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Report to Congressional Requesters

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March 1991

# COAST GUARD

# Millions in Federal Costs May Not Be Recovered From Exxon Valdez Oil Spill

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Resources, Community, and
Economic Development Division

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March 5, 1991

The Honorable Earl Hutto, Chairman
The Honorable John R. Kasich, Ranking
Minority Member
Subcommittee on Readiness
Committee on Armed Services
House of Representatives

In response to your request and subsequent agreements with your offices, this report presents information on the total federal costs of the Exxon Valdez oil spill reported as of June 30, 1990, the extent of reimbursement to the government through September 30, 1990, and improvements needed in the reimbursement process in the event of future catastrophic spills.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. We will then send copies to the Commandant of the Coast Guard; the Secretaries of Agriculture, Commerce, Defense, Energy, Health and Human Services, the Interior, Labor, and Transportation; the Attorney General; the Administrator of the Environmental Protection Agency; the Director, Office of Management and Budget; and other interested parties.

This work was performed under the direction of Kenneth M. Mead, Director, Transportation Issues (202) 275-1000. Other major contributors are listed in appendix IV.

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# Executive Summary

## Purpose

When the supertanker Exxon Valdez spilled more than 10 million gallons of oil into Alaska's Prince William Sound in March 1989, it set off an extensive cleanup effort. The Exxon Corporation assumed responsibility for managing and paying for the spill cleanup, and it had spent more than $2 billion through July 1990 for spill-related costs. A total of 10 federal agencies assisted in the cleanup. The Chairman and Ranking Minority Member of the Subcommittee on Readiness, House Committee on Armed Services, asked GAO to determine (1) whether federal agencies received reimbursement for their spill-related costs and (2) if improvements are needed in the reimbursement process.

## Background

The federal role in the cleanup of the Exxon Valdez spill was extensive because of its size and direct effect on land and water resources managed by the federal government. Federal agencies participating in spill-related activities were the Departments of Agriculture, Commerce, Defense, Energy, the Interior, Health and Human Services, Justice, Labor, and Transportation, and the Environmental Protection Agency. Their spill-related costs fell mainly into two categories:

- Personnel and equipment costs for removing the oil were eligible for recovery from a pollution fund authorized by the Clean Water Act and administered by the Coast Guard. To obtain reimbursement from this fund, agencies had to have authorization from and submit bills to the Coast Guard, which reviewed and approved the costs and billed Exxon. After receiving payment from Exxon, the Coast Guard reimbursed the agencies. Through September 1990, the Departments of Commerce, Defense, the Interior, and Transportation had obtained reimbursement from the fund for their spill-related costs.
- The Departments of Agriculture, Commerce, and the Interior, and the state of Alaska, acting as trustees for the natural resources, were responsible for seeking recovery of these costs from Exxon. Through September 1990, the trustees had received reimbursement directly from Exxon for part of their damage assessment costs.

## Results in Brief

As of June 30, 1990, the federal government reported spending almost $154 million on the spill. However, the federal government may recover only $123 million or about $31 million less than reported. The federal government also will not recover millions of dollars more in spill-related costs that went undocumented and unreported. GAO found three main reasons for the limited recovery of costs.

- Agencies have not been reimbursed for about $13 million of damage assessment costs because Coast Guard regulations provide only for reimbursement of oil removal costs from the pollution fund and agencies have been unable to collect them directly from Exxon. The federal government also may not recover any future spill-related costs mostly for damage assessment and restoration of natural resources, which for damage assessment alone may exceed $26 million, unless Exxon agrees to fund such costs. The Department of Justice is considering civil litigation to recover damage assessment and restoration costs from Exxon.
- The Coast Guard's spill coordinator at the site, who must approve agencies' spill costs, did not authorize agencies to recover some costs of their spill activities from the pollution fund. Reimbursement of these activities could be allowed under the broad definition of oil removal in the act and related regulations. However, the spill coordinator did not believe they were oil removal activities.
- Because of unclear communication and guidance between agencies and the Coast Guard, some agencies got a late start in documenting their costs and did not report all their costs, and some agencies made billing errors in the millions of dollars.

The Oil Pollution Act of 1990, enacted in August 1990, contains provisions that should remedy in future spills some of the factors that limited recovery in the Exxon Valdez spill. However, the Coast Guard needs to clarify the breadth of spill activities eligible for reimbursement from the current fund, and specify appropriate methods and standards to prepare correct bills.

# Principal Findings

## Federal Costs and Extent of Reimbursements From the Exxon Valdez Spill

As of June 30, 1990, the federal government reported spending almost $154 million on the spill of which about $123 million either has been reimbursed or is being processed for payment. GAO estimates that agencies may not be reimbursed for the remaining $31 million, or about 20 percent, of the spill costs they incurred through June 1990, and this percentage will grow substantially if agencies are not reimbursed for substantial future costs related to the spill. About half of the costs already incurred that may not be reimbursed are for assessing damages to the natural resources. Additional spill-related costs of over a million dollars went untracked and unreported and therefore are not reflected in the above amounts.

## Agencies Have Not Recovered All Their Damage Assessment Costs

The Clean Water Act makes the President responsible for recovering from the spiller—not the pollution fund—the costs of restoring natural resources after an oil spill. Three agencies—the Departments of Agriculture, Commerce, and the Interior—incurred costs of about $23 million through June 1990 for studies to assess damages to the natural resources and signed a direct agreement with Exxon that has resulted in reimbursement of about $9 million. However, Exxon has not responded to these agencies' requests for the remaining costs. The agencies are considering a civil suit against Exxon to recover unreimbursed amounts. In the meantime, they have received supplemental appropriations to cover these costs.

Recent legislation should make it easier for agencies to recover damage assessment and restoration costs resulting from future oil spills. The Oil Pollution Act of 1990 allows agencies to receive reimbursement—up to $500 million for each incident—from the Oil Spill Liability Trust Fund for costs of assessing damages to and restoring the natural resources affected by oil spills.

## Coast Guard Interpretations Limited Reimbursements From the Pollution Fund

Regulations implementing the Clean Water Act address only reimbursement from the pollution fund for those costs associated with "oil removal" and provides a broad definition of what costs qualify. The Coast Guard's spill coordinator is left to determine what activities are associated with "oil removal" and should be authorized for reimbursement. The coordinator in the Exxon Valdez spill did not believe a number of agencies' activities were related to oil removal and therefore did not authorize them for reimbursement even though these activities could qualify under a broad definition of oil removal. Coast Guard officials told GAO that the spill coordinator may have tried to minimize costs reimbursed because the Coast Guard did not know how long Exxon would finance agencies' activities. The unreimbursed costs were for such activities as monitoring worker safety at the site, and providing medical services for Native Americans adversely affected by the spill. Uncertainty over what costs qualify for reimbursement will continue until the broad range of reimbursable spill activities is described more clearly.

## An Absence of Clear Communication and Guidance Hampered Cost Recovery

Agencies also lost opportunities to recover their costs because of problems in tracking and billing their spill-related costs completely and accurately. One problem was in notification—the Coast Guard did not provide written notification to the four agencies that eventually obtained reimbursement from the pollution fund until 4 to 7 weeks after

the spill, when they were already involved in many spill-related actions. As a result, some agencies did not immediately begin to track and document all their costs, thereby losing recovery opportunities.

Even when agencies tracked costs, they had not been provided appropriate and consistent standards and methods by the Coast Guard to compute actual costs. As a result, agencies submitted incorrect bills. Some costs were understated—for example, several agencies did not charge use rates for some of their equipment, while others did not include adequate amounts for the costs of employee benefits. Other costs were overstated—for example, one agency billed overtime costs for its military personnel, even though military personnel are not paid for overtime. Unless the new regulations for the Oil Pollution Act of 1990 clarify the standards and methods agencies should use to submit bills for reimbursement, incorrect billings may occur again.

## Recommendations

GAO recommends that the Secretary of Transportation

- in establishing regulations to implement the Oil Pollution Act of 1990, describe the broad range of agency oil removal activities authorized for reimbursement from the current fund;
- develop procedures for quickly notifying agencies about the potential or actual use of the Oil Spill Liability Trust Fund; and
- prepare regulatory guidance or policies to implement the Oil Pollution Act of 1990 which clarify standards and methodologies that agencies should use in computing and recovering their spill costs from the fund.

GAO also makes other recommendations to the Secretary.

## Agency Comments

GAO discussed the contents of this report with the Commandant of the Coast Guard, other Coast Guard officials, and other agency officials, and incorporated their comments as appropriate. However, as requested, GAO did not obtain official agency comments on a draft of this report.

