

EXXON VALDEZ FISHERMEN'S CLAIMS PROCESS
REPORT TO
THE FISHING COMMUNITY
IN THE GULF OF MEXICO BP OIL SPILL

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This narrative will cover the fishing claims that were impacted and paid through the Exxon Valdez Oil Spill insurance, Trans Alaska Pipeline Settlement Liability Fund Act, Alyeska Settlement and litigation process to include compensatory and punitive damages. It will cover how the claims offices were set up, how the claims from different fisheries were treated, how different areas were treated. It will not cover tourism, businesses, Alaska Native and others subsistence users, land owners, federal and/or state land owners/resource owners, Alaska Native Corporations and/or landowners or municipalities/villages, or personal injury claims. An additional narrative will be included for Subsistence as well as fishing vessel charters to clean up the oil. Those will need additional narratives and can be discussed in an additional document as I can produce or induce others to write.

Some background: the litigation identified 53 classes of harm in the court process. Those are mentioned above. The number of classes was determined as the oil flowed and harmed each of the four oiled regions at different points in time as well as degree of damage. It was determined to divide the oil spill damage area into four regions: Prince William Sound region (site of the tanker hitting Bligh Reef), Kodiak region, Cook Inlet/Kenai Peninsula region and the Alaska Peninsula region. Each of these regions were oiled and the response efforts were different and in varied degrees of intensity.

The legal teams for the different classes of claims were slow at developing as the flood of the attorneys increased as the damages and pending damages began to increase. Forms for signing up with a law firm came much more quickly than boom to respond to the clean up.

This document is intended for just fishing claims and how they were handled.

On March 24, 1989 when the Exxon Valdez Tanker hit Bligh Reef, fishing vessels responded without a thought of compensation but concern about protecting their fishing grounds. The entire fleet of 545 gillnetters, 272 seiners, 132 herring pounders, 121 herring seiners, 32 herring gillnetters, and 20 or so tenders were prepared to respond. They knew the waters and they knew the sensitive areas that needed to be protected.

Attorneys worked hard to sign up clients with various fees. Initial fee for all work was any where from 10% to 25% for the insurance process. Then there were a raise in fees from 15% to 35% for the subsequent processes. These were the direct action attorney contracts. Some attorneys even wanted money up front but most direct action attorneys were on a contingency fee process: when you get paid, then I get paid. Direct action attorneys were always someone who had an attorney before, had a neighbor who had this attorney, a brother-in-law who was or knew an attorney or sometimes someone who just walked into town. The court determined the fee for the legal work was 22.5%. Some of the attorneys could not afford to remain in the lawsuit and dropped out. Not all of them gracefully.

The office I worked for was the Fishermen's Claims Office. We had offices in Kodiak, Anchorage, Kenai, Homer, Valdez, Seward and mine in Cordova. My office stayed open the longest and had the most experience with dealing with the claims. Our philosophy was to be a class action process. We didn't require contracts to get and receive legal representation or compensation through the insurance process, but after 1991 it was on a contractual determination. A claimant had to decide who would represent them. The Fishermen's Claims Office dealt with all areas that were impacted as I had the best contact with the attorneys for each claim area. We provided the most accurate updates on the case. I can teach a class action lawsuit 101 for the hours that I spent explaining the process to all claimants. We held many meetings for claimant information that was open to all claimants, no matter their representation.

The case was brought to federal court in a class action manner. Most cases such as this large one pending are dealt with in a class action manner. In the Exxon Valdez, the payout in the end was the same for both class and direction action clients. No one got a better deal and all the attorneys worked together to determine the case strategy and a complex matrix for compensation after the insurance process.

[Most class actions are treated in a manner that is somewhat anonymous. The attorneys know the main participants for the trial and the rest fall into a grouping of some sort. In our situation, I knew the claimants or got to know them quite well. I made sure that the attorneys from whatever claim category met and knew all the clients. I know today that the attorneys remain friends with some clients of twenty years. If the attorneys had a

question on any aspect of the fishing experience, I had that fisher available as well as variations for their consideration. Each category was not cast in stone, therefore could not be just jumbled together.]

The **direct action** attorneys know each of their clients and when a claim is made the client must provide many intrusive documents for the court to pursue their claim. You will go through Discovery process where all your life is exposed and questioned. It is not easy and it is frustrating.

There were several pay out and claims opportunities: initial Crawford Insurance until February 1990, Alyeska Pipeline in 1992, Compensatory Damages in 2007 and Punitive Damages in 2008 and still locating folks today. We still have some Punitive Damages money to be properly ordered by the court for a pay out. The jury determined that our damages were approximately \$390 million and the punitive damages were \$5 billion. **The US Supreme Court reduced the punitive damages to \$500 million.** (At \$5 billion, that number didn't reflect what the fishing fleet damage was: I believe it should have been very close to \$50 billion.)

