

FILED

MAR 30 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SEA HAWK SEAFOODS, INC., COOK)
INLET PROCESSORS, INC.,)
SAGAYA CORPORATION, WILLIAM)
McMURREN, PATRICK L. McMURREN,)
WILLIAM W. KING, GEORGE C.)
NORRIS, HUNTER CRANZ, RICHARD)
FEENSTRA, WILDERNESS SAILING)
SAFARIS, SEAFOOD SALES, INC.,)
RAPID SYSTEMS PACIFIC, LTD,)

Plaintiff,)

vs.)

EXXON CORPORATION, a New)
Jersey corporation, EXXON)
SHIPPING CO., a Delaware)
corporation, and ALYESKA)
PIPELINE SERVICE CO., a)
Delaware corporation,)

Defendants,)

Civ. No. A89-095 CIV

CLASS ACTION FOR
DAMAGES AND OTHER
RELIEF

JURY TRIAL DEMANDED

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Plaintiff allege as follows:

Jurisdiction and Venue

1. The jurisdiction of this Court arises under the federal question statute, 28 U.S.C. §1331, the federal admiralty and maritime jurisdiction statute, 28 U.S.C. §1333, and principles of pendent jurisdiction.

2. Venue is proper in this District by virtue of 28 U.S.C. §1391 because the claims arose in this District and Defendants are doing business in this District.

Parties

3. The named Plaintiffs are as follows:

a. Plaintiff SEA HAWK SEAFOODS, INC. ("Sea Hawk") is an Alaska corporation, whose principal place of business is in Valdez, Alaska. Sea Hawk purchases, processes and resells fish and shellfish harvested in Prince William Sound.

b. Plaintiff COOK INLET PROCESSORS, INC. ("Cook Inlet") is an Alaska corporation whose principal place of business is in Anchorage, Alaska. Cook Inlet operates a floating tender which purchases herring and salmon harvested by fishermen in Prince William Sound. Cook Inlet also operates a processing facility which processes and resells fish harvested in Prince William Sound.

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C E N

c. Plaintiff SAGAYA CORPORATION ("Sagaya") is an Alaska corporation whose principal place of business is in Anchorage, Alaska. Sagaya purchases, processes and resells herring roe on kelp, harvested in Prince William Sound. Sagaya also purchases and resells macrocystis kelp for use by roe pounders in Prince William Sound. Sagaya also is engaged in wholesale and retail sales of fish and shellfish harvested in Prince William Sound.

d. Plaintiffs WILLIAM McMURREN, PATRICK L. McMURREN, WILLIAM W. KING, and GEORGE C. NORRIS, are citizens and residents of Wrangell, Alaska who are engaged in commercial harvesting and sales of macrocystis kelp for use by roe pounders in Prince William Sound.

e. Plaintiff HUNTER CRANZ ("Cranz") is a citizen and resident of Valdez, Alaska who earns his living as a tenderman and fisherman, purchasing and harvesting fish and shellfish in Prince William Sound pursuant to permits issued by the State of Alaska.

f. Plaintiff RICHARD FEENSTRA ("Feenstra") is a citizen and resident of the State of Washington who earns his living harvesting and selling fish and shellfish in Prince William Sound, pursuant to permits issued by the State of Alaska.

g. Plaintiff ALASKA WILDERNESS SAILING SAFARIS ("AWSS") is a sole proprietorship of R. James Lethcoe, Ph.D., a

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citizen and resident of Valdez, Alaska. Dr. Lethcoe and his wife, Dr. Nancy Lethcoe, are authorities on the natural environment of Prince William Sound. AWSS, whose principal place of business is in Valdez, Alaska, operates sailboat tours on Prince William Sound, charters sailboats on Prince William Sound, and sells sailboats on Prince William Sound.

h. Plaintiff SEAFOOD SALES, INC. ("Seafood Sales") is a Washington corporation whose principal place of business is in Seattle, Washington. Seafood Sales is a wholesale broker of fish and shellfish harvested in Prince William Sound.

i. Plaintiff RAPID SYSTEMS PACIFIC, LTD. ("RSP") is an Alaska corporation whose principal place of business is in Anchorage, Alaska. RSP, a freight forwarder, transports for hire processed fish harvested in Prince William Sound and processed in Valdez, Alaska.

4. Defendant Exxon Corporation is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the State of New York.

5. Defendant Exxon Shipping Company ("Exxon Shipping") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Texas. Exxon Shipping, a subsidiary of Exxon Corporation, is the registered owner of the vessel Exxon Valdez and operated the Exxon Valdez in the waters of Prince William

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Sound on or about March 25, 1989.

6. Defendant Alyeska Pipeline Service Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Alaska.

Class Action Allegations

7. This action is brought by the named Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure.

8. The class represented by the named Plaintiffs, of which they are themselves members, consists of those persons (including commercial enterprises, nonprofit entities, membership organizations, nonfederal governmental entities and individuals) which have suffered or will suffer injuries from the oil discharge hereinafter referred to, including without limitation the incurrence of cleanup costs; loss and diminution of opportunities

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to cultivate, harvest, process, distribute and sell fish, shellfish and other marine resources; destruction and diminution of the value of fish, shellfish and other marine resources cultivated, harvested, processed, distributed or sold; loss and diminution of opportunities to engage in and/or carry on other commercial activities in the waters and subsurface and surface lands in and around Prince William Sound; harm to real and personal property; and other past, present and future economic injuries. It is anticipated that this class will be divided into appropriate subclasses as more information concerning the consequences of the oil discharge becomes known.

9. The exact number of members of the class is not known, but it is estimated that there are no fewer than 500 members. The class is so numerous that joinder of all members in this action is impracticable.

10. There are common questions of law and fact that relate to and affect the rights of each member of the class, including questions of violation and injury as alleged herein.

11. The claims of the named Plaintiffs, which are representatives of the class, are typical of the claims of the class in that the claims of all members of the class, including Plaintiffs, depend upon a showing of the acts and omissions of the Defendants giving rise to the relief sought herein.