# Contents


| | | |
|---|---|---|
| Executive Summary | | 2 |
| Chapter 1 Introduction | | 10 |
| | Federal Framework for Responding to Oil Spills | 10 |
| | Federal Response to the Exxon Valdez Spill | 11 |
| | Process for Reimbursing Federal Costs of the Exxon Valdez Spill | 12 |
| | Objectives, Scope, and Methodology | 14 |
| Chapter 2 Federal Costs and Extent of Reimbursements From the Exxon Valdez Spill | | 17 |
| | Federal Agencies Reported Costs Totaling About $154 Million Through June 30, 1990 | 17 |
| | About $31 Million of Reported Costs May Not Be Recovered | 19 |
| | Federal Agencies Have Not Identified All Spill-Related Costs | 20 |
| | Reimbursements to Agencies From the Pollution Fund Were Less Than Recoveries From Exxon | 21 |
| | Reimbursement for Future Federal Costs of the Exxon Valdez Spill Uncertain | 23 |
| Chapter 3 Problems Experienced by Agencies in Obtaining Full Reimbursement for Damage Assessment and Restoration Costs | | 25 |
| | Federal Agencies and the State of Alaska Performed Damage Assessment Studies | 25 |
| | The 311(K) Fund Is More Readily Available for Removal Activities Than for Damage Assessment and Restoration Activities | 26 |
| | Exxon Has Not Reimbursed Agencies for Full Costs of Damage Assessment Studies | 26 |
| | Conclusions | 27 |
| Chapter 4 Coast Guard Did Not Authorize Certain Oil Spill Removal Activities for Cost Reimbursement | | 28 |
| | Oil Removal Activities Are Broadly Defined by Regulations | 28 |
| | Basis for the Coast Guard's Decisions on Authorizing Spill Activities for Reimbursement | 29 |
| | Agency Activities Not Authorized for Reimbursement Could Meet the Definition of Oil Removal | 31 |
| | Conclusions | 33 |
| | Recommendations | 34 |

## Chapter 5 Better Communication and Guidance From the Coast Guard Could Have Resulted in More Accurate Agency Billings

35
The Coast Guard Took Weeks to Authorize Reimbursement of Agency Costs 35
Agency Billings Were Not Consistent, and They May Not Have Recovered All Their Spill Costs 38
Conclusions 41
Recommendations 42

## Appendixes

Appendix I: Activities Performed by Federal Agencies During the Exxon Valdez Spill 44
Appendix II: Federal Departments and Independent Agencies Contacted 46
Appendix III: Cost Recoveries That Are Uncertain 48
Appendix IV: Major Contributors to This Report 49

## Tables

Table 2.1: Costs Reported by Federal Agencies 18
Table 2.2: Status of Cost Reimbursements 20
Table 2.3: Federal Spill Costs Not Identified, Reported, or Billed by Agencies 21
Table 2.4: Total Reimbursements to Agencies From the Pollution Fund 22
Table 5.1: Comparison of Rates Agencies Used for Retirement and Leave Costs 40
Table I.1: Exxon Valdez Spill-Related Activities Performed by 10 Federal Agencies 44
Table III.1: Cost Recoveries That Are Uncertain—Amounts and Items 48

## Figures

Figure 1.1: Reimbursement Approaches for Recovery of Exxon Valdez Spill Costs 13
Figure 2.1: Distribution of Reported Federal Costs by Type 18
Figure 2.2: Status of Reimbursement of Reported Costs 19

## Abbreviations

| | |
|---|---|
| DOD | Department of Defense |
| DOE | Department of Energy |
| DOT | Department of Transportation |
| EPA | Environmental Protection Agency |
| FAA | Federal Aviation Administration |
| FDA | Food and Drug Administration |
| FWS | Fish and Wildlife Service |
| GAO | General Accounting Office |
| NOAA | National Oceanic and Atmospheric Administration |
| NPS | National Park Service |
| OSHA | Occupational Safety and Health Administration |

# Introduction

On March 24, 1989, the supertanker Exxon Valdez struck a reef in Alaska's Prince William Sound, spilling over 10 million gallons of crude oil. This spill—the largest ever in U.S. waters—triggered an extensive cleanup effort. Exxon took charge of cleaning up the spill by amassing equipment and people, and by providing financing for spill-related efforts. The Coast Guard, an agency of the Department of Transportation (DOT), acting within its authority under the Clean Water Act, was responsible for overseeing the response efforts and coordinating related federal resources. Other federal agencies also had substantial involvement because much of the land affected was federally owned, and they provided needed equipment and other resources. Federal agencies which recovered their spill costs received reimbursement for their activities directly from Exxon and/or from Exxon through a federal oil pollution fund established by the act.

## Federal Framework for Responding to Oil Spills

The Clean Water Act, as amended (33 U.S.C. 1251-1376), provides the framework for federal responses to oil spills. The act makes the spiller liable for the costs of removal, but it also provides for a National Contingency Plan to ensure that the resources and expertise of the federal government will be available to minimize damage from serious oil or hazardous substance spills. The National Contingency Plan designates the Coast Guard as the agency responsible for coordinating the federal response to spills in coastal waters, adjacent shorelines, and certain inland river and lake ports.[1] This coordination role is accomplished by predesignated on-scene coordinators located throughout the United States. The coordinator evaluates the extent of the spill, the potential hazards, the types of resources needed, and the ability of the responsible party to appropriately clean up the spill before deciding on the appropriate federal role.

Subsection 311(k) of the act authorized the creation of a revolving pollution fund initially financed through appropriations and available to federal agencies for oil removal activities. The Coast Guard was charged with managing this fund and developing regulations for its use.

Normally, the Coast Guard's role during spills has taken two basic forms:

[1]The Contingency Plan also creates national and regional response teams, composed of members from the Coast Guard and various other agencies, for response planning, coordination, and advice. These teams will be discussed in chapter 5.

- When spillers have managed the removal efforts, the Coast Guard's role has been one of monitoring the spillers' efforts and providing technical feedback. The Coast Guard has not usually sought reimbursement for its monitoring efforts, according to Coast Guard officials. They said if a spiller requests resources or other assistance from any other federal agency, the Coast Guard usually becomes the focal point for recovering federal costs from the spiller and for paying federal agencies. Agencies do not normally deal directly with the spiller to obtain reimbursement for their costs. As the administrator of the pollution fund, the Coast Guard bills the spiller for agencies' costs and reimburses agencies from the fund when it receives payment.
- When the spiller is unknown or when the spiller's response actions are insufficient, the Coast Guard's on-scene coordinator may assume direct control for managing all or part of the response activities. The coordinator can obtain the services of third-party contractors and seek the help of other federal agencies in mobilizing response equipment, personnel, and other resources. To pay for these services and resources, the Coast Guard may use the pollution fund. Other federal agencies can apply for and receive reimbursement from this fund, provided that the on-scene coordinator authorizes the activities for which reimbursement is being sought. To replenish the fund, the Coast Guard can bill the spiller when known. When necessary, the fund balance could be increased through appropriations.[2]

## Federal Response to the Exxon Valdez Spill

In the Exxon Valdez spill, Exxon retained responsibility for managing the spill response activities. As a result, the Coast Guard's on-scene coordinator operated in a role limited to monitoring and oversight. However, 10 federal agencies were involved in the spill which, according to the Coast Guard, is an unusually large involvement for an oil spill response.[3] Agencies' spill-related activities were considerable because of the size of the spill, its direct effect on land and water resources managed by the federal government, and the agencies' abilities to provide needed equipment and other resources. The Department of Defense (DOD), for example, used Air Force aircraft to fly supplies and equipment to the spill-impacted area; sent ships to Alaska to house cleanup

[2]The Oil Pollution Act of 1990, passed in August 1990, replaced the 311(k) fund with the Oil Spill Liability Trust Fund, established under section 9509 of the Internal Revenue Code. This fund is managed by the Coast Guard. Replenishment of the fund, discussed in more detail in chapter 4, will be achieved through payments from a $0.05 per-barrel tax on crude oil received at U.S. refineries.

[3]The 10 federal agencies involved in the Exxon Valdez spill were the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, the Interior, Justice, Labor, and Transportation, and the Environmental Protection Agency.

workers; furnished Navy oil skimmer vessels to clean oil from the water; and provided high-pressure sprayers to clean oil from the beaches. Other agencies, such as the Forest Service and the National Park Service (NPS), whose lands were oiled extensively, monitored cleanup efforts and other activities. Agencies such as the Occupational Safety and Health Administration (OSHA) and the Food and Drug Administration (FDA) performed activities to mitigate potential threats to the public health and welfare. A detailed description of each agency's spill-related activities is shown in appendix I.

## Process for Reimbursing Federal Costs of the Exxon Valdez Spill

From the outset, Exxon assumed financial responsibility for the removal efforts, although under the Clean Water Act, Exxon's strict liability was limited to about $14.3 million.[4] Exxon had spent more than $2 billion through July 24, 1990, for spill-related expenses, including reimbursing millions in federal costs.

Exxon used two approaches to reimburse federal agencies for removal, damage assessment, and research and development activities—direct agreements with agencies or payment to the 311(k) fund. As figure 1.1 shows, by September 30, 1990, four agencies had established direct agreements with Exxon, six had sought reimbursement through the 311(k) fund, and three were not seeking reimbursement.

[4]Under Subsection 311(f) of the act, the spiller is responsible for actual spill costs up to $150 per gross ton for oil tankers. The gross tonnage of the Exxon Valdez was about 95,000 tons, making Exxon's total liability $14.3 million. However, the act provides that the spiller is liable for the full amount of spill costs if willful negligence or misconduct can be proven.

**Figure 1.1: Reimbursement Approaches for Recovery of Exxon Valdez Spill Costs** (Through Sept. 30, 1990)

**Agencies seeking reimbursement from Exxon using process under section 311(k) of the Clean Water Act**

- Department of the Interior
- Department of Commerce
- Department of Defense
- Department of Transportation
- Environmental Protection Agency
- Department of Health and Human Services

**Agencies seeking reimbursement from Exxon through direct agreement**

- Department of the Interior
- Department of Commerce
- Department of Agriculture
- Environmental Protection Agency

**Agencies not seeking reimbursement from Exxon**

- Department of Energy
- Department of Labor
- Department of Justice

## Agencies Signed Direct Agreements With Exxon

Exxon signed four different agreements directly with agencies as follows:

- On April 7, 1989—2 weeks after the spill—Exxon negotiated an agreement with the Forest Service, a Department of Agriculture agency. This agreement provided for payment of Forest Service removal costs on national forest lands, including reimbursement of salaries, travel and lodging, equipment, supplies, and overhead. The Forest Service in Alaska was not aware of the 311(k) process when it negotiated this direct agreement.
- A week later, on April 13, 1989, Exxon negotiated another agreement with the Departments of Agriculture, Commerce, and the Interior, and the state of Alaska, all referred to as trustees. Exxon agreed to pay them $15 million to assess damages to the natural resources. The federal share from this agreement was $9.3 million. The agencies entered into this agreement because the Coast Guard did not believe the 311(k) fund was available for reimbursing damage assessment activities until that money had been collected from the spiller.
- In July 1989, the National Oceanic and Atmospheric Administration (NOAA), a Department of Commerce agency, signed an agreement with Exxon to test tissue samples of certain marine life in the oil-impacted areas. This agreement, which extends through September 1991, covers

expenses of this testing up to a ceiling of $800,000. As of June 30, 1990, NOAA had spent $352,000 under the terms of this agreement.

