

GAO

Briefing Report to the Chairman,
Committee on Natural Resources,
House of Representatives

August 1993

NATURAL RESOURCES RESTORATION

Use of *Exxon Valdez* Oil Spill Settlement Funds





United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-254199

August 20, 1993

The Honorable George Miller
Chairman, Committee on
Natural Resources
House of Representatives

Dear Mr. Chairman:

The March 1989 grounding of the supertanker Exxon Valdez in Alaska's Prince William Sound spilled 11 million gallons of crude oil--the largest oil spill in U.S. history. The spilled oil affected more than 1,200 miles of Alaskan shoreline, killed or injured large numbers of wildlife, and touched off massive cleanup and restoration efforts by Exxon¹ and federal and state of Alaska agencies.

In October 1991, the U.S. District Court for the District of Alaska approved settlements between Exxon and the federal government and the state of Alaska to resolve civil claims and criminal charges for damages caused by the oil spill. Under the civil settlement, Exxon agreed to pay a total of \$900 million in 11 annual payments. Under the criminal settlement, Exxon was fined \$150 million (\$125 million of which was forgiven because of, among other things, Exxon's cooperation during the cleanup) and required to pay \$50 million each to the federal government and to the state of Alaska as remedial and compensatory payments to be used exclusively for restoring natural resources damaged by the oil spill.

Oil from the Exxon Valdez affected the natural resources managed by the state of Alaska and three federal agencies --the Departments of Agriculture; Commerce, through the National Oceanic and Atmospheric Administration (NOAA); and the Interior. Federal and state trustees have been designated to assess the damage to the natural resources

¹As used in this report, the name Exxon includes the Exxon Corporation and its subsidiaries: the Exxon Pipeline Company and the Exxon Shipping Company, which owned the Exxon Valdez.

caused by the oil spill and to restore these resources. Currently, the federal trustees are the Secretary of the Interior; the Secretary of Agriculture; and the Administrator, NOAA.² The state of Alaska trustees are the Commissioner, Department of Environmental Conservation; the Commissioner, Department of Fish and Game; and the Alaska Attorney General, Department of Law.

In May 1989, the federal government and the state of Alaska established a trustee council to (1) coordinate damage assessment activities and (2) provide the framework to seek funds from responsible parties to restore or replace natural resources damaged by the oil spill. In August 1991, the federal government and the state of Alaska converted the original trustee council into the Exxon Valdez Oil Spill Trustee Council (Trustee Council)³ to jointly direct the restoration. After the civil claims and criminal charges were settled in October 1991, the Trustee Council became responsible for jointly managing the distribution of the civil settlement funds. (See sec. 1 for additional background information.)

In response to your request and subsequent agreements with your office, this briefing report provides information on

- the amount of money that Exxon has paid through December 1992 under the settlements and the distribution of this money and
- issues surrounding the functioning of the Trustee Council.

²In 1989, the then Secretary of Commerce recused himself of his duties as a trustee in matters related to the Exxon Valdez oil spill because of a potential conflict of interest. Since then, the Administrator, NOAA, has served as Commerce's trustee instead.

³The Trustee Council comprises three federal and three state members. The federal members are the Alaska-based representatives of the federal trustees--the Alaska Regional Forester, U.S. Forest Service, Department of Agriculture; a Special Assistant to the Secretary of the Interior; and the Director, Alaska Region of the National Marine Fisheries Service, NOAA. The state members are the state of Alaska trustees.

On March 19, 1993, we briefed your office on the preliminary results of our review. Following that briefing, we provided--at your office's request--two similar briefings: one on May 12, 1993, to senior officials from the Departments of Agriculture, Commerce, and the Interior in Washington, D.C.; and a second, on May 26, 1993, to federal and state members of the Trustee Council in Alaska. As subsequently agreed with your office, this letter and the following sections summarize and update the information provided at these briefings.

EXXON PAYMENTS AND DISTRIBUTION
OF SETTLEMENT FUNDS

Through December 1992, Exxon paid two annual installments --totaling \$240 million--on the \$900 million to be paid under the civil settlement. As of February 1993, the \$240 million was distributed as follows:

- \$107 million was returned to federal and state agencies as reimbursement for presettlement cleanup and damage assessment costs,
- \$40 million was offset against Exxon's payments, as provided in the settlement, for cleanup costs that Exxon incurred in 1991,
- \$19 million was approved by the Trustee Council for expenditure on damage assessment and restoration projects and administrative costs, and
- \$74 million remained in a joint federal/state trust fund for future use.

Both an August 1991 Memorandum of Agreement between the federal government and the state of Alaska and the civil settlement placed a limit of \$142 million on the amount of presettlement cleanup and damage assessment costs that can be reimbursed--\$67 million for federal agencies and \$75 million for state agencies. Trustee Council members believe that reimbursements will not exceed the \$142 million limit.

About 40 percent of the \$19 million for projects approved by the Trustee Council through February 1993 was used for damage assessment. The remainder was split almost evenly between restoration projects and administrative costs. Furthermore, the \$19 million was divided almost evenly

between federal and state agencies. The Trustee Council has approved a resolution to use \$21.1 million of the \$74 million remaining in the joint trust fund for damage assessment and restoration projects, habitat protection, and administrative costs for 1993. Of the \$21.1 million, about \$7.5 million was allocated for restoration work and habitat protection each.

In accordance with the criminal settlement, Exxon has paid \$25 million of the \$150 million fine, which was deposited into the North American Wetlands Conservation Fund (16 U.S.C. sec. 4401-4413) and the Victim Compensation and Assistance Act (42 U.S.C. 10601-10605) account. Under the terms of the settlement, the \$125 million balance of the fine was forgiven because of Exxon's cooperation during the cleanup. Exxon has also paid \$100 million in remedial and compensatory (restitution) payments--\$50 million each to the federal government and to the state of Alaska. Plans have been proposed or are under way to use these funds for such measures as acquiring land for habitat protection, building a marine mammal rehabilitation center, and restoring subsistence resources or services lost or damaged in rural communities. (See sec. 2.)

ISSUES SURROUNDING THE FUNCTIONING OF THE TRUSTEE COUNCIL

Issues surrounding the functioning of the Trustee Council fall into three categories: restoration planning, habitat protection, and overall organization and administration.

