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Report to the Chairman, Committee on Energy and Natural Resources, U.S. Senate

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NATURAL RESOURCES RESTORATION

Status of Payments and Use of Exxon Valdez Oil Spill Settlement Funds

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GAO

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Resources, Community, and
Economic Development Division

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The Honorable Frank H. Murkowski
Chairman, Committee on Energy
and Natural Resources
United States Senate

Dear Mr. Chairman:

In 1989, the Exxon Valdez oil spill contaminated Alaska's south central coastline, including portions of national wildlife refuges, national and state parks, a national forest, and a state game sanctuary. The spill killed or injured an estimated 250,000 sea birds, thousands of marine mammals, and large numbers of salmon and other fish and disrupted the ecosystem in its path. In October 1991, the U.S. District Court for the District of Alaska approved civil and criminal settlements between Exxon and the federal government and the state of Alaska. Exxon agreed to pay a total of $900 million in civil claims in 11 annual payments and a total of $125 million to resolve various criminal charges.[1] In August 1991, the federal government and the state of Alaska signed a memorandum of agreement to administer the $900 million civil settlement. This memorandum established a six-member federal/state trusteeship to review and approve expenditures of the civil settlement funds. Later, this trusteeship became the Trustee Council.[2]

Because of the historic nature of this settlement and your concern that settlement funds be used effectively to restore injured and damaged resources caused by the spill, you asked us to determine (1) how much Exxon had paid, to whom the funds had been disbursed, and how the money had been used; (2) whether the Trustee Council has funded activities that may not be consistent with the agreement and the council's implementing policies; (3) how the prices paid for land acquisitions compare with government land appraisals; (4) if the public participation process for the habitat acquisition program is similar to that used for other restoration actions; and (5) whether the trust funds are being managed to maximize the overall returns. This report is a follow-up to our 1993 report on the use of Exxon Valdez oil spill settlement funds in which we raised a

[1]Of the $125 million, $25 million represents a criminal fine and $100 million represents restitution for the impact of the violations.

[2]The Trustee Council has no control over the $125 million resolving criminal charges. As a result, we excluded the criminal fine and restitution payment from the scope of our review.

number of issues that needed attention to ensure that the $900 million in civil payments would be expended as intended.[3]

Our analysis covers payments received and moneys expended through the end of fiscal year 1997. We chose this cutoff date because Exxon's September 1998 payment would not be received until after our work was done and because a cutoff at fiscal year-end provided the most accurate fiscal information.

Results in Brief

Through the end of fiscal year 1997, Exxon had made settlement payments of $620 million. Of this amount, $521 million has been reimbursed or disbursed for various activities. These funds were to (1) reimburse agencies or credit Exxon for oil spill cleanup or damage assessment costs ($198 million);[4] (2) buy land to protect or enhance damaged resources ($187 million); (3) conduct monitoring, research, or restoration projects ($116 million); and (4) pay for administrative, science management, public information and related costs ($20 million). The remaining $99 million represents funds not yet disbursed. These funds have either been placed in a special reserve account for future disbursements or have not yet been allocated.

Most of the activities funded by the Trustee Council appear consistent with the terms of the memorandum of agreement and the council's implementing policies. To make this determination, we reviewed approved activities for the three primary restoration tools used to help restore damaged resources to their pre-spill condition—habitat acquisition, general restoration, and monitoring and research. We found that all of the activities that dealt with habitat acquisition and general restoration and most research and monitoring activities appeared consistent with the agreement and restoration plan in that they were linked to the oil spill, limited to restoration of natural resources in Alaska, and included in the types of restoration activities specified in the memorandum of agreement between the federal government and the state of Alaska. However, a few monitoring and research projects have been funded even though they have questionable linkage to the spill or appear to run counter to the Trustee

[3]Natural Resources Restoration: Use of Exxon Valdez Oil Spill Settlement Funds (GAO/RCED-93-206BR, Aug. 20, 1993).

[4]Of this $198 million, $40 million represents a credit to Exxon, and $158 million represents funds reimbursed to federal and state agencies. Both the credit and reimbursement were called for in the memorandum of agreement, and therefore the Trustee Council had no control over these expenditures.

Council's policy of not funding projects that would normally be funded by a federal or state agency as part of its mission.

The Trustee Council has paid about 56 percent above the government-appraised value for the lands it has acquired. Nearly all the amount paid above the government-appraised value is a result of five large parcel acquisitions. For these five acquisitions, involving about 360,000 acres bought outright or containing some type of easement, the council paid from 2 to almost 4 times the government-appraised value. In valuing land under the government and industry appraisal standards, the appraisers are required to place a value on the land on the basis of highest and best use. Because these five parcels did not have any single specific commercial best use, the appraisers generally determined that the highest and best use was to hold the land for speculation and thus valued the land at a relatively low price that the sellers were unwilling to accept. The four other large parcel acquisitions, totaling about 94,000 acres, contained timber resources, and the government appraisers valued the land on the basis of timber harvesting being the highest and best use. The sellers generally agreed with these appraisals, and the council paid near the government-appraisal value for these four parcels.

The public participation process followed by the Trustee Council for acquiring land is similar to the process followed for decisions on other restoration activities, such as monitoring, research, and general restoration projects. Both follow public input and information actions specified in the restoration plan. We found that the council's processes for both habitat acquisition and other restoration activities appear to provide ample opportunities for the public to review information and comment.

The Trustee Council's independent auditors have identified two major opportunities for increasing returns on settlement funds. Settlement funds awaiting disbursement are currently deposited in an interest-bearing account that is part of a cash management system utilized for district court settlements within the U.S. Treasury. One opportunity for increasing returns is to transfer funds electronically when they are disbursed from this account into interest-bearing federal and state accounts. The auditors estimated that about $242,000 in interest income was lost for the 3-year period fiscal years 1995 through 1997 because electronic transfer was not available. The second opportunity for increased returns is to move the account from the current cash management system, which has relatively high management fees, into some other account charging lower fees. The Trustee Council accrued about $439,000 in such fees in fiscal year 1997.

The council's administrative officer said that similar management services could be obtained elsewhere for as little as $24,000 per year. According to the Department of Justice, legislation could be enacted to authorize the deposit of such funds into other accounts outside the court registry and the U.S. Treasury, provided the court gives the federal government and the state of Alaska approval for doing so.

Background

The March 24, 1989, Exxon Valdez oil spill in Alaska's Prince William Sound was the largest oil spill in U.S. history, contaminating about 1,500 miles of Alaska's coastline. A map depicting the area affected is included as appendix I. Under a civil settlement agreement approved in the U.S. District Court for the District of Alaska in October 1991, Exxon agreed to pay civil claims totaling $900 million to the federal government and the state of Alaska by September 1, 2001.[5] Under a criminal settlement reached at the same time, Exxon agreed to pay a $25 million fine and to pay the federal government and the state of Alaska each $50 million as remedial and compensatory payments to be used exclusively for restoring natural resources damaged by the spill or for research on the prevention or amelioration of future oil spills.

Administration of the civil settlement is carried out under a memorandum of agreement between the federal government and the state of Alaska. The agreement established a six -member federal/state trusteeship, which later became the Trustee Council, to review and approve expenditures of civil settlement funds for restoration projects.[6] The three federal trustees are the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce, or their representatives. The three state trustees are the Commissioner of the State Department of Environmental Conservation, the Commissioner of the State Department of Fish and Game, and the Attorney General for the state of Alaska, or their representatives. A staff headed by an executive director conducts day-to-day activities.

