dangerous waters of Tatitluk Narrows. The 1st strike was located approximately 4000 yds. northerly from Bleigh Reef. The Loran location at: 7960X 14337-7960Y32162. The Loran location was documented by a witness to the grounding in Tatitluk Narrows (Bud Hall) commercial fisherman.

From the evidence shown, we believe the grounding of the EXXON Valdez to be deliberate and intentional.

What is the truth?

Sincerely,



Robert Gigler

Greenpeace Action International

(WATER 174' DEEP AT POINT
OF 1ST IMPACT ANCHORAGE DAILY)
NEWS ILLUSTRATION MAR. 29-1989

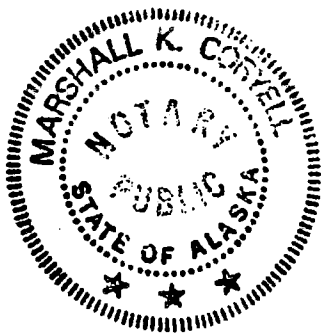
RECEIVED

APR 11 1991

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

State of Alaska)
) ss:
Third Judicial District)

The foregoing was acknowledged before me this 10th day of April, 1991, by Robert Gigler.



Marshall K Coryell
Notary Public in and for Alaska
My commission expires: 12/18/92

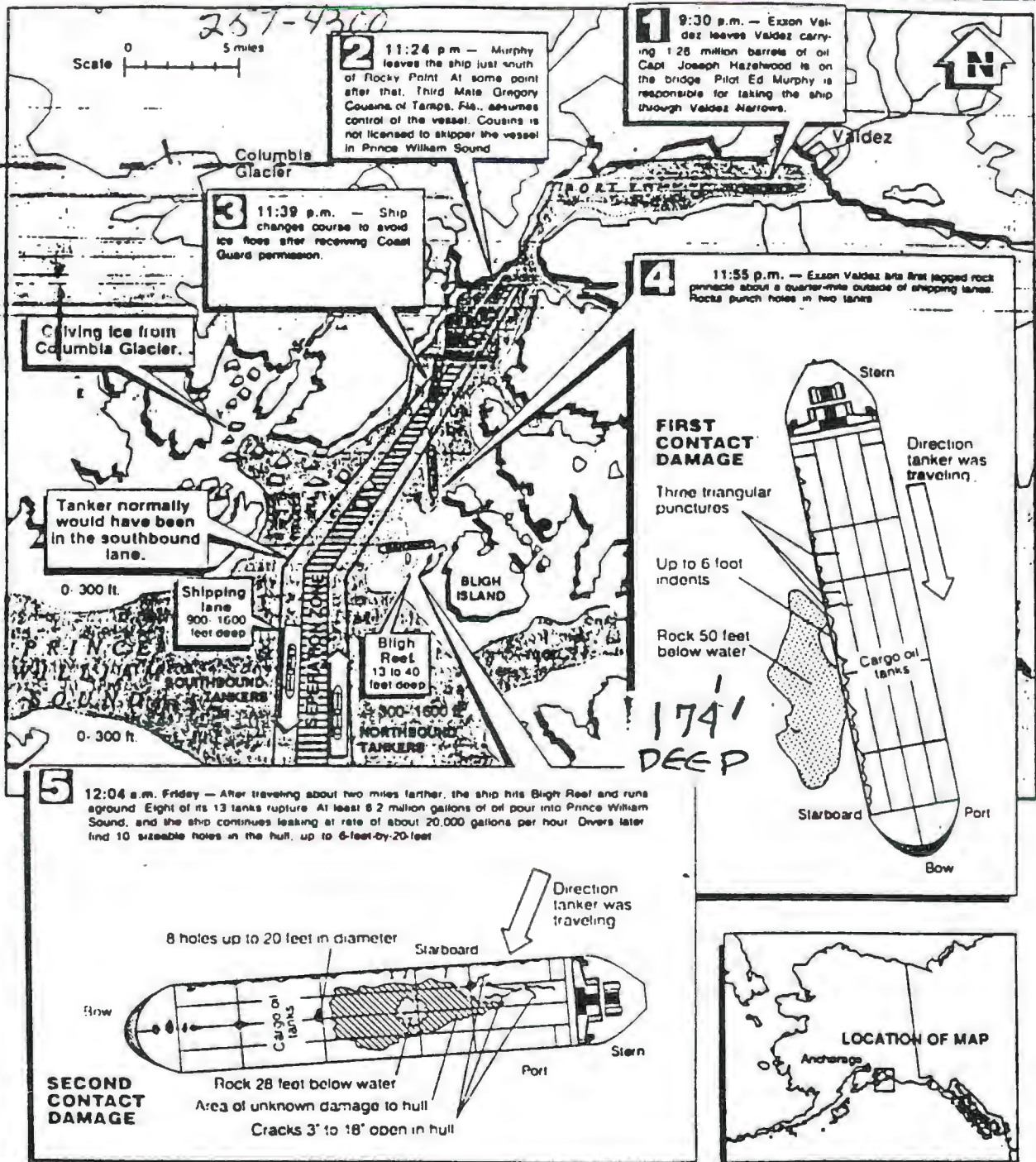
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APR 11 1991

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

5

TIMELINE OF EVENTS SURROUNDING TANKER AND OIL SPILL



LATER — OTHER KEY EVENTS

12:28 a.m. — Ship notifies the Coast Guard it has run onto the reef

4:30 a.m. — Coast Guard asks State Trooper Mike Fox to go aboard Exxon Valdez because of suspicions the captain had been drinking

7:00 a.m. — Fox arrives on board to assist two Coast Guard corporals in the investigation

8:00 a.m. — Blood samples taken from Capt. Hazelwood, Third Mate Cousins and the helmsman Robert Kagan, to test for alcohol or drug use. (Other reports place the time of the tests at 11 a.m.) Coast Guard closes Port Valdez to tanker traffic

Friday afternoon — First of containment booms are deployed, at least 12 hours after the spill was reported.

Friday evening — State environmental officials estimate 265,000 barrels spilled, about 11.5 million gallons. Slick covers about 30 square miles. Efforts begin to pump oil off the Valdez and onto the tanker Exxon Baton Rouge

Saturday morning — Exxon announces 175,000 barrels spilled, later raising that to about 240,000 barrels. At noon, official estimates place the spill at 260,000 barrels, about 11 million gallons

Saturday afternoon — Exxon Shipping President Frank Liorosi says the accident investigation is focused on the actions of Hazelwood, Cousins and Kagan and rules out mechanical problems

Saturday evening — Weather remains calm, but currents spread the slick into an expanding blot fouling nearby beaches.

Sunday — Gov. Steve Cowder declares Prince William Sound a disaster area, freeing state resources for cleanup and paving the way for a federal disaster declaration. He says it "may well be the greatest disaster to hit Alaska since the Good Friday earthquake 25 years ago."

Sunday afternoon — The slick now covers about 100 square miles in the shape of a crooked tear. Only about 126,000 gallons have been skimmed off the water. State, federal and company officials plan to use dispersants, fire and skimmers in a full attack on the spill Monday.

Monday morning — High winds foil cleanup. Aircraft are grounded, small boats cannot operate. The spill, now whipped into a brownish froth, spoils beaches on several spots as it 4 miles northwest in the shape of a 40 mile long snake.

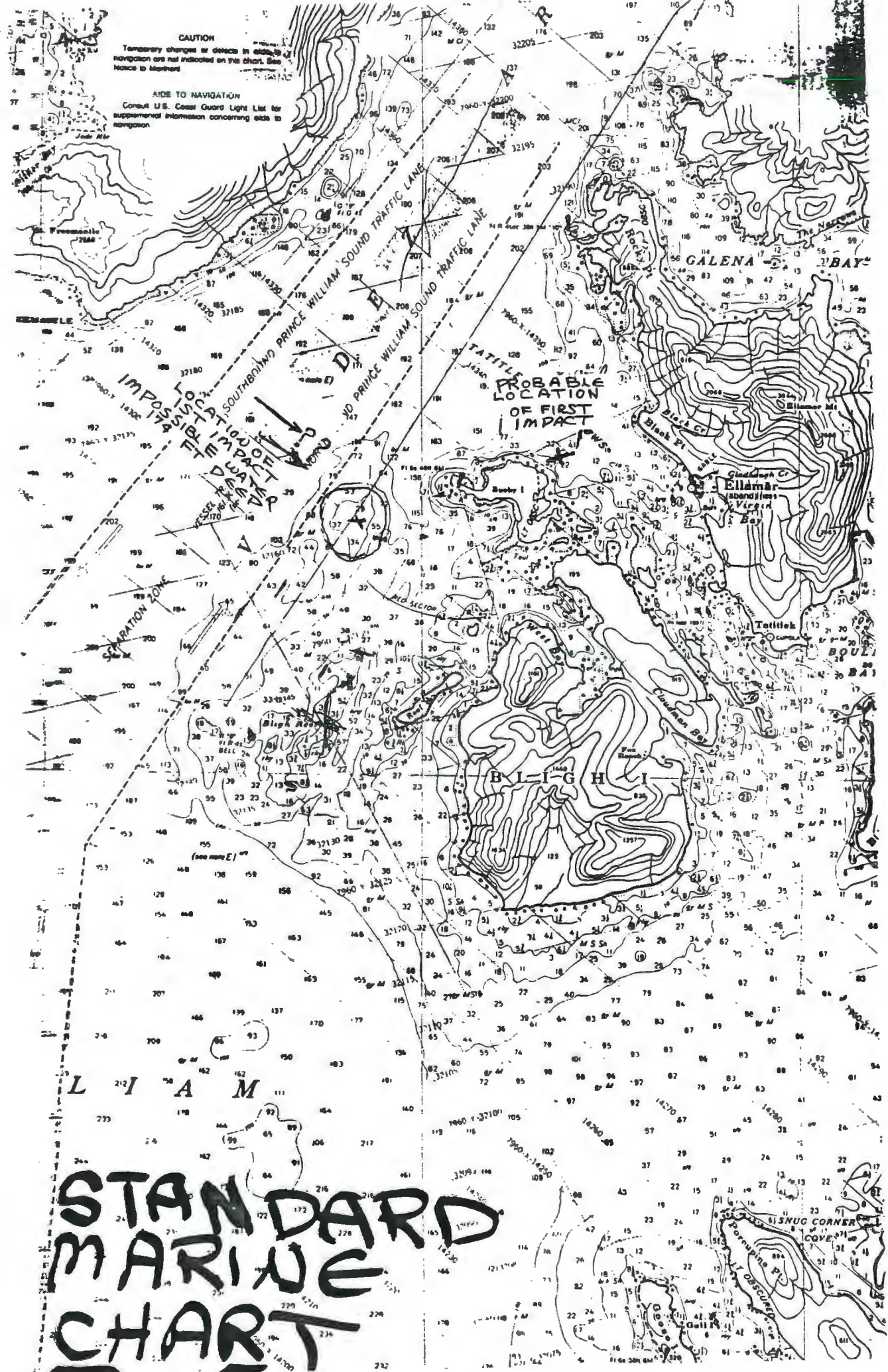
CAUTION
Temporary changes or defects in aids to navigation are not indicated on this chart. See Notice to Mariners

AIDS TO NAVIGATION
Consult U.S. Coast Guard Light List for supplemental information concerning aids to navigation

IMPOSSIBLE TO LOCATE IMPACT QUANTITATIVELY
PRINCE WILLIAM SOUND TRAFFIC LANE
PRINCE WILLIAM SOUND TRAFFIC LANE

PROBABLE LOCATION OF FIRST IMPACT

STANDARD
MARINE
CHART



RE: Exxon Valdez Oil Spill Civil Settlement

HC 2 Box 705
Kasilof, AK 99610
April 10, 1991

Clerk of the Court
Room 261, U.S. District Court
222 W. Seventh Ave.
Anchorage, AK 99513

Dear Sir:

I don't have enough information to decide "yes" or "no" on the proposed Exxon Valdez oil spill settlement, but I do have positive comments on one aspect of settlement and retribution -- the most important as far as I see it. So much of the damage done to environment in 1989 could have been prevented had the oil companies come forth within the first six to twelve hours with equipment to contain the spill and thence start immediately removing the heavy oil from the water. We watched with heavy hearts the first 24 hours after the spill, the weather in the area was quite calm, and no major effort at all was achieved in containing the spill. Once the oil spread and broke up, all efforts were like the proverbial chasing feathers when the pillow seam tears. With the technology available today and the clean-up effort in PWS (too late) to learn from, the oil industry first and foremost should install equipment in Alaska which can be moved rapidly to any spill area and all plans should be ready to implement IMMEDIATELY when a spill occurs. The large boat brought from the Soviet Union had much promise, I have heard, but it was brought in after the spill had spread.

It deeply grieves me that Exxon did indeed spend much money in clean-up which did absolutely NOTHING to improve the environment, but only made one company (VECO) hit the TOP FIVE money-making concerns in AK, caused never-to-be-settled conflicts in Alaskan communities among those who were given clean-up jobs and those who were not, changed forever the fishing fleet in some areas (due to ability of the cleaning money to upgrade), and once more allowed many non-resident Alaskans to make a quick trip North and go home with pockets loaded. Now I am pleading with the Court -- PLEASE force the oil industry to put in place equipment and plans to avoid a repeat of all the mistakes made in PWS because as surely as we know the spring eventually will come again, we know there will be oil spills in the future. Don't just let the State bureaucrats receive a big bundle so they can play "Favorites"; instead insist on equipment and plans to handle the next spill. To help with the planning, I call your attention to the outstanding creative thought and projects of individuals who on their own tried to clean up the oil spill. Maybe community planning groups could contribute to the final plan.

Thanks for reading my comments.

Sincerely,
Diane Sue McElroy

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HC 2 Box 705

Kasilof, AK 99610

April 5, 1991


House or Senate Special Committee on Exxon Valdez
Litigation Settlement

P.O. Box V

Juneau, AK 99811-3100

Greetings:

Thanks for the opportunity to comment on Exxon Valdez oil spill civil settlement and the criminal plea agreement; however, please give the public more facts and as much info as possible so we can make reasonable comments. Below are some of my questions, the answers to which would enable me to comment.

- 
- 1) Is the State settlement pressing only civil charges or also criminal charges?
 - 2) Will the settlement forever deny the State the right to press criminal charges against Exxon?
 - 3) Does the settlement provide for future claims not known at this time -- decimation of fish runs in certain areas, permanent habitat destruction, etc.
 - 4) How and where will the State spend the settlement money?
 - 5) What % of original claim is the State accepting in settlement?
 - 6) Are individual fishermen and village claims (through TAPS) affected by the State settlement and in what way? For instance, since State action will set precedent, will each individual claim only be settled for same or less % of original claim as State accepts?

Thanks for supplying further information through the media. We need to know the terms of settlement.

Yours truly,

Mary Joe McElroy

Alaska oil spill settlement.

Your Honor,

10 April, 1991.

I am a private Alaskan citizen. I had a claim against Exxon that was denied and I presently have a claim against the Trans Alaska Pipeline Fund pending.

I believe the agreement should be approved and settled at the earliest possible date.

I have no knowledge of the Law but I think other parties are culpable in the grounding and subsequent litigation. If others are culpable, as it seems to me, the entire guilt shouldn't rest on Exxon as it does now.

First is the claim Captain Hazelwood, an Exxon employee, was "drunk" in Valdez and then went to his ship in this condition and caused the grounding. I have never heard the question asked why there was no screening or testing before he was allowed on the ship. The lack of testing on Exxon's part shows gross negligence in the control of it's employees.

My contention is that the Alaska Civil Liberties Union, with the vocal backing of our press, was the reason for no testing on "Constitutional" grounds.

Immediately after the grounding Exxon and the other Companies, working on the spill, initiated testing programs that are still in place today. There has been total silence from the Union and the press on the issue of testing ever since.

Second is the adversary policy versus negotiations.

Our Governor, a lawyer, set the adversary stage by publicly stating he would shut down the pipeline. He went to the Lower 48 and hired lawyers, on a no bid contract, to prepare Alaska's case.

Shortly after the Spill Exxon put paid notices in the paper that they were sorry for the accident, they apologized and said they would be financially responsible. Later they opened claim offices to grant relief for legitimate claims (without lawyers if desired). My personal claim was denied but the newspaper ads and the claims offices show Exxon was working in the field of negotiations versus the Governor's litigation.

In the last few months Alaskans have negotiated this settlement and if it is approved it will benefit Alaskans with no lawyer fees deducted.

The papers said the Lower 48 lawyers had benefited by 11 million dollars so far in the adversary role. When, and if, the State of Alaska settles going this route all the claimants will see at least one third of their settlement going to other lawyers. So this boils down to a lawyer - lawyer case some distant time in the future as opposed to the present Governor's settlement now.

I have to put all my cards on the table.

The present Governor says he is going to develop Prince William Sound with part of the settlement money. I have submitted a boating safety program for Prince William Sound that will stand a fighting chance if there is a settlement. If there is no settlement I'll be back to square one.

The open door for the "drunken" Captain and pouring millions of dollars into the Lower 48 show me that Exxon isn't standing alone in the dock.

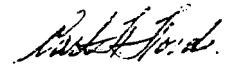
Coast Guard regulations spell out the duties of a Lookout but we never heard a word about the lookout's actions, or lack of them.

The Governor mandated a Show Trial for the Captain. The Prosecutor's office had to come up with a "Chinese Wall" strategy that was hilarious. It may have been succeeded by the "expert" who was trying for a new record in extrapolation.

Even if the settlement isn't adequate at least it will stop the lawyer hemorrhage and put some money back in the State of Alaska (possibly Prince William Sound).

Carl F. Ford
P.O. Box 103130,
Anchorage, Alaska
99510

Sincerely,



APR 11 1991

FEDERAL U. S. DISTRICT COURT

7216 Lake Otis Pkwy
Anchorage, AK 99507

Judge Russell Holland
222 W. 7th Ave, room 261
Anchorage, AK 99501

Dear Judge Holland:

Attached is my letter to Governor Hickel, sent earlier today, expressing my non-acceptance of the Alyeska oil spill agreement, as it has been presented by the media.

We believe there was too much secrecy in arriving at the agreement, not enough information divulged to the public, and the public input period is far too short. We believe the amount of money Alyeska is being assessed for clean-up and fines is far too low, and the 10-year payment period is far too generous.

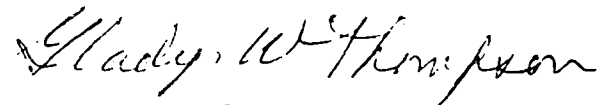
We hope your decision will be to reject the present agreement, to require that the public be informed of what went on in the negotiating process, and that the input period be lengthened considerably. We hope that all of the facts of the settlement will be forthcoming.

Thank you for your consideration of our input.

Sincerely yours



Glenn F. Thompson



Gladys W. Thompson

APR 11 1991 (34)
FBI U. S. D. JUSTICE

**THOMPSON
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TELEPHONE (907) 344-201

7216 LAKE OTIS PARKWAY • ANCHORAGE, ALASKA 99506

April 10, 1991

Walter J. Hickel
Governor of Alaska
3601 C Street, Suite 758
Anchorage, AK 99503

Dear Governor Hickel:

Please do not accept the Alaska oil spill settlement for Alaskans in its present form as it has been described to us through the media.

We need **ALL** the facts revealed to us before we can make a decision.

Many of us have reason to suspect that the reason for so much ~~se-~~crecy in the negotiations can be that too many of the negotiators on the State of Alaska side are more pro-oil than pro-Alaska, and are therefore afraid to reveal all of the details to impartial ~~ex-~~amination by all interested Alaskans.

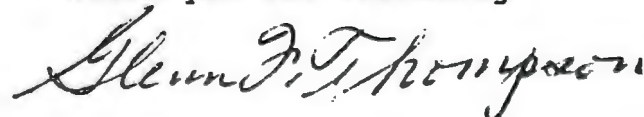
I thought that shutting out the public from decisions about crucial negotiations of vital interest to everybody, by discussing and ~~con-~~cluding them behind closed doors was a thing of the past.

True, we are being given the opportunity to give input now, but **only after** the negotiations have been completed, as a take-it-or-leave-it proposition. On that basis I would reject it, and I hope that **most** other Alaskans will do likewise.

Onebillion dollars is not much compared to the enormity of the ~~damag~~ I am sure that Alyeska would be most happy to get off that easily fo its carelessness. In fact, with the proposed 10-year payment period, it could very well **make** money on the deal.

I vote **NO** on acceptance of the secrecy and the probable over-generosity of the State's negotiators.

Thank you for listening



Glenn F. Thompson

April 11, 1991

Judge Russell Holland
Federal Court
222 W. 7th St. (Box 4)
Anchorage, Ak 99501

c/o Clerk's Office Rm. 261

Dear Judge Holland:

In view of oil spill information made public only three or four days ago, and hopefully with more to come, I ask that you extend the period for public response for at least another 30-60 days. (Also give more publicity to the correct name and address where the response should be sent.)

We need to read and digest this very important material before responding, as all facts should be known before making an intelligent decision.

Meanwhile, as expected Exxon and its cohorts, continue lying all the way to the banks. Their profits are at all time highs, particularly after gouging the public by raising the costs for gas to cover their own during the "War".

How can a just settlement be made until all facts are in and digested by the people?

If and when settlement is made, let us and everyone else get the repayments (fines, etc.) up front, not in the future. What would happen to the repayments if EXXON merges, is bought out, goes bankrupt, gets a Ch. 7, 11, 13, etc. BEFORE we were paid (during a waiting period)? How much interest, even at 2% could an entity make on \$660,000,000. million during an 11 year period? Why shouldn't that money be given to the victims, rather than left with the aggressive, unconscionable predators?

Our democracy is "hanging out there" and needs strengthening for it to endure in spite of the grievous assaults by greedy, money-hungry corporations or individuals.

Let's give the people an extended chance to speak!

Thank you for listening and doing your best!

Sincerely,


Gladys W. Thompson

APR 11 1991

FED. U. S. DIST. COURT

35



National Audubon Society

NATIONAL CAPITAL OFFICE

801 PENNSYLVANIA AVENUE, S.E.

WASHINGTON, D.C. 20003

(202) 547-9009

April 11, 1991

The Honorable H. Russel Holland
U.S. District Judge
c/o Clerk of the Court
Room 261
United States District Court
222 West Seventh Avenue
Anchorage, Alaska 99513

Re: United States v. EXXON Corporation and EXXON Shipping Company
No. A90-015 Criminal

Dear Judge Holland:

The following comments are submitted on behalf of Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace U.S.A., National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, and Trustees for Alaska ("the Conservation Groups") in response to the Court's March 22, 1991 Notice inviting public comment on the plea agreement entered into between the parties to the above-captioned proceeding. The Conservation Groups appreciate the opportunity to submit these comments. We are aware that you have offered the public an unusual opportunity to apprise the Court of its views on a criminal matter. But the events that led to the February 1990 ten-count indictment returned by a federal grand jury against EXXON and EXXON Shipping ("defendants") and the resultant consequences of those events for the environment of Prince William Sound and the surrounding area warrant the fullest possible public review of the settlement of the criminal charges against those defendants.

However, this review is hampered by the parties' failure to disclose information in their possession on the impact of the spill on the environment of Prince William Sound, Gulf of Alaska, Cook Inlet, and other affected areas making it difficult to give the Court an informed opinion on the adequacy of the proposed criminal fines.¹ Consequently, we cannot advise the Court with specificity

¹ The recent release by the United States of a 19-page summary of some of the information underlying the proposed settlement agreement does not cure this defect.

on whether the proposed criminal fines will provide restitution for the damage done Prince William Sound and its environs, or are even a "just" punishment for the crimes committed by defendants. This defect taints the entire settlement agreement. We ask the Court to order the release of all relevant information by the parties to the agreement.² Approval by the Court of the criminal plea should await such disclosure, and an opportunity should be given to the public to submit supplemental comments based upon that information.

The Conservation Groups view as central to the settlement of the federal and state governments' claims against defendants the imposition of a substantial criminal sentence. This sentence should reflect the seriousness of the offenses that underlie the federal indictment, provide restitution for damage to the Sound and act to deter future criminal behavior by defendants and other similarly situated businesses. We believe that the proposed agreement will not achieve these goals for the following reasons.

1. The Proposed Criminal Fines Are Insufficient

Based on what is known about the impact of the spill on Prince William Sound and applying basic tenets of criminal sentencing, the Conservation Groups believe the proposed fines are insufficient. We reach this conclusion after examining their correlation to the crimes that have been committed, their projected impact on defendants, and the extent to which they provide restitution for Prince William Sound and the species that depend upon the Sound for their survival.

The proposed criminal fines bear little relationship to the enormity of the crime against the environment committed by the defendants. These crimes are among the most heinous crimes against our environment to date. The crude oil that migrated from the *EXXON VALDEZ* contaminated 1,200 miles of shoreline, four National Wildlife Refuges, two National Parks, one National Monument, and one National Forest. It also destroyed migratory bird habitat, seal and lion haul-out areas, and six salmon hatcheries. According to a summary of natural resource damages from the spill released

Not included are the results of various economic studies. Without this information, the impact of defendants' conduct cannot be quantified.

² At minimum, the Court should order the United States to disclose the information in its possession, because of its special status as a Trustee of public resources.

on April 9, 1991 by the United States,³ several hundred bald eagles and as many as 500,000 birds of various species and several hundred thousand more chicks perished as a result of the spill. As many as 5,500 sea otters and 200 harbor seals may have died. Serious harm was done to at least 26 archaeological sites, and to the hunting and fishing lifestyles of Native villages. Contaminated clams and invertebrates are a continuing source of pollution to sea mammals, and the long-term impacts of the spill on fish and wildlife have yet to be determined.

The proposed criminal fines are significantly lower than those that might have been assessed had the Court elected to apply the Alternatives Fines Act, 18 U.S.C. Sec. 3571(d). Under that law, which the United States implied it would ask this Court to apply, defendants could have been assessed criminal fines at twice the proven pecuniary loss resulting from their criminal conduct.⁴ While such high amounts might not have actually been assessed by this Court, they do provide some measure of the potential seriousness of the crimes.⁵

2. Innovative Sentencing Measures Would Deter Repetitious Behavior

Corporations, particularly ones as large as defendant EXXON,

³ "Summary of Effects of the EXXON VALDEX Oil Spill on Natural Resources," filed with this Court April 8, 1991.

⁴ This would increase defendants' exposure to criminal fines to \$2 billion (twice the amount of civil damages assessed against defendants in the proposed settlement agreement). Depending on the accuracy of recent reports on the results of the State of Alaska's economic studies, this liability could run as high as \$6 billion.

⁵ A substantial criminal fine in this case, however, may deter others in the oil industry from engaging in similar criminal conduct. As there is ample evidence of widespread noncompliance with environmental laws and regulations by this industry, this Court should weigh the broader deterrent effect of high fines in evaluating the adequacy of the proposed fine. See Inland Oil Spills, Stronger Regulation and Enforcement Needed to Avoid Future Incidents (General Accounting Office, February 1989) (GAO/RCED-89-65).

pose particular challenges with respect to imposing sentences.⁶ Fines, even substantial ones, are rarely sufficient to induce behavioral reform.⁷ This fact is clearly illustrated in the instant case where the management of defendant EXXON has not only consistently refused to acknowledge any culpability or remorse for the havoc it wrought on the environment, but views the \$1.1 billion settlement agreement as a "cost of doing business."⁸ This unrepentant attitude makes it unlikely that defendants will take action to avoid a repetition of the events that caused this catastrophe. Therefore, the Court should consider the imposition of supplemental "innovative" sentencing measures to achieve a deterrence objective.⁹

We ask the Court to consider placing defendants on probation. Probation is particularly appropriate in sentencing a corporation where the goal is not to drive it out of business, but to preserve it as a constructive member of society, and where fines alone may not reform corporate behavior. Creative probation conditions can be tailored to each category of offense and to the characteristics of the offender to achieve the rehabilitation of defendants.

In this case, the Court could include as a condition of probation, or as a free-standing measure, a requirement that defendants' facilities be subjected to a periodic environmental audits by a court-appointed independent auditor. Such an audit could be designed to identify specific improvements in defendants'

⁶ Corporations do not go to jail and can absorb fines, because of their sheer wealth -- in no case more true than here -- and their ability to pass them on to customers. See F. Grad, *Treatise on Env't'l Law* at 2-555.

⁷ See Coffee, *Corporate Crime and Punishment: A Non-Chicago View of the Economics of Criminal Sanctions*, 17 *Am.Crim L. Rev.* 419, note 20 at 468, 475-76 (1980); Bower, "On the Amoral Organization" in *The Corporate Society*, 178, 197 (R. Marris ed. 1974).

⁸ Chairman of the Board of EXXON Corporation Rawls recently compared the total cost of the settlement to the cost of opening two offshore oil and gas wells.

⁹ See United States Sentencing Commission Proposed Amendments to the Sentencing Guidelines for the United States Courts. 54 Fed. Reg. 47056 (November 8, 1990).

equipment and operating practices to prevent a recurrence of the events that led to their conviction, and of other possible environmental problems as well. Environmental audits, like probation, can be viewed as a tool to "rehabilitate," rather than merely to punish environmental violators; analogous to community service requirements imposed on convicted drunk drivers.

3. Exculpation of Alyeska Pipeline Service Company

Conservation Groups object to the release of Alyeska Pipeline Service Company and its owner companies from any culpability under federal law arising from the events that unfolded after the grounding of the *EXXON VALDEZ*. Alyeska's failure to comply with the oil spill contingency plan in effect on March 24, 1989 significantly compounded the environmental damage that eventually occurred. According to material recently submitted to this Court by Rep. George Miller, Vice Chairman of the Committee on Interior and Insular Affairs, U.S. House of Representatives, Alyeska and its owners had knowledge of Alyeska's inability to respond to an oil spill in Prince William Sound, and failed to take remedial action.¹⁰

In light of this information about Alyeska and its owner companies' conduct, it is clearly not in the public interest for the United States to waive its right to pursue criminal as well as civil and administrative penalties against them. Alyeska and its owner companies gained access to environmentally sensitive lands to build the Trans Alaska Pipeline System, and then set out on a course of deceiving the public about their capacity to comply with the undertakings they had made to gain this privilege. If this portion of the agreement is approved, they will not be held accountable for their misconduct. The Court should strike that part of Paragraph IIIA that exculpates Alyeska and its co-owners.

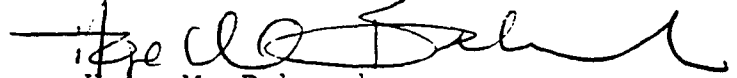
4. Alaska Should Not Be Insulated From Review

The Conservation Groups protest the insulation of Alaska from any administrative or judicial review of its actions under Paragraph IVA. Not only does the public have a right to review those actions and to challenge any that are inconsistent with the agreement, but the United States and this Court should not waive their authority to enforce the provisions of the agreement. Paragraph IVB is unenforceable, and should be struck by the Court.

¹⁰ April 8, 1991 letter from Rep. George Miller to Hon. Russel Holland and Hon. Stanley Sporkin, filed in No. A90-015 CR, A91082 Civil, A91083 Civil, A91081 Civil, 3AN-89-6852 Civil, 91-484 SS Civil.

We appreciate your consideration of these comments and hope that they will be helpful in your evaluation of the plea agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Hope M. Babcock', written over a horizontal line.

Hope M. Babcock
General Counsel
National Audubon Society

On behalf of Conservation Groups

RECEIVED

APR 11 1991

FED. U. S. DIST. COURT

Judge H. Russel Holland

April 10, 1991

U.S. District Court

Re: Plea bargain by
the Exxon Corp.,
concerning Exxon Valdez
oil spill.

Dear Judge Holland:

It appalls me to have to address you about this case. That the State of Alaska and the federal government are so willing to settle this suit, with so little pain to the Exxon Corporation, is disgusting. I thank you for at least allowing the public to address this issue.

In 1977, I purchased a three acre spot of land

horrific, particularly as my stiff passie by the thousands of sea birds that nest on "Guil Rock", knowing that they represent a fraction of the birds killed by the Exxon Valdez oil spill, and that these creatures could be totally eliminated by a spill of far less magnitude ~~that~~ than that of the Exxon Valdez.

Please, Judge Holland, do not allow the Exxon Corporation - run by rich men - to be held, essentially, unaccountable. I believe there are shareholders in the Exxon Corp. who are deeply concerned about company practices. I also believe they are a pitifully few. The Money God is too strong; Witness

and, certainly, most other Americans will be.
Please, before you rule, consider what the primary
motivating factor is in the three litigants responses.

If Exxon has the 'yep, it's a good deal.', that
is their eye, then it's money. If the state says
'yep, Prince William Sound will be a giant theme
park.', then it's money. And if the Federal government
says, 'yep, onward and outward.', then
conservation and preservation and a minimal amount
of reason give way to money.

Please, Judge Holland, if that is the case, then
let us start the process of sentencing them to
eat money. Because if companies of any sort that

April 11, 1991

APR 11 1991

FEDERAL U. S. DISTRICT COURT

Honorable Russell Holland
Federal Court House
Anchorage, Alaska 99501

Dear Sir:

I imagine that you will be receiving and reading through many letters in the next few days. I watch the news and read the paper regularly, yet Wednesday was the first time that I heard you were requesting statements from the public in regards to the Exxon Valdez disaster. This happening one day before your deadline.

I do not envy your position, for there will always be those that will not be satisfied. But sir, you are not here to satisfy. You are here to do the right thing, which is uphold the laws of our land and dispense justice.

In some ways our jobs are alike. I am a youth counselor for the State of Alaska. I can write release papers at any time for my counselees, or hold them until their institutional order expires. To them, their freedom is many times more important than the 11,000,000 gallons of oil that washed ashore in Alaska. My job is to find out as much information as possible, to develop a treatment plan, to work with my resident until he either proves his ability to act responsibly and obey our laws, or until his institutional order expires at which time I am forced to release him. How can I make the right decision if I do not have the facts in front of me? How can I release a resident if he is merely surface conforming in front of me, yet behind my back he is bragging to his fellow juveniles about how he is "getting over" on the system? I take as much time as is needed before I make my decisions. I observe the behavior of my resident very closely to find out just what is his real behavior.

The public does not know enough of the facts leading up to or after the spill to make correct decisions. We can only go by what we see or hear in the news, which is opinionated one way or another. As we approach the deadline, more information is surfacing and none of it appears to be good.

Why are we in such a haste to settle this? This will affect the people of Alaska for at least 10 to 20 years into the future. Everyone has made promises, from the oil companies to state and federal governments. Yet what promises have been kept? Only under pressure has anything been done. What does this behavior show me?

Honorable Russell Holland
April 11, 1991
Page Two

It has been shown that Exxon will not be losing much in the settlement; they will even be able to deduct some of their expenses through their taxes! If I was found guilty of a criminal act, would I be afforded the same luxury? Where is the justice? Would the average citizen have the same opportunity to plea bargain to such a degree? What message is going to be sent around the world?

In my opinion, big business and the government are in bed together. They both have much to lose so they are making their deals behind closed doors. Already the general public couldn't care less about politics because of the feeling that they as voters have little or no control. Here again is another classic case of the public saying one thing and the government doing another. Government is supposed to be protecting the public, yet the politicians are busy protecting themselves. If I had the facts to make the correct decision, I would know who I could trust during election time, and cast my vote accordingly. If the politicians knew the public was more active in their districts, and monitoring their behavior, then perhaps they would be less willing to make deals with big business - deals that their constituents often pay the price for.

I am against this settlement! I want to know who knew what and what part they played, so I can hold them accountable, as I would be held accountable for my actions and behavior. No more deals, no more plea bargains. Please send a message of truth, responsibility, and above all JUSTICE FOR ALL throughout our land. This is the only way we can prevent disasters such as the Exxon disaster from happening again.

Please do not rush into your decision just so our "honorable" Governor Hickel can begin "his" gas pipeline and the oil companies can begin drilling in even more environmentally sensitive areas. Their behaviors are proven - their track records speak for themselves. They need to earn the public's trust before they are ever allowed to work in our back yard again.

I'll be here twenty years from now - it's very likely that they will not.

Most sincerely,



J.R. Malesic

JM:kf

APR 11 1991

FEDERAL U. S. DISTRICT COURT

Tom Lakosh

Box 100648

Anchorage Ak 99516

Honorable N. Russel Holland

Having only recently been informed of your request for comments on the settlement of Criminal Charges against Exxon I am submitting an abbreviated response to your request.

If I were to offer money to a DA to avoid criminal prosecution I would be charged with bribery, why isn't Exxon

If I were to take water fowl illegally I would be fined heavily for each bird I so took, why isn't Exxon?

If I were to take marine mammals illegally I would be fined heavily and probably thrown in jail for years. Taking in this case refers to simple harassment of those animals

If I were to illegally dispose of hazardous waste heavy fines and jail time would be probable.

If I were to kill or harass Bald Eagles, much less 200 of them, I would have permanent record and board

If I were to engage in the above actions in a deliberate manner I would be a criminal

my intentions I would be criminally liable
for fraud and civilly liable for
punitive damages probably treble damage

If I bombed a church I would
be criminally liable for wanton destruction
and violation of the civil liberties of the
persons seeking to freely express their
religion.

Your honor the sound is my church
The wanton destruction of my church is
the only reason I have cried in 22 years

Sincerely
Tom LaRosh

TRADITIONAL DENA'INA TRIBE
Council Of Elders
Box 143
Sterling, Alaska 99672

To: The Honorable H. Russel Holland
United States District Judge

From: Mary Ann Mills, Council Member
Traditional Dena'ina Tribe
Kenai Peninsula

Subject: Exxon Valdez Oil Spill

Date: April 11, 1991

The Traditional Dena'ina Tribe is requesting you to rule against the State of Alaska from making a settlement with Exxon on the Exxon Valdez oil spill. We request all withheld information pertinent to the damage caused by the Exxon Valdez oil spill be made public and submitted to the Traditional Dena'ina Tribe, Council of Elders. This is the only way the Traditional Dena'ina Tribe, Council of Elders can assess the effects (damage) the oil spill has and will continue to have upon our people, land, and resources. We will submit our claim after perusal of such documents, and we may request monetary value compensation.

We ask you to peruse the Overview presented to you at the Northern Justice Conference (1990), as it is the bases of federal and state (entities) in the dealing with the Indigenous People.

We request no third party interference from Native Corporations, as in accordance to the CERCLA & SERA Amendments to the Clean Waters Act; which prohibits corporate interference, but mandates tribal involvement and tribal consent.

Thank you for your assistance in these matters of law.

*Mary Ann Mills
Council of Elders
Traditional Dena'ina Tribe*

CHICKALOON VILLAGE
CHICKALOON VILLAGE FISH AND GAME
CONSERVATION COUNCIL
HCO4 BOX 9880
PALMER, AK 99645
(907) 745-0505

April 11, 1991

Hon. Judge H. Russel Holland
U.S. Federal District Court
Anchorage, AK

Hon. Judge Holland,

This letter is to put Chickaloon Village, a federally recognized Tribal Government in South Central Alaska, on record as strongly opposing the proposed oil spill settlement negotiated between the Federal Government, the State of Alaska and the Exxon Corporation.

Information recently released to the public has revealed what many of the Alaska Native Villages have feared --that the documented effects of the spill are far worse than previously revealed, and the long-term effects on subsistence (and therefore Native culture, way of life, and economics), the environment (our sacred Mother Earth) and the health of the people of Alaska (Native and non-Native) are not yet known;

The lack of involvement in the negotiations for this proposed settlement by Traditional Alaskan Tribal Governments, both those effected directly due to their location on Prince William Sound, and those inland who, like Chickaloon, also depend for our survival on fish, game and fowl which will suffer long-term effects from the oil spill (please refer, for example, to the latest study released regarding the huge mortality rate of pink salmon adults and roe).

When both the state and the federal governments are persecuting and imprisoning Alaska Natives for subsistence fishing and hunting, in other words the taking of fish and animals to feed our families according to our traditional way of life, it outrages us that Exxon, the killer of countless fish, birds and mammals, is let off with nothing more than a slap (one Anchorage reporter stated that the fine proposed for Exxon was the equivalent of fining person who makes \$40,000.00 a year \$ 34.19). Recent revelations regarding the irresponsibility of the Alyeska Pipeline Corporation must also be addressed before all criminal charges are dropped in exchange for what amounts to chump change for these corporate giants.

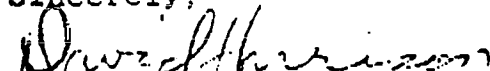
While no amount of money, or jail time for corporate

executives, can make up for the suffering of our fish and animal relations, who are still dying horrible deaths as a result of Exxon's negligence, or the loss of our subsistence way of life which has sustained us since time immemorial, it concerns us deeply that they (and we) have been determined to be worth such a paltry price.

Federal law mandates that Native Peoples give their consent before their resources and lands can be appropriated (25 USCA 177). Not only did this never occur in Alaska, but the Native Peoples directly effected by the spill were not allowed to be included in the negotiations. (The CERCLA and SERA amendments to the Clean Water Act specifically prohibits the so-called Alaska Native Corporations created by ANCSA from participation in any such negotiations on behalf of Alaska Native Peoples, although they do provide that the Traditional Tribal Governments in Alaska shall be participatory in all such proceedings, negotiations and settlements.)

Our sacred lands, waters and way of life have been seriously threatened and damaged by the Exxon Valdez oil spill. The suffering continues and the long term effects are only now coming to light. Why the need to act so quickly to "bury the hatchet" at the expense of truth, justice and human rights? Who will really benefit by such a quick and easy resolution to this matter? Chickaloon Village does not believe its best interests (nor those of the other traditional Native Villages) have been reflected in this proposed settlement, and we know that a great many Native Peoples throughout Alaska feel the same. When, if ever, will our voices be heard, here in our homeland?

Sincerely,



David Harrison
Tribal Administrator,
Chief Fish and Game Officer
Chickaloon Native Village

****END****

TO: Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

April 10, 1991

RE: A 90 - 015 CR

FR: Theodore P. Thoma
#2 Marine Way
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS
concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

APR 11 1991
FED. U. S. DISTRICT COURT

For the record, I am a self-employed environmental lobbyist and have been closely involved in Alaska resource issues for over 20 years. As such I was a chief proponent for the re-design of the Alyeska pipeline, for an all land route through Canada, and for full environmental safeguards to protect state and national/international waters connected with the eventual marine terminal and tanker route emanating from Valdez. As you are aware, the pipeline and marine route escaped full NEPA court review as a result of Congressional action instigated by the Alaska delegation in 1973. I still believe that NEPA review would have addressed the basic environmental safety and compliance responsibilities that were the root cause of the EXXON VALDEZ disaster, and subsequent inadequate response. My direct comments follow:

1) I oppose the agreement to drop the FELONY criminal charges against Exxon Corporation and Exxon Shipping Company (A90-015). I strongly believe that the pursuit of these grand jury charges and probable convictions are the only way to reform the inadequate staffing and competency levels aboard U.S. tankers that service Valdez and the West Coast to Panama. From the week-long live broadcast of the National Transportation Safety Board (NTSB) hearings in the summer of 1989, it was obvious that:

- A) Mr. Frank Iarossi, former chairman of Exxon Shipping, knowingly cut back the number of crew members aboard the EXXON VALDEZ, compromising safety, stretching the physical ability of crew to competently man this carrier of dangerous, toxic material;
- B) That Mr. Iarossi, Exxon Shipping, and Mr. Hazelwood, the ship's master, allowed Mr. KAGAN, a known incompetent, to serve aboard the EXXON VALDEZ, against the wishes and counsel of competent crew members who knew of his mental and physical problems, and caused KAGAN to steer the vessel through dangerous, ice-choked waters, resulting in the crash of the EXXON VALDEZ and resultant spillage of 11 million gallons of oil;
- C) That Mr. Iarossi, Exxon Shipping, and Exxon Corporation knowingly allowed Mr. Hazelwood to operate the EXXON VALDEZ without monitoring his acute alcoholism, and in fact fabricated the small amounts of paperwork in Exxon files relative to Hazelwood's condition. These two reports were without dates or signatures, yet purported to show that monitoring of Hazelwood did occur;

Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in lieu of applicable state laws covering crew safety and competence.

PAGE 1 of 2

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Page 2 of 2

2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly the Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early am hours, one of the first calls made by Mr. Iarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami, for a C-5 aircraft, specially fitted for disepesent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

APR 11 1991

U.S. DISTRICT COURT

April 11, 1991

HAND DELIVERED

The Honorable Judge Russel Holland
U.S. District Court House
222 West 7th Avenue
Anchorage, Alaska 99501

RE: EXXON SETTLEMENT AGREEMENT

Dear Judge Holland:

I respectfully urge you not to approve the Exxon Settlement Agreement. The recently released studies clearly indicate environmental and economic damage far in excess of what was originally calculated. There are estimates of Three to Eight Billion Dollars in provable damages. A settlement figure of 900 Million Dollars (approximately 500 Million in real terms) obviously is not in the public interest.

As to the 100 Million Dollars in settlement of criminal charges, I would suggest to you that this is also a grossly inadequate figure. Your Honor, I know you are aware that in order to be an effective deterrent penalties for crimes must be adequate. Do you honestly believe that 100 Million Dollars constitutes a significant punishment and deterrent for a corporation like Exxon? I would strongly suggest to you that it does not.

I have little faith in the wisdom and fortitude of the Alaska Legislature; therefore my hope lies with you. Your Honor, I urge you again, please, in the best interest of everyone, disapprove this agreement.

Respectfully Submitted,

Laura M. Schaffer

LAURA M. SCHAFER

P.O. Box 877569

Wasilla, Alaska 99687

Telephone: (907)373-3195 Home
(907)376-2414 Work

YALE H. METZGER
1102 C Street
Anchorage, Alaska 99501
(907)277-7245

April 10, 1991

United States District Court
Federal Building U.S. Courthouse
222 W. 7th Avenue
Anchorage, Alaska 99501

Re: Public comments regarding proposed settlements in
M/V EXXON VALDEZ criminal prosecution.

Dear Judge:

I am a frequent user of Prince William Sound as the sailor of a pleasure boat. Accordingly, I have followed the press reports of the settlement discussions between Exxon and the government carefully. I have no financial interest in the outcome of your decision regarding the proposed settlement of the criminal charges against Exxon. However, I believe that financial interests are not the only interests which should influence your decision in this matter. Perhaps those with no financial stake in the outcome of this case have the clearest view of the monumental implications of the proposed settlement.

The acceptance of the proposed settlement would remove the defendants' conduct from public scrutiny. Although Exxon's conduct may come under scrutiny in the litigation of civil suits, these could easily be settled out of court; forever closing the doors on the public's view of the defendants' conduct leading to this disaster. As a practical matter, the exposure of the defendants' conduct to the public's scrutiny in a criminal trial would seem to substantially reduce the amount of discovery necessary in the multitude of civil law suits resulting from the spill.

Ideologically, informed public opinion is the best basis for public policy. The criminal trial of the defendants seems to provide the only assurance that the public will be provided both sides of the story on which to base its opinion. Presently, public opinion is based in part on the allegations of the parties as reported in the press, and in part on information leaked from the closed-door negotiations leading to the proposed settlement. I believe that the impact of closing the doors on the information which would be exposed at a criminal trial is obvious and an important factor weighing in favor of not accepting the proposed settlement.

My second concern regarding the proposed settlement is the impression that it will leave on industry interests if approved. I am concerned that the ratification of the settlement would reinforce the belief that industry can solve its problems by spending money. Early in the effort to respond to the spill, Exxon officials vowed to leave Prince William Sound the way they found it. Anyone who ever walked the beaches of Prince William Sound knew that this promise was impossible to fulfill. Despite being impossible to fulfill, this is an understandable corporate reaction to the public's pressure at the time. Exxon's naivete about the environment in which they did business probably lead to their frivolous vow. Perhaps if the spill occurred on Wall Street or in the hallways of an office building in Houston, Exxon officials would have been better prepared to respond to public pressure. Allowing the defendants to, in effect, buy their way out of the present case, reinforces the same flawed reasoning that lead to such statements and (1) discounting the possibility that a catastrophic spill would occur; (2) failure to adequately prepare for a catastrophic spill; (3) failure to recognize and understand the uniqueness and delicacy of the environment in which they did business; (4) failure to realize, or acknowledge, the social, economic and aesthetic impact of their corporate decisions; (5) failure to recognize the ramifications of leaving irresponsible people in positions of great importance; and (6) failure to fulfill the promises made back when Exxon undertook to make Prince William Sound its place of business.