The fishing vessels that were ready to go were the herring vessel fleet. It was at the time our herring were coming into the Sound to spawn and our fleet to harvest them through several methods through the limited entry permits process: seining, gillnetting, pounding, and a wild harvest method (last is non limited entry permit.)

The canneries that processed the herring for foreign markets were in place to handle this expected large mass of seafood product. Two immediately impacted categories: herring four groups and cannery workers.

Exxon immediately set up their insurance company, Crawford Ins., and upon proof of working in the cannery, paid the **cannery workers** \$900.00 for their herring damage. In the entire process, they received no more due to herring losses. Their normal income during the herring season would have been in the \$2000 range. This group of claimants who are very important to all our fisheries was treated the worst.

Through Crawford, Exxon paid for the **herring groups** except the wild harvest fishermen (not too many of those folks participated in a non-limited entry permit fishery). The seiners were paid on their fishing history for the previous two years and averaged. It did not reflect how they fished; they usually had a partner or two and did a combine. It was a package deal: boat owner, permit holder, crew and spotter pilot on an individual herring permit basis all based on the Alaska Limited Entry Commission official reports of the herring history. When records were made annually, usually a larger amount was put on one permit report and didn't reflect the combine experience. Most partners didn't get their fair share.

The herring pounders were treated on an individual basis also. It did not reflect the partnerships that they had. Very few pounders operate alone. They have a seiner to harvest the herring with a crew, day laborers to set up the pounds and tend them, and the permit holder. They generally have relationships with up to six or seven other pounders who get varied percentages depending on their input. It is a complicated formula that is individualized for each named group. This was not recognized in the initial pay out. They would not receive any more funds until the Alyeska payout.

Herring fish have not returned to Prince William Sound since 1993. There isn't enough fish to have any fishery of any sort. Science debates what the cause has been: oil, natural cycles or something else. We say oil spill as it was a robust fishery prior to the oil spill. A herring seine permit was worth \$350,000 prior to the oil spill and is worth nothing now. The gillnet permit was about \$80,000 and the pound about \$100,000; they are worth nothing now. Can't give them away.

Salmon fisheries in the State of Alaska are done on a limited entry process. Unless you have a limited entry permit, you cannot fish for salmon. There is a personal use permit and a subsistence permit that require certain conditions to qualify and limited opportunities to fish. The limited entry process allows fishing for salmon during fishing openers determined by Alaska Fish & Game Department and records of the harvest and fisher payment are received from the canneries. Areas open to fish and type of fishing equipment is determined by this permit process. Each fishing area is treated according to the science of fish return patterns and harvest methods are different from area to area.

The first salmon fishery to open in the State of Alaska is in Cordova. In mid May salmon gillnet fishing begins on the Copper River Delta. This area was not exposed to oil, but watched very carefully for the change in tides and water flow. It remained safe and produces our famous Copper River Reds and King Salmon. In mid August the silver salmon return to this area.

In late May or early June the fish begin to return through the Prince William Sound area and many fishermen go west to harvest the red, chum, and pink salmon. These include gillnet fishers, seine fishers, and setnet fishers. The oil moved into these fishing grounds. Fishing closures were abundant and damage was extensive to the area. Each of these gear type fishers had different damages. Whenever there was a fishing opener the area was generally clean. If oil was present by surprise of tide and water change, then there was an emergency closure. Some did have oiled fish and gear. They were compensated almost immediately for that one time experience at a reduced price.

The price of fish for Prince William Sound reflects how much fish there is in the warehouses and how much more is expected to be harvested. In 1988 the price was \$1.20/pound for pink salmon (seine harvest target

fish) and the warehouses were short on stock. It was expected that the price would be a bit lower, in the \$.70 range, but compensation was paid on \$.35/pound negotiated amount. The price today is about \$.15/pound and we are grateful. Less than half the seiners are fishing anymore; the rest remain idle in hopes that the return of fish will grow and the price will raise enough for them to pay for the cost of the effort. This has gone on for about twelve years or more.

Compensation for salmon fisheries: Salmon gillnetters, Setnetters, and Seiners received some money from the Crawford Insurance three phase payout processes. Gillnetters: \$10,000, Setnetters: \$10,000 and Seiners: \$30,000. In each salmon category the vessel owner, permit holder and the crew were within the same dollar amount NOT added on. Proof of a permit, a vessel and a crew license were required. No questions asked.