Under the agreement, Exxon's civil settlement payments flow to three areas. The first two are to reimburse federal and state agencies for past

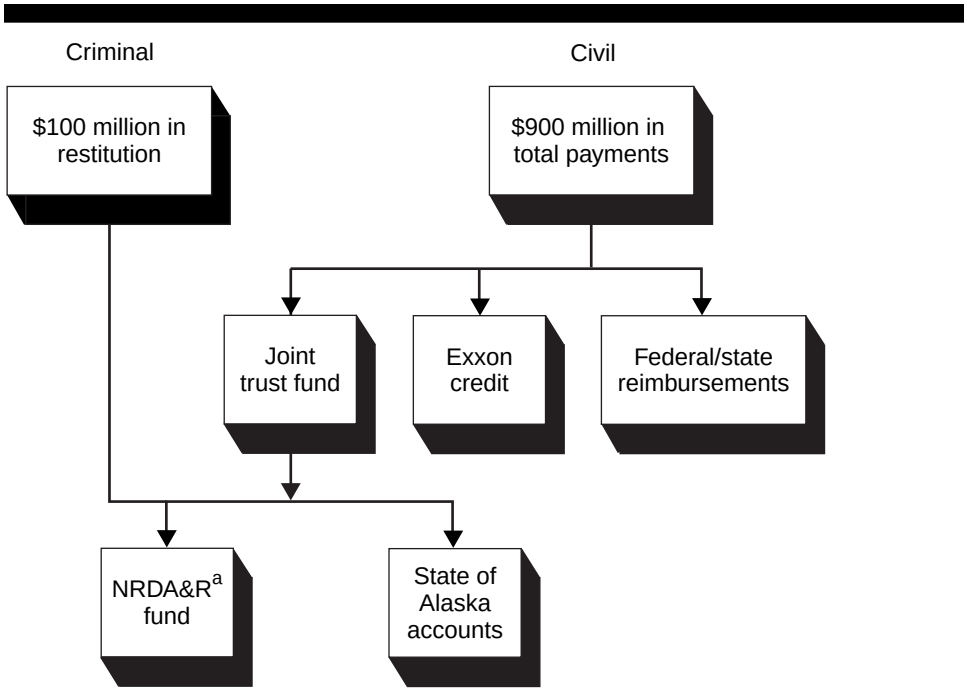
[5]The settlement agreement with Exxon also has a provision that allows the governments to claim up to an additional $100 million between September 1, 2002, and September 1, 2006, for projects to restore populations, habitats, or species that have suffered a substantial loss or decline not anticipated on the effective date of the settlement.

[6]The council's official name is the Exxon Valdez Oil Spill Trustee Council.

spill-related work and a credit to Exxon for the reimbursement of agreed-upon cleanup performed following the spill. These reimbursements go directly to the United States and Alaska, and the credit to Exxon was treated as a reduction in one of Exxon's payments.[7] The reimbursements and credit were called for in the civil settlement agreement, and therefore the council had no control over these payments. The remainder of Exxon's payments are deposited into a joint federal/state trust fund under the jurisdiction of the U.S. district court system. This trust fund is currently an interest-bearing account within the Court Registry Investment System (CRIS), a system utilized for U.S. district court settlements. To release any of these funds, the federal and state trustees must petition the court to make the funds available for the purposes and activities specified in the settlement agreement and the memorandum of agreement. Federal agencies in Alaska and Alaska state agencies responsible for the management of the land and species within the spill area take the lead in carrying out restoration activities. For restoration activities that are to be carried out by federal agencies, funds are transferred to an interest-bearing account of the Department of the Interior, where they are transferred to specific agency accounts as needed. For restoration activities to be carried out by the state, funds are deposited in a state trust fund, from which they are drawn directly by state agencies following an appropriation from the state legislature. Figure 1 shows the flow of Exxon settlement payments and fund distributions.

[7]Even though this credit represented a reduction, or offset, to one of Exxon's payments, we are treating it as if it represented a disbursement for ease in reporting.

Figure 1: Exxon Settlement Payments and Fund Distributions



[a]Natural Resource Damage Assessment and Restoration Fund.

Source: Prepared by GAO from the Trustee Council's data.

Decisions about the types of restoration activities to fund with civil settlement payments are governed by the agreement and a Trustee Council-developed restoration plan, which was the subject of substantial public comment. The plan calls for public participation in all council decisions and identifies five categories of restoration activities. (See table 1.)

Table 1: Restoration Activities Listed in the Trustee Council's Restoration Plan

Category	Examples of activities
Monitoring and research	Studies to understand how to accomplish restoration more effectively and surveys to determine population trends and gauge the status of recovery
General restoration	Projects to protect archaeological resources, build fish passages to restore fish populations, and reduce marine pollution by cleaning up oil
Habitat acquisition	Acquiring fee title or conservation easements on land important to the recovery of fish and wildlife
Administration	Day-to-day operations of the council, including scientific peer review, public meetings, public information, and outreach
Restoration reserve	Reserve savings account to fund future restoration projects after the last payment by Exxon is received in 2001

The first three categories primarily involve activities to help restore damaged resources to their pre-spill condition. The two remaining categories cover the council's general administration and the provision of funds once Exxon's payments end. The restoration plan emphasizes the need for studies to adhere to high scientific standards and address any injured resources and services in the spill area, with emphasis on those that have not yet recovered. The plan also states that government agencies will be funded only for restoration projects that the agencies would not have conducted had the spill not occurred, or in other words, for projects that go beyond normal agency management activities.

In August 1993, we reported on the use of Exxon Valdez oil spill settlement funds and raised a number of issues that needed attention to ensure that the funds were expended as intended. Among other things, we recommended completing restoration and land acquisition plans to provide direction for restoration planning in the oil spill area, increasing open competition for restoration projects to encourage nongovernmental participation, and improving internal controls to better track expenditures and management controls to ensure that expenditure decisions were reached objectively. By July 6, 1995, the council had taken steps to address all of our recommendations.

Status of Civil Settlement Payments, Activities Funded, and Distribution of Funds

As of September 30, 1997, Exxon had made seven annual settlement payments totaling $620 million. To complete its commitment, Exxon will need to make four additional annual payments totaling $280 million by September 2001. Most of the money disbursed through September 30, 1997, was used to (1) reimburse federal and state agencies for cleaning up the oil spill and assessing oil spill damage; (2) reimburse Exxon through a credit for cleanup work; (3) acquire habitat to protect resources damaged by the spill; and (4) fund monitoring, research, and general restoration projects.

Through Fiscal Year 1997, Payments Totaled $620 Million

Exxon's civil payments during the first 3 years of the period were for $90 million, $150 million, and $100 million; annual payments since then have been for $70 million each. The remaining four payments are also scheduled to be $70 million each.

Almost Two-Thirds of the Payments Made to Date Have Been Used for Damage Assessment and Cleanup or Habitat Acquisition

As of September 30, 1997, $198 million, or 32 percent, of the amount paid by Exxon had been used to reimburse federal and state agencies for oil spill cleanup or damage assessment or to credit Exxon for similar work the company had done itself. Another $187 million, or 30 percent, went to acquire habitat or purchase easements to restore resources damaged by the spill. The remaining 38 percent went to monitoring, research, and general restoration projects; went to administration; was deposited in the future restoration reserve; or represents funds not yet allocated as of September 30, 1997. Table 2 shows the distribution of the settlement payments.

Table 2: Distribution of the Exxon Civil Settlement Payments Made Through Fiscal Year 1997

Dollars in millions

Use of funds	Amount	Percent of total
Reimbursement to federal/state agencies	$158	26
Credit to Exxon for cleanup	40	6
Monitoring and research	90	15
General restoration	26	4
Habitat acquisition	187	30
Science management/public information/administration	20	3
Restoration reserve	48	8
Funds not yet disbursed	51	8
Total	**$620**	**100**

Nearly One-Half of the Remaining Funds Is Targeted for Habitat Acquisition

The Trustee Council has not finalized decisions on the uses of the four remaining payments. According to the council's Executive Director, however, it has estimated how these funds are likely to be used, based on past experience, ongoing negotiations and offers for additional land acquisitions, and annual goals and objectives. The council expects that about $129 million of the $280 million, or slightly less than half, will likely be targeted for habitat acquisition. Of the remaining $151 million not designated for habitat acquisition, about $65 million will likely be used for monitoring and research and general restoration projects, and the rest will be used for future reimbursements to the state, administration and public information, and the future restoration reserve. Table 3 shows the estimated distribution of Exxon's final four payments.

Table 3: Estimated Distribution of Future Exxon Civil Settlement Payments

Dollars in millions

Use of funds	Amount	Percent of total
Reimbursements to state agencies	$15	5
Monitoring and research	51	18
General restoration	14	5
Habitat acquisition	129	46
Science management/public information/administration	11	4
Restoration reserve	60	21
Total	**$280**	**99**[a]

[a]Column does not add to 100 because of rounding.

