

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

WILLIAM D. BRIGHTON
Assistant Section Chief
Environmental Enforcement Section

ERIKA M. ZIMMERMAN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115
Telephone: (206) 526-6608
Facsimile: (206) 526-6665
Email: erika.zimmerman@usdoj.gov

ATTORNEYS FOR THE UNITED STATES

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 EXXON CORPORATION, EXXON SHIPPING)
 COMPANY, and EXXON PIPELINE COMPANY,)
 et al., in personam, and the T/V EXXON VALDEZ,)
 in rem,)
)
 Defendants.)
 _____)

No. 3:91-CV-0082 Civil (HRH)

**STATUS REPORT BY THE
UNITED STATES AND THE
STATE OF ALASKA**

The United States and the State of Alaska (the “Governments”) jointly file this Status Report regarding the Reopener provision of the Consent Decree (“Reopener”).¹

1. As the Governments described in their September 28, 2012 Status Report, Docket No. 412, the Governments’ “Comprehensive Plan for Habitat Restoration” (“Plan”), submitted to Exxon pursuant to the Reopener in 2006, contemplated a multi-phase restoration project beginning with work designed to provide information needed to refine the Governments’ plan for addressing the lingering oil remaining in the subsurface of beaches in Prince William Sound and the Gulf of Alaska. The initial phases included (a) the development of a predictive model for identifying with greater precision the locations and the extent of lingering oil – a project which was completed in 2010; and (b) ascertaining whether bioremediation technologies could effectively accelerate the natural processes of degradation and dispersal of lingering oil – a project for which the analysis and final report is expected to be completed by early next year, as described below.

2. During the summer of 2012, additional field work was completed for the pilot study, initiated in 2011, to test the feasibility of accelerating the biodegradation of oil through the application of nutrients and oxygen to subsurface sediments. In addition, twenty-three beaches were visited and evaluated, from an engineering perspective, to determine their suitability as candidates for bioremediation using subsurface injection of oxygen and nutrients. We reported in September 2012 that the final report of this work was due to the *Exxon Valdez* Oil Spill Trustee Council (“EVOSTC”) by April 15, 2013. The analysis of the data obtained from the field work, however, was delayed significantly due to unforeseen contracting issues, and is

¹ The Consent Decree between the United States, the State and Exxon was approved by this Court in both this case filed by the United States against Exxon and the State’s case against Exxon (3:91-cv-0083 (HRH)).

expected to resume within the coming month. The final report for this project is scheduled to be submitted to the EVOSTC at the end of January 2014.

3. The Governments have also been continuing their evaluation of the effects of lingering oil on wildlife, including sea otters and harlequin ducks. Below is a summary of developments regarding the wildlife studies since the September 28, 2012 status report:

- a. The project to examine the exposure of harlequin ducks to residual *Exxon Valdez* oil continued with sampling of harlequin ducks again in March 2013 to test for exposure to oil. The samples are currently undergoing lab analysis. As previously reported, a report based on sampling data through March 2011 was submitted to the EVOSTC at the end of September 2011. (Esler, D, 2011. Nearshore Synthesis: sea otters and sea ducks (amendment), *Exxon Valdez* Oil Spill Restoration Project Final Report (Project 11100808), Centre for Wildlife Ecology, Simon Fraser (published on the EVOSTC website at http://www.evostc.state.ak.us/Projects/ProjectInfo.cfm?project_id=2186).
- b. The data and analysis from the aerial surveys of the sea otter population abundance in Western Prince William Sound and Knight Island conducted in June 2011 is undergoing peer review and will be published on the EVOSTC website following that process. Another set of aerial surveys of the sea otter population abundance in Western Prince William Sound and Knight Island was conducted during July of 2012. The analysis of the 2012 data is currently underway.
- c. Surveys aimed at counting beachcast sea otter carcasses occurred in April to May of 2012. The age-at-death information from the carcasses is still in the

process of being analyzed to ascertain the age distributions of dead otters, which is used to determine survival rates by age class within the population.

