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Attorneys for Defendant
Exxon Shipping Company (D-2)

FILED

DEC 13 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
BY Re Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	Case No. A89-095 Civil
)	
the EXXON VALDEZ)	(Consolidated)
_____)	

RE: ALL CASES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL)	Case No. 3AN-89-2533 Civil
SPIILL LITIGATION)	
)	(Consolidated)
This Document Relates to:)	
ALL CASES)	
_____)	

BOGLE & GATES

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RE-NOTICE OF TAKING DEPOSITION

1103 46

To: Harold Berger, Esq.
Charles W. Ray, Esq.
as Co-chairs of Plaintiffs' Discovery Committee and as
Designated Recipients of Discovery Matters for all Plaintiffs

PLEASE TAKE NOTICE that the Defendants in the above matter, pursuant to Rules 26, 30 and 45 of the Alaska Rules of Civil Procedure, and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure and the Discovery Plan, will take the oral deposition of the National Marine Fisheries Records Custodian before a Notary Public or some other person qualified to take oaths in the offices of Gibson, Dunn and Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. on Wednesday, the 23rd day of January, 1991, at the hour of 9:00 o'clock a.m. The deposition is expected to last one day.

Deponent is requested to bring with him or her to this deposition the records described in the attached Schedule A.

DATED: December 13, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants

By Charles P. Flynn
Charles P. Flynn
Co-member of Defendants'
Coordinating Committee

BOGLE & GATES

By Douglas J. Serdahely
Douglas J. Serdahely
Defendants' Liaison Counsel and
Co-member of Defendants'
Coordinating Committee

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NMFS

SCHEDULE A

I.

INSTRUCTIONS

1. This Subpoena Duces Tecum ("Subpoena") requires the production of all responsive Documents in the custody, possession, or control of the Agency (as defined below) regardless of whether such Documents concern the Agency, and regardless of whether such Documents were generated by or on behalf of the Agency, or by another Person.

2. For each Document withheld from production on a claim of privilege or work product protection, specify the privilege or work product protection(s) that You claim, and provide the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; and (e) the basis for Your privilege claim. If the claimed privilege or work product protection applies only to a particular phrase, sentence, paragraph, or section of a responsive Document, produce the entire Document with the allegedly protected portion redacted and a legend indicating that the withheld portion is a subject of a specified privilege or protection.

3. If any Document that was, or might have been, responsive to this subpoena was destroyed, erased, surrendered, or otherwise removed from Your custody, possession, or control at any time after March 23, 1989, please provide, to the maximum extent possible, the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; (e) the circumstances surrounding the removal of the Document from Your custody, possession, or control; and (f) the Identity of the person(s) having knowledge of such removal from Your custody, possession, or control.

4. Each request herein seeks production of responsive Documents in the file and in the order in which each Document was kept in the ordinary course of business.

5. The words "and" and "or" shall be individually interpreted as meaning "and/or" in every instance and shall not be interpreted disjunctively to exclude any Document that would be within the scope of any request if the word "and" were read separately or, alternatively, if the word "or" were read separately. Additionally, the singular shall mean the plural and the plural shall mean the singular throughout these requests.

6. Unless otherwise indicated, the Subpoena calls for Documents prepared during the period from January 1, 1975 to the present.

II.

DEFINITIONS

1. "ADEC" means the Alaska Department of Environmental Conservation and any predecessor entities.

2. "Agency" means any department, division, office or branch within the National Marine Fisheries Service, together with all Agency employees, contractors, consultants, and other third parties retained, hired by or working with the Agency, and all predecessor entities of the Agency.

3. "Alaska," "State of Alaska," and "State," except when used as a geographic term, mean the executive branch of the State of Alaska, present or former departments, agencies, corporations, offices, instrumentalities, boards, authorities, commissions, committees, and divisions; the Alaska State Legislature; the Legislative Affairs Agency or other legislative agencies; the Office of the Governor; Office of the Lieutenant Governor; Department of Administration; Department of Commerce & Economic Development; Department of Community & Regional Affairs; Department of Corrections; Department of Education; Department of Environmental Conservation; Department of Fish & Game; Department of Health & Social Services; Department of Law; Department of Labor; Department of Military and Veteran's Affairs; Department of Natural Resources; Department of Public Safety; Department of Revenue; Department of Transportation; the Oil Spill Commission; the

Pipeline Coordinator's Office; any official, employee, member, independent contractor, or agent of any of the foregoing entities; and any predecessor in interest of any of the foregoing.