Most Settlement Funds Were Distributed to Federal Agencies and Alaska

Of the $620 million in payments, $481 million had been distributed as of September 30, 1997, to federal agencies and Alaska for either reimbursements for spill-related expenses; council-approved projects; or science management, public information, and other council administrative expenses. In addition, $40 million was applied as a credit to Exxon for cleanup expenses. Of the $481 million distributed, federal agencies received $222 million, and the state of Alaska received $259 million. These distributions can be further divided by activity type as follows:

•Reimbursements for spill-related expenses. As shown in table 2, a total of $158 million went to the federal government and Alaska to reimburse agencies for costs incurred during oil spill cleanup and damage assessment efforts. The federal government received $69 million, or 44

percent, and Alaska received $89 million, or 56 percent. An additional $40 million represents a credit to Exxon for cleanup expenses. This credit was applied to one of the Exxon payments.

•Council-approved projects. The Trustee Council approved the disbursement of $323 million for the restoration and administrative activities called for in the memorandum of agreement and restoration plan. Of this amount, the federal government received $153 million, or 47 percent, and Alaska received $170 million, or 53 percent.[8] Appendix II provides a summary of the civil settlement funds received by federal agencies and Alaska through September 30, 1997.

•Balance. About $99 million of Exxon's payments through September 30, 1997, had not been disbursed. This amount included four annual deposits of $12 million for a total of $48 million to the future restoration reserve savings account and a fund balance of $51 million that had not been allocated to any specific activity as of September 30, 1997.

Most Funded Activities Are Consistent With the Agreement and Restoration Plan, but Some Exceptions Persist

For the most part, the approved activities to help restore injured resources funded by the Trustee Council—habitat acquisition, general restoration, and monitoring and research—appear consistent with the agreement and the policies in the restoration plan. However, a few research projects that were approved may not be consistent with one of two policies contained in the restoration plan: (1) Projects should be clearly linked to the oil spill, and (2) approved projects should not be ones that would be funded under normal agency mission activities. The council has attempted to clarify its policies in an effort to eliminate funding of projects with questionable links to the oil spill. A few projects with questionable links to the oil spill or normal agency mission activities, however, continue to be funded.

Most Activities Were Linked to Restoring Resources and Services Damaged by the Oil Spill

We found that nearly all disbursements by the Trustee Council were consistent with the memorandum of agreement and policies set forth in the restoration plan. The memorandum of agreement states that funds be used for restoring, replacing, rehabilitating, enhancing, or acquiring the equivalent of the natural resources damaged and the reduced or lost services provided by such resources; be spent on natural resources in Alaska; and be spent as a result of the oil spill. The restoration plan

[8]Of the $323 million disbursed to the federal government and Alaska, $180 million was passed on to landowners from whom land title or conservation easements were acquired, $7 million was passed on to contractors for land acquisition evaluation and support activities, and $31 million was passed on to nongovernment contractors for monitoring and research and general restoration projects.

provides the policy guidance in implementing the memorandum of agreement as well as guidance on funding projects that may be normal agency management activities.

For the habitat acquisition activities, we reviewed the nine large parcel purchases and found that they were located in the oil spill area and were to either help or enhance damaged resources. On the basis of our review of the approved work plans for the 3-year period fiscal years 1995 through 1997 and our discussions with the council's Chief Scientist, we believe that the monitoring and research and general restoration projects fell within the definition of the categories in the restoration plan, were subject to independent scientific review, and addressed injured resources and reduced or lost services in the spill area, focusing on those not yet recovered.

Some Projects Appear Questionable

Although most projects appear to be in keeping with the council's policies, some appear questionable and have generated disagreement in the review and approval process. During our review of the work plans, we noted that the council continued to fund sockeye salmon and killer whale projects that we identified in our 1993 report as either questionably linked to the oil spill or duplicating existing responsibilities of federal or state agencies. Parties involved in the review process have disagreed about whether these studies fall within the restoration plan. As part of the review process, a scientific peer review is conducted. The peer review is headed by the council's Chief Scientist, who involves other reviewers as necessary. According to the Chief Scientist, the peer reviewers have suggested that the council close out or not fund the multiyear sockeye salmon projects each year following the 1995 work plan. The peer reviewers' reasons for not funding the project include that (1) assessments of the sockeye salmon stock and products proposed by the study are routinely required by Alaska harvest management programs; (2) restoration objectives have been thoroughly achieved, and no further study is needed; and (3) the program should be taken over by the Alaska fish and game department as part of its normal management responsibilities. The work plans for each of the 3 years we reviewed indicated that the council took action to curtail the scope of projects or reduce funding or phase them out as a result of science and peer review recommendations but continued funding through 1997 at a total cost of $3.5 million since our report in 1993.

The Chief Scientist also said that there were a few other projects approved and funded since the early sockeye salmon and killer whale studies that

were not supported by peer review. For example, a 4-year project started in 1995 at a cost for the first 3 years of $1.2 million was approved to examine the effects of oil exposure during embryonic development on the return rate of pink salmon. The Chief Scientist said the work on the project is being conducted in Southeast Alaska well outside the spill area. This is allowed under the terms of the agreement. However, the restoration plan requires that research information acquired outside the spill area must be significant for restoration or understanding injuries within the spill area. Although one of the project's objectives is to relate the results of the study to Prince William Sound, the Chief Scientist said it will be difficult to project the results because the pink salmon being studied are not genetically the same as pink salmon in Prince William Sound.

Policy Regarding Support of Agency Mission Activities Remains Unclear

The Trustee Council developed the restoration plan in 1994 partly in response to our earlier report, which found that guidance for approving projects was insufficient. Although the plan addresses many of the problems we noted, guidance on projects that might be normal agency management activities remains unclear. The plan states that restoration funds should not be used to support normal agency management activities and that the council will consider agency authorities and the historic level of agency activities to determine whether work would have been conducted had the spill not occurred. We asked the council's Executive Director and its Chief Scientist to define the language in the policy concerning agency authorities and the historic level of agency activities. According to the Executive Director, the council could fund projects linked to the oil spill that would normally be part of an agency's mission but have not been funded in the past. The Chief Scientist said that the council could fund projects linked to the oil spill that are not a high priority for the agency.

Since 1995, the Trustee Council and the Public Advisory Group—a 17-member group that represents various public interests—have expressed concern that the policy against funding normal agency mission activities is not clear enough and requested that criteria be developed to identify normal agency activities to ensure that they would be eliminated from annual work plans. These criteria would be valuable information for reviewers because for many projects being considered for funding in the work plan, the final determination comes down to a case-by-case judgment based on a knowledge of the agencies' existing missions and activities. Although the Public Advisory Group and the council have considered

additional criteria in determining normal agency management activities, additional criteria satisfactory to both have not been agreed to. We realize that developing criteria to identify whether each project funded is part of normal agency activities is extremely difficult. However, as the years pass, determining the direct impact of the oil spill becomes less clear, and thus differentiating normal agency activities from the oil spill-related activities will become increasingly difficult. This is especially true if the future reserve account is set up as an endowment and all of the available funding comes from annual investment income generated from the reserve account and is used almost entirely for research and monitoring and general restoration projects. Therefore, it is important that the council continue its efforts to determine on a case-by-case basis if projects requesting funding are part of normal agency activities.

Large Parcel Land Acquisition Prices Are Often Higher Than Government-Appraised Value

Five of the Trustee Council's nine large parcel land acquisitions have involved paying between 2 and almost 4 times the appraised value for the land (see table 4). Because government and industry appraisal standards require that land be valued on the basis of highest and best use, the appraisers generally determined that the highest and best use of these five large parcels was for speculation purposes, and thus they were valued at relatively low prices. However, the landowners—generally Alaskan Native corporations[9]—were unwilling to accept the government's appraised-value offers. The appraisers representing the sellers of these parcels valued the land much higher because they contended the land contained multiple resources and had development potential. The council, desiring to permanently protect the habitat value of these parcels, agreed to pay higher prices. For lands with timber, the sellers generally agreed with the government's appraisals, and the prices paid by the government were at or near the government-appraised value.