The other side to the above argument is that it would be expensive to try the defendants and that the government may end up recovering less than the amount agreed upon in the proposed settlement. However, I believe that the cost to the public to try this case, combined with the risk of recovering less than specified in the proposed settlement, is outweighed by the benefit of placing the defendants in the limelight of a fair criminal trial.

The roughly one billion dollars which the defendants would pay pursuant to the proposed settlement comes with no enforceable assurances that it will be used to offset the damage caused by the defendants' conduct. In fact, some of the State of Alaska's proposed uses of the settlement funds are quite controversial and may result in further damage to Prince William Sound. I refer to the plans proposed by the present state administration to improve access to the area.

I believe that the influence on public policy from the exposure of the defendant's conduct leading to the spill is the only outcome which can be reasonably calculated to deter board room policies based on oversights or unacceptable risks. The premiss for public opinion should be facts. I do not believe that the public presently has enough facts on which to base an informed opinion. Our lawmakers cannot even seem to obtain the necessary information with which to draft laws and regulations. More recently, a release of information by NOAA suggests that

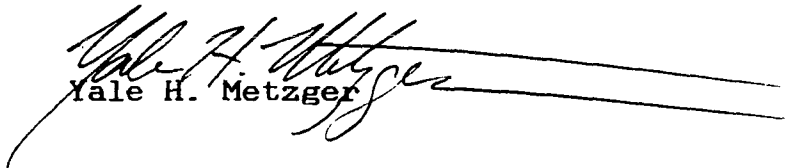
information currently compiled about the results of the spill is incomplete. The proposed settlement appears to be premature in light of our inability to adequately measure the damage caused by Exxon. The proposed settlement may obviate much of the need for future study of the effects of the spill.

The recovery of the dollar value of damages caused to Prince William Sound is only one of many public benefits which could be realized by the trial of the defendants in this case. There is no guarantee that any fines contemplated by the proposed settlement will support the objectives of our criminal justice system. This leaves the proposed settlement even less significant in view of the broad goals of our criminal justice system.

In short, I am concerned that the economic impact from the proposed settlement is not enough of a deterrent to prevent future flawed policy making like that which lead to the spill and not enough information is presently available with which to measure an appropriate punishment in the form of a fine should Exxon be convicted of a crime.

The above comments are respectfully submitted for your consideration.

Sincerely,


Yale H. Metzger

C:\WP51\EXXON.LTR

EX-114

APR 11 1991

FED. U. S. DISTRICT COURT

1040 Bench Ct.
Anchorage, AK 99504
April 10, 1991

Judge Russel Holland
Federal Court
222 West 7th
Anchorage, AK

Re: Exxon Valdez Oil Spill

Dear Judge Holland:

I understand from a newspaper article that you have made a call for public comment on the plea bargain proposed for the Exxon Corporation and its shipping subsidiary in the case of the Exxon Valdez oil spill. The following are my comments.

I understand from news media stories that a settlement of one billion dollars is proposed and that this figure was arrived at as a "reasonable" figure by Governor Hickel without the benefit of any analysis about what the actual costs are. A wide range of studies have been initiated the "Trustees" in 1989 and 1990 for the purpose of determining what the environmental costs of this oil spill are. The Trustees include representatives of the State of Alaska and the Federal government. I understand that Governor Hickel did not take these studies into consideration in determining the one billion dollar settlement amount. While those studies have not been completed, indications are that the costs would be well in excess of one billion dollars. If those costs are not paid by Exxon, it is the public that will bear the burden. The value of lost wildlife and other effects on the environment are difficult to determine. But it is only fair that those costs are determined as scientifically as possible through the studies that have been initiated and that Exxon pay the full amount. I think it is unfair and unjust that the case be settled without the benefit of the studies. Governor Hickel wants to settle the suit as quickly as possible and not go into protracted legal proceedings. If the issue were mere technicalities, quick settlement would be a good idea. But technicalities are not at issue. Quantifying the dollar value of damage to the environment is at issue. This proposed settlement has strong potential for making it easy for industry to violate the environment grossly and not pay for it. People should be good stewards of the land and water. Industry, the State of Alaska, and the Federal government should all be good stewards. I think they would be bad stewards if settlement is based on only a vague notion of what the costs are rather than the best scientific information available. This one billion dollar settlement could set a poor legal precedent that would set back the cause of protecting the environment considerably.

Thank you for the opportunity to comment and for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Holder".

Tim Holder

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APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND



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U.S. DISTRICT COURT
222 WEST 7TH AVE RM 261
ANCHORAGE AK 99513

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APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

000297

THE EXXON FLEA AGREEMENT IS PART OF A PACKAGE THAT INCLUDES CONSENT DECREE, MEMORANDUM OF AGREEMENT. THAT PACKAGE IS NOT IN THE PUBLIC INTEREST, BECAUSE NEGOTIATORS INTENTIONALLY STRUCTURED SETTLEMENT TO EXCLUDE LEGISLATIVE BRANCH, BOTH CONGRESS AND ALASKA LEGISLATURE, FROM ANY INFLUENCE OR CONTROL OVER SPENDING, DESPITE CONSTITUTIONAL PROVISIONS REQUIRING ALL MONEY BILLS TO ORIGINATE FROM CONGRESS, LEGISLATURE. STATE ATTORNEY GENERAL TESTIFIED TO LEGISLATIVE COMMITTEES AS TO THAT EXCLUSIONARY INTENT BY SETTLEMENT NEGOTIATORS. JUST SAY NO.

JOE SONNEMAN TEL.463-2624
324 WILLOUGHBY
JUNEAU AK 99801



Alaska Conservation Foundation

430 West 7th Avenue, Suite 215 • Anchorage, AK 99501 • (907) 276-1917 • Fax 274-4145

April 9, 1991

Honorable H. Russell Holland
U.S. District Court
District of Alaska
222 W 7th Avenue, #4
Anchorage, AK99513

Re: Exxon Settlement

Your Honor:

For eleven years, Alaska Conservation Foundation, a 501(c)(3) tax exempt, public foundation has been supporting Alaska's environmental community. It has made more than \$2,500,000 in grants for a wide range of activities. It would be fair to say that its emphasis has been support of local citizen activities for a clean and better environment.

Alaska Conservation Foundation helps citizens who are working to improve human habitat and the natural environment without relying on government assistance, not because they are opposed to such assistance, but because the responsible government agency has either refused to help or has had to be prodded to help, often after protracted litigation. This is not the way things should be, but it is the way they are.

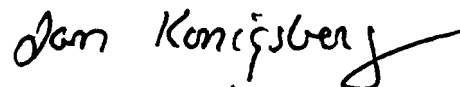
Alaska Conservation Foundation's strength is its trust in ordinary people to better their lives. Surely, it would make a great deal of sense to apportion some of the Exxon settlement to the foundation's grantmaking in support of citizen oversight of the actual restoration and rehabilitation of Prince William Sound. With the blessing of former Governor Cowper, Alaska Conservation Foundation received contributions from individuals across the country to assist citizen cleanup and oversight after the Exxon Valdez spill. The Foundation has already granted more than \$250,000 to citizen based efforts to cleanup the sound and to insure better oil spill contingency planning and preparedness. Although we should really be able to count on our representative form of government to protect the public interest, the spill proved that without continuing citizen oversight the public interest inevitably suffers.

For this reason and in addition to an "independent" board of trustees to administer the settlement fund, citizen oversight of fund implementation should be required as a condition of any settlement. Alaska Conservation Foundation is an appropriate and



responsible public interest institution to insure effective citizen oversight, and is qualified to receive funds for that purpose.

Sincerely,

A handwritten signature in cursive script, reading "Jan Konigsberg". The signature is written in dark ink and has a long, sweeping horizontal stroke at the end.

Mr. Jan Konigsberg
Executive Director

JK:sd

RECEIVED

APR 11 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

APR 11 1991

FEDERAL U. S. DISTRICT COURT

3710 Wesleyan Dr.
Anchorage, Alaska
99508
April 11, 1991

Judge Russ Holland
U.S. District Court
222 West 7th Street#4
Anchorage, Alaska

Your Honor Regarding the State of Alaska/Exxon agreement:

I do not support the agreement for the following reasons:

1. Possible SERIOUS CONFLICT OF INTEREST.

The Governor has appointed Mr. Heinze, an ex-Arco official. Mr. Heinze is acting as prime mover, consultant, and decision maker for the State of Alaska, whereas in 1988 he was active with the opposing party or parties.

Cole, our State Attorney, has possible undisclosed interests in oil leases; or may be disposed to accommodate the opposing party through previous partnerships, employment, or alignment. The public does not have information if there is a conflict or not.

Release of Alekeska from charges is not understandable since it delivered the damaging oil and is part of the consortium, including Exxon.

2. There should be no unilateral settlement between the State and Exxon.

There should be the combined interest with the State and its harmed residents and the damages should reflect all of Alaska. In this agreement Exxon and the State will settle and as I understand it, the State will join with Exxon to fight suits filed by residents of Alaska, against the State and Exxon. The State should present a position of "all for one, and one for All" to the people of Alaska. The State is in a better position to obtain damages for its people, in conjunction with the agreement of the residents not to sue the State.

3. The State of Alaska is not bargaining from a position of Strength, or using the States ability to gain just rewards.

The State claims it cannot afford a long expensive Court case--it needs a quick end to the suit.

The negotiations have been secret in that known damages have not been made public. The State representative claim the State needs money now.

The State has the means to sustain itself while pursuing just settlements by re-imposing State Income Taxes(deductible on Federal Income taxes), by restructuring or imposing other severance taxes on timber, minerals and fish. The State is obligated not to make Education and Social Services decline in order to accommodate one industry.

4. The Settlement, if made, should be in a "lump" sum with the Total amount up front. The present terms do not take into account of inflation over the pay-out years, nor lost interest.

4. cont;

The lump sum could invest the principle and spend only the interest to clean up the environment and insure implementation of Safety and Security. This endowment would be protected from political manipulation.

The State has reportedly spent \$900,000.00. The public does not know how much we actually have paid through the system. Rather than one billion, it appears that three billion would be reasonable claim. Also, the additional end expenses should reflect 100 % of actual cost.

5. Punitive damages should be awarded for criminal neglect and destruction. The residents of Alaska and its flora and fauna are innocent victims of long lasting harm.

I have always advocated we can have both oil and gas development and a safe environment. Alaskans need a fair settlement in order to go forward and to develop future plans with caution and confidence. We need a just decision, from the Court.

Your Honor, I have been a resident for about 32 years. I own joint property in the Seldovia Bay. The City of Seldovia was begging for oil containment booms to protect our Bay, there were none for Seldovia. The City asked for money to buy floater logs, across the Bay in Homer, there was nothing at that time and time was short. I immediately sent the City of Seldovia one of my first entire Social Security checks, \$300.00. I was proud of the workers in Seldovia. I never want to see this death and destruction again or suffer the tears of anguish.

Sincerely,


T.P. Burrell

3942 Turnagain Blvd.
Anchorage, Alaska 99517

H. Russell Holland
C/o Clerk of the Court
Room 261
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

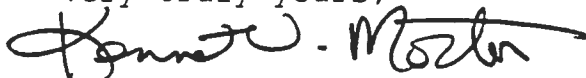
April 11, 1991

Dear Sir;

I am writing to express my opposition to the proposed settlement of criminal charges against Exxon regarding the Exxon Valdez oil spill. As a professional land use planner in private practice and as a former worker in the commercial fishing industry, I have known the Sound before and after the spill. In light of the long record of neglect on the part of Exxon, and the magnitude of the damage, I cannot believe that the proposed penalty is adequate. The penalty should send a clear message to the industry that their neglect will cost them. The proposed penalty does not do this. The proposed penalty is nothing more than a slap on the wrist and will do little or nothing to encourage greater care on the part of the industry. The penalty must be sufficiently large to hit them where it hurts, in their profits.

Thank you.

Very truly yours,


Kenneth V. Morton

APR 11 1991

EX 115

3531 Perenosa Bay Drive
Anchorage, Alaska 99515
April 10, 1991

Honorable H. R. Holland
United States District Court Judge
United States District Court
c/o Clerk of Court, Room 261
222 West 7th Avenue
Anchorage, Alaska 99513

Subject: Exxon Spill Testimony
No. A90-015 Criminal

Dear Judge Holland:

I would like to make the court aware of my feelings as a citizen of Alaska concerning the proposed settlement of the lawsuit involving the Exxon and the State of Alaska.

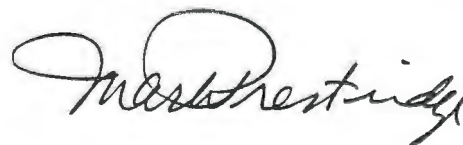
To be very specific, I am in favor of the proposed settlement. I think it is the most positive outcome from the entire catastrophe.

Money can never buy back the condition of Prince William Sound. Only nature through its own processes can restore the Sound. And since we cannot stop natural forces, the sound will be restored one day no matter what we do.

Today we think that what we did immediately in response to the spill may have been the wrong thing to do. There is no reason to think today's best logic may also change with time. As long as this argument goes on as to what was the right thing to do, the stronger Exxon's case is that they did what they were supposed to do at the time. Since natural restoration is lessening the effect of the spill, as time that passes, the more public sentiment and pressure will lessen toward Exxon.

What if the size of the settlement had been double the present amount? Public perception of Exxon is that they could afford any amount. I don't think that is true. But even if the settlement amount were double, I believe the same detractors to the agreement would be saying the same things that they are saying today. Where will it end?

It needs to end here and now. The State of Alaska should take this opportunity to put this whole thing behind us. Let's get on with our future and quit crying about what might have been!



Mark L. Prestridge

APR 11 1991

FRK. U. S. DISTRICT COURT

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KWG

APR 11 1991

FBI U.S.D. DIST. CO.

April 10, 1991

Judge Fussell Holland
U.S. District Court
Anchorage, Alaska

Your Honor,

I am writing in response to your call for public opinion on the out of court settlement with Exxon Corp. over the Exxon Valdez disaster.

I, as an active registered Alaskan voter, **urge you not to consider an out of court settlement.** I feel the comedy of errors and gross negligence that led to the disaster must be prosecuted.

Unfortunately, I do not represent any big money concerns in the state. But, as a student at UAA, an avid outdoor adventurer, a cold water SCUBA diver and sport fisherman, I feel I do represent a large cross section of the state. All this prompts me to write this letter.

I have been researching a paper on the out of court settlement with Exxon. That research has led me to the studies of probable cause of the oil spill conducted by the US Coast Guard and the State of Alaska and the Alaska State Oil Spill Coordinator. I have also looked at the original Alyeska Oil Spill Contingency Plan for 1989. These are all published reports and available to the public at the Alaska Resource Library in the Federal Building. The gross personal and corporate negligence on record is overwhelming.

I have reviewed the verdict and sentencing in the Joseph Hazelwood trial. Although Hazelwood is popularly viewed as a scapegoat, I believe a captain is ultimately responsible for what happens on his ship. There are so many departures from standard

and required procedure that they cannot be overlooked. Those in the Exxon Shipping Company are as much to blame for keeping him in his position as he is for failing in it. Justice was not served in that case.

Alyeska's part in compounding the initial errors certainly cannot be overlooked. Alyeska did not live up to its contract with Exxon or its understanding with the State of Alaska. Although Exxon Shipping Company assumed control of clean-up efforts it was not its jurisdiction to do so. The real heroes in the early response are the Cordova Fishermen.

It is evident that Alaska State government and the oil industry are necessary, yet strange, bedfellows. We have energy that the entire country requires and we are handsomely compensated for it. But the kind of negligence that led to the grounding of the Exxon Valdez cannot be tolerated, on a personal, state, or national level. We should not let ourselves be bought off by the money lavishly thrown at the ineffectual "clean-up" or the 300 million dollar offer.

The terms that allow them to take 10 years to pay the settlement and the tax deductibility of it are absurd. Ultimately we, the little people, wind up paying the settlement and the taxes on Exxon's profit with this plan. Exxon is a company that reported in excess of 30 billion dollars profit the year preceding the oil spill.

A more equitable arrangement than money would be to make Exxon restore the Sound to the way it was. This is not possible therefore, the chain of command responsible for the neglectful way in which the Exxon Shipping Company and Alyeska were run

should be held up to public consternation through a public trial, hopefully with adequate prosecution by the state this time.

I know that the bottom line in corporate responsibility is money. I have been told by several North Slope workers that the 2 Billion dollars Exxon already paid for "clean-up" efforts has put the fear of God into the entire industry. The oil industry will avoid environmental damage because it is not cost effective. Perhaps that is the best we can expect.

And yet, I, like Judge Johnstone, would have liked to hear an apology, an acknowledgment of Exxon's role in creating the conditions that allowed this to happen. Although Exxon acknowledges its responsibility after the fact, something Captain Hazelwood never did in court, they also proved that no amount of money will clean up the Sound. The industry does not have the technology to do so, and is in fact, not required to develop it.

I have to wonder what NOAA general counsel Tom Campbell meant when he said in Wednesday's Daily News that, "The federal government thinks it is getting enough money from Exxon to restore the waterway." I have not read any reports that credit anything but time with restoration of habitat after an oil spill. We are dealing with effects that can last up to 20 years. How can we settle in just two years? The herring harvest, the first commercial enterprise to be affected by the spill, will not return for two more years. It is unconscionable to make a final settlement when the overall results are not close to being known.

I know one cannot compare apples and hubcaps, like wildlife habitat vs money. I know that many people would find it naive to try, but someone must stand up for that which cannot defend

itself. That is one principle that law is based on, isn't it? We must balance the rights of indigenous species with the encroachment on their shrinking habitat.

In as much as time is the only cure for the wounded sound and money is all Exxon can offer, PLEASE, DO NOT SETTLE OUT OF COURT! Hold Exxon and Alyeska morally and legally responsible. We should demand ten times what they offer. If a tap on the pocketbook is all industry can feel, then make it feel it in a big way. We have a chance to send the message out that negligent polluting of our environment will not be tolerated. Industry must act responsibly as well as cost effectively. And where prevention is the best cure, response and restoration should also be required.

I have thought about this issue a lot and feel very strongly about it. I thank you for your time and consideration.

Sincerely,

Catherine L. Williams

Catherine L. Williams
2200 Gambell #151
Anchorage, Alaska 99503

April 10, 1991

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Judge H. Russel Holland
c/o Clerk of the Court
222 W. 7th Ave Room 261
Anchorage, AK. 99513

APR 11 1991

CLERK U. S. DISTRICT COURT

Dear Judge Holland:

I noticed in the Daily News this morning that you are accepting testimony on the EXXON settlement. Naturally, the California News makes the 14 letters you received to date seem like a million, with overwhelming negative response. No surprise there, as they have come out in editorials condemning the settlement and sensational journalism is their trademark. But I am glad they made mention of the letters so I could relay my thoughts to you on the settlement [before the deadline].

As a 27 yr. resident of Alaska, a certified Alaskan fanatic, and an avid outdoor enthusiast I consider myself a slight victim of the spill. I spend most of my vacations here (once every 4-5 yrs have to visit the relatives for a week). I'm just as PO'd out about the spill as anybody, maybe more so than most. It holds some of my favorite places in the State. It was a terrible, unfortunate accident, but that's all, just an accident. Its not like the spill in the Persian Gulf, ten times larger, intentionally created by a madman. At least I think there was a spill in the Gulf, didn't the press report something about one once back in January? Anyway, getting back to the PWS spill, I guess its safe to assume the State and the oil industry were fairly unprepared to tackle such a large one. I feel confident they are now. And the Sound is recovering very nicely from what I can tell.

Basically it sounds like just a few points are a question in peoples minds as to whether this is a good deal and whether we should accept it. The first being whether the State and Federal Governments could get more money by taking EXXON to court for 5-10 years. I'm not a gambler and I'm more tune to a bird in the hand is worth two in the bush. More than likely the lawyers will end up getting rich. The jury didn't hang Hazelwood like people expected and I doubt that they will find EXXON guilty of any "gross negligence". A hundred million plea bargain sounds pretty good. A billion total dollars (or 750 million real or whatever dollars) spaced out over 10 years so the money isn't wasted foolishly also sounds pretty good. Is the damage worth more? Is the new Star Trek better than the old one? Depends on who you ask.

Another point is who gets to spend the settlement. Anybody but the State of Alaska Legislature would be okay with me. I'd rather they didn't have

anything to do with it . . . period. My understanding is there would be a committee of 3 State and 3 Federal representatives that would decide. I guess I wouldn't mind having a few more folks representing the State but I can accept the committee as is. I hope the Legislature doesn't have anything to do with picking out the State representatives. Certainly the residents of Alaska should be allowed to provide input to the committee on how to use the money. Citizens of the USA could comment on the 100 million criminal fine if it's used toward restoration.

That's pretty much all I wanted to say. I support the settlement as is and hope it is accepted. It's about time we put the PWS spill behind us and move forward. Quite honestly, while its EXXON oil that spilled, I place most of the blame for the environmental damage on the Alaska State Government, and in particular Steve Cowper, Dennis Kelso and the bumbling idiots at the DEC. By not allowing EXXON to use cleanup techniques from the pre-approved spill response plan immediately, they could (and should) be blamed for much of the damage. This semi cover-up will be coming out in court and I have a feeling a lot of jury's will come to that conclusion too. In light of this, damages by taking EXXON to court could very well be less than those of the settlement.

In summary I say accept the settlement and take the money. But before I close, I'd just like to say that I for one appreciate the time and effort Attorney General Cole and Gov. Hickel put into this deal. Thanks for your time.

Sincerely,

A handwritten signature in cursive script, reading "Michael E. Beck". The signature is written in dark ink and is positioned above the printed name.

Michael E. Beck

Judge H. Russel Holland
c/o Clerk of Court
Room 261
222 W. 7th Ave.
Anchorage, Ak
99513

APR 11 1991
FEDERAL U. S. DISTRICT COURT

Judge H. Russel Holland,

In response to your request for public comment on Exxon's plea bargains, I am putting forth my comment. I agree with the attached article. The charges against Exxon are absurd and make no sense what so ever. If anyone believes that Exxon intentionally grounded a multi-million dollar vessel to intentionally lose a multi-million dollar cargo, they should have their head examined. I believe that the real criminals in this incident are the idiots that were running the state at the time - Kelso & Cowper. If they had been doing their jobs, they wouldn't have hobbled Exxon. So my comment, for the record, is in favor of the plea bargain.

Scott Sindelar
7700 Upper DeArmoun
Anchorage, AK. 99516

Hm. 345-5203
Wk. 263-4376

Scott Sindelar

dead sure Exxon never said to its personnel department, run down to the bars along the waterfront and find a few derelicts to man this huge ship. Furthermore, we should not forget in the heated hysteria that no official proof at this writing exists that either the captain or the crew were not competent.

Accidents do happen. Perfectly qualified and credentialed people make mistakes. Competent drivers get killed by the thousands because competence doesn't mean you can't have lapses of attention or make errors in judgment. So the criminal charges are political baloney, an attempt to shake down Exxon and win a cheer from the environmental mob.

When are the rest of us going to accept our share of the responsibility for the Valdez oil spill? After all, Alaskans love to sell the oil. We love to burn it. If you want oil, you must move it on the high seas. Capt. Eddie Rickenbacker was fond of saying that as long as you have movement, you are going to have crashes.

Let's dampen down the utopian heifer dust. There are no systems, plans or schemes that will prevent future oil spills. Given the volume of oil being moved, the uncertainty of nature, the fallibility of all humans,

The U.S. Justice Department I

By Paul Craig Roberts

Paul Craig Roberts, an economist at the Center for Strategic and International Studies, is a columnist for The Washington Times.

threats is the hostile attitude toward business that is being taught in our universities and law schools. Today the U.S. government is full of brainwashed young lawyers who believe that doing good in the world and destroying U.S. businesses are one and the same thing.

For example, exultant from its destruction of our nation's most innovative financial firm, Drexel Burnham, the U.S. Justice Department has now turned its guns on Exxon, our largest oil company.

It is absolutely certain that Exxon did not run its Valdez oil supertanker aground off the coast of Alaska on purpose in

order to pollute, kill migratory birds, or to violate Justice Department indictment assu-

The trumpets of the law rely on two laws to punish polluters: the Clean Air Act and the Resource Conservation and Recovery Act. These laws make it illegal to pollute without a permit, to stop polluting without a permit, and to dump oil in water.

It is absurd for the Justice Department to claim that the Valdez oil spill of valuable oil in Alaska Sound was "prevented" by Exxon.

It is equally absurd for Exxon with victory over the Bird Treaty, which prohibits the killing of birds without a permit, to claim that the Justice Department's psychiatric canard is that Exxon's cleanup costs are "excessive" in order to go

Criminal prosecution of Exxon must puzzle

By Jerry Heaster

Jerry Heaster is a columnist for the Kansas City Star in Kansas City, Mo.

The criminal prosecution of the Exxon Corp. for last year's Alaskan oil spill must come as a puzzlement to America's economic allies around the world who look to this nation for leadership.

The conventional wisdom of the United States is that if the United

tional light.

A criminal charge should be based on criminal intent. Given this, is it rational to assume that Exxon executives would have knowingly done anything that would have caused such an accident to happen?

Hardly. The accident was horrendous, not only in

and no doubt more.

Despite the accidental nature of the spill, good faith clear attorney general prosecution significantly environmental criticism tolerated."

Not so. What

Judge Holland:

When I heard of the proposed settlement between Exxon Corporation , the Federal Government, and the State of Alaska concerning the Exxon Valdez incident, I was incensed. After the incredible magnitude of environmental harm this company, or rather consortium of companies, inflicted on our state, I find a "billion dollar" settlement, spread out in convenient installments over many years, akin to slapping John Hinkley's hand for trying to shoot President Reagan, or saying "Shame on you!" to Saddam Hussein.

Exxon's apparent abrasiveness and indifference during the early hours of the spill, coupled with Alyeska's lack of *promised* spill response capabilities were ingredients in a sick recipe for disaster. The damage caused by this spill to wildlife and associated ecosystems will be evident far into the future. Punishment for the results of Exxon's poor judgement and apparent lack of ecological morals should carry similar long-term affects for their organization.

The settlement is far too little for a corporation of Exxon's resources, and the installment plan makes it far too easy for Exxon to escape from this incident with a minimum of wear and tear. It is my opinion that Exxon Corporation should pay 5% of their gross annual income, before expenses, for the next 30 years at the very least. This would provide a corporate punch that will be felt for the lifetimes of the people involved in the events which lead to the spill. The effects of the spill will be felt for the next millennium. It is only fair that Exxon feel some pain as well.

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FED. U. S. DIST. COURT

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Now for a little perspective on the person who has just vented his spleen. Until December 1990 I worked for Chevron U.S.A., and I parted company on friendly terms. I have no deep animosity towards "Big Oil" or large corporations per se. I worked for ten years at Chevron's Anchorage Terminal, and spent the last 3-1/2 years at Chevron's Point Arguello Facility near Santa Barbara, California. I recently relocated to Anchorage to pursue a career in the computer industry in the state I have come to love very deeply.

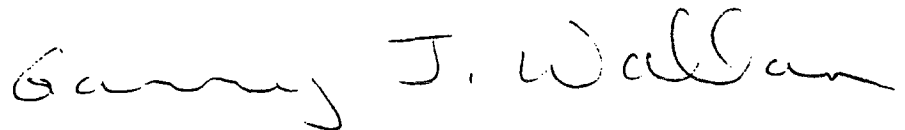
While working as a Programmer/Analyst for Chevron in California, I watched as they and their project partners waded through adverse public opinion and incredible bureaucratic muck trying to get their oil processing facility up and running. To this day, after expending nearly 2.5 billion dollars on the project, not a drop of oil has moved through the plant, and not a penny of positive cash flow has entered the pockets of the members of the project consortium.

So, I have witnessed one end of the spectrum; "Big Oil" trying to get their raw materials but dealing with people who want the benefits of petroleum technology, but don't want the material obtained from their "back yard." The frustration of trying to get the oil safely and cleanly while being pre-judged by the public is incredible.

On the other hand, I can see the need for some kind of regulation, some method of checking-up on companies which are performing environmentally sensitive work, to ensure that they are capable of handling emergencies of magnitudes commensurate with their projects. When I heard of the Exxon Valdez spill, I was sickened that such a thing had happened, especially to an area as beautiful and bountiful as Prince William Sound. As the drama unfolded I was amazed at the poor initial response to the spill and wondered why the companies had not complied with their promises.

Here was the other end of the spectrum; "Big Oil", gambling that they could slide by and not attend to their responsibilities as expected by the general public. Indeed, Exxon and Alyeska gambled, and we all lost. It is time for those who played the game, and blithely danced around their promises, to pay until it hurts. They should not get off lightly and, in my opinion, the current settlement is *far too light!*

Thank you for the opportunity to comment on this issue.

A handwritten signature in cursive script that reads "Garry J. Wallan". The signature is written in dark ink and is positioned above the printed name and address.

Garry J. Wallan
7215 E. 20th Avenue
Anchorage, Alaska 99504

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

APR 11 1991

April 11, 1991

FEDERAL U. S. DISTRICT COURT

The Honorable H. Russel Holland
Judge of the United States District Court
222 West 7th Avenue, Room 4
Anchorage, Alaska 99513

Dear Judge Holland:

On behalf of the State of Alaska, I am submitting the following brief comments on the Plea Agreement between the United States and Exxon Corporation and Exxon Shipping Company currently pending imposition of sentence. These items are those of most concern to the State.

The State of Alaska has a paramount and continuing interest in seeing that parties found criminally responsible under federal law for the discharge of crude oil in the Alaska environment are deterred from future conduct which could lead to similar catastrophes. It is also important that others in the oil and marine transportation industries are similarly deterred. The proposed disposition, when viewed in light of all of the events surrounding the Exxon Valdez oil spill, is of sufficient magnitude to call to the attention of Exxon and the industry at large the need to assure that all necessary precautions must be taken to guarantee the safe transportation of crude oil over the land and waters of our state.

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The Honorable Russell Holland
Judge of the United States District Court
April 11, 1991
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The Plea Agreement provides for a \$100 million fine, remitted to \$50 million dollars based upon Exxon's efforts to clean up the spill and to pay for some of the damages caused by the spill. The Agreement further provides for the immediate payment of \$50 million in restitution to the State of Alaska to be used for restoration purposes. In addition to these payments, the Agreement recites that Exxon has expended in excess of \$2 billion in response and cleanup costs and paid more than \$300 million in damages to private parties to date. Simultaneously with filing of the plea agreement, Exxon entered into a civil settlement agreement with the United States and the State of Alaska which, if approved, calls for as much as \$1 billion dollars to be paid over the next ten to fifteen years. These payments, in conjunction with the guilty pleas to be entered by Exxon and the public censure which accompanied the spill, are sufficient to establish an adequate level of deterrence.

The remittance provision is beneficial to this State as it should serve as an incentive to those who might in the future be responsible for the discharge of oil to take responsibility for its clean up and to take affirmative voluntary steps to compensate victims of oil spills.

The \$50.0 million restitution payment to the State of Alaska required by Part IV of the Agreement for restoration of natural resources is an especially appropriate condition of the sentence. It provides the Alaska State Legislature immediate

The Honorable Russell Holland
Judge of the United States District Court
April 11, 1991
Page 3

access to significant funds to commence the restoration of Prince William Sound. These restoration activities will ultimately benefit all of the user groups who appear as plaintiffs in the myriad civil actions, including Alaska natives, commercial fishermen, recreationists, property owners and businesses.

In sum, the proposed sentence outlined in the Plea Agreement adequately addresses the State's concerns about long term industry-wide deterrence. In addition, although the \$50.0 million restitution payment is not in itself adequate compensation for all of the State of Alaska's damages, it is a significant down payment on those damages to be recovered under the civil settlement or in subsequent civil litigation. Most importantly, the amounts are available immediately and are dedicated to restoration of the environment which in turn will redound to the benefit of all Alaskans who live, work and recreate in Prince William Sound and other areas affected by the oil spill.

Thank you for the opportunity to comment on the pending Plea Agreement and sentencing proceeding.

Sincerely,

Craig J. Tillery
for CHARLES E. COLE
ATTORNEY GENERAL

CEC:bkn

Chris Chavasse
P.O. Box 15003
Fritz Creek, Ak
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April 9th, 1991

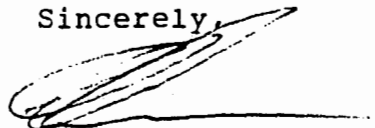
The Honorable Judge Holland:

In the light of the recent disclosure of the summary of the federal assesment I believe that not only do we as the residents of the State of Alaska, but also the residents of the Nation, have the inherent right to examine this document prior to accepting a politically motivated out of court settlement with Exxon Corp. Therefore, I must request that the Judicial System extend the comment period on the proposed settlement and also provide copies of the released summary of damage to all communities in the State of Alaska and the Nation at large.

Having personally participated in the clean-up effort after the spill, and having seen and appraised the damage to the communities and natural resources of the State I do not consider that the current settlement amount is appropriate, nor the terms thereof.

In the light of the accumulated damage, planet wide, caused by Industry, this is not the time to be releasing the perpetrators in a political settlement. Exxon and Aleyeska, both, should be held accountable for their negligence and criminal disregard for the Life and Liberty afforded the State and its peoples.

Sincerely,



Chris Chavasse

APR 11 1991

U.S.D. NOT COR

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April 11, 1991

Honorable H. Russell Holland
United States District Judge
U.S. Courthouse
Anchorage, Alaska 99501

Re: Comments on Criminal Plea Agreement in United States of America v. Exxon Corporation and Exxon Shipping Company, No. A90-015 CR

Dear Judge Holland:

These comments in opposition to the proposed criminal plea and settlement are submitted in behalf of our clients, the Alaska Sport Fishing Association and named individuals who are recreational plaintiffs, the Area Business Class, and approximately 500 other claimants in the civil litigation arising from the Exxon Valdez oil spill. Those plaintiffs represent a variety of recreational, commercial, subsistence and other pursuits involving consumptive and nonconsumptive use of the fish, wildlife, lands and waters affected by the spill. The Association is the largest fishery conservation organization in Alaska and has through political, legislative, administrative, and litigatory efforts achieved conservation of more than a dozen areas, totalling nearly 7 million acres of fish and wildlife habitat in Alaska since the enactment of ANILCA in 1980.

Because the Association and these class and individual plaintiffs are concerned for the conservation of fish and wildlife habitat, and because the monies from this plea and settlement may be used for such purposes, the criminal plea and settlement are of particular concern. The proposed fine is inordinately low, particularly when combined with the inordinately low settlement of civil damages. The manner with which they were reached erodes confidence.

A. This Court Should Not Allow the Governments to Settle Without Encouraging the Governments to Provide an Opportunity for Public Interest Litigants, and Probably Also Private Class Litigants, to Participate in Settlement of Negotiations.

Fundamentally, this is a political case that goes to the heart of how our judicial, executive, and legislative branches of government, as well as our corporate institutions, deal with environmental injuries of great magnitude that affect natural resources and the public in innumerable and complex ways. Here, the executive branch has chosen to operate and settle in isolation, without any opportunity for public interest litigants and private interest litigants to participate.

In a case of this nature, where the science, injuries and damages involve complex relationships between public and private claims, that should not be encouraged. It erodes confidence in the settlement, our corporate institutions and government in general. The importance of such confidence reaches far beyond this spill. By allowing public comment, this court has commendably sought to allow the public to be heard. But informed comment has been thwarted by the long silence on science and the continued silence on damage calculations. That history of silence, isolation and the need for confidence warrants rejection of this settlement. That is essentially the point reached by Congressman George Miller, when he concludes that without

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confidence in the Department of Justice, "how is it that Congress and the people . . . can rely on (governmental or corporate) assurances in the future?"

B. This Court Should Apply the Alternative Fines Act, 18 USC Section 3571(d).

In imposing sentence, this court should apply the Alternative Fines Act for purposes of determining the appropriate criminal penalty. The Act provides that the court may impose up to twice the pecuniary loss resulting from the offense. In this case, the defendants have already paid out approximately \$300 million in damages for pecuniary losses occurring in just 1989 and for the most part to just the commercial fishing industry. There are as yet outstanding in excess of \$56 billion in claims filed against the TAPS Fund, much of which is for pecuniary loss. This court should not hesitate to conclude that the pecuniary losses resulting from this spill vastly exceed the \$300 million already paid out.

Therefore, this court is faced with the problem determining an appropriate fine based on only partially determined pecuniary losses. These plaintiffs urge this court to impose a fine as follows: \$600 million (for twice the pecuniary losses already determined) plus \$400 million (not twice, but to address pecuniary losses yet to be determined) with a remittance of any portion of the latter that is not determined.

C. The Court Should Not Accept the Plea Agreement Until the Court Has Received a Summary of the Damage Calculation Studies, and Acceptance of the Plea Agreement Should Be Contingent Upon Scientific and Economic Studies Being Made Public and Being Continued.

It has been impractical for the public, this court, or state and federal officials and legislators to evaluate this settlement or the criminal plea without scientific and economic data being available. While the recent federal release of scientific information shows the injuries to be long lasting and worse than Exxon claims, more importantly, the release shows that the entire ecosystem has been attacked from the lowest to the highest trophic levels.

The signs of this are: (1) the decline in species diversity, abundance and recruitment of benthic organisms that are important to predator-prey relationships and the food chain, (2) the widespread loss of kelp, which has been conservatively documented in similar Alaskan ecosystems to provide 58.3 percent of the organic carbon load into the environment (see Attachment A), and (3) the widespread incidence across many higher trophic species of continuing lethal and sublethal effects such as lost reproductivity, debilitating lesions, mutagenic effects, MFO induction (multi-function oxidases which attack testosterone and estrogen), behavioral and territorial disruptions, low body weight, and decreased growth rates. In general, these are the types of (post-initial mortality) injuries to be expected at higher trophic levels when the lower trophic levels are severely disrupted by oil spill contaminants. Furthermore, these injuries are most prevalent among organisms that more often than not have non-market (and often nonconsumptive) use and intrinsic value, such as marine birds, harlequin ducks, eagles, sea otters, dolly varden, killer whales, harbor seals, and intertidal benthic life, as well as among marketed and non-marketed harvested species such as salmon and shellfish.

Of greater importance are the damage calculation studies. Neither the state or federal governments has released the studies that measure the value of market and non-market losses, including commercial, subsistence, recreational, and intrinsic losses. Various reports in the press, based on interviews with economic experts, have placed the natural resources damages at multiple billions of dollars. A range of \$3 - 10 billion has been mentioned in several recent reports as

coming from economic studies conducted by the State of Alaska that were designed to measure the non-use and intrinsic values associated with the injured natural resources.

To reach a reasonable decision on this settlement, this court needs those studies, particularly the intrinsic value study, every bit as much as it needs the scientific summary. To obtain a summary of the intrinsic value damage study, this court should subpoena the testimony and any summaries prepared by the following experts who, by information and belief, were retained as expert witnesses by the Alaska Department of Law and performed the intrinsic value study: Dr. Richard Carson, Associate Professor of Economics, University of California, San Diego; Dr. Robert Mitchell, Professor of Sociology, Clark University, Worcester MA; Dr. Michael Hanemann, Associate Professor of Agricultural & Resource Economics, University of California, Berkeley; and Dr. Raymond Kopp, Director, Quality of the Environment Division, Resources for the Future, Inc. Washington, D.C. In addition, this court should subpoena Dr. Norman Meade, Chief Economist in the NOAA Damage Assessment Branch, Rockville, MD, who managed the federal studies of recreation damages and intrinsic values, and the following experts who, by information and belief, were retained as expert witnesses by the U.S. Department of Justice to perform those studies: Dr. Alan Randall, Professor of Agricultural Economics, The Ohio State University, Columbus; Dr. John Hoehn, Assistant Professor of Agricultural Economics, Michigan State University, East Lansing; and Drs. Nancy Bockstael, Kenneth McConnell and Ivar Strand, Professors of Agricultural & Resource Economics at the University of Maryland, College Park.

The federal and state studies of intrinsic value employed the contingent valuation approach that was recently upheld by the U.S. Court of Appeals for the District of Columbia Circuit. By information and belief, these studies had been under way for a period of about eighteen months at the time the settlement was submitted to this court and they had reached preliminary conclusions indicating a range of \$3 - 10 billion for the non-use component of the natural resources damages. The range arises from the fact that, by design, the studies sought only a lower bound on the damages and reflects differences due to the use of willingness to pay versus willingness to accept, differences in the payment vehicle and the period of time over which payments would be made, and -- most importantly -- differences in the extent and duration of the natural resources injuries. In the light of the scientific information concerning these injuries that has just been released by the federal government, it is more than likely that a final analysis of the contingent valuation data will place the value of the non-use damages near the high end of the \$3 - 10 billion range.

We urge this court not to accept this settlement and plea agreement until such information is before it and that any acceptance be contingent on release and continued assessment of damages for loss of commercial, subsistence and recreational use of natural resources, as required by 43 C.F.R. 11.83. By information and belief, including statements of Attorney General Cole at the April 6 legislative hearing, we believe those studies are not complete and that the governments have effectively turned their backs on their citizens.

D. The Settlement Represents a Gross Violation of the State and Federal Governments' Fiduciary Obligations as Trustees for the Natural Resources Injured by the Oil Spill.

From numerous press accounts of the settlement, it is abundantly clear that it was a political decision on the part of a few key players in the state and federal governments who bypassed the entire natural resource damage assessment process. By information and belief, the amount of the settlement was in no way grounded in the information developed by the scientists and economists working on the damage assessment. The idea of settling for around one billion dollars originated with Governor Hickel a few weeks after the election, if not earlier -- well before he had taken office or had obtained access to the information developed by the damage assessment.

At the federal level, the settlement was promoted by Secretary of Transportation Skinner, who not a trustee and who, by his own account, was not conversant with the findings of the damage assessment.

The final agreement calls for payment of \$900 million for natural resource damages over a period of more than 10 years without interest. The trustees' decision to forego interest on the natural resource damages violates the decision of the DC Circuit Court of Appeals upholding payment of interest at a rate of 10%, and reduces the costs of conducting the damage assessment and the costs of restoration, which would be fully recoverable with interest accruing from the time that they were incurred. When these costs are subtracted from the amount of the settlement and the remainder is converted to present value terms, recognizing the time value of money, the settlement for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent and related natural resource values amounts, at best, to about \$450 million.

By information and belief, this trifling sum is grotesquely out of proportion to an reasonable estimate of these damages and bears no relation whatsoever to the information developed by the state and federal damage assessment teams. Indeed, the trustees would have reached a figure considerably larger than \$450 million if they had merely taken the estimated kill of fish and wildlife immediately after the spill and multiplied this by replacement cost figures that have been used in earlier cases to value a very limited set of natural resources damages.

For example, in the case of the T/V Puerto Rican oil spill off the coast of San Francisco in 1984, NOAA published a damage assessment report in 1986 valuing the birds killed in the incident at from \$575,000 to \$1,528,000 using the replacement cost method, based on estimates from zoological institutions and supply houses of what it would cost to obtain replacement specimens of the birds affected. (See Attachment B.) This case was subsequently settled for about \$750,000. The Exxon Valdez spill involves many of the same species of birds. NOAA's estimate of the replacement cost for these birds was from \$200 to \$500 per bird at 1986 prices. When these replacement costs are applied to the estimates of bird losses just released by the federal government for the Exxon Valdez spill, and when similar replacement costs are applied to the many other wildlife and fish losses and the injuries to land, it is evident that a damage estimate of well over \$1 billion would be obtained for just initial effects.

It is widely recognized, including by the NOAA Attachment, that estimates of replacement cost from supply houses significantly understate the true cost of replacing of wildlife quite possibly by an order of magnitude because it is impossible to buy a half million wild birds, let alone other wildlife. Furthermore, because of delays before restoration can be effected, there are additional, interim, losses to the fish and wildlife populations that would have to be added to this \$1 billion of damages. One would also have to add the loss of recreation and other use values. The resulting total damage would be compounded at 10% interest from the time the damage occurred until the time that payment was received by the trustees. All of this is added to the state and federal governments' other expenses for damage assessments, cleanup and restoration that are fully recoverable under existing law.

By settling for an amount that is so much lower in present value terms, and by failing to provide a credible explanation of the settlement or to relate it in a meaningful way to any theory of damage valuation, the trustees have cast aside their fiduciary obligations to determine the magnitude of natural resources damages and account for them to the general public. If this court does not intervene, it will send a signal that such wanton misconduct by trustees can become the norm in all future natural resource damages cases.

Furthermore, the gross imbalance between the actual settlement of \$450 million for natural resource damages and any reasonable accounting of such damages makes a mockery of the re-opener clause. Under this clause, an amount no more than \$100 million is payable in 2002 for injuries that could not reasonably have been known at the present time. According to press reports, William Reilly, the Administrator of the EPA had recommended that \$300 million be set aside for this purpose. When viewed as a proportion of the likely natural resource damages that already are known to the trustees --if they choose to consult their damage assessment -- even this amount seems small. By failing to provide any rationale for capping the re-opener at \$100 million, the trustees have violated their fiduciary obligations and set a bad precedent for future natural resource damages cases.

E. This Court Should Strike the Prohibition on Judicial and Administrative Review in Paragraph IV B.

Paragraph IV B provides that the State of Alaska may spend monies from the criminal plea without public objection, challenge, or judicial or administrative review. This prohibition is unconscionable. It allows the State of Alaska to spend in any manner whatsoever and should be stricken from the agreement.

F. Alyeska Should Not be Excused From Criminal Liability.

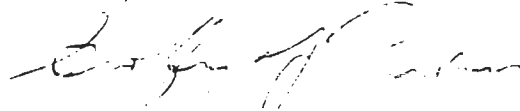
Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that government diligently prosecutes major corporate perpetrators of environmental crimes. The exculpation of Alyeska should be stricken.

CONCLUSION

The political nature of this highly public case demands that the court scrutinize carefully the secretive process and evidence behind this settlement. Private litigants, particularly public interest litigants, should not have been foreclosed from that process. This court can redress that process by rejecting this criminal settlement and effectively urging the governments to pursue a more open settlement of civil aspects of this case brought by both governments and numerous public interest and class litigants. By so doing, this court will be sensitive to its own vital role in sustaining public confidence in public institutions.

Respectfully submitted,

ADLER, JAMESON & CLARAVAL



Geoffrey Y. Parker

APR 11 1991

U.S. DISTRICT COURT

to 32%, $K_2O \approx 8$ to 9%, and $CO_2 \approx 27$ to 32% (3–5, 15). Analyses of fresh samples, which were sealed before complete cooling, indicate that the 1988 lavas were almost water-free. The volatile contents of F (2.5 to 4.5%), Cl (3.5 to 5%), and SO_2 (4 to 5.5%) are higher than reported previously for the 1960 lavas (15). Such high volatile concentrations no doubt contributed to the lower solidus temperature of the lava of Oldoinyo Lengai compared with that of the synthetic system studied by Cooper *et al.* (13).

The temperature measurements on natural lava flows are in good agreement with experimental melting-temperature determinations carried out on samples from the same flows. The rock powder of the natural lava melted easily at temperatures of 500° to 550°C. The melting temperature at 1 atm was determined by differential thermal analysis (DTA) and differential thermal gravimetry (DTG). A pronounced DTA endotherm, representing the onset of melting, began at 490°C ($\pm 5^\circ$) and had its maximum at 510° to 520°C. This range (490° to 520°C) is similar to the range of the temperature measurements of the lava flows. Dissociation of CO_2 from the carbonate melt began at 660°C.