4. "Alaskan Territorial Waters" or "State Territorial Waters" means any waters, Fresh or Marine, over which the State claims police power jurisdiction.

5. "Area Arguably Affected by the Spill" means the lands and waters of Prince William Sound, Cook Inlet, the Kodiak Archipelago, the Kenai Peninsula, the Alaska Peninsula, the Aleutian Chain, and the Gulf of Alaska and adjacent lands and waters.

6. "Baseline Condition" means the condition or conditions that would have existed within the Area Arguably Affected by the Spill had the Spill not occurred, but includes, without limitation, any conditions that You claim are "baseline conditions" for purposes of ascertaining change or injury to any Person, thing, organism or Natural Resource.

7. "Chemical Dispersant" means any chemical agent that is used to emulsify, disperse, or solubilize Oil into water, or promote the surface spreading of Oil to facilitate emulsification of Oil or its dispersion into water.

8. "Clean Up" means all actions, private and public, voluntary, regulatory or mandatory, that have been taken (or will be taken) to contain, control, recover, treat, disperse, burn, manage, remove, respond to, dissipate, clean, or remediate Oil or

other contaminants or pollutants resulting from the Spill or from any of the foregoing activities Relating to the Spill, and to restore or rehabilitate Natural Resources injured by the Spill.

9. "Commercial fishing" means the extraction of Fish from the water for profit.

10. "Commercial Fishermen" means all Persons engaged in Commercial fishing.

11. "Communication" means any transfer of information whether oral, written or electronic.

12. "Defendants" means the following parties named as defendants in the above-captioned litigation: Alyeska Pipeline Service Company, Amerada Hess Corporation, ARCO Pipe Line Company, Mobil Alaska Pipeline Company, SOHIO Alaska Pipeline Company, BP Pipelines (Alaska), Inc., Phillips Alaska Pipeline Corporation, UNOCAL Pipeline Company, Exxon Shipping Company, Exxon Corporation (including, without limitation, its division Exxon Company, U.S.A.) and Exxon Pipeline Company.

13. "Discuss" or "Discussion" means any communication concerning or Relating to the subject matter specified as the subject of or under such "Discussion."

14. "Document" has the same meaning as "writings or recordings" and "photographs" as specified in Rules 1001(1) and 1001(2) of the Alaska Rules of Evidence, including, without limitation, any data in digital notation of any kind useable by a computer or electronic word processor.

15. "File" means, any procedure, convention or mechanism used to aggregate, group or store Documents or sets of Documents, whether by topic, by date or otherwise.

16. "Fish" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal.

17. "Fisheries" means the taking of Fish of a particular type or species, by particular means or at a particular place or time; the business of catching and selling Fish; or the place where Fish are caught.

18. "Fresh Water" means any non-Marine water environment.

19. "Human Services" means any value that a Natural Resource has for human beings, the loss or reduction of which or the restoration of which is alleged to be recoverable or is alleged to provide a measure of recovery in this action.

20. "Identity" means the name of any Person or entity, the employment and title of any Person and the last known business address and telephone number of the Person or entity.

21. "Intrusive Clean Up Technique" means any technique such as removal of sediment for rock washing, which involves gross movement or surface or subsurface sediment.

22. "Marine" means a saltwater environment.

23. "Natural Resources" means land, Fish, wildlife, vegetation and other biota, air, water, groundwater, drinking water supplies and other such resources belonging to managed by, held in

trust by, appertaining to, or otherwise controlled by the United States, the State of Alaska, or any Indian Tribe.

24. "NRDA" means any systematic process of collecting, compiling, and analyzing information, statistics, or data to determine damages for injuries to Natural Resources, conducted by the State or federal government or any other Person in connection with the Spill.

25. "Oil" means petroleum, including crude oil, or any fraction thereof, and any other hydrocarbon, together with any and all chemicals or additives contained therein.

26. "Oil spill" means an Oil spill in a Marine environment, unless otherwise provided.

27. "Organism of Any Species" means any or all organisms of a species (animal or plant), other than humans, including microorganisms, wherever or whenever located, if such organism at any time originates in, migrates from, passes through, or returns to any part of the Area Arguably Affected by the Spill.

28. "Person" refers to and includes any natural Person, individual, firm, association, partnership, joint venture, corporation, company, estate, trust, receiver, syndicate, proprietorship, municipal or other governmental corporation or agency, including groups and combinations of the same acting as a unit.

29. "Prespill Condition" means the condition or conditions that existed within the Area Arguably Affected by the Spill before the Spill.

