

DISCUSSION DRAFT DELTA PLAN

v. 3 | Sept. 26, 2022

The **Delta Plan** is the plan that closes the delta (difference) between available and unavailable funds in the Research Subaccount in EFY26, a shortfall expected to range from \$5M to \$7M. To ensure coverage for all projects through the first five years, fully funding all five-year-or-under projects, the Plan presents alternatives to address the expected shortfall to the Research Subaccount in accordance with current funding restrictions.

Background on the Subaccounts

In its Mission Statement (adopted in 1993), the EVOSTC committed to accomplish restoration “through the development and implementation of a comprehensive interdisciplinary recovery and rehabilitation program that includes” **restoration and enhancement** of injured resources and affected services, **habitat acquisition and protection**, and **research and monitoring**. In its 5-Year Report, the EVOSTC referred to this as “a balanced approach, with three areas as the major focus of its mission” and “set in motion the creation of a reserve fund to support ecosystem restoration, research and monitoring over the long term”.

According to the 10-Year Report, an 18-month public engagement process demonstrated strong support for using the reserve fund to continue “the Council’s two main restoration programs” and the EVOSTC adopted its March 1, 1999 Resolution to “place \$55 million into a long-term habitat protection program and approximately \$115 million [into] a research, monitoring and general restoration program” (emphasis added). Additional funds in the reserve on Exxon’s last payment would go into the Research Subaccount.

Natural resource damage restoration funds typically may only be held in the Natural Resource Damage Assessment and Restoration (NRDAR) Fund or in an account managed by the Court. The EVOS settlement funds were originally held in an interest-bearing account in the Court Registry Investment System (CRIS). Public Law 106-113, Section 350, enacted in November 1999, provided the authority to place settlement funds into either the NRDAR Fund (authorized by independent federal statutory authority under Public Law 102-154; 43 U.S.C. 1474b) or an account outside the United States Treasury invested in income-producing obligations and other instruments and securities determined by the EVOSTC to have a high degree of reliability and security. Section 350 made settlement funds eligible for the new investment authority conditioned on their management and allocation consistent with the March 1, 1999 Resolution concerning the Restoration Reserve, as follows:

- (A) \$55 million of the funds remaining on October 1, 2002, and the associated earnings thereafter shall be managed and allocated for habitat protection programs including small habitat acquisitions. ...
- (B) All other funds remaining on October 1, 2002, and the associated earnings shall be used to fund a program consisting of—
 - (i) marine research, including applied fisheries research;
 - (ii) monitoring; and
 - (iii) restoration, other than habitat acquisition, which may include community and economic restoration projects and facilities (including projects proposed by the communities of the EVOS Region or the fishing industry), consistent with the Consent Decree.

On September 29, 2000, upon application by the United States and the State, the Court entered an Order regarding transfer of the funds to an investment account within the Alaska Department of Revenue, Division of Treasury.

The **Research Subaccount** was initially funded at \$87 million to support research and monitoring efforts, improved resource management tools and methods, and support for “community-based projects, including enhancements to subsistence, educational programs, local stewardship of resources, and other projects that have been an ongoing part of the current restoration program.” It would further support information sharing, public engagement, data management, and administrative obligations. According to the 10-Year Report, **Habitat Subaccount** funds would “be flexible enough” to use for either a large or small parcel “protection effort” in the future, with initial set-asides for ongoing negotiations (\$29.9M) and pending small parcel acquisitions (\$24.4M).

The 10-Year Report also acknowledged that details on subaccount operations had “not yet been worked out” when the March 1, 1999 Resolution was adopted. As the Executive Director acknowledged a few years earlier, the EVOSTC “process is continually evolving as we seek better ways to achieve our mission, and in the process we are turning abstract restoration goals into concrete achievements.”

Summary of Delta Plan Alternatives

Three alternatives were designed to close the delta in EFY26, with full funding for the General Operating Budget and Long-Term Research and Monitoring Integrated Program Management. Colors distinguish between the alternatives to avoid any hierarchical or preferential implication from numbering or lettering and to underscore the infinite variations available. Each alternative accomplishes Plan objectives based on projected available funds in a unique manner that is equally open for consideration and adoption.

Alternative Orange proposes funding certain project components from the Habitat Subaccount instead of the Research Subaccount. In collaboration with the public, **Alternative Purple** reconsiders previous funding decisions using the Research Subaccount, with the opportunity to reconsider previous funding decisions using the unencumbered balance in the Habitat Subaccount. **Alternative Green** blends these approaches with the opportunity to close the delta in EFY33 or earlier, requiring more extensive funding reductions.

DRAFT ALTERNATIVE ORANGE

The EVOSTC will shift to funding components of previously approved projects from the Habitat Subaccount instead of the Research Subaccount, including reallocating associated funds issued in EFY22. This Alternative affects the allocation of **\$13,576,960** in funding issued to or approved for the following projects in EFY22-26: 22220400 (CORaL Network Program), 22220405 (Chugach Region Culture Camps), 22220503 (Alutiiq Museum & Archaeological Repository Sustainability Project), and 22220505 (Chugach Region Archaeological Repository & Museum).