The observed temperatures are several hundred degrees lower than the lowest 1-atm temperatures of silicate lavas. Significant cooling must have occurred from temperatures of possible partial melting in the mantle (6). Concomitant crystallization can account for the distinctly fractionated composition of natrocarbonatites (5, 6, 15).

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17. The DTA and DTG analyses were carried out at the

Kristallphysikalisches Institut, University of Tübingen. V. Keszmer is thanked for his help. We thank the members of the expedition, K. Krafft, C. Nnamwura, C. Hug-Friedl, and A. Demasson for assistance. We also thank Eric Peterson from Anusna, and our local porters for their help in the field.

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Magnification of Secondary Production by Kelp Detritus in Coastal Marine Ecosystems

D. O. DUGGINS, C. A. SIMENSTAD, J. A. ESTES

Kelps are highly productive seaweeds found along most temperate latitude coastlines, but the fate and importance of kelp production to nearshore ecosystems are largely unknown. The trophic role of kelp-derived carbon in a wide range of marine organisms was assessed by a natural experiment. Growth rates of benthic suspension feeders were greatly increased in the presence of organic detritus (particulate and dissolved) originating from large benthic seaweeds (kelps). Stable carbon isotope analysis confirmed that kelp-derived carbon is found throughout the nearshore food web.

ALTHOUGH PHYTOPLANKTON IS UN- doubtedly the primary source of organic carbon in much of the world's oceans, benthic plants are thought to be important contributors to food webs in estuarine and coral reef habitats (1). In the early 1970s, Mann and others (2–4) showed exceptionally high productivity in benthic macrophytes belonging to the order Laminariales (kelps) and inferred that kelp-derived organic carbon could play a significant role in temperate coastal (nearshore) secondary production. We assessed the significance of kelp-derived organic carbon to secondary production by a natural experiment involving islands in the Aleutian archipelago (Alaska) with and without sea otters, and thus with and without extensive kelp forests (5). We show that growth rates of benthic suspension feeders are two to five times as high at kelp-dominated islands as at those without kelp beds. Stable carbon isotope ($\delta^{13}C$) analyses show that kelp-derived carbon contributes significantly to the carbon assimilated by secondary consumers at these islands.

Kelps are a dominant feature of many exposed and semiexposed temperate coastlines, where they frequently form dense stands from the low intertidal zone to depths approaching 40 m. Individual kelps can achieve large biomass and rapid growth even at high density, thus forming one of the world's most productive habitats (3, 6). Benthic marine herbivores such as sea urchins (Echinoidea) can retard the growth of kelp populations and occasionally decimate extant populations, but most kelp biomass is not consumed directly (7). This has led to

speculation that kelp biomass enters the nearshore food web through indirect (detrital) routes. By releasing particulate as well as dissolved organic matter (POM and DOM respectively) as they grow and senesce, kelps could provide a significant organic carbon source for the diverse and abundant assemblages of nearshore suspension feeders, pelagic as well as benthic. Even the considerable quantity of kelp biomass deposited on beaches adjacent to kelp stands ultimately may reenter the nearshore food web as POM and DOM after decomposition.

The reestablishment of sea otters in the Aleutians after their near extinction in the 19th century and the subsequent resurgence of otter predation upon sea urchins allow us to compare secondary production between areas that differ greatly in kelp biomass but are otherwise similar. Oceanographic data indicate that the pervasive influence of the westward-flowing Alaskan Stream accounts for relatively uniform physical conditions among the central and western Aleutian Islands (8). Neither the few prior studies nor our surveys provide evidence for significant differences in species composition (including phytoplankton) along this segment of the archipelago (9).

The mid- and low-intertidal zones throughout the Aleutian Islands are dominated by kelps belonging to the genera

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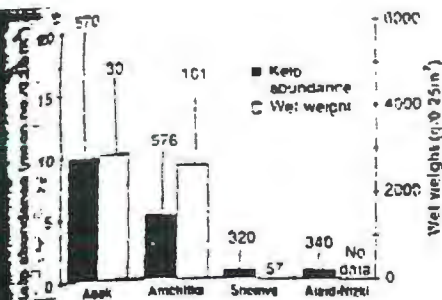


Fig. 1. Kelp abundance and wet weight (means and 1 SD of quadrat counts and sample weights) from islands with sea otters (Adak and Amchitka) and without otters (Shemya and Alaid-Nizki). Biomass at Shemya = 0. Sample size is given above each error bar.

Laminaria and *Alaria*, which exist in a refuge above the foraging range of sea urchins. Rocky subtidal habitats at islands with sea otters are characterized by low urchin biomass and large stands of both understory and surface canopy kelps; however, islands where sea otters have not become reestablished are characterized by large urchin biomass and few kelps (5). This nearshore community variation allowed us to assess (by comparison) the importance of kelp to the production of nearshore consumers. Between 1985 and 1987 we conducted benthic surveys, experiments, and $\delta^{13}\text{C}$ analyses at Adak and Amchitka Islands (sea otters abundant) and at Shemya and Alaid-Nizki Islands (no sea otters) to determine whether growth (as an indicator of production) and $\delta^{13}\text{C}$ of consumer organisms were related positively to kelp bio-

Systematic benthic surveys verified differences in kelp abundance and biomass between islands. At each island, transects were established at 16 to 30 randomly selected sites along the 6-m contour. All sites were on the Bering Sea side of each island and were judged subjectively to be of similar exposure. Along each transect, 20 randomly selected 0.25-m² quadrats were censused by divers for kelp abundance. The resulting data (Fig. 1) show orders of magnitude differences in subtidal kelp abundance and biomass between islands with and without sea otters. Although abundance and biomass are not synonymous with production, research on similar kelp assemblages indicates that benthic production should be very different among these islands (2, 10). If kelp-derived organic carbon is available to nearshore suspension feeders, detritivores, and (indirectly) their predators, and if phytoplankton alone is a limiting resource, then secondary production should be significantly different between island groups. We used two analyses to determine suspension-feeding organisms

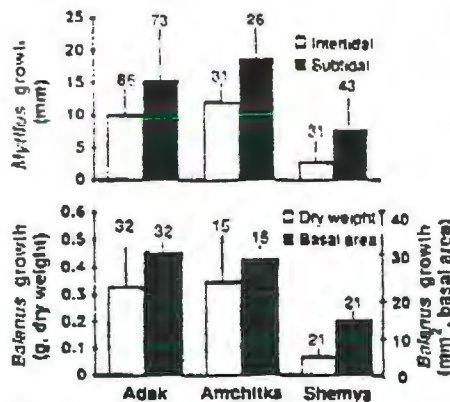


Fig. 2. Results of translocation experiments; means and 1 SD of growth in length (mussels, *Mytilus*) or dry weight and basal area (barnacles, *Balanus*). Sample size is given above each error bar.

grow faster in kelp-dominated than in urchin-dominated environments. First, we translocated two species of suspension feeders (the mussel *Mytilus edulis* and the barnacle *Balanus glandula*) from a common source (Puget Sound, Washington) into cages at six intertidal and six subtidal sites at Adak, Amchitka, and Shemya islands. Mussels were translocated in 1985 and 1986 and barnacles in 1986. Mussels were individually tagged and measured (maximum valve length) (12); barnacles were allowed to settle on fiberglass plates, thinned to minimize competition, and measured in four dimensions (length and width of operculum and base). Barnacle locations were mapped for individual identification and the plates were placed in the same cages with the mussels. All animals were remeasured after 1 year. Mussel valve elongation, barnacle final dry weight (13), and change in barnacle basal plate area were the parameters used to compare growth among islands.

Growth rates were significantly different (14) among islands. Mussels in kelp-dominated habitats (Adak and Amchitka) grew approximately two (subtidal) to four (intertidal) times as fast as mussels in urchin-dominated habitats (Fig. 2). Likewise, barnacles (intertidal) grew up to five times as

fast in kelp-dominated environments (Fig. 2) (barnacles from subtidal cages did not survive).

As a second, independent verification of the translocation data, age-size relations were analyzed for intertidal mussels collected from six sites at each of four islands (15). Mussel valves were sectioned and age determined by the methods of Lutz (16). For year classes 2 to 5, mussels were significantly larger at islands with substantial subtidal kelp forests (Fig. 3) (17).

Our results do not exclude the possibility that a carbon source other than that derived from kelps accounted for differences in mussel and barnacle growth among islands. We employed $\delta^{13}\text{C}$ analyses to determine the extent to which consumers were using kelp-derived organic carbon and if such use differed among islands as predicted (18). The Aleutian nearshore food web lends itself well to such analyses for several reasons. Unlike other habitats such as estuaries where diverse autotrophs (phytoplankton, benthic algae, and marine and terrestrial angiosperms), each with a distinctive $\delta^{13}\text{C}$ signature, contribute POM and DOM to nearshore waters, the Aleutians have only two principal sources of organic carbon: benthic algae and phytoplankton (19). Furthermore, at high latitudes, phytoplankton is more depleted in ^{13}C than at low latitudes (20) and thus the difference in signatures between kelps and phytoplankton is large, leading to less ambiguous interpretation of the origins of organic carbon in nearshore consumers. In addition, because islands differ greatly in the potential input of kelp carbon, we could incorporate the measured consumer $\delta^{13}\text{C}$ enrichment at kelp-dominated islands in a simple mixing model to assess quantitatively the magnitude of kelp carbon input to the nearshore food web.

To characterize predominant carbon sources, $\delta^{13}\text{C}$ was determined from samples of the dominant kelps (*Laminaria groenlandica*, *L. longipes*, and *Alaria fistulosa*) collected at Adak and Amchitka islands. Six suspension feeders, two detritivores, and three

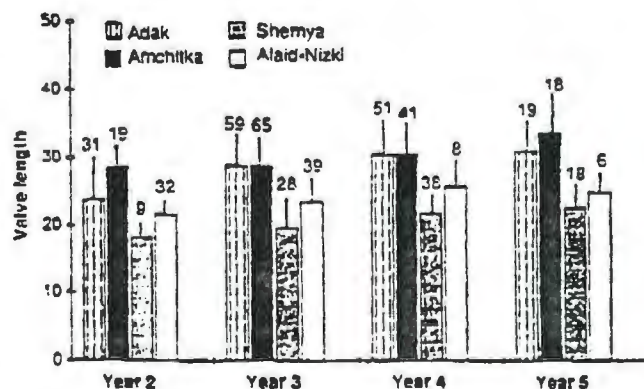


Fig. 3. Age-size relations for *Mytilus edulis* at four Aleutian Islands; means and 1 SD of valve length. Sample size is given above each error bar.

predator taxa were collected at each island as indicators of the islands' nearshore consumers (21). Phytoplankton isotopic values were derived from cultures incubated on board the R.V. *Alpha Helix*. Cultures inoculated from ambient seawater were used rather than net tow samples because of the inevitable problem of contamination by non-phytoplankton carbon in plankton net tows. These cultures were made up primarily of *Chaetoceros* and *Thalassiosira*, which were the dominant genera in net tows at all islands as well as the most common genera reported for the region (9). The mean phytoplankton isotopic value (-24.0 per mil ± 1.0 SD, $n = 5$) corresponds with published values (-22.9 to -24.4 per mil) for this region and surface water temperatures. Kelps were considerably enriched in ^{13}C relative to phytoplankton, and values were relatively consistent among taxa and islands (overall mean of -17.7 per mil ± 2.3 SD, $n = 162$).

Differences in consumer $\delta^{13}\text{C}$ between kelp-dominated islands and urchin-dominated islands support the hypothesis that carbon fixed by kelp is found throughout the nearshore food web and may even be consequential at islands with comparatively low kelp abundance. For each of 11 consumers tested, with the single exception of *Mytilus edulis* (22), mean $\delta^{13}\text{C}$ values for animals from kelp-dominated islands (Adak and Amchitka pooled) were more enriched than mean values for animals from islands without kelps (Shemya and Alaid-Nizki pooled)

(23). On the basis of a simple mixing model (24), primary consumers at kelp-dominated islands average, conservatively, 58.3% kelp-derived carbon (Fig. 4), whereas at urchin-dominated islands they average only 32.0%. This was the case despite all consumers being collected in midsummer during periods of peak phytoplankton abundance, when $\delta^{13}\text{C}$ values should be indicative of maximum phytoplankton influence. The moderate percentage of kelp-derived carbon in consumers at urchin-dominated islands is probably the result of input from intertidal kelps and kelps existing in subtidal refuges from urchin grazing. The relatively consistent enrichment of consumers at Adak and Amchitka, regardless of feeding type or trophic level, argues for the pervasive occurrence throughout the nearshore food web of organic carbon originally derived from kelp photosynthesis.

Both the transplant translocation experiments and age-size analysis show that suspension feeders grew at a significantly higher rate at islands with extensive subtidal kelp forests than at those without. The $\delta^{13}\text{C}$ data indicate that this difference in growth rate most likely results from the use of organic carbon photosynthesized by kelps, rather than from differences among islands in phytoplankton production or some other variable. Isotopically enriched signatures of organisms such as mysids, rock greenling, and pelagic cormorants at kelp-dominated islands further indicate that use of kelp-de-

rived organic carbon is not restricted to benthic organisms.

The ecological role of kelps in the nearshore region is multifaceted. Strong evidence exists that they provide habitat (substratum and canopy) for a wide range of benthic, epibenthic, and pelagic organisms and alter the hydrodynamic environment of the nearshore region (25). Here we suggest a strong trophic link between kelps and a wide range of organisms of varied feeding strategies and trophic levels, extending through the obvious kelp-grazer-predator chain. The common occurrence of consumers in highly productive kelp forests along temperate to subpolar coastlines suggests that our results are not specific to the Aleutian Islands. The relative trophic contributions of kelp detritus and phytoplankton may vary with latitude, habitat, or season, particularly given the punctuated nature of phytoplankton production. The relative production may actually be greater in winter, when phytoplankton production is at a minimum, and kelp standing stock is senescing (annual species) or being physically degraded during storms (annual and perennial species).

Our data support quantitatively the suggestions of Mann (2, 3) and others that kelps contribute significantly to coastal secondary production, perhaps ultimately establishing limits to the abundances of foundation populations. Factors affecting kelp occurrence and production such as the recolonization or extinction of sea otters, sea urchin disease, catastrophic storms, nutrient depletion during El Niño events, or oil spills and other pollution are thus likely to have wide-ranging and often long-lasting influences on the productivity of coastal ecosystems.

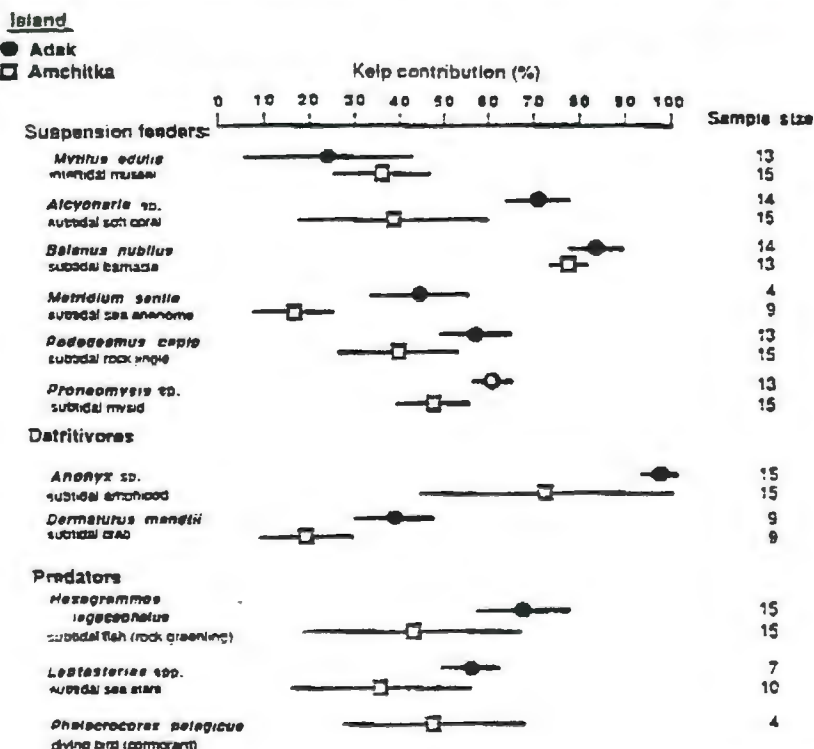


Fig. 4. Percentage of carbon photosynthesized by kelps found in tissues of consumers at islands with extensive subtidal kelp beds. Values are means and 1 SD. Three to five samples were collected and analyzed from each of three sites at each island.

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Phytoplankton production in the Aleutians is comparatively low (38 to 243 mg of carbon per square meter per day) concentrated during a relatively short growing season and probably restricted to bays (rather than the exposed coasts) with vertical water stability (9).

Mussels were initially of equal size and were assigned to cages randomly. We could not replicate the "no kelp" treatment of this experiment because we were unable to visit Adak-Nukli Island until the summer of 1987.

All barnacles occurred in the settling plates within a span of several weeks and were of similar size. Barnacle physical dimensions were measured within 48 hours of placement in cages; at that time there was no statistically significant difference in mean basal plate area among islands ($n = 4$) for those individuals that survived to the experiment's conclusion (Kruskal-Wallis, $P > 0.1$). Final dry weight was measured on animals removed from the plates and dried at 50°C for 24 hours.

Kruskal-Wallis ANOVA on mean growth of individuals at a site (cage) were mussel intertidal, $\chi^2(2) = 19.3$, $P < 0.0001$; mussel subtidal, $\chi^2(2) = 17.2$, $P < 0.0002$; barnacle dry weight, $\chi^2(2) = 6.4$, $P < 0.05$; barnacle basal plate area, $\chi^2(2) = 6.2$, $P < 0.05$.

Mussels were collected from equivalent tidal heights at sites of equivalent wave exposure. Spatially isolated mussels were chosen to reduce the possible confounding consequences of intraspecific competition.

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Complete random block ANOVA for age-size analysis with age (2 to 5 years) as the blocking factor; $F(1,11) = 203$, $P < 0.001$. Such a random block analysis allows us to examine island effects (kelp-dominated compared to urchin-dominated) for all four age classes simultaneously.

See B. Fry and E. B. Sherr (Comit. Mar. Sci. 27, 15 (1984)) for comprehensive discussion and critique of the application of $\delta^{13}\text{C}$ techniques to ecological studies. The ratio of ^{13}C to ^{12}C is fixed at the time (and according to the pathway) of photosynthesis. With minor modification (± 0.5 to 1.5 per mil per trophic level), this ratio is maintained through consumer trophic levels. Thus consumer signatures reflect those of key primary producers.

Terrestrial input of organic matter to nearshore coastal waters was presumed to be insignificant primarily because most terrestrial vegetation is maritime forests of grasses and lichens, which degrade in situ; there is no woody vegetation that would produce large amounts of exportable detrital matter. I. McConnaughey and C. P. McKoy, *Mar. Biol.* 53, 257 (1979); M. R. Fortuque and J.-C. Duplissy, *Oceanol. Acta* 4, 85 (1981); G. H. Rau et al., *Deep Sea Res.* 29, 1035 (1982).

Five whole (above holdfast) kelp specimens per mussel were collected at each of three randomly selected sites at each island and subsampled systematically by taking a number of plugs uniformly along the length of the blade. Three to five specimens of each consumer class were collected at the same sites as the kelps and were used whole (mysid, amphipod, sea anemone) or subsampled (mussel tissue of ophiuroids).

The single exception to the pattern of greater consumer enrichment at islands with kelps was *Mytilus* data, which was the only consumer we collected from the intertidal zone, where kelps are abundant at all four islands. *Mytilus* $\delta^{13}\text{C}$ values showed no pattern between kelp and no kelp islands.

Differences between kelp and no kelp islands were significant in a random-block ANOVA (with species as blocks, thus allowing analysis of all species simultaneously) considering all subtidal consumers pooled ($F(1,27) = 7.96$, $P < 0.0001$) or only suspension feeders ($F(1,14) = 11.64$, $P < 0.005$).

A simple mixing model based upon that of T.

McConnaughey and C. P. McKoy, *Mar. Biol.* 53, 265 (1979) was possible because of the two-carbon source system. Percentage contribution from kelp is calculated as $[\delta^{13}\text{C}_{\text{kelp}} - \delta^{13}\text{C}_{\text{phytoplankton}}] / [\delta^{13}\text{C}_{\text{kelp}} - \delta^{13}\text{C}_{\text{phytoplankton}}] \times 100$, where $\delta^{13}\text{C}$ represents a post-photosynthetic isotope fractionation and was empirically derived for each species by calculating the difference in $\delta^{13}\text{C}$ between the most depleted sample of that species ("pure" phytoplankton diet) and the mean phytoplankton value (-24.0). In cases where the most $\delta^{13}\text{C}$ depleted value for a species was less than our phytoplankton value, the mean of our measured enrichment values (2.5 per mil per trophic level) was used. This method makes our model conservative in favor of phytoplankton (reducing the percentage of carbon from kelp) in that our calculations indicate that even the most isotopically depleted consumers incorporate

the kelp-derived carbon.

O. Duggins, in *The Community Ecology of Sea Otters*, G. A. VanBlaricom and J. A. Estes, Eds., Springer-Verlag, Berlin, 1985, pp. 192-201.

20 Supported in NSF grant DTT-8421362. We sincerely appreciate the discussions and comments of our colleagues M. Dethier, B. Fry, T. Michaels, and G. VanBlaricom, and the assistance provided by a small army of divers plus the U.S. Coast Guard (17th District), the U.S. Navy (Adak Naval Station), the U.S. Air Force (Snohomish Air Force Base), and the U.S. Fish and Wildlife Service (Alaska Maritime Refuge), during our surveys, collections, and experiments in the Aleutians. We thank P. Haeussler, L. Johnson, A. Sewell, and J. Watson who were particularly helpful in the field or laboratory.

28 November 1988; accepted 16 May 1989

A 48-Million-Year-Old Aphid-Host Plant Association and Complex Life Cycle: Biogeographic Evidence

NANCY A. MORAN

Biogeographical and paleobotanical evidence suggests that the aphid subtribe Melaphidina has been associated with its sumac host plant since the early Eocene when these plants were continuously distributed across the Bering land bridge. Transfer experiments indicate that the American species, *Melaphis rhois*, shows an unusual complex life cycle, similar to that known in Chinese melaphidines, with some generations feeding on mosses as alternate host plants. As with the association with sumac, this complex life cycle may have been established in the melaphidine lineage before the southward retreat of sumac from Alaska 48 million years ago. This example suggests that the interactions and life histories shown by modern populations may be determined, in large part, by evolutionary commitments made in the distant past.

DESPITE THE LARGE AMOUNT OF attention paid to possible coevolutionary interactions between herbivorous insects and their host plants, the ages of interactions between specific insect and plant lineages have been estimated in only a few cases (1, 2). These ages are difficult to obtain from fossils of damaged plant tissues since the damage must be distinctive enough to be definitely associated with a modern insect group. The ages of life cycle phenomena observed in modern animal species are even more difficult to establish, because these are rarely documented by any fossil evidence. I have used biogeographic evidence to establish the antiquity of an association between an aphid and a plant lineage and of a peculiar complex life cycle.

The aphid subtribe Melaphidina (Homoptera: Aphididae: Pemphiginae: Fordini) consists of four Asian genera and a monospecific American genus (3, 4). All known species form galls on sumac species [Anacardiaceae, *Rhus* L. subgenus *Rhus* (3, 4)]. These galls are induced by aphid feeding and are inhabited by three generations of parthenogenetic females. Galls are closed, sac-like structures with a structure and composition very different from leaves from

which they are derived (5). Ecdysis of the final winged emigrant generation is synchronized with opening of gall exit slits. Although this level of intricacy suggests that a sumac-Melaphidina association is ancient, more definite evidence concerning the age of the interaction is provided by biogeographic considerations.

The current distribution of the Melaphidina implies that use of sumac was established before the geographic separation of the ancestors of modern hosts in Asia and America. The occurrence of the subgenus *Rhus* in both the Old and New Worlds is attributed to dispersal across the Bering land bridge during or before the early Eocene, an explanation strongly supported by fossil evidence (6) (Fig. 1). The vicariance between Asian and American plant lineages resulted when climatic changes pushed plant distributions southward during the Tertiary (7). For sumac, this occurred about 48 million years ago, as judged by the distribution of leaf fossils in Alaskan Tertiary floras (6, 8). The sumac-Melaphidina association must be

Department of Entomology and Department of Ecology and Evolutionary Biology, University of Arizona, Tucson, AZ 85721.

Resource Damage Assessment of the T/V *Puerto Rican* Oil Spill Incident

April, 1986

Prepared for:

**United States Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management
Sanctuary Programs Division
Washington, D.C. 20235**

**Under Contract Number
50-DGNC-6-00102**

Prepared by:

**James Dobbin Associates Incorporated
Coastal and Ocean Planners
110 North Royal Street, Suite 300
Alexandria, VA 22314**



Attachment B

commercial fishery of the area depends. Thus, not only would many of the larvae have been valuable in themselves if they had lived to become adults, but the entire commercial fishery would have been more productive. Unfortunately, current ecological theory will not support an estimate of the total injury done to the commercial fishery as a result of the destruction of a part of the food chain upon which it depends.

Replacement Costs

222

A replacement cost approach can avoid many of the problems involved in attempting to estimate the use value of biological resources. Under the replacement cost approach the resource is valued at what it would cost to replace it. If the resource is replaced, the problems of identifying all its uses, the monetary value of these uses, and the users affected by the resource loss are eliminated, except for the period between the initial loss and the replacement.

223

Twenty-three institutions were asked to estimate the cost of obtaining specimens of the birds killed in the Puerto Rican oil spill, or the price at which they would be willing to sell members of each species (Sterling Hobe Corporation 1985; and California Department of Fish and Game 1985). Nine institutions responded and their estimates are shown in Figure 23.

224

One problem with most of these estimates is that they are not true replacements costs, but rather the cost of collecting already existing specimens from the wild and redistributing them to the Gulf of the Farallones area. This does not represent true replacement, since true replacement requires a complete recovery of the species population. This can be most clearly assured by using only captive breeding programs for replacement.

FIGURE 23

ESTIMATES OF SEABIRD SPECIES VALUE/PRICE FROM VARIOUS SOURCES

(In dollars per one specimen)

SPECIES	SOURCE								
	Seattle Aquarium	Sea World	Los Angeles Zoo	Mystic Marine Life Aquarium	New York Zoological Park	Busch Gardens	International Zoological Distributors	International Animal Exchange	Boston Zoological Gardens
Common Loon		200	300		1500		200	800	250
Arclic Loon		200	500		1500		500	800	250
Red-throated Loon		200	500		1500		500	800	250
Loon spp.		200			1500			800	250
Western Grebe	75	200	250		1000		25	800	250
Red-necked Grebe	75	200	300		1000		25	800	250
Horned Grebe	75	200	300		1000		25	800	250
Eared Grebe	75	200	250		1000			800	250
Grebe spp.					1000			800	250
Northern Fulmar					500			800	250
Sooty Shearwater		100	200		500			800	250
Brandt's Cormorant			75	200		500			800
Pelagic Cormorant		75	200		500			800	150
Cormorant spp.		75	200		500			800	
Northern Pintail	20			50	200	35	15	800	50
Ruddy Duck	150	75		90	300	75	90	800	100
Greater Scaup		37	150		100	50	15	800	50
Scaup spp.			150		100			800	
Black Scoter					500		150	800	250
Surf Scoter	228	1000	700		500		150	800	250
White-winged Scoter	228	1000	100		500		150	350	800
Scoter spp.					500			800	
American Coot			30		300		10	800	50
Red Phalarope		50	100		150			800	150
Western Gull			50		50			800	50
Common Murre	228	100	200		500			800	250
Pigeon Guillemot	228	100	250		500			800	250
Cassin's Auklet	228	100	250		500			800	250
Marbled Murrelet	228	100	250		500			800	250
Rhinoceros Auklet	228	100	200		500			250	800
Ancient Murrelet									
Alcid spp.		100	200		500			800	
Red-tailed Hawk	50				500		150	800	100

However, most of the species in this list are not and probably cannot be bred in captivity (Briggs, pers. comm.). Therefore, true replacement from captive breeding is probably impossible. It is absurd to value them at 0 since they cannot be replaced. Therefore, this section presents some calculations on the assumption that they could be redistributed or replaced.

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Figure 24 presents a range of calculations, multiplying the number of dead birds times the second lowest and the second highest replacement costs given in Figure 23. The second lowest and highest costs were selected in order to eliminate extreme values. Using this approach, the total replacement costs for the birds estimated to have been killed in the Puerto Rican incident amount from \$574,692 to \$1,528,050.

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An alternative approach to estimating replacement costs is to estimate the cost of creating new habitat or enhancing existing habitat to support enough nesting pairs of each species to replenish the population. Again, to represent true replacement costs, this should be new or enhanced habitat, not just the cost of acquiring already existing habitat. Research on estimating replacement costs based on this alternative approach is currently being conducted and will be concluded within the next several months. Upon completion of this research, the estimates of habitat replacement or enhancement will be included in a supplement to this report.

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If replacement of the birds were attempted, it would take several years to accomplish. In the interim, there would be a loss of use which would have to be included to derive the total cost of a replacement strategy. Most of the birds destroyed in the Puerto Rican incident require three to twelve years to mature. Assuming no natural regeneration and that the replacement effort began immediately after the spill and all the replacement birds were released three years later, there would be three years lost use in addition to the

FIGURE 24**REPLACEMENT COST FOR MARINE BIRDS**

SPECIES	TOTAL DEAD BIRDS *	LOW ESTIMATE		HIGH ESTIMATE	
		Cost/Bird	Total Cost	Cost/Bird	Total Cost
Common Loon	19	200	3,800	800	15,200
Arctic Loon	176	250	44,000	800	140,800
Red-throated Loon	6	250	1,500	800	4,800
Loon spp.	-	-	-	-	-
Western Grebe	109	75	8,175	800	87,200
Red-necked Grebe	2	75	150	800	1,600
Horned Grebe	7	75	525	800	5,600
Eared Grebe	25	200	5,000	800	20,000
Grebe spp.	1	75	75	800	800
Northern Fulmar	-	500	-	500	-
Sooty Shearwater	3	200	600	500	1,500
Brandt's Cormorant	2	200	400	500	1,000
Pelagic Cormorant	3	150	450	500	1,500
Cormorant spp.	2	150	300	500	1,000
Northern Pintail	1	20	20	200	200
Ruddy Duck	5	75	375	300	1,500
Greater Scaup	2	37	74	150	300
Scaup spp.	-	-	-	-	-
Black Scoter	-	250	-	500	-
Surf Scoter	25	228	5,700	800	20,000
White-winged Scoter	10	228	2,280	800	8,000
Scoter spp.	-	-	-	-	-
American Coot	13	30	390	300	3,900
Red Phalarope	10	100	1,000	150	1,500
Western Gull	33	50	1,650	50	1,650
Common Murre	1856	200	371,200	500	928,000
Pigeon Guillemot	2	228	456	500	1,000
Cassin's Auklet	548	228	124,944	500	274,000
Marbled Murrelet	1	228	228	500	500
Rhinoceros Auklet	4	200	800	500	2,000
Ancient Murrelet	1	200	200	500	500
Aleut spp.	7	200	1,400	500	3,500
Red-tailed Hawk	1	100	100	500	500
TOTALS	2874		\$575,792		1,528,050

* November 20, 1984 to May 30, 1985

To: Federal District Court
Federal Building
Anchorage, Ak. 99501

From: E. nt D. Cole
551 Kimberly
Wasilla, Ak. 99687

4/10/91

RE: Settlement of the Exxon Valdez Oil Spill.

I would like to protest the fact that pertinent information was not made public in time to allow response. I hope this letter will provide a voice for many who would have responded if more time had been allowed.

There seems to be an attitude that settlement money be allowed to be spent as the State and Federal Government see fit. I submit there is a responsibility to insure that such funds shall be spent for the compensation of victims and restoration of the environment.

No amount of money can restore what has been taken from Alaskans and all U.S. citizens. It will be many years before the effects are known, and there will be many hidden costs. The market for our fish has suffered, as well as much of Alaska's best fishing waters destroyed. What is the loss of subsistence, and medical problems which will arise because of the contamination worth? I have lost about \$60,000, but will never be compensated because I can not substantiate the loss. The court is well aware of the difficulty a cancer patient will have proving their condition resulted from the spill.

I believe that the amount of money which is being offered is not enough to compensate the losses incurred, and it is insufficient to release Exxon from liability for all future damages! Furthermore, Exxon's record of numerous large oil spills throughout the world, before and after the Valdez, is evidence that there has not been enough deterrence to cause Exxon to act responsibly toward the environment.

- 1-1-1

APR 11 1991

U.S. DISTRICT COURT

I have heard it suggested that Exxon deliberately created the Valdez spill, and I can not dismiss this as a possibility. It was notable that large price increases were seen at the pump nation wide within a couple of days of the Valdez grounding. The increases were enough to account for several billion dollars in increased profits. This might have been motive enough to deliberately create the spill!

I have worked for the oil companies at Prudhoe Bay, and for oil-field service companies for over 8 years. In that time I have come to understand the thinking and lack of ethics by which the Oil Companies operate. A prime example is the under-reporting of oil flowing through the pipeline. I asked several of Arco's field production supervisors how much oil was flowing through the pipeline while working at Prudhoe in 1987 and 1988. Every one of them told me that it was well in excess of 2 million barrels a day. 1.7 million barrels a day was the amount reported according to information submitted to the State of Alaska for tax purposes. Another favorite practice is to shuffle many millions of gallons of gasoline and crude oil to other oil companies immediately before taking inventory. Of course there is nothing in writing anywhere.

Before the Valdez grounding it was commonly believed among the field hands that in the event of a large spill in Alaskan waters, the policy would be to "wait for it to flush out to sea". That is exactly the policy that was followed! There was never a serious attempt to contain or pick up the oil, it was just a big show. Since that time pertinent information has been withheld from the public in an effort to make things look better than they are and reduce the settlement.

I believe it is contrary to the public interest to allow the proposed settlement to be ratified.

Sincerely,

Brent D. Cole

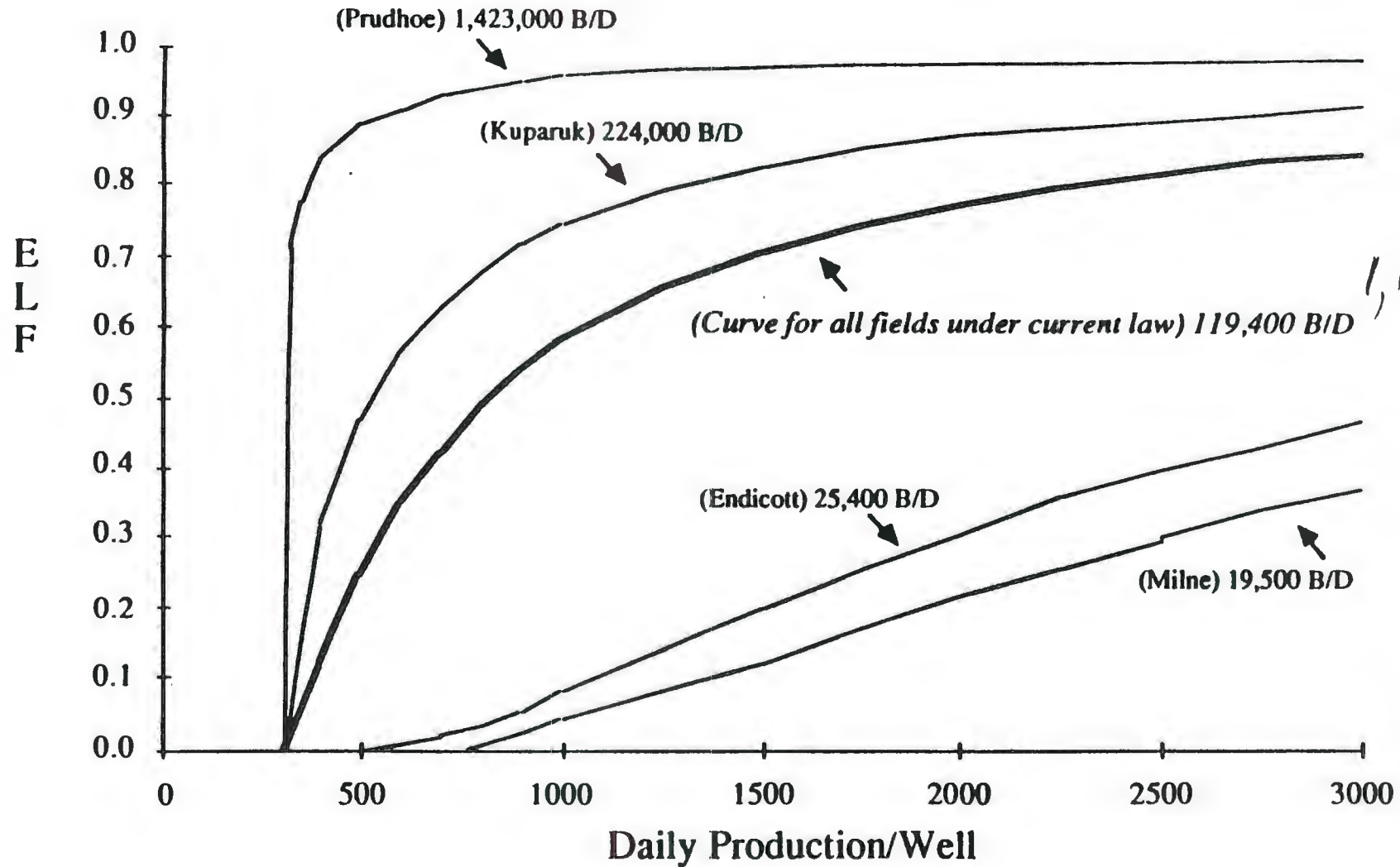
From Questions & Answers on the EII with related briefing materials

April 21, 1987

Office of The Governor

Alternate ELF

Constant At 55,000,000



1,423,00
224,00
~~119,400~~
25,40
19,50
1,691,90

TECHNICAL NOTE ON ARCO'S KUPARUK EXAMPLE

Tax Effects of Drilling an Additional Well Under Current Law

Mr. James Weeks, Kuparuk Unit Manger for ARCO, provided testimony to the House Finance Committee on March 27, 1987. Examples of severance tax effects (see following page) accompanied his testimony. The examples compare the severance tax effects of adding one additional well in the Kuparuk field under the current ELF and under the proposed ELF (CSHB 154 fin.). The examples show that the addition of one well producing just under 300 barrels per day would increase output from 90,168,000 barrels of oil per year (BOPY) to 90,277,000 BOPY. At the \$9.00 per barrel price assumed in ARCO's example, annual gross revenue to the owners increases by \$981,000.

$$(90,277,000 \text{ BOPY} - 90,168,000 \text{ BOPY}) * (\$9/\text{barrel}) =$$

$$(109,000 \text{ BOPY}) * (\$9/\text{barrel}) = \$981,000$$

The first of ARCO's two examples shows how under current law the owners would collect an annual severance tax *rebate* of \$37,846 on this additional revenue. The effective severance tax rate on the new production is thus -3.9 percent. The effect is analagous to a personal income tax where the effective tax rates become lower as increasing income moves the taxpayer into a higher bracket.

The second ARCO example illustrates how this will be changed under the proposed law. Instead of giving the owners a \$37,846 windfall, the proposed law will collect \$58,611 (6.0 percent) of the incremental \$981,000 for the state in severance tax. The table below summarizes the effects under the current and proposed severance tax laws, as shown in the ARCO examples.

TAX EFFECTS OF DRILLING ONE ADDITIONAL WELL
(ARCO Kuparuk Example)

	Change In Annual Gross Revenue	Change In Annual Severance Tax	Tax Rate On Incremental Production	Average Tax Rate Before Drilling	Average Tax Rate After Drilling	Percent Change In Average Tax Rate Due To Drilling
Current Law	\$981,000	(\$37,846)	-3.9%	7.820%	7.806%	-0.180%
Proposed Law	\$981,000	\$58,611	6.0%	10.944%	10.938%	-0.055%

Jack Kimm

April 10th 1991

P. O. BOX 7
ANCHORAGE, ALASKA 99510
USA

The Hon. Russel Holland
Hearing Exxon Valdez spill-case
Federal Court
Anchorage, Alaska

HAND CARRY

APR 11 1991

U.S. DISTRICT COURT

Your honor,

Thank you for your labor over this matter.

The day the spill happened I was in Japan trying to drum up bookings for summer tourist season. When the big headlines hit the street, there were droves and droves of cancellations: "Alaska is too dirty now" they seem to think.

An old gent in his 80s told me, " I am so sorry for you." It is like this, he said.

"There was a pretty daughter of 17 in the old days. "The family was poor. So to eat, we had to let her go work in a bar as a drink~~ing~~ - serving wait~~ress~~. She brought in money. So we could live, everyone had enough to eat. Then one day a drunk came in and propositioned her. She politely refused. She was an unkissed virgin, the old timer said. The drunk whipped a knife and brutally scarred her pretty face. Scarred for life."

About the same thing happened to your unkissed, unmolested innocence, didn't it? he said.

XXXXX

Exxon is a grown up. An adult corporate citizen. Like all adults in this country, they must make restitution fully where they cannot bring it back "as was".

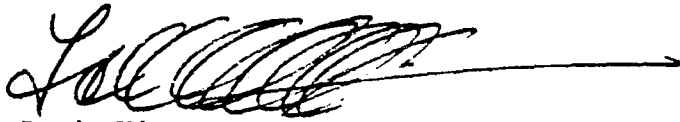
Lax control of personnel with drinking problems! What would have happened if a Jumbo pilot so drunk crashed with 400 people? But this damage is much worse. Damage in many places permanent.

Such a thing as this cannot be over-looked, or condoned.
One may run a business, make money, etc but one may never
hurt your country or fellow citizens in the process.

This is a horrible crime, this neglect, this callousness.
Alaska - America's God's country - scarred by their neglect,
their irresponsibility.

Their responsible officials should be checked for their
life-long citizenship education.

Thank you, Judge Holland

A handwritten signature in black ink, appearing to read 'Jack Kimm', followed by a long horizontal line extending to the right.

Jack Kimm
A long timer

FORTIER & MIKKO
A PROFESSIONAL CORPORATION
Attorneys at Law

DENALI TOWERS NORTH
2550 DENALI STREET
SUITE 604
ANCHORAGE, ALASKA 99503
April 11, 1991

SAMUEL J. FORTIER
DAGMAR C. MIKKO
CARLENE M. FAITHFUL
TELEPHONE (907) 277-4222
FAX LINE (907) 277-4221

The Clerk of Court
U.S. District Court
Federal Building
U.S. Court House
222 W. 7th Avenue #4, Rm. 261
Anchorage, AK 99513-7564

Hand Delivered

Dear Judge Holland:

I am writing this letter in a personal capacity, and not as a lawyer for any particular group. However, my law firm is primarily engaged in Alaska Native Law, particularly the representation of Village Corporations.

I have represented Chenega Corporation and Port Graham Corporation for over seven years. In my representation, I have also become very close, personally, to each of the Communities. My personal relationship with each of the Communities is a deeply enriching and rewarding experience for me; I have learned more from those relationships than from any other single experience of my life.

I was in Chenega on March 31, 1989, as the battle for Saw Mill Bay began. That battle had to do with saving a hatchery, not with protecting a peoples' way of life. For the past two years, the images of my friends at Chenega Bay struggling with the impact of that trauma continues to haunt me. The air was thick with oil fumes, the Island upon which Chenega Bay is located was surrounded by oil, helicopters and airplanes were continuously taking off and landing, Crab Bay was filled with vessels from Cordova and Valdez, and my friends were reduced to obtaining their food from an Exxon boat docked at the Chenega Bay dock.

APR 11 1991

U.S. DISTRICT COURT

(60)

The Clerk of Court
Judge Holland
Page 2
April 11, 1991

When I returned from Chenega Bay, I was shaken and ill, realizing that I had witnessed the complete destruction of a way of life, which destruction occurred overnight. Several years later, one of my dear friends, an elder from the Village, Paul Kompkoff Sr., appeared on national television, his image video taped at Sleepy Bay, once one the most beautiful areas in Prince William Sound. He said that Exxon was calling him a liar but he had lived in the area all of his life (some seventy years) and he knew what there was before the oil spill; there were otters and seals and the lands and seas were rich. Now there was nothing. Exxon called him a liar because, according to Exxon, the Sound was restored. A few days ago, a damages assessment released by the Federal government established that Paul was right; the sea birds were virtually wiped out of his homelands; the entire otter population had been destroyed in and about traditional Chenega lands and there are no seals.

I traveled to Port Graham as the oil was hitting the beaches surrounding their lands in April 1989. My friend, Mary Malchoff, served me bidarkis, a favorite food. I was eating as many as I could, because in Anchorage you can't get bidarkis. One of Mary's children told me that I could be eating the last of the bidarkis in Port Graham for a long time, because the oil spill would inundate where mollusks lived, the seacoast. I haven't eaten a bidarkis since. Port Graham lands are considered the most highly toxic, the entire mollusk population the most deadly to eat in the entire spill area, now.

I have learned that subsistence is not merely food gathering; it is sharing, love, and culture all wrapped into an ability to survive handed down for centuries. In both Chenega and Port Graham, subsistence is not possible. In 1989, Villages from Southeast Alaska to Tyanelc shared salmon with Port Graham and Chenega. That was a sharing of food resources. Subsistence is a way of life, sharing within the Village. And that is impossible today.

I witnessed the victimization of my friends. Exxon brags that the settlement, including the criminal sentencing, is insignificant, and is probably tax deductible, and Exxon apparently needs lots of tax deductions. My friends don't need any tax deductions; they don't have any income, anyway. However, their way of life has been destroyed by Exxon and they, as victims of extreme economic violence, receive no compensation.

The Clerk of Court
Judge Holland
Page 3
April 11, 1991

The victim of a robbery may apply through the violent crimes compensation fund; my friends applications to TAPPA, as you ordered, are rendered meaningless by the claims of Exxon against that very same fund.

Exxon ought to know that it is being punished, in order to deter such criminal conduct by others, and to isolate Exxon as a danger. Society as a whole, and the microsocieties at Chenega Bay and Port Graham in particular, are entitled to retribution, which the court should exact from Exxon. Exxon Company U.S.A. and Exxon Shipping are responsible for the largest oil spill in North American history, in an area of unsurpassed beauty. Chenega, the worst hit lands and community in the spill area, is the oldest continually inhabited settlement in all of Prince William Sound. The way of life has withstood many centuries, including the largest recorded earthquake in North American history but it cannot survive the destruction of the environment. And that is what happened. Port Graham, similarly, continues to struggle.

Under the sentencing guidelines, the Court is to consider the impact on the victims. In this case, the U.S. Probation office did not prepare a sentencing report. Exxon is riding on its tax deductible cleanup effort which has not restored and cannot restore the resources or the lifestyles of my friends in Chenega Bay or Port Graham. Not in our lifetime or perhaps in their childrens lifetimes.

The plea agreement is not fair, nor just. It does not isolate, condemn, or rehabilitate Exxon. No restitution is required to be paid to the victims. The plea agreement does not conform with the sentencing guidelines, nor with the pattern of illegality in which Exxon and Exxon Shipping engage. The simple fact is this tragedy could and should have been avoided, but for the criminal acts of the defendants.

This is not a simple misdemeanor case. It is a felony case and should be treated as such.

The Clerk of Court
Judge Holland
Page 4
April 11, 1991

Very truly yours,

FORTIER & MIKRO, P.C.

By: 

Samuel J. Fortier

SJF:cbs (4/11.1:cc3)

April 12, 1991

Dear Legislators,

My wife Luba and I were born in the Village of Port Graham and ~~have lived here all our lives.~~
We raised 11 children ~~and now we have 30 grand~~
children, I am 76 yrs. old and my wife ~~to~~
Luba is 69 yrs. old.