- d. The studies of the effects of oil exposure on long-term survival of sea otters are also still continuing. Sixty sea otters were captured and sampled in Western Prince William Sound in July of 2012. Analyses of the blood samples of those otters are underway. These analyses are aimed at evaluating continuing exposure and health of sea otters. A report on this work was due to the EVOSTC in April 2013 but has been delayed until Fall 2013, pending sample analyses. Peer review of the report will follow. The histopathology studies of archived sea otter livers are also continuing, and analysis of data from samples is still underway.

4. In addition, work has continued on the effort to synthesize the results of the lingering oil modeling effort with data on the abundance and intertidal use of sea otters and harlequin ducks as well as data obtained on the measures of exposure and health of those and other nearshore vertebrate species that are still recovering from the *Exxon Valdez* Oil Spill. This work is aimed at determining whether there are spatial linkages between the distribution of lingering oil within Prince William Sound and the distribution of those species, taking into account the suitability of habitat for the affected species. We reported in September 2012 that the final report of this work was due to the EVOSTC in mid-April 2013; however, this project has also been slightly delayed. The Governments expect a final report for this work to be provided to the EVOSTC by the end of September 2013.

5. As the Governments previously reported, based on the information gained once the

above-mentioned projects are complete, the Governments will assess the information and determine the next steps to make final decisions regarding whether, and what types of, actions are appropriate to restore the injured habitats. As identified in the Plan, the Governments will evaluate implementation of an effective treatment technology by taking into consideration the environmental benefit, likely costs, and public input. The Governments anticipate discussing with Exxon its interest in participating in those next steps, as appropriate, and a possible resolution of the Governments' demand to Exxon under the Reopener.

6. The Governments propose to submit another status report to the Court on March 14, 2014.

Dated: June 28, 2013

FOR THE UNITED STATES

Respectfully submitted,

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/ Erika M. Zimmerman
ERIKA M. ZIMMERMAN
Trial Attorney, Oregon No. 055004
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115
Telephone: (206) 526-6608
Facsimile: (206) 526-6665
Email: erika.zimmerman@usdoj.gov

GARY M. GUARINO
Assistant United States Attorney
U.S. Attorney's Office, District of Alaska
Federal Bldg U.S. Ctse.

222 W 7th Ave. 9 Rm 253
Anchorage, Alaska 99513

FOR THE STATE OF ALASKA

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: s/JENNIFER L. SCHORR (consent)
Assistant Attorney General
State of Alaska
Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501-1994
Telephone: (907) 269-5274
Facsimile: (907) 278-7022
Email: Jennifer.Schorr@alaska.gov
Alaska Bar #0811082

SETH BEAUSANG
Assistant Attorney General
State of Alaska
Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501-1994
Telephone: (907) 269-5274
Facsimile: (907) 278-7022
Email: Seth.Beausang@alaska.gov
Alaska Bar #1111078

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 28, 2013, a copy of the foregoing Status Report was served by the Court's Electronic Case Management system upon all persons registered to receive filings in this matter, and a copy was also served via USPS to the following:

Jennifer Schorr
Assistant Attorney General
Alaska Department of Law
1031 West 4th Ave., Suite 200
Anchorage, AK 99501

James F. Neal
Neal & Harwell
2000 One Nashville Place
150 Forth Avenue North
Nashville TN 37219

Douglas J. Serdahely
Patton Boggs LLP
601 West 5th Avenue, Suite 700
Anchorage, AK 99501

Patrick Lynch
O'Melveny & Meyers
400 South Hope Street
Los Angeles, CA 90071

John F. Clough III
Clough & Associates
P.O. Box 211187
Auke Bay, AK 99821-1187

Christine O'Sullivan
AK Dept. of Fish & Game
PO Box 115526
Juneau, AK 99811-5526

s/ Erika M. Zimmerman