Status of Land Acquisitions

The Trustee Council has identified land acquisition as a principal tool of restoration because it helps minimize further damage to resources and services by protecting the land from development, which allows recovery to continue with the least interference and is consistent with public comments received on the restoration plan. Land acquisition may include

[9]The Alaska Native Claims Settlement Act of 1971 was enacted to settle land claims made by various Alaskan native groups. The act provided for the establishment of 13 regional native corporations and about 200 village native corporations to manage the money and lands offered in the settlement. As a result of the act, several regional and village corporations owned large parcels of land—in Prince William Sound, along the south central coast of Alaska, and on Kodiak and Afognak Islands—that were impacted by the oil spill.

purchase of fee title or restrictive interest, such as short-term or perpetual conservation easements and timber rights. From 1992 through 1994, the council evaluated nearly 1 million acres of land in the spill area for its restoration value. These lands were made up of blocks, or parcels, that include potential habitat conducive to aiding the recovery of fish or wildlife injured or damaged by the spill or services reduced or lost and that may be threatened by development activity, such as logging. These lands were evaluated and ranked according to the benefits the protection would provide to resources injured by the spill. In early 1994, the council began working with willing landowners to develop a list of parcels important to the recovery of injured resources and initiated action to develop a standardized appraisal process to determine a market value for the land interest being acquired.

Through the end of fiscal year 1997, the council had completed actions to acquire about 456,000 acres of land in fee simple and in easements in the spill area at an overall cost of $265 million.[10] Almost all of the acreage was acquired through the purchase of nine large parcels valued at $150 million. The council, however, paid $234 million, or 56 percent more.[11] Table 4 compares the prices paid for the nine parcels and the government-appraised value determined through the approved appraisal process.

[10]The $265 million overall cost to acquire lands includes $187 million disbursed for habitat acquisitions completed by the council as of September 30, 1997, $32 million in future installment payments for completed acquisitions, and $46 million contributed from the criminal settlement funds and other sources to supplement civil settlement funds.

[11]The other $31 million ($265 million less $234 million) represents the interest to be paid on two large parcels, the cost of limited easements on one parcel segment that was not appraised, and the acquisition price for 27 small parcels totaling 3,600 acres, along with acquisition costs such as expenses for appraisals.

Table 4: Comparison Between Prices Paid and Government-Appraised Values for Completed Large Parcel Acquisitions

Dollars in millions

Completed acquisitions	Government appraisal	Price paid for parcel	Difference between appraisal and purchase price
Akhiok-Kaguyak, Inc.	$22	$46	$24
Koniag	8[a]	27	19
Old Harbor	4	15	11
Chenega	15[b]	34	19
English Bay	4	15	11
Kachemak Bay	20	22	2
Orca Narrows	3	3	0
Seal Bay	41	39[c]	–2
Shuyak Island	33	33[c]	0
Total	**$150**	**$234**	**$84**

[a]This is a GAO-computed adjusted value. The original government-contracted appraisal value was estimated at $15 million on the basis of acquiring a total of about 119,000 acres, all fee simple. However, only about 60,000 acres were acquired in fee simple, with the remainder consisting of a limited easement. We therefore reduced the original appraisal estimate to reflect the reduction.

[b]This is a revised appraisal value. The original government-contracted appraisal value was estimated at $9 million. Government review appraisers identified an additional $6 million in "timber value" not included in the original contract appraisal.

[c]Price paid includes the appraised—single cash payment—value. Because these acquisitions include an agreement to pay for the land in installments, interest will be paid on the unpaid balance for these two acquisitions.

Source: Prepared by GAO from the Trust Council's data.

In addition to the nine large parcels, the council has acquired 27 small parcels of land and is in the process of acquiring a number of other large and small parcels, but the sales have not been finalized. The status of the council's habitat acquisition program—including the acreage acquired and pending, agreed prices and offers for land parcels, and funding sources—is shown in appendix III.

Disagreement About Land Values Centered on Lands With No Commercial Resources

Nearly all of the amount paid above government-appraised value was for five parcels that contained little or no single commodity of commercial value, such as timber or minerals.[12] As shown in table 4, together, these five parcels sold for $137 million, compared with a government-appraised value of $53 million.[13] Under government and industry appraisal standards, which require land to be appraised at its highest and best use, where there was no commodity of commercial value, the appraisers generally determined that the land's price should be based on their value as speculative property, which usually results in a lower value than land with a commodity or commercial value. This process resulted in government-appraised values that the sellers were unwilling to accept because the sellers' appraisers valued the land at much higher prices on the basis of its purported multiple resources and development potential. By contrast, for the four parcels in which timber was an identifiable commercial commodity, the price paid by the government was at or near the government-appraised value because the sellers agreed with the commercial market value estimated by the government's appraisers.

To determine why the government paid more than the government-appraised value in these five instances, we selected three parcels to examine in more detail. We selected these parcels because they were all located on the same island and within close proximity to one another, which minimized the travel time and cost needed to visit them. Our purpose in analyzing these transactions was to determine why the council paid more than the government-appraised price; we did not review and evaluate the appraisal processes or the assumptions used to determine the appraised values on either the government's or seller's side. The three parcels—Akhiok-Kaguyak, Koniag, and Old Harbor—are on the south end of Kodiak Island, a sparsely populated island comprising 3,620 square miles and containing mountains, alpine lakes, and some 400 rivers and streams providing a world-class habitat for salmon and about 3,000 Kodiak brown bears. Two-thirds of the island is a federal wildlife refuge. The three parcels represent more than one-half of the total acreage acquired by the council and about one-third of the total acquisition cost. The council paid 2-1/2 times the government appraisal value for these three large

[12]These five parcels include Akhiok-Kaguyak, Koniag, Old Harbor, Chenega, and English Bay. Acquisition involved about 360,000 acres, including lands acquired in fee title and lands protected with conservation easements.

[13]As pointed out in table 4, the original government contract appraisal for two of the five parcels was adjusted. As described, the appraised value for Chenega was revised by government review appraisers to include the value of timber not included in the contracted appraisal, and we adjusted the appraised value for Koniag to reflect the acquisition of title to fewer acres than included in the contracted appraisal.

parcels—about $88 million, compared with an appraised value of $34 million. The eventual purchase price was determined through negotiations between the council's authorized negotiators and the sellers.

We discussed the appraisal process with the appraiser who conducted the government appraisals, reviewers who verified the appraisals, lawyers and corporate officials who represent two of the native corporation landowners, and Trustee Council officials. Their comments reflect widely different perspectives about the value of the land.

•The government appraisers who reviewed the contractor-prepared appraisals said that the appraisals were approved as meeting uniform appraisal standards for valuing such property[14] and represented fair market value for the land. The overall conclusion of the appraisal reports was that the land held little economic value and that the single and best use of the land was to hold it for speculation; the reports assigned a value of about $8 million for Koniag lands, about $4 million for the Old Harbor lands, and about $22 million for the Akhiok-Kaguyak lands.

•The sellers said that under no circumstances were they willing to accept the government's appraised value as the fair market value for the land. The sellers conducted their own appraisals, which identified the highest and best use as commercial activities and conservation management, and established a value of about $54 million for the Koniag lands,[15] $19 million for the Old Harbor lands, and $88 million for the Akhiok-Kaguyak lands. The basis for these appraisal values was that the land contained multiple resources, such as rivers, lakes, and world-class salmon, as well as its existing commercial and developmental potential. Government appraisers said that under the Uniform Appraisal Standards for Federal Land Acquisitions they were prevented from using noneconomic-value factors in appraisals.

When the native corporations rejected the Trustee Council's appraised price, the council's negotiators began negotiations with the corporations to establish an agreed-upon price for the land. These agreed on prices were $27 million for Koniag, $15 million for Old Harbor, and $46 million for Akhiok-Kaguyak. The final prices represented a higher amount than the

[14]Uniform Appraisal Standards for Federal Land Acquisitions, Interagency Land Acquisition Conference (1992).

[15]The appraised value provided to us for Koniag was $101 million for fee title to 113,000 acres. Since only about 60,000 acres were acquired in fee title, with the remainder under a limited-term easement, we adjusted the original appraisal to reflect the reduction in fee title land acquired.

government-appraised value and a lower amount than the appraisal amounts provided by the native corporations. According to council resolutions confirming the agreements reached with the native corporations, the council believed it was appropriate to pay more than the government-appraised value for these particular parcels because the land provided exceptional habitat for promoting recovery of natural resources and because the council wanted to prevent any possible degradation of this habitat.