- In June 1989, the Environmental Protection Agency (EPA) signed a joint agreement with Exxon for a research and development study on the use of microorganisms to break down the oil (bioremediation). Under the terms of the agreement, Exxon and EPA each agreed to provide cash contributions of about $1.7 million for the study. Later in 1989 and 1990, EPA and Exxon amended the agreement to extend the program activities through the summer of 1990. Under the terms of the amended agreement, Exxon agreed to pay an additional $1.4 million toward project costs, and EPA agreed to pay an additional $900,000. Exxon also agreed to provide certain services to EPA, including the use of Exxon facilities, accommodations at the spill site, and transportation, collectively worth about $1.6 million.

### Reimbursement Through the 311(K) Fund

Obtaining reimbursement through the 311(k) process was the approach used to recover most federal spill costs. However, a Coast Guard official said this was the first time the fund had been used to reimburse agencies during a removal effort. In keeping with its normal procedures, the Coast Guard, as administrator of the fund, was the go-between for obtaining reimbursement of federal agencies' costs from Exxon. Agencies submitted their bills to the Coast Guard, which reviewed and approved the costs and billed Exxon. After receiving payment from Exxon, the Coast Guard reimbursed the agencies.

## Objectives, Scope, and Methodology

In a letter dated April 10, 1989, the Chairman and Ranking Minority Member, Subcommittee on Readiness, House Committee on Armed Services, asked us to examine several issues regarding the federal costs associated with the Exxon Valdez oil spill. In January 1990, we issued an interim report, Coast Guard: Federal Costs Resulting From the Exxon Valdez Oil Spill (GAO/RCED-90-91FS). As agreed with the subcommittee's staff, this follow-up report addresses two additional issues:

- The total spill-related costs through June 30, 1990, and the extent of reimbursement through September 30, 1990.
- Improvements needed in the reimbursement process in the event of future catastrophic spills.

As further agreed, we did not perform a comprehensive analysis of agencies' accounting systems to determine whether agencies correctly

reported all their spill costs, but rather, we identified examples of incorrect billings based on an analysis of selected agencies' spill-related cost records.

To respond to the first objective, we contacted 13 federal departments and independent agencies that had oil spill responsibilities under the National Contingency Plan, and gathered data from numerous bureaus and components within these agencies.[5] We performed work at agency headquarters in Washington, D.C., and field locations in Anchorage, Alaska, and Seattle, Washington. When available, we obtained spill-related cost summaries, billing documents, and estimates of future costs from each agency. We also examined agencies' supporting documents, including daily activity summary reports for personnel, equipment, and supplies; pay vouchers; daily reports of vessel operations; agency direct agreements with Exxon; and third-party contracts.

We obtained from the Coast Guard all 311(k) billings to and receipts from Exxon and summaries of Coast Guard-approved payments to agencies through September 30, 1990. We also interviewed Coast Guard officials in headquarters and its Finance Center in Alameda, California, to obtain their rationale for the types of payments to agencies.

To gain a perspective on improvements needed in the reimbursement process for oil spills, we interviewed headquarters and field office officials from the 10 agencies that incurred spill-related costs. We discussed with them the extent of direction and guidance they received from the Coast Guard, the methodologies and criteria they used to determine billed costs, and where appropriate, their views on improvements needed to the reimbursement process. To determine requirements and Coast Guard responsibilities for administering the 311(k) fund, we also reviewed provisions of the Clean Water Act and its implementing regulations (33 C.F.R. 153); the National Contingency Plan (40 C.F.R. 300); the Alaska Regional Contingency Plan; and Chapter 7, Volume VI, of the Coast Guard's Marine Safety Manual, which provides standard operating procedures for the Coast Guard to accomplish its responsibilities under the National Contingency Plan.

We also addressed several legal questions regarding the specific types of oil spill activities reimbursable under the Clean Water Act and regulations, the policies and procedures used by the Coast Guard in managing

[5]A complete list of these agencies is shown in appendix II.

the 311(k) fund, and the effect of the new Oil Pollution Act of 1990 on the reimbursement process.

Our work was performed from February through October 1990 in accordance with generally accepted government auditing standards. We discussed the information in this report with the Commandant of the Coast Guard, other Coast Guard officials, and other agency officials, and we incorporated their comments as appropriate. As requested, however, we did not obtain written agency comments on the draft of this report.

# Federal Costs and Extent of Reimbursements From the Exxon Valdez Spill

Federal agencies reported spending about $154 million on the spill through June 30, 1990, but the federal government may not recover as much as $31 million of this amount. Recovery is also uncertain for millions in costs, mostly for damage assessment and restoration activities that will be incurred after June 30, 1990. In addition, significant amounts of federal costs will not be recovered because federal agencies did not accumulate and report the costs as being incurred.

This chapter provides an overview of these costs and reimbursements as a framework for discussions in chapters 3, 4, and 5, which explain why full cost recovery is not occurring. Chapter 3 discusses problems agencies have had in obtaining reimbursement for their damage assessment costs, chapter 4 discusses amounts not billed Exxon which could have been, and chapter 5 discusses the need for Coast Guard guidance to avoid incorrect billings. This chapter discusses

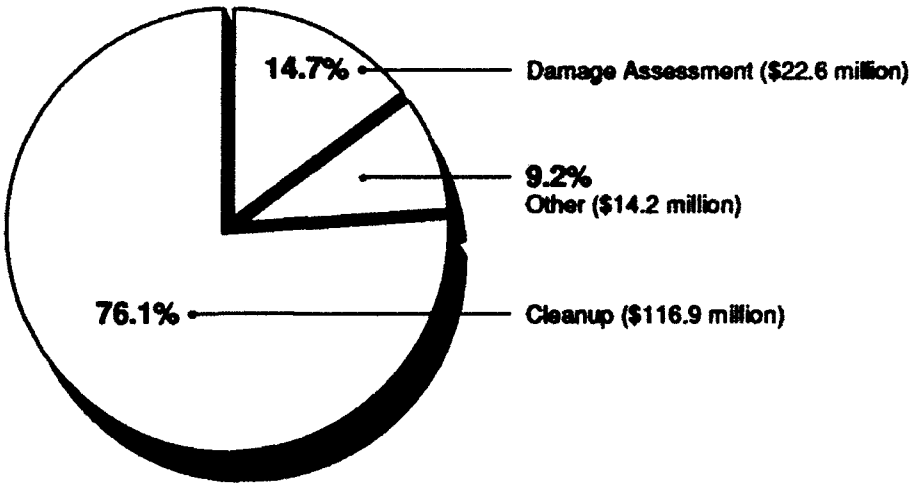
- the amount of federal agencies' reported costs,
- the extent to which reported costs will or may not be reimbursed by Exxon,
- the amounts and types of costs not reported by federal agencies for reimbursement,
- the amount of reimbursement collected from Exxon that the Coast Guard has forwarded to agencies, and
- the extent to which recovery of future costs is uncertain.

## Federal Agencies Reported Costs Totaling About $154 Million Through June 30, 1990

Federal agencies reported spill-related costs totaling $153.7 million through June 30, 1990. As figure 2.1 shows, $116.9 million was for removal, $22.6 million was for damage assessment, and $14.2 million was for other costs resulting from the spill.[1]

[1]Removal costs cover the direct removal and disposal of oil. Damage assessment costs involve the evaluation of damages to the natural resources. Other costs cover indirect spill-related activities that do not clearly fall in either of the first two categories, such as monitoring worker safety, preparing for possible litigation, or inspecting the food supply for any effects from oil pollution.

**Figure 2.1: Distribution of Reported Federal Costs by Type**




Four agencies—the Departments of Defense, Transportation, the Interior, and Commerce—accounted for 87 percent of the total reported costs. DOD—at $62.2 million—reported the highest costs among the 10 federal agencies. (See table 2.1.)

**Table 2.1: Costs Reported by Federal Agencies** (Through June 30, 1990)

Dollars in millions

| | Costs Reported for the Following Activities[b] | | | |
|---|---|---|---|---|
| **Agency[a]** | **Removal** | **Damage assessment** | **Other** | **Total** |
| Department of Defense | $62.2 | $0.0 | $0.0 | **$62.2** |
| Department of Transportation | 39.7 | .0 | .0 | **39.7** |
| Department of the Interior | 5.4 | 7.1[c] | 4.6 | **17.1** |
| Department of Commerce | 4.9 | 9.5[c] | .4 | **14.8** |
| Environmental Protection Agency | .5 | .9 | 6.1 | **7.5** |
| Department of Agriculture | 2.1 | 5.1[c] | .0 | **7.2** |
| Department of Justice | .0 | .0 | 2.6 | **2.6** |
| Department of Health and Human Services | 2.1 | .0 | .3 | **2.4** |
| Department of Labor | .0 | .0 | .2 | **.2** |
| **Total** | **$116.9** | **$22.6** | **$14.2** | **$153.7** |

[a]Does not include Department of Energy costs because the Department did not track and bill for costs.

[b]Costs of these activities represent costs agencies reported to GAO. Not all of these reported costs have been billed to Exxon for reasons discussed in chapter 4.

[c]Of these amounts, Exxon funded $9.3 million, which was allocated to three agencies as follows: Interior, $2.8 million; Commerce, $3.7 million; and Agriculture, $2.8 million.

## About $31 Million of Reported Costs May Not Be Recovered

Through both direct agreements and the 311(k) fund, as of September 30, 1990, Exxon had reimbursed $116.1 million of the $153.7 million that agencies reported they had spent on the spill. (See fig. 2.2.) The unreimbursed balance of $37.6 million consists of $7.1 million worth of bills being routinely processed, and $30.5 million for which recovery is uncertain because

- bills totalling $6.5 million are being questioned by the Coast Guard or Exxon;
- Exxon has not agreed to pay about $13.3 million for damage assessment costs, and the recovery of about $2.6 million for litigation costs is unknown; and
- agencies have no plans to bill Exxon for about $8 million.