30. "Relate to," "Relates to," "Related to" and "Relating to" means Discussing, recording, analyzing, describing, summarizing, referring to, containing or commenting on the subject matter referred to in each Request.

31. "Seafood" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal, vegetation (including kelp) or any other aquatic or Marine flora or fauna, or the products thereof, used or sold for human consumption, ornament or other use.

32. "Spill" means the Oil Spill described on p. 1 of Proposed Probable Cause, Findings & Recommendations of the State of Alaska in National Transportation Safety Board Docket No. DCA 89 MM 040, attached as Attachment "A".

33. "Sport fishing" means the taking or possession of or attempting to take or possess for enjoyment or personal use, not for sale, barter or subsistence, of any Fresh Water, Marine, or anadromous Fish, shellfish, vegetation (including kelp), or any other aquatic or Marine flora or fauna. "Sport fishing" includes the taking of any such Fish, shellfish or other flora or fauna even where such Fish, shellfish or other flora or fauna is released or replanted after such taking.

34. "Statement" means any Document that records declarations or admissions of a Person, whether or not given by the Person or signed by the Person.

35. "Subsistence Use" means the non-commercial, non-sport, non-recreational customary and traditional uses of Fresh Water, terrestrial, or Marine resources by Persons in the State for

direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, or the making and selling of handicraft articles out of edible or non-edible by-products of Fish and wildlife resources taken for personal or family consumption or for customary trade, barter or sharing, the proceeds of which are used for personal or family consumption.

36. "Subsistence fishing" means the taking or possession of Fresh Water or Marine Fish, shellfish, or vegetation (including kelp), or any other aquatic or Marine flora or fauna, or the products thereof, by gillnet, seine, fishwheel, longline, hook & line, gill or dip net, or any other means defined by the Alaska Board of Fisheries, for Subsistence Use.

37. "You", "Yours" and "Yourself" means the responding Agency.

38. "VTs" means the vessel traffic system operated by the United States Coast Guard in Prince William Sound.

III.

DOCUMENTS REQUESTED

1. All Documents from January 1, 1969 up to and including March 24, 1989 Relating to the actual or potential environmental impacts on any marine environment of a Trans Alaska Pipeline to Valdez, or any alternative to such a pipeline, including, without limitation:

- a. All Documents Relating to the advantages, disadvantages, risks and contingencies of transporting Alaska North Slope crude oil by vessel;
- b. All Documents Relating to any environmental impact statements or negative declarations, including without limitation all drafts, comments, evaluations, criticism or endorsement thereof.

2. All Documents Relating to any changes in the shoreline or the bottom of Prince William Sound.

3. All Oil spill contingency plans in effect on or before March 24, 1989 applying to the State or the territorial waters of the State.

4. All Documents Relating to the preparation, review, evaluation, analysis, critique, rejection, approval or implementation of, or the interrelationships among, any of the following Oil spill contingency plans (including, without limitations, all memoranda of understanding or interpretative memoranda of the Agency or any other Person Relating to the responsibilities for oil spill response and clean-up under such plans):

- a. the National Contingency Plan;
- b. the Regional Contingency Plan applicable to Alaska or State Territorial Waters;
- c. the State of Alaska Oil and Hazardous Substances Pollution Contingency Plan;
- d. the Captain of the Port (Prince William Sound) Pollution Action Plan;
- e. the Alyeska Oil Spill Contingency Plan;
- f. the Alaska Emergency Plan;
- g. the Exxon Shipping Company Headquarters Casualty Response Plan;
- h. any Oil spill contingency plan submitted to the State by any of the Defendants (whether or not still in effect).

5. All Documents Relating to the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of State or Agency policies or

regulations in effect on or before March 24, 1989 concerning compliance with State or federal law requiring Persons owning or operating tank vessels or tank vessel loading facilities to maintain or carry out an approved Oil spill contingency plan with regard to the Marine transport of Oil.

6. All Documents Relating to the Regional Response Team for Alaska, including, but not limited to, all Documents Relating to the pre-approval process by the Regional Response Team for the use of dispersants in the State, State territorial waters, or the waters of the United States.

7. All Documents Relating to the use of scenarios in Oil spill response contingency planning.

8. All Documents Relating to the risk or likelihood of Oil spills, or the likely or possible size or magnitude of such Oil spills, in the State or on State Territorial Waters.