Restoration Planning

A key ingredient--which the Trustee Council does not yet have--in the transition from the Trustee Council's role of assessing damage to taking action to restore the natural resources affected by the oil spill is an approved restoration plan. The plan is scheduled to be issued in December 1993. At present, however, the Trustee Council's annual work plans are not tied to a comprehensive restoration plan, and some projects do not appear to have a direct link to the oil spill or else appear to duplicate existing agency responsibilities. In addition, some participants in and observers of the Trustee Council's activities believe that the damage assessment and restoration work carried out to date has been dominated by federal and state agencies and that, as a consequence, few nongovernmental organizations have been able to

participate in the process. For example, almost all of the 1992 and 1993 work projects were not open for competitive bid and were carried out by federal and state agency personnel. The Trustee Council's chief scientist believes that open competition would encourage more timely completion of projects at reduced costs. According to Trustee Council members, there was a need for federal and state agencies to do most of the damage assessment work; however, as more restoration projects are undertaken, less use will be made of federal and state agencies and more projects will be subject to bid proposals from nongovernment sources. (See sec. 3.)

Habitat Protection

The Trustee Council is facing increasing public pressure to acquire land to protect habitat. However, land acquisition is expensive, as is illustrated by the Trustee Council's estimates to acquire land for habitat protection that run as high as \$3 billion. Currently, land acquisition activities are not yet tied to an approved land acquisition plan that is linked to an approved restoration plan. Meanwhile, using interim evaluation criteria approved by the Trustee Council, a habitat protection/acquisition work group classified about 42,000 acres as critical habitat to help the recovery of injured wildlife species. This land was identified as "imminently threatened" because of its vulnerability to activities, such as logging, that would significantly lessen the land's ability to provide habitat protection for wildlife species injured by the oil spill. The Trustee Council has approved over \$60 million to acquire 24,500 acres, which includes the work group's two top-ranked imminently threatened parcels totaling 22,500 acres. The work group classified another 338,000 acres as "opportunity-to-buy" parcels--land that is important as habitat protection but not imminently threatened. (See sec. 4.)

Overall Organization and Administration

The Trustee Council's current procedures and practices lead many to view the Trustee Council's objectivity with some skepticism. Among other things, the individuals making up the Trustee Council and its organization, which includes a restoration team and several work groups, are, for the most part, employees of the various federal and state trustee agencies. The same agencies--and sometimes the same individuals--that recommend a project for funding

also approve and carry out the project. Moreover, financial reviews or audits have not been conducted of the federal and state agencies' reimbursement claims or of the use of civil settlement funds.

In addition, required project reports on damage assessment and restoration efforts are frequently submitted late and often require extensive revision because of such problems as incomplete analyses, overreaching conclusions, and imbalanced presentations. Consequently, the Trustee Council has often made decisions on follow-on projects without the knowledge of the final conclusions of earlier, related studies. Also, there are some who believe that the Trustee Council organization has not sufficiently sought meaningful public participation or independent scientific viewpoints in deciding which studies and restoration activities should be undertaken. Because of the importance placed on the public's views, the Trustee Council has held numerous public meetings and has established a 17-member public advisory group to facilitate the gathering of the views of individuals and various interest groups throughout Alaska. (See sec. 5.)

CONCLUSIONS

Our review raised a number of issues surrounding the functioning of the Trustee Council. These issues require attention before adequate assurance can be provided that the \$1 billion being received as a result of the Exxon Valdez oil spill civil and criminal settlements are expended as intended. Several of the issues relate to the completion of a comprehensive restoration plan to guide such things as annual work plans and land acquisitions, more timely and better quality project reports, and more open competition for restoration projects. Other issues involve the adequacy of internal controls, including (1) financial reviews and program audits to ensure the propriety of reimbursements and subsequent expenditures of settlement funds and (2) a separation of duties among agency personnel involved in recommending, approving, and carrying out the projects.

RECOMMENDATIONS

We recommend that the three federal trustees proactively work with the three state of Alaska trustees to better ensure that the \$1 billion being received as a result of the Exxon Valdez oil spill settlements is expended as

intended. Among other things, attention should be given to (1) completing restoration and land acquisition plans, (2) requiring more timely and better quality project reports, (3) providing for more open competition for restoration projects, and (4) improving internal controls.

AGENCY COMMENTS

At your office's request, we did not obtain written agency comments on a draft of this report. We did, however, discuss the information in the report with members of the Trustee Council. They generally agreed with the information in the report and provided comments and suggestions, which we incorporated where appropriate.

More specifically, the Trustee Council members suggested that we more clearly distinguish between the role and makeup of the presettlement and postsettlement trustee councils, which we did. They also commented that we had understated the extent of public participation actively sought and used for the Trustee Council's decisions. We revised the report as necessary to more clearly reflect the extent and form of public participation.

The Trustee Council members expressed concern that we had not fully reflected the magnitude of the challenge they faced in establishing a joint federal/state organization, process, and plan for addressing the restoration of resources damaged and services affected by the largest oil spill on record. We believe that the report does recognize the magnitude and complexity of the challenges faced by the trustees and the Trustee Council, and that this is all the more reason for the trustees to address the issues identified in the report to ensure that settlement funds are expended efficiently, effectively, and as intended.

Finally, the Trustee Council members believe that we should have addressed the multiplicity of federal and state procedures and requirements that must be met in developing a restoration plan. Although the scope of our review did not include an in-depth analysis of all the statutes, laws, and regulations affecting the Trustee Council's operations, we believe that the report does provide a fairly comprehensive overview of its operations, including the restoration planning process.

SCOPE AND METHODOLOGY

To determine how much Exxon has paid to date under the settlement and how the money has been distributed, we obtained documents and interviewed officials from federal agencies in Washington, D.C., and their regional offices in Alaska, as well as state of Alaska agencies. The federal agencies we contacted were the Departments of Agriculture, Commerce (NOAA), the Interior, Justice, and Transportation (U.S. Coast Guard). The state of Alaska agencies included the Departments of Environmental Conservation, Fish and Game, and Law.

To identify issues surrounding the functioning of the Trustee Council, we interviewed the six federal and state members of the Trustee Council and various other officials of the Trustee Council organization, including members of the Trustee Council's restoration team, work groups, the public advisory group, and the chief scientist. We also reviewed the Trustee Council's documents, including transcripts of the Trustee Council's monthly meetings; annual budgets and work plans; and analyses prepared by the chief scientist.

We conducted our review between February and July 1993 in accordance with generally accepted government auditing standards. As agreed, however, we did not verify the accuracy or reliability of the annual budgets or actual distributions of funds.