The three parcels were originally part of the national wildlife refuge prior to being selected by the native corporations in the 1970s under the Alaska Native Claims Settlement Act of 1971. Each of the deeds for these parcels contains two conditions relating to the sale and use of the land, which appear to provide a degree of protection from development and some restrictions on how the land can be used. First, if the land was ever sold, the United States had the right of first refusal. This means that if a landholder had a bona fide offer, the United States has the option to step in and purchase the land for the price and terms included in the offer. Second, the land was subject to the laws and regulations governing the use and development of the refuge.[16] However, Interior officials believe these protections and restrictions are difficult to act upon. For example, the federal appropriations process makes it generally impossible to exercise the right of first refusal, because funds must be available to match a sale price within 120 days. Second, some "compatible" use and development are permitted in refuges, and enforcement of prohibitions against uses and development deemed noncompatible is difficult because compatible has never been defined in federal regulations. Interior officials believe that the acquisitions provided a degree of protection and public access not available under the regulatory process.

[16]These provisions were contained within the Alaska Native Claims Settlement Act of 1971, the law under which the native corporations had become owners of these parcels. Under this law, Alaska natives received the right to select parcels in settlement of their aboriginal claims upon the land. A provision in the law required native corporations to select parcels near their native villages. All the land near native villages on the south end of Kodiak Island was already within the existing Kodiak National Wildlife Refuge.

Public Participation Process for Land Acquisition Similar to the Process for Other Restoration Activities

The public participation processes followed by the Trustee Council for acquiring land and approving other restoration activities such as monitoring, research, and general restoration projects are similar. Each follows the guidance in the restoration plan, which calls for meaningful public participation at all levels of the decision process. Public involvement in council decisions on monitoring and research and general restoration projects are linked to an annual work plan cycle with distinct and predictable opportunities for public input. However, public involvement in council decisions on land acquisitions depends on negotiations between buyer and seller with less predictable opportunities for public input. Given these distinctions, we found that the council provides adequate and ample opportunity for public review and comment for both land acquisition decisions and for restoration projects.

Public Participation Process for All Restoration Activities Follows Guidance in the Restoration Plan

The 1994 restoration plan developed by the Trustee Council emphasizes a commitment to include meaningful public participation in all restoration activities. To meet this objective, the Trustee Council has taken steps to involve the public in council decisions by (1) opening most meetings to the public; (2) including a public comment period during meetings that are usually linked by telephone to sites in the spill area; (3) making transcripts of the meetings as well as all project reports available through libraries throughout the state; and (4) publishing and disseminating documents proposing monitoring, research, general restoration, and land acquisitions for public review and comment before council decisions are finalized. In deciding on monitoring, research, and general restoration projects, the council follows an annual planning process that includes a public call for project proposals, the review of proposals by the Chief Scientist and peer reviewers, a legal and policy review, a draft plan distributed for public comment, a public hearing on the draft plan and review by the Public Advisory Group, and final selection of projects to be funded for the year. The process has a beginning point and an end point, and the dates for each milestone are published and made available to the public. In contrast, council decisions on land acquisition do not follow an annual cycle. For example, while the council has published a list of lands under consideration for acquisition within the oil spill area, there is no timetable for decision points because they are dependent on variables such as the completion of appraisals and negotiations with the sellers.

Numerous Opportunities Provided for Public Review and Comment Regarding Land Acquisitions

The Trustee Council disseminates information about the status of land acquisitions and solicits public input about acquisitions being negotiated or considered in a number of ways. The council highlights land acquisition status and future actions in numerous publications available to the public, including a "Restoration Update Newsletter"—published six times per year since 1994; an annual status report to the public; and an annual work plan, which contains a segment on land acquisitions. All of these publications are available in the state library system, and the council has recently added a web site on the Internet that provides summary information about land acquisition. In addition, according to the Executive Director, land acquisition status is included as an agenda item at most council meetings, which are open to the public. The agendas are advertised in advance in newspapers and on the radio, and time during the meetings is devoted to hearing public comment on planned land acquisition actions. In addition, the Executive Director told us that once the council approves an offer made to acquire land, there are additional opportunities for public review and comment before the acquisition is finalized, which usually takes an additional 3 to 4 months to draft and sign a purchase agreement, clear the land title, and close the deal. Also, when land title goes to the state, the Alaska legislature must appropriate the funds for the acquisition; public notice of these meetings is made and they are open for public comment. In those instances when title goes to a federal agency, the Alaska congressional delegation staff are briefed by council staff or by representatives of Interior or Agriculture—the two federal agencies that sponsor various land acquisitions and that eventually take title to the acquired lands.

In addition to the public participation opportunities provided through Trustee Council publications and public meetings, additional opportunities exist for public input. For example, most of the large parcel land acquisitions involve native corporations that answer to shareholders. According to the attorneys for one of the native corporations, state law requires that anytime a native corporation sells or disposes of a "substantial" share of its assets, the shareholders must be fully informed, and the sale must be approved by its shareholders.[17] For the three Kodiak Island large parcel sales, we found that in only one case (Akhiok-Kaguyak) did the corporation decide it was required by law to have the shareholders approve the sale because the sale resulted in the disposition of a substantial share of the corporation's assets. However, for the sale of both Akhiok-Kaguyak and Old Harbor Native Corporation, the shareholders voted overwhelmingly to approve the sales (though the approval was not

[17]The amount or percent that represents substantial is not defined in state law.

required for the latter). In addition, Koniag held a meeting to inform shareholders about the sale.

We reviewed many of the written comments received by the council from the public and special interest groups on the large parcel acquisitions—particularly the acquisitions on Kodiak Island. The vast majority of the comments support the land acquisition program and individual acquisitions.

Return on Settlement Funds Could Be Increased

Independent auditors hired by the Trustee Council have noted two opportunities for increasing the return on Exxon settlement funds. One opportunity involves using electronic transfer procedures, rather than the current process, which includes writing checks, when disbursing funds from the joint trust account to the federal and state accounts for council-approved uses. Another opportunity is to invest Exxon settlement payments with an organization that charges lower management fees. In addition, the rate of return on investments may be higher elsewhere.

Civil Settlement Funds Invested in Court System Account

Under the terms of the memorandum of agreement, annual Exxon settlement payments (excluding the $158 million in reimbursements paid directly to the federal government and the state of Alaska and the $40 million Exxon credit) are deposited into a joint interest-bearing trust account. This account entitled the Exxon Valdez Oil Spill Settlement Account is held in CRIS and is administered through the U.S. District Court for the Southern District of Texas. The settlement account was established specifically for receiving, depositing, investing, disbursing, and managing all nonreimbursement payments from the Exxon civil settlement. There are two main accounts within the settlement account—the liquidity account and reserve fund account. Funds held in the liquidity account are disbursed to the federal government and Alaska with the unanimous approval of the Trustee Council, and a court order, to pay for council-approved uses, such as natural resource restoration and protection activities. Funds disbursed to the federal government are deposited in the U.S. Department of the Interior, Fish and Wildlife Service, Natural Resource Damage Assessment and Restoration Fund, where they are invested and paid out to federal agencies as needed. Funds disbursed from CRIS to Alaska for approved restoration activities are deposited in the State of Alaska, Exxon Valdez Oil Spill Settlement Trust. Pursuant to state law, expenditures of trust funds by a state agency must be in accordance with an appropriation made by law.

In addition to the liquidity account, the council established a reserve fund account in February 1996—within CRIS—as a savings account for future restoration activities. The council plans to place up to $12 million into the reserve fund annually for 9 successive years. The goal of the reserve fund is to have money available to finance a long-term restoration program after the last payment from Exxon. The reserve funds are maintained within CRIS and are invested in U.S. government Treasury securities, with maturity dates ranging from fiscal year 1997 through fiscal year 2002. The council expects the reserve fund to be worth about $140 million, including interest, in 2002.

Initiating Wire Transfers Will Increase Revenues

When the Trustee Council needs to fund its operation in accordance with the memorandum of agreement, the Department of Justice and the Alaska Department of Law petition the U.S. District Court, District of Alaska, in Anchorage to have money transferred from the CRIS liquidity account to the federal government and the state of Alaska. The court clerk in Houston transfers funds to the court in Anchorage. The court clerk in Anchorage then issues checks to the state or federal government. The council's independent auditors have noted in their annual reports that because of the administrative procedures involved, there is a time lag of at least 7 days between when the funds are liquidated in the CRIS account and when checks written against those funds are reinvested in interest-bearing trust funds maintained by the federal and state governments. During this time, the liquidated funds do not earn interest. The auditors estimated that interest lost due to the time lag totaled approximately $242,000 for the 3-year period fiscal years 1995 through 1997.[18] We can not estimate how much could be lost over the next 5 years through fiscal year 2002 when the settlement account is expected to be fully liquidated. However, we believe a similar rate of loss is likely.