12. This action is properly maintained as a class action under Rule 23(b)(2) because the Defendants have acted and refused to act on grounds generally applicable to the class, as hereinafter more fully appears, thereby making appropriate the equitable relief sought herein with respect to the class as a whole.

13. This action is properly maintained as a class action under Rule 23(b)(3) because the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Factual and Legal Allegations

14. On or about March 25, 1989 the vessel Exxon Valdez took aboard a load of approximately 53,000,000 gallons of oil at the southern terminus of the Trans-Alaska Pipeline at Valdez, Alaska. This crude oil had been transported through the Trans-Alaska pipeline prior to being loaded onto the Exxon Valdez. After being loaded onto the Exxon Valdez, the oil was not brought ashore at a port under the jurisdiction of the United States.

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T H E N

15. After the Exxon Valdez departed from the terminus, the vessel was negligently, grossly negligently and/or recklessly caused to collide with an undersea reef located in the Prince William Sound.

16. As a result of its negligent, grossly negligent and/or reckless operation, the Exxon Valdez was damaged in a manner which permitted and/or caused the discharge of more than 11,000,000 gallons of oil upon and into Prince William Sound and subsurface and surface lands.

17. Other negligent, grossly negligent and/or reckless acts and omissions of Defendants further contributed to the discharge of oil upon and into the waters of Prince William Sound and subsurface and surface lands. These acts and omissions include, but are not limited to, failing to respond to the oil spill in a timely manner, failing to maintain sufficient equipment to prevent discharged oil from spreading from the wrecked vessel, failing to maintain in working order vessels necessary to haul cleanup and containment equipment to the area of the spill, and otherwise failing to respond promptly and effectively.

18. As a result of negligent, grossly negligent and/or reckless acts and omissions by Defendants, containment and cleanup

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equipment did not reach the area of the spill when needed, thereby materially compounding the harm arising from the discharge of oil.

19. The oil discharged from the Exxon Valdez into and upon Prince William Sound has polluted and will continue to pollute waters and subsurface and surface lands containing fish, shellfish and other marine life. This oil is a "hazardous substance" as defined by AS 46.03.826(4)(B).

20. The waters and subsurface and surface lands in and around Prince William Sound are utilized by and for the benefit of the members of the Plaintiff class. Such utilization includes, without limitation, the cultivation, harvesting, and processing of fish, shellfish and other marine resources.

21. As a direct and proximate result of the discharge of oil upon and into the waters, subsurface and surface lands in and around Prince William Sound, the members of the Plaintiff class have suffered and will continue to suffer both immediate injury and long-term and permanent injury, including but not limited to: incurrence of cleanup costs; loss and diminution of opportunities to cultivate, harvest, process, distribute and sell fish, shellfish and other marine resources; destruction and diminution of the value of fish, shellfish and other marine resources

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cultivated, harvested, processed, distributed or sold; loss and dimunition of opportunities to engage in and/or carry on other commercial activities in the waters and subsurface and surface lands in and around Prince William Sound; harm to real and personal property; and other past, present and future economic injury that will be proved with more specificity at trial. Plaintiffs are currently unable to determine the amount of damages suffered by the members of the Plaintiff class, which will be proved with more specificity at trial.

22. Defendants' acts and omissions complained of herein were willful, outrageous, malicious and/or demonstrated a reckless indifference to the interests of the members of the Plaintiff class.

23. Pursuant to 43 U.S.C. § 1653, Defendants Exxon Corporation and Exxon Shipping Company, as owners and operators of the vessel Exxon Valdez, are strictly liable jointly and severally to the members of the Plaintiff class for all damages suffered as a result of their acts and omissions complained of herein.

24. The following are admiralty claims within the meaning of Federal Rule of Civil Procedure Rule 9(h), and are also common law claims cognizable under principles of pendent jurisdiction:

a. Defendants are liable in trespass to members of the Plaintiff class because the oil allowed or caused to be

discharged as a result of Defendants' acts and omissions entered into and upon the waters and subsurface and surface lands in and around Prince William Sound, causing injury as complained of herein. Members of the Plaintiff class have rights in such waters and subsurface and surface lands and the fish, shellfish and marine resources therein.

b. Defendants, by causing or allowing the discharge or contributing to the discharge of oil into and upon the waters and subsurface and surface lands in and around Prince William Sound and other property utilized by or for the benefit of members of the Plaintiff class, created and maintained a private nuisance which has substantially interfered and may continue to interfere with enjoyment of such property, has polluted waters and lands utilized by them or for their benefit, and has caused permanent injury to the livelihood of members of the Plaintiff class. The acts or omissions of Defendants in causing or allowing or contributing the discharge of the oil into and upon the waters and subsurface and surface lands in and around Prince William Sound are the direct and proximate cause of the injuries complained of herein.

c. The acts and omissions of Defendants complained of herein are a public nuisance. By reason of special rights and status of the members of the Plaintiff class with respect to the cultivation and harvest of fish, shellfish and

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other marine resources from the waters and subsurface and surface lands in and around Prince William Sound, they have suffered or will suffer special injury as a result of discharged substances and the nuisance created or contributed to by Defendants, different in kind and degree from that suffered by the general public from the nuisance.

d. Defendants, in producing and transporting oil, were engaged in an abnormally dangerous and ultra-hazardous activity and therefore owed to the members of the Plaintiff class an absolute duty to conduct their activities in a safe and proper manner. Defendants breached their duty by causing or allowing or contributing to the discharge and dispersion of oil upon and into the waters and surface and subsurface lands in and around Prince William Sound. As a result of the Defendants' breach, the members of the Plaintiff class have suffered or will suffer injury as complained of herein. Defendants are strictly liable to compensate the members of the Plaintiff class for said damages in an amount to be proven at trial.

e. Defendants Exxon Corporation and Exxon Shipping Company, jointly and severally, owed a duty of care to the members of the Plaintiff class to maintain a seaworthy vessel and to properly transport, handle, and prevent spillage of the oil carried by the Exxon Valdez, and all Defendants owed a duty to properly contain, clean up, and otherwise take adequate

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precautions and measures to prevent injury to the members of the Plaintiff class in the event that oil was spilled and to conduct cleanup efforts in a non-negligent manner. Defendants Exxon Corporation and Exxon Shipping Company breached their duty of care in failing to maintain a seaworthy vessel, in navigating the vessel and in transporting and handling the oil discharged from the Exxon Valdez, and all Defendants breached their duty of care by negligently failing to clean up, contain and prevent damage from the discharged oil in a timely and proper manner. As a direct and proximate result of Defendants' negligence, the members of the Plaintiff class have suffered or will suffer injury as complained of herein.