**Figure 2.2: Status of Reimbursement of Reported Costs** (Through Sept. 30, 1990)

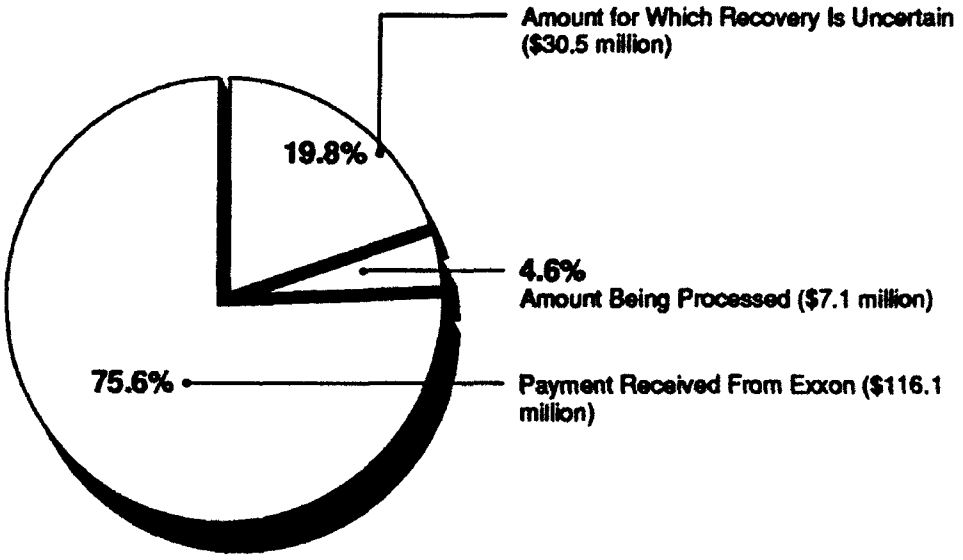



Table 2.2 summarizes the reported costs for each federal agency that may not be reimbursed, and appendix III provides additional details on them.

**Table 2.2: Status of Cost Reimbursements** (Through Sept. 30, 1990)

Dollars in millions

| Agency | Total reported costs | Amount paid by Exxon[a] | Amount being processed | Amount that may not be reimbursed |
|---|---|---|---|---|
| Department of Defense | $62.2 | $56.3 | $0.0 | $5.9 |
| Department of Transportation | 39.7 | 36.6 | 3.1 | .0 |
| Department of the Interior | 17.1 | 7.2 | 1.0 | 8.9 |
| Department of Commerce | 14.8 | 8.0 | .9 | 5.9 |
| Department of Agriculture | 7.2 | 4.9 | .0 | 2.3 |
| Environmental Protection Agency | 7.5 | 3.1 | .0 | 4.4[b] |
| Department of Justice | 2.6 | .0 | .0 | 2.6 |
| Department of Health and Human Services | 2.4 | .0 | 2.1 | .3 |
| Department of Labor | .2 | .0 | .0 | .2 |
| **Total** | **$153.7** | **$116.1** | **$7.1** | **$30.5** |

[a]Consists of amounts paid into the 311(k) pollution fund and amounts paid directly to agencies on the basis of preestablished agreements.

[b]This amount includes what EPA spent as part of a direct agreement with Exxon whereby EPA agreed to share the costs of a bioremediation research and development effort.

Agency officials said that to pay for unreimbursed spill activities, federal agencies had to absorb the costs into their normal operations, reprogram existing funds, and/or obtain additional funding from the Congress. Three agencies—the Departments of Agriculture, Commerce, and the Interior—received supplemental appropriations to help pay for their spill costs. Interior received the most, $19.6 million—$7.3 million and $12.3 million in fiscal years 1989 and 1990, respectively. Some of these funds, which are available for spill costs incurred through 1994, have been used to pay for unreimbursed damage assessment studies and for other costs incurred through September 1990. Agriculture received $8.6 million in fiscal year 1990 and reprogrammed $1.7 million to cover the cost of its damage assessment studies, according to a Forest Service official. Commerce received $8 million in fiscal year 1990 to cover unreimbursed spill costs. All other agencies absorbed unreimbursed spill costs into their existing operating budgets.

## Federal Agencies Have Not Identified All Spill-Related Costs

The $153.7 million of reported federal costs does not include all amounts incurred by federal agencies. At least five agencies involved in the spill did not identify all their spill-related costs and bill for them. Such unreported costs included costs for personnel (such as overtime and fringe benefits), equipment, and administrative and indirect costs. Chapter 5

discusses the reasons why these costs were not identified, and provides detailed examples.

The unidentified and unreported costs could represent a substantial underbilling of costs to Exxon. For example, in determining its personnel time charges for the spill, the Coast Guard did not include retirement costs for its personnel, which according to the Coast Guard, understated personnel costs by about $1.2 million. Other agencies also did not identify and report full costs for their personnel and equipment, which collectively could be substantial. Table 2.3 summarizes examples of unidentified or unbilled spill-related activities we found or which agency officials told us about.

**Table 2.3: Federal Spill Costs Not Identified, Reported, or Billed by Agencies**

| Agency | Costs |
|---|---|
| Department of Commerce | Asset use charges for one of its large ships, full retirement costs for personnel engaged in spill activities, overtime costs for personnel in Alaska for the first 4 to 6 weeks after the spill, and salary costs of personnel who worked on spill-related activities performed away from the spill site. |
| Department of Defense | Overhead and administrative costs. |
| Department of the Interior | Asset use charges for short-life, low unit-value equipment (such as sleeping bags, small computers, cameras, etc.), costs for some personnel working on spill activities away from the spill site, and full retirement costs for all personnel engaged in spill activities. |
| Department of Transportation | Full retirement costs for Coast Guard and Federal Aviation Administration personnel involved in spill activities and asset use charges for some of the agency's air traffic control equipment. |
| Department of Energy | Costs of a gasoline price impact study, an oil supply analysis, and a joint Department of Energy/state of Alaska study on production and delivery systems. |

## Reimbursements to Agencies From the Pollution Fund Were Less Than Recoveries From Exxon

The Clean Water Act makes spillers liable for reimbursing actual costs of spill activities up to their liability limit. Under the implementing regulations, however, the Coast Guard does not have to reimburse agencies the full amount recovered from the spiller. The regulations limit reimbursements from the 311(k) fund to costs that are found to be reasonable and that "are not ordinarily funded by an agency's regular appropriations and that are not incurred during normal operations." For example, reimbursable costs which the Coast Guard refers to as incremental costs include travel; overtime for civilian personnel; equipment rentals; costs to operate vehicles, vessels, or aircraft, such as gasoline and oil; and supplies and equipment used in the response effort. Under

the Coast Guard regulations, they do not include base salaries of agency response personnel and depreciation on government-owned equipment.[2]

The portion that agencies do not receive remains in the pollution fund, where it is available for future oil spill costs. As table 2.4 shows, the Coast Guard has paid agencies about $70 million as of September 30, 1990, or slightly over two-thirds of the $101.3 million Exxon has paid into the pollution fund for these same agency activities. About $29 million was retained in the fund.

**Table 2.4: Total Reimbursements to Agencies From the Pollution Fund**
(Through Sept. 30, 1990)

Dollars in millions

| Agency | Amounts paid by Exxon | Amounts Coast Guard paid to agency | Amounts retained in 311(k) fund | Percent paid to agency |
|---|---|---|---|---|
| Department of Transportation | $36.6 | $36.1a | $0.5 | 99 |
| Department of Defense | 56.3 | 27.4 | 26.7 | 49 |
| Department of Commerce | 4.0 | 3.1 | .8 | 78 |
| Department of the Interior | 4.4 | 3.4 | 1.0 | 77 |
| **Total** | **$101.3** | **$70.0b** | **$29.0** | **69** |

[a]The Coast Guard received special authority from the Congress pursuant to its supplemental appropriations act to receive reimbursement for its total operating costs associated with the spill. As of September 30, 1990, Exxon had paid $35.6 million of the Coast Guard's costs, and all but $0.1 million had been reimbursed to the agency.

[b]As of September 30, 1990, the Coast Guard had authorized payment of $72.4 million to agencies, but had not yet paid them $2.4 million.

As stated in chapter 1, the Department of Agriculture—which negotiated a separate agreement with Exxon for its response costs—has bypassed the 311(k) fund, and instead obtained reimbursement directly from Exxon. Agriculture reported receiving reimbursement from Exxon for its cleanup costs, including base salaries. We did not determine, however, whether Agriculture received full reimbursement for its cleanup costs.

Some agencies—most notably the Departments of Defense and Commerce—objected to not receiving full reimbursement from the 311(k) fund for their costs. We discussed agencies' concerns on this issue with staff from both the House Armed Services Committee, the requester of this report, and the House Merchant Marine and Fisheries Committee, which was at the time preparing for Conference Committee meetings on

[2]The regulations (33 C.F.R. 153.407) allow the Coast Guard to limit reimbursements unless the agency is authorized by law to receive its total actual costs.

the Oil Pollution Act of 1990. Subsequently, the authors of the act provided for the payment of federal administrative, operational, and personnel costs and expenses reasonably necessary for, and incidental to, the implementation, administration, and enforcement of this act. In clarifying their intent for this provision—in the Joint Explanatory Statement of the Committee of Conference on the legislation—they said:

> . . . both incremental and base costs should be included, except for persons normally available for oil spill response, when calculating the cost of federal efforts to respond to a spill. Reimbursement for these costs should be sought from the responsible party, and agencies that assist in oil spill response actions should be fully compensated by the Fund or by the responsible party for that assistance.

## Reimbursement for Future Federal Costs of the Exxon Valdez Spill Uncertain

As of June 30, 1990, six federal agencies were still incurring costs for Exxon Valdez spill-related activities.

- The Coast Guard and, to some extent, EPA performed cleanup-monitoring activities throughout the summer of 1990.
- During the summer of 1990, NOAA assisted the on-scene coordinator in monitoring cleanup activities and it also analyzed seafood tissue samples under its direct agreement with Exxon.
- The Department of Justice is considering litigation against or settlement with Exxon in 1991, and it expects to continue incurring costs into 1991, according to a Justice official.
- The trustee agencies—the Departments of Agriculture, Commerce, and the Interior—and EPA, are also performing damage assessment studies through February 1991.

