

22 August, 2004

Commander Mark Swanson
Captain of the Port
U. S. Coast Guard
Marine Safety Office
Valdez, AK 99686

Dear Commander Swanson:

We are writing in regards to the Potential Places of Refuge Project (PPOR) as it concerns Jack Bay and nearby areas of Prince William Sound. We are private landowners in Jack Bay, and are worried about serious repercussions the results of this planning process may ultimately have on our properties and lives. As substantial as these personal concerns may be, however, our interest in this matter reaches far beyond our own well being.

For more than a decade, Jack Bay landowners have worked with state and federal agencies, as well as the City of Valdez and a number of public interest organizations, to develop and improve management strategies that protect the natural qualities present in Jack Bay, and to preserve these qualities for public enjoyment. There have been several occasions in which there have been potential threats to the current high standards of ecological health or scenic qualities of Jack Bay, and each time we have found broad-based public and agency support for renewed protection of the bay, due to its physical beauty, proximity to Valdez, popularity among a wide array of recreational users, and highly productive marine and terrestrial habitats. Thus, we write out of a personal interest, but also with a long-standing and demonstrated concern for the public good, combined with considerable collective experience regarding a variety of issues affecting Jack Bay.

Recently, we received a letter from the Prince William Sound Regional Citizens Advisory Council (PWSRCAC), bringing to our attention the Places of Refuge Project, the recent diesel spill in Jack Bay, and the oil spill training exercises being conducted by Alyeska Pipeline Ship Escort and Response Service (SERVS) and the U.S. Coast Guard. We appreciate and commend this outreach to interested parties, and look forward to improved communication in the future. We also encourage the full participation of other local stakeholders, such as the communities of Tatitlek and Ellamar, Chugach National Forest, and State Marine Parks.

We have not had sufficient time to research the issues adequately, but are writing at this time because we are concerned that the planning process appears to have reached a high degree of specificity and inertia without first attaining substantially greater input from affected parties, including the major Jack Bay land owners, Chugach National Forest and State Marine Parks. We offer the following as preliminary comments, some general and others specific:

- 1. We are puzzled that Jack Bay, an area with so many compelling reasons to avoid contamination and disturbance of the physical and biotic environments, should have been selected as one of a relatively few sites where a distressed large vessel (oil tanker or cruise ship, with the potential for creating serious and chronic pollution) should be anchored or even grounded, without much greater attention given to potential environmental and social impacts.**

While there may never be “good” places to anchor a leaking vessel, some areas are likely to suffer greater harm and more lasting damage, and affect a wider segment of the public than others. The cursory information provided on the PPOR Jack Bay map and data sheet does not represent an adequate assessment of site considerations or resources at risk. We offer the following as an initial summary of resources, qualities, and management concerns.

Jack Bay is one gem among many in Prince William Sound, but it is unique in the Valdez area by virtue of its proximity to the port, and it is irreplaceable in terms of its contribution to the recreational value of the Valdez area. A large number of boaters using the Valdez small boat harbor launch light craft that are not suitable for traveling the length of Valdez Arm or for the open waters of Prince William Sound. Jack and Sawmill Bays are the two most popular destinations for small boat users seeking solitude and a scenic natural setting. Jack Bay receives recreational use throughout the year by local residents and landowners, while the heaviest non-resident use occurs during the August silver salmon run. Recreational activities here, as well as the commercial salmon fishery, contribute significantly to the Valdez economy. Jack Bay has been the focus of considerable conservation attention by land management agencies, public interest organizations, and local landowners over the past decade, all dedicated to protecting the outstanding recreational and fish and wildlife resources present here.

Jack Bay offers impressive scenery, and is frequented by pleasure boaters, fishermen, hunters, wildlife viewers, kayakers, and campers, skiers and mountaineers, among other recreational users. Four major anadromous fish streams produce pink, chum, and silver salmon, making a substantial contribution to the regional wild stock of salmon. Jack Bay is a major commercial salmon seining area. Bald Eagles, harbor seal, black and brown bear and other wildlife rely on spawning salmon for part of their annual foraging requirements, while many other species prey on the salmon fry. Sea otters, Stellar’s sea lions, and orcas also use the bay. These and other species have healthy populations that contribute greatly to the public enjoyment of these lands. There are many eagle nests and an additional seal haul out not depicted on the PPOR map.