We have used subsistence all our lives, I am also a commercial fisherman. We are going to need subsistence now more than ever because the cash economy has been affected by the Exxon oil spill. The cash economy is almost nil in the Village of Port Graham. Our subsistence has been damaged because of the oil spill. I feel uncertain as to whether our subsistence food is safe to eat.

Our commercial fishermen have been affected which in turn affects the canneries, fish buyers and canning workers because of the Exxon oil spill. It seems to me the Exxon Settlement offer is inadequate, but there is a need to start somewhere, use the Exxon Settlement offer as a starting point. I would go along with it as long as there is room for negotiating at the end of 11 years then I suggest that we accept the agreement.

we might not live to see the result
but knowing Exxon will continue to take
care of the damages caused by the Exxon
oil spill - I will depart happily to
my happy hunting grounds
Good luck

Sincerely,

Walter R. Megawack, SR.

P.O. Box PG-11

Port Graham, Alaska 99603

April 13, 1991

Mr. Thomas A. Campbell,
General Counsel
NOAA
U.S. Department of Commerce
16th and Constitution Ave. NW
Washington D.C. 20230

Re: Consent Decree
State of Alaska v.
Exxon Corp.

Dear Mr. Campbell:

This provides comments on the referenced agreement and consent decree. I believe that the State and Federal government are proposing to settle for considerably less than the cost of damages to the Alaskan environment. Conclusions from economic studies of the oil spill, released through the media, indicate the damages were several billion dollars more than the proposed settlement. However, because the government has presented its bottomline, I believe that only small gains can be made in attempting to renegotiate dollar figures on the settlement. On the other hand, I would encourage modifying some of the text of the settlement as well as the memorandum of agreement as described below.

To make the best of a bad situation, I would suggest that the agreement be carefully examined to eliminate any loopholes or potential areas for misunderstanding. For example, it was not clear to me what part of the settlement monies would be used for past work (during the oil spill through the end of 1990). Page 3 states that Exxon paid in excess of \$2 billion for clean-up activities and reimbursements to the federal, State and local government for their expenses of response to the oil spill. The agreement further states that the payments called for in this agreement are in addition to those described above. However, paragraph 10 (page 10) states that 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. This implies that part of the monies from this settlement will be used to reimburse the government for clean-up work prior to December

1990. This contradicts the statement on page 3. If the statement on page 3 means that Exxon had only made partial reimbursement to the government for response expenses prior to December 1990, this amount should be stated. This figure is crucial to determine the funds that would be available for future clean-up and restoration studies. Reimbursements for any other past expenses (to be paid by settlement money) should also be presented.

When large sums of monies are transferred to government agencies, there is the potential for waste and abuse. To avoid this problem and make maximum use of funds from this settlement, I would strongly urge you to include a provision that expenditures of oil spill funds will be audited on an annual basis by an independent accounting firm.

I was pleased to see a provision in the memorandum of agreement to require for public participation and establishment of a public advisory group. I would further suggest that there be a clear separation between recommendations made by principal investigators and the trustees. I recommend that an independent panel of peer reviewers be established. The peer reviewers would make recommendations on proposed studies as well as review studies. This panel is needed so pure scientific information would be made available to the public without political interpretation by the trustees. Scientific decisions should be made by peer reviewers. The trustees may have the authority to override peer reviewers decisions, but a record of decision should be kept and made available to the public. My personal experience suggests that there was no clear logic on some decisions in continuing studies or determining the scopes of studies.

Sincerely,

A handwritten signature in cursive script that reads "Mike Nishimoto".

Mike Nishimoto

407 Rangeview Ave.

Homer, AK 99603



UNIVERSITY OF ALASKA FAIRBANKS

INSTITUTE OF ARCTIC BIOLOGY
Fairbanks, Alaska 99775-0160 U.S.A.

APR 19 AM 1:45

(907) 474-7640
FAX: (907) 474-6967

ATTORNEY GENERAL'S OFFICE

April 15, 1991

Thomas A. Campbell
General Counsel of NOAA
U.S. Department of Commerce
Room 5814
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

and

Barbara Herman
Attorney General's Office
State of Alaska
1030 West 4th Avenue
Anchorage, Alaska 99501

Dear Mr. Campbell and Ms Herman:

I would like to comment on one aspect of the Exxon Valdez oil spill settlement agreement that concerns me greatly. At issue is the definition of natural resources contained in the agreement. Since very soon after the spill occurred, the effects of both the oil and the clean up efforts on archaeological sites and resources have been recognized as an issue that must be addressed. Yet the definition of natural resources, as written in the agreement, does not specifically mention archaeological or cultural resources. I feel strongly that these important resources need to be mentioned explicitly in the definition so that they cannot possibly be left out of future damage assessment and restoration efforts. Let me outline several reasons why.

1. Archaeological resources should be included in the definition of natural resources because:

a.) archaeological sites clearly are made up of natural resources. They are tangible physical resources that include "land" and "biota" such as rocks, shells, pollen grains, animal bones, carbonized seeds, wood, and a host of other natural materials. Further some of the sites consist of petroglyphs, pictographs (sculptures and paintings on rock faces), stone or wood weirs, and submerged stratigraphic layers, all clearly natural resources.

b.) archaeological resources are natural resources in the traditional sense, in that when they are properly studied, they can provide important information about human history that is not documented in any other way.

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c.) archaeological resources fit the definition of natural resources in that they are tangible, publically-owned resources for which the state of Alaska and the federal government are responsible.

2. Efforts are currently under way by solicitors within the Department of Justice to rule that archaeological resources are not natural resources under the definition used this agreement, which is very similar to the definition in CERCLA. Such a ruling would not only jeopardize the archaeological resources affected by the Exxon Valdez oil spill, including some magnificent resources on Kodiak Island as well as those in Prince William Sound, but could be used as a very negative precedent for future events in other parts of the country in which CERCLA might be invoked.

3. Damage assessment studies have already been significantly delayed. The awarding of the contract for last summer's proposed work was delayed until it was too late in the season to complete all the work, or even to carry out a part of it safely (August can be extremely stormy in that region, and even under good conditions, great care must be taken to reach remote sites safely.) Has the Department of Justice's efforts to exclude archaeological resources already played a role? It is difficult for someone who is not an insider to know. But is clear that this delay has led to the loss of an entire year's time in obtaining important data.

It is extremely important that the damage assessment work proposed for this summer go forward without further delay. On the present timetable, the award date will leave barely enough time for a responsible contractor to prepare for and carry out the work. If additional damage to sites is to be prevented, a prompt damage assessment is essential. Further arguing over the definition of natural resources could lead to such a delay, and could bring about a significant additional loss of resources that are already endangered.

4. Finally, inclusion of archaeological resources in the definition of natural resources is important because it could make available restoration funds needed to protect sites in the region from looting. One of the spill's most significant impacts was to reveal to many people working on the clean-up the location of sites that had hitherto been protected by their obscurity. These sites are now in much increased danger of being looted. Money for site monitoring, anti-looting education, and ARPA investigations when looting occurs is not readily available from regular agency budgets, but could be made available as a part of

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Exxon Valdez Settlement Comments

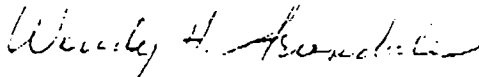
April 15, 1991

restoration efforts. Such funding could play a significant role in preserving archaeological resources in the affected area for the future.

I am a professional archaeologist who has worked in northern regions for nearly 20 years and Alaska for the past 12 years. I have no personal interest whatsoever in any work that might come out of damage assessment or restoration efforts. But I have a great concern for Alaska's magnificent cultural resources. And I have seen the significant losses that take place when adequate funds are not available for preventing further losses to endangered resources. I urge you strongly to amend the settlement's definition of natural resources so archaeological resources are explicitly included.

Thank you for this opportunity to comment.

Sincerely,



Wendy H. Arundale, Ph.D.
Research Associate

cc: Richard Stewart, Assistant Attorney General for Lands and
Natural Resources, Department of Justice
Manuel Lujan, Jr., Secretary, Department of the Interior
James M. Ridenauer, Director, National Park Service
Jerry Rogers, Associate Director, Cultural Resources, NPS
Senator Dick Eliason, Chair, Special Committee on the Exxon
Valdez Oil Spill Settlement Claims, Alaska State Senate
Representative Max Gruenberg, Chair, Special Committee on the
Exxon Valdez Oil Spill Settlement Claims, Alaska State
House

CHICKALOON VILLAGE
CHICKALOON VILLAGE FISH AND GAME
CONSERVATION COUNCIL
HCO4 BOX 9880
PALMER, AK 99645
(907) 745-0505

April 15, 1991

Hon. Judge H. Russel Holland
U.S. Federal District Court
Anchorage, AK

Hon. Judge Holland,

In the letter you received from Chickaloon Village dated April 11, 1991, we went on record as opposing the proposed oil spill settlement with the Exxon corporation regarding the criminal charges and damages. At this time Chickaloon Village would also like to go on record as opposing the currently proposed settlement pertaining to civil charges and damages against Exxon.

The reasons behind our opposition are basically the same as we outlined in our April 11th letter to you, specifically: the lack of federally-mandated participation in the negotiations by the Traditional Tribal governments of Alaska; the withholding from the public (Native and non-native) of information gathered to date regarding the documented extent of damage caused by the spill; the low amount of the proposed settlement, given Exxon's huge profits; and the lack of information regarding the long-term effects on the environment, the health of the people or the subsistence activities and culture of the Alaska Native People who depend upon these resources for our survival.

Chickaloon Village, like a great many villages not located directly on the Sound, has nevertheless suffered from the Exxon Valdez spill, as the subsistence resources in our traditional jurisdictional and subsistence use areas have been affected, and will be affected into the future.

To date the Chickaloon Village Traditional Council has not received the documents pertaining to the spill's (currently known) effects which are now in the hands of various corporate and governmental bodies. We officially request that all such pertinent documents be submitted to us within 30 days of the receipt of this letter. Chickaloon Village officially reserves the right to initiate legal action against the responsible parties in tribal court at some point in the future, after our Traditional Tribal Council and the appropriate other tribal officials have had the opportunity to fully study and consider the implications of these documents and any other relevant information that becomes available to us.

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APR 16 1991

We may also wish to enter a claim, either singly or in conjunction with other Traditional Tribal governments, in either state or federal court, and reserve the right to do so after full consideration of all existing relevant information by our Tribal officials.

Sincerely,

David Harrison
Tribal Administrator,
Chief Fish and Game Officer
Chickaloon Native Village

cc: Mr. Rick Davidage
State of Alaska Subsistence Council

R.D.4, Box 348
Canton, N.Y. 13617
April 15, 1991

Thomas A. Campbell
General Council, NOAA
U.S. Department of Commerce
16th & Constitution Ave., N.W.
Washington, D.C. 20230

Dear Mr. Campbell:


The proposed "settlement" of the Exxon Valdez disaster appears to have been made under some secrecy without public participation. This is not acceptable.

The full damage to Prince William Sound has not been determined and with continuing death of wildlife which is ongoing, there should be no settlement until scientific evidence clearly indicates the extent of the damage. There is every evidence that the adverse impact of this oil spill will continue well into the future.

Allowing Exxon and associates to escape their responsibility is comparable to the Savings and Loan scandal which is devastating the economy of this nation.

The public is entitled to information and input before any such settlement hurried pro-oil company proposal is accepted. We, the taxpayers, are not about to be accept such a deficient proposal.

Sincerely,


Clarence Petty

RE: Exxon Valdez Settlement

24 Delafield St Apt 1
New Brunswick, NJ 08901
April 16, 1991Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Ave #200
Anchorage, Alaska 99501

R1

Dear Ms. Herman,

I demand clear opportunities for public participation in determining how the settlement monies shall be spent. ~~This should~~ This should include a public advisory group with members from the environmental community and spill affected communities whose comments are seriously considered by the Trustee Council.

The money should be spent on the buy back of timber rights along spill affected ~~area~~ coastlines to prevent further damage, restoration activities, and ongoing studies in the Sound.

Thank you.

Nadine Mark

Tom Lakosh
P.O. Box 100648
Anchorage, Alaska 99510-0648
(907) 258-5767



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re

the EXXON VALDEZ

Case No. A-89-095 Civil
Re: A89-140 and P108

Motion For Stay Of Exxon Valdez Settlement

Plaintiff moves this court to Stay Consideration of the Memorandum of Agreement and Settlement of Claims between the United States Government, State of Alaska and Exxon Corporation, et. al.. Plaintiff brings this motion in an effort to preserve a predominating operation of law in 31 U.S.C.A. §3729 et. seq.. Plaintiff requests this Court take judicial notice of averments of fraud perpetrated by Defendants as reported by U.S. Congressman George Miller and Plaintiffs' Consolidated Class Action Complaint 3AN-89-2533 and its amended complaints. These parties have only recently been made aware of the Qui Tam cause of action and are swiftly moving to bring forward all original relators/informants with first-hand knowledge of Defendants' fraudulent and false claims against the U.S. Government and its agencies.

Plaintiff respectfully pleads to the mercy of the Court not to foreclose this cause of action where it is obvious that the U.S. Attorney General and State Attorney General have failed to adequately protect the public interest through prosecution of

criminal fraud and other high crimes and misdemeanors perpetrated by Defendants as stated in this Plaintiff's comments to the Court regarding this settlement dated April 15th, 1991.

Plaintiff reiterates his plea for a temporary stay of consideration of this settlement so as to allow this private cause of action brought in the King's name to be brought forward. Plaintiff fully expects an amended Qui Tam complaint to be filed naming all relators within thirty (30) days from this date. Plaintiff will graciously accept any allowance of time to pursue this cognisable cause of action which may be materially affected or foreclosed by this insubstantial settlement.

Plaintiff submits an article entitled "The Private War on Pentagon Fraud" by Steve France, published in the ABA Journal, March 1990, pages 46 - 49 for the Court's consideration of the viability of this claim.


Plaintiff further asserts that the settlement will materially affect other Plaintiffs' causes of action and the settlement should not be considered without specific protection of private Plaintiffs' causes of action with language that indicates that the Memorandum of Agreement SHALL NOT infringe upon any private cause of action seeking damages from or restitution for Defendants' tortuous activities.

Signed and dated this 19th day of April, 1991 at Anchorage, Alaska.



Thomas A. Lakosh,
Pro Se Class Action Representative

I hereby certify that a copy
of the foregoing was served to
Bogle and Gates, and
Burr, Pease & Kurtz, and
Plaintiffs' Liaison on
April 19, 1991.


Thomas A. Lakosh

●LITIGATION

BY STEVE FRANCE

Most people think of Ronald Reagan as the best friend defense contractors ever had. But, before leaving office, the champion of military spending almost casually fathered a law that threatens to play a deadly David to the Goliath of defense industry fraud and waste.

The concept is simple: Discover someone defrauding the government and the law empowers you to sue the wrongdoer in the name of the United States. It also entitles you to at least 15 percent of the treble damages and civil fines it recovers, plus fees and costs. While cases must first be filed under seal to the Justice Department, which then has at least 60 days to decide whether to take the lead in prosecuting an action, the private "qui tam" plaintiff remains a full party and, if Justice stays out, can press on alone.

In effect the law "privatizes" the government's anti-civil fraud function—a classic Reagan Revolution response to bureaucratic impotence. Indeed, in providing legal weapons to whistle-blowers, it can be seen as a domestic application of the philosophy that armed anti-communist insurgents in Afghanistan, Angola and Nicaragua.

Some lawyers suspect that this new class of guerrilla plaintiffs will become the most dangerous foe of the military-industrial complex since the Viet Cong. The defense industry already is spending millions of tax-deductible dollars on its legal defense. As of Oct. 26, according to DOJ, 198 qui tam actions had been filed and 13 settled for a total of \$26.7 million with \$2.7 million going to private plaintiffs.

Five federal judges emphatically have rejected constitutional challenges to the qui tam provisions of the law, known as the False Claims Act, 31 U.S.C.A. § 3729 et seq. Two industry groups retained former solicitor general Rex Lee to argue that the law violates separation-of-powers and standing doctrines, and the appointments clause of the Constitution, but no judge yet has agreed.

Since the Justice Department has taken no position on constitutionality, defendants have found themselves arguing the issue on behalf of the government—a role ironically similar to that of qui tam plaintiffs.

Steve France is a Washington lawyer and writer, and a contributing editor of Defense Contract Litigation Reporter.

The Private War on Pentagon Fraud



On the political front, a recently leaked internal memorandum of the Lockheed company, which is defending against a qui tam action, indicated that the industry is preparing to mount a campaign in Congress against qui tam. Bruce Fein, a well-known conservative legal polemicist, calls the law "nothing but a treasure chest for unthinking scoundrels of the defense industry."

Richard Sauber, former head of DOJ's Defense Procurement Fraud Unit and now counsel to several defense companies, compares the mischief-making potential of these private attorneys general to the abuses of the Iran-contra scandal. "There is something basically wrong about having private individuals operating their own 'off-the-shelf' private Justice Departments," he says.

Senior DOJ officials have complained about this invasion of the department's prosecutorial discretion and the burden of weeding out dozens of weak cases. But so far Justice has not moved openly to repeal or modify the law. Congress, which passed the law unanimously, remains strongly supportive. In August the entire Senate Judiciary Committee wrote to Attorney General Richard Thornburgh urging him to support the law.

Meanwhile, battalions of America's best lawyers are waging a "scorched earth" litigation strategy on behalf of their well-heeled contractor clients, according to John

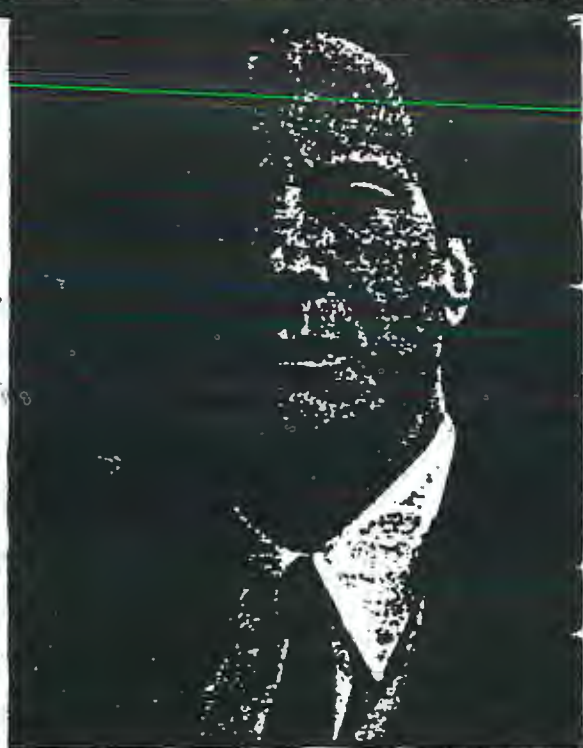
Phillips of Los Angeles, a senior member of the budding qui tam bar. Thinly financed plaintiffs are learning that filing a complaint—like planting the harpoon in a whale—is merely the beginning of an enormous effort.

But more people are learning about the law, which applies to any case of knowingly false claims for payment from the government. And ever more attorneys are attracted by the huge sums of money potentially recoverable and the idea of serving the taxpayers at the same time.

"I hear from a lot of young lawyers who want to know how they can get into this new area," says Bradley Weiss, 35, who left the Pentagon Inspector General's Office last June and is currently preparing several qui tam cases. "It's public interest for profit. Former government attorneys in particular often would like to leave government, but don't want to go work for the other side," he adds.

Enacted in October 1986, the law was proposed by Sen. Charles Grassley, a homespun, conservative Republican very popular with his Iowa constituents. In the early 1980s he had surprised many by conducting several stubborn investigations of defense-contracting abuses.

Frustrated by the difficulty of reforming the procurement process and Justice's performance in prosecuting abuses, he resorted to the ancient qui tam device, which goes back



John Phillips:
"To count on
a guaranteed
minimum recovery
makes a tremendous
difference."

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to feudal times.

The term *qui tam* comes from the Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "who brings the action for the king as well as for himself."

In 1863, unable to stem massive procurement frauds against the Union Army perpetrated by well-connected contractors, President Abraham Lincoln included *qui tam* provisions in the original False Claims Act. But a 1943 amendment and several adverse judicial interpretations had crippled *qui tam* plaintiffs' ability to bring actions. Grassley's idea was to reinvigorate the Lincoln law.

Surprisingly, given the controversy now surrounding the law, he was able to get his legislation through

Congress with minimal opposition. After accommodating several technical criticisms, he obtained DOJ's formal support and a warm endorsement from President Reagan. Even the defense industry declined to object openly to the False Claims Act Amendments of 1986.

The 1986 act strengthened the position of whistle-blowers in three ways. Under the new law, plaintiffs have more power to initiate and prosecute claims. Financial incentives are larger and are guaranteed. Tough protections against employer retaliation have reduced the risks of suing one's employer, or disclosing evidence in such cases.

Before 1986 the law precluded any *qui tam* suit based on information already in the government's pos-

session, even if the information had come from the "relator" (the statutory name for *qui tam* plaintiffs). The government usually did have some relevant prior information, whether or not DOJ knew of it. In addition, even relators who avoided this obstacle had no means to ensure strong prosecution of their case. Once DOJ intervened, the relator had no guaranteed involvement in or access to information about the suit, and almost no way to object to its dismissal or settlement.

Now, provided DOJ has not already filed suit, the government's prior knowledge is irrelevant. Furthermore, DOJ must decide within 60 days to join an action, unless it shows good cause for taking more time. Workload considerations are not enough to extend the 60-day period. If DOJ enters a case it assumes "primary responsibility," but the relator remains a party entitled to copies of all pleadings and deposition transcripts, and to object and request an evidentiary hearing on any motions to dismiss or proposed settlements.

So, where before relators were little more than bounty-hunting informants, dependent on the decisions of their government handlers, now they operate more as private attorneys general. When the government tried to settle James Gravitt's case against General Electric for \$234,000, his attorney, James B. Helmer Jr. of Cincinnati, successfully objected. Last February, on the day set for trial, GE settled the case, and three others, for \$3.5 million. Gravitt reportedly received \$770,000—22 percent of the government's recovery.

Before 1986 the law provided for double damages, plus forfeitures of \$2,000 per false claim. Relators could receive up to 10 percent of the recovery, but their share depended on what the court deemed appropriate.

The 1986 amendments provide for treble damages, forfeitures of at least \$5,000 and up to \$10,000 per false claim, and reimbursement of reasonable attorney fees and costs. Relators are guaranteed at least 15 percent of any judgment or settlement in cases where DOJ participates, but the court can award up to 25 percent. If DOJ stays out of a case, the relator is entitled to 25 to 30 percent. In certain cases based on publicly disclosed information, the court can award the relator less than 10 percent.

"The fact of being able to count on a guaranteed minimum recovery makes a tremendous difference to people thinking about suing, and to



James B. Helmer Jr.:
His client received
a reported \$770,000
in a General Electric
qui tam settlement.

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Herbert Hofif:
A qui tam top gun
or "loose cannon"?
His targets include
the Stealth bomber
and MX missiles.

attorneys evaluating a case," says John Phillips, who helped draft the amendments and represents several qui tam clients.

Many DOJ-adopted actions allege well over \$100 million in damages, enough to interest even the wealthiest potential whistle-blower and bring any law firm in on a contingent-fee basis. Phillips' model of calculated, self-interested whistle-blowing is his client James Carton, former technical director of Litton Computer Systems. Carton alleges that in 1986 he discovered that Litton was systematically charging the government millions of dollars for costs incurred in commercial work. Litton denies the charges.

Carton says his superiors ignored his findings. Being a team player, he did not insist, and left Litton in 1987 on good terms. In 1988 he read a newspaper article about qui tam and contacted Phillips. The rest is litigation.

In the hearings that led to passage of the 1986 amendments, whistle-blowers told of being fired or severely punished by their employers when they exposed improprieties. Under the new law, such employer retaliation is subject to heavy penalties. According to Phillips, who monitors most of the qui tam cases, the protections largely have eliminated the problem.

Congress inserted two other "clarifications" that help government and relators' counsel win their cases. Overruling contrary judicial interpretations, the law now specifies that "knowingly" making a false

claim includes acting in "reckless disregard" of the truth. No proof of actual knowledge or specific intent to defraud is required.

Also, rejecting cases that required "clear and convincing" proof of false claims violations, the 1986 law states that a mere preponderance of the evidence is sufficient.

As people have learned about these changes, the number of cases has increased sharply. Before 1986, DOJ used to receive about six qui tam cases a year. The first 10 months of 1989 produced 100. The Department's 43 civil-fraud attorneys spend close to half their time on those cases, despite the addition of 18 new lawyers. U.S. attorneys also are adding staff to handle qui tam work.

Introducing his bill on the Senate floor, Grassley called for establishment of "a solid partnership between public law enforcers and private taxpayers." Lisa Hovelson, then in law school, was Grassley's chief staffer in the legislative effort. Now she is busy representing several qui tam plaintiffs as a private attorney. She says her post-law school employment was not a major reason for the legislation, but reinforcing the government's legal manpower was.

Hovelson points out that involving private attorneys means putting more lawyers on the government's side, lawyers who add entrepreneurial energy and creativity to the task of countering fraud.

"It isn't really in the nature of an overburdened bureaucracy to think of new ways to attack a problem," she

says. "But the statute doesn't just reach defense fraud and procurement fraud. It applies to almost everything—government loans, loan guarantees, grant programs, farm subsidies, entitlements, federal highway funds spent by the states, subcontracts. Creative lawyers and plaintiffs will be finding new applications for years, and state legislatures are starting to work on their own versions of qui tam."

Medicare fraud, for example, in which physicians and hospitals submit claims for medical procedures not actually performed, already has spawned a number of qui tam lawsuits. The amounts at stake are far less than for defense cases, but, by the same token, defendants have much less to spend on their defense. One Medicare case was partially settled last year for \$355,000.

Phillips, who represents the relator in that case, says such smaller but more timely recoveries help fill the war chest for more costly litigation. Because these simpler cases can move more quickly in the courts, they also may be the place where early judicial interpretations are formulated.

Weiss anticipates that private attorneys general will use the law to enforce environmental regulations. "Compliance with environmental laws is obligatory in any government contract," he says. "Therefore, non-compliance entails a false claim. If DOJ ignores the problem, qui tam lets you sue on behalf of the government and gives you a unique decision-forcing mechanism to bring Justice in, something even EPA doesn't have when it tries to sell a case."

That is the kind of situation that disturbs Michael Hertz, head of DOJ's commercial-litigation branch. The law "prioritizes investigations by legislative fiat, regardless of what we or the agency involved think should be done," Hertz argues. "There are other ways to encourage people to bring information to the government's attention."

Defenders of the law point out that DOJ can simply decline to enter weak or badly prepared cases, with the option of intervening later, if the case improves and the court allows.

Meanwhile, DOJ is entitled to receive all pleadings and depositions, and, on showing good cause, can block discovery. It always can move to dismiss a case or limit the relator's participation.

So far, according to Hertz, few of the cases filed have been completely unfounded. Yet, with its limited resources, DOJ has entered only 25 cases, while declining 73. But as soon

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as someone hits the jackpot "it will be like the lottery," he says, with everybody taking action on a qui tam lawsuit.

His nightmare is Ernest Fitzgerald's dream. After 25 years of fighting uphill against Pentagon waste, including a famous 14-year lawsuit to regain his job as Air Force Deputy for Management Systems, which he lost for blowing the whistle on cost overruns, Fitzgerald fantasizes about the lucky qui tam plaintiff who will retire with \$50 million to live on the French Riviera—causing 10,000 golden whistles to blow.

Many in the federal investigative community share Fitzgerald's warm feelings for qui tam. James Richards, the Interior Department's inspector general, says he and his colleagues in government "feel warm and fuzzy about the law." People involved in programs he monitors for fraud still do not know about it, but Richards intends to publicize qui tam to potential whistle-blowers, perhaps using the federal Fraud-Waste Hotline system.

Michael Ryman in the Labor Department IG's office compares the potential of qui tam to that of RICO 15 years ago, when he helped the FBI turn that law into an all-purpose legal weapon.

"Back then, too, the bureaucrats were sluggish, if not hostile to our efforts," he says. He thinks qui tam could be even more lethal: "This is grass-roots enforcement. It motivates our whistle-blower sources. Without that you won't ever even know what's going on, much less stop it."

Having spent years depending on overmatched government lawyers to turn his investigations into convictions and recoveries, Ryman hopes qui tam lawyers will learn to prosecute cases without relying on DOJ. He sees little problem in letting dozens of "off-the-shelf" DOJ's go into action. Indeed, he says he might just go to work helping them.

Derrick Van Der Schaaf in the Pentagon IG's office, who has had lots of experience with qui tam, is more cautious. He has seen too many solid fraud investigations come to naught. "A lot of people just don't realize the factual and legal complexity of procurement-fraud cases," he says.

Lanny Davis of Patton Boggs & Blow, one of the few big-firm attorneys representing a qui tam plaintiff, agrees: "The biggest problem is getting the resources to prepare a com-



In our case we have a corporate client with resources [Irvin Industries, a defense contractor itself, which sued a competitor under the new law when antitrust discovery exposed apparent overpricing]. But it took us over a year to bring DOJ in. And we still have a long way to go. The other side easily has a dozen attorneys on the case."

One man who already has proved how expensive this kind of "lottery ticket" can be is Los Angeles attorney Herbert Hafif. He says he has put over \$4 million into the qui tam suits his small firm is handling. To date, Hafif has yet to see any return on his investment. The one case he won involved an insolvent defense company, so he waived his fee.

But Hafif, who made a fortune as a plaintiffs' lawyer, is not backing off in the face of corporate-federal litigation with enormously complicated factual issues. On the contrary, he has gone after the biggest programs in defense, including the Stealth bomber, and the MX and cruise missiles. He relishes his roles as populist crusader and enfant terrible of the qui tam bar. And he believes he can outlitigate anybody, even without help from DOJ.

Hafif's aggressive tactics have disturbed almost everyone in the qui tam business—DOJ, defendants, and perhaps most of all, some of his fellow qui tam lawyers, who call him a "wild man." They say his swash-buckling ways further alienate DOJ, are unsuited to complex federal litigation and could cast doubt on the law's merits. But Hafif fights on. In a \$45 million case against Northrop Corp., Hafif says he soon will be moving for summary judgment.

of big-time litigation. Drawing on his public-interest background, he works with two non-profit organizations, the Center for Law in the Public Interest, and Taxpayers Against Fraud. Through them he is developing a consortium of outside lawyers with special expertise. Lots of top attorneys are interested, Phillips says. His most glamorous catch so far is Robert Montgomery, former general counsel to the Energy Department, now with Paul, Weiss, Rikkind, Wharton & Garrison in Washington, D.C.

In addition, Phillips asks his clients to make TAF a co-relator in their cases and thus entitled to as much as 60 percent of any qui tam recovery. TAF's board members inform themselves of the facts alleged, thereby acquiring the requisite knowledge to become relators, but bylaws require TAF to use recoveries to promote qui tam in the courts and the media, Phillips says.

"One of the most fascinating things about the new qui tam law is how it has attracted every type of lawyer," says Jay Gourley, editor of *Defense Contract Litigation Reporter*, a newsletter. "Corporate, government, personal injury and public-interest attorneys are all using the law in their own way," he says.

Qui tam is here to stay. Constitutional challenges are failing. Even critics admit that any law combining hostility to defense contractors with skepticism about government will be hard to repeal.

Will this radical restructuring work? The law returns a measure of executive power to the people. But the people have to exercise that power through lawyers. Thus, the law will be above all a test of the American bar.

It is easy now to dismiss qui tam's critics as petty or self-serving, but we have yet to see the explosion of lawsuits that could occur when people find out the law is for real.

If private lawyers don't screen cases and conduct them in a highly professional manner, if government lawyers don't adapt their methods, chaos could be the result. Reputable individuals and companies could suffer the expense, indignity and disruption of defending themselves in court against untrue charges of fraud, while overwhelmed government lawyers watch important cases unravel in the hands of amateurs.

In this worst-case scenario it would be easy for critics to kill the law, all the while blaming another popular target of public scorn: greedy



ALASKA DISCOVERY

369 South Franklin Street • Juneau, Alaska 99801 • (907) 586-1911 • Fax: (907) 586-2332

April 19, 1991

COPY

Barbara Herman
Office of the Attorney General
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage AK 99501

Dear Ms. Herman:

On behalf of Alaska Discovery, Inc., I wish to comment on the State of Alaska's proposed settlement of civil litigation arising from the Exxon Valdez oil spill disaster. Alaska Discovery is an Alaska business that depends on tourism, primarily visitors interested in wildlife and other natural resources. We believe that the terms of the proposed settlement do not protect the public interest and that the settlement should not be accepted.

We support the concept that an adequate settlement is preferable to protracted litigation. However, the proposed settlement is inadequate because it fails to ensure restoration of injured natural resources in the areas affected and because it does not require payment substantial enough to serve as both compensation and assurance to Alaskans that operators such as Exxon will not simply externalize the costs of safety by burdening the public with the risk.

The Exxon Valdez spill killed more wildlife than any spill in history. The state-federal natural resource damage assessment studies show substantial damage to natural resources. The Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources (March 1991) estimates bird mortality at between 260,000 and 580,000 animals. (at p. 8). The common murre, for example, may take decades to recover; the regional population suffered virtually total reproductive failure in both 1989 and 1990. Other species also show severe disruption of life cycles and population dynamics. Injury to marine mammals was documented, including "continuing injury to sea otters." (*Ibid.* at p. 5.) The intertidal and nearshore ecosystem was "the most severely contaminated habitat" (*Ibid.* at p. 13). This was reflected in decreased biological productivity, reduced abundance of organisms, and disruption of ecosystem functions. "Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and other species that forage in the shallow subtidal zone." (*Ibid.*) Strikingly, samples from pollock taken as far as 500 miles away from the site of the tanker grounding showed

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elevated petroleum hydrocarbon metabolite concentrations in their bile. (See ibid.)

Even without the release of all the scientific damage assessment information, it is clear that the Exxon spill caused serious long-term damage. If all the data on the intertidal and subtidal ecosystem were released, we believe it would reinforce this conclusion and document additional damage as well. The Summary of Effects also notes that "long-lived species such as bald eagles, murres, and sea otters may not manifest some effects until a number of years have passed." (at p. 15)

Harm to human communities also has been well-documented. Disruption to fisheries, to other natural resource based businesses, and to local government functions was widespread. While Exxon paid some damage claims, it has flatly refused to pay many others. Alaska Discovery is one of the businesses harmed financially by the spill. Exxon has simply refused to pay, correctly betting that the expense of litigation would make it impossible for us to pursue our claims against the company.

The Exxon spill caused serious injury beyond financial harm. For communities like Chenega Bay, it has disrupted residents' ability to use resources near the village: they have concluded that many traditional subsistence harvest areas are no longer suitable and village activities have either been discontinued or shifted to other areas, at considerably greater cost and risk. Some of these changes may be permanent. The spill has also torn apart community life in other towns and left lasting scars.

To be considered adequate, any settlement must be sufficient to restore damaged natural resources and services. In addition, however, a settlement must be substantial enough to show that Exxon is compensating the state for the many other harms to Alaskans resulting from the company's failure to prevent the spill and its failure to respond effectively and in accordance with the approved, site-specific oil spill contingency plan. Anything less will mean that Exxon has escaped without shouldering its full responsibility. If that happens, the affected public will know that the State of Alaska has let an operator off the hook without clearly taking full responsibility for what its actions have caused and without establishing that industry operations must fully protect the public in Alaska.

It is important to note that the settlement is not as large as first reported. Exxon apparently is not being required to pay interest on the deferred payments. The present value of money received by the State of Alaska years in the future is much less than the face value of the debt, unless it is corrected by appropriate discounting and interest payments.

The Associated Press (March 22, 1991), citing projections by the Congressional Research Service and private companies specializing in deferred payment settlements of lawsuits, estimates that the actual cost to Exxon of the settlement may be as little as \$486.3 million -- less than half of the "one billion dollar" deal originally announced. This reduced value to the state is not merely theoretical. Every household paying a mortgage and every business facing operating loans pays interest on the deferred amount still

owed; this agreement does not hold Exxon to the same standard. Even worse, Exxon would be free to set up its own annuity arrangement, using investments and tax deductions to reduce the cost of the settlement still further.

The amount of money available for damage restoration is also reduced by the amount already expended in the response effort by the state and federal governments. Reimbursement of these expenditures will consume up to \$134 million. In addition, the costs of damage assessment studies now scheduled or planned could require another \$40 million. Together, these items will reduce the amount of the settlement actually available for restoration work by nearly \$175 million.

This settlement also lets Exxon escape all further cleanup responsibility. Additional cleanup costs will fall on the state. These expenses may total \$50 million in the short-term and another \$50 million in the future. As a consequence, the adequacy of the proposed settlement is directly and substantially reduced.

With respect to natural resource damages, the settlement does not provide for a payment large enough to cover all restoration costs. The ecosystems damaged by the spill desperately need a substantial recovery period during which they are free from further degradation. Consequently, the highest priority should be prevention of additional stress on the ecosystems hurt by the spill. **The most effective method is direct protection of areas that otherwise could be subject to further degradation.** Examples include acquisition of timber harvest rights, land classifications to safeguard the area while recovery occurs, establishment of forested stream buffers to prevent siltation of salmon spawning beds, and protection of critical areas such as bald eagle nesting sites. These measures could easily cost \$200 to \$300 million in Prince William Sound alone and more than twice that amount if damaged areas outside the Sound are included.

Direct assistance to some plant and animal populations should be considered as well. Although the complete program depends on the results of the scientific damage assessment work and the restoration planning process, a partial list includes cleaning of affected spawning beds and bank gravels, building incubation boxes, enhancing stream channels for spawning, and replanting beach vegetation. In addition to these direct boosts to populations, it is necessary to manage fisheries harvests more precisely in order to protect wild stocks harmed by the spill. This requires expenditures for research and for better in-season management. Other techniques, such as shellfish mariculture projects, also should be considered -- especially in relation to village subsistence and economic needs.

Restoration of biological communities is not the only work remaining to be done, however. Shoreline areas used by Alaskans and visitors need substantial attention. Many sites plainly need additional cleaning, plus revegetation and other restoration measures. For example, recreational campsites remain badly damaged, archaeological and historical sites need

attention, and areas used by village people for subsistence activities and other aspects of community life are still seriously degraded.

One other matter, equally important but more difficult to quantify, should not be neglected in evaluating the adequacy of the settlement. The Exxon spill violated Alaskans' trust and eroded our sense of confidence in the oil industry. Tremendous damage was done to the people who live in the areas hit by the spill. They and many other Alaskans experienced a strong sense of violation. The ineffective response by Alyeska and Exxon and their failure to follow the site-specific oil spill contingency plan exacerbated this feeling. Exxon's subsequent, and continuing, massive national public relations blitz, claiming that everything is clean and back to normal is further evidence that the company sees this as simply a transitory incident in its business enterprise. Exxon has spent a great deal of money in selectively releasing massaged "scientific" data, anonymously presenting airline in-flight video propaganda pieces that look like news reports, producing a torrent of glossy, misleading publications and many other items designed to convince the American public that there's no longer a problem.

This settlement does virtually nothing to vindicate the sense of violation and the sense of injustice engendered by the spill and its aftermath. The proposed deal requires Exxon to pay for things that it was required to pay anyway under applicable statutes. There is no overall compensation element to the settlement, showing that the full extent of the damage has been recognized, that the seriousness of this violation has been acknowledged, and that Alaskans can put this matter behind us with the assurance that Exxon has made a genuine commitment to safe, responsible operations.

A compensation element could take at least two forms: a monetary payment to the State of Alaska or concrete measures to provide greater protection against damage from future spills. The latter approach has the advantage of matching the compensation to the source of the harm and reducing the risks that Alaskans face from potential oil spills. For example, Exxon could fund a Marine Spill Response Center for Alaska (MSRC). Since Alaska does not now have the statewide response capacity that the MSRC would provide, Exxon's sponsorship of MSRC facilities and services would help demonstrate the company's commitment to strengthening spill prevention and response preparedness.

In summary, we believe the settlement is inadequate. The dollar amount is too low to cover the full range of restoration activities, Exxon has escaped further cleanup responsibility, and there is no overall compensation element to clear the air and reestablish confidence. In our view, the most appropriate course is to require the renegotiation of this proposed agreement. Recognizing, however, that the settlement may be approved even with these serious shortcomings, we offer the following recommendations for conditions or stipulations:

1. Exxon should be required to forego any deduction of settlement costs or cleanup expenditures from its state and federal taxes. With respect to the

State of Alaska, such a deduction would amount to a direct subsidy by the people most damaged by the company's failures.

2. Use of the settlement proceeds should be explicitly limited to reimbursement of state response costs, damage assessment, and restoration. There is not enough money in the settlement to tolerate spending it for economic development projects, highway construction, or other collateral items.

3. The Alaska Legislature should exercise its oversight authority and structure the allocation of the settlement proceeds. The decision should not be left to state agency heads designated as natural resource trustees. A public process should be established so that affected Alaskans and their local governments are directly involved in making the decisions about how settlement proceeds are used. Simply commenting is insufficient; they must actually shape the decisions ultimately reached. The legislature has already created the Citizens Oversight Council on Oil and Other Hazardous Substances. This body is well-suited for implementing the kind of public process needed for decisions on how to use the settlement proceeds. Under no circumstances should the state administration be authorized to control the allocation of the funds or the appointments to any public process.

4. The legislature should direct that habitat protection and acquisition be given top priority in restoration efforts using settlement proceeds. This is the single most effective tool available to achieve lasting recovery of the natural resources damaged by the spill. Recent statements by some state officials have suggested that the administration may not give habitat sufficient priority. The legislature should not leave this crucial decision to the administration's discretion.

5. All parties should release their scientific and other studies, including economic studies. This information should include but not be limited to data generated in the natural resource damage assessment effort. Alaskans have a right to know the acute and long-term effects of the spill. Selective release of information by Exxon has skewed the public's understanding of the impacts. Honest scientific inquiry demands that the studies be subject to public and peer review.

6. The State of Alaska should be required not only to release the scientific damage assessment studies, economic studies, technical analyses, and other information within its control, but also to help the public understand the data. Public workshops to discuss the findings in the affected areas would be a useful approach. Although a legal justification for not releasing the information has been offered by the attorney general, there is a compelling public policy reason for full disclosure. The public is entitled to know what damage actually occurred, what risk still exists, and what

restoration burdens may fall on local communities. The public also is entitled to know the basis used by the state to conclude that this settlement proposal was desirable.

Thank you for the opportunity to comment.

Sincerely,

Ken S. Leghorn

Ken S. Leghorn
Alaska Discovery, Inc.

cc Thomas A. Campbell,
NOAA General Counsel

12 April 1991

PO Box 2397
Homer, Alaska 99603

Judge H. Russel Holland
c/o Clerk of the Court
Room 261 U.S. Dist. Court
222 W. 7th Avenue
Anchorage, Alaska

Dear Judge Holland:

In the wake of the Exxon Valdez Oil Spill there has been much suffering. This suffering comes in many forms, but it has been here with us every day since that terrible tragedy...that careless terrible tragedy! The pain of watching so many beautiful creatures endure unspeakable deaths, the anger and frustration of participating in a clean-up effort with no equipment and the fear that our livelihood of fishing has been severely damaged these are but a few of our continuing nightmares.

With these things in mind I request that you suspend a determination until the scientific and economic data has been released and the public and legislature have the opportunity to review it.

This issue is gravely important! I urge you to allow it to be done with great care and consideration.

Sincerely,

Gail Parsons
Gail Parsons

cc: Barbara Herman Office of the Attorney General
Thomas A. Campbell General Council, NOAA
Senator Paul Fischer
Rep. Mike Navarre
Rep. Gail Phillips

DAVID P. JANKA
P.O. BOX 1022
VALDEZ, ALASKA 99686

4-16-91

GREETINGS,

I AM A 15 YEAR RESIDENT OF PRINCE WILLIAM SOUND, ALASKA. I HAVE KAYAKED, SAILED, POWER BOATED, FLOWN, RESEARCHED, HIKED, WORKED, ENJOYED AND AM RAISING A FAMILY HERE.

I HAVE BEEN INVOLVED AT TIMES WITH OIL SPILL RESPONSE AND HAVE FOLLOWED ALASKA LEGISLATIVE HEARINGS RELATED TO THE EXXON VALDEZ SETTLEMENT.

I DO NOT FEEL THIS SETTLEMENT IS IN THE PUBLIC INTEREST OR DOES IT EVEN MEET THE NON-PUBLIC INTERESTS. IT IS CLOSE TO BEING A GOOD SETTLEMENT THOUGH! THE CONCERNS RAISED OVER THESE PAST WEEKS COULD BE SATISFIED WITHIN A SHORT PERIOD OF TIME (< 1 YEAR I BELIEVE) WITH A REWORKED SETTLEMENT.

PLEASE WITHDRAW FROM/OPOSE THIS SETTLEMENT AND COME BACK TOGETHER WITH A COMMITMENT TO WORK OUT A GOOD, WELL REPRESENTED SETTLEMENT BASED IN REALITY WITH PUBLIC AND LEGISLATIVE PARTICIPATION THROUGHOUT THE PROCESS.

THANK YOU FOR ALLOWING US TO COMMENT. I ONLY WISH WE WERE BROUGHT INTO THE PROCESS EARLIER.

D.P. Janka

CC: BARBARA HERMAN - ST. OF ALASKA
THOMAS A. CAMPBELL - NOAA WASH. D.C.
H. RUSSEL HOLLAND - US DIST. COURT AK.
EUGENE KUBINA - AK. LEGISLATURE
KURT MENARD - AK. LEGISLATURE
JIM KERTUILLA - AK. LEGISLATURE
CHARLES COLE - ATTORNEY GENERAL, ALASKA
WAITER HICKEL - GOVERNOR, ALASKA

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U.S. House of Representatives
Committee on
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WAYNE ALLARD, COLORADO

April 8, 1991

DANIEL F. BEARD
STAFF DIRECTOR
RICHARD MELTZER
GENERAL COUNSEL
DANIEL VAL KISH
REPUBLICAN STAFF DIRECTOR

Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 West 7th Avenue No.4
Anchorage, Alaska 99513

Honorable Stanley Sporkin
United States District Judge
U.S. Court House
3rd and Constitution, N.W.
Washington, D.C. 20001

In Re:

United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.)
[Criminal Plea Agreement]

United States of America v. Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company,
in personam, and the T/V Exxon Valdez, in rem (A91082 Civil) [Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company, in
personam, and the T/V Exxon Valdez, in rem (A91083 Civil) [Agreement and Consent Decree]

United States of America v. State of Alaska, and The State of Alaska v. United States of America (A91081
Civil) [Memorandum of Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, et al., (3AN-89-6852 Civil)

The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al. (91-483 SS Civil) and Chenega
Corporation, et al., v. Manuel Lujan, Jr., et al. (91-484 SS Civil)

Gentlemen:

For purposes of your review of the pending cases cited above and other claims arising from the Exxon Valdez oil spill of March 24, 1989, I want to bring to your attention some significant evidence concerning Exxon Corporation's and the Alyeska Pipeline Service Company's culpability.¹

¹The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arco

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
Page 2

As Chairman of the Subcommittee on Water, Power and Offshore Energy Resources, I have conducted an investigation of matters related to the Exxon Valdez oil spill, including the cleanup response, damage to natural resources, and operation of the Trans-Alaska Pipeline System.² The Committee on Interior and Insular Affairs was a principal author of the Trans-Alaska Pipeline Authorization Act (P.L. 93-153) and has broad jurisdiction concerning public lands and natural resources in Alaska and a special interest in issues affecting Alaska Natives.

In the course of this investigation, Alyeska has provided me with documents which indicate that Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and, (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Alyeska's Promises

Before the Pipeline Was Approved

In 1971, during the consideration of the trans-Alaska pipeline project, Alyeska's pollution control specialist R.L. Benyon promised the public in testimony before the Department of the Interior that:

"The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with any spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through world-wide research. The best equipment, materials and expertise which will be made available as part of

Pipe Line Co. (20.34 percent); Mobil Alaska Pipeline Co. (4.08 percent); Amerada Hess Pipeline Corp. (1.5 percent); Unocal Pipeline Co. (1.36 percent); and Phillips Alaska Pipeline Corp. (1.36 percent).