25. The following claims arise under the law of the State of Alaska and are cognizable by this Court under principles of pendent jurisdiction:

a. Defendants Exxon Shipping Company and Exxon Corporation owned and/or had control of the oil that Defendants caused or allowed to be discharged into and upon the waters and subsurface and surface lands in and around Prince William Sound, in areas used by or for the benefit of members of the Plaintiff class for the cultivating, harvesting or processing of fish, shellfish and other marine resources. As a direct and proximate result of this discharge of said hazardous substance, members of the Plaintiff class pursuant to AS 46.03.822 et seq. for all

resulting damage or injury to them or their property, including but not limited to loss of income, loss of means of producing income and the loss of economic benefit. Pursuant to the laws and regulations of the State of Alaska, including AS 46.04.040 and 18 AAC 20.005 et seq, Defendant Exxon Shipping Company and/or Defendant Exxon Corporation executed a guaranty of financial responsibility in the amount of \$14,000,000. Pursuant to AS 46.04.040(i), such financial responsibility undertaken by Defendant Exxon Shipping Company and/or Defendant Exxon Corporation extends to a loss compensable under Alaska Statute 46.03.822. Defendant Exxon Shipping Company and/or Defendant Exxon Corporation are thereby liable for all injury or damages incurred by the members of the Plaintiff class.

b. For their acts and omissions complained of herein, Defendants are also liable pursuant to AS 09.45.230 et seq. for creating a private nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Enter a judgment in favor of the members of the Plaintiff class against each Defendant.
2. Award compensatory and punitive damages for all injuries and losses suffered by the members of the Plaintiff class, in an amount to be proven at trial.

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3. Order immediate and continuing environmental monitoring and assessment of the conditions of the waters and subsurface and surface lands and the fish, shellfish and the associated marine resources.

4. Order abatement and cleanup of the damage caused by Defendants to the waters and subsurface and surface lands and the fish, shellfish and marine resources and restoration of the preexisting environmental conditions, as well as monitoring and assessment of such abatement and cleanup.

5. Award Plaintiffs and the members of the Plaintiff class prejudgment and postjudgment interest, costs and attorneys' fees in this action.

6. Grant such other relief as this Court deems just and equitable.

Plaintiffs demand a jury trial.

DATED at Anchorage, Alaska, this 30th day of March, 1989.

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CRUZAN FISHERIES, INC.,
STANLEY NORRIS GROVE, and
ANTHONY GROVE
on behalf of themselves
and all others similiarly
situated,

Plaintiffs

v.

ALYESKA PIPELINE SERVICE COMPANY,
TRANS-ALASKA PIPELINE LIABILITY
FUND; EXXON CORPORATION; EXXON
CO., USA; and EXXON SHIPPING
COMPANY,

Defendants.

:A 89 096

CIV

:
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: CLASS ACTION

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: JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, bring this action on their own behalf and on behalf of the Class they represent to obtain damages, injunctive relief and costs of suit from the defendants named herein, and complain and allege as follow:

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JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P"), plaintiffs demand that all issues so triable be tried by a jury in this case.

JURISDICTION AND VENUE

2. This is a civil action for injunctive relief and monetary damages for losses sustained by each member of the putative Class arising out of, and directly resulting from, oil and toxic effluents unlawfully and negligently discharged into navigable waters from the Exxon Valdez, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and Long Beach, California, a port under the jurisdiction of the United States.

3. This Complaint is filed and these proceedings are instituted pursuant to 28 U.S.C. Sections 1331 and 1333(1), which provide for original jurisdiction in the district courts of all civil actions arising under the laws of the United States and admiralty or maritime jurisdiction. This Court also has subject matter jurisdiction over this action in accordance with the principles of pendent jurisdiction.

4. The grounds for relief are: (i) the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Section 1651 et seq.; (ii) Admiralty and Maritime Jurisdiction and The Admiralty Extension Act of 1948, 46 U.S.C. Section 740 (1964);

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(iii) Negligence; (iv) Statutes adopted in Alaska providing for damages due to injury to property and natural resources; (v) common law nuisance; and, (vi) negligence per se.

5. Venue is properly laid in this district pursuant to 28 U.S.C. Sections 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Defendants reside in this district for venue purposes and the cause of action arose in this district.

THE PARTIES

6. Plaintiff Crouzan Fisheries, Inc., a resident of Seattle, Washington, is engaged in the business of commercial fishery, who has been damaged by the acts and conduct of the defendants as alleged herein.

7. Plaintiff Stanley Norris Grove, a resident of Copper Center, Alaska, is the owner of a charter business for sport fishermen as well as being a commercial and subsistence fisherman, who has been damaged by the acts and conduct of the defendants as alleged herein.

8. Plaintiff Anthony Grove, a resident of Copper Center, Alaska, is engaged in the business of sport fishing, and has been damaged by the acts and conduct of the defendants as alleged herein.

9. Defendant, The Trans-Alaska Pipeline Liability Fund ("Fund"), is a non-profit corporate entity established pursuant to

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the Trans-Alaska Pipeline Authorization Act ("Act"), 43 U.S.C. Section 1653(c)(4). The Fund, which is administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary of the United States Department of the Interior, is a resident of the State of Alaska with its principal place of business in Alaska.

10. Defendant, Alyeska Pipeline Service Company, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System that includes: Amerada Hess Corporation, Arco Pipeline Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, Trans-Alaska Pipeline Liability Fund, Exxon Corporation, Exxon USA, and Exxon Shipping Company. Alyeska Pipeline Service Company ("Alyeska") owns and operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska, and loaded the Exxon Valdez with North Slope crude oil at the Valdez terminal.