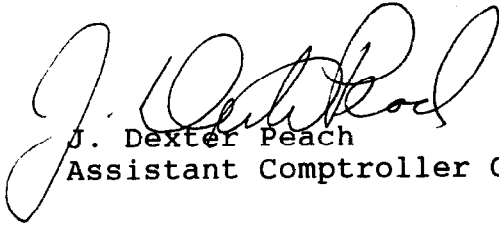
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As requested, unless you publicly announce its contents earlier, we plan no distribution of this briefing report until 30 days from the date of this letter. At that time, we will make copies available to the Secretary of Agriculture; the Secretary of Commerce and the Administrator, NOAA; the Secretary of the Interior; designated federal and state members of the Trustee Council at Anchorage, Alaska; and other interested parties. Copies will also be made available to others on request.

B-254199

This work was performed under the direction of James Duffus III, Director, Natural Resources Management Issues, who can be reached at (202) 512-7756 if you or your staff have any questions. Other major contributors to this briefing report are listed in appendix I.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach".

J. Dexter Peach
Assistant Comptroller General

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ABBREVIATIONS

GAO	General Accounting Office
NOAA	National Oceanic and Atmospheric Administration
NRDA&R	Natural Resources Damage Assessment and Restoration Fund

SECTION 1

BACKGROUND

Shortly after midnight on March 29, 1989, the supertanker Exxon Valdez struck a reef and ran aground in Prince William Sound, off the coast of Alaska, spilling 11 million gallons of crude oil, the largest oil spill in U.S. history. The spilled oil spread to more than 1,200 miles of Alaska's coastline, including portions of one national forest, four national wildlife refuges, three national parks, five state parks, four state critical habitat areas, and one state game sanctuary. This coastline is rich in fish and wildlife, such as herring, salmon, sea otters, whales, bald eagles, and seabirds. The spill killed and injured large numbers of many of these wildlife species. Services dependent upon these natural resources--such as native subsistence, commercial and sport fishing, sport hunting, camping, boating, and tourism--were also reduced or lost.

Oil from the Exxon Valdez affected the natural resources managed by the state of Alaska and three federal agencies--the Departments of Agriculture; Commerce, through the National Oceanic and Atmospheric Administration (NOAA); and the Interior. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. sec. 9607); the Clean Water Act (33 U.S.C. sec. 1321); and implementing regulations provide for the designation of federal and state officials to act as trustees to ensure that responsible parties pay to restore, rehabilitate, or replace natural resources damaged or destroyed by an oil spill. The federal trustees were the Secretary of the Interior; the Secretary of Agriculture; and the Administrator, NOAA. The state of Alaska trustee was the Commissioner, Department of Fish and Game.

Although the response of the state of Alaska and of the various federal agencies to the oil spill was swift, a need soon emerged for a formal interagency structure to coordinate response and damage assessment activities. In May 1989, the trustees established a trustee council to coordinate activities. The council was composed of three Alaska-based representatives of the federal trustees--the Alaska Regional Forester, U.S. Forest Service, Department of Agriculture; the Director, Alaska Region of the U.S. Fish and Wildlife Service, Department of the Interior; and the Director, Alaska Region of the National Marine Fisheries Service, NOAA--and the state's Commissioner, Department of Fish and Game. The U.S. Environmental Protection Agency participated in the council's activities as an adviser on the long-term revival of Prince William Sound.

During 1989, state and federal agency efforts focused on containing and cleaning up the spill and rescuing oiled wildlife. Although winter storms helped in cleaning many beaches,

additional cleanup work was needed in 1990 and 1991. Along with the cleanup effort, the state and federal trustee agencies--under the coordination of the trustee council--also planned and directed natural resources damage assessment studies to determine the nature and extent of injuries sustained in the oil spill area. The results of these studies were to be used as evidence in pending civil and criminal claims against Exxon and to help in the restoration of the damaged resources.

Both the state of Alaska and the federal government filed claims against Exxon seeking to recover damages for injuries to and the restoration and replacement of natural resources affected by the oil spill. In October 1991, the U.S. District Court for the District of Alaska approved agreements that settled the claims of the United States and the state of Alaska against Exxon for civil damages and criminal charges. Under the major terms of the civil settlement, Exxon (1) agreed to pay the federal government and the state of Alaska a total of \$900 million in 11 annual payments (see table 1.1) beginning in December 1991 and ending in September 2001 and (2) might be liable for up to an additional \$100 million between 2002 and 2006 for projects to restore populations, habitats, or species that had suffered a substantial loss or decline not anticipated on the effective date of the settlement.

Table 1.1: Schedule of Exxon's Civil Settlement Payments

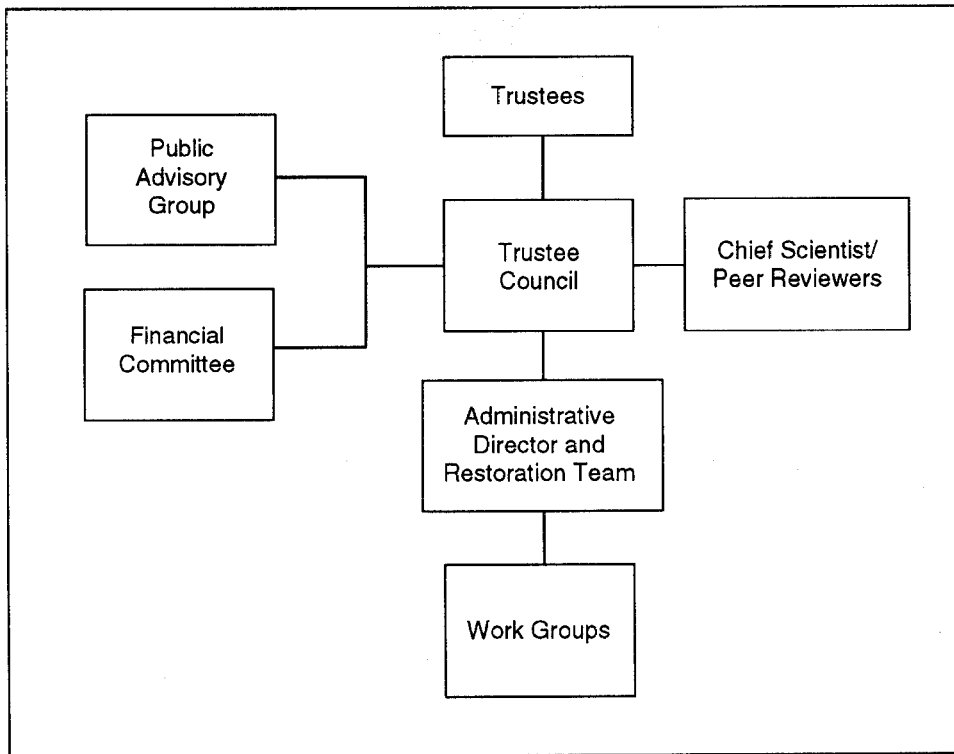
Dollars in millions

Scheduled payment date	Amount
Dec. 1991	\$90
Dec. 1992	150
Sept. 1993	100
Sept. 1994	70
Sept. 1995	70
Sept. 1996	70
Sept. 1997	70
Sept. 1998	70
Sept. 1999	70
Sept. 2000	70
Sept. 2001	70
Total	\$900