9. All Documents Relating to the Oil spill containment and clean up responsibilities and the readiness of the State, the Agency, the United States (including, without limitation, the U.S. Coast Guard and the U.S. Environmental Protection Agency), Alyeska, Exxon Shipping Co., Exxon Pipeline Co., Exxon Corporation, or any other Person during the period from January 1, 1969 up to and

including March 24, 1989, whether under statute, regulation, contingency plan, contract, or otherwise, for any Oil Spill in the State or on State territorial waters including, without limitation:

- a. All Documents Relating to any obligation of any of the Defendants to respond to Oil spills in Prince William Sound;
- b. All Documents Relating to the readiness of any other Person to respond to any Oil spill under its Oil spill contingency plan;
- c. All Documents Relating to whether, in responding to an Oil spill, Alyeska acted, or would act, in its individual capacity or as agent for another party.
- d. All Documents Relating to any planned, considered, expected or actual transfer or non-transfer of operational control over any response to an Oil spill from Alyeska to the spiller or transporter of the Oil, the Coast Guard or any other party.

e. All Documents Relating to any Oil spill response exercises or drills that occurred up to and including March 24, 1989.

10. All Documents from January 1, 1989 to the present which identify personnel of, and positions in, the Agency whose responsibilities include oil spill response duties.

11. All Documents Relating to any means, methods, techniques or procedures, to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation:

- a. Chemical Dispersants;
- b. In situ burning;
- c. Booming;
- d. Skimming;
- e. Chemical beach cleaning agents;
- f. Water washing;

- g. Bioremediation, including chemical stimulation of biological agents;
- h. Intrusive Clean Up Technique;
- i. Weathering;
- j. Non-intervention; and
- k. Natural restoration.

12. All Documents Relating to any request or application to the State, the Agency or the federal government for authorization or approval of the use of any means or method to contain, control, recover or clean up spilled Oil on bodies of water (whether Fresh or Marine), and the State's or federal government's response to such request or application, including, without limitation, any testing or pilot studies done of any of the techniques listed in Request No. 11.

13. All Documents Relating to the actual or predicted effect on the environment (other than the removal, clean up, or dispersal of Oil) of any means, methods, techniques or procedures to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation, any of the techniques listed in Request No. 11.

14. All Documents Relating to the preparation, drafting or negotiation of any guidelines, policies, regulations or procedures in effect up to and including March 24, 1989 for the use of chemical dispersants in connection with the clean up of Oil spills.

15. All Documents Relating to the capability, efficiency, or effectiveness of any equipment or machinery that could be used in cleaning up, recovering, removing, containing, dispersing, or otherwise disposing of an Oil spill.

16. All Documents Relating to the speed or rate at which, or time period within which, any actual or hypothetical Oil spill, or any portion thereof, was or could be cleaned up, recovered, removed or otherwise disposed of by any spill response means or technology, including, without limitation, any of the techniques listed in Request No. 11.

17. All Documents Relating to any actual, calculated, estimated or assumed recovery rate of any skimmer or other mechanical recovery equipment.

18. All Documents Relating to the State's, the Agency's or the federal government's policies or positions regarding considerations relevant to oil spill response decision-making, including but not limited to:

- a. Personnel safety;
- b. Vessel safety;
- c. Lightering;
- d. Environmental impacts and trade-offs;
- e. Federal control of spill response;
- f. State participation in spill response;
- g. Participation in spill response activities by third parties; and
- h. Spill response by, and legal responsibility of the spiller.

19. All Documents Relating to the Oil spill resulting from the grounding of the T.V. Glacier Bay in Cook Inlet on or about July 2, 1987, the cleanup or restoration of natural resources after that spill, or the damages alleged to have resulted from it.

20. All Documents prepared from January 1, 1969 to the present Relating to any Oil spill in the Port of Valdez or in Prince William Sound (whether actual, predicted or hypothetical) or any Person's response to, or plan, capabilities or state of preparedness for, responding to such a spill.

21. All Documents Relating to any Person's response to, or the clean up or environmental impacts of, any Oil spill in excess of 25,000 barrels other than the Spill.

22. All Documents Relating to the training or instruction of employees, members or contractors of any Person concerning the clean-up of any Oil spill in excess of 25,000 barrels, including, without limitation, all manuals, memoranda, and other Communications and Documents Relating to these manuals and memoranda.

23. For every Oil Spill in excess of 25,000 barrels, produce all final reports issued by the federal on-scene coordinators assigned to those spills, together with all "POLREPS" generated by the Agency, or any other federal agency, relating to those spills.