²"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska," Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs (Serial No. 101-5, Parts I to V) (hereinafter "Investigation of the Exxon Valdez Oil Spill").

the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world. [Emphasis added.]"

On April 10, 1973, the President of Alyeska, E.L. Patten, in testimony urging approval of the pipeline project, promised Congress that the very best technology would be in place:

"In safety [sic] superior American tankers the light traffic between Valdez, Alaska, and the west coast involves hazards of less magnitude than any other tanker run of which I have knowledge. The most modern loading equipment and proposed vessel designs will reduce even these modest risks before pipeline authorization begins."³

In the Right-of-Way Agreements

In exchange for the right to build the Trans-Alaska Pipeline System on public lands, Alyeska signed right-of-way agreements with both the United States and the State of Alaska.

In the section on oil spill contingency plans in the right-of-way contract with the United States, Alyeska promised to control and clean up any oil spill:

"It is the policy of the Department of the Interior that there should be no discharge of Oil or other pollutant into or upon lands or waters. Permittees must therefore recognize their prime responsibility for the protection of the public and environment from effects of spillage.... Permittees shall demonstrate their capability and readiness to execute the [contingency] plans....If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Permittees, regardless of fault. [Emphasis added.]"⁴

³ "Oil and Natural Gas Pipeline Rights-of-Way," Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs (Serial 93-12) at p.526.

⁴Stipulation 2.14 to Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, January 23, 1974, between United States of America and Alyeska owners. As used in Stipulation 2.14, Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

At the time of the Exxon Valdez spill

According to the "purpose" section of Alyeska's Oil Spill Contingency Plan (the "contingency plan") which was in effect on March 23, 1989, Alyeska promised rapid and effective response to any oil spill using state-of-the-art technology:

"The objective of the Alyeska Oil Spill Contingency Plan is to minimize damage to the environment...in the event of an oil spill...the resources of [Alyeska] are organized in a preplanned manner to assure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill cleanup technology. [Emphasis added.]"⁵

In section 102 of the contingency plan, Alyeska promised that it is the policy of the owner companies to fully comply with the laws and to take "every reasonable action" to minimize environmental damage from oil spills:

"It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and, if they occur, to minimize environmental damage. Alyeska will comply with the relevant pollution laws for the protection and conservation of environmental resources. [Emphasis added.]"⁶

Alyeska also promised in section 102 of the contingency plan that it will be fully prepared to implement the contingency plan even in the event of a major oil spill:

⁵ Section 101, Alyeska Pipeline Service Company Oil Spill Contingency Plan General Provisions (January, 1987).

⁶The "relevant pollution laws" according to Alyeska are: "Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, and any revisions thereof, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act [sic], as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectfully. Alyeska Pipeline Service Company will ensure that the National Contingency Plan is followed during any spill event." p.1-1

"Regularly scheduled training programs will be conducted....The objectives of this training program are:....To maintain the Plans as fully operable working documents [and] To update the Plans to reflect state-of-the-art capability....Full scale, company-wide field exercises will be held at least once per year to insure overall readiness for response to large scale oil spills.... [Emphasis added.]"

Alyeska further promised in section 102 of the contingency plan that, as agent for the owner companies, it will effectively direct and conduct cleanup operations, including those related to any spill in Prince William Sound:

"[C]leanup operations within the areas of liability and responsibility [imposed by law] will be conducted by Alyeska as Agent for the Owner companies and will be conducted in a manner as not to require assumption of control of such cleanup operations by federal or state officials....Alyeska will direct cleanup operations of spills resulting from...[O]peration, involving tankers carrying or destined to carry crude oil transported through the Trans-Alaska Pipeline System, occurring at Valdez terminal, in Port Valdez, Valdez arm or Prince William Sound. [Emphasis added.]"

Promises Versus Performance

In an addendum to its Oil Spill Contingency Plan in 1982, Alyeska informed the Alaska Department of Environmental Conservation that, in the event of a spill in Prince William Sound, the "[e]stimated time of completion of spill cleanup of a 100,000 barrel spill would be less than 48 hours."⁷

At the urging of the State of Alaska's Department of Environmental Conservation, Alyeska reluctantly included a response scenario for a 200,000 barrel spill in the 1987 Oil Spill Contingency Plan for Prince William Sound. "Alyeska believes it is highly unlikely a spill of this magnitude would occur."⁸

⁷Letter from B.L. Hilliker, manager, environmental protection and government reports, to Alaska Department of Environmental Conservation, dated June 22, 1982, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 894.

⁸ Oil Spill Contingency Plan Prince William Sound (January 1987), p.3-54. By letter to the Alaska Department of Environmental Conservation dated October 23, 1986, Alyeska predicted that the probability of a 200,000 barrel spill occurring in Prince

This Prince William Sound response scenario assumed that the spill would occur 30 miles from the Valdez terminal and that weather conditions would be conducive to oil spill cleanup. The contingency plan called for equipment, including a barge, to be in place within 5 hours after the spill.

Alyeska's Prince William Sound contingency plan predicted that 35 percent of the oil would be recovered from the water (70,000 barrels), 30 percent recovered from shoreline cleanup, 30 percent to disperse naturally or evaporate, and only 5 percent to remain in the environment.⁹

Yet when the Exxon Valdez spilled some 260,000 barrels on March 23, 1989 the cumulative total of oil recovered within the first 72 hours was less than 3,000 barrels. As one example of the response failure, the equipment barge which the contingency plan relied upon was damaged and unloaded at the time of the spill. The barge did not reach the spill site for more than 14 hours, even though the contingency plan called for it to be on the scene within five hours. Based on my investigation, there were clearly not sufficient quantities of dispersants or application equipment available to make up for the utter failure of the mechanical recovery effort.¹⁰

Even under extraordinarily good weather conditions for the first three days, Alyeska did not have equipment or resources to contain and collect even a fraction of the amount specified in the contingency plan. The failure of Alyeska's cleanup response in the first 72 hours significantly contributed to the ultimate environmental impacts of the spill, since winds of over 70 miles per hour spread the slick completely out of control (more than 40 miles from Bligh Reef) by the fourth day.

The Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflict one of the worst wildlife disasters in our nation's history, and disrupt the lives of thousands of Alaskans who depend on the natural resources of this region.

William Sound would be once in 241 years. "Investigation of the Exxon Valdez Oil Spill," Part I at p. 834.

⁹Oil Spill Contingency Plan Prince William Sound (January 1987) at p. 3-56.

¹⁰"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Part I at p. 303.

As the Alaska Oil Spill Commission concluded, "[p]ublic pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false."¹¹

Exxon and the Alyeska Owner Companies Knew That Alyeska Was Not Equipped to Effectively Respond To An Oil Spill in Prince William Sound.

My investigation revealed that Alyeska was on notice in 1984 that its own personnel believed they were incapable of effectively responding to an oil spill in Prince William Sound. James K. Woodle, former commander of the U.S. Coast Guard's Marine Safety Office in Valdez, and marine superintendent at the Valdez terminal, informed Alyeska's President George M. Nelson that:

"Serious doubt exists that Alyeska would be able to contain and clean-up effectively a medium or large size oil spill....Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel. [Emphasis added.]"¹²

A series of documents, which I have enclosed, reveal that Alyeska by 1988 -- one year prior to the Exxon Valdez oil spill -- had reached the same conclusion as James K. Woodle: it was seriously unprepared for an oil spill in Prince William Sound.

On April 18, 1988, W.D. Howitt, then Alyeska's Valdez Marine Terminal Superintendent, wrote to the Marine Services Subcommittee -- comprised of representatives of the owner companies, including Harvey Borgan of Exxon Shipping -- to inform them of a meeting in Bellingham, Washington on May 18, 1988. "Oil Spill Response Equipment" was listed on the agenda [Exhibit A].

On April 28, 1988, Howitt wrote to the Marine Services Sub-committee members with additional information for the May 18 meeting [Exhibit B]:

"The first part of the information package contains the T.L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on

¹¹Final Report of the Alaska Oil Spill Commission (February 1990) at p.135.

¹²Letter from James K. Woodle dated April 15, 1984 concerning operations of the Marine Department, Alyeska Marine Terminal, Valdez, Alaska, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 179 and 890.

Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. [Emphasis added.]¹³

Theo L. Polasek's (Alyeska's Vice President of Operations) briefing on April 6-7 for the Operations Subcommittee was entitled "Oil Spill Issues -- Status of Action Items from January Owners Meeting." [Exhibit C] The topic of "Alyeska's Response Capability to Spills at midpoint of Prince William Sound" is included under the heading "ARCO/Alyeska Response Equipment Discussions." What follows is a comparison of the equipment available to the "Clean Sound" Cooperative in Puget Sound, Washington. According to the document, Clean Sound's spill cleanup methodology is "immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil."

By contrast to the equipment available to Clean Sound, Polasek's briefing on "Present Alyeska Prince William Sound Capability" notes that "no new skimming vessels purchased since 1977." The list of Alyeska equipment is clearly deficient by comparison to Clean Sound.

Polasek's briefing on Alyeska's Prince William Sound cleanup response equipment includes the following indictment of Alyeska's capability to meet its obligations under its own Oil Spill Contingency Plan:

"Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement." (emphasis added)

Exxon and the Alyeska Owner Companies Failed to Improve Alyeska's Oil Spill Response Capabilities Before the Exxon Valdez Spill on March 23, 1989.

Theo Polasek's briefings to the owner company representatives in April and May 1988 outlined the deficiencies in Alyeska's equipment including the fact that "no new skimming vessels had been purchased since 1977."

¹³Howitt's letter also states that purchases of clean-up equipment for Alyeska, as recommended by Jeff Shaw of Arco, would be discussed at the May 18th meeting. In a document with the heading "Alyeska Equipment Project (for oil spill cleanup)" dated March 22, 1988, Jeff Shaw recommends: 1) a large oceangoing skimmer; 2) a 10,000 barrel barge; 3) an adds pack; 4) fast spill response vessels; 5) a destroil skimmer with power pack; and 6) an additional 5,000 feet of sea quality boom. [Exhibit D] In addition, a separate document indicates that the marine subcommittee members discussed an advanced skimmer recovery system which could operate in open waters, the "Dynamic Inclined Plan Oil Vessel." [Exhibit E]

When Polasek testified, under oath, at a hearing I chaired in Valdez on May 7, 1989, he acknowledged that: "the equipment in this plan was similar to the plan in 1977. We increased the amount of boom and take [sic] other actions, but essentially that was the same equipment decided upon."¹⁴

Polasek's briefing includes a reference to the planned acquisition of a 10,000 barrel tank barge by late 1988. In fact, this oil spill barge -- the "Betty-K" -- was stored in Washington state for the winter of 1989 and was not available in the Exxon Valdez cleanup.

Moreover, Polasek's briefing refers to a "mobile contingency command center with communications repeaters" which would be installed by "mid 1988." In fact, such a system was not in place at the time of the Exxon Valdez spill.

Exxon and the Alyeska Owner Companies Secretly Decided that Alyeska Would Not Respond to an Oil Spill In Prince William Sound in the Manner Prescribed in the Contingency Plan.

According to a June 30, 1988 telex from Roger A. Gale, Manager, Marine Operations, Sohio Oil (now BP) to Polasek of Alyeska, the Marine Services Subcommittee decided to make five recommendations to the Owners Committee as part of an "acceptable compromise" [Exhibit F]:

First, the "current stockpile of clean up equipment is adequate" for spills at the terminal, but "should be maintained to the highest state of readiness."

Second, for spills in Prince William Sound, additional equipment should be purchased of the "type best suited for near shore and beach operations."

Third, a large barge (50-100,000 barrel capacity) equipped with ocean boom and skimmers was needed.

Fourth, a "study of the best and quickest methods of moving the barge around" including predeployment in Prince William Sound.

Fifth, that Alyeska and the owners "press" state and federal officials for "preapproval to use chemicals on a widespread basis."

¹⁴"Investigation of the Exxon Valdez Oil Spill, Prince William Sound," Part I at p. 155.

However, on July 6, 1988, Stanley Factor, Vice President, Chartering and Evaluations, Arco Marine, Inc., objected to Roger Gale's recommendations because the owners had already decided that Alyeska would not respond to spills in Prince William Sound in the manner required by the Oil Spill Contingency Plan [Exhibit G]:

"Arco Marine Inc. does not agree with this telex nor do we concur that this represents the thoughts of the subcommittee.

"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller. [Emphasis added.]"¹⁵

Conclusion

At my subcommittee's hearing on May 7, 1989 in Valdez, Theo Polasek testified under oath on Alyeska's behalf that "[w]e fulfilled our promises in that [oil spill contingency] plan. We have not broken our promises to the people of this State."¹⁶

But the evidence I have set forth indicates that Alyeska broke the law as well as its promises to the State of Alaska and the Congress.

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4)) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.¹⁷ In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.¹⁸

¹⁵The Chairman of the Owners Committee at the time was Darrell Warner, President of Exxon Pipeline Company.

¹⁶"Investigation of the Exxon Valdez Oil Spill," Part I at p. 169.

¹⁷ A fine of up to \$10,000, or a prison term of up to two years or both may be imposed under this section.

¹⁸A fine of up to \$10,000, or a prison term of up to five years, or both, may be imposed under this section.

Thus, since Alyeska knew that it could not and would not respond to an oil spill in Prince William Sound as required by its oil spill contingency plans, Alyeska and any responsible officer could be exposed to substantial criminal penalties.

However, the Department of Justice has not even filed any criminal charges against Alyeska or its owner companies other than Exxon. Furthermore, in the proposed Criminal Plea Agreement, the United States would waive its rights not only to pursue any criminal charges against Alyeska and its owner companies, but also waive its rights to pursue civil or administrative penalties against Alyeska and its owner companies.¹⁹

The proposed Agreement and Consent Decree also provides generous protection for Alyeska. The United States and the State of Alaska both waive their rights to raise claims against Alyeska for natural resource damages in Paragraph 20. In addition, should either government recover any amount from Alyeska for claims of any kind, Exxon is entitled to be reimbursed for 20.34 percent of the governments' recovery (this figure represents the percentage ownership by Exxon of Alyeska). Yet Alyeska, including its shareholders and owner companies other than Exxon Pipeline, expressly reserves their rights to sue the United States or the State of Alaska in Paragraph 19 of the proposed settlement agreement.

In my view, the inclusion of Alyeska in the proposed Criminal Plea Agreement and in the proposed settlement Agreement and Consent Decree is contrary to the public interest. Based on the evidence, it is inconceivable that the Department of Justice would waive its rights to pursue criminal claims, and virtually all civil claims, against Alyeska.

In sum, the proposed Exxon settlement fails to hold Alyeska accountable to the public for its wrongdoing and fails to serve as a deterrent for similar conduct in the future.²⁰

¹⁹ Section III.A. of the Plea Agreement states that "[t]he United States agrees not to seek additional criminal charges or any civil or administrative penalties.... against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the 'EXXON VALDEZ,' the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related, by Alyeska Pipeline Service Company to the federal or state government...." p.5.

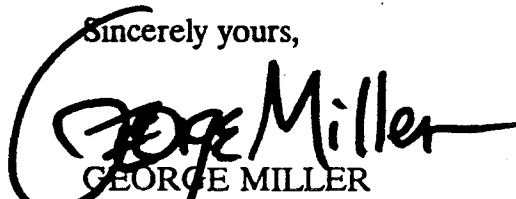
²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
Page 12

After extensive debate about the environmental risks, the Trans-Alaska Pipeline System was approved in 1973 by only a one-vote margin in the U.S. Senate. In exchange for access to environmentally sensitive public lands, the Congress was assured by Alyeska and the owner companies that the pipeline system would be operated in a safe and environmentally sound manner, using state-of-the-art technology.

The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez oil spill. Without a commitment by the Department of Justice to prosecute this intentional deception, how is it that Congress and the people of the State of Alaska can rely on such assurances in the future?

Sincerely yours,


GEORGE MILLER
Vice Chairman

cc:

The Honorable Walter J. Hickel, Governor, State of Alaska
The Honorable Ben Grussendorf, Speaker, Alaska House of Representatives
The Honorable Richard Eliason, President, Alaska Senate
The Honorable Senator Ted Stevens
The Honorable Senator Frank Murkowski
The Honorable Representative Don Young
The Honorable Richard L. Thornburgh, Attorney General, U.S. Department of Justice
The Honorable Manuel Lujan Jr., Secretary, U.S. Department of the Interior
The Honorable Samuel K. Skinner, Secretary, U.S. Department of Transportation
The Honorable Edward R. Madigan, Secretary, U.S. Department of Agriculture
The Honorable William K. Reilly, Administrator, U.S. Environmental Protection Agency
The Honorable John A. Knauss, Undersecretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce
Members, Committee on Interior and Insular Affairs

Alyeska pipeline

SERVICE COMPANY

ALYESKA PIPELINE SERVICE COMPANY, P.O. BOX 288, VALDEZ, ALASKA 99686 TELEPHONE (907) 426-4444 TOLL FREE

April 18, 1988

ATTN: CAPT.
Johnson

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Cleveland, Ohio 44114-2375

Capt. Ken J. Fullwood
Mobil Oil Corp
Marine Transportation Dep.
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John Weichert
Clean Sound Co-op.
Seattle, Washington

Theo L. Polasek
Alyeska Pipeline Service Company
1835 South Bragaw
Anchorage, Alaska 99512

Gentlemen:

A meeting of the Marine Services Sub-Committee will be held May 18, 1988, in Bellingham, Washington.

Present agenda items are:

- Oil Spill Response Equipment (including a demonstration of large skimmer vessel by John Weichert of Clean Sound Co-op.)
- Port Information Manual status.
- Berth Equipment and Repair and Upgrade Schedule.

An information package will be mailed to confirmed attendees for review prior to the meeting.

The meeting will be held at Nendel's Hotel in Bellingham, the Compass Room, commencing at 8:00 am. The skimmer demonstration will commence at 1:00 pm, departing from the small boat harbor.

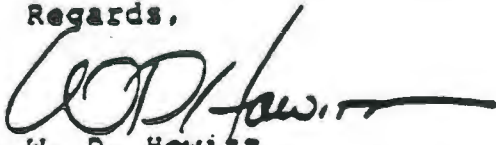
Roger Gale has informed me that there will be a joint meeting of the Operations Sub-Committee and the Marine Services Sub-Committee on the previous day, May 17th, at the same location. The agenda for this meeting will be advised separately.

Rooms have been blocked for May 17th at Nendel's Hotel, (206)671-1011, and must be confirmed by individual attendees. Arrangements have been made for a continental breakfast and luncheon buffet to be served in the meeting room on May 18th.

For travel planning; Bellingham is approximately 2 hours North of Sea-Tac airport by car or is served by commuter airlines, PSA, Horizon Air, and San Juan Air.

Please reply to C. F. (Chuck) O'Donnell (907)835-6526, indicating attendance or additional agenda items.

Regards,



W. D. Howitt
Valdez Marine Terminal Superintendent

Alyeska pipeline

SERVICE COMPANY

April 28, 1988

Capt. Roger Gale
Standard Oil of Cleveland
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Subject: Meeting Agenda and Information Package

Gentlemen:

As referenced in my April 18, 1988 meeting notification, an information package is enclosed concerning the agenda items for the upcoming Marine Service Subcommittee Meeting in Bellingham, Washington on May 18, 1988.

The first part of the information package contains the T. L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. The specific concern stated was the use of the Terminal tugs for the response effort, thereby directly affecting the Terminal's ability to continue vessel loading operations. Alyeska and ARCO personnel visited the Clean Sound Oil Spill Cooperative because of the similarities/comparability of Puget Sound and Prince William Sound operating environments. The briefing summarizes the group's findings.

You will note that the briefing makes no recommendations with regard to additional equipment purchases. Mr. Jeff Shaw, ARCO, is prepared to discuss his specific recommendations during the meeting.

The Marine Services Subcommittee has been requested to review the alternatives, and recommend a course of action to the Operations Subcommittee.

The second agenda item covers the present status of the revised Port Information Manual. Enclosed you will find the financial responsibility statements that were presented to the Owners Committee and the Legal Subcommittee for incorporation into the revised manual. A final version of the statement that will be used in the manual will be issued before our meeting, and a distribution schedule of the new manual will be discussed at that time.

The third agenda item covers the Berths and Ballast Water Treatment Plant repair and upgrade schedule for this coming summer. Enclosed you will find a definition of scope and a implementation schedule for each of these projects.

Very truly yours,



W. D. Howitt
Superintendent
Valdez Marine Terminal

CFOD/WDH/pkk

cc: C. F. O'Donnell
L. D. Shier
T. L. Polasek

enclosures

OIL SPILL ISSUES

T. L. Polasek
April 6-7, 1988

OIL SPILL ISSUES

Status of Action Items from January Owners Meeting

- **Pursue Advance Approval for Dispersant Use**
 - **Regional Response Team (RRT) has issued first Draft of "Prince William Sound Guidelines" for review.**
 - **Most of Port Valdez and all of Tanker Lanes included in "Zone 1" where dispersant is approved for use, with consent of senior Federal official, USCG Captain of Port.**
 - **Follow up meetings scheduled.**

- **Expedite "ADDs Pack" AFE**
 - **AFE sent to Owners on March 4, 1988.**
 - **Approvals received from ARCO, Exxon, and Mobil.**
 - **Procurement package being prepared.**

OIL SPILL ISSUES

- **Conduct Survey of Commercial Ships Available for Oil Spill.**
 - **Preliminary Survey completed.**
 - **Several Hundred fishing vessels, fleet tenders, and supply boats available in Valdez and Cordova (45 ft. to 120 ft. lengths)**
 - **Several "Rig Tender" oil platform supply and service boats available in Kenai/Homer area (18 to 25 hours travel).**
 - **Four tour boats in Valdez (85' to 100') available for personnel support.**
 - **Availability of all dependent on season.**
 - **Private operators.**
 - **Will pursue negotiating rates for "on season" and "off season".**

OIL SPILL ISSUES

- **Desk Top ARCO/Alyeska Drill**
 - **Drill scheduled for May 3 and 4, 1988.**
 - **Located at Valdez Civic Center and other contingency sites in area.**
 - **Federal/State agencies will participate.**
- **Expeditious Clean-up Cost Reimbursement Procedures.**
 - **Proposed language and section revisions to the Port Information Manual sent to Legal Subcommittee.**
- **USCG Spill Take Over if Responsible Party Unwilling.**
 - **Informal discussions held with Valdez Coast Guard.**
 - **Coast Guard has no problem with concept**
 - **Would continue to use Alyeska as prime "Contractor".**
 - **Discussions with Alaska DEC will be necessary and revision to approved contingency Plan may be required.**
- **Discuss Oil Spill Response Equipment List with ARCO.**
 - **Discussions held.**
 - **Joint tour of "Clean Sound" facilities and equipment during March**
 - **Report follows in this presentation.**

**ARCO/Alyeska
Response Equipment Discussions**

**T. L. Polasek
April 6-7, 1988**

Response Equipment Discussions

- **Alyeska Response Capability to Spills at midpoint of Prince William Sound.**
 - Amount/Type of containment of boom.
 - Oil skimming vessels.
 - Fast response boats.
- **Equipment and Operating Plan Developed by "Clean Sound" Cooperative for Puget Sound.**
- **Similarities/Comparability of Puget Sound and Prince William Sound Operating Environments.**
 - Weather
 - Sea states and currents
 - Environmental sensitivity
 - Distances and access
 - Spill volume history/exposure

Response Equipment Discussions

Clean Sound

- **Non-profit, unincorporated organization of Oil and Oil Transportation Companies.**
- **All expenditures by Co-op funded wholly by the member companies.**

ARCO	Union	SPC Shipping
Mobil	US Oil & Refining	Olympic Pipeline
Shell	Foss Maritime	Trans-Mountain Pipeline
Texaco	Chevron	Four others
- **Clean Sound owns equipment and employs small staff.**
- **Contractors utilized for equipment maintenance and operation.**
- **Agreements with contractors assure supply of qualified operators and maintenance personnel.**
- **Equipment staged at commercial facilities in five locations: Bellingham, Anacortes, Seattle, Port Angeles, and Tacoma.**

Response Equipment Discussions

Clean Sound

- Major Equipment and Materials

- 6 each fast response boats (27' to 34'): Each equipped with 1000 foot "Zoom" Boom, sorbent materials, and radar. May be equipped with small, portable hydraulic skimmers.
- 1 each 42' fast response boat: Equipped with "Destoil" skimming system and 600 gallons recovered oil storage. Has bow door and is capable of beach landing.
- 3 each 30' work boats: Medium speed response with 1000 foot "Zoom" boom and portable disk skimming units.
- 1 each tank barge: 12,000 BBL capacity with 60' reach deck crane, 2 diesel powered pumps and tankerman's office/shelter.
- 10 each highway trailers/vans (32' to 40'): Stocked with booms, sorbents, tools, skimmers, bird scare cannons.
- 1 each Mobile Command Post: 34' Trailer with charts, maps, contingency plans and communications equipment.

Response Equipment Discussions

Clean Sound

Major Equipment (continued)

- 3 each "Belt Type" skimmer vessels (34' to 40'): Self-powered, twin hull units rated at 300 to 350 gpm recovery rates.
- 1 each 60' skimmer vessel: Catamaran hull with two each 3 foot belt recovery units rated at 600 gpm total. Designed for all weather operations in all areas of Puget Sound.
- 1 each 75' skimmer vessel: Seagoing vessel designed for sustained operations with minimum crew. Has debris recovery and handling devices. Recovery is 500 gpm with 12,000 gallons on board storage.
- 6000 feet of Kepner "Sea Curtain".
- 30,000 feet of Bennett "Zoom Boom" compactable boom.

Response Equipment Discussions

Clean Sound

- Spill Cleanup Methodology

- Immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil.**
- After boom deployment, immediately begin light skimming operations with small units carried on response boats.**
- Follow up with large, self-propelled, high efficiency skimmers as required.**
- If necessary, deploy land-based support equipment to spill site for continued work.**
- Use contracted helicopters for spill recon and direction of vessel operations.**

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- All equipment and material staged at Valdez Terminal.
- Alyeska employees are prime operators with back-up manpower from Northland Maintenance.
- Alyeska equipment maintenance contractor performs maintenance.
- Expenditures funded by Owner Companies.
- Mission: To immediately respond and perform initial cleanup of oil spills from vessels in the TAPS trade in Prince William Sound.

Exposure magnitude: Approximately 940 tankers per year, from 30,000 to 265,000 DWT, transiting and loading in a non-congested area with high environmental concern.

Response Equipment Discussions

Present Alyeska Prince William Sound Capability

- **No new skimming vessels purchased since 1977.**
- **Work boat upgrade/replacement program in progress.**
- **Response Complement:**
 - **Fast response boats with sorbent boom and light duty skimmers.**
 - **Medium capacity self-propelled skimmer vessels.**
 - **Deck barge with sea skimmer and boom.**
 - **10,000 BBL tank barge (late 1988)**
 - **Airborne dispersant delivery (late 1988)**
 - **Contracted tug boats.**
 - **Mobile contingency command center with communications repeaters (mid-1988).**

Response Equipment Discussions

Alyeska

- **Present Major Equipment and Materials.**
 - **5 each fast response boats (21' to 26'):** Equipped with sorbent booms. May be equipped with portable hydraulic skimmers.
 - **2 each 26' work boats:** For support and supply delivery.
 - **2 each "Belt Type" skimmer vessels (36' and 45'):** Self-powered, twin hull units, rated at 300 GPM recovery.
 - **5 each Vikoma Sea Pack units:** 8000 total feet inflatable boom. Units must be towed to site by tugs.
 - **1 each deck barge:** 16,000 foot harbor boom packed in containers and Vikoma 240 BBL/hr sea skimmer. Must be towed to site by tugs.
 - **3 each 19' work platforms:** Powered by small outboards for calm water use.

Response Equipment Discussions

Alyeska

- **Prince William Sound Cleanup Methodology**
 - **Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement.**
 - **Dispatch available aircraft for recon and spill cleanup direction.**
 - **Dispatch equipment sets pulled by Crowley tugs and line boats.**
 - **Obtain additional USCG and commercial resources to continue cleanup and relieve Crowley tugs.**
 - **Turn over spill to responsible party or USCG after initial activities complete.**

ALYESKA EQUIPMENT PROJECT
(for oil spill cleanup)

RECOMMENDED PURCHASES

1. LARGE OCEAN GOING SKIMMER, SIMILAR TO THE CLEAN SOUND VESSEL THE NORTH SOUNDER. THIS VESSEL SHOULD BE LARGE ENOUGH TO TAKE THE CREW OUT OF THE WEATHER. THE VESSEL SHOULD HAVE RADAR, BUNKS, GALLEY AND A HEAD, CAPABLE OF A FEW DAYS OF OPERATION WITHOUT RETURNING TO PORT.

THE NORTH SOUNDER IS A BELT TYPE SKIMMER WHICH EVIDENTLY WORKS WELL. I SUGGEST THE SYSTEM THAT McLORI MAKES BE INVESTIGATED.

2. 10000 BARREL BARGE IS NEEDED TO HANDLE OIL THAT IS PICKED UP DURING A SPILL. A SPILL > 5000 bbls, ADDITIONAL BARGES WOULD BE REQUIRED. THE ADDITIONAL BARGES COULD COME FROM SEATTLE, AND BE ON SCENE IN 96 HOURS.

THE DESIRED BARGE SHOULD HAVE CLEAR WORKING SPACE SIMILAR TO CLEAN SOUNDS, CLEAN ONE. ROOM FOR A HELICOPTER PAD WOULD BE USEFUL. SOME "BUNK HOUSE" SHELTERS WOULD BE HANDY FOR EXTENDED CLEANUPS TO HOUSE THE CREWS.

3. ADDS PACK NEEDED. I UNDERSTAND THAT ALYESKA HAS ALREADY STARTED THIS PURCHASE.
4. FAST SPILL RESPONSE VESSELS ARE NEEDED, SUCH AS SEEN AT THE MUNSON BOAT YARD. ALSO, IT IS IMPORTANT TO HAVE A SHELTERED CABIN AND RADAR.
5. DESTROIL SKIMMER WITH POWER PACK, TO BE ABLE TO QUICKLY GET A SKIMMER ON SCENE OR SET UP IN AREAS WHERE THE VESSEL SKIMMERS CANNOT APPROACH. THIS HAS THE CAPABILITY TO USE FROM THE FAST SPILL RESPONSE VESSELS.
6. ADDITIONAL 5000 FEET OF SEA QUALITY BOOM.

JEFF SHAW 3/22/88

JBF DIP MODEL 5001A

DYNAMIC INCLINED PLANE
OIL RECOVERY VESSEL

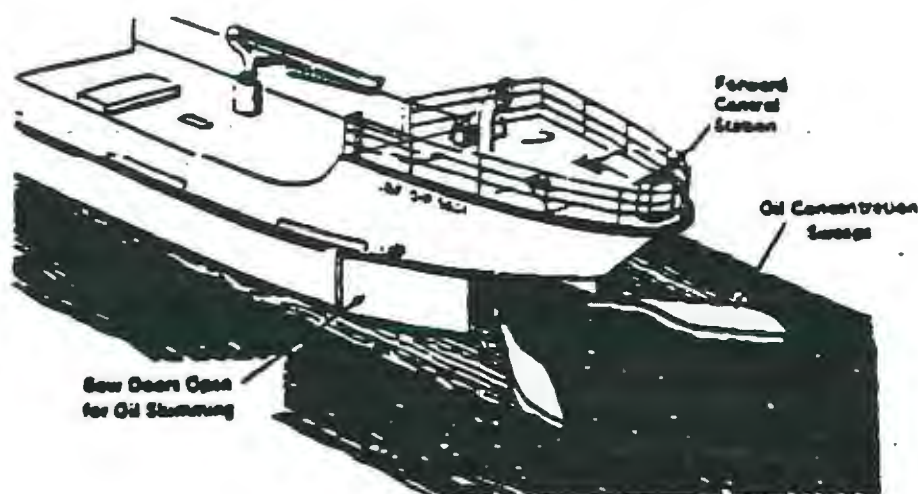


Figure 1-1. JBF DIP Concept and Oil Concentration Sweeps

1-1 PURPOSE OF SYSTEM/DIP CONCEPT

The JBF Model 5001A recovery system is designed to pick up spilled oil and debris from the water's surface. A conveyor forward of the oil recovery system first removes floating debris while water and oil flow through the open-mesh conveyor belt. The oil collection system then collects the oil, separates it from the water, and collected oil can then be pumped into on-board storage tanks from which it can subsequently be pumped to barges or to deckside receiving tanks. The cargo pump and valving system are also designed to allow collected oil to be pumped directly from the collection well to a barge or tank alongside. The vessel is self-propelled and is equipped with a complete and independent power system to drive all collection and pumping systems.

The DIP Model 5001A system is based on the concept (Figure 1-1) of collecting oil under the surface of the water, thus reducing the effect of waves. As the system moves through the water, the oil is forced to follow the surface of a moving inclined plane to a collection well underneath the hull. Buoyant forces cause the oil to surface in the well, forcing water out the bottom. When a sufficiently thick oil layer has collected, it is pumped into storage tanks. Separation occurs automatically and no water is collected.

The vessel can be used in both protected waters and in the more open waters. It can be used in a wide variety of operating modes that require stationary or self-propelled oil-skimming capability. The wide aperture formed by the sweep system makes it extremely effective against oil slicks in open waters. The skimmer can also be used successfully as a thick in boom harvesting system or as a means of picking up oil contained within a boomed-off area.

BT

MR. THEO POLASEK
ALYESKA
ANCHORAGE, ALASKA

RE: ALYESKA OIL SPILL EQUIPMENT

::::::::::::::::::::::::::::

AS YOU KNOW THE MARINE SUBCOMMITTEE WAS ASKED TO PROVIDE THE OWNERS COMMITTEE WITH ITS THOUGHTS AND RECOMMENDATIONS REGARDING THE UPGRADING OF ALYESKA'S OIL SPILL RESPONSE EQUIPMENT FOR USE BOTH AT THE TERMINAL AND IN PRINCE WILLIAM SOUND.

A REVIEW OF THE HISTORY OF OIL SPILLS AT THE VALDEZ TERMINAL LEADS THE COMMITTEE TO THE CONCLUSION THAT THE CURRENT STOCKPILE OF CLEAN UP EQUIPMENT IS ADEQUATE. FROM THAT CONCLUSION, THE MARINE SUBCOMMITTEE'S FIRST RECOMMENDATION SHOULD BE THAT THE CURRENT STOCKPILE OF EQUIPMENT MUST BE MAINTAINED TO THE HIGHEST STATE OF READINESS, AND SHOULD BE REPLACED WITH SIMILAR EQUIPMENT AS AND WHEN APPROPRIATE. PRIOR TO ANY ACTUAL EQUIPMENT RENEWALS, A CAREFUL REVIEW OF ALL TECHNOLOGICAL IMPROVEMENTS SHOULD BE UNDERTAKEN. APPROPRIATE REPLACEMENT EQUIPMENT SHOULD THEN MEET BEST AVAILABLE TECHNOLOGY STANDARDS.

WHEN CONSIDERING ADDITIONAL EQUIPMENT FOR THE PURPOSES OF IMPROVING SPILL RESPONSE AND RECOVERY IN PRINCE WILLIAM SOUND, THE TOTAL LACK OF PRIOR SPILL EXPERIENCE IN THE SOUND IS BOTH A CURSE AND A BLESSING. WHAT SORT OF CASUALTY AND SIZE OF SPILL SHOULD BE PLANNED FOR? ANY SPILL IN PRINCE WILLIAM SOUND IS MOST LIKELY TO RESULT FROM EITHER A COLLISION OR A STRANDING. THE RELATIVELY LOW LEVEL OF TRAFFIC, THE TRAFFIC SEPARATION SCHEME AND THE U.S. COAST GUARDS VESSEL TRAFFIC SERVICE ALL CONTRIBUTE TOWARD LOWERING THE POSSIBILITY OF A COLLISION. A STRANDING AS A RESULT OF THE TOTAL LOSS OF POWER OR STEERING, IS IN THE COMMITTEE'S VIEW MUCH THE MORE LIKELY EVENT TO TRIGGER A SPILL.

WHILE THE ISSUE OF WHETHER A SPILL IS MORE LIKELY TO OCCUR AS A RESULT OF EITHER A COLLISION OR STRANDING IS A VEXING ONE, IT IS QUITE CLEAR THAT A DIFFERENT TYPE OF CLEAN UP EQUIPMENT WOULD BE REQUIRED IN EITHER CASE.

IT IS NOT UNREASONABLE TO ASSUME THAT ANY COLLISION LIKELY TO RESULT IN AN OIL SPILL WOULD MOST PROBABLY OCCUR IN MID-CHANNEL AND, THEREFORE, BE IN RELATIVELY OPEN WATER. WHEREAS A STRANDING BY DEFINITION WOULD PROBABLY BE ON A LEE SHORE, WHERE EQUIPMENT DESIGNED PRINCIPALLY FOR OPEN WATER WOULD BE OF LIMITED VALUE. THEREFORE, THE MARINE SUBCOMMITTEE'S SECOND RECOMMENDATION SHOULD BE THAT ANY ADDITIONAL EQUIPMENT PURCHASED BY ALYESKA FOR THE PURPOSE OF ENHANCING SPILL RESPONSE AVAILABILITY IN PRINCE WILLIAM SOUND SHOULD BE OF THE TYPE BEST SUITED FOR NEAR SHORE AND BEACH OPERATIONS.

CONSIDERING THE LACK OF REAL BEACH THROUGHOUT PRINCE WILLIAM SOUND. THE NEED FOR A STABLE WORKING PLATFORM AND FLOATING STORAGE FOR RECOVERED MATERIAL MAKES THE ACQUISITION OF BARGE WITH SUBSTANTIAL DECK SPACE AND TANK VOLUME A PRIORITY. AGAIN. BECAUSE THE CLEAN UP ACTIVITY IS LIKELY TO BE CLOSE INSHORE WITHOUT A BEACH. WORK BOATS MOUNTED ON THE BARGE WILL BE REQUIRED FOR DEPLOYING BOOMS AND SKIMMERS, ETC.

THE MARINE SUBCOMMITTEE'S THIRD RECOMMENDATION SHOULD BE THAT A BARGE (50-100 MBLS.) OUTFITTED WITH VARIOUS LENGTHS AND TYPE OF BOOM (INCLUDING OPEN WATER BOOM). SKIMMERS (LARGE, SMALL AND VISCOUS). CRANE AND WORKABOUTS BE ACQUIRED. DEPLOYMENT AND/OR PRE-STAGING OF THE BARGE ARE REALLY SEPARATE ISSUES. BUT ISSUES THAT SHOULD BE ADDRESSED AT THIS TIME IF A PURCHASED BARGE IS TO BE EFFECTIVE. OUR FOURTH RECOMMENDATION SHOULD BE THAT ALYESKA UNDERTAKE A STUDY OF THE BEST AND QUICKEST METHODS OF MOVING THE BARGE AROUND AND WHETHER THE BARGE SHOULD BE PRE-DEPLOYED IN A SAFE COVE SOMEWHERE BETWEEN ROCKY POINT AND THE NARROWS. THE STUDY SHOULD ALSO DETERMINE WHETHER OR NOT PERSONNEL FROM MIDDLE ROCK, INC. (THE PILOT BOAT SERVICE) COULD BE EFFECTIVELY AND ECONOMICALLY EMPLOYED IN MAINTAINING THE PRE-DEPLOYED BARGE.

THE IMPORTANCE OF CHEMICAL DISPERSANTS SHOULD NOT BE IGNORED AND THE SUBCOMMITTEE'S FINAL RECOMMENDATION SHOULD BE THAT ALYESKA, AIDED BY THE OWNER COMPANY'S AS APPROPRIATE, CONTINUE TO PRESS STATE AND FEDERAL AUTHORITIES FOR PRE-APPROVAL TO USE CHEMICALS ON A WIDE SPREAD BASIS. THE OWNERS COMMITTEE HAS APPROVED THE PURCHASE OF AN ADDS PACK AND DISPERSANTS CONTINGENT ON OBTAINING STATE AND FEDERAL PRE-APPROVAL.

I BELIEVE THE FOREGOING REPRESENTS AN ACCEPTABLE COMPROMISE OF THE SLIGHTLY DIFFERING VIEWS EXPRESSED BY THE TASK GROUP MEMBERS. THE OPERATIONS COMMITTEE IS DUE TO MEET ON JULY 6 AND THEREFORE I WOULD APPRECIATE YOUR ADVISING ME BY TELEX, COPIED TO THEO POLASEK (TELEX: 09025127 -- ANSWER BACK: TRANSPIEAHG) AT ALYESKA. NO LATER THAN JULY 5 THAT YOUR COMPANY CAN SUPPORT ALL FIVE RECOMMENDATIONS.

ROGER A. GALE
MANAGER, MARINE OPERATIONS
SOLIO OIL, CLEVELAND

CC: F. G. GARIBALDI
J. P. G. CROXSON

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EXHIBIT G

ARCOMAR S LGB
1515 PDT 07/06/88

ROGER A. GALE
SOMIO OIL.
CLEVELAND. OHIO

MSG NBR 016

REF: YOUR TELEX 6/30/88 - ALYESKA OIL SPILL EQUIPMENT

ARCO MARINE, INC. DOES NOT AGREE WITH THIS TELEX NOR
CONCUR THAT THIS REPRESENTS THE THOUGHTS OF THE SUB-
COMMITTEE.

AT THE OWNERS COMMITTEE MEETING IN PHOENIX. IT WAS DECIDED
THAT ALYESKA WOULD PROVIDE IMMEDIATE RESPONSE TO OIL SPILLS
IN VALDEZ ARM AND VALDEZ NARROWS ONLY. FURTHER EFFORTS IN
THE PRINCE WILLIAM SOUND WOULD BE LIMITED TO THE USE OF
DISPERSANTS AND ANY ADDITIONAL EFFORT WOULD BE THE
RESPONSIBILITY OF THE SPILLER. THE DELAY IN PURCHASING
THE ADDS PACK IS INEXCUSABLE; NO FURTHER APPROVAL WAS
REQUIRED.

THE OWNERS ALSO DIRECTED ALYESKA TO REVIEW ITS ADMINIS-
TRATIVE AND EQUIPMENT PLANS TO MEET THE INITIAL RESPONSE.
IN OUR OPINION THE ADMINISTRATIVE PLAN MEETS ALL CRITERIA
FOR A SUCCESSFUL CLEANUP. ON THE OTHER HAND, THE
FINDINGS WERE THAT SOME ADDITIONAL EQUIPMENT WAS NEEDED
TO MEET THE INITIAL NEEDS OF SPILL CLEANUP. IN PARTICULAR
ADDITIONAL LARGER WORK BOATS. ALYESKA HAS REVIEWED THEIR
EQUIPMENT NEEDS AND SUBMITTED A PROPOSAL. ARCO MARINE, INC.
SUPPORTS ALYESKA'S RECOMMENDATION AND NOT THOSE AS
OUTLINED IN THE TELEX.

STANLEY FACTOR,
VICE PRESIDENT. CHARTERING & EVALUATIONS
ARCO MARINE, INC.

CC: THEO POLASEK

ARCOMAR S-LGB

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cc
Copied
JUL 6 1988

TO	FROM	DATE	TIME	ATTN	STATUS
OPS	RECEIVED	JUL 6 1988			YES
OPS	JUL 6 1988				Action
OPS				Genl. Support	None

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GEORGE D. PENCE

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
 Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

April 12, 1991

Dear Judge Holland:

We are writing to express our views regarding certain aspects of the proposed settlement of Federal and state civil claims arising from the EXXON VALDEZ oil spill.

These views are based on the ongoing effort of our Subcommittees to monitor the response to the oil spill, particularly by Federal agencies, including the assessment of injury to natural resources and plans for restoring the environment of Prince William Sound. In this capacity, our Subcommittees conducted an oversight hearing on the proposed settlement on March 20, 1991. Prior to that hearing, we asked the Department of Justice to prepare and make public a summary describing and quantifying the scope and severity of injuries caused by the EXXON VALDEZ spill to natural resources. That summary was prepared and submitted to Congress and the Court on April 8th.

Following the hearing, we asked the Justice Department to provide "all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages", while offering, if requested, to maintain the confidentiality of those documents. That request was denied in a letter to us on April 9th. A copy of the correspondence is enclosed.

We believe there is a strong general argument to be made in favor of settling the pending Federal and state claims now, thereby avoiding prolonged litigation and making funds immediately available for restoration purposes. But we also believe that no settlement should be accepted unless it serves the public interest and meets the requirements of Federal law. We are unable at this time to determine if the proposed settlement satisfies these criteria. We therefore respectfully recommend that you not approve the proposal unless and until certain fundamental issues are clarified.

April 12, 1991
Page Two

Specifically, we believe that the following three actions should be taken prior to approval of the settlement: 1) disclosure to the court of enough information to permit a fully informed judgment about the monetary sufficiency of the proposed settlement; 2) a commitment by the trustees to release all damage assessment and restoration studies and related documents to the public after the settlement is approved; and 3) clarifications by the trustees concerning the manner in which the recovered funds will be spent and the extent of public participation in the restoration planning and decisionmaking process. Each point is discussed below.

1. THE TRUSTEES HAVE FAILED TO PROVIDE THE INFORMATION NEEDED TO ASSESS THE MERITS OF THE PROPOSED SETTLEMENT.

a. How much will restoration cost?

Section 311 of the Clean Water Act requires the United States to recover from Exxon sufficient funds to cover the costs of replacing or restoring the natural resources under its trusteeship that were damaged or destroyed by the oil spill. At this point, only the trustees--and perhaps not even they--are in a position to judge whether or not the amount of the settlement is sufficient to meet this statutory obligation. This is true because the trustees have not disclosed to the court, and have refused to disclose to Congress and the public, the detailed information necessary to assess the severity of damage and the anticipated costs of restoration or replacement.

Although we do not know how large the settlement should be, we do know that it is not as large as some of its proponents have encouraged the public to believe. Last month, we asked the Congressional Research Service to review the proposed agreement to determine its net value to the Federal and state governments in real terms, taking into account the effects of inflation and Exxon's ability to deduct civil payments from its taxes. That study, a copy of which is enclosed, placed the estimated net value of the settlement at between \$421 million and \$524 million.

The difficulty of judging the adequacy of the settlement is further complicated by the facts that the damage assessment process is, according to the Administration's April 8th summary, still in a "preliminary" stage; the degree of injury to some important species, including salmon, will not be known for years; injuries to several other species are continuing; and specific restoration plans have not been made, nor costs estimated.

April 12, 1991

Page Three

b. Should restoration funds be used to pay cleanup costs?

Today, more than two years after the spill, oil remains trapped in sediments and gravel. More cleanup may occur this summer. Under the proposed agreement, any future cleanup activities (and certain past cleanup costs) will be paid for by the Fund established to finance restoration activities. This will create a direct tension between cleanup funding and restoration funding -- an "either-or" scenario even though the Clean Water Act requires both.

The adequacy of this arrangement depends upon the sufficiency of funds to cover both obligations. Once again, no good conclusion can be made about this aspect of the agreement without better information on projected cleanup costs and restoration costs.

We, like the public, are not able to make a good judgment about the monetary adequacy of the proposed settlement. That is important, but it is far more important that the court have access to all the documents it needs to make that judgment. Those documents must include more than a summary of the injuries to natural resources that have occurred, but also an expert evaluation of the cost of restoring those injuries, acquiring equivalent resources, if necessary, and providing compensation for lost use and other values pending restoration. We urge you to withhold approval of the settlement unless and until that information has been provided to the court.

2. THE PUBLIC'S NEED TO KNOW.

As mentioned above, the trustees have refused to release their evaluations of the scope and severity of the injury to natural resources resulting from the spill. This refusal is based on the claim that disclosure would jeopardize the proposed settlement and is covered by a loosely construed attorney-client privilege.