A few weeks later, the claim process became more complicated. The original money was held against the claim. Some fishermen didn't participate in the second phase as it wasn't to their benefit. At the moment they had made a little money on the deal according to the insurance process. If you missed the deadline, which was very short - less than fifteen days, you didn't get this advance.

For those who did go forth on the second phase, it was more complicated. They of course provided: permit holder card, proof of ownership for the vessel, crew licenses for making the claim. They then had to provide their fishing history through official state records to set the compensation percentile for the previous two years. This six digit percentile was applied to a negotiated possible harvest amount available at the reduced price of fish. It was a great deal of calculating on a calculator and using a mechanical pencil. (Computers were not readily available; our office had two.) Then the amount of fish caught, proven by present Fish & Game Dept records was subtracted from this projected amount of claim for 1989. Your advance was subtracted for all parties involved in the claim packet. [It was through this Phase II process that my skills with the calculator/adding machine and mechanical pencil discovered the programming glitch in their program - it had proven that most fishermen owed money to Exxon. I solved that by challenging the programming and we won.]

Phase III was short lived. The fishermen who could prove that they had been previously paid more money for iced fish (what we have done to guarantee our fish are handled in the most careful manner to ensure quality fish) were able to receive more money upon proof of this enhancement. No recognition of a newer vessel, added new nets, improved fishing operation or challenging the history that was impacted by health, vessel break down, or other handicapping experience.

Throughout this filing of insurance claims I discovered that an agreement had been made between Exxon and the claims process negotiators that no lawyers would be involved. With the Fishermen's Claims Office, they had me (a legal technician and para legal) while direct action attorneys had the claims filed individually not by their law firm.

In some instances, private direct action attorneys refused to file for claims under the insurance. When this process went away, their clients had no present damage funds and no method to receive any further moneys until the court process had been completed. Their lawyers also wanted some legal fees up front and at times refused to represent their crew. We picked them up under the class action. We did our best to make sure everyone had legal representation and weren't left out.

The attorney firms all received some legal process funds that were negotiated and put in a trust fund (difficult to get out later) to help defray the cost of having offices available. Until the trust fund could be accessed many years later, the law firms paid for the claims offices from their own budgets.

In March of 1991 the two year statute of limitations time line for filing a claim against Exxon arrived. We filed on the Trans Alaska Pipeline Liability Fund. It was announced in the beginning of the year that all claims had to be filed. This was a limited dollar amount fund and no guidelines on how the compensation should be documented. The attorneys that I worked with set a dollar amount with hope that the amount would cover future losses. We didn't know if the individuals were a package or separate.

I knew my fisheries and how each was different. There were multiple permit holders and crew that were paid at a higher or lower rate depending on their experience and their agreement with the owner. I also had been visiting with some of the other local offices in Cordova and other parts of the state on the claims process so I knew that there was a lack of guidelines as well as a process by which to do this. It was agreed that we would file for \$2,000,000 for each major permit and \$1,000,000 for each subsequent permit and crew on top of that. This process was a futile exercise as the TAPLF came back with a determination that the fishermen owed Exxon money!!!

Alyeska Pipeline Services Company settlement. In 1992 Alyeska who operates the pipeline delivering oil to the tankers and is a partnership of the oil producers came to a settlement on their liability. This was \$100,000,000. In order to fairly recognize the various impacts to the different fisheries, the attorneys after a great deal of negotiation, arbitration, and frustration developed a matrix. Each class of claims would develop their claim amount and defend it to the entire legal profession involved in this lawsuit. They negotiated, not without a great deal of discussion, on the value of these classes. It was put in a matrix that allowed for a weighted value.

With this percentile number, then the fishermen and other classes could multiply their personal percentage and determine what their claim dollar would be when funds from liable parties became available.

Within each class there could and were differences of impact. Those class representatives would meet to determine the proper weight for their damages and defend that to the class group. It had to be signed off by the representatives on behalf of their group. Direct action claimants and class action claimants fared the same.

This process worked as best it could. Each class thought that they were damaged the most, but solid evidence needed to be proven. Through this process, when the court via the jury process determined that a class was not damaged or not proven their damage, the entire claimant process had agreed to follow the matrix and share with those that were dismissed. The previous court cases had eliminated some classes but it was felt by all classes that they were part of the family and could not be eliminated. (Like Granny in the house contributing her love and direction but not bringing in money. This is not a claim just showing relative connection.)

Alyeska did pay to specific communities funds for specific purposes. Several villages improved their ferry terminal facilities.