Under the criminal settlement, Exxon agreed to plead guilty to four criminal charges arising from the oil spill and be fined \$150 million. The \$150 million fine was the largest fine ever imposed for an environmental crime. Of this amount, \$125 million was forgiven because of Exxon's cooperation during the cleanup, timely payment of many small claims, and environmental precautions taken since the spill. The remaining \$25 million was paid into the North American Wetlands Conservation Fund (16 U.S.C. sec. 4401-4413) and the Victim Compensation and Assistance Act (42 U.S.C. sec. 10601-10605) account. In addition, Exxon agreed to pay \$100 million (\$50 million to the federal government and \$50 million to the state of Alaska) as remedial and compensatory (restitution) payments to be used exclusively for the restoration of natural resources damaged by the oil spill.

Guidelines for the use of the \$900 million civil settlement funds are set forth in a Memorandum of Agreement between the federal government and the state of Alaska, which was approved by the U.S. District Court in August 1991. The agreement established a federal/state trusteeship--known as the Exxon Valdez Oil Spill Trustee Council (Trustee Council)--to review and approve the expenditure of civil settlement funds for such things as damage assessment and restoration projects. The federal members of the Trustee Council are the same as those on the earlier trustee council, except that a Special Assistant to the Secretary of the Interior replaced the Director, Alaska Region of the U.S. Fish and Wildlife Service. The Memorandum of Agreement also designated as state of Alaska trustees and as members of the Trustee Council the Commissioner, Department of Environmental Conservation; the Commissioner, Department of Fish and Game; and the Alaska Attorney General, Department of Law. Figure 1.1 shows the postsettlement Trustee Council organization.

Figure 1.1: Exxon Valdez Oil Spill Trustee Council Organization



Under the Memorandum of Agreement, civil settlement funds must be used to restore, replace, rehabilitate, enhance, or acquire the equivalent of the natural resources injured, lost, or destroyed as a result of the oil spill and the reduced or lost services provided by such resources. The funds must be spent on the restoration of natural resources in Alaska unless the trustees unanimously agree that spending funds outside of the state is necessary for effective restoration. The agreement also established a joint trust fund, within the jurisdiction of the U.S. District Court, as a depository for Exxon's payments. The use of the \$100 million restitution funds from the criminal settlement was not covered by the Memorandum of Agreement; however, these funds must be used by the federal government and the state of Alaska for restoration activities, within the state, relating to the Exxon Valdez oil spill.

The six-member Trustee Council receives input and advice from a contracted chief scientist and a peer review group of scientists, a financial committee, a public advisory group, and the public at large. The primary day-to-day activities of the Trustee Council organization are performed by an interim administrative director, a six-member restoration team, and

various work groups. The restoration team reviews and recommends proposed actions to the Trustee Council, and the work groups prepare plans and documents as directed by the restoration team, including annual work plans and a long-term habitat-protection plan. The work groups are staffed by officials from state and federal agencies represented on the Trustee Council or restoration team. The Trustee Council's first of generally monthly meetings occurred in December 1991. All Trustee Council meetings are open to the public under Alaska's open-meeting laws. Teleconferencing is used in many of these meetings as a means of involving individuals from up to 10 communities throughout the state who, otherwise, would be unable to participate. A significant part of each meeting is devoted to the public comments received on the issues being considered by the Trustee Council.

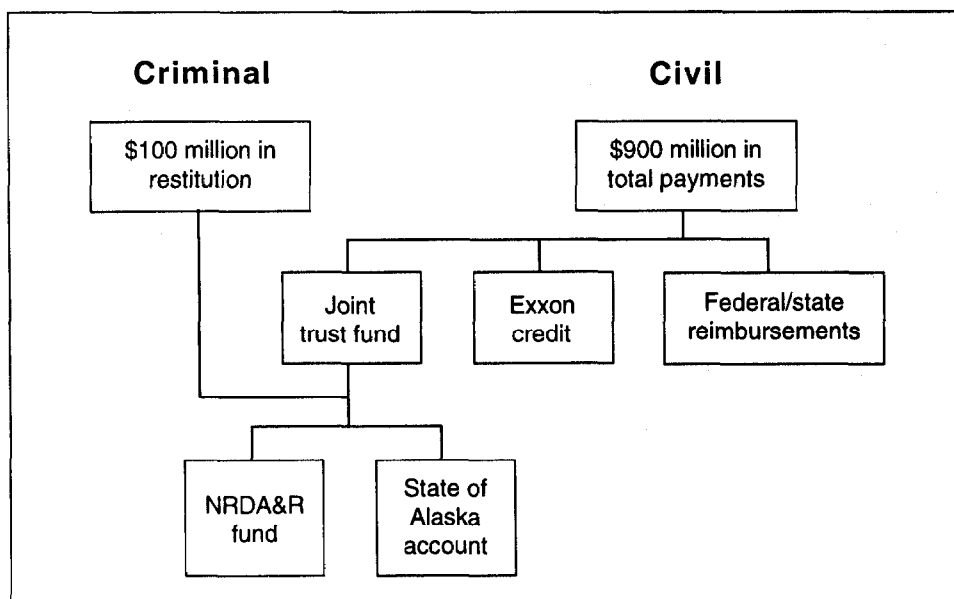
According to Trustee Council members, settlement fund expenditure decisions are made in the following manner. The annual work plan group initially develops a proposed list of damage assessment and restoration projects, including projects proposed by the public. The group then forwards the recommended list of proposed projects to the restoration team. At least five of the six members of the restoration team must approve a proposed project before it is recommended to the Trustee Council. The Trustee Council may also consider projects in addition to those recommended by the restoration team. The chief scientist reviews the proposed projects and provides comments to the Trustee Council. The list of proposed projects is also available for public review and comment. A unanimous vote is required by all six members of the Trustee Council to approve a project's funding. After a project begins, periodic progress reports and a final completion report for the project must be submitted to the chief scientist for review and approval.