Electronic transfer of funds directly into federal and state accounts from Houston could solve the problem. The Anchorage court clerk does not currently have the ability to transfer funds electronically; however, the Houston clerk does. The auditors said that it appears the Houston court clerk could make the electronic transfers directly from Houston after receiving a voucher from the Anchorage clerk initiating the transfer. In this manner, the Anchorage court would continue to control the disbursement process. During our review, we contacted the clerk of the U.S. District Court in Anchorage to determine if there was anything that

[18]Losses due to transfer inefficiencies prior to 1995 were not estimated because independent audits were not conducted for those years.

the council could do to initiate an electronic fund transfer system. The clerk told us that an official of the U.S. Court Administrative Office in Washington, D.C., could make the decision to allow the electronic transfer of funds. Subsequently, we contacted the council's Executive Director, who said she would initiate action to resolve the problem.

Moving Settlement Funds Outside of CRIS Will Reduce Expenses

The Trustee Council's auditors also recommended that the council identify whether there are other, more advantageous, entities outside of CRIS in which to place the Exxon settlement funds. The auditors' opinion is that the fees charged by CRIS on the liquidity and reserve accounts are excessive and greatly exceed the costs incurred in administering the funds. The council's Administrative Officer told us that fees for managing these funds outside of CRIS could be significantly less. She said, for instance, the state would charge about $24,000 a year to manage both the liquidity and reserve accounts, whereas during fiscal year 1997 CRIS charged the Trustee Council about $258,000 in fees for managing just the liquidity account. In addition, accrued management fees for the reserve account were about $181,000 for a total of about $439,000.

A state of Alaska study of potential investment options conducted for the Trustee Council showed that the council could also earn a higher rate of interest income on liquidity and reserve accounts if they were invested outside of CRIS. The amount of income would depend on the types of investments and the amount of risk the settlement agreement would allow. Department of Justice lawyers told us that legislation could be enacted to permit the deposit and investment of funds outside CRIS and the Treasury. The legislation would have to consider (1) the status of the fund as a federal court-administered fund and (2) the different parties involved in the fund's operation—the federal government, the state of Alaska, and the federal and state trustees. According to Justice lawyers, such a statute could authorize depositing trust funds into appropriate accounts outside the Treasury provided that the government and Alaska receive court permission to do so. The legislation would require the trustees to determine that the classes of investments have a high degree of security and reliability.

Conclusions

The Trustee Council's management of the Exxon Valdez oil spill civil settlement funds is more effective today than when we last reported on this issue in 1993. However, one issue discussed in our 1993 report—that some research projects were being funded that might not be directly

linked to the oil spill or which appeared to duplicate normal agency responsibilities—continues to be an issue today. One of the options for the future reserve account being discussed by the council is to set up an endowment in which all or part of the available annual funding for research and monitoring projects will come from annual investment income. Because the funding of projects from the reserve account will not begin for several more years, the linkage of proposed projects directly to the 1989 oil spill and the differentiation of normal agency mission activities from oil spill-related activities will become more difficult. As a result, it is important for the Trustee Council, especially if a reserve is established, to continue to review the restoration projects on a case-by-case basis to ensure that each project is directly tied to the oil spill and that the project is not part of an agency mission activity.

Also, if the Trustee Council does adopt the option of making the reserve an endowment, increasing net return on the fund's principal and minimizing management fees will result in more funds being available annually for restoration activities. The independent auditors of the Trustee Council noted that using electronic transfer procedures when disbursing funds could increase interest income, and placing the settlement into a different account could result in lower management fees.

Recommendation

To increase the amount of settlement funds available for future restoration activities, we recommend that the Trustee Council review ways such as those identified by the Trustee Council's independent auditors to minimize management fees and maximize net returns without compromising the security and reliability of the investment returns.

Agency Comments and Our Evaluation

We provided a draft of this report to the Trustee Council and the Departments of the Interior and Justice. The Trustee Council and Interior agreed with the overall findings of the report. The Trustee Council also fully concurs with the report's recommendation. Interior did not comment on the recommendation. The Trustee Council and Interior had some suggestions or technical clarifications to the report, which we incorporated where appropriate. The Trustee Council's and Interior's comments are contained in appendixes V and VI, respectively. The Department of Justice had some technical clarifications to the report, which we incorporated where appropriate.

The Trustee Council disagreed with our statement that the funding of three research projects identified in the report—regarding sockeye salmon, killer whale, and pink salmon—appear questionable because the projects may not be sufficiently linked to the oil spill or should be considered part of a federal or state agency's existing mission. The council believes that the files and deliberations on these projects document the rationale and linkage to the oil spill. As stated in the report, parties involved in the Trustee Council review process have disagreed over whether these three studies fall within the restoration plan guidance and should be funded. Because of the disagreement between the various parties, we relied on the judgment of the Chief Scientist and his peer reviewers, who are charged with providing an independent review of all proposed monitoring, research, and general restoration projects. Because the Chief Scientist and the peer reviewers have questioned the funding of these three projects, we continue to believe that some projects are being funded that may not be directly linked to the oil spill or that appear to duplicate normal agency responsibilities. It should be noted that the Trustee Council agreed that this is an important issue and that the council should continue to review restoration projects on a case-by-case basis.

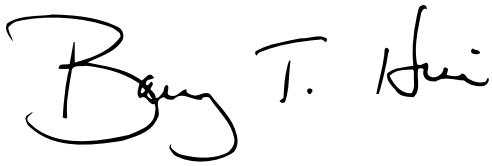
Scope and Methodology

To conduct our review, we visited the Exxon Valdez Trustee Council office in Anchorage, Alaska, reviewed council files, and met with various members of the council and its staff. We also met with various federal and state agency officials, including the Departments of the Interior and Justice, who were involved in various activities relating to the oil spill. We reviewed various documentation, including the memorandum of agreement between the federal government and Alaska and the Trustee's Council restoration plan, which, in essence, represents the council's implementing policies for carrying out council activities. Our work was performed from February through July 1998 in accordance with generally accepted government auditing standards. Appendix IV describes the scope and methodology of our review in greater detail.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days. At that time, we will provide copies to the Secretaries of Agriculture, Commerce, and the Interior; the Attorney General, Department of Justice; the Executive Director and the members of the Trustee Council; and other interested parties. We will also make copies available to others upon request.

Please contact me at (202) 512-3841 if you have any questions. Major contributors to this report are listed in appendix VII.