Agency officials told us that the estimated costs of these future activities would be about $26 million, most of which would be spent for damage assessment studies by federal agencies through February 1991. Agencies were not able to estimate costs to restore damaged natural resources to their pre-spill conditions. Also, the Department of Justice could not provide estimates for possible future spill-related litigation costs.

The assessment of whether these costs will be recovered is mixed. On the basis of its conversations with Exxon representatives, Coast Guard officials believe Exxon will pay for the remaining removal costs. However, recovery of the future damage assessment and restoration costs is uncertain at this time. As discussed in more detail in chapter 3, Exxon

has not reimbursed federal agencies for damage assessment studies beyond the $15 million already paid as part of a direct agreement with federal trustee agencies and the state of Alaska; however, Justice is considering civil litigation to recover these unreimbursed costs. In the meantime, agencies have had to absorb these unreimbursed costs or obtain supplemental appropriations. The recovery of Justice's costs depends on the outcome of litigation and is thus unknown.

# Problems Experienced by Agencies in Obtaining Full Reimbursement for Damage Assessment and Restoration Costs

For the Exxon Valdez spill, federal agencies incurred $22.6 million as of June 30, 1990, to assess damages to the natural resources, and will likely spend millions more for further assessments and restoration of the natural resources to their pre-spill state. Under delegations pursuant to the Clean Water Act, trustee agencies are responsible for recovery of these costs. Therefore, agencies sought recovery directly from Exxon. Exxon has paid $9.3 million of the federal agencies' damage assessment costs, but agencies have been unsuccessful in obtaining the remaining $13.3 million from Exxon. Agency officials said they are trying to recover the remaining costs through the Department of Justice. In the meantime, the agencies have received appropriated moneys which should cover most of their damage assessment study costs through February 1991. New legislation will allow agencies to obtain reimbursement for damage assessment and restoration costs of future oil spills from a newly created oil pollution fund.

## Federal Agencies and the State of Alaska Performed Damage Assessment Studies

Subsection 311(f) of the Clean Water Act authorizes the designation of federal and state officials to act as trustees to restore, rehabilitate, or replace natural resources damaged or destroyed by an oil spill. Oil from the Exxon Valdez spill affected natural resources under the trusteeship of the state of Alaska and three federal agencies—the Departments of Agriculture, Commerce, and the Interior. These four trustees formed a Trustee Council to develop and implement plans for assessing natural resource damages and for restoring the natural resources. EPA is participating in the Council's activities as an advisor to promote the long-term ecological revival of Prince William Sound.

The types of studies planned by the trustees fall into three major areas:

- Determination and quantification of injury.
- Determination of damages.
- Development of a restoration strategy.

Determination of injury involves documenting the exposure of the resources—such as birds, otters, seals, and fish—to oil and identifying which resources were adversely affected. Quantification of an injury involves measuring the amount of adverse effect upon each resource. Determination of damages involves putting a price tag on restoring these adverse effects as a basis for recovery from the spiller, who is liable for spill costs according to conditions discussed in chapter 1.

## The 311(K) Fund Is More Readily Available for Removal Activities Than for Damage Assessment and Restoration Activities

The act specifically authorizes use of the 311(k) fund for spill removal activities, and agencies to be reimbursed from the fund for their spill removal costs. The Coast Guard regulations implementing 311(k) accordingly address only oil removal activities. However, recovery of costs associated with assessment or restoration activities,[1] as stated earlier, is the responsibility of and is accomplished by the trustee agencies' obtaining the necessary funds directly from the spiller. Recently, the trustees placed the funds they had obtained from Exxon into the 311(k) fund, where it was earmarked and ultimately used for assessment activities. Although neither the act nor the regulations specifically address the circumstances under which the Coast Guard is authorized to use the 311(k) fund to reimburse agencies for their assessment and restoration activities, we believe the fund may be used if, as on this one occasion, the trustees have recovered the money from the liable spiller, and have deposited and earmarked it in the 311(k) fund.

The use of the 311(k) fund to finance damage assessment and restoration costs in future spills is no longer relevant with the recent enactment of the Oil Pollution Act of 1990, which replaces the 311(k) fund with the Oil Spill Liability Trust Fund. For future oil spills, the new act specifically allows reimbursement from this fund for the cost of "assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources." The amount reimbursable from the fund for damage assessment and restoration costs would be limited to $500 million for each incident.[2]

## Exxon Has Not Reimbursed Agencies for Full Costs of Damage Assessment Studies

Because trustee agencies—not the Coast Guard—were responsible for recovering the costs of damage assessment studies, the trustees sought recovery directly from Exxon. In April 1989, the trustees signed an agreement with Exxon for $15 million, which covered only part of the costs for these studies. The three federal trustee agencies received $9.3 million, and the state of Alaska received the remainder of the $15 million. As of June 30, 1990, federal agencies reported spending $22.6 million, which is $13.3 million more than they had recovered from Exxon.

[1]Subsection 311(f) of the Clean Water Act explicitly makes the spiller liable for actual costs to restore and replace natural resources affected by an oil spill and makes the President responsible for recovering these costs from the spiller. The costs incurred in assessing damages to natural resources are necessary to determining the extent of the need for restoration and replacement. Therefore, by implication, assessment costs are recoverable under section 311(f).

[2]Under the new law, fund expenditures exceeding $50 million in any fiscal year for oil removal or assessment of damages to natural resources must be appropriated. However, moneys recovered to restore damaged natural resources and deposited in a revolving trust account pursuant to section 1006(f) of the Oil Pollution Act of 1990 are available for that purpose without limitation.

The trustees estimate that federal costs of additional studies planned from July 1990 through February 1991 would be about $26 million, bringing the total unreimbursed costs to over $39 million. This estimate does not include any costs for restoring the injured natural resources.

The trustees have attempted to recover additional moneys from Exxon, but without success. In January 1990 and again in March, the trustees sent letters requesting payment of an additional $20 million for the remainder of the first-year costs. According to trustee officials, Exxon did not respond to the letters, and it has not communicated directly with the trustees about its reasons for not providing additional funds or its intentions about funding future damage assessment and restoration costs. As of September 30, 1990, Exxon had not paid any more than the $15 million included in the trustee agreement with Exxon for the damage assessment activities. Federal trustee representatives told us that they are working with the Department of Justice attorneys who are considering civil litigation against Exxon specifically to recover damage assessment and restoration costs.

Since they have not recovered any additional damage assessment costs from Exxon, the federal agencies have had to obtain additional appropriations to cover these costs. Through fiscal year 1990, federal agency officials estimated they will use about $33 million from supplemental appropriations for damage assessment studies. Unless Exxon agrees or is required to provide additional funding for these costs, agencies will likely seek further appropriations to cover projected damage assessment and restoration costs.

## Conclusions

The problems experienced by the trustee agencies in the Exxon Valdez spill should be reduced in future spills because of provisions in the Oil Pollution Act of 1990 that allow recovery of damage assessment and restoration costs from the Oil Spill Liability Trust Fund. For the Exxon Valdez spill, the trustees appear to be pursuing available means for recovering damage assessment and future restoration costs directly from Exxon. Justice is considering civil litigation against Exxon for damage assessment and cost recovery.

# Coast Guard Did Not Authorize Certain Oil Spill Removal Activities for Cost Reimbursement

The Clean Water Act and its implementing regulations specify that agencies can obtain reimbursement from the pollution fund for their "oil removal activities." It is left to the on-scene coordinator to determine which activities qualify as reimbursable removal activities. In our opinion, not all of the agencies involved in the oil removal effort had the opportunity to recover all or part of their spill removal costs, even though these costs could qualify for reimbursement under the broad definition of the act and related regulations. Without a better description of the broad range of agency activities that qualify as reimbursable oil removal activities, agencies likely will continue to encounter problems recovering their future oil spill costs.

## Oil Removal Activities Are Broadly Defined by Regulations

The Clean Water Act authorizes the President to remove oil spilled in navigable waters of the United States. The act defines oil removal as

> removal of the oil . . . from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Under this definition, the act provides that agencies may obtain reimbursement for a wide variety of spill activities.

As previously stated, subsection 311(k) of the act authorized the creation of a revolving fund available to federal agencies for oil removal activities. The Coast Guard was charged with managing this fund and developing regulations for its administration. Coast Guard regulations (33 C.F.R. 153.407) stipulate that federal agencies may be reimbursed from the pollution fund if

- the on-scene coordinator approves their oil spill activities and
- agency activities qualify as "Phase III—Containment, countermeasures, cleanup, and disposal" actions, as defined in the National Contingency Plan, Subpart E (40 C.F.R. 300.53).

The National Contingency Plan cites two broad statements to describe Phase III oil removal activities. The Plan says that

- Defensive actions should begin as soon as possible to prevent, minimize, or mitigate threat to the public health or welfare or the environment. The Plan cites seven examples of these defensive actions.[1]
- Appropriate actions should be taken to recover the oil or mitigate its effects.

These broad statutory and regulatory definitions give the Coast Guard on-scene coordinator considerable latitude in deciding which agency activities qualify for reimbursement from the pollution fund. According to Coast Guard headquarters officials who have management oversight responsibilities for the pollution fund, each on-scene coordinator has sole authority to determine which agency spill activity costs can be recovered from the pollution fund. They said that while many spill activities are not specifically enumerated, the coordinator is expected to make decisions based on his/her judgment, given the circumstances of each spill. Sometimes, they said, coordinators' decisions will differ from one spill to another.

The newly enacted Oil Pollution Act of 1990 broadens the scope of reimbursable activities. For example, it specifically authorizes that the fund can be used for damage assessment and restoration reimbursement. Concerning oil removal, however, the new act provides that the fund can be used to pay federal removal costs and the costs of monitoring removal actions, but it provides no further description of oil removal activities. This task is left to the Coast Guard, when it develops new regulations and guidelines to implement the act.