The Jack Bay State Marine Park on the north side of the bay encompasses the islands, cove, and north-west trending peninsula at the mouth of Vlasoff Creek. The hardened camping site on the islands receives much public use, as do the waters between the islands and the creek mouth. Vlasoff Creek provides important Bald Eagle and brown and black bear habitat, silver salmon spawning, and the cove is an important year-round foraging site for piscivorous diving birds, including (in various seasons) Marbled Murrelets, Common Murres, Pigeon Guillemots, cormorant, loon, and grebe species, and diving ducks such as Barrow’s Goldeneye. Flocks of non-migratory Mallards and Canada Geese use the shoreline environment throughout the year. We have counted as many as fifty Bald Eagles in this cove during September. The steep south-facing slopes on the west side of the cove provide important, localized low-elevation mountain goat wintering habitat.

The Naomof River, at the head of Jack Bay, includes extensive salt marsh habitat used by brown bears and many other species. This is the largest producer of pink and silver salmon in the bay. The delta and large intertidal zone are an important sea otter and harbor seal foraging area, and are adjacent to the Chugach National Forest Jack Bay public use cabin, which receives frequent recreational use during the summer.

Gregoreoff and Levshakoff Creeks on the south side of Jack Bay are clear water spawning streams which are important for local Harlequin Duck populations (ADF&G/EVOS Harlequin Duck Study 1991-1993). This species was heavily impacted during the Exxon Valdez oil spill, and has been recovering slowly in Prince William Sound. Bald Eagles, Great Blue Herons, diving

ducks, harbor seals, sea otters, river otters, black bears, and many other species use these two stream mouths. We have counted over thirty adult and immature eagles at one time in Gregoreoff Cove. These two creek mouths and associated coves, intertidal areas and estuaries were considered to be such sensitive and valuable habitat that the Exxon Valdez Oil Spill Trustee Council (EVOSTC), US Forest Service, DNR State Parks, and The Nature Conservancy negotiated with the University of Alaska for eight years to purchase a 940 acre parcel that encompasses over four miles of convoluted coastline. This property is now protected by a strict conservation easement (see # 2, below), and the remainder of Chugach National Forest lands in Jack Bay are designated “back country non-motorized,” in attempt to conserve natural resource and recreation values.

During the mid-1980’s the state offered ten 20-acre homestead parcels in Jack Bay to the public. Given the effort owners have invested to construct cabins on these remote homesteads, these lands are not only valuable, they are priceless to the owners. Some cabins have been used as year-round residences, while others are inhabited less frequently. Three of the private parcels abut Jack Bay, and there are two residential cabins close to, and visible from the water. The owners of all three shoreline properties are currently negotiating a conservation easement to limit excessive future development, in order to protect the long-term public enjoyment of Jack Bay. Land owners moor their boats and access their properties from Gregoreoff Creek Cove eastward for approximately one and one-half miles

There are no docks or other shoreline modifications, contrary to the PPOR-02 Site Considerations statement. The site assessment matrix Table H-2 should be changed to recognize the close proximity of the southernmost proposed anchorage to private property and residences. Short-term contamination of this area, use of containment boom, etc., could directly impact access and subsistence activities (e.g., fishing, shell fish harvest, hunting) for residents, while persistent degradation could reduce property values, and raises the question of liability and reparations.

2. The PPOR plan would substantially conflict with existing Federal and state conservation and land management objectives in Jack Bay. Within Table H-2, Site Assessment Matrix for the Jack Bay PPOR, the column for “Conflicting Uses,” lists: subsistence, commercial fishing, anchorages, sport fishing, and recreation. In addition to these, we would like to bring up the following management plans/easements that provide a legal framework and guidance for allowed uses of public lands in Prince William Sound: the State Prince William Sound Area Plan, including state marine parks; the Chugach National Forest Management Plan; and the EVOSTC-purchased conservation area, now owned by the USFS with a conservation easement held by DNR. These conflicts seem to us to be a serious issue.

The Prince William Sound Area Plan provides a clear management directive for the state-owned tidelands and uplands in Jack Bay, including the Jack Bay State Marine Park, with an emphasis on maintaining wildlife habitat and public recreation values present (PWS Area Plan pp. 3-183-188). We believe that the PPOR program’s proposed use of Jack Bay conflicts with the Plan’s stated intent sufficiently to require the Plan to be modified. This would require approval of the commissioner of DNR, as well as approval by other affected agencies, and a public review process. It is not clear to us how the US Forest Service’s “backcountry” management prescription would be affected by the PPOR plans, but certainly there are potential conflicts here, as well. Pollution of marine waters and the intertidal zone unavoidably impacts supratidal habitats and wildlife populations, as well.