11. Defendant, Exxon Corporation, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, NY 10020. Exxon Corporation, which is engaged in the business of operating petroleum companies through its subsidiaries and divisions, is an owner and operator of the vessel known as the Exxon Valdez.

12. Defendant, Exxon Shipping Company, a Delaware Corporation and maritime subsidiary of defendant Exxon Corporation with its principal place of business at 811 Dallas Avenue, Houston, TX 77002, is an owner and operator of the vessel known as the Exxon Valdez.

13. Defendant, Exxon Co., USA, is a division of defendant Exxon Corporation with its principal place of business at 800 Bell Avenue, Houston, TX 77002. Exxon Co., USA, which is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States, is an owner and operator of the vessel known as the Exxon Valdez.

DEFINITIONS

14. As used herein, the terms "rupture", "spill", and "accident" refer to the rupture of the hull and oil tanks of the Exxon Valdez on March 24, 1989 and the consequent release of more than ten million gallons of crude oil into Prince William Sound, one of the nation's most productive and pristine sounds containing sensitive estuaries, which is home to whales, sea otters, seals and numerous types of commercial fisheries.

15. As used herein, the terms "Exxon", "defendant Exxon" and "the Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Shipping Company, and Exxon Company, USA.

16. As used herein, the term "Terminal facilities" refers to those facilities of the Trans-Alaska Pipeline System, including

specifically Port Valdez, at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

17. As used herein, the terms "Trans-Alaska Pipeline System" or "System" refer to any pipeline or terminal facilities constructed by the holders of the Pipeline right-of-way under the authority of the Act.

18. As used herein, the term "Pipeline" refers to any pipeline in the Trans-Alaska Pipeline System.

19. As used herein, the term "Vessel" refers a ship or tanker, including specifically the vessel known as the Exxon Valdez, being used as a means of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

OPERATIVE FACTS

20. On Thursday evening, March 23, 1989, one of Exxon's two biggest ships, the Exxon Valdez, a 987 foot tanker, weighing 211,000 deadweight tons with cargo and bunker fuel, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

21. The tanker's twelve oil tanks were filled to capacity with approximately 1.2 million barrels of crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska

Pipeline.

22. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989.

23. Shortly thereafter, Captain Hazelwood retired to his cabin, one flight below the bridge, leaving only Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all time relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of defendant Exxon.

24. Mr. Cousins, who was not certified for commanding the tanker through these waters, sought and received Coast Guard permission to leave the normal deep-water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that had broken to the northwest.

25. The ship steered east into the empty northbound lane, and then proceeded on a southwesterly course bound for Long Beach, California. The tanker, however, proceeded three miles east past the alternative channel, outside the traffic lanes and entirely beyond the shipping channel into a chartered area of rocky reefs.

26. The vessel was approximately one quarter-mile outside the channel when she first struck the well-marked Bligh Reef, which ripped along the starboard side with jarring impact, tearing three holes into the starboard tanks and ripping out a portion of the hull.

27. Upon information and belief, Captain Hazelwood remained in his cabin, although the noise and impact should have immediately commanded the Captain to the bridge.

28. Although the ship was still navigable after the first impact, she was so far east of deep water that when Cousins tried to turn the Exxon Valdez back toward the West it struck a second part of the shallow reef. This second impact brought the ship aground, stopping the ship's progress completely.

29. The scraping impact and grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing -- upon information and belief -- the largest oil spill in United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, already contaminating at least one hundred square miles of the Sound's abundant wildlife.

30. Late Sunday, March 26, 1989, critical of the slow pace of any attempted clean-up efforts by Alyeska and the Exxon defendants and concerned about even further possible damage to

property, marine and wildlife, Alaska Governor Steve Cowper declared a disaster emergency.

31. Damages to plaintiffs and the plaintiff Class caused by this discharge of millions of gallons of thick, North Slope crude oil, include but are not limited to damage to marine life, including all five species of herring, salmon, ground bottom fish, shrimp and crab, relied upon by plaintiffs and the plaintiff Class for economic purposes.

32. Plaintiffs and the plaintiff Class were preparing for the herring season, which is followed by harvests of shellfish and salmon when the spill occurred. The harvesting of herring roe alone earns approximately \$16 million per year for plaintiffs and the plaintiff Class, while the salmon harvest is worth approximately \$75 million a year.

33. By late Monday, March 27, 1989, winds gusting up to seventy miles per hour were pushing the slick toward environmentally sensitive fisheries and bird rookeries.

34. The oil slick has already spread to Smith, Little Smith, Naked and Seal Islands as it moved toward the southern end of Prince William Sound; these islands are home to thousands of water birds and sea mammals, whose contamination by the spreading oil cannot yet be quantified.

35. Upon information and belief, the damage caused by the spill to property, trades and businesses, fishing and marine life

could last for years. The region's jagged coastline created hidden pockets of oil as the slick reached shore, creating opportunities for repollution for a protracted time into the future.

CLASS ALLEGATIONS

36. This action is brought by plaintiffs on their own behalf and, pursuant to Rule 23, Fed.R.Civ.P., on behalf of a class consisting of all persons and entities who were injured or adversely affected by the rupture of defendant Exxon's oil tanker on March 24, 1989, the subsequent oil spill therefrom, and/or the ensuing clean-up effort. Excluded from the class are all persons currently seeking to make tort claims based exclusively on bodily injury as a result of the rupture, spill, the conduct of the emergency response, and clean-up activities; as well as the defendants, their respective parent corporations, affiliates, subsidiaries, divisions and the directors, officers, agents, employees and representatives of each.

37. Plaintiffs are unable to state precisely the size of the Class, but members of the Class number in at least the thousands. The Class is sufficiently numerous that joinder of all of its members is impracticable.