EVOS Trustee Council The State and Federal governments had been sued by the claimants as well as the State and Federal governments were suing Exxon parties. In order for these cases of damage to the environment - the lands and water, overall oil impacted area, to be settled, and to bring them to our side with evidence, support and cooperation, the claimants agreed to drop their case against them for \$900,000,000 fund plus \$50,000,000 in fines to both governments. Exxon received some of the money for their effort of clean up after the first year's work. The money was set up in a fund that would do science for the recovery programs over a twenty year period and then phase out.

Three trustees from the Federal government and three from the State government had to all agree on how the funds were expended. At this point now they are in a phase out of their programs with the final sciences being completed in the coming years. A Public Advisory Committee was appointed that represent the different interests in the oiled area. These are federally approved appointments of local residents.

Some Alaska Native village corporations sold some of their land; others built a Sea Life center, the Alutiq Museum. It was hoped to improve their communities and to lessen the long term impact on the residents.

Pre Trial Process: Direct Action claimants went through a process called Discovery. Here they brought in their five years of income tax records and had to be interviewed by Exxon attorneys as to the legitimacy of their claim. For the Class Action claimants, they only had to bring in their income taxes for copying. Keep these records near by.

Compensatory Process and the Federal Court: In 1994 the case went to court. Early in the year it was determined that this was to be held in the Federal Court system and would be dealt with as a class action case. There would be four phases of the trial. Phase I: finding guilty or not of Exxon's liability in the spill. Phase II: How much the compensatory damages would be before a jury. Phase III: would there be punitive damages and how much. Phase IV: smaller claims. There was a settlement on the Alaska Native subsistence claims of about \$6,000,000. The smaller claims were rolled into the matrix so as to not dismiss them and to not go through expensive court/legal costs for claims that were small.

Before the court hearing, Exxon had expended \$400,000,000 on legal costs; the combined claimants' costs were \$40,000,000. This was all out of their pockets. Remember, the attorneys don't get paid until you get paid.

Other Fisheries & Seafood

Shrimp: these past two years are just starting to show a possible comeback; most shrimpers have had to do something else.

Bait Herring: just not there for the harvest; same problem as the Pacific herring not enough for a harvest.

Black cod and miscellaneous finfish: just beginning to recover enough to think about the investment in gear that has sat in yards waiting.

Halibut: the process went to an individual quota system. Qualifying years included the 1989 season when there was no time or courage to harvest let alone for documentation.

Killer whales: studying them and suspect that a pod or so is missing.

Birds: some species slowly recovering and others are being watched carefully.

Sea Otters: some areas are o.k. and others are cleaning up the bottom of the bays when they dig for clams.

Sea foods: clams, oysters. The clams were originally damaged in the 1964 Earthquake and are not recovering while oysters are brought in to raise.

Crab: not recovering; may be other factors.

Fishing Tenders: The tender class received small amounts of compensation and were just about last in each payout. It didn't reflect their losses. Their contracts changed drastically throughout the time. They

originally had contracts that were 90 days or so, and then reduced to half day before an opener and half day after; some were for poundage. They were lucky at times to get a contract.

Summary: *as you can note, the initial process only paid a nominal amount. Salmon Gillnetters received on average about \$75,000 in the entire process yet each year they lost on average about \$50,000. In twenty one years that adds up to many lost opportunities to improve the fishery. A gillnet permit (my father died the year before and we sold it in 1990) was valued at \$190,000 and today is about \$80,000. A salmon seine permit sold the day before the oil spill for \$329,000 and today would be worth \$125,000 had they not had to go bankrupt to clear that debt. A set net permit was about \$100,000 and now is about \$35,000. The high numbers reflect the expected average income for that year in that fishery.*

Herring fishers didn't receive money until Alyeska process and then the previous payment, as for others was subtracted out.

Fishing vessels, the boat, lost enormous value as it goes with the success of the fishery and the demand for more modern and efficient equipment.

Suggestions to make your life easier:

- 1. Mitigate your losses. This means do something to earn money as you must do something and not just stand around and wring your hands. It doesn't have to be in the same work or fishery you have done before.*
- 2. Document everything and keep it in order. Put it in a file box for safe keeping and don't get tired of it and throw it away. You will need it.*
- 3. Make sure that your income tax records are in order.*
- 4. When you receive a document, respond. Don't wait there are deadlines. Get help from someone who can help you.*
- 5. Make copies of all documents you sign. Don't be in a rush, but don't delay.*

Comments on this narrative are welcome. This is from my experience of working nine years in Cordova Fishermen's Claims Office as an employee of the class action group and since as a volunteer to help claimants fill out their documents.

Copies of documents

Copies of papers signed

Hay

Hair

Wills

Powers of attorney

Living wills

Living trusts