## Basis for the Coast Guard's Decisions on Authorizing Spill Activities for Reimbursement

According to the chief financial advisor for the on-scene coordinator, the coordinator did not authorize reimbursement from the pollution fund for some agency activities because he did not believe these activities were oil removal functions. Coast Guard headquarters officials told us that other factors not related to oil removal can affect the coordinators' decisions on allowable oil removal costs and may also have influenced the Exxon Valdez on-scene coordinator. They said coordinators typically have been conservative in interpreting oil removal activities eligible for recovery from the fund, thereby restricting reimbursements to agencies. This conservative approach stems from two reasons, according to these

[1]The seven examples were: (1) analyzing water samples to determine the source and spread of oil, (2) controlling the source of discharge, (3) measuring and sampling, (4) source and spread control or salvage operations, (5) placement of physical barriers to deter the spread of oil or to protect endangered species, (6) control of the water discharged from upstream impoundment, and (7) the use of chemicals or other materials to restrain the spread of oil or mitigate its effects.

officials. First, the Coast Guard encourages each known spiller to maintain control over management of the spill, including providing all resources for the removal effort. The Coast Guard believed that by keeping the costs to a minimum, the spiller would continue to manage the spill, leaving the Coast Guard responsible only for monitoring the removal efforts. Second, the degree that the Coast Guard approved reimbursement of agencies' activities was influenced by the size of the balance in the 311(k) pollution fund. The Coast Guard did not want to spend or obligate more money for agencies' spill costs than was available in the pollution fund.

Both of these factors were present during this spill, although their effect on specific decisions made by the on-scene coordinator is unknown, according to the Coast Guard officials. When the spill occurred, for example, Coast Guard officials said the pollution fund balance was $6.7 million, hardly enough to pay for federal agency activities for a few days. Also, in the early days of the spill, the Coast Guard did not know how long Exxon would finance agencies' spill activities.

The influence of these two factors on the coordinator's decisions after the spill should have disappeared quickly, however, given—as the Coast Guard acknowledged—that Exxon

- stated its intent to manage the spill soon after the spill occurred, and it had continued to do so through September 1990;
- made a cash advance into the pollution fund within 2 weeks after the spill to cover agency spill costs; and
- promptly paid most agency spill costs for which it was billed by the Coast Guard.

Given Exxon's actions, we believe that the Coast Guard should not have applied such a conservative approach in this spill to restrict agency activities that, by regulatory definition, could have qualified as oil removal activities reimbursable from the 311(k) fund. Moreover, the need for the Coast Guard to apply a conservative approach in authorizing agency activities for reimbursement in future oil spills has been substantially reduced because of the way the current fund is to be financed and administered.

- The Oil Spill Liability Trust Fund, which is financed by a per-barrel tax on oil received at U.S. refineries, had a $372 million balance as of September 30, 1990—15 times as much as the highest year-end balance of the 311(k) fund since 1971.

- Under the Oil Pollution Act of 1990, the spiller is liable for oil spill costs up to a specified limit, after which the industry-financed fund is available to pay additional spill costs up to $1 billion per incident.

In essence, the current fund provides substantial additional funding if the spiller does not pay for cleanup costs or those costs exceed its limit of liability. The Coast Guard's traditional concerns about a low pollution fund balance or the availability of a willing payer for spill cleanup costs should be lessened considerably by the current fund, and should not significantly affect on-scene coordinators' judgments in authorizing future agency spill activity costs eligible for fund reimbursement. However, because Coast Guard officials said they typically apply a conservative approach in authorizing agency spill activities under the 311(k) process, both on-scene coordinators and agencies may have an "institutionalized," narrow view of oil removal activities qualifying for reimbursement. A clear description of the broad nature of agency oil removal activities reimbursable from the current fund would likely prevent agencies from encountering similar types of reimbursement problems in future spills as they encountered on this spill.

## Agency Activities Not Authorized for Reimbursement Could Meet the Definition of Oil Removal

The on-scene coordinator in the Exxon Valdez spill did not authorize a number of agencies' activities even though reimbursement of these agency activities could be allowed under the broad definition of oil removal in the act and related regulations. In addition, we found examples where the circumstances of some activities were similar but, in one case, the agency was reimbursed, and in the other, the agency was not.

### Department of Labor Activities

The Occupational Safety and Health Administration—in accordance with its oil spill duties enumerated in the National Contingency Plan—incurred fiscal year 1989 costs of $191,000 to ensure that worker safety regulations were being implemented and to prevent hazards to worker health and safety. OSHA officials told us that they normally have a staff of 5 in Alaska, but because of the spill, they had 29 people working on spill activities. They also had to rent a trailer, and incurred travel expenses. Since OSHA was overseeing worker safety at the spill site, its spill activities could be interpreted to fall within the "defensive actions . . . to prevent, minimize, or mitigate the threat to public health . . . .," as Phase III costs are described in the National Contingency Plan.

An OSHA representative contacted the Coast Guard on-scene coordinator early in the spill about OSHA's involvement and offered its assistance, but the Coast Guard never authorized OSHA's activities as being reimbursable from the pollution fund. The chief financial advisor for the coordinator believed that OSHA's activities were not oil removal related, but rather the activities were part of OSHA's normal responsibilities for ensuring worker safety.

However, a case where the Coast Guard could have used the same argument, but did not, involved the Federal Aviation Administration (FAA). FAA established air traffic control operations in Valdez, Alaska, during the 1989 cleanup effort, but it was not directly involved in any cleanup activity. The on-scene coordinator believed that FAA's involvement was necessary to facilitate the cleanup efforts. Consequently, the Coast Guard reimbursed FAA's spill-related costs from the 311(k) fund.

## Department of the Interior Activities

Another case where activities could be reimbursed under the act's broad definition involved the Fish and Wildlife Service (FWS). According to FWS and Coast Guard officials, the Coast Guard and Exxon conducted a shoreline inspection program in the spring of 1990 to determine whether selected beaches in the spill-affected area needed cleaning. FWS staff participated in this program, which involved the inspection of 141 miles of beaches under FWS' jurisdiction. The financial advisor to the on-scene coordinator told us that the Coast Guard authorized reimbursement from the pollution fund for this effort. An FWS official said that FWS staff in Alaska believed the scope of this inspection was too limited and conducted an additional inspection of over 1,000 miles of beaches on its own. He said many of the beaches examined as part of the additional inspection had never been examined before. When FWS approached the Coast Guard for reimbursement from the 311(k) fund for the additional inspection, the Coast Guard would not authorize these activities, even though the Coast Guard had authorized similar activities in the original shoreline inspection effort.

An FWS official said during the additional inspection that the FWS team identified about 15 miles of significantly oiled beaches and informed the Coast Guard of their location. He said the Coast Guard directed Exxon to clean up these oiled beaches. The Coast Guard told FWS it would pay for some of FWS' additional inspection activities relating only to those beaches where oil was found, but it will not authorize reimbursement for the remaining costs of FWS' additional beach inspection activities.

The Coast Guard believes that most of FWS' additional beach survey was not necessary and was related to damage assessment, not to oil removal.

## Off-Site Costs

Even when the Coast Guard authorized reimbursement from the fund for agency spill activities, it restricted the scope of the tasks within each activity that could be reimbursed. For example, according to officials from Commerce and the Interior, the financial advisor for the on-scene coordinator told them that only costs incurred at the spill site would be reimbursable. As a result, both agencies incurred "off-site" spill costs for which they did not bill the Coast Guard.

A NOAA official said NOAA did not track off-site spill costs because of the Coast Guard's position, even though the spill-related time spent by its people away from the site was substantial. For example, the administrative officer in NOAA Region 10 advised us that three of her staff in Seattle worked full time on spill-related tasks for 6 months, but NOAA did not bill for these costs because the people did not perform the functions at the spill site. Similarly, an FWS official said that although FWS tracked $144,000 of off-site costs, it did not include these costs in its bill because of the Coast Guard's position.

Coast Guard headquarters officials who managed the 311(k) fund for the Exxon Valdez spill and the on-scene coordinator's financial advisor said that its position on the reimbursement of agencies' off-site spill costs stems from its belief that oil removal usually relates only to cleanup efforts performed within the oil-affected area. They said, however, the on-scene coordinator has latitude to make exceptions to this policy. We believe off-site costs could be reimbursable from the fund under the regulatory definition of oil removal.

## Conclusions

Unless criteria defining the broad nature of oil spill activities eligible for reimbursement are developed and included in implementing regulations for the Oil Pollution Act of 1990, we believe that disagreements will occur between the Coast Guard and agencies seeking reimbursement in future spills. A more comprehensive regulatory and policy description of the range of agencies' activities recoverable from the current oil pollution fund should add consistency to the reimbursement decisions made by the on-scene coordinators and provide agencies with a clearer basis and impetus for submitting their costs for reimbursement.

Also, given, the examples we found of the inconsistencies in authorizing agencies' activities related to the Exxon Valdez spill, we believe the Coast Guard should reassess whether additional agency activities should be billed to and recovered from Exxon. This seems particularly appropriate for agencies such as OSHA and others whose activities were not authorized but could meet the broad definition of oil removal.

## Recommendations

We recommend that the Secretary of Transportation:

- In establishing regulations to implement the Oil Pollution Act of 1990, provide a comprehensive description of the range of agency spill activities that constitute "oil removal activities" eligible for reimbursement from the current Oil Spill Liability Trust Fund. While such a description cannot be all-inclusive, given the differing circumstances of each spill, the key activities reimbursable for each agency represented on the national and regional response teams should be enumerated.
- Reexamine agencies' activities that have not been authorized for the Exxon Valdez spill, such as worker safety inspections, to determine whether recovery should be sought.

# Better Communication and Guidance From the Coast Guard Could Have Resulted in More Accurate Agency Billings

For weeks after the spill, not all agencies that eventually obtained authorization for reimbursement from the 311(k) pollution fund were fully aware of the Coast Guard's use of the fund. Some assumed they would not be reimbursed for their spill costs. Further, even when the Coast Guard told these agencies they could obtain reimbursement through the 311(k) process, it did not provide agencies with appropriate standards to calculate actual costs. Consequently, agency billings were not consistent and they may not have recovered all costs. More clear and timely communication and guidance between the Coast Guard and other agencies could have mitigated or prevented such problems.