38. There exist questions of law and fact common to the Class with respect to the rupture and resultant spill, the cause thereof, and the ensuing clean-up efforts which predominate over any questions affecting only individual members of the Class. Among

the questions common to the Class are:

(a) whether Alyeska, the Exxon defendants and the Fund are strictly liable pursuant to the provisions of the Trans-Alaska Pipeline Authorization Act;

(b) whether Alyeska and the Exxon defendants are liable in negligence pursuant to the provisions of the Trans-Alaska Pipeline Authorization Act;

(c) whether the Exxon defendants were negligent in (i) maintaining, (ii) controlling, and/or (iii) operating the Exxon Valdez;

(d) whether the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in (i) maintaining, (ii) controlling, and/or (iii) operating the Exxon Valdez;

(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing adequate and proper tactics in the ensuing clean-up effort; and (vi) having available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

(f) whether Alyeska and the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff class in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing adequate and proper tactics in the ensuing clean-up effort; and (vi) having available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

(g) whether Alyeska and the Exxon defendants were negligent per se because of violations of applicable federal and state laws;

(h) whether the conduct of Alyeska and the Exxon defendants as set forth herein is such as to warrant the imposition of punitive damages;

(i) the impact of the discharged oil and toxic effluents upon Prince William Sound and its marine life;

(j) the measures necessary to ameliorate present and future pollution; and,

(k) whether the acts and omissions of Alyeska and the Exxon defendants were violative of Alaska Stat. Section 46.03.822 and other applicable state laws.

39. The claims of the representative plaintiffs are typical of the claims of the Class.

40. Plaintiffs will fully and adequately protect the interests of the Class. The interests of the Class representatives are consistent with those of the members of the Class. In addition, plaintiffs are represented by experienced and able counsel who have represented plaintiff classes throughout the United States.

41. Given the scope of harm inflicted by defendants and the egregiousness of the misconduct which renders the award of punitive/exemplary damages appropriate, the prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to the individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

42. A substantial claim for punitive/exemplary damages exists on behalf of all of the members of the plaintiff Class. In order to achieve maximum judicial economy and fairness to litigants, a class action is desirable to assure that an award of punitive damages is made in a single proceeding and fairly and uniformly allocated among all the members of the Class.

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43. Certification is appropriate under one or more of the provisions of Rule 23(b), Fed.R.Civ.P., including Rule 23(b)(1)(B), 23(b)(2) and/or 23(b)(3).

COUNT I

Trans-Alaska Pipeline Authorization Act,
43 U.S.C. Section 1653(a)/Strict Liability
Plaintiffs v. Alyeska

44. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

45. Alyeska is now, and was at all times relevant hereto, the holder of the Pipeline right-of-way granted pursuant to the Act.

46. The damages to plaintiffs and the plaintiff Class arose in connection with and resulted from activities along or in the vicinity of the Trans-Alaska Pipeline right-of-way.

47. Upon information and belief, the damages to plaintiffs and the plaintiff Class were neither caused by an act of war nor by the negligence of the United States, any other government entity, or plaintiffs and the plaintiff Class.

48. The oil discharged in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way have damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiffs and plaintiff Class, for subsistence and economic purposes.

49. Defendant Alyeska is strictly liable to plaintiffs and

the plaintiff Class for all damages sustained as the result of the discharges of oil from the Exxon Valdez up to a maximum of \$50 million pursuant to the Act, 43 U.S.C. Section 1653(a).

COUNT II

Trans-Alaska Pipeline Authorization Act,
43 U.S.C. Section 1653(c)/Strict Liability
Plaintiffs v. Exxon and The Fund

50. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

51. The Exxon defendants are now, and were at all times relevant hereto, the owners and operators of the Exxon Valdez.

52. The damages to plaintiffs and the plaintiff Class arose as the result of discharges of oil from the Exxon Valdez that had been transported through the Trans-Alaska Pipeline and loaded on the Exxon Valdez at the terminal facilities of the pipeline.

53. Upon information and belief, the damages to plaintiffs and the plaintiff Class were neither caused by an act of war nor by the negligence of the United States, any other governmental agency, or plaintiffs and the plaintiff Class.

54. The oil discharged from the Exxon Valdez has damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiffs and the plaintiff Class, for subsistence and economic purposes.

55. Defendants Exxon and the Fund are strictly liable to plaintiffs and the plaintiff Class for all damages sustained as the

result of the discharges of oil from the Exxon Valdez up to a maximum of \$100 million pursuant to the Act, 43 U.S.C. Section 1653(c).

COUNT III

Trans-Alaska Pipeline Authorization Act,
43 U.S.C. Sections 1653(a) and (c)
Negligence -- Plaintiffs v. Alyeska and Exxon

56. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

57. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiffs and the plaintiff Class, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

58. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms -- long bars with heavy plastic skirts -- around the slick. By that time, the discharged oil had already become too large to contain.

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59. The delays were in part due to repairs being performed on the barge required to pull the booms around the Exxon Valdez.

60. Lack of proper equipment and supplies also hindered effective clean-up operations.

61. Moreover, neither Alyeska nor Exxon had enough equipment to handle a spill of this size, even though these defendants have represented for years that their oil-spill crews were prepared for such a spill.

62. The tactics finally chosen by defendants, chemical dispersants which could cause further harm to the water, proved ineffective. These chemical dispersants, previously touted as an effective weapon against oil slicks, could not be used initially because the water was too cold and calm, making the slick too thick for the dispersants to work.

63. Upon information and belief, the oil has now been in the water too long for these dispersants to work since they are most effective only if employed within twenty-four hours after a spill. Beyond that time period, the oil develops a resistance to chemical treatment.

64. Defendants' other "contingency clean-up plan" was to burn the surface oil with a substance similar to Napalm, basically changing the water pollution into air pollution; however, defendants' delay ultimately allowed changed weather conditions to make it impossible to deploy the necessary small boats used to try

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to corral the oil into a concentrated area for this purpose.

65. Pursuant to the Act, the proper control and total removal of the discharged oil which polluted, damaged and threatens to further pollute and damage aquatic life, wildlife, public and private property was the responsibility of defendants. In regard thereto, defendants had a duty to plaintiffs and the plaintiff Class to have adequate resources available to immediately and effectively contain and clean-up any oil spill in any area within or without the right-of-way or permit area granted to them.