24. All Documents Relating to the wreck of the LEE WANG SIN which occurred near Prince of Wales Island, Alaska on or about December 25, 1989, including but not limited to the Federal On-Scene Coordinator's report and all "POLREPS" generated regarding this incident.

25. All Documents Related to the actual or predicted fate or effects of any Oil spill in excess of 25,000 barrels on any Person or Natural Resource.

26. All Documents Relating to the State's, the Agency's or the federal government's experience with any Oil spill in excess of 25,000 barrels, including, without limitation, any regulatory, administrative or other governmental action taken or discussed by the State, the Agency or the federal government in response to such Oil spill.

27. All Documents Relating to the experience of the Agency with any Oil spill in excess of 25,000 barrels, including, without limitation, any studies of the effects of such spills on any Organism of Any Species.

28. All Documents Relating to any advice, assistance, technical support, personnel or consultation provided by the Agency to any other Person Relating to any Oil Spill in excess of 25,000 barrels.

29. All Documents Relating to any change in, or events, circumstances or conditions causing a change in, Alyeska's Oil spill response capabilities or state of readiness taking place up to and including March 24, 1989.

30. All Documents Relating to the response to the Spill including, without limitation, the following subject matters:

- a. Clean-up, restoration and containment measures and activities or any other action taken by the Agency or its agents, contractors or consultants in any way Related to the EXXON VALDEZ oil spill.

- b. The efforts of any Person besides the Agency in connection with the Spill or Clean Up, including, without limitation, any Defendant, the Coast Guard, and the Regional Response Team;
- c. The transfer of Clean Up and containment efforts from Alyeska to Exxon Shipping or other Exxon entities;
- d. The organizational relationships among any State or federal agencies, offices or task forces involved in the Clean Up, including, without limitation, the chain of command and the process by which responsibility for various aspects of the Clean Up was assigned;
- e. The quantity of Oil originating from the EXXON VALDEZ that exists at the present, or that did exist, in any part of the Area Arguably Affected by the Spill from March 24, 1989 to the present, including, without limitation, any calculation of the quantity of Oil recovered or dissipated during the Clean Up, and any calculation of the quantity of Oil

originating from the EXXON VALDEZ that remains in the environment in the Area Arguably Affected by the Spill;

- f. The quantity of Oil or chemicals introduced into the environment as part of the Clean Up;
- g. Field surveillance or studies done by any Person in connection with the Clean Up;
- h. Tests or other efforts to identify the source of any Oil or other chemical found during 1989 or thereafter within the Area Arguably Affected By The Spill;
- i. The collection or preservation of any remains of flora or fauna allegedly killed as a result of the Spill or the Clean Up;
- j. Tests, research or studies to determine the effectiveness of the Clean Up or the amount of Oil claimed to be from the Spill that remained in the environment; and
- k. The effects of any Oil claimed to be from the Spill on any Organism of Any Species.

31. All Documents Relating to efforts of any Person to control or manage the Spill, including, without limitation, use or application of any of the techniques listed in Request No. 11.

32. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant Relating to the Spill or Clean Up.

33. All Documents Relating to means, methods or agents for the Clean Up or other remediation of the Spill or restoration of any area or resource allegedly affected by the Spill.

34. All Documents Relating to contracts, receipts or other evidence of payment or charge of any expense alleged to have been incurred by the Agency or any other Person as a result of the Spill or the Clean Up.

35. All Documents Relating to the EXXON VALDEZ oil spill received by your Agency from any Person.

36. All incident reports and reports of interviews Related to the EXXON VALDEZ oil spill or Clean-up, and all Documents Related to such reports.

37. All Documents Relating to any activities by any of the following organizations which are related to the Exxon Valdez oil spill:

- a. The National Response Team;
- b. The Alaska Regional Response Team;
- c. The Multi-Agency Committee (MAC) or the Inter-Agency Department.

38. All Documents which in any way Relate to the impact upon the environment of the EXXON VALDEZ oil spill and the associated Clean-up and response.

39. All Documents from January 1, 1985 to the present Relating to the Baseline or Pre-spill Condition of any Organism of Any Species, or of any other Natural Resources, or Human Services within the Area Arguably Affected by the Spill, including, without limitation, the level of Oil in any waters within the Area Arguably Affected by the Spill.

40. All Documents from January 1, 1985 to the present Relating to the habitat, life patterns or populations of any Organism of Any Species in or around the Area Arguably Affected by the Spill.