## The Coast Guard Took Weeks to Authorize Reimbursement of Agency Costs

Because of its focus on cleanup efforts, the Coast Guard waited from 4 to 7 weeks after the spill to provide written authorization for reimbursement of the various agencies' spill costs from the 311(k) fund. By then, agencies were heavily involved in the spill response. Because they had not heard from the Coast Guard, some agencies assumed that they would have to pay for their spill activities from their own budgets. Two agencies did not track and accumulate all or part of their spill costs, thereby losing opportunities to obtain full reimbursement.

## Regulations and Guidance for Coordinating Agency Response Efforts and Administering the 311(K) Fund

The National Oil and Hazardous Substances Pollution Contingency Plan establishes separate roles for 12 agencies during an oil spill response.[1] According to the Contingency Plan, unless their services are requested by the on-scene coordinator, the agencies are expected to "make resources available, expend funds, or participate in response to oil discharges under their existing authority."

The Contingency Plan makes the on-scene coordinator responsible for coordinating agencies' response activities. To facilitate communication between response agencies and to assist the on-scene coordinator in carrying out his/her responsibilities, the Contingency Plan created a national and 13 regional response teams. The regional teams, which consist of representatives from each of the 12 agencies with designated oil spill response functions, are the principal conduits for their respective agencies in communicating with the on-scene coordinator and arranging for the use of federal resources. For oil spills affecting coastal waters, the Coast Guard chairs both the national and the regional response

[1]The 12 agencies are the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, the Interior, Justice, Labor, Transportation, and State; EPA; and the Federal Emergency Management Agency.

teams, and is responsible for communicating with regional response team members.

Conditions for reimbursement of agencies' response costs from the 311(k) fund are cited in regulations (33 C.F.R. 153.407; 40 C.F.R. 300.58), the Alaska Contingency Plan, and Chapter 7 of the Coast Guard's Marine Safety Manual. Collectively, these sources provide criteria for using the 311(k) fund, including the following:

- The on-scene coordinator must request and authorize agency spill activities.
- The federal government must assume direct control for managing the spill cleanup. This happens when the spiller is either unknown or is not taking prompt or appropriate cleanup measures.

## Some Agencies Did Not Know That the 311(K) Process Would Be Used

Representatives of agencies involved in the Exxon Valdez spill told us that the focus during the early weeks after the spill was not on reimbursement matters, but rather on cleanup and monitoring activities to minimize or prevent damages to federal lands and natural resources. We were told that agency personnel were not always aware of specific requirements for obtaining reimbursement from the 311(k) fund. Even some of the agencies that had participated with the Coast Guard in previous spills assumed that the 311(k) fund had not been activated to reimburse federal spill costs. Interior, for example, told us that the criteria for using the 311(k) fund had not been met, in that the Coast Guard had neither requested their services nor assumed control for managing the cleanup from Exxon. Hence, they assumed that they would have to fund their response activities from their own appropriated moneys as set forth in the National Contingency Plan.

On April 24, 1990, a month after the spill occurred, the Coast Guard sent a letter to Department of Defense officials notifying them about procedures for documenting pollution response costs. Later, on May 12, 1989, the Coast Guard sent a letter to three other agencies notifying them that the 311(k) fund would be used to reimburse federal agencies for "some of their expenditures" applicable to "oil response actions authorized by the FOSC [federal on-scene coordinator]." The three agencies were the Department of Commerce, EPA, and FAA. Interior officials said the Coast Guard informally notified them in May 1989 about participating in the 311(k) process. The chief financial advisor for the on-scene coordinator and other Coast Guard headquarters officials told us that these agencies were not notified earlier because:

- The focus during the early stages of the spill was on monitoring the spill and developing strategies and marshalling resources to contain and clean up the oil. Reimbursement was not a high priority during this period.
- The Coast Guard hesitated in approving agency activities for reimbursement from the 311(k) fund because of concerns that the fund would run out of money before it could be replenished by the spiller or through appropriations. When the spill occurred, the pollution fund balance was $6.7 million, hardly enough to pay for federal agency activities for a few days. Also, in the early days of the spill, the Coast Guard did not know how long Exxon would finance the spill activities.

Given the low fund balance and the initial uncertainty about the extent of Exxon's participation in financing agencies' spill activities, we can understand the Coast Guard's hesitancy in the early days of the spill to approve agency spill activities for reimbursement. However, the Coast Guard should have alerted potentially affected agencies immediately about the possible use of the pollution fund. This early communication would have put agencies on notice and provided them the impetus to document all their spill costs.

Agencies' inexperience in obtaining reimbursement for spill costs, assumptions that the fund would not be available for reimbursement, and Coast Guard notifications to selected agencies 4 to 7 weeks after the spill all contributed to confusion among agencies about the reimbursement process.

## Agencies Did Not Track and Accumulate All Their Spill Costs

Two agencies—Commerce and EPA—that received letters from the Coast Guard in May 1989 encountered reimbursement-related problems that could have been minimized or avoided if they had received notification and instructions sooner from the Coast Guard.

- NOAA officials said that after the spill occurred, they immediately sent a helicopter and six people to Alaska to begin activities related to NOAA's function as the science advisor for the on-scene coordinator. In subsequent weeks, NOAA sent additional people and equipment to the site. According to NOAA Region 10 officials, NOAA personnel worked 12- to 16-hour days, but did not record overtime worked until the Coast Guard notification in May 1989. NOAA Region 10 officials explained that NOAA did not record overtime costs initially because it assumed that the 311(k) fund had not been activated, and NOAA would have to pay for

spill costs itself. Since NOAA did not record overtime worked, there is no way now to document the extent of the amount of overtime charges lost.

- EPA had a problem of a different type. EPA officials said that in establishing cost-accounting procedures to accumulate costs for its spill activities, EPA did not segregate costs for oil removal and damage assessment. Rather, EPA commingled these costs, part of which were not reimbursable from the pollution fund. An EPA official said that EPA had already begun commingling costs before it received the Coast Guard's May 1989 letter stating that damage assessment costs were not reimbursable from the pollution fund. A Coast Guard official said it rejected EPA's initial bill of August 1989 because it was not properly documented and might contain damage assessment costs. EPA tried to segregate its removal costs and submitted a new bill for about $1.3 million to the Coast Guard in June 1990. A Coast Guard official said this bill was not adequately supported either. As of September 30, 1990, the Coast Guard had not paid EPA's latest bill.

## Agency Billings Were Not Consistent, and They May Not Have Recovered All Their Spill Costs

Coast Guard regulations and guidance did not provide the specificity needed by agencies to calculate actual costs. Therefore, in preparing bills to obtain reimbursement from the 311(k) fund, agencies did not always apply consistent methods, criteria, and standards to determine billed charges. We found several cases where agencies had either under- or overstated billed costs by more than a million dollars. However, we did not perform a detailed analysis of the appropriateness of each agency's billed amount.

### The Coast Guard Did Not Provide Guidance to Agencies on Determining Appropriate Charges for Spill Activities

The Coast Guard is responsible for formulating policies and procedures for agencies to use in seeking and obtaining costs for reimbursement from the pollution fund. The National Contingency Plan requires the Coast Guard to ensure that necessary documentation is collected and maintained "to form a basis for cost recovery." Coast Guard regulations (33 C.F.R. 153.417) on administering the 311(k) pollution fund state that federal agencies seeking reimbursement from the fund must submit an itemization and supporting data for the actual costs incurred. The on-scene coordinator is to review and certify these costs to ensure that they were authorized and reasonable.

Neither the Clean Water Act nor its implementing regulations, however, provide or refer to specific criteria, methods, and standards for determining and calculating actual costs to be billed to the spiller, i.e., appropriate charges for federal agencies' personnel, equipment, and other

resources used during a spill. For example, the regulations do not specify the acceptable elements—such as fringe benefits, cost-of-living allowances, and retirement costs—making up the standard rates for billing personnel costs.

According to Coast Guard officials responsible for managing the 311(k) fund, the Coast Guard had not developed more specific guidance for agencies because no one foresaw the kinds of reimbursement problems and difficulties of a spill of this size. They said that the recovery process for prior, much smaller spills went smoothly and without much need for detailed guidance. Coast Guard officials said they assumed that agencies had systems to accumulate spill costs and determine appropriate charges for their resources. Looking with hindsight at the problems agencies encountered in developing their billed charges, however, Coast Guard headquarters officials said that improved guidelines that included or referred to generally accepted standards and methods for developing spill costs would be useful.

Agency officials said that because they did not receive specific guidance from the Coast Guard on the criteria, standards, and methods necessary to develop costs for the use of their resources, they had to rely on their own procedures and guidance to the extent available. Agencies could have used, for example, existing guidance in OMB Circulars and the Cost Accounting Standards (4 C.F.R. 400-420) that provide methods, standards, and criteria for developing charges in certain other circumstances. Generally, agency officials believed that improved regulations or guidelines were needed from the Coast Guard that included or referenced applicable standards and methods for developing spill charges.

## Agencies Used Inconsistent Methods and Rates for Developing Billed Charges

Without applicable Coast Guard standards for developing spill charges, agencies used different methods and rates to develop their bills. For example, as table 5.1 shows, agencies used different rates for retirement and leave factors to compute and bill spill-related salary costs, according to agency officials.

**Table 5.1: Comparison of Rates Agencies Used for Retirement and Leave Costs**

Percentage of salary

| | Rates applied by each agency | | | | | |
|---|---|---|---|---|---|---|
| | Transportation | | | | Interior | |
| Cost elements | Coast Guard | FAA | NOAA | DOD | FWS | NPS |
| Retirement | | | | | | |
| Civilian | 7 | 4.3 | 7.0 | N/A | 7 | 7 |
| Military | 0 | N/A | 26.6 | 50.2 | N/A | N/A |
| Leave/holidays allowance | 17 | 0 | 19.0 | 0.0 | 0 | 0 |

Note: N/A = Not applicable

Agency officials said they used these different rates for retirement and leave costs because they did not know how to determine total cost to the federal government, or they used different procedures to develop costs. For example, the Coast Guard Comptroller said he did not include any costs for military retirement in billing Exxon because this cost is not funded as part of the Coast Guard's operating expense budget. NOAA and DOD officials said they used a higher rate for their military personnel because they fund retirement costs from their budgets. NOAA's military rate, however, was based on an outdated DOD rate.