We agree that the trustees are entitled to maintain the confidentiality of a limited amount of detailed information gathered or prepared specifically to assist the prosecution of a pending case and that would, if publicly revealed, seriously undermine their legal position. That entitlement is an extremely narrow one in our judgment, however, and should never again be interpreted as broadly as it has been by the trustees in the present case.

April 12, 1991
Page Four

The fact is that the trustees in this instance developed a virtual obsession about secrecy. That obsession undermined the effectiveness and coordination of oil spill response and damage assessment efforts and unnecessarily limited public access to information on matters as important as public health. The sharing of scientific data and the dissemination of expert opinions is vital to maintain public confidence and ensure the effectiveness of response actions. In this case, the trustees operated with a degree of secrecy for which there was no practical or legal justification.

It is important to remember that the information available to the Executive branch concerning natural resource injuries in the EXXON VALDEZ case was gathered pursuant to public law, by public personnel and at public expense. The information pertains to resources that are publicly managed, publicly owned and subject to public trusteeship under federal law. Accordingly, we believe that citizens deserve access to the information whether they desire simply to assess the merits of the deal worked out by the trustees or to make a more informed judgment about their own legal options.

Consequently, we urge you to solicit an enforceable commitment from the Federal Government that all information available to it concerning the scope and nature of injuries done to natural resources as a result of the oil spill, including documents that place an estimated dollar value on those injuries and the costs of restoration, will be made public promptly subsequent to approval of any proposed settlement.

3. THE TRUSTEES MUST CLARIFY VAGUE COMMITMENTS ABOUT HOW THE FUNDS WILL BE SPENT.

The proposed settlement and Memorandum of Agreement between the Federal and state trustees provide only a vague and inadequate description of the purposes for which the recovered monies will be spent and the manner in which decisions about spending priorities will be made. We therefore recommend to the court that it seek substantial further clarifications from the trustees on these matters.

The effect of the consensus decisionmaking approach proposed for the Trustee Council will be to allow each Federal and state representative to veto any proposal by any participant. In the event that the obligations of the Federal and state trustees under Federal and state law are not identical, the Trustee Council may be operating under a set of dual and potentially conflicting obligations. Under section 311 of the Clean Water Act, recovered funds must be used to solely to restore,

April 12, 1991
Page Five

rehabilitate or acquire the equivalent of the damaged natural resources. We encourage the Court to make it clear that this limitation must be strictly adhered to by the trustees. The restoration fund is not to be viewed as a general fund to finance favorite projects or to conduct assessments in perpetuity.

We also urge you to solicit a clearer commitment from the Federal and state trustees for public participation in the natural resource damage restoration process. As you know, the proposed Memorandum of Agreement and Consent Decree provides that the Trustees shall ensure "meaningful public participation", including the "possible" establishment of a public advisory group. We believe a more detailed commitment should be made before the agreement becomes final.

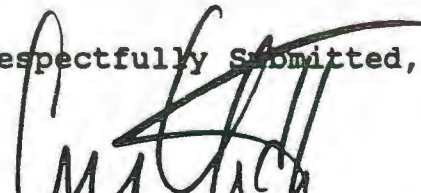
CONCLUSION

We appreciate the opportunity to provide the court with our recommendations on the proposed settlement. While we value and applaud the attempt by the litigants to settle their differences, we believe that certain clarifications are necessary before the proposed settlement is approved. We respectfully urge the court to seek those clarifications prior to taking final action on the agreement.

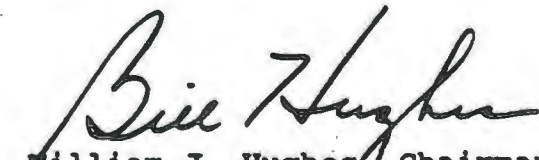
Respectfully Submitted,



Dennis M. Hertel, Chairman
Subcommittee on Oceanography,
Great Lakes and the Outer
Continental Shelf
Committee on Merchant Marine
and Fisheries



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment
Committee on Merchant Marine
and Fisheries



William J. Hughes, Chairman
Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary

The Honorable H. Russel Holland
U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

Enclosures

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GEORGE D. FENCE

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

March 26, 1991

Mr. Dick Thornburgh
Attorney General of the United States
Department of Justice
Constitution Avenue and Tenth Street, N.W.
Washington, D.C. 20520

Dear Mr. Thornburgh:

We are writing to re-state our interest in obtaining information concerning the recently negotiated proposed settlement of certain civil and criminal liabilities resulting from the EXXON VALDEZ oil spill.

We understand that your Department is currently preparing a summary of information describing and quantifying the scope and severity of injuries to natural resources caused by the spill and that this summary will soon be available to the Committee and the public.

We also request that documents, studies and memoranda be made available to us for the purpose of allowing us to make an informed judgment about the reasonableness of the settlement that has been reached. These materials need not include raw scientific data, but they should include all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages. If requested, we will agree to maintain the confidentiality of these materials. We ask that the materials be provided no later than the close of business on Thursday, March 28.

March 26, 1991

Page Two

If you have any questions about these requests, please let me know or ask a member of your staff to contact Bill Woodward or Will Stelle of the Subcommittee staff at 226-3533.

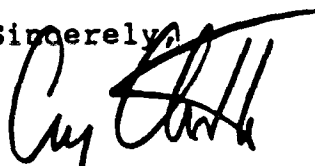
We look forward to your continued help and cooperation.

With kind regards.



Dennis E. Hertel, Chairman
Subcommittee on Oceanography
and Great Lakes and the
Continental Shelf

Sincerely,



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

cc: Mr. John Knauss, Administrator
National Oceanic and Atmospheric Administration



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 9, 1991

Honorable Gerry E. Studds
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and
the Environment
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Honorable Dennis M. Hertel
Chairman
Subcommittee on Oceanography and
Great Lakes
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman Studds and Hertel:

This responds to your letter to the Attorney General, dated March 26, 1991, requesting documents prepared in connection with the pending criminal and civil litigation arising from the Exxon Valdez oil spill. These are United States v. Exxon Corporation, et al. (Nos. A90-015-1CR; A90-015-2CR) and United States v. Exxon Corporation, et al. (No. A-91-082 Civ. D. Alaska).

The Department has endeavored to obtain appropriate criminal penalties and civil remedies for the wrongdoing and injuries related to the oil spill. The court is scheduled to sentence the defendants who have entered pleas in the criminal case during the next month. A proposed settlement and consent decree are pending before the court in the civil case and we expect that the court will rule on them at the end of the current notice and comment period. We believe, based upon the available information, that the proposed settlement is adequate, proper and would serve the best interests of the United States. If, however, the court decides not to accept the pretrial resolution of one or both of these actions, then they could proceed to trial. In that event, the United States would be forced to litigate the criminal and civil claims against Exxon, which litigation would run for years. Also, additional litigation has recently been filed alleging that the United States bore some responsibility for the Valdez spill.

We have prepared and filed with the court a summary of our scientific studies relating to natural resource damage from the spill in order to assist the court in evaluating the civil consent decree and the criminal plea. A copy of the summary is enclosed. We also can furnish some of the raw scientific data, which will not have a material affect on our litigation position, gathered by the federal trustee agencies in connection with damage assessment and restoration planning, which will be placed in the Oil Spill Public Information Center (OSPIC) in Anchorage. We believe that these documents, and the extensive materials already on file at the OSPIC, examples of which are listed in the enclosed bibliography, will provide an ample basis for evaluating the proposed plea agreement and civil settlement.

We regret that we cannot provide additional documents which were developed during the course of the pending litigation. Some of these documents, which include information furnished by expert consultants on a confidential basis, have not been disclosed outside of the Department and its federal agency clients. They also include materials that would not be available to an opposing party in the litigation. After careful consideration and despite our appreciation of the interests of your Subcommittees, we have concluded that the production of additional documents at this time would be inappropriate and pose an unacceptable risk to the pending litigation.

We appreciate your understanding of the importance to the United States of these proposed criminal and civil resolutions relating to the Valdez spill and the litigation sensitivity of the considerations that have gone into the proposed resolutions of these matters. We also appreciate your understanding that we must protect the exercise of fiduciary responsibilities by the natural resource trustees, who are among our client agencies, in achieving the best resolution of these claims. At the same time, we appreciate the Committee's oversight role in these matters. Once the litigation is resolved, we would be pleased to discuss the possibility of providing additional information.

Sincerely,


W. Lee Rawls
Assistant Attorney General

Enclosures

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ERNEST E. WELCH

CHIEF CLERK
BARBARA L. CAVAS

MINORITY STAFF
DIRECTOR/CHIEF COUNSEL
GEORGE D. FENCE

U.S. House of Representatives **Committee on**

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
Washington, DC 20515-6230

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CRS Estimates Value of Settlement

The attached memorandum from the Congressional Research Service (CRS) estimates the current value of the Exxon Valdez settlement at a low of \$421 million and a high of \$524 million.

The estimate takes into account the deductibility of the civil payments and discounts future payments to current value.

Majority Staff
House Fish and Wildlife
Subcommittee



Congressional Research Service • The Library of Congress • Washington, D.C. 20540

March 19, 1991

TO : House Committee on Merchant Marine and Fisheries
Attention: Will Stell

FROM : Bernard A. Gelb
Specialist in Industry Economics
Economics Division
and
Jane G. Gravelle
Senior Specialist in Economic Policy

SUBJECT : Net Present Values of the Exxon Valdez Settlement

This memorandum is in response to your request for a calculation of the present value of the recent settlement of the Exxon Valdez case to the U.S. Government and to Exxon Corporation. (Such a "value" would be negative in the case of Exxon.) The gross amount received (or paid) can differ from the net cost to the firm depending on tax liabilities, and values could differ with choice of discount rate. Because of uncertainties we have prepared several alternative scenarios.

One uncertainty is the ultimate amount to be paid. The agreement provides for a \$100 million criminal penalty, which we assume will be paid May 1, 1991, and for a series of civil payments tentatively payable on September 1 of this and the following ten years. These payments are set at \$90 million in 1991, \$150 million in 1992, \$100 million in 1993 and \$70 million for the next eight years. These amounts total to \$1 billion. There also is, however, the possibility of up to \$100 million more being payable after the year 2001, if additional environmental damage is discovered. In this alternative, we assume the \$100 million will be paid in two installments in the two years following.

Undiscounted, the payments will sum to \$1 billion and \$1.1 billion in the two payment scenarios. The net cost to Exxon will be smaller, however, because the civil payments can be deducted from income for purposes of both State and Federal taxes. The Federal tax rate is set at 34 percent; and we add three percentage points to account for State income taxes net of the

deductibility against Federal taxes.¹ Thus, the combined tax rate is set at 37 percent. As a result, the net cost to Exxon (net receipts to the Government) will be \$655 and \$716 million, respectively, without discounting.

A second major uncertainty is the discount rate. The present value of both net and gross costs depend on the discount rate used, and the proper discount rate is not entirely clear.

We consider several. The Forestry Service uses a 4 percent real return, while the Office of Management and Budget (OMB) suggests a 10 percent real return. (The regulations on evaluating natural resource damages, 43 CFR 11, direct the use of the OMB rate). The General Accounting Office (GAO) suggests using a nominal rate of return similar to a Treasury security for the same maturity. The 4 percent rate of return is closer to a riskless rate; it is also quite similar to the Government bond yield for three to ten year maturities assuming an inflation rate of around 4 percent. The 10 percent rate seems quite high, and would be associated with a relatively risky investment. Our understanding is that this rate was based on an attempt to estimate the pre-tax real return on physical capital investment. We would estimate that the average pre-tax return on private capital investment is lower than these numbers, at around 7 percent.²

Since the payments are in nominal dollars, these real returns should be converted to nominal returns. Assuming an inflation rate of 4 percent, the nominal rates would be 8.16 percent for the Forestry Service number (and consistent with the GAO approach), 11.28 percent to correspond to the average pre-tax return on private capital, and 14.4 percent to correspond to suggested OMB rates.

Using the three discount rates with the two payment scenarios, we obtain the following results:

(1) For the 8.16 percent rate, the present value to the Government ranges between \$734 million and \$773 million. The cost net of taxes to Exxon would be \$499 to \$524.

¹ This adjustment was suggested to us by Andy Yood of the American Petroleum Institute, who indicated that an add on of two to three percentage points was a typical rule of thumb to obtain a combined Federal and State income tax rate.

² To estimate the pre-tax return requires a measure of yields on debt and equity and an estimate of the effective tax rate. See Jane G. Gravelle, Differential Taxation of Capital Income: Another Look at the 1986 Tax Reform Act, National Tax Journal, December 1989, pp. 441-464 for a discussion of the methods used to derive this number.

(2) For the 11.28 percent rate, the present value to the Government ranges from \$666 million to \$694 million. Exxon's cost net of taxes would be \$456 million to \$474 million.

(3) For the 14.4 percent rate, the present value ranges from \$611 million to \$631 million. The cost net of taxes would be \$421 million to \$434 million.

While we would consider the discount rate in (3) as probably too high, the choice between (1) and (2) is less clear. Since the stream of payments is fixed, there is some justification for using a relatively riskless rate of return. On the other hand, the present value using the estimated pre-tax return rate represents the quantity of actual physical capital that would be necessary to generate the stream of future payments.

Please contact us (at 7-7300) if you have further questions on this matter.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0483 SS

CHENEGA CORPORATION, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0484 SS

APR 17 1991
DEPT. OF JUSTICE
DISTRICT OF COLUMBIA

MOTION FOR REFORMATION AND STAY
OF IMPLEMENTATION OF SETTLEMENT
AND REQUEST FOR ORAL HEARING

Plaintiffs The Native Villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk (the "Alaska Native Class"), by their undersigned counsel, hereby move for reformation and stay of implementation of the settlement between the United States, the State of Alaska, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company in connection with natural resource damages claims arising from the Exxon Valdez oil spill.

In support of its motion, the Alaska Native Class states that the Defendants United States and State of Alaska have failed

to adhere to representations given to the Court that the settlement would not impair plaintiffs' right to subsistence and their ability to prosecute fully their lawsuits against Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company and Alyeska Pipeline Service Company.

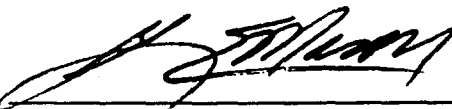
This motion is based upon the annexed Memorandum In Support Of Motion For Reformation And Stay Of Implementation Of Settlement.

Pursuant to Local Rule 108(f), the Alaska Native Class requests an oral hearing on this motion.

Respectfully submitted,

APR 20 1991

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA



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DATED: April 16, 1991
Washington, D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,

Plaintiffs,

v.

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Defendants.

Civil Action No. 91-0483 SS

APR 19 1991

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

CHENEGA CORPORATION, et al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et al.,

Defendants.

Civil Action No. 91-0484 SS

MEMORANDUM IN SUPPORT OF MOTION FOR
REFORMATION AND STAY OF IMPLEMENTATION OF SETTLEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIVE VILLAGE OF
CHENEGA BAY, et al.,

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CHENEGA CORPORATION, et al.,

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MEMORANDUM IN SUPPORT OF MOTION FOR
REFORMATION AND STAY OF IMPLEMENTATION OF SETTLEMENT

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I. INTRODUCTION

On March 12, 1991, the United States and the State of Alaska settled their claims for natural resource damages against Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company (collectively, "Exxon"). The settlement has three components. First, the State and the United States entered into an Agreement and Consent Decree ("Agreement") with Exxon whereby the governments would receive payments totalling \$900,000,000 for settlement of civil claims for damages to natural resources caused by the Exxon Valdez oil spill. Second, the United States and the State entered into a separate settlement in connection with natural resource damages, embodied in a proposed Memorandum of Agreement and Consent Decree ("MOA").¹ Third, the United States entered into a Plea Agreement with Exxon Corporation and Exxon Shipping Company whereby the defendants were fined \$100 million.²

Plaintiffs The Native Villages of Chenega Bay, Port Graham, English Bay, Larsen Bay and Karluk (hereinafter referred to as "Alaska Native Class," "Alaska Natives," or "Native Villages") do not bring this Motion to upset the settlements between the United States, Alaska and Exxon. The Alaska Native Class seeks only to ensure that the proposed settlement, as reduced to writing in the

¹The Agreement and the MOA are attached to federal defendants' Motion To Transfer as Exh. 3 and 5, respectively.

²The Plea Agreement is attached hereto as Exh. A.

Agreement and MOA,³ does not conflict with or contradict the rights of the Alaska Natives to subsistence.⁴

II. PROCEDURAL BACKGROUND

On March 5, 1991, the Alaska Native Class filed suit seeking to enjoin the defendants from entering into any agreement with Exxon and Alyeska Pipeline Service Company resolving civil claims arising from the Exxon Valdez oil spill. The suit sought to enjoin defendants from in any way encumbering or disposing of the Alaska Natives' claims arising from the oil spill.⁵ On March 7, 1991, the Alaska Natives filed an amended complaint which made clear that the plaintiffs in this matter are the Alaska Native Class certified by the Superior Court for the State of Alaska by Judge Brian Shortell on February 14, 1991, in Pretrial Order No. 22, Exxon Valdez Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-25333 Civil (Consolidated) (Alaska Sup. Ct.) (see ¶16 of

³The Alaska Native Class will submit this Memorandum as a public comment to both the Agreement and the MOA in accordance with 56 Fed. Reg. 11,636 (Mar. 19, 1991) and 56 Fed. Reg. 11,642 (Mar. 19, 1991).

⁴As used herein, the word "subsistence" refers to the hunting, fishing and gathering-based culture upon which the Alaska Native Class has survived for thousands of years.

⁵On March 6, 1991, Plaintiffs Chenega Corporation and other native corporations ("Native Corporations") filed suit seeking the same preliminary injunctive relief. This Motion, however, is made solely on behalf of the Alaska Native Class.

Amended Complaint).⁶

On March 11, 1991, Judge Sporkin granted the Alaska Natives' motion for a temporary restraining order. On March 12, 1991, the Court dissolved the temporary restraining order and denied plaintiffs' motions for a preliminary injunction. The Court based its decision upon the defendants' representation that "resolution of [the United States'] natural resource damages should not impair rights or claims of third parties," which the Court took to mean that:

after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed [and] that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources and/or lands they have an interest in, even if it is claimed the same natural resource and/or lands are covered by the settlement agreement among the defendants and Exxon and Alyeska.

March 12 Order at 2. The Court retained jurisdiction over this litigation "to ensure that the defendants' representations are carried out so that plaintiffs' rights are protected." Id. at 3.

Now that the settlement has been reduced to writing, it is evident that the United States and Alaska's settlement with Exxon and the United States and Alaska's settlement with each other do impair the rights of the Alaska Natives and their ability to litigate or settle their claims. The language of the settlement papers, when read as a whole, violates the defendants'

⁶The District Court for the District of Alaska has decided not to certify any classes at this time and has directed all action to first proceed as claims against the Trans-Alaska Pipeline System Liability Fund.

representations. The papers are replete with language that will most certainly be relied upon by Exxon to argue denial of the Alaska Native Class's right to damages to their subsistence way of life based on the natural resource devastation wrought by the oil spill. Accordingly, the Court should order reformation of the settlement agreement and stay its implementation.

III. ARGUMENT

The proposed settlement impairs the rights of the Alaska Native Class in at least four ways. First, the Agreement is inconsistent with and contradictory to the rights of the Alaska Native Class to recover subsistence natural resource damages. Second, the Plea Agreement impairs the Alaska Native Class and denies it of an opportunity for necessary and immediate restitution. Third, the Agreement, even if considered to be neutral on its face, significantly impairs the rights of the Alaska Native Class by permitting a partial settlement of an indivisible injury and thereby, in practical terms, "binds everybody and [leaves] these people . . . out in the cold." Transcript of Status Call (Mar. 12, 1991), at 35. Fourth, and finally, the settlement impairs the rights of the Alaska Natives to be treated as a co-equal to the United States and Alaska with respect to natural resources.

A. The Language of The Agreement Is Inconsistent With
And Contradictory To The Rights Of The Alaska Natives

The language of the Agreement appears to be drafted to afford Exxon every opportunity to argue that no one other than the United States and Alaska has a right to recover for damages to natural resources. In the Introduction section of the Agreement, the parties make clear that the United States and Alaska are the sole entities having any natural resource rights:

The United States and the State represent that it is their legal position that only officials of the United States . . . and state officials . . . 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).

Agreement, Introduction, at 3 (emphasis added). Such claims of exclusivity directly undermine the very right of the Alaska Native Class to protect their way of life and the natural resources upon which their existence depends.⁷ The language has

⁷The actual language of Section 311(f)(5) does not use the limiting word only or otherwise expressly state that entities other than the United States can never act as trustees for natural resources. Section 311(f)(5) provides that the "President, or the authorized representative of any state, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resource."

It is thus no surprise that in Paragraph 13(c) the drafters of the Agreement state that:

. . .nothing in this Agreement shall affect or impair. . . the rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill.

been apparently inserted at the outset of the Agreement with the forethought that its qualifying nature will eliminate all competing and complimentary claims for natural resource injury caused by the Exxon Valdez oil spill.

Paragraph 32 of the Agreement, rather than adopt clear language protective of plaintiffs' rights as suggested by the Court, contains only a half-hearted assurance that "[n]othing in this Agreement . . . is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement." Agreement, ¶32, at 24. This is precisely the kind of "wishy-washy" language the Court cautioned the United States to avoid. Transcript of Status Call (Mar. 12, 1991), at 8. Were the defendants not attempting to whittle away at plaintiffs' claims, they would have stated that the Agreement shall not affect the legal claims of the Alaska Native Class.

Paragraph 13, the sole provision purporting to protect the rights of the Alaska Natives, affords no meaningful protection. The paragraph provides that:

. . . nothing in this Agreement, shall affect or impair . . .
. the rights and obligation, if any, of Alaska Native villages to act as trustees for the purpose of asserting and compromising claims for injury to, destruction of, or loss

Agreement, ¶13(c), at 15. The word "present" is used intentionally in this provision to provide Exxon with an argument that the Natives have no claim to damages to natural resources that are not in existence at this time, such as subsistence damages caused by injuries to future generations of marine life (and that similarly the Native Corporations cannot bring claims in the future on lands which have been selected but not transferred pursuant to the Native lands selection program, 43 C.F.R. subpart 2650).

of natural resources, if any, belonging to, managed by, controlled by or appertaining to such villages

Agreement, ¶ 13(b) (emphasis added). This language falls far short of the defendants' promise that the Agreement will not in any way impair the rights of the Alaska Native Class. First, as if to emphasize the Agreement's implicit position that the Alaska Natives have no right to subsistence and no claims to natural resource damage, references to the Native Villages' claims are modified by the phrase "if any."⁸ Second, this language casts doubt upon the fact that the Alaska Natives suffered damages to natural resources used for subsistence. This is an especially untenable suggestion in light of the United States' post-settlement disclosure that the most severe damage to natural resources occurred in the subtidal habitats relied upon by the Alaska Natives for subsistence.

A summary report released by the United States on April 9, 1991, nearly one month after entering into the Agreement and two days prior to the close of the comment period on the Plea Agreement, provides overwhelming evidence that the coastal tidal zone, the region most heavily exploited for subsistence purposes, "was the most severely contaminated habitat." See "Summary Of Effects Of The Exxon Valdez Oil Spill On Natural Resources And Archaeological Resources" (Mar. 1991), at 12 (hereinafter "Summary") (Attached hereto as Exh. B). It further finds that

⁸The phrase "if any" is used repeatedly throughout the settlement papers. See Agreement, ¶13(c), at 15, ¶32, at 24; MOA, ¶III.C., at 9.

intertidal organisms such as mussels, clams, certain species of fish, and fecus (the dominant intertidal plant) continue to be exposed to hydrocarbons, are less abundant, and were severely affected by the oil spill and subsequent cleanup activities. Id. at 12-13. The Summary admits that "some communities virtually or entirely ceased subsistence harvests in 1989 and have only gradually begun to resume harvests, while other communities continued some reduced level of subsistence harvest in 1989 and thereafter." Id., at 14.

Further, a study of subsistence conducted by the Alaska Department of Fish & Game, which is referenced in the Summary, concludes that "until [environmental danger] signs disappear and people are able to place confidence in their own abilities to again interpret and understand their environment, recovery from this disaster will likely remain incomplete." Fall, "Subsistence Uses of Fish and Wildlife in 15 Alutiq Villages After the Exxon Valdez Oil Spill," at 9 (Attached hereto as Exh. C) (second emphasis added).⁹

While acknowledging and even documenting the essential shortcoming of their natural resource settlement and Alaska Native subsistence damage, the United States and Alaska crafted an agreement which does its utmost to deny a right of recovery to

⁹Studies have found that the decrease in subsistence activities had the effect of increasing hardship and stress in the villages. Continuation of this contamination raises serious questions as to the very viability and survivability of the Native subsistence way of life. See Fall, supra, at 8-9.

Alaska Natives. Accordingly, plaintiffs request the court stay execution of the settlement and order that the Agreement be reformed so that, at a minimum, the word "only" be stricken from the preface to the Agreement, the word "present" be stricken from ¶13(b) of the Agreement, the phrase "intended to affect" be replaced with "shall" in ¶32, the phrase "if any" be stricken wherever it is used in connection with plaintiffs' claims, and order such other reformation the Court deems appropriate to ensure that the settlement in no way impairs the subsistence rights and claims of the Alaska Native Class.

B. The Plea Agreement Denies The Alaska Native's An Opportunity For Immediate And Necessary Restitution

The plea provisions which allow criminal fines to be remitted is intended to provide an incentive to the wrongdoer to make restitution to crime victims by permitting the United States to reduce a criminal fine if payments to victims have been made. Under the Plea Agreement, the United States has agreed to remit 50 percent of the \$100 million criminal fine imposed upon Exxon and Exxon Shipping because the defendants "have paid in excess of \$300 million to claimants allegedly injured by the oil spill." Plea Agreement, ¶III.C(c), at 7. None of these payments, however, were made upon the claims of the Alaska Natives. No restitution funds are provided for in the civil settlement.

The United States has breached its trustee obligation towards the Alaska Natives by costing them their best opportunity

for an early settlement of their own claims.¹⁰ The failure to insist upon restitution to the Alaska Natives is difficult to understand given that the United States has documented that the most severe impacts were sustained to those natural resources upon which the Alaska Natives depend for their existence and it leaves the victims who most directly depend upon renewable uncontaminated natural resources for their very existence without relief. The Alaska Natives need to undertake immediate restoration of their subsistence natural resource areas. By failing to provide for immediate and necessary relief, the parties to the settlement have in effect contributed to the continued erosion of the subsistence way of life.

The failure to insist that restitution be made to the Alaska Natives before civil settlement was finalized and the criminal

¹⁰The United States clearly has a trust responsibility towards the Alaska Natives. This has been recognized over and over both by the United States and by the State of Alaska, and is probably shown most clearly in the numerous statutes and international conventions protecting the subsistence way of life of Native Alaskans, and in the yearly programs (including fish and game programs) funded for the Natives by the United States. In reviewing many of these provisions protective of Alaska Native subsistence rights, the Federal District Court in People of Togiak v. United States, 470 F. Supp. 423, 428 (D.D.C. 1979) stated the situation clearly:

These various responsibilities impose fiduciary duties upon the United States including the duties so to regulate as to protect the subsistence resources of Indian communities and to preserve such communities as distinct cultural entities. . . .

470 F. Supp. at 428 (citations omitted); see also North Slope Borough v. Andrus, 486 F. Supp 332, 344 (D.D.C.), aff'd, 642 F.2d 589, 612 (D.C. Cir. 1980).

penalty set directly impairs the rights and claims of the Alaska Native Class.

C. The Agreement, Even If Neutral On Its Face,
Impairs The Rights of the Alaska Native Class

The Agreement, even if considered to be neutral on its face, significantly impairs the rights of the Alaska Native Class by permitting a partial settlement of what is, practically speaking, an indivisible natural resource injury. Contrary to this Court's warning that the document be neutral in its effect, the Alaska Natives are no longer in the same position as if the United States and Alaska had not settled their claims.

There are three entities that have a priority interest in the affected natural resources -- the United States, the State of Alaska and the Alaska Native Class. The injury to natural resources cannot be segmented. A partial settlement by two of the priority interested parties of something less than the whole of an indivisible injury clearly impacts and impairs the rights and claims of the remaining party to that injury.¹¹

That which appears neutral on its face may in fact have a discriminatory impact. Prior to settlement the alignment of the United States and the State of Alaska with the Alaska Natives on the issue of natural resource damages gave greater strength to

¹¹That the injury is indivisible is perhaps best evidenced by the MOA, under which the federal and state governments forego their own disagreements over their respective shares in favor of a joint management regime.

the ability of each to prove, in combination, the fact, nature and extent of that injury. The benefits of this synergism were evidenced by the undertakings of the United States and Alaska regarding basic scientific evaluations which included the identification of subsistence natural resource injury. With a partial settlement by the United States and Alaska alone, these benefits are lost and the conduct of future necessary evaluations is now in question.¹²

The settlement of natural resource claims by the United States and Alaska, without the Alaska Natives, leaves the Alaska Native Class in the position of facing Exxon and Alyeska alone on this issue. The isolation is compounded by the position that settlement has created with respect to Exxon and Alyeska. The prevailing attitude is that the governments' natural resource settlement has put this issue to rest for all parties. It is now virtually guaranteed that the Alaska Native Class's natural resource claims will not be resolved by anything short of full litigation.

The adverse impact of this partial settlement can best be viewed if the agreement were analyzed as an attempted class settlement. Suppose, for example, that a subset of a class in an antitrust price fixing conspiracy attempted to settle the injury caused by the conspiracy for their interests alone. In a

¹²The MOA anticipates that the manner in which monies received by Exxon are spent will be the subject of dispute. It is doubtful that in the tug-of-war between these governments either will respond to the needs of the Alaska Native Class.

traditional settlement of this type of injury, no court would permit any subset of the class to settle for either the entire injury or anything less than the whole injury and no class counsel would permit such segmentation of the injury. This does not mean that the amount offered to settle the interests of the subsets of the class is automatically unfair or inadequate. What it does mean is that the remaining party, with similar interests in the same injury, should be afforded an opportunity to settle on a proportionate basis for itself.

Here, the United States and the State of Alaska were able to settle for less than the whole injury only because there was no court, prior to the filing of this action, which had jurisdiction over both of these entities. Recognizing this void, the federal and state governments were able to settle out what was essentially a class claim without the inclusion of all similarly situated class members.

In the absence of an opportunity to settle on a proportionate basis for itself, the rights of the remaining subset of the class -- the Alaska Natives -- are impaired by the other class members' settlement. To rectify this impairment, the settlement should be stayed pending negotiations and the allocation of some portion of the settlement fund to the Alaska Native Class for restoration and rehabilitation of natural resources appertaining to the class.

D. The Settlement Impairs The Rights Of The Alaska
Natives As A Co-Equal With The United States
And Alaska With Respect To Natural Resources

The MOA is intended to provide a "framework" for "the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources." MOA, at 2. In establishing this framework, the defendants looked to a variety of environmental laws: Section 107 of CERCLA, 42 U.S.C. §9607; the National Contingency Plan, 40 C.F.R. §300.615(a); and the Natural Resource Damage Assessment Regulations, 43 C.F.R. §11.32(a)(1)(ii). Interestingly, each of these sources of law contemplates that Indian tribes, like the Native Villages, may act as co-trustees for natural resources. See 42 U.S.C. §9607(f)(1) (Indian tribes have an interest in natural resource appertaining to them); 40 C.F.R. §§300.610, .615 (designating Indian tribes as trustees for natural resources appertaining to such Indian tribes and stating that where there are multiple trustees because of coexisting or contingent natural resources they should coordinate and cooperate in carrying out these responsibilities); 43 C.F.R. § 11.32 (prior to developing an assessment plan "authorized officials from . . . Indian tribes are encouraged to cooperate and coordinate any assessments that involve coexisting and contiguous natural resources or concurrent jurisdictions").

The legal framework relied upon by the defendants in reaching an agreement would have readily accommodated inclusion

of the Native Villages as a co-trustee. By failing to include the Native Villages in the MOA, defendants have left plaintiffs without any mechanism through which to coordinate with defendants for the assessment and restoration of natural resources used for subsistence.

The MOA does not provide the Native Villages with any assurances that any portion of the settlement fund (or for that matter the monies which will be paid by Exxon to the United States as criminal penalties) will be used to assess the Native Villages injuries or to restore, replace, rehabilitate or enhance those natural resources used by them for subsistence purposes. Indeed, simple cost-benefit analysis suggests that the limited funds available will go towards highly-visible projects, such as restoration of beaches in popular national parks, and not towards the low-profile restoration programs sought by the Alaska Natives.

Further, the MOA does not contemplate any coordination with the Native Villages in the event that they do, upon settlement or judgment, receive payments from Exxon or Alyeska for damages caused to natural resources appertaining to them.

The failure of the MOA to treat the Native Villages as co-trustees, either from the Agreement's effective date or at any time in the future, impairs their right to recover damages to natural resources used for subsistence, for it unnecessarily places obstacles in the way of full resource recovery. The Court should therefore stay the Agreement pending the inclusion of

provisions for the coordination of the Native Villages as a co-trustee.

CONCLUSION

For all of the foregoing reasons, Plaintiffs Alaska Native Class requests that the Court stay implementation of the Agreement and the MOA for 90 days, order that the Alaska Native Class, through its counsel, be included in further settlement negotiations so that all claims to natural resource damages can be settled efficiently and equitably, and order that such reformation of the settlement papers be made as deemed appropriate.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA)	
	)	No. A90-015 CR.
Plaintiff,)	
)	
v.)	
)	
EXXON SHIPPING COMPANY	)	<u>PLEA AGREEMENT</u>
)	
and)	
)	
EXXON CORPORATION,)	
)	
<u>Defendants.</u>)	

I. INTRODUCTION

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

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

APR 10 1991

CLERK, U.S. DISTRICT COURT
DISTRICT OF ALASKA

CA 91-483
CA 91-484
EXHIBIT A
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Act, Title 33, United States Code, Sections 407 and 411; and the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

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

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

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

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

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

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

1. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, did negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil, from a point source, namely the tank vessel "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A).

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

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

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

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

C. Legal Basis for the Fines and Restitution Payment

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

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

D. Consequences of the Plea

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

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

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

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

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

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

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

by Alyeska Pipeline Service Company to the federal or state government.

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

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and the acceptance by the Court thereof, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., and that under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$100 million, as follows:

1. With respect to EXXON SHIPPING, the fine shall be \$75 million.
2. With respect to EXXON, the fine shall be \$25 million.
3. With respect to EXXON SHIPPING, \$37.5 million shall be remitted, and with respect to EXXON, \$12.5 million

shall be remitted. The remission of these amounts is appropriate in view of the following facts:

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

(b) The defendants have expended in excess of \$2 billion in response to and clean up of the oil spill in Prince William Sound and its environs;

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

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

D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement, and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties referred to in Paragraph IIIA. The payment of \$37.5 million by EXXON SHIPPING and \$12.5 million by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.

IV. AGREEMENT OF THE PARTIES REGARDING RESTITUTIONARY PAYMENTS

A. The defendants, EXXON SHIPPING and EXXON, agree to make payments to the State of Alaska which total \$50 million

within 30 days of the acceptance of this plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph IVA are remedial and compensatory payments. Such monies are to be used by the State of Alaska exclusively for restoration projects 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 the State of Alaska and that upon payment, such monies and any interest which accrues thereon shall be available for use by the State of Alaska for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.

C. The parties agree that all payments made under paragraph IVA represent compensation for harm or injury to the State of Alaska. Such payments are intended by the parties to be exclusively remedial, compensatory, and non-punitive and are intended to be separate and distinct from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed upon the defendants.

V. GENERAL PROVISIONS

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

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

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

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

**FOR THE UNITED STATES
OF AMERICA:**

/s/ Joseph G. Block
JOSEPH G. BLOCK
Chief
Environmental Crimes Section
Environment and Natural
Resources Division
U.S. Department of Justice

/s/ Charles A. De Monaco
CHARLES A. De MONACO
Assistant Chief

/s/ Eric W. Nagle
ERIC W. NAGLE
Trial Attorney

/s/ Mark R. Davis
MARK R. DAVIS
Special Assistant U.S.
Attorney

/s/ Mark B. Harmon
MARK B. HARMON
Trial Attorney

FOR THE DEFENDANTS:

/s/ James F. Neal
JAMES F. NEAL
Counsel for Exxon Shipping

/s/ E. Edward Bruce
E. EDWARD BRUCE
Counsel for Exxon Shipping

/s/ Robert C. Bundy
ROBERT C. BUNDY
Counsel for Exxon Shipping

/s/ Edward J. Lynch
EDWARD J. LYNCH
Counsel for Exxon
Corporation

/s/ John F. Clough, III
JOHN F. CLOUGH, III
Counsel for Exxon
Corporation

DATED THIS 13th day of March, 1991

SUMMARY OF EFFECTS OF THE EXXON VALDEZ OIL SPILL ON NATURAL RESOURCES AND ARCHAEOLOGICAL RESOURCES March 1991

INTRODUCTION

The T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound on the night of March 23-24, 1989, spilling approximately 11 million gallons of North Slope crude oil, making this the largest oil spill in United States history. The oil spread through Prince William Sound, the Gulf of Alaska, and Lower Cook Inlet. More than 1,200 miles of coastline were oiled, including portions of the Chugach National Forest, Alaska Maritime, Kodiak, and Alaska Peninsula/Sechart National Wildlife Refuges, Kenai Fjords National Park, Katmai National Park and Preserve, and Aleutian National Monument and Preserve. Oil from the T/V Exxon Valdez impacted shorelines nearly 600 miles from Bligh Reef.

The magnitude of efforts of the state and federal governments, the public, and Exxon to contain and clean up the spill, rescue wildlife, and study the effects of the spill is unprecedented. Among those efforts are the state/federal natural resources damage assessment studies designed to measure injuries to natural resources including birds, mammals, fish and other wildlife, and marine and terrestrial habitats. Those studies are intended to provide the information necessary for the Trustee agencies to manage and restore injured resources appropriately and to provide necessary documentation to enable the governments to present a claim for damages to the responsible parties. This summary briefly describes the area affected by the spill, the chronology of the spill, and the process developed to implement and manage the injury assessment studies. It focuses, however, on what has been learned over the past two years about the effects of this oil spill on natural resources.

DESCRIPTION OF THE AREA AFFECTED BY THE SPILL

Prince William Sound lies near the top of the Gulf of Alaska (see map), an 850 mile arc extending from the Aleutian Islands on the west to the islands of southeast Alaska. The gulf coast is remote, rugged, and scenic. Its maritime climate provides a lush, green landscape in the summer. The area is now covered in the winter. Bear, whale, bald eagles, puffins, seals, sea lions, and sea otters are among the stranger wildlife of the area. Storms that cross the Gulf drop as much as 300 inches of rain and snow annually in the high coastal mountains. Glaciers descend from permanent ice fields capping these coastal mountain ranges, continuing to carve intricate fjords and sand bays flowing out to sea. These are the largest glaciers outside Antarctica and Greenland.

Prince William Sound is one of the largest relatively undeveloped marine ecosystems in the United States. It has one of the continent's largest tidal estuary systems. Prince William Sound has rich commercial herring and salmon fisheries. The open water of the Sound is about the size of Chesapeake Bay. Its many islands, bays, and fjords give it

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more than 2,000 miles of shoreline. Prince William Sound is surrounded by land, most of which is part of Chugach National Forest.

To the southwest of Prince William Sound is the Kenai Peninsula, home of the Kenai Fjords National Park, various units of the Alaska Maritime National Wildlife Refuge, and, among others, the cities of Homer and Seward. Numerous seabird colonies are located along the coast of the Kenai Peninsula, including those most frequently visited by tourists in Alaska. Both Prince William Sound and the Kenai Peninsula are accessible by air, boat, and on a limited basis, by automobile from nearby Anchorage, Alaska's major population center. State ferries that run among the larger communities and many charter boats make it easy for people to visit the heart of the Gulf coast. In recent years, there has been a steady increase in the number of wilderness seekers, kayakers, cruise ship passengers, and other tourists visiting the area.

The Kenai Peninsula points southwest to Shelikof Strait and Kodiak Island. Shelikof Strait lies between Kodiak Island, on the south and the Alaska Peninsula on the north. Shelikof Strait is the source of a very productive commercial pollock fishery. The Kodiak National Wildlife Refuge is located on the Kodiak Archipelago and Katmai National Park and Preserve, Alaska Peninsula/Bocharof National Wildlife Refuge, and Aniakchak National Monument and Preserve are located along the coast of the Alaska Peninsula. The Alaska Peninsula tapers, then scatters into the islands of the Aleutian chain.

CHRONOLOGY OF THE EXXON VALDEZ OIL SPILL

For the first three days of the spill, the weather was calm and the slick lengthened and widened amoeba-like and generally stayed in the vicinity of the grounded tanker and off the beaches. Even with these seemingly ideal circumstances for oil recovery, the amount of oil in the water completely overwhelmed efforts to contain and recover the oil. A major windstorm on March 27, 1989, pushed the oil in a southwesterly direction and oiled beaches on Little Smith, Naked, and Knight Islands. The oil continued to spread, contaminating islands, beaches, and bays in Prince William Sound. Four days into the spill, oil began to enter the Gulf of Alaska. The leading edge of the slick reached the Chirwell Islands off the coast of the Kenai Peninsula on April 2, 1989, and the major seabird nesting colonies on the Barren Islands on April 11, 1989, nineteen days into the spill. By May 18, 1989, oil had moved some 470 miles and had fouled shorelines of Prince William Sound, the Kenai Peninsula, the Kodiak Archipelago, and the Alaska Peninsula. Oil subsequently reached shorelines on the Alaska Peninsula nearly 600 miles from Bilg Reef.

During 1989, the response to contain and cleanup the spill and rescue oiled wildlife involved a massive effort. Skimmer ships were sent throughout the spill zone to vacuum oil from the water surface. Booms were positioned to keep oil from reaching important commercial salmon hatcheries in Prince William Sound. A fleet of fishing vessels, known as the "Mosquito Fleet," played an important role in protecting these hatcheries, in corralling oil to assist the skimmer ships, and in capturing oiled wildlife and

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transporting these animals to rehabilitation centers. After oil contaminated shorelines, a beach cleanup program was activated. Various local committees, with community and government agency participation, provided recommendations to the U.S. Coast Guard about areas that should receive priority for cleanup. An army of workers cleaned shorelines, using techniques ranging from cleaning rocks by hand to high pressure hot water washing. Fertilizers, sometimes in a chemical base, were applied to some oiled shorelines to increase the activity of oil-metabolizing bacteria, in an experimental procedure known as bioremediation. When deteriorating weather brought an end to cleanup work in the fall of 1989, a gross amount of oil remained on the shorelines. Although winter storms proved extremely effective in cleaning many beaches, spring shoreline surveys indicated that much work remained to be done in 1990. Crews operating from boats and helicopters cleaned oiled shorelines in Prince William Sound, along the Kenai and Alaska Peninsulas, and on the Kodiak Archipelago. Manual pick up of remaining oil was the principal method used during 1990, but bioremediation and relocation of oiled berms to the active surf zone were also used in some areas. Another shoreline survey will be conducted during May 1991, to determine the need for additional cleanup work.

INJURY ASSESSMENT PROCESS

The Exxon Valdez oil spill occurred just prior to the most biologically active season of the year in southcentral Alaska. During the two month period after the spill, seaward migrations of salmon fry, major migrations of birds, and the primary reproductive period for most species of birds, mammals, fish, and marine invertebrate species took place. The organisms involved in these critical periods of their life cycles encountered the most concentrated, volatile, and potentially damaging forms of the spilled oil. As will be discussed in this summary, the oil affected different species differently. Whereas, for example, it directly killed large numbers of birds and sea otters that encountered oil on the water surface, it did not prohibit in and out migration and spawning of large schools of salmon and herring.

The state and federal Trustee agencies were forced to mobilize field studies rapidly with little time for planning. Through intensive efforts, studies were designed, administrative processes were accelerated, and 58 field studies were carried out. Additionally, technical services programs were organized to provide hydrocarbon analysis, histopathology, and mapping support for the field studies. Initial decisions on the types and scope of studies conducted were made by agency experts familiar with the resources and the environment. Even with the rapid deployment of studies, however, some opportunities to gather injury data were irretrievably lost during the early weeks of the spill.

A legal framework was subsequently established and studies were reviewed and modified according to their likelihood to document resource injury. Expert peer reviewers were retained and study plans used during 1989 underwent scientific review for possible

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modification in 1990. Some studies were discontinued or modified if they were unable to further document resource injury, and some new studies were initiated to fill identified information needs. Status reports prepared in January 1990, were used to guide the development of plans for the second year of studies. Thirty-nine studies and three technical services programs were continued in 1990. Scientific review was again used to plan for the upcoming 1991 field season, during which 29 studies and two technical services programs will be conducted.

This summary of the effects of the Exxon Valdez oil spill on natural resources is preliminary, as studies are still underway and available data are not fully analyzed and interpreted. However, the injuries to natural resources that have been documented to date are summarized herein. This summary also addresses studies that were discontinued. It should be noted that studies were discontinued for a variety of reasons, such as the determination that field work has been completed, that there was no practicable way to measure injury, or that no injury was documented. Even though some studies failed to identify injury and were discontinued, this does not necessarily mean that the resources were not affected by the spill. Certain injuries (if present), such as possible latent or sublethal effects on reproductive or other systems in animals, might not become fully evident for a number of years after the spill. At present there is no significant indication of long-term injury to resources other than those specifically noted below. Although studies indicate that there are continuing injuries to certain resources, natural recovery may also have begun. As petroleum hydrocarbons are broken down in the ecosystem, plant and animal communities begin to reestablish themselves. This recolonization has already been observed in some of the more lightly oiled areas. In the more heavily oiled areas, this natural recovery process is expected to take longer. As this natural recovery occurs, many of the birds and mammals that feed in these areas are expected to begin recovering.

MARINE MAMMALS

Following the spill, studies of humpback whales, Stellers sea lions, sea otters, harbor seals, and killer whales were started. The humpback whale and Stellers sea lion studies were discontinued following the 1990 field season. Humpback whale investigations were limited to photo identification of whales, estimations of reproductive success, and possible relocations of whales. It was not possible to take tissue samples for petroleum hydrocarbon analysis to document exposure. The study did not show direct oil spill mortalities or reproductive failures.

The sea lion study is being completed following the 1990 pup counts. Some tissue samples were analyzed for petroleum hydrocarbon concentrations, and although there was some indication of exposure to oil, it was difficult to determine what populations were affected because of the sea lions' active seasonal movements. Because of an ongoing pre-spill population decline and premature pupping of sea lions, it was not possible to distinguish post- from pre-spill population effects clearly.

Studies of killer whales, based on observations only (because tissue sampling was not an

option), have indicated that killer whales are missing from at least one and possibly two pods in Prince William Sound. Injuries to harbor seals and sea otters have been clearly indicated and studies of these species are continuing.

Sea Otters: The population of sea otters in Prince William Sound before the spill was estimated to have been as high as 10,000. The total sea otter population of the Gulf of Alaska was estimated to be at least 20,000. Statewide, the sea otter population is estimated at 150,000. Sea otters were particularly vulnerable to the spill. As the oil moved through Prince William Sound and the Gulf of Alaska, it covered areas used by large numbers of otters. When sea otters become contaminated by oil, their fur loses its insulating capabilities, leading to death from hypothermia. Sea otters also died as a result of ingestion of oil and perhaps inhalation of toxic aromatic compounds that evaporated from the slick shortly after the spill. The effects of oil were documented by surveys of wild populations: analysis of tissues for petroleum hydrocarbons and indicators of reduced health; by tracking sea otters outfitted with radio transmitters (including those released from rehabilitation centers); and estimating total mortality from the number of sea otters found on beaches. These studies concentrated on developing an estimate of sea otter mortality in Prince William Sound and along the Kenai Peninsula, the population most affected by the spill. During 1989, a total of 1,011 sea otter carcasses were recovered in the spill area, cataloged, and stored in evidence trailers. Of these, 876 were recovered dead from the field and 135 died in rehabilitation centers or other facilities. The total number of sea otters estimated to have been killed directly by the spill ranges from 3,500 to 5,500 animals throughout the spill area.