SECTION 2

EXXON PAYMENTS AND SETTLEMENT FUND DISTRIBUTIONS

Figure 2.1 shows the flow of dollars resulting from the criminal and civil settlements. As mentioned earlier, Exxon owed \$100 million in criminal restitution payments--half to the federal government and half to the state of Alaska. The \$50 million payment to the federal government was deposited into the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDA&R) Fund and the state of Alaska's \$50 million was deposited into a state account.

Figure 2.1: Exxon Payments and Settlement Fund Distributions



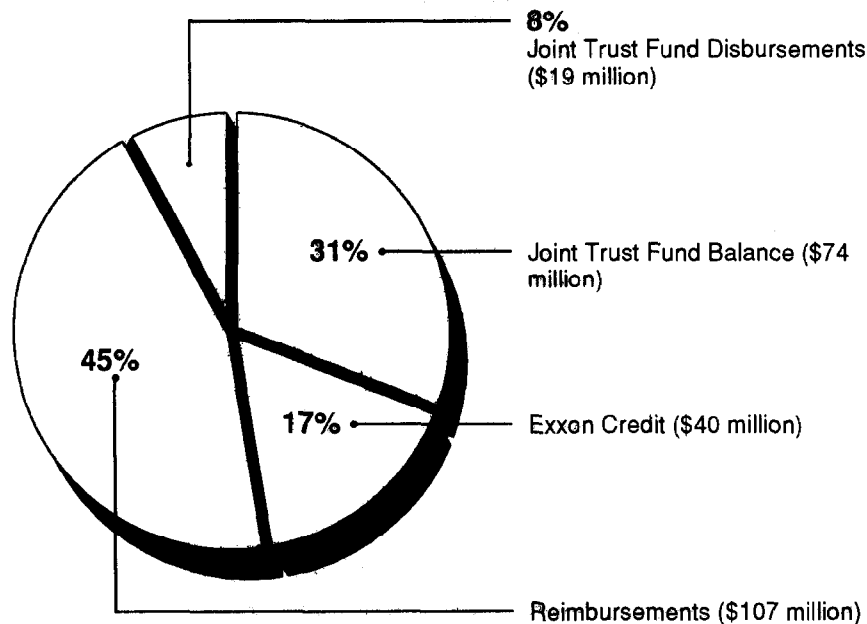
Exxon's payments from the \$900 million civil settlement flow to three areas:

- reimbursements to federal and state agencies of up to \$142 million for past spill-related work,
- a credit of \$40 million to Exxon for the reimbursement of certain agreed-upon cleanup work performed at the direction of a federal on-scene coordinator, and
- deposits of the remaining funds from 11 annual payments from Exxon into the joint federal/state trust fund held in a depository under the jurisdiction of the U.S. District Court.

After the Trustee Council approves damage assessment and restoration projects and the administrative costs of the Trustee Council organization, the U.S. District Court is petitioned to release funds from the joint trust fund to cover these activities. For projects carried out by federal agencies, the funds are transferred from the joint trust fund to the NRDA&R fund. Interior then transfers funds from the NRDA&R fund to the federal agency carrying out the activity. For Alaska agencies' projects, the funds are transferred from the joint trust fund to the state's general fund for subsequent distribution to the various state agencies.

Through December 1992, two civil settlement payments totaling \$240 million were made by Exxon. The next Exxon payment, in the amount of \$100 million, is scheduled for September 1993. Prior to each of Exxon's annual civil settlement payments, the respective federal and state agencies reach agreement on the amount of the payment that will apply toward reimbursements and the amount that will be deposited into the joint trust fund for activities authorized by the federal and state trustees. Figure 2.2 shows the distribution of the \$240 million in Exxon payments through February 1993.

Figure 2.2: Distribution of \$240 Million in Exxon Payments Through February 1993



Most of the funds distributed to date have been used to reimburse various government agencies and Exxon for past cleanup costs; some have been used for the Trustee Council's activities such as administration, damage assessment and restoration projects, and restoration planning; and the remainder resides in the joint trust fund. The \$40 million Exxon credit was provided for in the settlement. The credit was to reimburse Exxon for expenditures it made for cleanup costs incurred at the direction of a federal on-scene coordinator in early 1991 as well as specified cleanup costs performed at a later date. The Coast Guard performed a financial review of Exxon's claims and allowed the \$40 million credit. Additional credits against future Exxon payments may result if federal/state on-scene coordinators direct Exxon to perform additional cleanup work. According to the Trustee Council, cleanup work that met federal and state standards was completed as of August 1992.

Both the Memorandum of Agreement and the civil settlement place a limit of \$142 million on the amount of presettlement cleanup and damage assessment costs that can be reimbursed. The limit is divided into maximums of \$67 million for federal agencies and \$75 million for state agencies. Trustee Council members believe that reimbursements will not exceed the \$142 million limit. Through December 1992, approximately \$107 million was used to reimburse federal and state agencies for

presettlement response, cleanup, and damage assessment costs incurred before January 1991. Certain additional reimbursements, including litigation costs, incurred since then may also be claimed but must be jointly agreed to by the federal and state trustees. Of this \$107 million, federal agencies have been reimbursed \$49 million and state agencies \$58 million. Table 2.1 shows a summary of reimbursements to federal agencies through December 1992. A detailed breakdown of the reimbursements to state agencies was not available at the time of our review.

Table 2.1: Reimbursements to Federal Agencies Through December 1992

Dollars in millions unless otherwise noted

Federal agency	Amount
Department of Army: Corps of Engineers	\$5.5
Department of Agriculture: Forest Service	10.4
Department of Commerce: NOAA	11.7
Department of the Interior	10.2
Department of Transportation: Coast Guard Federal Aviation Administration	7.2 ^a
Environmental Protection Agency	4.2
Total ^b	\$49.2

^aLess than \$10,000.

^bReimbursements do not include about \$226,000 in interest paid by Exxon between the scheduled and actual dates of the first payment under the civil settlement. This amount was distributed proportionately among the federal agencies being reimbursed from the first payment.