The differences in the rates for leave costs reflect differing opinions and methods among agencies about whether or how to charge for these costs. Interior and FAA officials said they used a base of 2,087 hours per year for calculating their personnel costs. The labor rate derived from using this base included leave and holiday hours. DOD used a slightly different base of 2,080 hours. NOAA also used a base of 2,087 hours, but added 19 percent to its salary costs for leave. The Coast Guard used a different method altogether. In determining its salary costs, the Coast Guard determined "productive" hours by excluding leave, holiday, and other nonproductive time. The use of this method resulted in a higher hourly labor rate than would have been established by using a 2,087-hour base.

## Agencies Submitted Incorrect Bills

Each of the agencies that had obtained reimbursement from the 311(k) fund as of September 30, 1990, submitted incorrect bills to the Coast Guard. While we did not perform an analysis of all elements of each agency's bill, we found the following examples of both under- and overbillings.

- The Coast Guard had spent over $10 million in labor costs as of July 19, 1990, none of which included any retirement costs, according to Coast Guard officials. The Coast Guard's fiscal year 1989 retirement benefit rate was 29 percent, and applying this rate to its personnel costs would have resulted in additional billing opportunities of about $1.2 million.
- We found that three agencies—NPS, NOAA, and FAA—did not bill for the use of some of their equipment. Depreciation is a necessary element for determining actual costs. For example, OMB Circular A-25, which identifies costs agencies should recover when providing special services or benefits, says that federal agencies should recover their costs for depreciation of equipment. An NPS official said NPS did not bill for the use of about $261,000 of low-cost, short-life items such as sleeping bags, cameras, etc., that were used for spill activities. She said the agency wanted to keep the equipment and it was not cost effective to establish separate user fees for hundreds of items. The NPS official was not aware that an aggregate use rate could be applied by grouping the equipment for depreciation purposes. NPS could have grouped the equipment for depreciation such as allowed under the Cost Accounting Standard on Depreciation of Tangible Assets (4 C.F.R. 409). Also, NOAA did not submit any costs for the use of one of its ships because, according to a NOAA official, the vessel was old and fully depreciated. An FAA official said FAA did not charge Exxon for using air traffic control equipment valued at $50,000 because it was not sure how to establish asset use rates for this equipment, and it believed that the charge would have been minimal.
- Coast Guard officials said military personnel are paid a salary rate which does not include payment for any overtime worked. In monitoring spill response efforts, Coast Guard personnel worked substantial overtime. In computing their charges to bill Exxon, however, the Coast Guard included all the hours its personnel worked, including overtime.

## Conclusions

The Exxon Valdez spill demonstrated the confusion over the reimbursement process that can result among agencies from an oil spill involving many diverse federal resources. Agencies need to know in advance of such incidents how to determine actual costs for their spill activities. The Coast Guard, as manager of the Oil Spill Liability Trust Fund, should help agencies accurately determine their actual costs through clear, definitive guidance and direction which sets forth methods, standards, and criteria. The Coast Guard also needs to alert agencies immediately after a spill about appropriate reimbursement procedures and policies to avoid confusion among agencies and better ensure that they properly track and accumulate their spill costs.

Improved guidance should be included in the implementing regulations for the Oil Pollution Act of 1990, which the Coast Guard is responsible for preparing. In developing the sections of the new regulations that deal with the reimbursement policies and procedures, the Coast Guard should solicit the assistance and views of affected federal agencies and ensure compliance with accounting principles established by GAO pursuant to 31 U.S.C. 3511. The national and regional response teams, which are established in part to provide such assistance, would be logical vehicles for involving agencies in this process.

## Recommendations

We recommend that the Secretary of Transportation:

- Develop procedures for quickly notifying agencies about the potential or actual use of the Oil Spill Liability Trust Fund.
- Prepare regulatory guidance or policies which clarify standards and methodologies that agencies should use in computing and recovering their spill costs from the fund.
- Verify that agencies involved in the Exxon Valdez spill used appropriate standards and methodologies in computing spill costs and have agencies submit corrected billings, if necessary.

# Activities Performed by Federal Agencies During the Exxon Valdez Spill

Ten federal agencies performed a wide variety of spill-related activities during the Exxon Valdez oil spill. A summary of these activities is described below.

**Table I.1: Exxon Valdez Spill-Related Activities Performed by 10 Federal Agencies**

| Activity performed by | Description |
|---|---|
| Department of Agriculture | The Department of Agriculture identified areas for protection and cleanup and assessed environmental damage. |
| Department of Commerce | The National Ocean Service[a] coordinated all scientific data on the spill and advised the on-scene coordinator about the status of the oil spill.<br><br>The National Marine Fisheries Service[a] identified salmon hatcheries and marine mammal rookeries for protection and cleanup, studied halibut habitat to determine if closures to fishing were necessary, and performed damage assessment studies.<br><br>The National Oceanic and Atmospheric Administration (NOAA) used a helicopter, a ship, weather stations, and buoys to support cleanup efforts and scientific studies. |
| Department of Energy | The Department of Energy performed spill-related studies and analyses of the gasoline price impact, oil supply, and a joint study with the state of Alaska on production and delivery systems. |
| Department of Defense | The Navy provided barrack ships to house cleanup crews, and skimmers, booms, tow boats, other equipment, and personnel necessary to support the cleanup.<br><br>The Army provided two Corps of Engineers dredges to help remove oil from the water, and provided medical evacuation equipment and personnel.<br><br>The Air Force provided aircraft to transport material and equipment to Alaska, and provided personnel and telecommunications and support services. |
| Environmental Protection Agency (EPA) | The Environmental Protection Agency monitored the extent of pollution and advised the Coast Guard's on-scene coordinator on cleanup strategies, and advised Alaska of the disposal of hazardous material. |
| Department of Health and Human Services | The National Institute for Occupational Safety and Health investigated worker protection issues associated with the cleanup.<br><br>The Indian Health Service provided health care services and subsistence support for Alaska Natives affected by the spill.<br><br>The Food and Drug Administration incurred costs for seafood testing and inspection for possible contamination. |

(continued)

| Activity performed by | Description |
|---|---|
| Department of the Interior | The National Park Service (NPS) cleaned up National Park lands, protected park resources from damage, and established a data base for future cleanup activities.<br><br>The Fish and Wildlife Service captured sea otters and other animals affected by the spill, and assessed damage done to fish and wildlife habitats.<br><br>Several other Interior agencies performed response and damage assessment activities, including administrative support. |
| Department of Justice | The Department of Justice investigated civil and criminal matters associated with the spill, and prepared for future claims and litigation. |
| Department of Labor | The Occupational Safety and Health Administration (OSHA) investigated workers' complaints and injuries and ensured that worker safety regulations were met. |
| Department of Transportation | The Coast Guard performed day-to-day monitoring of the cleanup, which included the use of Coast Guard vessels, aircraft, and personnel; and coordinated federal assistance in the cleanup effort.<br><br>The Federal Aviation Administration provided air traffic control services for the area around Valdez, Alaska. |

[a]A National Oceanic and Atmospheric Administration agency.

# Federal Departments and Independent Agencies Contacted

During our review, we contacted 13 federal departments and independent agencies that had oil spill responsibilities under the National Contingency Plan, or that had federal financial oversight responsibilities. We gathered data from bureaus and components within these agencies as shown below.

## Department/ Independent Agency

Department of Agriculture
- Forest Service

Department of Commerce
- National Oceanic and Atmospheric Administration

Department of Defense
- Air Force
- Army
- Army Corps of Engineers
- Navy

Department of Energy

Department of Health and Human Services
- Food and Drug Administration
- Indian Health Service
- National Institute for Occupational Safety and Health

Department of the Interior
- Fish and Wildlife Service
- National Park Service
- Office of Environmental Affairs

Department of Justice
- Civil Division
- Land and Natural Resources Division

Department of Labor
- Occupational Safety and Health Administration

Department of State

Department of Transportation
- Coast Guard
- Federal Aviation Administration

Environmental Protection Agency

Federal Emergency Management Agency

Office of Management and Budget

# Cost Recoveries That Are Uncertain

The recovery of $30.5 million of reported federal spill costs is uncertain for reasons discussed in chapter 2. Table III.1 summarizes the amounts of these reported costs, the agencies involved, and the items being questioned.

**Table III.1: Cost Recoveries That Are Uncertain—Amounts and Items**

Dollars in millions

| Agency | Amount | Discussion items |
|---|---|---|
| Department of Defense | $5.9 | The Corps of Engineers provided two dredges for removing oil from the water. Exxon is evaluating the appropriate rates to pay for the dredges. |
| Department of Commerce | 5.9 | NOAA incurred costs in performing damage assessment studies. Also, the Coast Guard is evaluating the use of NOAA helicopters that were used for cleanup-related activities. |
| Department of the Interior | 8.9 | The Fish and Wildlife Service performed damage assessment studies.<br><br>NPS performed analyses of shoreline conditions before and after the oil polluted the area to establish baseline data for determining spill effects. |
| Department of Agriculture | 2.3 | The Forest Service performed damage assessment studies. |
| Department of Justice | 2.6 | Incurred costs to prepare for litigation against Exxon. |
| Environmental Protection Agency | 4.4 | The Coast Guard has asked EPA for documentation to support billed cleanup costs. Also, EPA has participated in damage assessment studies.<br><br>EPA incurred costs for a joint research and development project with Exxon for which EPA agreed to share in the project costs. |
| Department of Health and Human Services | 0.3 | The Indian Health Service incurred costs for health services for Native Americans affected by the spill.<br><br>The National Institute for Occupational Safety and Health incurred costs for establishing safety standards for spill workers. |
| Department of Labor | 0.2 | OSHA performed worker safety inspections at the site. |
| **Total** | **$30.5** | |

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| | |
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