

Exploring Gulf restoration issues with individuals working on the ground and in the water



Jim Ayers, Alaska Strategies

Jim Ayers is the founder and President of Alaska Strategies. Among many other projects, Jim is currently a member of the United States Coast Guard Preparedness Review Panel of the Deepwater Horizon oil spill. From 1992 to 1994, Jim served as Executive Director for the *Exxon Valdez* Oil Spill Trustee Council, where he developed and led implementation of the restoration plan that resulted from the civil settlement between Exxon and the state and federal governments.

LESSONS LEARNED FROM EXXON: A CALL FOR TRANSPARENCY, CITIZEN ACTION, AND A ROLE FOR SCIENCE

ELI: How did the natural resources damage assessment (NRDA) process play out in the *Exxon Valdez* spill?

Jim: The NRDA was never completed after the *Exxon Valdez* spill, but ended up in a global settlement between Exxon and the state and federal governments. This included a \$900 million civil settlement, with the opportunity to access another \$100 million through a very stringent reopener clause. To this day, neither the state nor federal governments have been able to access that \$100 million, either through negotiation or litigation.

I should note that the parties wanted to reach a settlement. This was to avoid a legal battle that was likely to last 7 to 10 years, as well as to avoid going before Congress for approval of appropriations that may have gone to purposes other than direct restoration. This is different from today, where the current Congress is considering legislation that would provide opportunities for Clean Water Act penalties to be directed towards restoration in the Gulf instead of going to the Oil Spill Liability Trust Fund and the U.S. Treasury.

ELI: How were restoration projects selected once the settlement was in place?

Jim: In the debate over restoration projects, it was like flies to a carcass: many individuals, groups, scientists, and universities had ideas about what types of projects should be implemented based on their expertise and interests.

The settlement funds were administered by a trustee council, which consisted of three federal and three state trustees. Any expenditure of the funds had to be based on a unanimous decision of the six trustees in a public setting. The trustees brought in a science director who, along with a team of peer-review scientists, studied the health of the ecosystem and recommended specific areas for restoration based on damage and injured species. Universities, agencies, and other independent scientists were then invited to propose restoration projects through an open call for proposals. The team reviewed and, in some cases, modified the proposals, at which point the projects were incorporated into a work plan. The trustees reviewed the work plan and then approved it, approved it with modifications, or rejected it. Projects that were

approved went through an environmental review process.

ELI: What role did citizens play in the selection of restoration projects?

Jim: Under the terms of the settlement, a public advisory committee (PAC) was established, so the PAC was in place before restoration was underway. While the PAC only had an advisory role, it reviewed proposed projects and made recommendations as to which ones should be implemented and how. The PAC also ensured that the settlement funds were going toward restoration and not to supplant federal and state agency budget items.

ELI: What are some of the lessons you learned from the Exxon spill?

Jim: The restoration process must be organized and focused on the ecosystem. To accomplish this, it is imperative that an independent science group be established with citizen oversight and a clear framework through which each project must pass, including a peer-review process to ensure that the project relates to the long-term health and biodiversity of the ecosystem. This is the only way to ensure the scientific integrity of the process; anything less is corruption.

I should note that some of the bills currently before Congress require that a science advisory panel be established. In considering these bills, Congress should look to the language that was used in the *Exxon* settlement and require that any NRDA funds, as well as any fines and penalties, be directed to restoration of the Gulf based on an independent science peer-review process.

During *Exxon*, we realized that restoration would be a significant part of our lives for this and the next generation. A major lesson

learned – and a significant part of the *Exxon Valdez* restoration plan – was the establishment of a separate endowment for long-term monitoring, observation, and research, with an opportunity for the public to review the results and participate in the analysis of the health of the ecosystem on a periodic basis.

ELI: Why should the public get involved in the restoration process?

Jim: We are at a crossroads right now: will the Gulf of Mexico be an oil patch or an incredible marine ecosystem, teeming with fish and wildlife, that also can produce energy? The people of this country need to understand that is in play. The decision is being made right now about which way to go. If there is no commitment to restoration based on science, then we must resign ourselves to the fact that it will be an oil patch.

ELI: If members of the public are interested in getting involved in the restoration process, what should they do?

Jim: There are several things members of the public can do. They can tell their representatives and the trustees what their vision of a healthy Gulf looks like. Members of the public who have spent years fishing or who otherwise have experience in the Gulf should tell the trustees how the Gulf has changed since the spill – for example, explaining what sorts of species they used to see and where, and how that has changed since the spill. The public can also insist that the process focus on restoration and not parochial state interests. To achieve this, we must have a scientific or other advisory group that vets projects and guides the process. The creation of a citizen advisory group and a government commitment to transparency are also imperative.