Sincerely yours,



Barry T. Hill
Associate Director, Energy,
Resources, and Science Issues

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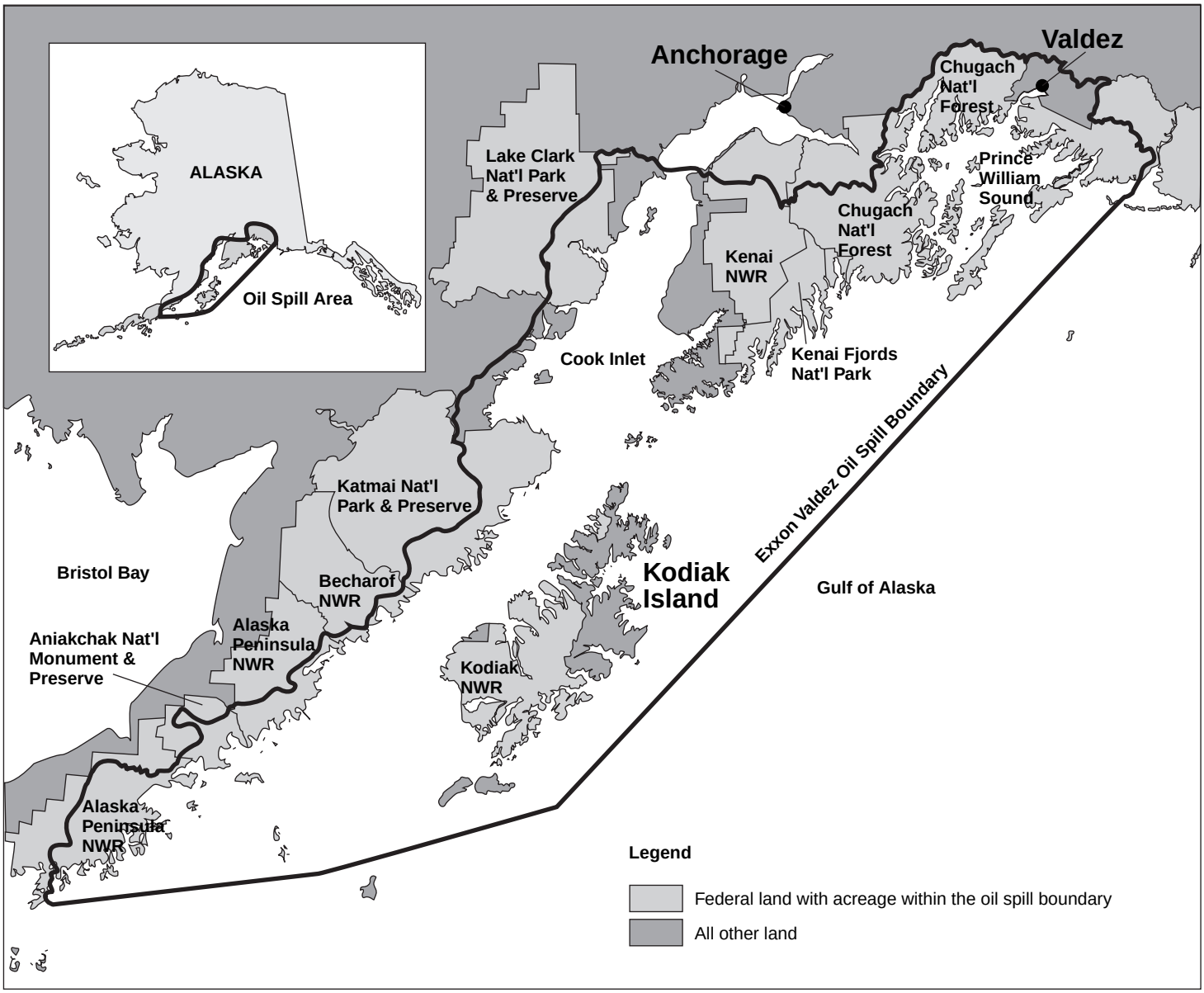
Abbreviations

CRIS	Court Registry Investment System
DOJ	Department of Justice
EPA	Environmental Protection Agency
GAO	General Accounting Office
NRDA&R	Natural Resource Damage Assessment and Restoration Fund

Oil Spill Boundary Defining the Area Affected by the Exxon Valdez Oil Spill and Federal Lands Located Within the Boundary



Source: Alaska Department of Natural Resources.

The Exxon Valdez oil spill occurred in Prince William Sound south of the port of Valdez, Alaska. The oil spread in a south westerly direction entering the Gulf of Alaska and contaminating an area, including the Kenai Peninsula, Kodiak Island, southern Cook Inlet, and the Alaska Peninsula. The area enclosed within the oil spill boundary represents the maximum extent of oiled shoreline, affected communities, and adjacent uplands providing habitat for injured resources.

Summary of Civil Settlement Funds Received by Federal Agencies and the State of Alaska Through September 30, 1997

Dollars in millions

Organization	Reimbursement for oil cleanup/ damage assessment	Monitoring and research[a,b]	General restoration[a,b]	Habitat protection[a,c]	Science management information and administration	Total[a]
Department of Agriculture	$19	$3	$2	$32	$ 4	$60
Department of Commerce	18	14	2	[d]	1	35
U.S. Coast Guard	16	[d]	[d]	[d]	[d]	16
Department of the Interior	12	10	1	83	1	107
EPA	4	[d]	[d]	[d]	[d]	4
Total U.S. government	**69**	**27**	**5**	**115**	**6**	**222**
Total state of Alaska	**89**	**63**	**21**	**72**	**14**	**259**
Exxon[e]	**40**	**[d]**	**[d]**	**[d]**	**[d]**	**40**
Grand Total	**$198**	**$90**	**$26**	**$187**	**$20**	**$521**

[a]Totals may not add because of rounding.

[b]Of the $116 million received by the federal agencies and Alaska for monitoring and research and general restoration activities, $31 million was further passed on to such third parties as universities, independent contractors, and private nonprofits.

[c]Of the $187 million, $180 million was passed on to landowners from whom land title or conservation easement is acquired; management of the acreage acquired remains with the sponsoring federal agency or Alaska.

[d]Not applicable.

[e]Credit to Exxon for cleanup work relating to the oil spill.

Trustee Council Habitat Acquisitions: Acreage Acquired and Pending, Agreed Price and Offers, and Funding Sources

Parcel description	Total acreage	Fee title	Less than fee	Total price	Trustee Council contribution from civil settlement[a]	Other contributions from: Federal criminal settlement	Other contributions from: Other sources
Large parcel acquisitions completed							
Akhiok-Kaguyak, Inc	115,973	73,525	42,448	$46,000,000	$36,000,000	$10,000,000	0
Chenega	59,520	37,236	22,284	34,000,000	24,000,000	10,000,000	0
English Bay	32,537	32,537	0	15,371,420	14,128,074	1,243,346	0
Kachemak Bay	23,800	23,800	0	22,000,000	7,500,000	0	$14,500,000[b]
Koniag	118,710	59,674	59,036	28,500,000	21,500,000	7,000,000	0
Old Harbor	31,609	28,609	3,000	14,500,000	11,250,000	3,250,000	0
Orca Narrows	2,052	0	2,052	3,450,000	3,450,000	0	0
Seal Bay	41,549	41,549	0	39,549,333	39,549,333	0	0
Shuyak Island	26,665	26,665	0	42,000,000	42,000,000	0	0
Subtotal	**452,415**	**323,595**	**128,820**	**245,370,753**	**199,377,407**	**31,493,346**	**14,500,000**
Acquisitions pending							
Tatitlek	69,814	32,284	37,530	34,550,000	24,550,000	10,000,000	0
Offers accepted							
Afognak Joint Venture	41,750	41,350	400	70,500,000	70,500,000	0	0
Eyak	75,425	55,357	20,068	45,000,000	45,000,000	0	0
Subtotal	**117,175**	**96,707**	**20,468**	**115,500,000**	**115,500,000**	**0**	**0**
Large Parcel Total	**639,404**	**452,586**	**186,818**	**395,420,753**	**339,427,407**	**41,493,346**	**14,500,000**
27 small parcel acquisitions completed	**3,560**	**3,560**	**0**	**12,877,700**	**12,877,700**	**0**	**0**
11 small parcel acquisitions pending	**3,760**	**3,760**	**0**	**8,174,400**	**7,703,400**	**430,000**	**41,000[c]**
Grand Total	**646,724**	**459,906**	**186,818**	**$416,472,853**	**$360,008,507**	**$41,923,346**	**$14,541,000**

[a]The Trustee Council's contribution does not include about $7 million for parcel evaluation and support costs which could not be broken out on an individual parcel basis.

[b]Consists of $7 million from the Exxon criminal plea agreement and $7.5 million appropriated by the state as a result of a civil settlement with Alyeska Pipeline Service Company.

[c]From the city of Homer.

Scope and Methodology

To determine how much Exxon had paid toward the total $900 million civil settlement through September 1997 and to whom these funds were disbursed, we visited the Exxon Valdez Trustee Council office in Anchorage, Alaska, and reviewed council files, including financial reports and independent audits of the council's operation. We did not independently verify the accuracy of the financial reports provided by the council. We also reviewed the settlement agreement, the memorandum of agreement, the council's court requests for release of funds from the joint federal/state trust account, the council's annual status reports, and other reports that documented Exxon's payments and the disbursement of those funds. In addition, we interviewed the Executive Director of the Trustee Council, council staff, and Department of Justice officials in Anchorage and in Washington, D.C.

To determine whether the council has funded activities that may not be consistent with the memorandum of agreement, we examined the requirements of the agreement for funded projects as well as the council's implementing policies, such as the restoration plan. We reviewed annual draft and final work plans to determine which projects were proposed and actually funded. We also reviewed the council's habitat acquisition plans and the minutes from council meetings. We interviewed the council's Executive Director, federal and state council members, the council's Chief Scientist, and Justice officials to gather data on individual funded projects. We also compared some of the projects we reported on in our 1993 report with those continuing to receive funding. Because the scope of our review was to review expenditures approved by the Trustee Council, we did not examine in detail how the federal government and Alaska expended the $125 million the court assessed Exxon in criminal fines and penalties.