Of the \$240 million paid by Exxon through December 1992, about \$93 million was deposited into the joint trust fund to fund activities approved by the Trustee Council. Of this amount, about \$19 million was authorized by the Trustee Council to fund damage assessment and restoration projects included in the restoration work plan approved by the Trustee Council for 1992. Table 2.2 shows how these funds were distributed among damage

assessment projects, restoration projects, and administration through February 1993. The \$19 million was about equally divided between federal and state agencies. On the federal side, the Forest Service received the most funds--about 20 percent--and for the state of Alaska, the Department of Fish and Game received the most--about 40 percent. The balance--about \$74 million--remains in the joint trust fund and is earning interest.

Table 2.2: Distribution of Funds From the Joint Trust Fund Through February 1993

Dollars in millions

Category	Amount
Damage assessment	\$7.5
Restoration	6.6
Administration	5.1
Total	\$19.2

In April 1993, the Trustee Council approved a resolution to draw \$21.1 million from the joint trust fund to finance damage assessment projects, restoration projects, the Trustee Council's administrative costs, and other activities included in the 1993 work plan. (See table 2.3.) The 1993 work plan reflects a phasing out of damage assessment studies and an increase in restoration projects. Overall, about 25 percent of the \$21.1 million will fund federal agencies' work, and 75 percent will fund state agencies' work.

Table 2.3: Planned 1993 Distribution of Funds From the Joint Trust Fund

Dollars in millions

Category	Amount
Damage assessment	\$1.5
Restoration	7.5
Administration	2.8
Other	9.3
Total	\$21.1

Note: Distribution of these funds is for the period March 1, 1993, to September 30, 1993.

Included in the \$9.3 million "other" category is \$1.5 million to fund an archaeological repository on Kodiak Island. The repository will preserve and protect artifacts from about 17 sites on Kodiak Island that were destroyed or discovered as a result of the cleanup following the spill. Also, the Trustee Council approved \$7.5 million to be used by the state, along with about \$14 million from the state's restitution funds from the criminal settlement and another source of state funds, to purchase 7,500 acres of privately owned land within the boundaries of Kachemak Bay State Park on the Kenai Peninsula across from Homer, Alaska. The purchase is intended to provide additional lands to protect habitat from further degradation and to allow recovery of various species. Following the drawdown to fund the 1993 work plan, a balance of about \$52.9 million will remain in the joint trust fund. This balance will increase when Exxon makes its third annual civil settlement payment--in the amount of \$100 million--in September 1993. The actual amount to be deposited into the joint trust fund will depend on how much of Exxon's payment is used for reimbursements.

As of June 1993, none of the \$100 million in criminal restitution funds had been expended. However, as shown in table 2.4, several projects have been proposed by the federal and state governments. In March 1993, the federal trustees proposed that \$25 million be used to acquire private land concentrated within the boundaries of the Chugach National Forest, Kenai Fjords National Park, Kodiak National Wildlife Refuge, and the Maritime Wildlife Refuge Islands. Although the precise use of the remaining \$25 million has yet to be determined, agencies are considering the funds for various habitat acquisition, restoration, and monitoring projects.

Table 2.4: Proposed Use of Criminal Restitution Funds

Dollars in millions

Federal share	\$50.0
Proposed uses:	
Habitat acquisition	25.0
Other (habitat acquisition, restoration, and monitoring)	25.0
State share	\$50.0
Proposed uses:	
Build marine center	12.5
Buy land for habitat protection	7.0
Restore subsistence areas	5.0
Oil spill research programs	5.0
Restore recreation sites	4.8
Enhance hatchery system	4.0
Other smaller projects	11.7

Using its share of the restitution funds, the Alaska state legislature, in May 1993, approved funding for a variety of projects, the larger of which include the following:

- the design and construction of a recreation and marine mammal rehabilitation center for education and research;
- the partial funding of the acquisition of private land within the Kachemak Bay State Park to add habitat for recovering wildlife species;
- the restoration, replacement, or enhancement of subsistence resources or services lost or damaged in rural communities; and
- the development of research programs directed at the prevention, containment, cleanup, and amelioration of oil spills.

SECTION 3

RESTORATION PLAN AND ANNUAL WORK PLAN ISSUES

We identified several issues relating to the development of the Trustee Council's restoration plan for damaged resources and services and its annual work plans.

RESTORATION PLAN

Table 3.1 shows issues relating to the Trustee Council's development of a restoration plan.

Table 3.1: Issues Related to the Restoration Plan

- No restoration plan in place
- Plan scheduled to be issued in December 1993, but issuance date may slip

An approved restoration plan is a key ingredient in the transition from the Trustee Council's role of assessing damage to taking action--as provided for in the August 1991 Memorandum of Agreement--to restore, replace, rehabilitate, enhance, or acquire the equivalent of natural resources injured as a result of the oil spill and the reduced or lost services provided by such resources. Moreover, according to the Trustee Council, the restoration plan is a primary means for the public to help the Trustee Council prioritize restoration activities. However, an overall restoration plan is not yet in place to provide direction to restoration planning for Prince William Sound. Restoration planning began in late 1989. In April 1992, a restoration framework document was published that proposed a process to guide the trustees in restoration efforts, discussed possible action alternatives, and invited public comment.

A year later, in April 1993, a brochure providing an advance description of a draft restoration plan was distributed for public comment. Five potential restoration alternatives were presented:

1. Natural recovery: No action.
2. Habitat protection: Over 90 percent of the settlement funds would be used for habitat protection and acquisition. Restoration activities would be limited to the spill area.

3. Limited restoration: About 75 percent of the settlement funds would be used for habitat protection and acquisition. Some effort would be directed at restoring only the most severely injured species with declining populations within the spill area.
4. Moderate restoration: About 50 percent of the settlement funds would be used for habitat protection and acquisition. An additional one-third of the funds would be used to restore all injured species, including those whose populations did not decline and are located outside of the spill area.
5. Comprehensive restoration: About one-third of the settlement funds would be used for habitat protection and acquisition. About one-half of the settlement funds would be used to restore all injured species, including those whose populations did not decline and are located outside of the spill area.

The public was asked to comment on the plan and the five restoration alternatives by August 6, 1993. In addition, the Trustee Council scheduled public meetings in 21 communities throughout the state to solicit input. Trustee Council members told us that about 1,200 responses from the public were received and will be considered in further development of the plan. A draft environmental impact statement analyzing the impacts of the alternatives on the physical, biological, social, and economic aspects of the environment was due to be released for public comment in June 1993, but it had not been released as of the end of July 1993. The final restoration plan is scheduled to be issued in December 1993, but according to Trustee Council members, this too may slip.