The EVOSTC parcel merits particular attention, as it is our understanding that both the Forest Service and DNR are required to manage and protect these lands as per the conservation easement placed on the land by the Nature Conservancy (Valdez Recording District 2003-000332-0, pp. 2-3).

The Grantee [DNR] shall be entitled to enforce on a non-exclusive basis the terms of the following restrictive covenants against the Grantor, its successor, or assigns [USFS]:

- a.(v) manipulating or altering natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water purity on the Protected Property.
- and
- b. (ii) the dumping of garbage, trash or hazardous materials.

Without claiming legal expertise, we believe that the Forest Service and DNR have an obligation to prevent situations where pollution of the actual easement lands (i.e., above mean high tide) and proximate (intertidal) lands occurs as a reasonably foreseeable result of a policy or proposed action. *All* public lands in Jack Bay are currently managed to protect their recreational and habitat values, but it would be particularly ironic for the EVOSTC acquired land to suffer from predictable and preventable pollution, given the intent of the Trustee Council to provide lasting protection to injured species and key habitats, as well as to support the restoration of commercial fishing, subsistence, recreation, and tourism, all of which are dependent upon healthy productive ecosystems. The Trustee Council spent more than one-million dollars to purchase this land.

A discussion of these lands on the south side of Jack Bay would not be complete without mentioning the affect prevailing winds are likely to have on the dispersion of oil or other floating pollutants on the bay. Table H-2, Site Assessment Matrix for the Jack Bay PPOR in the Prince William Sound Subarea states that the exposure to winds and seas is east within the Bay, this is not accurate as winds are generally north to north east from October through April and west to south west during the remainder of the year. During periods when a marked pressure gradient exists across the Chugach Mountains and coastal Prince William Sound, strong northeasterly winds and gusty down drafts in excess of 25 knots often emanate from Vlasoff Creek valley and spill down off the ridge along the entire north side of the bay between Vlasoff Creek and Valdez Narrows. These conditions frequently persist for days or even weeks during the winter months, and will have the effect of blowing any uncontained spills in the direction of private land and the USFS/EVOSTC conservation area, including the sensitive habitats within Levshakoff and Gregoreoff estuaries.

Tim Robertson of Nuka Research and Planning Group, LLC., an expert in oil spill response, stated during a conversation with Jon Miller that at wind speeds greater than 25 knots, containment boom becomes ineffective. Both of the two potential anchorages identified on the PPOR Map 02 of Jack Bay shows that, in the event of a discharge from a vessel, the entire EVOSTC coast line and private properties would be at great risk during the common periods with strong north/northeasterly winds. In summer the prevailing winds would tend to push uncontained spills in the direction of the State Marine Park and the sensitive estuarine, intertidal, and salt marsh habitat areas of Vlasoff Creek and the Naomoff River.

3. Because the PPOR is a Federal action that has the potential to significantly affect the quality of the human environment it falls under the requirements of the National Environmental Policy Act (NEPA). It is our interpretation that the Potential Places of Refuge

(PPOR) document constitutes a Federal action for two reasons. First, the U.S. Coast Guard Captain of the Port has jurisdiction over the final selection of the Place of Refuge; second, the PPOR document will be incorporated into the Prince William Sound Subarea Contingency Plan, which is a point planning effort by members of the U.S. Environmental Protection Agency, U.S. Coast Guard, ADEC, U.S. Department of the Interior, and numerous other Federal, State, local, Native and industry participants. NEPA requires, at a minimum, that an environmental assessment of the proposed action be prepared, however, because of the level of interest and potential impacts and conflict associated with this proposal, it is likely that an Environmental Impact Statement will have to be written.

4. It is likely that the PPOR document will require that a National Marine Fisheries Service Essential Fish Habitat Consultation (50 CFR Part 600) and a U.S. Fish and Wildlife Service Endangered Species consultation be conducted (Section 7 of the Endangered Species Act). In the meeting notes posted by the PWS Places of Refuge Workgroup (May 6, 2004), it is stated that the PPOR document will not include environmental resource information but will reference the Alyeska Geographic Resources Database (GRD). This is acceptable as long as the analysis conducted includes the elements required by NEPA (see 40 CFR Parts 1500-1508).