Initial results indicate significant differences in hematology and blood chemistry parameters between sea otters in oiled and unoiled areas. Greater variation was observed in DNA content of blood lymphocytes of sea otters from oiled areas, but sperm and testicular cells showed no indication of DNA damage resulting from oil exposure. It cannot yet be determined whether these differences affect sea otter health or survival. There are indications that sea otters continue to be exposed to petroleum hydrocarbons in oiled areas. Analysis of blood and fat samples collected from animals during 1990 found elevated concentrations of certain aromatic compounds in sea otters from heavily oiled areas and elevated concentrations of petroleum hydrocarbons continue to be documented in food items eaten by sea otters in oiled areas. Additionally, other damage assessment studies have documented a decreased abundance of mussels in oiled areas, a key prey species for sea otters.

Studies have documented continuing injury to sea otters. Normally, very few prime age sea otters (animals between 2 and 8 years old) die each year and most mortality occurs among very young and old age classes. The high number of prime age sea otter carcasses found during 1990 indicates that the pattern of sea otter mortality in heavily oiled areas continues to be abnormal. Results of boat surveys indicated continued declines in sea otter abundance within oiled habitats in Prince William Sound.

Preliminary results indicate that pupping rates in oiled and unoiled areas are not significantly different. However, the first information available for the spring of 1991 shows higher yearling mortality rates in oiled areas than in unoiled areas.

Studies of the survival and reproductive success of sea otters released from rehabilitation

centers indicate a high level of mortality of adult animals and significantly lower pupping rates than the pre-spill mortality and pupping rates in Prince William Sound. Of the 193 sea otters released from rehabilitation centers, 45 were fitted with radio transmitters. Sixteen of these animals are still alive, 13 are known to be dead, and 15 are missing. One radio transmitter is known to have failed.

Harbor Seals: There has been no census of harbor seals in Prince William Sound since the mid-1970s when the population was estimated at 3,000 to 5,000 animals. Since that time, the harbor seal population in Prince William Sound and the Gulf of Alaska has declined substantially. A population census of Prince William Sound is planned for the summer of 1991.

Two hundred harbor seals are estimated to have been killed by the spill. Only 19 seal carcasses were recovered following the spill, since seals sink when they die. Population changes were documented by summer and fall aerial surveys of known haulout areas. Toxicological and histopathological analyses were conducted to assess petroleum hydrocarbon accumulation and persistence and to determine toxic injuries to tissues.

Population surveys, which are reliable indicators of population trends, conducted in 1984 and 1988 indicated that harbor seal populations in Prince William Sound had declined prior to the spill, with similar declines in what were subsequently oiled and unoled areas. From 1988 to 1990, however, the decline at oiled sites (35 percent) was significantly greater than at unoled sites (13 percent).

Severe debilitating lesions were found in the thalamus of the brain of a heavily oiled seal collected in Herring Bay 36 days after the spill. Similar but milder lesions were found in five other seals collected three or more months after the spill. During 1989, oiled harbor seals behaved abnormally, being lethargic or unwary. Petroleum hydrocarbon concentrations in bile were 5 to 6 times higher in seals from oiled areas one year after the spill. This indicates that seals were still encountering oil in the environment, were metabolizing stored fat reserves that had elevated levels of petroleum hydrocarbons, or both.

Killer Whales: Approximately 152 killer whales forming nine distinct family units or "pods" resided in Prince William Sound before the spill. This count is based on pre-spill documentation. These whales were studied intensively before the spill and their group composition and dynamics are well known. Damage assessment studies of killer whales involved extensive boat-based surveys in Prince William Sound and adjacent waters. Whales were photographed and the photographs were compared to the Alaskan

Harbor seals are taken in some Alaska villages for subsistence. The State of Alaska conducted a program, separate from the damage assessment program, to test subsistence foods potentially affected by the spill to insure that they were safe for human consumption. The State of Alaska determined that harbor seals in the affected area were safe for people to eat (Oil Spill Health Task Force, July-August 1990 Report and September-October 1990 Report, Alaska Department of Fish and Game, Division of Subsistence).

killer whale photographic database for the years 1977 to 1989 to determine changes in whale abundance, seasonal distribution, pod integrity, and mortality and natality rates.

The AB pod of 36 individual whales was sighted intact in September of 1988. When sighted on March 31, 1989, seven days after the spill, seven individuals were missing. These whales remain absent and six additional whales were missing from the AB pod in 1990. Several of the missing whales are females who left behind calves. It is unprecedented for females to abandon calves, therefore their prolonged absence implies that these adult females are dead. In addition, nine individuals from AI pod were missing in 1990. Explanations for the possible causes of death of these missing whales, including explanations apart from the effects of the spill, are being explored. Killer whale surveys will continue in 1991.

TERRESTRIAL MAMMALS

Studies were conducted on terrestrial mammals that may have been exposed to oil through foraging in intertidal habitats. These species included brown bear, mink, black bear, Sitka black-tailed deer, and river otters.

Brown bears are long-lived animals and forage seasonally in the intertidal and supralittoral areas of the Alaska Peninsula and the Kodiak Archipelago. Preliminary analysis of brown bear fecal samples and some tissues show that some brown bears were exposed to petroleum hydrocarbons, but no conclusive injury has been documented. Radio-collared brown bears along the Katmai coast and at a control site on the Alaska Peninsula will continue to be monitored while the transmitters remain active.

Mink and other small mammals that are known to feed and spend part or all of their time in the intertidal zone are difficult to study. They are known to crawl off into burrows or the brush if sick or injured and carcasses are unlikely to be found. Also, information on pre-spill populations of these animals is minimal. Scientists developed a laboratory study to test reproductive effects of oil on ranch-bred mink, in which they were fed food mixed with small, non-lethal amounts of weathered oil. Although changes in reproductive rates or success were not documented, it was found that oil-contaminated food moved through the intestines of the animals at a more rapid rate than did clean food, possibly providing less nutrition to the animals.

No field studies were carried out for black bear due to the difficulty of finding, collaring, or otherwise investigating these animals in the dense underbrush in which they reside. However, a literature search confirmed that these animals do forage in the intertidal zone in the spill area.

The deer study found no evidence of injury based on intensive searches of beaches that revealed no mortality attributable to the spill. However, deer taken for purposes of testing for safety for human consumption (not part of the damage assessment process) found slightly elevated petroleum hydrocarbons in some tissues in deer (which feed on kelp in intertidal areas) but it was determined that the deer were safe to eat.

River Otters: A few river otter carcasses were found by cleanup workers. River otters forage in streams and shallow coastal habitats that were contaminated by the spill. Analysis of river otter bile indicated that petroleum hydrocarbons are being accumulated by this species. Studies of radio tagged animals in Prince William Sound showed that home ranges are larger, movements more erratic, and body weights are lower in oiled habitat. Field work is continuing in 1991 to further assess the status of this species, including analysis of blood samples to measure the health of these animals.

BIRDS

Among the most conspicuous effects of the Exxon Valdez oil spill was the injury to birds. Seabirds are particularly vulnerable to oil as they spend much of their time on the sea surface while foraging. Oiled plumage insulates poorly and loses buoyancy and birds die from hypothermia or drowning. Birds surviving initial acute exposure may then ingest oil by preening. Approximately 16,000 dead birds were recovered after the spill; at least 31,000 of these deaths were attributed to the effects of oil. In addition to the large number of murres, sea ducks, and bald eagles, carcasses of loons, cormorants, pigeon guillemots, grebes, murrelets, and other species were also recovered (see attached comprehensive list of bird carcasses logged into evidence trailers by September 25, 1989). Only a small proportion of the total number of birds estimated to have been killed were recovered, as many undoubtedly floated out to sea, sank, were scavenged, were trapped and hidden in masses of oil and were not visible, were buried under sand and gravel by wave actions, decomposed, or simply beached in an area where they were not found. Additionally, it is known that, in a number of cases, carcasses found shortly after the spill were not turned in to receiving stations. Preliminary analyses provided by computer models that account for some of these variables estimate that the total number of birds killed by the spill ranges from 260,000 to 580,000 with the best approximation that between 350,000 and 390,000 birds died. Following peer review, the model will be run again to provide a more refined estimate of total mortality.

Common and Thick-billed Murres: Murres are the third most abundant seabird in Alaska (after tufted puffins and black-legged kittiwakes). A total of approximately 1,400,000 murres reside in the Gulf of Alaska (Unimak Pass to the Canadian border in southeastern Alaska). The total population of murres in Alaska is approximately 12,000,000. The murre colonies on the Chiswell Islands are the most visited by tourists in Alaska. In 1989 and 1990 murres were the most heavily affected bird species. Murre colonies impacted by the spill lost 60 to 70 percent of breeding birds. Oil in Prince William Sound affected major wintering areas of murres and other species. As oil moved out of Prince William Sound and along the Kenai Peninsula and the Alaska Peninsula, it hit major seabird nesting areas such as the Chiswell and Barren Islands, as well as numerous smaller colonies. The oil hit these areas outside Prince William Sound at the same time that adult murres were congregating on the water near colonies in anticipation of the nesting season. Approximately 22,000 murre carcasses were recovered following the spill. Colony surveys indicate that an estimated minimum of 120,000 to 140,000 breeding adult murres in the major colonies that were surveyed were killed by the spill. Extrapolating this information to other known murre colonies hit by

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the spill (but not specifically studied), the mortality of breeding adult murres is estimated to have been 172,000 to 198,000. However, area-wide, including wintering and non-breeding birds, the total mortality of murres is estimated to be about 300,000. Murres exhibit strong fidelity to traditional breeding sites and infrequently immigrate to new colonies.

Normally, murres breed in densely packed colonies on cliff faces. Each murre colony initiates egg laying almost simultaneously. This synchronized breeding behavior helps the birds repel predators such as gulls and ravens. In oiled areas, murre colonies have exhibited a much lower populations than before the spill, breeding is later than normal, and breeding synchrony has been disrupted. These structural and behavioral changes in colonies have caused complete reproductive failure during 1989 and 1990, and thus lost production of at least 215,000 chicks. Murre colonies in unoiled areas displayed none of these injuries and had normal productivity. Monitoring of reproductive success of the colonies will continue in 1991.

Bald Eagles: Of the estimated Alaskan bald eagle population of 30,000 birds (20,000 adults and 10,000 fledglings), an estimated 2,200 reside in Prince William Sound. One hundred forty-four (144) dead bald eagles were found following the spill. Although there is considerable uncertainty regarding the total mortality of bald eagles, it is estimated that several times this amount may have been killed by the initial spill. Approximately 90 percent of radio-tagged bald eagles that died during subsequent studies were not found on the beach but in the brush back from the beachfront. This suggests that most of the eagles that died in the spill would not have been found by surveys typically restricted to beach areas. To assess injuries to bald eagles, helicopter and fixed-wing surveys were flown to estimate populations and productivity. Radio transmitters were attached to bald eagles to estimate survival, distribution, and exposure to oiled areas. Bald eagles in Prince William Sound were most intensively studied. Productivity surveys in 1989 indicate a failure rate of approximately 85 percent for nests on moderately or heavily oiled beaches compared to 55 percent on unoiled or lightly oiled beaches. Bald eagles have a delayed sexual maturity and have a relatively long life span under normal circumstances. Consequently, although reproduction apparently rebounded to more normal levels in 1990, population impacts as a result of poor productivity of nestlings and the death of hundreds of adult eagles in 1989 may not be readily apparent for several years. Fewer bald eagles were sighted in 1990 than in 1989, however this change was within the expected error of the survey method. An additional survey will be conducted in 1991 to see if there is a downward population trend.

Sea Ducks: More than 2,000 sea duck carcasses were recovered after the spill, including more than 200 harlequin ducks. Studies concentrated on harlequins, goldeneyes, and scoters, species that use the intertidal and shallow subtidal habitats most heavily affected by the spill. Harlequins were most affected, consistent with the fact that they feed in the shallow water area of the intertidal zone. This is the only species of sea duck studied that both nests in the spill area and feeds in the shallow intertidal zone. All of these species feed on invertebrates such as mussels and are likely to continue to be exposed to petroleum hydrocarbons through their food. About 33 percent of the harlequins collected in the spill area had poor body condition and about 40 percent had

tissues contaminated with petroleum hydrocarbons. Preliminary surveys also indicate harlequins may have failed to reproduce in the spill zone in Prince William Sound during 1990. These injuries will be investigated further during 1991.

Other Birds: Surveys and studies indicate reduced numbers of black oystercatchers, pigeon guillemots, and marbled murrelets in oiled areas. Black oystercatchers and pigeon guillemots use inshore and intertidal areas for feeding and nesting. Reduced breeding success of black oystercatchers was documented in oiled areas, largely as a result of loss of chicks along oiled beaches. It is estimated that between 1,500 and 3,000 pigeon guillemots were killed by the spill, representing as much as 10 percent of the catalogued population in the Gulf of Alaska. This species is susceptible to continued exposure to petroleum hydrocarbons because it uses intertidal rocks and waters within 200 meters of shore. Petroleum hydrocarbons were found in eggs and tissue in 1989.

Marbled and Kittitz's murrelets represented a high proportion of the dead birds recovered in oiled areas of Prince William Sound. The reduction in the number of murrelets observed in oiled areas during cleanup in 1989 and the rescue of many of these birds in 1990 suggest disturbance associated with cleanup activities affected these birds. The extent of injury to certain species, including loons, cormorants, and gulls will probably never be known because pre-spill information on numbers of these birds in the spill area are not available. Data on bird distribution and abundance data gathered during aerial and boat surveys remain to be fully analyzed and interpreted. Boat surveys will continue during 1991. Studies did not document injury to certain bird species such as Peale's peregrine falcons or songbirds.

FISH/SHELLFISH

No massive die-offs of adult fish were found following the spill and adult salmon, for example, were evidently able to migrate to spawning areas after the spill. However, fish are most vulnerable to oil contamination during the early stages of their life cycles. Accordingly, most fish studies initially focused on this phase of fish life history. During 1991, scientists will begin to be able to assess effects on adult fish such as salmon that would have been exposed to oil as eggs or larvae. Species most often affected by the spill were those that inhabit and spawn in the intertidal zone (salmon) or in the shallow areas next to shore (herring and Dolly Varden).³ Less than ten dead rockfish were found during the spill and their deaths were attributed to oil. Several species of coastal and offshore fish (pollock, halibut, sablefish, cod, yellowfin and flathead sole, and rockfish) show evidence over a large geographic area of continuing exposure to petroleum hydrocarbons in areas affected by the spill, but significant injury has not yet been documented. Exposure to petroleum hydrocarbons does not necessarily lead to

³The State of Alaska imposed the highest possible standards for commercial fishery openings and for processing plant inspections to insure that all commercially harvested salmon were free from contamination. Salmon subject to commercial harvest in the spill area were rigorously tested to insure that the catch was safe for human consumption.

TABLE 2. ANNUAL SUBSISTENCE HARVESTS, POUNDS USEABLE WEIGHT PER PERSON, STUDY COMMUNITIES AND PERCENT INCREASE OR DECREASE DURING THE YEAR FOLLOWING THE EXXON VALDEZ OIL SPILL

<u>Community</u>	<u>Year One</u>	<u>Year Two</u>	<u>Oil Spill Year^a</u>	<u>Percentage of decrease/increase in harvests during the year of the spill</u>	
				<u>Most recent previous year</u>	<u>Average of all previous years</u>
Chenega Bay	308.8 ^b	377.7	148.1	-60.8%	-56.9%
Tatitlek	351.7	641.5	214.8	-66.5%	-56.7%
English Bay	288.8		140.6	c	-51.3%
Port Graham	227.2		121.6	c	-46.5%
Akhlok	517.9 ^b	158.2 ^b	289.0	+82.7%	-14.5%
Karluk	832.1 ^b	380.8 ^b	250.7	-34.2%	-58.7%
Larsen Bay	388.3 ^b	204.7 ^b	212.1	+ 3.6%	-28.5%
Old Harbor	465.5 ^b	419.0 ^b	260.0	-37.9%	-41.2%
Ouzinkie	358.3 ^b	401.1 ^b	89.0	-77.8%	-76.6%
Port Lions	266.9 ^b	323.0 ^b	146.7	-54.6%	-50.3%
Chignik Bay	187.7		208.6	c	+11.1%
Chignik Lagoon	219.5		211.4	c	- 3.7%
Chignik Lake	279.6		447.6	c	+60.1%
Ivanof Bay	451.8		489.8	c	+ 8.4%
Perryville	390.4		394.2	c	+ 1.0%

^a For Prince William Sound and Kodiak communities, two pre-spill measurements are available. Pre-spill study years are as follows: Tatitlek, 1987-88 and 1988-89; Chenega Bay, 1984-85 and 1985-86; English Bay and Port Graham, 1987; Kodiak Island Borough, 1983-83 and 1986; Alaska Peninsula, 1984. The 'spill year' is 1989 for all communities but Chenega Bay and Tatitlek, for which it is April 1989 - March 1990.

^b Factors for converting numbers of animals or fish to pounds useable weight were revised slightly for the current study. We are presently recalculating earlier per capita harvest estimates using the revised conversion factors so that the data are comparable. This recalculation is incomplete. Those figures noted with a "b" have not yet been recalculated.

^c Only one previous measurement.

Please note that these data are preliminary and might change. Consult the final reports in the division's technical paper series for final data and analysis.

injury, since many animals have the capability to physiologically "manage" the exposure with no resulting harm. In particular, salmon and other fish can metabolize petroleum hydrocarbons so that these contaminants are unlikely to be found in edible fish tissues. Indicators of exposure among fish include bile metabolites and mixed function oxidases. Since injuries from chronic exposure to oil may not manifest themselves for a number of years, it is premature to conclude that coastal and offshore species were not injured; therefore certain studies are continuing.

Pink Salmon: The full extent of short term injury to pink salmon cannot be assessed until after the 1991 run returns to spawn in the summer. Although the overall catch of pink salmon in Prince William Sound during 1990 was an all-time record (as predicted before the spill), this was primarily due to strong runs of hatchery-produced salmon. Salmon survival associated with the Armin F. Koernig hatchery, located in the middle of a heavily oiled area of the spill zone, was half that of Ester Hatchery, located outside the area of the spill. Wild production of pink salmon did not mirror the record production of hatchery fish.

Seventy-five percent of wild pink salmon spawn in the intertidal portion of streams in Prince William Sound. Wild stock salmon did not shift spawning habitat following the spill and deposited eggs in intertidal areas of oiled streams. Preliminary analyses indicate a 70 percent greater mortality of pink salmon eggs laid in the summer of 1989 and a 50 percent greater mortality in the summer of 1990 in oiled streams as compared to control streams. Larvae from heavily oiled streams showed gross morphological abnormalities, including club fins and curved spines. The pink salmon that returned to Prince William Sound in the summer of 1990 were exposed to oil as larvae as they swam under the slick, but not as eggs which were more directly exposed to oil than the larvae. Fish returning in 1991 will be the first that were exposed to oil as eggs. Eggs and larvae of wild populations continue to be exposed to oil in intertidal gravel in oiled areas.

Sockeye Salmon: Commercial harvest of sockeye salmon was curtailed in portions of Cook Inlet, Chignik, and Kodiak in 1989 because of the spill, resulting in an unusually high number of adults migrating to spawn in certain lake spawning systems (returning adults that arrive at the spawning areas are referred to as the "escapement"). Overly large spawning escapements may result in poor returns in future years by producing more juvenile salmon than can be supported by the nursery lake's productivity. Preliminary data indicate that overescapement degraded rearing habitat in lakes and that sockeye salmon survival and growth rates are lower than usual. Further study is needed before the extent of these injuries can be determined.

Dolly Varden and Cutthroat Trout: Prince William Sound is the northern extreme of the range of cutthroat trout. Both cutthroat trout and Dolly Varden use nearshore and estuarine habitat for feeding throughout their lives (in contrast to salmon which migrate out to sea). The highest concentrations of bile petroleum hydrocarbon metabolites in all fish sampled were found in Dolly Varden. Tagging studies have demonstrated that the annual mortality of adult Dolly Varden was 32 percent greater in oiled areas than in unoiled areas. The larger cutthroat trout showed similar levels of mortality in oiled and unoiled areas. Additionally, cutthroat trout growth rates were reduced in oiled areas.

Studies are continuing to measure impacts on populations of these popular sport fish species.

Pacific Herring: Populations of Pacific herring were spawning in shallow eelgrass and algal beds at the time of the spill. The effects of oil on egg survival, hatching success, larval development, and recruitment to the spawning population were studied. Study results show a large increase in the percentage of abnormal embryos and larvae in oiled areas of Prince William Sound during the 1989 reproductive season. Larvae in oiled areas also had a greater incidence of eye tumors. These effects continued but at somewhat lower rates in 1990. Results also showed greater egg mortality in oiled areas as compared to unoiled areas. Whether the adult population has been affected by these larval injuries will not be determined until the 1989 and 1990 cohorts return to spawn in 1992 and 1993.

COASTAL HABITAT

The coastal tidal zone, commonly known as the "intertidal zone," was the most severely contaminated habitat. Intertidal habitats are highly productive and biologically rich. They are particularly vulnerable to the grounding of oil, its persistence, and effects of associated clean-up activities. An interdisciplinary team with expertise in plant and systems ecology, marine biology, and statistical analysis, was established to conduct field studies to assess the effects of oil on intertidal ecosystems.

Suprandal: Results of studies in the Kodiak/Alaska Peninsula area suggest that oil in the suprandal habitat and beach cleanup disturbance decreased the productivity of grasses and other vegetation including beach rye grass, that help stabilize beach dunes. In one instance, cleanup activities completely removed the vegetation. Increased production of suprandal vegetation was found in Prince William Sound in 1989. This finding corresponds with information from other oil spills. It is not known whether this increased production was a result of decreased browsing by terrestrial mammals or a fertilizer effect of the oil.

Intertidal: Natural populations of intertidal organisms were significantly reduced along heavily oiled shorelines such as Herring Bay. Densities of intertidal algae (*Fucus*), barnacles, limpets, amphipods, isopods, and marine worms were decreased. Although there were increased densities of mussels in oiled areas, they were significantly smaller than mussels in the unoiled areas and the total biomass of mussels was significantly lower. Intertidal organisms continue to be exposed to hydrocarbons from the more heavily oiled sediments. Petroleum hydrocarbon accumulation in filter feeding mussels experimentally placed in oiled areas indicate that oil remains available for uptake by other organisms. Initial findings also indicate that oiled surfaces retarded settlement by juvenile barnacles when compared to unoiled sites. In addition to direct mortality, the reproductive cycle of mussels at oiled sites in the lower Cook Inlet/Kenai Peninsula and Kodiak/Alaska Peninsula regions was delayed by several months.

Intertidal fishes were less abundant in oiled areas than in unoiled areas. In addition, gill

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parasitism and respiration rates were significantly higher in fish from oiled sites compared to unoiled sites.

Fucus, the dominant intertidal plant, was severely affected by the oil and subsequent cleanup activities. The percentage of intertidal areas covered by Fucus was reduced following the spill and opportunistic plant species which characteristically flourish in disturbed areas were increased. The average size of Fucus was reduced, the number of reproductive sized plants greatly decreased, and the remaining plants of reproductive size decreased in reproductive potential due to fewer fertile receptacles per plant. There was also reduced recruitment of Fucus at oiled sites.

SUBTIDAL HABITATS

Spilled oil in some areas has migrated to and contaminated the seafloor at depths of up to 100 meters as contaminated sediments moved off beaches during winter storms and cleanup activities. There is evidence that petroleum hydrocarbons have been taken up by animals feeding on the ocean bottom. Petroleum hydrocarbon metabolites have been found in the bile of yellowfin sole, rock sole, rockfish, and pollock. Concentrations of petroleum hydrocarbon metabolites in the bile of yellowfin sole have not declined from 1989 to 1990. This contrasts with Dolly Varden which feed close to shore and where petroleum hydrocarbon metabolites in bile decreased in the same period. The effects of this exposure are still being studied. Many subtidal and intertidal species, particularly fish, have the capability of metabolizing and eliminating petroleum hydrocarbons from their bodies. Clams metabolize hydrocarbons very slowly and consequently accumulated them in high concentrations.

Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and otherspecies that forage in the shallow subtidal zone. Samples from pollock, which feed in the water column, taken as far away as 500 miles from the wreck site on Bligh Reef, showed elevated petroleum hydrocarbon metabolite concentrations in their bile. This indicates that the water column or food supply was affected at great distances from the spill. Initial 1990 study results show a significant effect on benthic organisms associated with eelgrass beds. These are known to be highly productive habitats. The composition of benthic animal communities on soft-bottom habitats as deep as 40 meters were also significantly altered in oiled areas.

ARCHAEOLOGICAL AND SUBSISTENCE RESOURCES

The spill directly impacted archaeological sites and subsistence resources. Cleanup activities and the associated significant increases in human activity throughout the spill zone resulted in additional injuries to these resources.

Archaeological Resources: Archaeological sites along the shoreline were injured by the

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spill. Review of spill response data revealed injuries from oil to a minimum of 26 archaeological sites. Among these are burial sites and home sites. Twenty-one (21) of these sites are on federally-owned land, with the remaining five on State of Alaska and private lands. Of the 21 sites on federal land, 10 are on national parks, six on national wildlife refuges, four within Chugach National Forest, and one on Bureau of Land Management land. While injury to these 26 sites was documented during cleanup, a spill-wide assessment of injuries to archaeological resources has yet to be completed. In addition to oil contamination, increased knowledge of the location of archaeological sites may put them at risk from looting. Loss of rye grass cover may threaten some sites. A comprehensive survey of injuries to archaeological resources on public lands throughout the spill zone will be conducted during 1991.

A study was conducted to determine impacts caused by oil contamination on radiocarbon dating of archaeological resources and to investigate the potential for cleaning artifacts and materials to allow such dating. Preliminary results indicate significant injury to the ability to contextually date artifacts and materials by Carbon analysis. It also appears that these materials cannot be successfully "cleaned" to allow accurate dating.

Subsistence Resources: Surveys undertaken by state researchers before the spill and in 1990 indicated that subsistence harvesters in the area affected by the oil spill significantly reduced their use of subsistence resources after the spill, primarily because of their concerns about possible contamination of these resources. The oil spill disrupted the subsistence lifestyle of some communities that have historically relied upon these resources. Some communities virtually or entirely ceased subsistence harvests in 1989 and have only gradually begun to resume harvests, while other communities continued some reduced level of subsistence harvest in 1989 and thereafter. The attached report (Subsistence Use of Fish and Wildlife in 15 Alutiiq Villages after the Exxon Valdez Oil Spill) details these studies. Warnings were issued by the state in 1989 for people to avoid consumption of intertidal invertebrates (such as mussels and clams, which bioaccumulate petroleum hydrocarbons) found along shorelines contaminated by oil. After the spill, an oil spill health task force was formed, including the state and federal governments, subsistence users, and Exxon. This group helped oversee studies conducted by the state and others in conjunction with FDA and NOAA in 1989 and 1990, on subsistence food resources such as seals, deer, salmon, ducks, clams, and bottomfish. Based upon the test results these resources, with the exception of clams and mussels in certain oiled areas such as Windy Bay, were determined to be safe for human consumption.

CONCLUSION

The federal and state Trustee agencies have now concluded two field seasons of study and are currently preparing to begin a third year of studies to assess injuries to natural resources resulting from the Exxon Valdez oil spill. The information contained in this

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summary is based upon the field work and data analysis conducted to date. It is preliminary. Many studies will likely need to continue for additional years before a full understanding of injuries is developed. For example, long-lived species such as bald eagles, murres, and sea otters, may not manifest some effects until a number of years have passed. For other species, such as herring and salmon that return to spawn years after hatching, it is necessary to wait for these key life history events to occur before one can determine the extent to which or if they have been injured. At present there is no indication of long-term injury for species other than those noted in this summary. Although two field seasons of study are complete, only a portion of the data gathered has been fully analyzed and interpreted. As studies and data analysis are completed, some of the information contained in this summary may need to be modified.

For the reasons given above, injury assessment studies will continue in 1991 and thereafter until the process is complete. The need to continue to understand the long-term effects of the spill will be accomplished through monitoring projects that will measure the natural recovery of resources injured by the spill as well as the effectiveness of restoration measures implemented by the Trustee agencies. The information gathered by the injury assessment studies, the restoration monitoring studies, and other studies will be used to develop and implement a restoration program that will accelerate the recovery of injured resources.

Restoration measures will begin in 1991 and are expected to become more comprehensive as the understanding of the effects of the spill improves and as experts and the public provide input on where restoration measures should be concentrated. Whenever possible, restoration will focus on those projects that will provide ecosystem-wide benefits, thereby benefiting a variety of species. These projects may include various initiatives to protect habitat; in other cases it may be necessary to conduct restoration programs that will primarily benefit a particular resource injured by the spill.

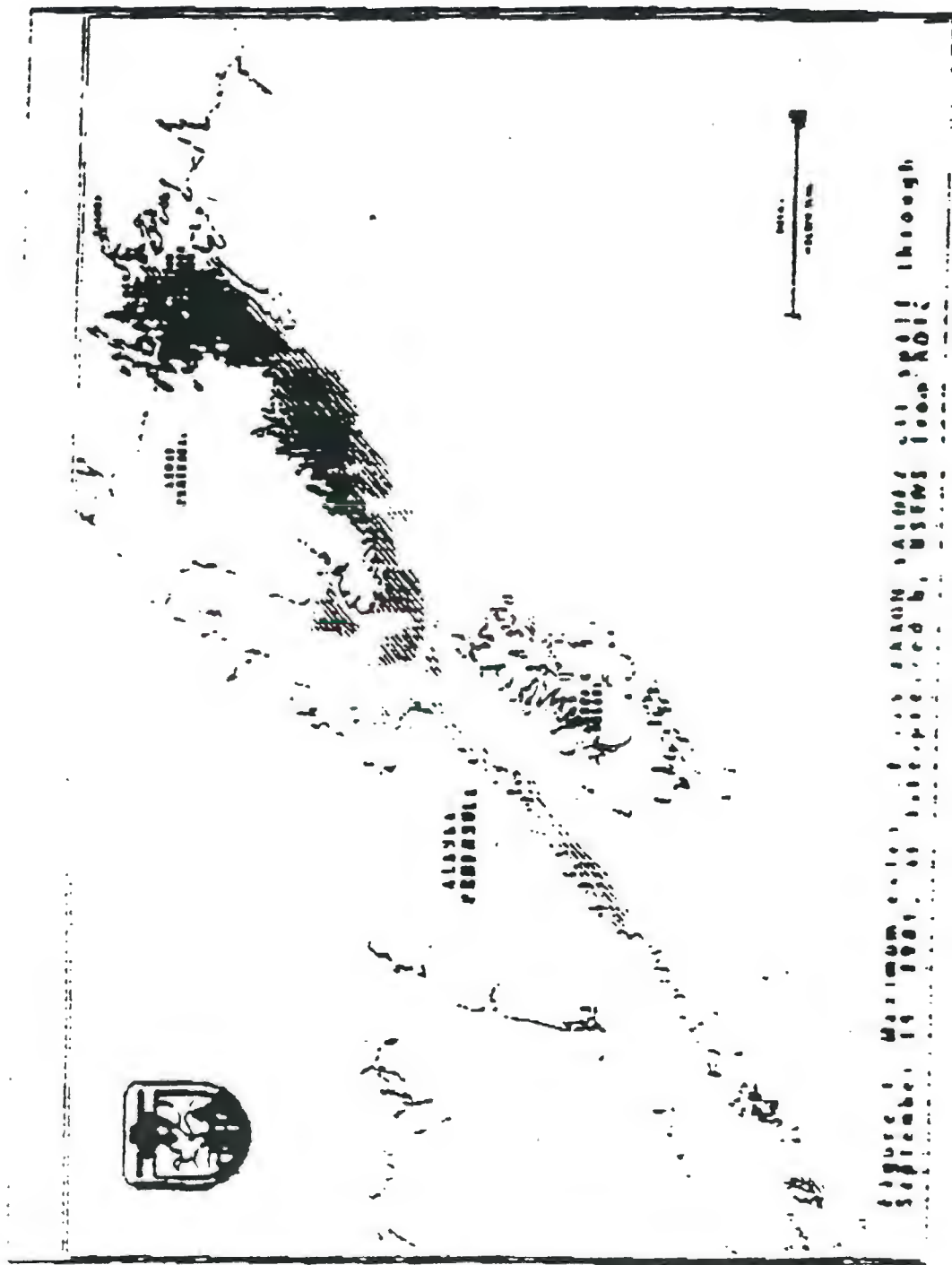


Table 1. Species composition and number of birds recovered from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989.

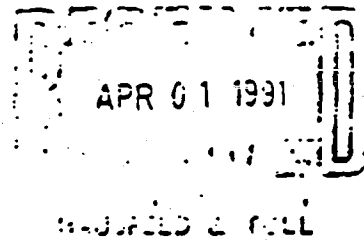
Species	Total	Talies	Sewards	Rever, Declin
Total	18,279	1,180	1,102	1,102
Unidentified bird	2,927	176	414	1,102
Unidentified loon	49	17	1	1
Common Loon	216	12	1	1
Yellow-billed Loon	47	12	1	1
Pacific Loon	13	3	1	1
Red-throated Loon	1	1	1	1
Unidentified grebe	43	17	1	1
Red-necked Grebe	120	19	1	1
Horned Grebe	177	100	1	1
Northern Fulmar	426	1	1	1
Unidentified shearwater	179	1	1	1
Sooty Shearwater	160	1	1	1
Short-tailed Shearwater	1,461	1	1	1
Unidentified petrel	54	1	1	1
Fork-tailed Storm-petrel	181	1	1	1
Leach's Storm-petrel	1	1	1	1
Unidentified cormorant	110	1	1	1
Double-crested Cormorant	10	1	1	1
Pelagic Cormorant	11	1	1	1
Red-faced Cormorant	11	1	1	1
Great Blue Heron	1	1	1	1
Unidentified swan	1	1	1	1
Emperor Goose	1	1	1	1
Canada Goose	1	1	1	1
Brant	1	1	1	1
Unidentified duck	10	1	1	1
Unidentified scaup	110	4	1	1
Mallard	11	1	1	1
Northern Pintail	4	1	1	1
Green-winged Teal	1	1	1	1
Unidentified Scaup	1	1	1	1
Greater Scaup	17	1	1	1
Lesser Scaup	1	1	1	1
Unidentified Goldeneye	13	1	1	1
Common Goldeneye	4	1	1	1
Barrow's Goldeneye	10	1	1	1
Bufflehead	11	1	1	1
Oldsquaw	125	111	41	1

Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 23 September, 1989. (Cont'd)

Species	Total	Valdez	Igarka	Other	Unknown
Harlequin Duck	222	218	3	1	0
Unidentified Eider	1	1	0	0	0
Stellar's Eider	1	1	0	0	0
Common Eider	1	1	0	0	0
King Eider	1	1	0	0	0
Unidentified Scoter	162	158	2	1	1
White-winged Scoter	142	134	2	1	5
Surf Scoter	172	165	2	1	4
Black Scoter	102	102	0	0	0
Ruddy Duck	1	1	0	0	0
Unidentified Merganser	1	1	0	0	0
Common Merganser	1	1	0	0	0
Red-breasted Merganser	1	1	0	0	0
Sandhill Crane	1	1	0	0	0
Black Oystercatcher	1	1	0	0	0
Golden Plover	1	1	0	0	0
Unidentified sandpiper	1	1	0	0	0
Unidentified turnstone	1	1	0	0	0
Common Snipe	1	1	0	0	0
Semipalmated sandpiper	1	1	0	0	0
Lesser Yellowlegs	1	1	0	0	0
Western Sandpiper	1	1	0	0	0
Saint's Sandpiper	1	1	0	0	0
Least Sandpiper	1	1	0	0	0
Gull	1	1	0	0	0
Short-billed Dowitcher	1	1	0	0	0
Red Phalarope	1	1	0	0	0
Red-necked Phalarope	1	1	0	0	0
Long-tailed Jaeger	1	1	0	0	0
Unidentified gull	29	29	0	0	0
Glaucous-winged Gull	552	542	12	13	15
Herring Gull	1	1	0	0	0
Mew Gull	1	1	0	0	0
Black-legged Kittiwake	1,225	1,225	0	0	0
Arctic Tern	1	1	0	0	0
Aleutian Tern	1	1	0	0	0

Table 1. Species composition and number of birds retrieved from oiled areas and processed at U.S. Fish and Wildlife receiving stations as of 25 September, 1989. (Cont'd)

Species	Total	Valdez	Seward	Kenai	Kodiak
Unidentified alcid	275	24	7	12	232
Unidentified murre	3,351	22	172	11	3,254
Common Murre	10,428	779	322	87	9,240
Thick-billed Murre	469	16	142	77	234
Pigeon Guillemot	514	125	109	33	247
Unidentified murrelet	412	22	17	121	252
Mottled Murrelet	512	189	37	22	264
Kittling's Murrelet	47	13	3	1	30
Ancient Murrelet	122	3	10	1	108
Cassin's Auklet	48	1	12	1	34
Least Auklet	7	1	1	1	4
Parakeet Auklet	12	1	1	1	9
Rhinoceros Auklet	42	1	1	1	39
Unidentified puffin	46	1	1	1	43
Horned Puffin	107	1	12	1	93
Tufted Puffin	161	1	12	1	147
Bald Eagle	122	1	12	1	108
Unidentified vulture	1	1	1	1	1
Peregrine Falcon	1	1	1	1	1
Willow Ptarmigan	1	1	1	1	1
Unidentified owl	1	1	1	1	1
Great-horned Owl	1	1	1	1	1
Unidentified woodpecker	1	1	1	1	1
White Swallow	1	1	1	1	1
Violet-green Swallow	1	1	1	1	1
Unidentified tanager	1	1	1	1	1
Stellar's Jay	1	1	1	1	1
Magpie	1	1	1	1	1
Common Raven	28	1	1	1	25
Northwestern Crow	24	1	1	1	21
American Robin	1	1	1	1	1
Varied Thrush	1	1	1	1	1
Hermit Thrush	1	1	1	1	1
Unidentified warbler	1	1	1	1	1
Yellow Warbler	1	1	1	1	1
Pine Grosbeak	1	1	1	1	1
Unidentified sparrow	15	1	1	1	12
Savannah Sparrow	1	1	1	1	1
Golden-crowned Sparrow	4	1	1	1	1
White-winged Crossbill	8	1	1	1	5



**SUBSISTENCE USES OF FISH AND WILDLIFE IN 15 ALUTIIQ VILLAGES
AFTER THE EXXON VALDEZ OIL SPILL**

by

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Please note that this paper contains preliminary data. Thus the paper should not be quoted without the permission of the author. Contact the Division of Subsistence at the above address for copies of the final reports for this project.

**Paper presented at the 18th annual meeting of
the Alaska Anthropological Association, Anchorage, Alaska**

March 23, 1991

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ABSTRACT

The paper discusses some of the results of research on subsistence uses of fish and wildlife in 15 Alutik villages affected by the Exxon Valdez Oil Spill of March 1989. The research was conducted by the Division of Subsistence of the Alaska Department of Fish and Game. The study communities included Tatitlek and Chenega Bay in Prince William Sound; English Bay and Port Graham in lower Cook Inlet; Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions in the Kodiak Island Borough; and Chignik, Chignik Lagoon, Chignik Lake, Ivanof Bay, and Perryville on the Alaska Peninsula. The primary data collection method was a systematic survey administered to representatives of 403 households. The research documented substantial declines in subsistence harvests and uses in 10 study communities in the year following the spill. For example, subsistence harvests at Tatitlek and Chenega Bay were down about 57 percent from pre-spill averages. The paper describes these changes and discuss reasons for the declines, especially concerns about hydrocarbon contamination of resources harvested for subsistence use.

INTRODUCTION¹

At last year's annual meeting of the Alaska Anthropological Association (aaa) in Fairbanks, I described the division's "oil spill response program" (Fall 1990a). Particularly, I focused on the issue of possible hydrocarbon contamination of subsistence foods, including the role of the Oil Spill Health Task Force and the subsistence resource collection and testing program. The division also presented another overview at the Conference on Hunting and Gathering Societies (CHAGS) in Fairbanks in May 1990 (cf. Smith 1991). As mentioned in those earlier presentations, another goal of the division's program was to understand changes to subsistence harvest and use patterns in the spill-affected communities. I presented preliminary findings of that aspect of our research at the annual meeting of the American Anthropological Association (AAA) in New Orleans last November (Fall 1990b). This present paper is an abridged version of the AAA paper and is, essentially, "part two" of my presentation at last year's aaa.²

As all of us well remember, two years ago tomorrow (March 24, 1989), the tanker Exxon Valdez ran around off Bilgh Reef and dumped almost 11 million of gallons of crude oil into Prince William Sound. The currents and tides eventually carried oil, mousse, sheen, and tar balls more than 580 miles along Alaska's southern coast. Soon, images of oiled seabirds, dead and dying sea otters, and miles of ravaged coastline filled television screens and newspapers around the world.

As shown in Figure 1, the oil also fouled waters and beaches used for subsistence hunting, fishing, and gathering by 15 Alutik villages with about 2,200 people. For at least 7,000 years, Alaska Native people

¹ Acknowledgments. This paper is based on research by the following Division of Subsistence staff: Janet Cohen, Philippa Colley, Rita Miraglia, Craig Miehler, Deborah Robinson, Lisa Hutchinson-Scarborough, Ron Stanek, and Lee Stratton. Data management support has been provided by Louis Brown, Gretchen Jennings, Cheryl Scott, Sandy Skaggs, Robert Walker, and Charles Utermohle of the Division of Subsistence. Carol Barnhill, Division of Habitat, prepared the maps. Assistance in research design and data analysis was provided by division research director Robert Wolfe. Also, 23 village residents were especially helpful in a variety of ways, including conducting interviews, translating, and introducing the project in their communities (see Fall 1990b). Especially, we thank the governments of each village for granting us permission to conduct this research in their communities and the hundreds of people who took the time to participate in the project.

² Another version of this paper was presented by Craig Miehler at the 50th Annual meeting of the Society for Applied Anthropology in Charleston, South Carolina, on March 16, 1991 (Fall and Miehler 1991).

have depended upon these lands and waters for survival (Clark 1984a, 1984b). This survival has also depended upon the people's knowledge about and observations of the natural world around them.

One of the first signs that people in Tatitlek, the community closest to Bligh Reef, used to warn them that something terrible might be happening to the fish and wildlife of Prince William Sound as a result of the spill was a report of a dead starfish that washed up on the beach near the village. Hundreds of miles away, news spread of a dead whale washed up at Cape Karluk, and everyone in Karluk suddenly stopped fishing (Craig Mishler, personal communication). Starfish are not eaten and whales are no longer hunted, but they, like other creatures, may act as signs or omens of unseen dangers throughout the ecosystem. Furthermore, as residents of these and the other villages traveled in their traditional harvest areas and worked on the spill clean-up, they experienced the spill's damages first-hand.

But, the effects of the spill were discontinuous. Some beaches were heavily oiled, other were not. Some animals, such as sea otters and sea ducks, were very vulnerable to oiling, but salmon and deer showed no outer signs of exposure to the oil. Thus, the major question for the villagers became: are our subsistence foods still safe to eat? If some beaches, waters, and animals were oiled, were any safe to use? Were there links between what the villagers could observe and what they could not see? Accordingly, when health officials advised villagers that if resources did not smell or taste oily, they were "almost certainly safe to eat" (ADHSS 1989), villagers responded with skepticism and disbelief. As the oil spread and wildlife died, anxiety over the safety of eating traditional foods grew to the point where subsistence harvests in some villages virtually ceased. As a village official at Ouzinkie put it in June 1989, "No one's eating anything out of the ocean anymore."

By August 1989, some preliminary findings from studies to test the safety of subsistence foods were available. In the following months, there were health bulletins, village meetings, newsletters, and videos reporting study findings, all with basically the same message. No fish tested were unsafe to eat. Most shellfish tested were also safe, but people should avoid using shellfish from oil contaminated beaches. Later tests on marine mammals, deer, and ducks, and additional testing of fish and shellfish in

1990, supported these conclusions.³ Nevertheless, after months of observing the spill's effects first-hand, for many people, doubts remained.

The remainder of the paper will compare measures of subsistence harvests for the year after the spill with pre-spill measurements. It will then explore the assessments people themselves gave of subsistence harvests and the reasons they provided to explain differences. It will conclude with some observations about subsistence uses since our 1990 field interviews were completed.

DATA GATHERING METHODS

The primary method for gathering information about subsistence uses in the 15 Alutiq oil spill villages was a household survey administered in person in each village. The questionnaire was modeled after other division survey instruments that had been administered at least once before in all 15 communities. For the 12 smaller communities, we tried to interview knowledgeable representatives of every household, while in the three larger villages of Port Lions, Old Harbor, and Ouzinkie, we chose 50 percent random samples. In total, from January to April 1990 we interviewed 403 households, for 88.2 percent rate of achievement of our goal (Table 1). Survey data were coded for computer entry and analysis with the SPSS program. Harvest quantities in numbers of animals or fish were converted into pounds edible weight using standard factors. Final study findings will be reported in a series of technical papers now in preparation (Fall et al. 1991; Mishler and Cohen 1991; Stanek 1991; Stratton and Colley 1991).

SUBSISTENCE AFTER THE SPILL

As reported in Table 2 and Figure 2, the subsistence harvests in the study communities in the year after the spill ranged from a low of 89 pounds per person in Ouzinkie to a high of 490 pounds at Ivanof

³ For summaries of these programs and findings see Fall (1990a, 1990b), Varanasi et al. 1990, Walker and Field 1991, and the newsletters produced by the division for the Oil Spill Health Task Force (ADF&G 1990).

Bay.⁴ As shown in Figure 3, of the 10 study communities in Prince William Sound, lower Cook Inlet, and the Kodiak Island Borough, eight had lower harvest levels during the study year than in the closest previous year for which data are available. This includes all four Prince William Sound and Lower Cook Inlet villages, and four of the six in the Kodiak Island Borough. In contrast, four Alaska Peninsula villages showed higher harvests, while the other (Chignik Lagoon) was only slightly lower than the previous measurement.

Table 2 and Figure 4 compare the relative changes in subsistence harvests for each community across study years. Where two pre-spill measurements were available, they were averaged for this comparison. The comparison shows startling declines for all but the Alaska Peninsula villages. The Prince William Sound communities were down markedly in 1989-90, Chenega Bay by 56.9 percent and Tatitlek by 56.7 percent. The lower Cook Inlet communities also exhibited sharp declines of 51.3 percent for English Bay and 46.5 percent for Port Graham. Every Kodiak community also reported lower harvests in the study year compared to the average of previous measurements, ranging from 76.6 percent lower for Ouzinkie (the largest relative decline for any village) to 14.5 percent lower at Akhiok. With the exception of Karluk, the relative decline in harvests in the Kodiak Island Borough decreased as the community's distance from the source of the spill increased. Again in contrast, subsistence harvests in four of the five Alaska Peninsula communities were relatively stable. The exception was Chignik Lake, which showed a 60.1 percent increase in harvests compared to 1984. This community's harvest of 447.6 pounds per person was similar to that of Ivanof Bay, Perryville, and similar communities of the Alaska Peninsula such as Port Helden, Pilot Point, and Egegik (Walker et al. 1988).