To determine how the prices paid for land acquisitions compare with government land appraisals and whether the public participation process for the habitat protection acquisition program is similar to the public participation process for other types of restoration actions, we reviewed the council's habitat acquisition plans for both large and small acquisitions; government appraisal documents that describe the appraisal process; council documents that show the location, acreage, type of property acquired for each acquisition, the government appraisal value, and the amount paid for each parcel. We also reviewed and compared documents describing the public participation process for both habitat acquisitions and for the other restoration activities, as well as interviewing the council's Executive Director, council members, and the public advisory group Chairman to determine habitat acquisitions and the public

participation process. To gain more detailed data on prices paid for selected land acquisitions and the public participation process, we visited three large parcel acquisitions (Akhiok-Kaguyak, Koniag, and Old Harbor) on Kodiak Island to discuss these matters with Department of the Interior officials, whose Department sponsored these acquisitions; as well as the President of one of the native corporations who negotiated and sold property to the council. We did not review and evaluate the appraisal processes or the assumptions used to determine the appraised values on either the government's or seller's side. Our purpose in analyzing these transactions was to determine why the council paid more than the government-appraisal price.

To determine if trust funds are being invested to maximize the returns available to the trust, we reviewed the memorandum of agreement which, among other things, describes how settlement payments are to be handled, documents describing the Court Registry Investment System in which the joint trust account is maintained, council financial reports, and independent auditors' reports that recommended changes to the current investment system to maximize returns. We also interviewed the Clerk of the U.S. District Court in Anchorage, officials with the Department of Justice to determine how settlement funds could be invested outside of the registry system, and the Chief Investment Officer for the Alaska State Department of Revenue (Treasury Division) about the costs and returns of managing state investment accounts similar to the Exxon Valdez Joint Trust Account. We also reviewed a study of investment options prepared by the Department of Revenue for the Trustee Council, which describes potential returns on investment if money were invested outside of the court registry system. Our work was performed from February through July 1998 in accordance with generally accepted government auditing standards.

Comments From the Trustee Council

Exxon Valdez Oil Spill Trustee Council

645 G Street, Suite 401, Anchorage, AK 99501-3451 907/278-8012 fax: 907/276-7178

July 17, 1998

Barry T. Hill
Associate Director
Energy, Resources and Science Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Hill:

These comments on your draft report, "Status of Payments and Use of *Exxon Valdez* Oil Spill Settlement Funds," are offered on behalf of the entire *Exxon Valdez* Oil Spill Trustee Council. We appreciate being given the opportunity to comment on this draft.

Now on p.7.

In general, the Trustee Council supports the overall findings of this draft report. We appreciate the fact that you have noted that issues identified in an earlier GAO report have all been addressed (p. 9). Many programmatic improvements have been made and we are very proud of the program that has been developed by the Council over the past seven years. Certainly, there has never been a settlement this large, or an injury to the environment of such magnitude and complexity, resulting in some inevitable delays in getting a program fully operational. As noted in the GAO report, the settlement calls for meaningful public involvement. While extensive public involvement has slowed the process, we feel that overwhelming public support for the restoration program provides ample justification for careful development of the program and clear evidence of the Trustee Council's success in meeting its trust responsibilities.

Now on p. 23.

The draft report notes that the Council's management of the settlement funds "appears more effective than when we last reported on this issue" (p. 30). We believe the abundant documentation provided to the GAO amply demonstrates more than just an appearance of effective management and we are now confident that the *Exxon Valdez* settlement process can serve as a model for other similar efforts throughout the nation. Accordingly, the statement on p. 30 should be substantially strengthened.

Now on p. 23.

Now on p. 10.

Status of distribution of funds. We believe it is important to note on p. 12 in the paragraph headed "Council-approved projects" that of the $323 million disbursed by the Trustee Council to federal and state agencies, $187 million was for habitat protection, virtually all of which has been passed on to private landowners. Of the

$116 million spent for monitoring, research and general restoration projects, $31 million has gone to non-agency entities such as universities, independent contractors, and private non-profits. The Trustee Council is pleased that while the general public benefits from the protection of valuable habitat and improved scientific understanding of the injured resources, it has also been possible to use the vast majority of settlement funds in a manner that has economic benefits for the private sector.

Now on p. 2.

Now on p. 11.

Projects consistent with *Restoration Plan*. The draft report states (p. 3) that "a few monitoring and research projects have been funded" even though they "appear questionable and have generated disagreement in the review and approval process." The draft report specifically identifies three projects (sockeye salmon, killer whales and pink salmon genetics) and suggests that (p. 13) they "may not" be sufficiently linked to the oil spill or are projects that should not have been funded because they "would be funded under normal agency mission activities." We do not agree. While the record reflects debate about these three projects, we believe that the files and deliberations on these projects document the rationale and oil spill linkage.

Now on p. 12.

Respecting "normal agency management, the *Restoration Plan* states that "government agencies will be funded only for restoration projects that the agencies would not have conducted had the spill not occurred." The *Restoration Plan* further clarifies that "this policy addresses the concern that restoration projects should not support activities that government agencies would do anyway." (*Restoration Plan*, p. 17) We note that virtually every project the Council has funded could arguably be considered part of a federal or state agency's existing mission. In fact, the Trustees for the most part were chosen because of their management authorities and responsibilities for the public's natural resources. However, while the three projects noted may also fall generally within an agency's mission, they were funded by the Trustee Council for the specific purpose of addressing issues and impacts resulting from the 1989 oil spill that were not being addressed by the agencies and are thus not "normal agency activities."

As indicated in the draft report, the issue of "normal agency activities" was raised in the 1993 GAO audit. We agree with the current audit's conclusion that this continues to be an important issue and that the Trustee Council should "continue to review the restoration projects on a case-by-case basis to ensure that each project is directly tied to the oil spill and that the project is not part of an agency mission activity." At the request of both the Trustee Council and the Public Advisory Group, substantial effort was made in 1995 to develop further criteria to help define what constituted "normal agency management" in order to supplement the existing *Restoration Plan* policy and provide more guidance in the review process. However, after extensive review no further criteria could be found that improved the guidance to the satisfaction of the Council and the PAG. Both bodies concluded that there was no perfect, all-encompassing definition of normal agency management, and thus directed staff to increase its review of individual projects on a case-by-case basis. This has been done and continues to this date.

Management of Settlement Funds. We fully concur with the GAO's recommendation regarding the need "to minimize management fees and maximize net returns without compromising the security and reliability of the investment returns." This issue has been the focus of considerable effort by the Council over the past two years and, during the audit process, the Council strongly promoted attention on this issue by the GAO. The major change needed -- to withdraw the settlement funds from the U.S. Treasury -- has been the most problematic since it requires Congressional action. We are hopeful that we will be able to achieve this without compromising the integrity of the settlement itself. We continue our efforts to implement electronic transfers, and continue to find ourselves frustrated by the court system bureaucracy. We hope that the added attention provided by the GAO's recommendation will help us resolve this matter.

In reviewing the draft report we have identified a number of additional technical errors or suggested clarifications. We have noted these in a marked up draft that has been sent separately.

Again, we appreciate the opportunity to provide these comments and also the opportunity to explain in detail our program to your excellent team of auditors.

Sincerely,

Molly McCammon
Executive Director

cc: Trustee Council
U.S. Department of Justice

MM/ty

Comments From the Department of the Interior

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 20 1998

Mr. Barry T. Hill
Associate Director, Energy
Resources, and Science Issues
U.S. General Accounting Office
441 G Street, NW, Room 2T23
Washington, DC 20240

Dear Mr. Hill:

Thank you for the opportunity to review and comment on your draft report entitled, "Natural Resources Restoration: Status of Payments and Use of Exxon Valdez Oil Spill Settlement Funds" (GAO/RCED-98-236).

The Department of the Interior agrees with the findings in the Report. We do, however, offer the following comment for clarification.

The first sentence of the Conclusion reads, "The Trustee Council's management of the Exxon Valdez Oil spill civil settlement funds appears more effective today than when we last reported on this issue in 1993." This sentence is rather mild given the fact that the management of the EVOS funds is substantially more effective, as proven by the audit. We suggest that the sentence be reworded to match the content of the audit by stating that the management "is" more effective, or appears "substantially" or "significantly" more effective.

Thank you for the opportunity to provide comments on the Report.

Sincerely,

John Berry
Assistant Secretary for
Policy, Management and Budget

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