



U.S. Fish & Wildlife Service

Exxon Valdez Oil Spill -- Civil Settlement “Reopener” Potential Funds for Restoration of Unanticipated Injuries to Natural Resources

What is the “Reopener”?

The 1991 agreement settling the federal and state governments’ civil claims against Exxon contains a provision entitled “Reopener for Unknown Injury.” Under that provision, Exxon could be required to make additional payments totaling as much as \$100 million for specific restoration projects if all of the following conditions are met:

- The governments must establish that
- (1) a population, habitat, or species has suffered a substantial and continuing loss or decline in the spill area;
 - (2) the loss or decline is attributable to the spill; and
 - (3) the loss or decline could not have been known nor reasonably anticipated by any of the federal or state trustees from information available to them when the settlement was signed in 1991.

If the answer to each of these questions is “yes,” the federal and state governments must then determine that there are projects they could undertake to restore the population, habitat or species, the costs of which are not “grossly disproportionate” to the “magnitude of the benefits anticipated from the remediation.”

The governments’ monetary demand can not exceed the predicted cost of the specific restoration projects proposed.

How will the decision be made?

The federal and state governments will decide whether to assert a claim against Exxon under

the Reopener. In the case of the federal government, the three federal agencies whose trust resources were injured by the spill, the Department of Interior, the Department of Agriculture, and the Department of Commerce, will determine whether they have sufficient evidence to support a demand of additional monies from Exxon. If they make an affirmative decision, they will recommend that the Department of Justice make a claim on behalf of the United States. While the agencies represented on the Exxon Valdez Trustee Council have important roles in making this decision, the Council itself is not directly involved.

When will the decision be made?

The reopener option expires on September 1, 2006. If the governments decide to make a demand of Exxon, they must provide the company with detailed restoration plans, a statement of claims, and all relevant supporting information at least 90 days before September 1, 2006. If a demand is made, these materials will be provided to Exxon by June 2, 2006.

What about reopening for injured services?

The settlement with Exxon does not permit a claim brought pursuant to the reopener provisions to be based on declines in services.

How much can the governments recover from Exxon?

Under the 1991 settlement, any additional recoveries from Exxon must be based on the specific costs of restoration projects and

cannot exceed \$100 million.

How much have the federal and state governments recovered from Exxon?

Exxon has paid the governments the equivalent of \$900 million to settle the civil claims associated with the Exxon Valdez oil spill; a portion of that was used to reimburse the governments for cleanup costs. Under a separate settlement of federal criminal charges, the company also paid \$25 million in fines and \$100 million, divided equally between the United States and Alaska, as restitution for its criminal conduct.

Is any of the money still left?

Of the original \$900 million in civil recoveries, approximately \$146 million remains for new restoration projects. The money is used by the Exxon Valdez Trustee Council to fund ongoing restoration through a public process that involves the award of funds to conduct research, monitoring and general restoration; to acquire habitat; and to provide public information about, and science management and administration of, the restoration process.

What resources were injured by the spill?

In its 2002 *Update on Injured Resources and Services*, the Exxon Valdez Trustee Council identified the following resources and services as not having recovered from the spill: certain seabirds and sea ducks, Pacific herring and other fish, subtidal communities, clams, designated Wilderness areas, intertidal communities, Killer whales, mussels, sea otters, sediments, and services including recreation and tourism, commercial fishing, passive uses and subsistence. The following

resources were identified as “recovered”: archaeological resources, bald eagles, certain seabirds, river otters, and pink and sockeye salmon. In an effort to update the injured resource list, the Trustee Council has recently funded projects that synthesize the latest monitoring results.

What is the current status of each of those resources?

Information concerning the status of injured resources appears in numerous scientific studies by the governments (using their own researchers as well as those outside the governments), Exxon, and other researchers in the sixteen years since the spill. Exxon scientists have been critical of some of the results of the government-sponsored research and vice-versa. Study of the spill’s effects continues, and government officials are making as complete an assessment as possible of potential reopener claims.

Has the government exercised a reopener before?

No. Although many natural resource damage settlements from oil spills and other forms of environmental contamination typically include reopener provisions, such provisions have not been invoked for natural resource damages. Reopening the case against Exxon would be the first such action of its kind by either the federal government or the State of Alaska.