66. In the exercise of care, defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and clean-up a spill of this magnitude, that their "contingency clean-up plan", including the tactics they developed thereunder, were extremely limited in their efficiency and use, and that these tactics could only be employed under "ideal environmental conditions".

67. The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) inadequately carrying-out the ensuing clean-up effort; (iv) unreasonably delaying the ensuing clean-up effort; (v) choosing inadequate tactics in the ensuing clean-up effort; and (vi)

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possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up effort, all of which served to aggravate and compound the damages to plaintiffs and the plaintiff Class.

68. As a direct and proximate result of the foregoing negligence, plaintiff and the plaintiff Class have suffered damages.

69. Defendants Alyeska and Exxon acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in the control and clean-up operations of this spill, for which plaintiffs and the plaintiff Class are entitled to punitive damages.

COUNT IV

Trans-Alaska Pipeline Authorization Act,
43 U.S.C. Section 1653 (c)/Negligence
Plaintiffs v. Exxon

70. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

71. The captain of the Exxon Valdez, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had his driver's license suspended or revoked three times in that same period, was not in command when the tanker hit the well-marked Bligh Reef.

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72. Instead, the third-mate, Gregory Cousins, was in command of the tanker when it ran aground although Cousins lacked proper certification to pilot vessels such as the Exxon Valdez through the waters of the Prince William Sound.

73. Captain Hazelwood and third-mate Cousins knew or should have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins, but also a violation of applicable Coast Guard rules and regulations.

74. Captain Hazelwood and third-mate Cousins knew or should have known that Cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

75. The Exxon defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

76. The Exxon defendants knew or should have known based on the service in which the Exxon Valdez was involved that its single hull construction was not sufficient to allow it to safely engage in the trade for which it was intended.

77. The negligence of the Exxon defendants in the ownership and operation of the Exxon Valdez specifically included, but was not limited to, (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; and (iii) failing to utilize a seaworthy vessel. As a direct and proximate result of the foregoing negligence, the Exxon defendants, in their own right as well as by and through their agents, servants and employees, caused plaintiffs and the plaintiff Class to suffer damages as described above.

78. The Exxon defendants, acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in the ownership and operation of the Exxon Valdez for which plaintiffs and the plaintiff Class are entitled to punitive damages.

COUNT V
Maritime Tort -- Plaintiffs v. Alyeska and Exxon

79. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

80. By virtue of the above, defendants violated the general maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages suffered by plaintiffs and the plaintiff Class.

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COUNT VI
Common Law Negligence -- Plaintiffs v. Alyeska and Exxon

81. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

82. By virtue of the above, defendants were negligent, which negligent acts and omissions directly and proximately caused the damages suffered by plaintiffs and the plaintiff Class.

COUNT VII
Alaska Environmental Conservation Act
Plaintiffs v. Alyeska and Exxon

83. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

84. Oil, including the approximately 10.1 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

85. The presence of oil in the Prince William Sound and its subsequent spreading to at least, Smith, Little Smith, Naked and Seal Islands, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

86. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation

Act, over the oil which was loaded on the Exxon Valdez at the Port of Valdez, Alaska and released into the Prince William Sound.

87. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of:

(i) an act of war;

(ii) an intentional act or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants;

(iii) negligence on the part of the United States government or the State of Alaska; or,

(iv) an act of God.

88. Upon information and belief, upon discovery of the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska, defendants delayed and/or failed to begin operations to contain and clean-up the hazardous substance within a reasonable period of time.

89. The entry of the oil which is owned and/or within the control of the defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to plaintiffs and the plaintiff Class, including but not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to Section

46.03.822 of the Alaska Environmental Conservation Act.

COUNT VIII

Alaska Stat. Section 09.45.230
Plaintiffs v. Alyeska and Exxon

90. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

91. The acts and omissions of the defendants created a private nuisance through substantial interference with the use and enjoyment of plaintiffs and the plaintiff Class' interests in property.

92. This substantial interference with the use and enjoyment of plaintiffs and the plaintiff Class' interests in property includes, but is not limited to, inter alia, injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

93. The substantial interference with plaintiffs and the plaintiff Class' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs and the plaintiff Class for the damages sustained.

94. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs and the plaintiff Class' irrefutable damage. Plaintiffs and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries

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threatened to continue.

COUNT IX

Public Nuisance -- Plaintiffs v. Alyeska and Exxon

95. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

96. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiffs and the plaintiff Class to water that is free from pollution and contamination by oil.

97. The unreasonable interference with the rights of plaintiffs and the plaintiff Class common to the public resulted in special and distinct harm to plaintiffs and the plaintiff Class including, but not limited to, inter alia, loss of business as a result of the pollution.

98. The substantial interference with plaintiffs and the plaintiff Class' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs and the plaintiff Class for the damages sustained.

99. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs and the plaintiff Class' irrefutable damage. Plaintiffs and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT X
Negligence per se -- Plaintiffs v. Alyeska and Exxon

100. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

101. The acts and omissions of the defendants violate The Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651, et seq., and Alaska State and local law, including Alaska Stat. Section 46.03.010, et seq., and Alaska Stat. Section 09.45.230. In so violating these laws, defendants were negligent per se.

102. The Exxon defendants also failed to obtain the necessary certification from the Coast Guard for Gregory Cousins to pilot vessels such as the Exxon Valdez through the waters of the Prince William Sound, violating Coast Guard regulations. In failing to do so, defendants were negligent per se.

103. The defendants are liable to plaintiffs and the plaintiff Class for all damages resulting from the accident and discharge on account of their violations of the above-mentioned Federal and State laws and certification requirements.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that this Court:

A. Order this action to proceed as a class action, with plaintiffs as class representatives;

B. Award compensatory and punitive damages under all counts to plaintiffs and all other members of the Class in an amount to

be determined by the finder of fact;

C. Award attorneys' fees and the costs of this action; and,

D. Award such other and further relief as this Court deems just and proper.

Respectfully submitted,

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FILED

MAR 31 1989

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CORDOVA DISTRICT FISHERMEN)
UNITED, INC., an Alaska)
corporation; PRINCE WILLIAM)
SOUND AQUACULTURE CORPOR-)
ATION, an Alaska non-profit)
corporation; and ELMER J.)
CHESHER, on their own behalf)
and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

EXXON CORPORATION, a New)
Jersey corporation, EXXON)
SHIPPING COMPANY, a Delaware)
corporation, and ALYESKA)
PIPELINE SERVICE COMPANY, a)
Delaware corporation,)

Defendants.)