Because of the conditions set forth in Public Law 106-113 for use of the outside investment authority, one of three options are required to implement this Alternative:

- A) Seek Congressional authorization to fund components of these four programs from the Habitat Subaccount, or remove the condition in Public Law 106-113 that the funds be allocated and managed in separate subaccounts; or
- B) Move all of the funds in the Habitat and Research Subaccounts out of the outside investment account and into the NRDAR Fund; or
- C) Move all of the funds in the Habitat and Research Subaccounts out of the outside investment account into the court registry.

Option A would allow the settlement funds to continue to generate income in an outside investment account; Option B or C would offer greater flexibility by re-combining the Subaccounts and would not require further legislation, but the funds may have a lower potential of generating income.

DRAFT ALTERNATIVE PURPLE

The EVOSTC will engage the public in revisiting funding decisions made at the October 13, 2021, and January 18, 2022, meetings, which may include administrative re-allocations and/or reduced funding for previously approved projects to close the \$7M delta in EFY26. Habitat protection projects that were not approved can be reconsidered for funding from any unencumbered balance in the Habitat Subaccount. Additional funds needed to conduct the public engagement process will be split between the subaccounts as relevant administrative expenses for each.

After consulting with proponents, unfunded habitat protection projects that may be reconsidered include:

- 22220600 – Robe Lake Habitat Preservation & Rehabilitation (1 year) – \$256,893
- 22220601 – Alaska State Parks Habitat Restoration & Protection (5 years) – \$5,585,356
- 22220604 – Kenai River Coho Salmon Habitat & Fishery Assessment (5 years) – \$4,525,087
- 22220605 – American River (Kodiak) Restoration (3 years) – \$851,236
- 22220607 – Kodiak Archipelago Fish Passage Project (5 years) – \$8,426,401
- 22220609 – Copper River Watershed Habitat Enhancement Phase II (5 years) – \$9,036,464
- 22220611 – Big Eddy Restoration & Improvements (4 years) – \$4,329,567
- 22220613 – Valdez Area Habitat Restoration Project (5 years) – \$8,822,413
- 22220701 – Natives of Kodiak Afognak Island Project (4 years) – \$10,582,186
- 22220702 – City of Kodiak Ram Site at Fort Abercrombie (5 years) – \$7,868,492
- 22220703 – Koniag, Inc. Women’s Bay Project (5 years) – \$3,354,696

All of these projects were recommended for funding by the EVOSTC Public Advisory Committee at its September 28-29, 2021, meeting. At over \$63M total, there is not enough in the Habitat Subaccount to fund them all in addition to previously approved expenditures. Some combination of projects could be funded from the unencumbered Habitat Subaccount balance through EFY26, when the Research Subaccount will run out of funds to support EVOSTC operations. Newly approved projects may be able to modify previous funding requests to receive the full or minimum necessary amount in fewer years.

DRAFT ALTERNATIVE GREEN

The EVOSTC will propose to fund certain components of the Museum & Archaeology cohort from the Habitat Subaccount, as described in Alternative Orange. The EVOSTC will also engage the public in revisiting its previous funding decisions, as described in Alternative Purple, to maximize the:

- (a) number of previously approved projects that can be fully funded, in addition to the Long-Term Research & Monitoring Integrated Program and General Operating Budget (through EFY33);
- (b) use of the funds remaining in both the Research and Habitat subaccounts (which could include unexpected cost overruns for Museum and Archaeology projects); and,
- (c) degree of public participation and involvement in the decision-making process.

This hybrid alternative reaches beyond the Delta Plan target of ensuring available funds through EFY26 to ensure available funds for as many projects as possible through EFY31 or whenever projected funds

are exhausted. The public and stakeholder engagement process, including guidance from the EVOSTC Public Advisory Committee, will help to determine which approved projects will receive reduced funding and, where available funds remain, which eligible projects may be newly approved. Projects previously approved for multi-year funding past EFY26 include the:

- General Operating Budget,
- Data Management Program,
- Long-Term Research and Monitoring Integrated Program Management,
- 15 projects in the Long-Term Research and Monitoring Program,
- 1 project in the Mariculture cohort, and
- 2 projects in the Education and Outreach cohort.

This alternative was inspired by the discussion at the September 9, 2022, meeting of the EVOSTC Public Advisory Committee and the full scope of budgetary concerns facing the programs. Neither combining the Research and Habitat subaccounts nor having a plan to close the \$7M delta in EFY26 will resolve the substantial shortfalls that are now anticipated to impact projects and expenditures through EFY33. Please refer to the EVOSTC Spending Scenarios presentation for details:

<https://evostc.state.ak.us/media/7727/9-fy23-fy33-spending-scenarios-82922.pdf>.