5. The industry's track record does not promote confidence among those of us who live and recreate in this proposed Potential Place of Refuge. Shall we expect, in the event of a future spill, the same unwillingness to assume responsibility and make reparations that followed the Exxon Valdez oil spill? Even in less serious incidents, we find that there is a lack of preparedness, capability, and concern to respond to spills in a way that minimizes environmental damages. For example, it was distressing to us learn of the recent diesel spill in Jack Bay on April 28 of this year, during a spill response training drill. It is always disheartening to hear of spills within the Sound, but one of the more disturbing things about the recent spill was the overall failure to contain the diesel, *even though containment equipment and personnel trained in the use of the equipment were immediately on hand, and the site of the spill was in an area that at the time was sheltered from wind and wave action.* We have spoken with individuals involved in this drill, as well as DEC spill response professionals, who are critical of the decision making process that led to the failure to recover the spilled diesel and the subsequent pollution of portions of the adjacent shoreline. Apparently, a financial motivation—not to contaminate sorbent and other more effective response equipment available at the time—took priority over a commitment to avoid polluting Jack Bay. Some observers also claim that the spill far exceeded the 50 gallon estimate.

At this time, we are still awaiting a final report that explains this spill fully, critiques the causes for the failure to contain the diesel under apparently optimal conditions, and in which liable parties assume responsibility. We are not encouraged by the dilution of accountability apparent in the letter we received from the RCAC, dated July 15:

On May 4, 2004 PWSRCAC staff collected sediment and mussel samples at the impacted site for laboratory analysis. Preliminary results received on June 29, 2004 indicate that the samples contain a clear diesel signature at a moderately contaminated concentration range. *As PWSRCAC was not able to obtain a sample of the diesel spilled, we are not able to make a direct correlation to the April 28, 2004 spill and the detectable diesel in the sample (italics added.)*

Does this mean that SERVS is not liable for the spill or for remediation? Are we to believe that the diesel residues found in mussels on a generally pristine section of coastline five days following the spill are not the result of a sheen that was tracked to this site at the time of the April 28 spill? Why was a sample of the spilled diesel not taken, if this is typically required to show that the spill results in contamination? The public looks to the RCAC for information and oversight, and this quote leads readers to the unsettling conclusion that the RCAC is hesitant to be critical of SERVS. If even relatively minor incidents, such as this, are not followed by a more forthright assessment and acknowledgment of mistakes made, responsibility assumed, and the public fully informed, we feel great trepidation about the handling of a serious accident. Lastly, what changes are being made to procedures, priorities, and equipment so that this type of failure is not repeated?

6. We applaud the intent of both the Geographic Response Strategy and PPOR programs, insofar as they attempt to reduce environmental and social impacts of a spill or other vessel problem. However, we urge the PPOR working group to devote additional effort identifying those PPOR selected sites that should be used only in time of dire need and as a last resort, due to environmental sensitivities and social considerations. Any decision to use a specific PPOR by the Captain of the Port, and resulting damages, should be fully defensible, based on objective criteria.

We understand that an emergency situation involving a large vessel will be highly situation specific, and will require both prior planning and difficult decisions. Furthermore, we realize that the ultimate decision on where to secure a distressed vessel rests with the Captain of the Port, who must take many factors into consideration. However, we are concerned that a Place of Refuge designation could pre-dispose Jack Bay to receive a variety of uses in the future that conflict with existing uses, and are destructive to the qualities and resources that are explicitly and tacitly protected here. We are concerned not only with damaged, discharging large vessels, but also with smaller vessels; the risk of ancillary pollution, such as occurred in April this year during a spill response drill; and visual, auditory and vessel congestion, boom, barges, etc., that substantially alter the character of the bay. One small incident may have negligible impact, but a catastrophic spill, a grounding, or repeated incidents over time could clearly harm the resources and the public good. As stated above, this outcome is clearly contrary to the intent of existing management plans, including the recent Chugach National Forest Plan and the Prince William Sound Area Plan. It also conflicts with the management intent of the Jack Bay State Marine Park, the EVOSTC small parcel acquisition program, and numerous other stakeholders who have worked diligently and successfully to date to protect Jack Bay.