Civ. No. AB9-099 CIV

CLASS ACTION FOR
DAMAGES AND OTHER
RELIEF

ASHBURN AND MASON
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Plaintiffs allege as follows:

Jurisdiction and Venue

1. The jurisdiction of this Court arises under the federal question statute, 28 U.S.C. §1331, the federal admiralty and maritime jurisdiction statute, 28 U.S.C. §1333, and principles of pendent jurisdiction.

2. Venue is proper in this District by virtue of 28 U.S.C. §1391 because the claims arose in this District and Defendants are doing business in this District.

Parties

3. The named Plaintiffs are as follows:

a. CORDOVA DISTRICT FISHERMEN UNITED, INC. ("CDFU") is a corporation organized and existing under the laws of the State of Alaska with its principal place of business in Cordova, Alaska. CDFU is a membership organization of more than 500 commercial fishermen who earn their living in Prince William Sound pursuant to permits issued by the State of Alaska.

b. Prince William Sound Aquaculture Corporation ("PWSAC") is a non-profit corporation organized and existing under the laws of the State of Alaska with its principal place of business in Cordova, Alaska. PWSAC operates three salmon hatcheries in Prince William Sound.

c. Plaintiff Elmer J. Cheshier is a citizen and resident of Cordova, Alaska, who earns his living as a commercial

fisherman in Prince William Sound pursuant to a permit issued by the State of Alaska.

4. Defendant Exxon Corporation is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the State of New York.

5. Defendant Exxon Shipping Company ("Exxon Shipping") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Texas. Exxon Shipping, a subsidiary of Exxon Corporation, is the registered owner of the vessel Exxon Valdez and operated the Exxon Valdez in the waters of Prince William Sound on or about March 24, 1989.

6. Defendant Alyeska Pipeline Service Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Alaska.

Class Action Allegations

7. This action is brought by the named Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure.

8. The class represented by the named Plaintiffs consists of all persons (including individuals, corporations, partnerships or other entities) engaged in the commercial cultivation and/or harvesting of fish, shellfish or other marine resources in or upon the waters and subsurface and surface lands in and around Prince William Sound, Alaska.

9. The exact number of members of the class is not known, but it is estimated that there are no fewer than 500 members. The class is so numerous that joinder of all members in this action is impracticable.

10. There are common questions of law and fact that relate to and affect the rights of each member of the class, including questions of violation and injury as alleged herein.

11. The claims of the named Plaintiffs, which are representatives of the class, are typical of the claims of the class, in that the claims of the Plaintiffs and all members of the class depend upon a showing of the acts and omissions of the Defendants giving rise to the relief sought herein.

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12. This action is properly maintained as a class action under Rule 23(b)(2) because the Defendants have acted and refused to act on grounds generally applicable to the class, as hereinafter more fully appears, thereby making appropriate the equitable relief sought herein with respect to the class as a whole.

13. This action is properly maintained as a class action under Rule 23(b)(3) because the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Factual and Legal Allegations

14. On or about March 24, 1989 the vessel Exxon Valdez took aboard a load of approximately 53,000,000 gallons of oil at the southern terminus of the Trans-Alaska Pipeline at Valdez, Alaska. This oil had been transported through the Trans-Alaska pipeline prior to being loaded onto the Exxon Valdez. After being loaded onto the Exxon Valdez, the oil was not brought ashore at a port under the jurisdiction of the United States.

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15. After the Exxon Valdez departed from the terminus, the vessel was negligently, grossly negligently and/or recklessly caused to collide with an undersea reef located in the Prince William Sound.

16. As a result of its negligent, grossly negligent and/or reckless operation, the Exxon Valdez was damaged in a manner which permitted and/or caused the discharge of more than 11,000,000 gallons of oil upon and into Prince William Sound and subsurface and surface lands.

17. Other negligent, grossly negligent and/or reckless acts and omissions of Defendants further contributed to the discharge of oil upon and into the waters of Prince William Sound and subsurface and surface lands. These acts and omissions include, but are not limited to, failing to respond to the oil spill in a timely manner, failing to maintain sufficient equipment to prevent discharged oil from spreading from the wrecked vessel, failing to maintain in working order vessels necessary to haul cleanup and containment equipment to the area of the spill, and otherwise failing to respond promptly and effectively.

18. As a result of negligent, grossly negligent and/or reckless acts and omissions by Defendants, containment and cleanup

COMPLAINT/6

equipment did not reach the area of the spill when needed, thereby materially compounding the harm arising from the discharge of oil.

19. The oil discharged from the Exxon Valdez into and upon Prince William Sound has polluted and will continue to pollute waters and subsurface and surface lands containing fish, shellfish and other marine life. This oil is a "hazardous substance" as defined by AS 46.03.826(4)(B).

20. The waters and subsurface and surface lands in and around Prince William Sound are utilized by and for the benefit of the members of the Plaintiff class and PWSAC. Such utilization includes the production, cultivation and harvesting of fish, shellfish and other marine resources.

21. As a direct and proximate result of the discharge of oil upon and into the waters, subsurface and surface lands in and around Prince William Sound, the members of the Plaintiff class and PWSAC have suffered and will continue to suffer both immediate injury and long-term and permanent injury, including but not limited to: incurrence of cleanup costs; loss and diminution of opportunities to produce, cultivate, harvest, and sell fish, shellfish and other marine resources; destruction and diminution of the value of fish, shellfish and other marine resources

COMPLAINT/7

produced, cultivated, harvested, or sold; harm to real and personal property; incurrence of cleanup costs; and other past, present and future economic injury that will be proved with more specificity at trial. Plaintiffs are currently unable to determine the amount of damages suffered by the members of the Plaintiff class and PWSAC, which will be proved with more specificity at trial.