ANNUAL WORK PLANS

Table 3.2 shows three issues relating to the Trustee Council's development of annual work plans.

Table 3.2: Issues Related to Annual Work Plans

- Not tied to restoration plan
- Some projects may not be directly linked to the oil spill or appear to duplicate agencies' responsibilities
- Few projects competitively bid

First, the Trustee Council's 1992 and 1993 annual work plans were not linked to an approved restoration plan. About 90 projects totaling nearly \$40 million were approved during this time. Although not directly linked to a restoration plan, Trustee Council members have reported that they have strived to work within the restoration framework by approving projects measuring damage or monitoring injured resources that either were time-critical or represented a lost opportunity if not conducted. Some Trustee Council members claimed that if action had been postponed until a restoration plan were developed, work projects would not have been approved until 1995 or 1996. Because of the lead time needed to implement approved work projects, the Trustee Council will approve the 1994 work plan before issuing the final restoration plan. Trustee Council members advised us that the 1994 work plan decisions will be based on a synopsis of public comments related to the restoration plan, scientific data available from past studies, and input from the public and the chief scientist on the merits of the proposed projects.

Second, certain projects either do not appear to be directly linked to the oil spill, as required in the settlement, or appear to duplicate existing responsibilities of federal and state agencies, particularly several sockeye salmon and killer whale projects. According to Trustee Council members, where linkage or contribution of the spill to an injured resource is unclear, Trustee Council members have been inclined to approve data collection projects so that members are put in a better position to evaluate the causes and extent of damage to the resource resulting from the oil spill.

To illustrate, the management of the sockeye salmon fishery has historically been a responsibility of the Alaska Department of Fish and Game, including the development and maintenance of a state plan for the rehabilitation, enhancement, and development of the state's salmon fisheries. One particular problem that the Alaska Department of Fish and Game has been dealing with for several years--both before and after the oil spill--is the overescapement of sockeye salmon into the Kenai River during migration to their spawning areas upstream. Overescapement occurs when too many migrating adult fish reach the spawning areas and produce too many juvenile fish that deplete the available food supplies needed to sustain them until they are ready to migrate downstream and out to sea. The depletion of the food supplies causes reduced growth and high mortality of current and future generations.

The overescapement of sockeye salmon occurred on the Kenai River system in 1987 and 1988--before the oil spill occurred--and again in 1989 when the sockeye salmon fishery was closed because of the presence of oil in the fishing areas from the Exxon Valdez oil spill. Consequently, the problems associated with the overescapement of sockeye salmon entering the Kenai River

probably are only partially due to the closure of the salmon fishery following the oil spill. Thus far, the Trustee Council has approved five projects totaling about \$3 million to study the Kenai River sockeye salmon fishery. According to Trustee Council officials, although there may not be a direct link between the situation with the sockeye salmon and the oil spill, there is enough of an indirect link to justify the spending of settlement funds to study the problem.

Several killer whale studies also illustrate projects which do not appear to have a direct link to the oil spill or appear to duplicate existing agency responsibilities. Between 1989 and 1992, the Trustee Council approved four studies totaling about \$700,000 to examine the mortality rate of the approximately 245 killer whales in Prince William Sound. However, the chief scientist believes that the disappearance of some killer whales has not been convincingly linked to the oil spill. Nevertheless, in 1993, the Trustee Council approved an additional \$127,000 to further assess the disappearance of 13 out of a group of 36 killer whales since the oil spill occurred. NOAA's National Marine Mammal Laboratory is responsible for the general monitoring of killer whales off Alaska, and it has been studying these whales for several years both before and after the oil spill. For example, from 1989 through 1993, the laboratory's budget--in addition to the oil spill funds provided through the Trustee Council--for killer whale studies totaled about \$665,000. Trustee Council officials stated that the chief scientist is not an expert on all issues and that public comments received on the work plans indicated a very high interest in determining whether the whales' disappearance was linked to the oil spill.

Last, some participants in and observers of the Trustee Council organization believe that the carrying out of damage assessment and restoration work to date has been dominated by federal and state agency personnel and that, as a consequence, few nongovernment organizations have been able to competitively bid for these projects. For example, almost all of the 1992 and 1993 work projects were not open for competitive bid and were carried out by federal and state agency personnel. The Trustee Council's chief scientist believes that open competition would encourage more timely completion of projects at reduced costs. According to Trustee Council members, as more restoration projects are undertaken, less use will be made of federal and state agencies and more projects will be subject to bid proposals from nongovernment sources.

SECTION 4

HABITAT PROTECTION AND ACQUISITION ISSUES

We identified several issues relating to the Trustee Council's activities to protect and acquire habitat to aid in the restoration of the natural resources damaged by the oil spill. These issues are shown in table 4.1.

Table 4.1: Issues Related to Habitat Protection and Acquisition

- Acquisition plan not approved or tied to restoration plan
- Interim criteria used to identify acquisition parcels
 - 42,000 acres identified as imminent threat
 - 338,000 acres identified as opportunity parcels
- Pressure is building for Trustee Council to acquire land and protect habitat
- Much of the remaining \$660 million may be used for land purchase

An acquisition plan has neither been approved by the Trustee Council nor tied to an approved restoration plan. The Trustee Council, however, has approved interim evaluation criteria for use by its habitat protection/acquisition work group. Using these criteria, in February 1993 the work group classified 42,000 acres as being "imminently threatened." The group concluded that various parcels of land were significant ecologically and that they were threatened by actions--such as imminent logging--which would significantly lessen the land's ability to provide habitat protection for wildlife species injured by the oil spill. The two top-ranked imminently threatened parcels were 7,500 acres within Kachemak Bay State Park near Homer, Alaska, and 15,000 acres near Seal Bay on Afognak Island north of Kodiak Island. Both of these parcels of land were described in the Trustee Council's ranking analysis as essential habitat sites for injured species, such as bald eagles and marbled murrelet, and were located within the area affected by the oil spill. These wildlife species are considered vulnerable or threatened by human activity. The Trustee Council has approved, subject to appraisal, the purchase of these two parcels--the 7,500 acres of private land in Kachemak Bay State Park for \$21.5 million and

42,000 acres (25,000 acres of which are to be donated by the land owner) near Seal Bay, which includes the 15,000 acres classified as imminently threatened, for \$38.7 million. The work group classified an additional 338,000 acres as "opportunity-to-buy" parcels--land important as habitat protection, but not imminently threatened.