7. We would like to see a detailed discussion of probable scenarios for which each proposed PPOR would be chosen, and a robust justification advanced for selecting that particular PPOR before the need arises. This would make the decision making process more transparent to, and subject to comment by, affected parties. We fear that the fact that a particular bay *is physically suitable* for use as a PPOR is being used as justification that it *should* be used in time of need. In a place as sensitive and productive as Prince William Sound, and where so much of the area's inherent public value rests on its aesthetic qualities, we feel that this issue should be openly discussed by the public before the program gains more momentum.

8. We would like to see a discussion within the document on the recent success rate of oil spill recovery methods used in U.S. waters in recent years, with specific reference to Alaska. Spill recovery rates are generally quite low, particularly in the cold waters and severe weather found in Alaska. What would be probable consequences of a leaking vessel anchored in Jack Bay and other PPORs under various seasonal conditions? We are particularly concerned

about the use of dispersants in proximity to the sensitive estuarine and intertidal habitats found in the bay. We would like assurance that the use of dispersants will not be approved until they can be shown to be beneficial to the short- and long-term recovery of intertidal and near-shore ecosystems. At present, this assertion appears to be problematic.

9. We would like to see the issue of liability and compensation for damage addressed within the document. In the wake of the Exxon Valdez oil spill's legal fiascos, it seems advisable to discuss these issues in advance, and develop a clear chain of legal accountability for damages to public and private interests.

In summary, we believe that employing Jack Bay as Place of Refuge would conflict with numerous existing uses and management directives that are based on a healthy, productive, and attractive natural environment. We respectfully request that you consider the following suggestions and alternatives:

a. Sites with noteworthy public interest values that conflict with use as a place of refuge should be clearly identified as such, and *all reasonable efforts should be made to avoid using these areas*. We would like to see this principle formalized for Jack Bay and other sensitive wildlife habitat and recreational areas in PWS by adding a separate "geographic layer" to the PPOR plan that maps and describes particularly sensitive habitats and recreational areas, of which there are many. It was our understanding that this was the intent of the Geographic Response Strategy project, and it is ironic that the GRS materials are now used to facilitate the PPOR project. Clear and workable alternative PPORs should be identified to assist the Captain of the Port during emergencies. In short, after identifying physically suitable PPORs, the working group should, through further research and in consultation with stakeholders, also identify places that should be protected at great effort. We believe that Jack Bay falls into this category, for the many reasons discussed above.

b. The vicinity of the Alyeska Terminal in Port Valdez is dedicated to the oil shipping industry's needs. This is also where tanker accidents seem most likely to happen, and we would prefer to see a state of the art spill response, containment, and repair infrastructure established here for all distressed vessels, large and small, that are capable of being moved, rather than among the pristine bays of Prince William Sound. The infrastructure to efficiently handle a damaged vessel is immediately available, and spill response equipment can be concentrated here. Anchorages are available, wind and sea conditions are typically less inclement, and containment of oil should be less problematic. Also, having easy physical accessibility in Port Valdez (relative to remote sites) should improve oversight capability by the Coast Guard, PWSRCAC, and DEC. This would be likely to provide additional pressure on the industry and contractors to improve containment and cleanup efforts. This could be developed as a joint project of the oil shipping industry and the city of Valdez, and would likely qualify for federal funding. Clearly, this proposal would not address all needs for a place of refuge, but we would like to see greater attention given to the overwhelming conflict between vessel discharge pollution and virtually all other uses of Prince William Sound. We believe that by making a greater effort to contain as many effects of the oil shipping industry to a small, localized area in Port Valdez as possible can go a long way toward the stated objectives of the PPOR project with regards to preventing or limiting pollution.

Thank you for considering our concerns. We look forward to continued participation in the PPOR planning process, as it relates to Jack Bay.

Sincerely,

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Signing for the following Jack Bay landowners:

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Tom Schantz
Jen Steitz
John and Suzanne Lyle
Chuck and Patti Balzarini
Richard and Katie Marson

cc: John Devins, Prince William Sound Regional Citizens' Advisory Council
Larry Iwamoto, Alaska Department of Environmental Conservation
Steve Zemke, Chugach National Forest
Chris Degerness, Superintendent, Alaska State Marine Parks
Steve Moffitt, Cordova Area Research Biologist, Alaska Department of Fish and Game
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