ASSESSMENT OF CHANGES AND REASONS FOR CHANGE

During household interviews, respondents were asked to compare their uses of particular categories of wild resources during the post-spill study year with those of previous years. If they noted a difference, they were asked for reasons why the differences had occurred. Assessments of change were

⁴ Please note that these are preliminary data and will undergo minor changes before the final project reports are published.

requested for salmon, other fish, marine invertebrates, deer (Prince William Sound and Kodiak only), marine mammals, and waterfowl, as well as harvests overall.⁵ As shown in Table 3 (cf. Figure 5), only 2 percent of the households reported higher levels of use in the year following the spill, while 61 percent of the households said uses were lower overall than in previous years. About a third of the households said that subsistence uses had stayed about the same.

There were notable differences in these assessments between subregions. For lower Cook Inlet and Prince William Sound, most respondents said that lower harvests had occurred (93 percent and 87 percent, respectively). Over half (58 percent) of the households from Kodiak Island Borough indicated lower harvests as well. This percentage was lowest among Alaska Peninsula households, 36 percent of all households. The communities with the largest percentage of households reporting lower harvests were English Bay (97 percent), Port Graham (90 percent), Chenega Bay (89 percent), Tatitlek (85 percent) and Ouzinkie (77 percent).

As also shown in Table 3 (cf. Figure 5), most respondents reported that lower subsistence uses during the study year were due to the effects of the Exxon Valdez oil spill. Overall, 80 percent of the households which reported lower harvests cited the spill as the cause of the decline, while 11 percent cited non-spill reasons. Respondents attributed lower levels of subsistence use to the spill in at least 97 percent of the households with declines in Prince William Sound, 91 percent in lower Cook Inlet, 71 percent in the Kodiak Island Borough, and 64 percent in the Alaska Peninsula.

More specifically, as reported in Table 4 (cf. Figure 5), fear of contamination of subsistence foods by the oil was the most common reason cited for lower levels of subsistence harvests. Of the 189 households which specified oil spill reasons for lower harvests, 68 percent said that fear of oil-contaminated foods reduced their harvests or uses.⁶ This was a major concern in all the subregions, but highest in Prince William Sound (78 percent of households), followed by lower Cook Inlet (75 percent), Alaska Peninsula (61 percent), and the Kodiak Island Borough (58 percent).

⁵ The discussion here focuses on the overall assessment, but important differences between assessments for particular resource categories will be discussed in subsequent reports.

⁶ Households could cite more than one reason for the change.

Here are some representative statements from survey respondents about their concerns about oil contamination of their traditional food supply.

We saw too much oil, and we didn't want nothing to do with [fish]. I guess if you didn't see the oil you wouldn't mind. We don't want to eat them until we find out what's really going on.

– Chenega Bay, April 1990

I didn't go to the same places [as usual] to hunt because of oil on the beach. I've seen deer eating kelp. I don't want to shoot [a] deer and then find out it has been eating oil.

– Tatitlek, April 1990

There is still lots of oil on Elizabeth Island and Anderson Beach. In some places, there is lots of oil. I think people will wait a couple years before going out [to those places] again because they just don't trust it.

– English Bay, January 1990

I can't go out and get what I want off my beach just to eat without worrying if it is contaminated or I'll get poisoned. . . That's why I don't eat nothing off the beach. I don't eat clams no more.

– Ouzinkie, January 1990

We won't touch clams after that oil was floating around. Not our family anyway.

– Chignik Lake, January 1990

The other major oil spill-related reasons for lower harvests were the time spent on oil spill clean up (at least 43 percent of the households), and the perception that less resources were available because of spill-induced mortality (at least 6 percent of the households). Regarding the latter, here are two statements from Tatitlek:

There are usually hundreds of black ducks [scooters] around here, [but] this year there's not. [There's] nothing around to hunt. There are areas around here [usually] loaded with ducks. Last year, there were none.

I've hunted seal for years and years. All my life. This year, [there's] none around. [It's a] poor year for seal. Some trips I go out, [there's] not a one.

FOLLOW-UP INTERVIEWS

As reported in another paper (Fall and Mishler 1991:6-9), between September 1990 and March 1991 the division conducted 88 follow-up interviews with household heads who had earlier reported decreased subsistence harvests because of concerns about hydrocarbon contamination. We found that the closer the community was to the origin of the spill, the higher the level of concern remained. This was especially clear regarding salmon and shellfish. For salmon, concern remained high at Chenega Bay and Tatitlek, but dropped off sharply past Ouzinkie. We found higher levels of concern remaining about oil-contaminated shellfish especially in communities such as Chenega Bay and English Bay. Overall, the follow-up interviews showed that for many households in some communities, especially those where the oil hit the hardest, questions remain about the damages that the spill might have caused to subsistence foods.

OBSERVATIONS AND CONCLUSIONS

This paper has provided an comparison overview of the size of subsistence harvests after the Exxon Valdez oil spill in 15 Alaska Native communities whose harvest areas were affected by the spill. The research found that in 10 of the communities, these harvests were substantially lower than in previous years. Especially, subsistence harvests in villages of Prince William Sound, lower Cook Inlet, and some in the Kodiak Island Borough showed stark declines. In contrast, subsistence production in five Alaska Peninsula villages was relatively similar to earlier measurements or higher.

When asked to assess differences in their subsistence uses in the study year compared with other years, most households confirmed that harvests were down (61 percent). In 80 percent of the cases, the oil spill was cited as the reason for the decline. The dominant oil spill-related reason for lower harvests was fear that subsistence foods had been contaminated by the oil. The majority of the households in most of 15 communities had direct contact with the effects of the spill through their employment on oil clean up jobs, as well as during other travel through their traditional use areas. They saw oil on the beaches, in the

water, and on certain animals and birds. Others suspected oiling when they inspected resources they had harvested or had been given. In addition, reports of dead wildlife and other signs warning of danger led many people to doubt that their traditional harvest areas were safe to use and traditional foods were safe to eat.

By the time reliable information based on tests of resources from specific traditional sites was available to these communities, all of the spring and most of the summer opportunities for subsistence harvesting in 1989 had passed. Furthermore, after months of observing the danger caused by the spill, many villagers were skeptical that foods could be safe. They demanded more tests from more places on a wider range of species. With oil still present, they argued that the tests should continue and be expanded.

Follow-up interviews suggested that respondents in most communities had returned to eating fish again in 1990, but many still distrust the safety of shellfish and deer. Overall, those communities closest to the source of the spill are most likely to express continuing concerns about resource contamination.

Indeed, it appears that as long as residents of the Native communities of the areas affected by the Exxon Valdez oil spill believe that oil remains in their environment, many will continue to refrain from using subsistence foods. The following report appeared from Chenega Bay in October 1990, more than 18 months after the spill (Evanoff 1990). The report indicated that the people of the village

Have eaten only a small fraction of the foods they ordinarily live on daily. They reported that indications from wildlife around them make the people very uncomfortable, and they are afraid to harvest subsistence food. An abnormal seal liver, ordinarily firm, was soft and runny. The arm of a starfish fell apart when pulled from the rocks. They have reported several dead eagles and sea gulls, a dead bear and a blind sea lion found during the past month, highly unusual occurrences prior to the spill.

In February 1991, several more dead and sick bald eagles were observed near Chenega Bay. The villagers captured one alive and turned it over to the U.S. Fish and Wildlife Service for treatment. In the same month, the villagers harvested chitons which, after cooking, were noticed to have strange white sores.

For a people whose survival has long relied upon their observations of the natural environment, such signs continue to warn of danger. And people have continued to respond in a culturally appropriate manner - with caution. Our analysis of data about subsistence uses in Alutik communities following the

Exxon Valdez oil spill suggests that while these signs have persisted, certain traditional foods have been avoided by many households. Until such signs disappear and people are able place confidence in their own abilities to again interpret and understand their environment, recovery from this disaster will likely remain incomplete.

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TABLE 1. SAMPLE SIZES, OIL SPILL AREA HARVEST SURVEY, 1990

<u>Community</u>	<u>Number of Households</u>			
	<u>Target</u>	<u>Completed</u>	<u>Refusals</u>	<u>No contact</u>
<i>Prince William Sound Subarea</i>				
Chenequa Bay	21	18 (85.7%)	1	2
Tatlietk	28	22 (78.6%)	3	3
	—	—	—	—
Subtotal	49	40 (81.6%)	4	5
<i>Lower Cook Inlet Area</i>				
English Bay	41	33 (80.5%)	6	2
Port Graham	61	48 (78.7%)	9	4
	—	—	—	—
Subtotal	102	81 (79.4%)	15	6
<i>Kodiak Island Borough</i>				
Akhlok	13	10 (76.9%)	2	1
Karluk	17	14 (82.4%)	1	2
Larsen Bay	39	34 (87.2%)	4	1
Old Harbor	46 (50%) ^a	48 (104.3%)	2	NA
Ouzinkie	35 (50%) ^a	35 (100%)	5	NA
Port Lions	36 (50%) ^a	36 (100%)	5	NA
	—	—	—	—
Subtotal	186	177 (95.2%)	19	4
<i>Alaska Peninsula Area</i>				
Chignik Bay	39	35 (89.7%)	2	2
Chignik Lagoon	15	15 (100%)	0	0
Chignik Lake	28	21 (75.0%)	0	7
Ivanof Bay	7	7 (100%)	0	0
Perryville	31	27 (87.1%)	2	2
	—	—	—	—
Subtotal	120	105 (87.5%)	4	11
	—	—	—	—
TOTAL	457	403 (88.2%)	42	26

^a Target was a 50 percent random sample of year-round households.

Table 3

Overall Assessment of Harvest/Use, Post-Spill Study Year

REGION Community	Households Surveyed*	CHANGE IN HARVEST/USE						REASONS FOR LESS					
		No Response		Higher		Same		Lower		Non-Spill		Oil Spill	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
PRINCE WILLIAM SOUND	38	1	2.6%	0	0.0%	4	10.5%	33	86.8%	1	3.0%	32	87.0%
Tellish	20	0	0.0%	0	0.0%	3	15.0%	17	85.0%	1	5.0%	16	84.1%
Chernega Bay	18	1	5.6%	0	0.0%	1	5.6%	16	88.9%	0	0.0%	16	100.0%
LOWER COOK INLET	81	1	1.2%	1	1.2%	4	4.9%	75	92.6%	7	9.3%	68	80.7%
English Bay	33	0	0.0%	0	0.0%	1	3.0%	32	97.0%	2	6.3%	30	93.6%
Port Graham	48	1	2.1%	1	2.1%	3	6.3%	43	89.6%	5	11.8%	38	88.4%
KODIAK ISLAND	148	12	7.2%	6	3.6%	56	33.1%	80	54.0%	7	7.5%	68	71.0%
Ouzetille	31	2	6.5%	0	0.0%	5	16.1%	24	77.4%	0	0.0%	18	75.0%
Port Lissa	36	6	17.1%	0	0.0%	11	31.4%	18	51.4%	1	5.8%	15	83.3%
Old Harbor	45	3	6.7%	2	4.4%	23	51.1%	17	37.8%	4	23.5%	8	47.1%
Larsen Bay	31	1	3.2%	2	6.5%	7	22.6%	21	67.7%	1	4.8%	15	71.4%
Kachik	14	0	0.0%	1	7.1%	4	28.6%	9	64.3%	0	0.0%	7	77.6%
Ashick	10	0	0.0%	1	10.0%	5	50.0%	4	40.0%	1	25.0%	3	75.0%
ALASKA PENINSULA	101	1	1.0%	0	0.0%	64	63.4%	36	35.6%	12	33.3%	23	63.6%
Chignik Bay	31	0	0.0%	0	0.0%	24	77.4%	7	22.6%	2	26.6%	5	71.4%
Chignik Lagoon	15	0	0.0%	0	0.0%	7	46.7%	8	53.3%	1	12.5%	7	87.5%
Chignik Lake	21	0	0.0%	0	0.0%	16	76.2%	5	23.8%	1	20.0%	4	80.0%
Perryville	27	0	0.0%	0	0.0%	18	66.7%	12	44.4%	7	64.3%	4	33.3%
Island Bay	7	1	14.3%	0	0.0%	2	28.6%	4	57.1%	1	25.0%	3	75.0%
TOTAL	368	15	3.9%	7	1.8%	127	32.9%	237	61.4%	27	11.4%	169	79.7%
												21	8.9%

* Households not present during the pre-spill period were removed from analysis. These include two households from Tellish, three from Larsen Bay, three from Old Harbor, one from Port Lissa, and four from Chignik Bay.

Table 4
Oil Spill-Related Reasons for Reduction in Overall Subsistence Harvest/Use, Post-Spill Study Year

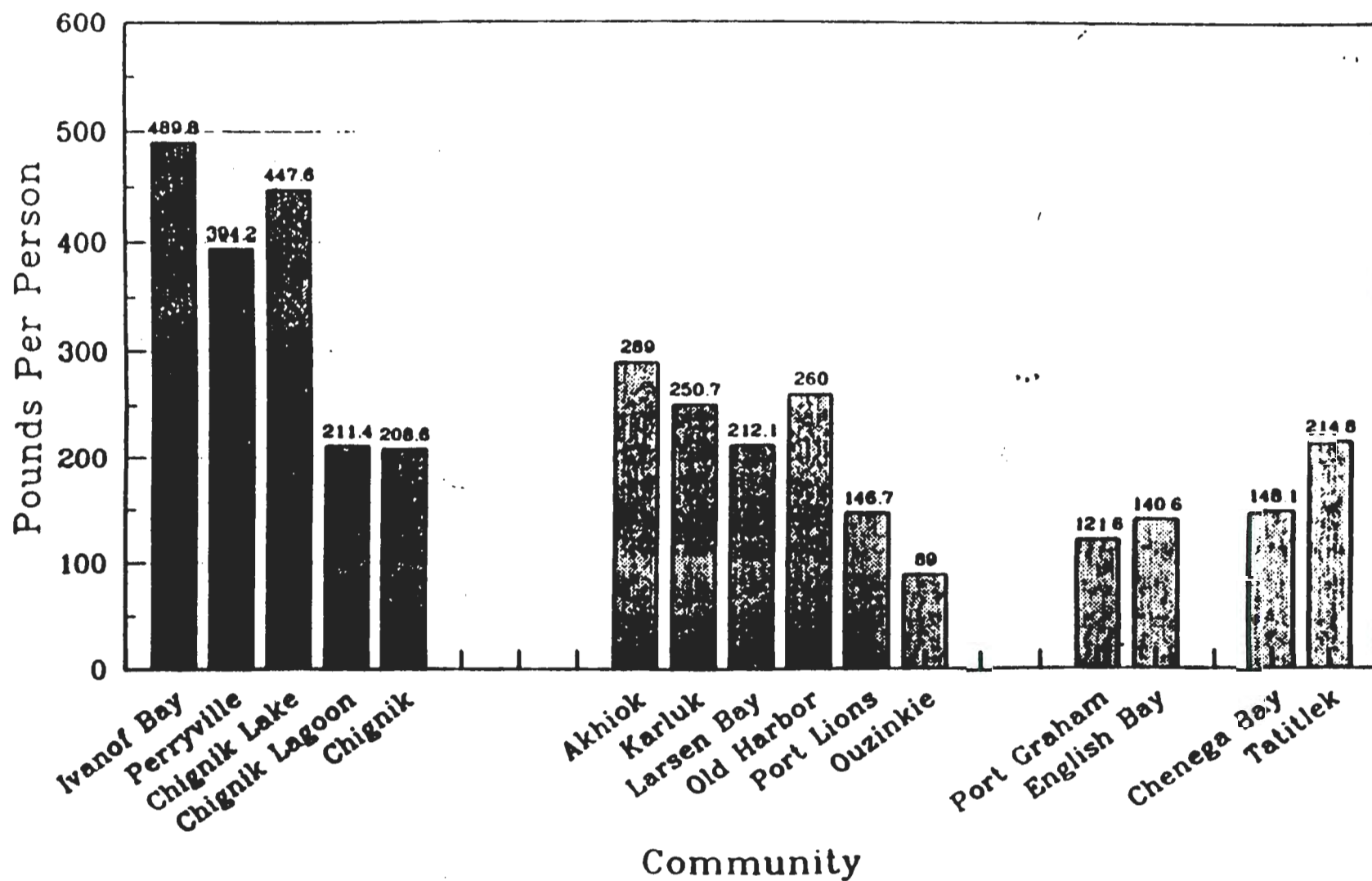
REGION Community	Households Surveyed	Households Specifying Spill-Related Reductions Number Percent**	Less Resource Around Due to Spill Number Percent***	Fear of Contamination Number Percent	Too Busy Working to Obtain Sub. Food Number Percent	Other Spill-Related Reasons Number Percent	Oil Spill-Related Reasons Number Percent
FRISCO WILLIAM SOUND	28	22 84.3%	4 12.5%	26 78.1%	4 12.5%	4 12.5%	8 16.0%
Tadilak	20	16 80.0%	1 5.3%	13 61.3%	3 18.8%	2 12.5%	2 12.5%
Charraga Bay	16	16 88.0%	3 18.8%	12 75.0%	1 6.3%	2 12.5%	3 18.8%
LOWER COOK INLET	81	68 84.0%	0 0.0%	51 75.0%	49 72.1%	28 41.2%	0 0.0%
English Bay	33	30 90.9%	0 0.0%	22 73.3%	24 80.0%	14 48.7%	0 0.0%
Port Graham	48	36 79.2%	0 0.0%	29 78.3%	25 60.6%	14 38.8%	0 0.0%
KODIAK ISLAND	106	88 38.0%	0 0.0%	38 57.9%	25 37.9%	3 4.5%	11 18.7%
Ouztelle	31	16 58.1%	0 0.0%	13 72.2%	3 18.7%	1 5.6%	3 18.7%
Port Lions	35	16 42.9%	0 0.0%	6 53.3%	6 40.0%	0 0.0%	4 28.7%
Old Harbor	46	6 17.5%	0 0.0%	4 50.0%	2 25.0%	0 0.0%	2 25.0%
Larson Bay	31	15 48.4%	0 0.0%	9 60.0%	6 40.0%	2 13.3%	2 13.3%
Kashik	14	7 50.0%	0 0.0%	4 57.1%	5 71.4%	0 0.0%	0 0.0%
Abikak	10	3 30.0%	0 0.0%	0 0.0%	3 100.0%	0 0.0%	0 0.0%
ALASKA PENINSULA	101	23 22.8%	7 30.4%	14 68.0%	4 17.4%	7 28.4%	0 0.0%
Chignik Bay	31	5 16.1%	2 40.0%	3 60.0%	1 20.0%	3 60.0%	0 0.0%
Chignik Lagoon	16	7 46.7%	2 28.6%	2 28.6%	2 28.6%	4 57.1%	0 0.0%
Chignik Lake	21	4 19.0%	0 0.0%	3 78.0%	0 0.0%	0 0.0%	0 0.0%
Perryville	27	4 14.8%	3 78.0%	3 78.0%	1 28.0%	0 0.0%	0 0.0%
Island Bay	7	3 42.9%	0 0.0%	3 100.0%	0 0.0%	0 0.0%	0 0.0%
TOTAL	308	189 49.0%	11 5.6%	128 67.7%	82 43.4%	42 22.2%	16 8.5%

* Households not present during the pre-spill period were removed from analysis. These include two households from Tadilak, three from Larson Bay, three from Old Harbor, one from Port Lions, and four from Chignik Bay.

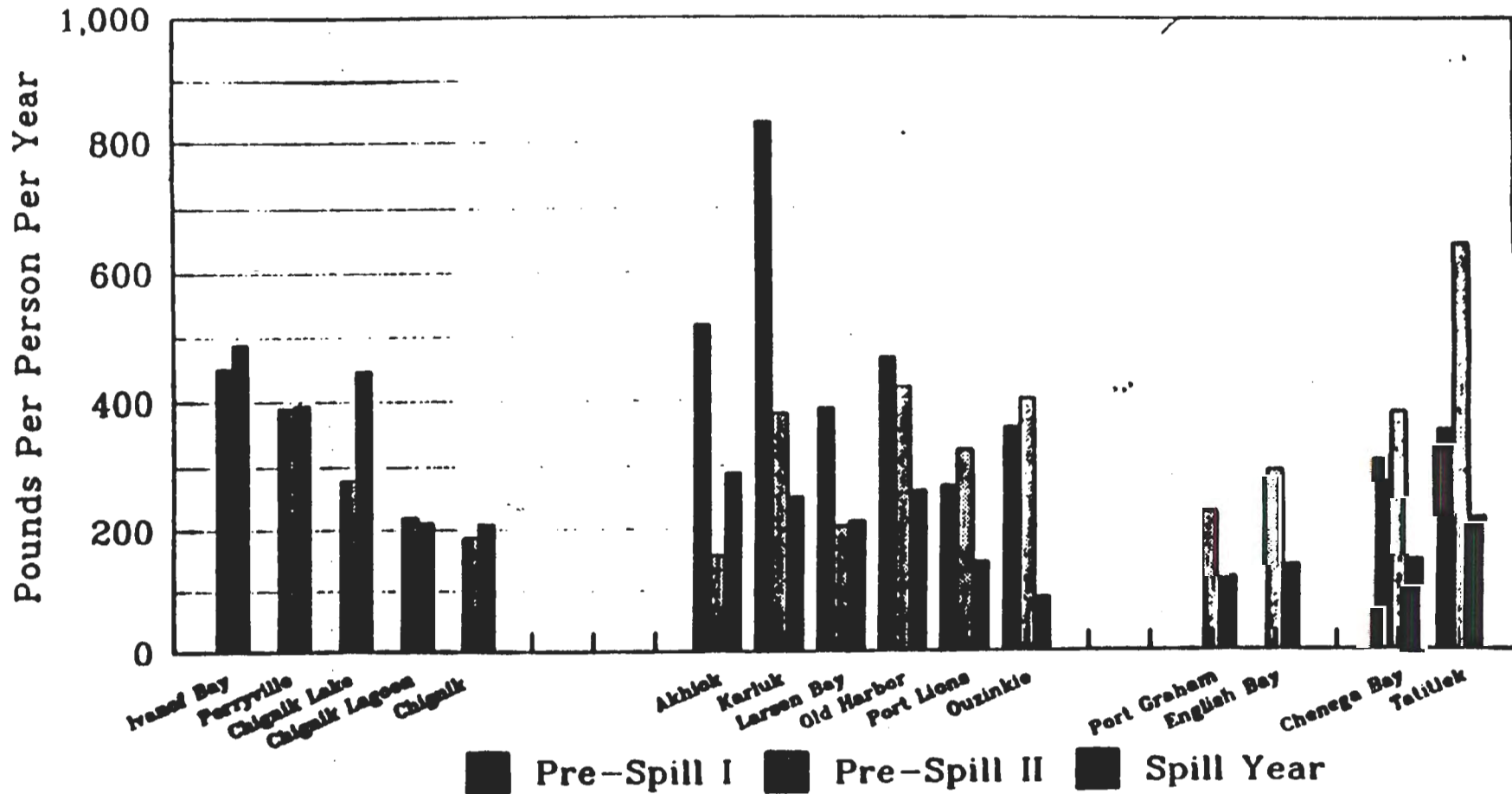
** Percentages based upon number of households surveyed.

*** Percentages based upon number of households specifying spill-related harvest reductions. As multiple responses are possible, percentages across reasons will not equal 100%.

**Figure 2. Per Capita Subsistence Harvests
In the year following the
EXXON VALDEZ oil spill**



**Figure 3. Per Capita Subsistence Harvests
Oil Spill Study Communities, 1980's**



Two previous study years exist for Kodiak and Prince Wm. Sound. One previous study year exists for AK. Peninsula and L. Cook Inlet

Figure 4. Comparison of Subsistence Harvests
Pounds per person, per year
Before and after the EXXON VALDEZ oil spill

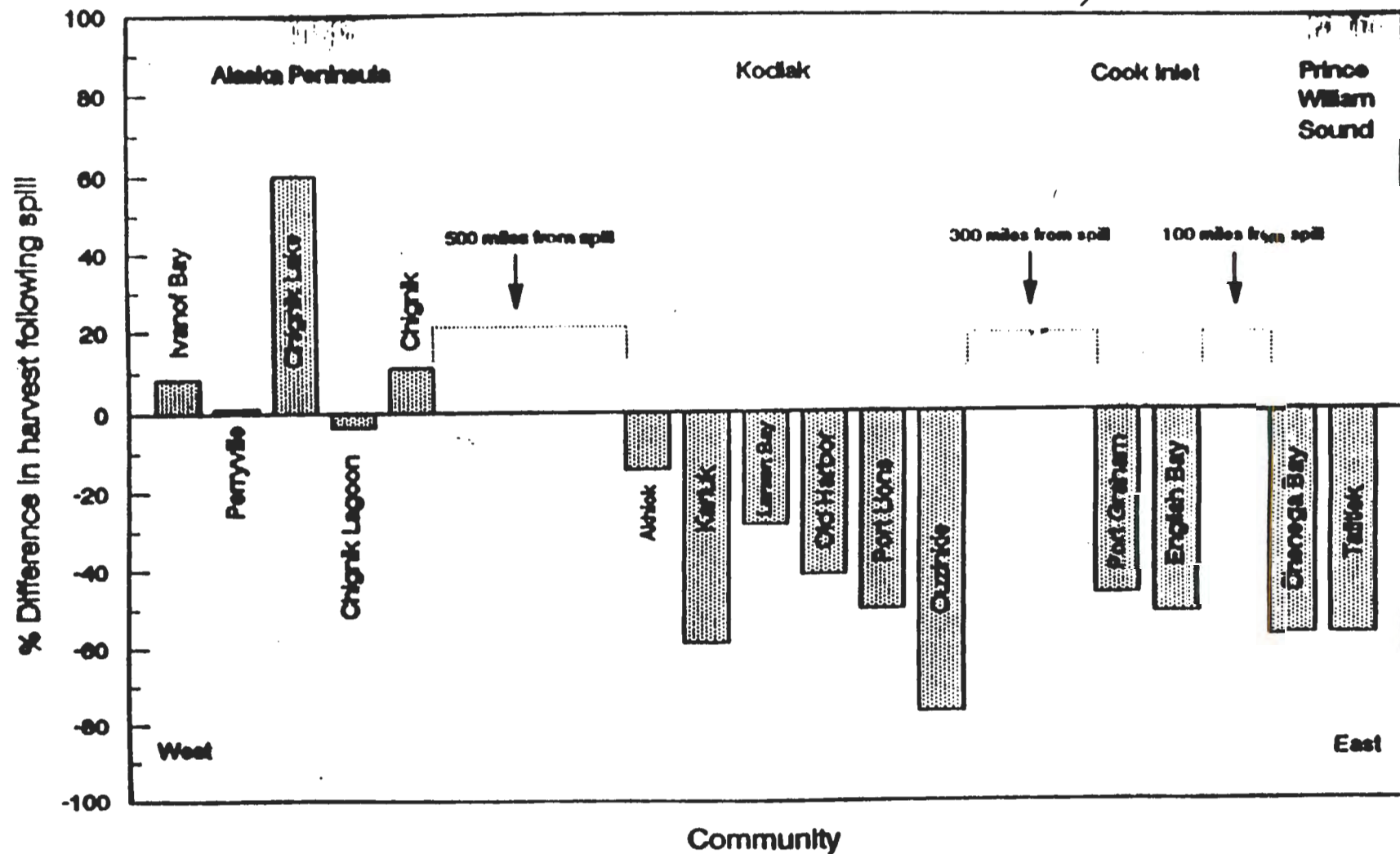
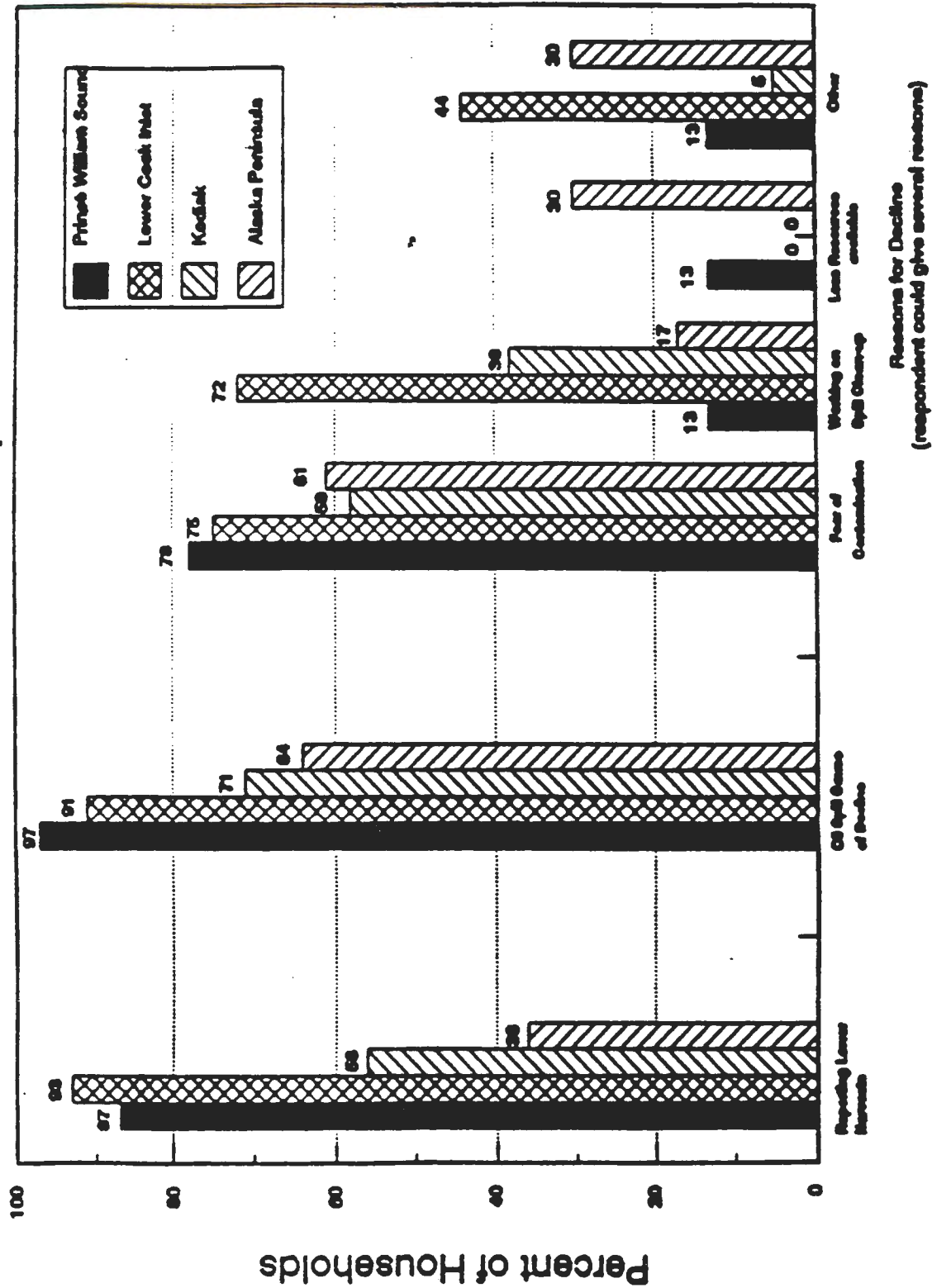
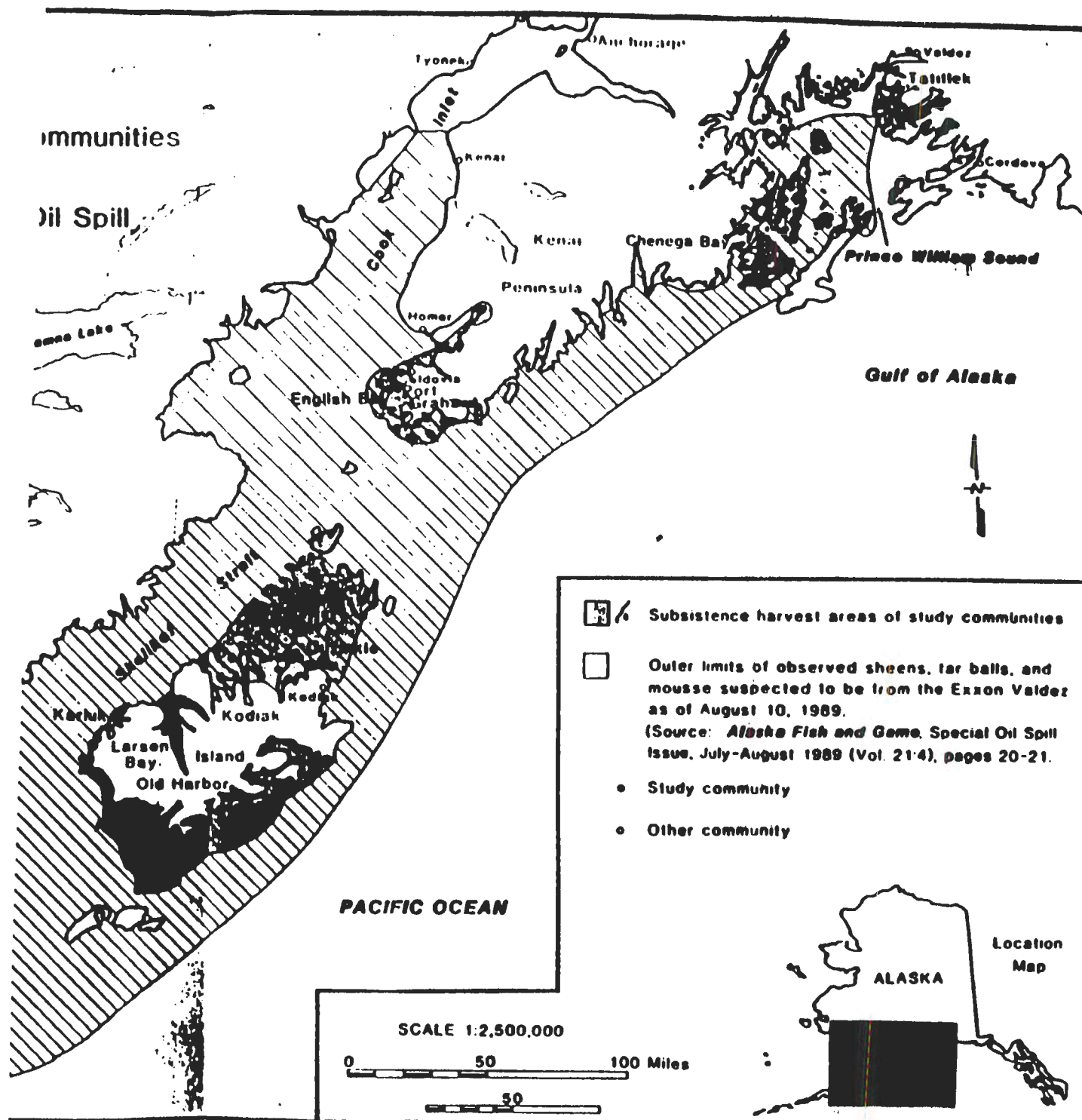


Figure 5. Assessments of Subsistence Harvests in the year following the EXXON VALDEZ Oil Spill





CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 1991, I caused a copy of the foregoing to be served by hand-delivery upon:

Richard B. Stewart
David A. Carson
Environmental and Natural Resources Division
United States Department of Justice
Tenth and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

and by Federal Express, overnight mail, upon:

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

Barbara Herman
Office of the Attorney General
State of Alaska
1021 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501



Gary E. Mason, Esq.

4/18/91

Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 West 7th Avenue No.4
Anchorage, Alaska 99513

Honorable Stanley Sporkin
United States District Judge
U.S. Court House
3rd and Constitution, N.W.
Washington, D.C. 20001

FROM: Pesticide Action Network - NARC
Int'l Indian Treaty Council
Abalone Alliance
West County Toxics Coalition
Coalition For Our Earth
South and Meso Am. Indian Center
Alaska Action Group

In Re:

United States of America v. Exxon Corporation, Shipping, and
Pipeline Companies: Cases No. A90-015 CR., A91082 Civil, A91083
Civil.

U.S. v. State of Alaska and St. of Ak. v. U.S.: No. A91081 Civil

St. of Alaska v. Exxon Corporation, et al.: 3 AN-89-6852 Civil

Native Village of Chenega Bay v. Manuel Lujan, Jr., et al. and Chenega
Corp. v. Manuel Lujan, Jr., et al.: 91-484-SS Civil.

Dear Sirs:

We are presenting this letter as public comment for the above stated cases and the Settlement Agreement Concerning Exxon Valdez Oil Spill and Memorandum of Agreement Between the United States and the State of Alaska and Exxon Corp. (Exxon Settlement)

The following comments on the Exxon Settlement represent the views of the above mentioned organizations which have reviewed the Exxon Settlement, the comments submitted by Representative George Miller, the Summary of Effects of the Exxon Valdez report, and other applicable reports and comments. In our review of these documents and other available information we found the current Exxon Settlement inadequate and severely lacking in several key areas, including legal.

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4/18/91

We urge you to reject the Exxon Settlement because of the following important points of information:

* The Exxon Settlement compromises the rights of the people of the United States by waiving their right to suit on civil or criminal claims Algeska Pipeline Company and its owner companies. Algeska intentionally broke the law and has a record of negligence and incompetence in its activities in Alaska. In no way does this settlement act as a deterrent for Algeska and other companies who knowingly jeopardize the health and welfare of the people of the U.S.

Criminal charges against Algeska Pipeline Company and its owner companies need to be pursued by the U.S. Department of Justice and the State of Alaska. To not file these charges will be to ignore the legal responsibility of the State of Alaska and the U.S. to protect and preserve the rights of its citizens.

We refer to the comments and proof provided by the Honorable George Miller, D - Martinez in making the above conclusions. It is only through the work of Rep. Miller that the people of the U.S. have been alerted to the legal atrocities that are occurring in the State of Alaska, which are a national issue.

* Settlement cannot be made until an objective verification is made of the amount of oil spilled from the t/v Exxon Valdez. To date, the only estimate has come from Exxon and requests for verification have been ignored. We believe 11 million gallons is an incorrect figure based on the fact that 8 out of 13 cargo holds were split open, the total of which contained 53 million gallons of oil. It does not make logistical sense that more oil did not get out, especially given the 5 day delay in response.

Penalties must be based on an accurate, objective verification of the amount of oil spilled. This verification can still be pursued. Other estimates some as high as 25 million gallons should be investigated.

* The Exxon Settlement suppresses information from studies done by publicly funded agencies. Suppression of these studies deprives those directly affected by the spill of irreplaceable and needed information. In addition, withholding information paid for by tax dollars attained through public agencies is highly questionable and at least an affront to the people of the U.S.

4/18/91

* Given the information contained within the Summary Effects of the Exxon Valdez report, long-term damage abatement and restoration will continue for many years. 1 billion and its 500,000 estimated value upon final payment is inadequate. At least, the appropriateness of the damages that would be recovered under this settlement cannot be determined until the studies are released.

Restoration will be imperative for 3rd parties currently abandoned by the state. The state is already in the process of legislating away to other expenditures money from the settlement that should be spent on restoration.

An accurate account of coastal impact in miles of beach oiled has not been done. There are reports of oiled beaches being found that are not currently listed and have never been cleaned. Most of these seem to be outside of the Prince William Sound. Reports by people who testify that they were told "enough beaches have been reported" should be investigated.

* The re-opener clause has been made ~~obsolete~~ ^{obsolete} due to the release of the Summary of Effects report. It is not realistic that we will discover any damage we are not currently aware of. It is the longevity and the persistence of the impacts that will cause the most damage. This fact is already being predicted, making it impossible for the state to be awarded any more damages in the future.

* The state's constitution is being abrogated by the settlement. Precedents such as this compromises the ability of the state of Alaska or other states fighting industry to attain reparations for damages done. Given the practices of the oil industry in and out of Alaska, it is important that this case act as a precedent damaged parties can look to for assistance in future cases versus a precedence they are disabled by.

It is not in the peoples interest to have their state constitution abrogated when Alyaska remains free to press charges against the state. This failure to protect the state spells pure stupidity on the part of those acting for the State of Alaska.

* On moral grounds, the state of Alaska is abandoning those it represents and siding with an immoral and criminal party that has severely impacted the people and resources of the state. After

4/18/91

supposedly persuading the Native villages to drop their cases against the state and convincing them to side with the state in their suits against Exxon, the state has since taken a turn for the worse.

Community impacts are not represented in the settlement. Impacts that threaten the integrity of Native communities and have caused devastating economic, psychological, and emotional effects in these communities. Alaska Natives are being ignored by all parties of this case. Given the states role in the spill, which is fairly large considering their lack of enforcement of critical laws, the state has a responsibility to those negatively affected by the spill. Including, extensive restoration of damaged resources and communities.

In summary:

The Exxon Settlement fails as a deterrent to Multinational Corporation arrogance that works to undermine the rights of the people of the U.S. and effectively places them at the hands of Corporate whim. Exxon's reaction alone is enough to reject this settlement. Comments such as calling the settlement "a price of doing business," saying "it looks pretty good," and it "will not have a noticeable effect on their financial results" reveal the inadequacy of the settlement.

The state needs to re-evaluate its responsibilities and constituency and base the settlement on those aspects, rather than on the political endeavors of certain key public figures.

As we as national and international groups believe we will be ultimately affected by this decision, we urge you to reject the Exxon Settlement.

Thank You

Pesticide Action Network - North American Regional Center
International Indian Treaty Council
Abalone Alliance
Coalition For Our Earth
West County Toxics Coalition
South and Meso American Indian Center
Alaska Action Group

* Appendix offers contact information for the above groups

Addresses:

Pesticide Action Network - North American Regional Office
965 Mission Street Room 514
San Francisco, Ca. 94103
(415) 541-9140

International Indian Treaty Council
710 Clayton #1
San Francisco, Ca. 94117
(415) 566-0251

Abalone Alliance
2940 16th Street #301
San Francisco, Ca. 94103
(415) 861-0592

Coalition For Our Earth
P O Box 335
Sonoma, Ca. 95476
(707) 996-5527

West County Toxics Coalition
1019 MacDonald
Richmond, Ca. 94801
(415) 232-3427

South and Meso American Indian Center
P O Box 28703
Oakland, Ca. 94604
(415) 834-4263

Alaska Action Group
1372 32nd Avenue
San Francisco, Ca. 94122
(415) 564-7001

To: Honorable Russel Holland
US District Judge
U.S. District Court
222 West 7th Ave #4
Anchorage AK 99513.

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From: PAN
Anti Treaty Council
Abolish Alliance
et al.

Contact: Elise Scott
(415) 564-7001

RE: Exxon/AK Settlement
Public Comments

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Dear Ms. Herman,

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The Legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining how settlement monies should be spent. This should include a legislative appointed public advisory group with members from the environmental community and spill affected communities whose comments legally bind the Trustees Council. The money should be spent on: buy back of timber rights along spill affected coastlines to prevent further damage; restoration activities; and ongoing studies in the Sound.

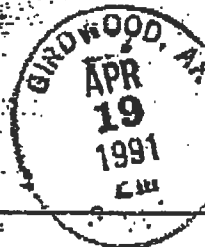
Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

ACE 417943

Sincerely,

Berrie Marlow

Doug & Kerrie Marlow
P. O. Box 888
Girdwood, AK 99587



Barbara Herman
Office of the Attorney General
State of Alaska
1031 W. 4th Ave #200
Anchorage, AK 99501

APR 22 1991

DEPARTMENT OF LAW
RECEIVED

ACE 417944



Alaska Conservation Foundation

430 West 7th Avenue, Suite 215 • Anchorage, AK 99501 • (907) 276-7178 • Fax 276-7175

*MCS Nelson
Sander*

RECEIVED
MAR 7 1991
GOVERNOR'S OFFICE

RECEIVED
APR - 4 1991

Governor Walter Hickel
P.O. Box A
Juneau, Alaska 99811

Dear Governor,

ADEC
COMMISSIONER'S OFFICE

I attended the 20th anniversary reception for the Alaska Center for the Environment last Thursday. I was interested in hearing what you had to say, and enjoyed your presentation. Boring it was not!

Governor, Alaska Conservation Foundation has been supporting Alaska's environmental community since 1980. It has made more than \$2,000,000 in grants for a wide range of activities. It would be fair to say that its emphasis has been support of local citizen activities for a clean and better environment.

Governor, I heard you speak of the need to attend to our "human habitat." We need to clean up the air in Anchorage and in Fairbanks, and I agree with you that switching over to natural gas to run our vehicles would make a hell of a lot of sense. It would also make sense to generate electricity with our abundant natural gas supply and then use the power supply to run electric vehicles. This would be one quick step to a first class human habitat. And I think you would also agree that we need to clean up the toxic chemicals which endanger clean water supplies on the Kenai peninsula. But caring for "human habitat" also means caring for the natural habitat. Fishermen can't fish if the marine environment is threatened by industrial pollution. Alaska is our home, not just our business.

The problem is that we are not addressing the threats to our human habitat and Alaska's natural habitat in an especially considerate and timely manner. Large scale development projects will of course improve the financial situation of many individuals by creating jobs and providing return on capital, but the community as a whole does not necessarily improve. California, for example, has a vast economy to which oil has made a major contribution, but this has not reduced crime, sickness, or poverty; it has not meant cleaner water and cleaner air nor better human relationships. We can do a better job in Alaska, only if we devote as much attention to our community as we do to construction projects.

All along Alaska Conservation Foundation has been helping



citizens with a sense of purpose. Citizens who are working to improve human habitat and the natural environment without the assistance of government, which in some cases has refused to help, and in many other cases has had to be prodded to help. Alaska Conservation Foundation's strength is its trust in ordinary people to better their lives. Surely, it would make a great deal of sense to apportion some of the Exxon settlement to the foundation's support of individual initiative and participation in addressing quality of life issues in Alaska. Two million dollars could make a tremendous difference to the foundation's efforts to benefit the health of Alaska citizens, to ensure a secure quality environment and to expand environmental education throughout the state. At a minimum, citizen oversight of the restoration and reclamation effort will be essential.

Considering Alaska Conservation Foundation in the terms of the Exxon Valdez settlement would be a bold and popular move by your administration. I am aware that you may be skeptical of this proposal, but I would welcome the opportunity to persuade you of its validity.

Sincerely,



Mr. Jan Konigsberg
Executive Director

encl:

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, AK 99811-1800

Phone: (907) 465-2600

Fax: (907) 465-2617

WALTER J. HICKEL, GOVERNOR

April 15, 1991

Mr. Jan Konigsberg
Executive Director
Alaska Conservation Foundation
430 West 7th Avenue, Suite 215
Anchorage, AK 99501

APR 17 1991
7:00 PM

Dear Mr. Konigsberg:

Governor Hickel has asked that I respond to your March 4, 1991, letter requesting that a portion of the Exxon Valdez settlement be directed to support the work of the Alaska Conservation Foundation. I read and considered your letter with interest. I believe that the best use of settlement funds will be to directly enhance, protect and preserve the resource values of Prince William Sound and the other regions that were impacted by the oil spill, rather than using the funds for other environmental initiatives that, while potentially valuable, may not be directly related to the spill.

Specific decisions regarding the use of settlement funds will be made by all of the State and federal Trustees overseeing the joint trust fund established with settlement funds. The Trustees will be considering a wide range of options for the best use of settlement funds. I will share your letter with my fellow Trustees for their consideration.

Sincerely,


John A. Sandor
Commissioner

cc: State and Federal Trustees
(w/copy of ACF March 4, 1991, letter)

cc: B. Herman

ACE 418018

60

4704 Kenai

Anchorage 99508

April 19, 1991

Dear Barbara Herman,

Please convey to the Attorney General my apprehensions about the proposed settlement of the Exxon Valdez oil spill.

The people of Alaska can't evaluate the settlement conditions without knowing the extent of the damages so it is important that the publicly funded scientific and economic studies be released. This material needs to be reviewed by the legislature and the public.

The settlement should be delayed until the facts are known.

Sincerely,

Rick Sherman

04/25/91 10:43

907 276 7178

CACI, INC.

→→→ LORI CARROL

008

Ms Ruth Sheridan
4704 Kanai
Anchorage AK
98508-2327



Barbara Herman
A.G.'s Office
1031 W. 4th Ave
#200
Anchorage, AK 99501

ACE 418153