22. Defendants' acts and omissions complained of herein were willful, outrageous, malicious and/or demonstrated a reckless indifference to the interests of the members of the Plaintiff class and of PWSAC.

23. Pursuant to 43 U.S.C. § 1653, Defendants Exxon Corporation and Exxon Shipping Company, as owners and operators of the vessel Exxon Valdez, are strictly liable jointly and severally to the members of the Plaintiff class and PWSAC for all damages suffered as a result of their acts and omissions complained of herein.

24. The following are admiralty claims within the meaning of Federal Rule of Civil Procedure Rule 9(h), and are also common law claims cognizable under principles of pendent jurisdiction:

a. Defendants are liable in trespass to members of the Plaintiff class and to PWSAC because the oil allowed or caused to be discharged as a result of Defendants' acts and omissions entered into and upon the waters and subsurface and

surface lands in and around Prince William Sound, causing injury as complained of herein. Members of the Plaintiff class and PWSAC have rights in such waters and subsurface and surface lands and the fish, shellfish and marine resources therein.

b. Defendants, by causing or allowing the discharge or contributing to the discharge of oil into and upon the waters and subsurface and surface lands in and around Prince William Sound and other property utilized by or for the benefit of members of the Plaintiff class and PWSAC, created and maintained a private nuisance which has substantially interfered and may continue to interfere with enjoyment of such property, has polluted waters and lands utilized by them or for their benefit, and has caused permanent injury to the livelihood of members of the Plaintiff class and PWSAC. The acts or omissions of Defendants in causing or allowing or contributing to the discharge of the oil into and upon the waters and subsurface and surface lands in and around Prince William Sound are the direct and proximate cause of the injuries complained of herein.

c. The acts and omissions of Defendants complained of herein are a public nuisance. By reason of special rights and status of the members of the Plaintiff class and PWSAC with respect to the cultivation and harvest of fish, shellfish and other marine resources from the waters and subsurface and surface lands in and around Prince William Sound, they have suffered or

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will suffer special injury as a result of discharged substances and the nuisance created or contributed to by Defendants, different in kind and degree from that suffered by the general public from the nuisance.

d. Defendants, in producing and transporting oil, were engaged in an abnormally dangerous and ultra-hazardous activity and therefore owed to the members of the Plaintiff class and PWSAC an absolute duty to conduct their activities in a safe and proper manner. Defendants breached their duty by causing or allowing or contributing to the discharge and dispersion of oil upon and into the waters and surface and subsurface lands in and around Prince William Sound. As a result of the Defendants' breach, the members of the Plaintiff class and PWSAC have suffered or will suffer injury as complained of herein. Defendants are strictly liable to compensate the members of the Plaintiff class and PWSAC for said damages in an amount to be proven at trial.

e. Defendants Exxon Corporation and Exxon Shipping Company, jointly and severally, owed a duty of care to the members of the Plaintiff class and PWSAC to maintain a seaworthy vessel and to properly transport, handle, and prevent spillage of the oil carried by the Exxon Valdez, and all Defendants owed a duty to properly contain, clean up, and otherwise take adequate precautions and measures to prevent injury to the members of the Plaintiff class and PWSAC in the event that

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oil was spilled and to conduct cleanup efforts in a non-negligent manner. Defendants Exxon Corporation and Exxon Shipping Company breached their duty of care in failing to maintain a seaworthy vessel, in navigating the vessel and in transporting and handling the oil discharged from the Exxon Valdez, and all Defendants breached their duty of care by negligently failing to clean up, contain and prevent damage from the discharged oil in a timely and proper manner. As a direct and proximate result of Defendants' negligence, the members of the Plaintiff class and PWSAC have suffered or will suffer injury as complained of herein.

25. The following claims arise under the law of the State of Alaska and are cognizable by this Court under principles of pendent jurisdiction:

a. Defendants Exxon Shipping Company and Exxon Corporation owned and/or had control of the oil that Defendants caused or allowed to be discharged into and upon the waters and subsurface and surface lands in and around Prince William Sound, in areas used by or for the benefit of members of the Plaintiff class and PWSAC for the cultivating, harvesting or processing of fish, shellfish and other marine resources. As a direct and proximate result of this discharge of said hazardous substance, pursuant to AS 46.03.822 et seq. defendants are strictly liable to the Plaintiff class and PWSAC for all resulting damage or injury.

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to them or their property, including but not limited to loss of income, loss of means of producing income and the loss of economic benefit. Pursuant to the laws and regulations of the State of Alaska, including AS 46.04.040 and 18 AAC 20.005 et seq, Defendant Exxon Shipping Company and/or Defendant Exxon Corporation executed a guaranty of financial responsibility in the amount of \$14,000,000. Pursuant to AS 46.04.040(i), such financial responsibility undertaken by Defendant Exxon Shipping Company and/or Defendant Exxon Corporation extends to a loss compensable under Alaska Statute 46.03.822. Defendant Exxon Shipping Company and/or Defendant Exxon Corporation are thereby liable for all injury or damages incurred by the members of the Plaintiff class and PWSAC.

b. For their acts and omissions complained of herein, Defendants are also liable pursuant to AS 09.45.230 et seq. for creating a private nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Enter a judgment in favor of the members of the Plaintiff class and PWSAC against each Defendant.
2. Award compensatory and punitive damages for all injuries and losses suffered by the members of the Plaintiff Class and PWSAC, in an amount to be proven at trial.

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3. Order immediate and continuing environmental monitoring and assessment of the conditions of the waters and subsurface and surface lands and the fish, shellfish and the associated marine resources.

4. Order abatement and cleanup of the damage caused by Defendants to the waters and subsurface and surface lands and the fish, shellfish and marine resources and restoration of the preexisting environmental conditions, as well as monitoring and assessment of such abatement and cleanup.

5. Award Plaintiffs and the members of the PWSAC prejudgment and postjudgment interest, costs and attorneys' fees in this action.

6. Grant such other relief as this Court deems just and equitable.

Plaintiffs demand a jury trial.

DATED at Anchorage, Alaska, this 31 day of March, 1989.

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