Public pressure is building for the Trustee Council to acquire more land to protect habitat because many consider land acquisition to be an effective restoration activity. The Trustee Council's habitat protection/acquisition work group received comments from various public interest groups encouraging the Trustee Council to protect habitat. Comments included the following:

- ". . . habitat acquisition is the most meaningful form of restoration"
- ". . . habitat protection is [the] best means of protecting natural and cultural resources"
- ". . . the acquisition process [is] taking too much time; no more talk--start using funds to buy land."

With the pressure building for the Trustee Council to approve the acquisition of land to protect habitat, some Trustee Council officials believe that much of the remaining Exxon payments--about \$660 million--may be used for land acquisitions rather than for other restoration purposes. The Trustee Council's estimate of the cost to acquire parcels of land classified as "imminently threatened" and "opportunity to buy," and additional parcels of land that may eventually be classified as such, runs as high as \$3 billion. Because Exxon's settlement payments will continue until 2001, it appears that difficult land acquisition choices will have to be made throughout the period.

SECTION 5

TRUSTEE COUNCIL ORGANIZATION AND ADMINISTRATION ISSUES

We identified several issues relating to the Trustee Council organization and its day-to-day administration.

TRUSTEE COUNCIL ORGANIZATION

Table 5.1 shows four issues relating to the Trustee Council organization.

Table 5.1: Issues Related to the Trustee Council Organization

- Agencies propose, review, approve, and carry out projects
- No executive director to lead efforts
- Meaningful public participation and independent scientific viewpoints not always sought
- Financial audits and program reviews not conducted

First, the current makeup and process of the Trustee Council organization leads many to view the objectivity of the organization with some skepticism. The federal and state agencies that propose damage assessment and restoration projects are the same agencies that review, approve, and carry out the projects. This organization has the same general makeup as the presettlement organization responsible for measuring the nature and extent of the injuries, losses, and destruction of resources as part of the litigation process leading up to criminal and civil law suits against Exxon. Trustee Council members believe the organization has provided the best source of expertise for cleanup and damage assessment, and foresee a gradual lessening of dependence on federal and state agency personnel to conduct projects as damage assessment is completed and the restoration plan is implemented.

Second, no executive director or chief executive officer is in place to lead and direct day-to-day operations. The Trustee Council currently employs an interim administrative director who mainly functions as a coordinator of Trustee Council organization activities. In March 1993, the Trustee Council advertised

nationally for an executive director position. Eighty-eight applications were received, and the Trustee Council is in the process of selecting a director, who it hopes will be in place by the fall of 1993.

Third, some participants in and observers of the Trustee Council organization have faulted the state and federal agencies represented on the Trustee Council for not seeking meaningful public participation or independent scientific viewpoints in deciding which studies and restoration activities should be undertaken. To date, expert assessments of the merits of various proposed projects have been predominantly those of the chief scientist, who is under contract to the Trustee Council, or the agencies' personnel proposing the projects. In 1992, many of the 58 approved projects in the 1992 work plan were started and partially funded before the public review process was completed. Although the Trustee Council members pointed out that all of the Trustee Council's meetings have been open to the public and public comment is encouraged on issues facing the Trustee Council, the time available to both solicit and analyze the comments is generally insufficient, according to critics. A review of some of the transcripts of the Trustee Council's meetings indicates that the public would like more time to review and comment on the draft plans being considered by the Trustee Council. Because of the importance placed upon the public's views, the Trustee Council has held numerous public meetings separate from the Trustee Council's meetings and has made available to the public, for review and comment, transcripts of Trustee Council meetings as well as drafts of annual work plans and restoration plans. In addition, the Trustee Council has established a 17-member public advisory group to facilitate the gathering of the views of various interest groups throughout Alaska. This group has met five times since its establishment and is in the process of developing and clarifying its role.

And fourth, although almost \$150 million either has been used to reimburse federal and state agencies for presettlement response, cleanup, and damage assessment costs or has been approved to fund Trustee Council activities, no financial audits or program reviews have been conducted to ensure the propriety of reimbursements and subsequent expenditures of civil settlement funds. Furthermore, at the time of our review, there were no federal or state plans to conduct such audits or reviews of past or future expenditures, in spite of their magnitude.

TRUSTEE COUNCIL'S ADMINISTRATION

Table 5.2 shows three issues relating to the Trustee Council's day-to-day administration.

Table 5.2: Issues Related to the Trustee Council's Administration

- Few project reports approved by the chief scientist
- Some planning meetings lacked procedures and focus
- High travel costs incurred (Juneau/Anchorage)

First, only 8 of about 91 scheduled project reports have been approved by the Trustee Council's chief scientist. Many reports have been returned by the chief scientist to the projects' principal investigators for needed revision because of his belief that they were poorly organized and contained unclear messages, incomplete analyses, overreaching conclusions, and imbalanced presentations. For example, the chief scientist returned for revision 10 of the 20 reports due in 1992. Of the remaining 10, 4 were approved, 3 were still under review, and 3 had not been received for review by the chief scientist as of May 1993. Because of these types of delays, the Trustee Council is forced to make decisions on follow-on projects without the knowledge of the final conclusions of earlier, related studies. Trustee Council members stated that they are aware of reporting problems and that they would like reports to be (1) completed on time and (2) of acceptable quality. We were told that the Trustee Council has directed that all project reports be submitted before the Trustee Council deliberates the 1994 annual work plan this fall.

Second, although the restoration team and the work groups have held frequent meetings to develop proposed plans and approaches that need to be acted upon by the Trustee Council, the work groups did not have final operating procedures until November 1992. Many products resulting from this process have been late, required substantial rework, and have not reflected the consensus of the restoration team. This, in turn, often caused the public to comment on plans and the Trustee Council to make decisions without sufficient time to thoroughly review the plans and supporting material.

And third, many of the federal and state officials on the Trustee Council's restoration team and various work groups live in Juneau but must travel to Anchorage to attend frequent work sessions and meetings. This travel increases administrative costs for the Trustee Council organization. For example, the round-trip airfare between Juneau and Anchorage is about \$450.

Trustee Council members anticipate that travel costs will diminish in the future as the restoration plan is implemented and the number of restoration team and various work group meetings is reduced.

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