41. All Documents from January 1, 1985 to the present Relating to the causes or possible causes of any variations in the population of any Organism of Any Species, or in the level of any Natural Resource or Human Service in or around the Area Arguably Affected by the Spill, including, without limitation, such causes as low temperatures, storms, predators, disease, reproductive failure, drift netting, otter expansion, increased development or tourism, the Spill or the Clean Up.

42. All Documents from January 1, 1985 to the present Relating to events or circumstances other than the Spill or Clean Up that are, have been, may have been or may be detrimental to any Organism of Any Species, or to the level of any other Natural Resource or any Human Service in the Area Arguably Affected by the Spill, including, without limitation, such events or circumstances as climatic variations, other Marine and non-Marine oil spills, pollution attributable to the development of Valdez or other areas, ocean drift net operations, predators, diseases, changes in breeding patterns or nesting patterns, the development or operation of Fish hatcheries, human use or development or the like.

43. All Documents Relating to any research protocols, sampling, testing or analytical methodologies, and quality control/quality assurance methodologies and other means and methodologies used in any study, survey or research concerning any

Natural Resource or Human Services within the Area Arguably Affected by the Spill at any time after March 24, 1989, or the results of such study, survey or research.

44. All Documents Related to any Organism of any Species which was killed, injured, sacrificed or otherwise harmed or damaged as part of any research, studies or investigation Related to the Spill or the Cleanup.

45. All Documents from January 1, 1985 to the present Relating to samples or specimens of any Natural Resource taken from the Area Arguably Affected by the Spill, together with all Documents and Communications that Relate to such samples or specimens or the information derived therefrom.

46. All Documents Relating to the post-Spill viability of any Organism of any Species within the Area Arguably Affected by the Spill including, without limitation, incubation success, egg to fry survival, or other information relating to successful or unsuccessful regeneration of individual members of any Organism of Any Species.

47. All Documents Relating to the projected or forecasted duration of any effect of the Spill or the Clean Up, including, without limitation, any prediction of the time during

which the presence of Oil or other substance originating from the EXXON VALDEZ will have an effect, favorable or unfavorable, on Natural Resources in the Area Arguably Affected by the Spill.

48. All Documents Relating to certain reports prepared for the Agency by Triton Environmental Consultants, Ltd., entitled Early Life History of Pacific Herring: 1989 Prince William Sound Herring Egg Incubation Experiment, and Early Life History of Pacific Herring: 1989 Prince William Sound Herring Larvae Survey, including, but not limited to the following:

- a. All Documents received by the Agency from Triton;
- b. All Documents Relating to any Communications or discussions about the reports;
- c. All appendices, companion studies and background materials and data related to the reports.

49. All Documents from January 1, 1985 to the present Relating to the chemistry of waters in the Area Arguably Affected by the Spill, including, without limitation, the presence or

absence of Oil, toxins, contaminants, or hazardous substances, the salinity, oxygenation, turbidity or temperature of such waters, or any colloids in suspension in such waters.

50. All Documents from January 1, 1985 to the present Relating to the sources--natural or man-made--of any Oil in the waters, subsurface sediments, air or uplands of the Area Arguably Affected by the Spill.

51. All Documents from January 1, 1985 to the present Relating to the source of any Oil or other chemical found prior to 1989, and separately after January 1, 1989, within the Area Arguably Affected by the Spill, including, without limitation, any tests of sheens, Oil, tar, mousse, or tar balls to "fingerprint" the character of the source Oil.

52. All Documents Relating to the chemistry of, or pollutants or contaminants contained on or in, water (Fresh and Marine), sediment, land, or shoreline surface within the Area Arguably Affected by the Spill at any time after March 24, 1989.

53. All Documents Relating to the involvement of any Person in the assessment of alleged Natural Resource damages resulting from the Spill or Clean Up, including, without limitation, all Documents and Communications furnished to the Persons purporting to act as trustees for Natural Resources under

federal or State law, all Documents related to the agreement between Exxon Shipping, the State and federal trustees dated April 13, 1989 regarding participation in the NRDA process and all other understandings or agreements between Exxon Shipping and the Natural Resource Trustees, written or oral.

54. All Documents Relating to the issuance of permits to scientists or investigators for research concerning changes in the state or condition of Natural Resources within or about the Area Arguably Affected by the Spill subsequent to the Spill, including, without limitation, Documents Relating to the terms and conditions imposed or to be imposed in such permits, and reports submitted to the State or federal government in compliance with such permits.

55. All Documents Relating to permits, licenses, or other authorizations, of any type, issued since January 1, 1980, to any person or entity for any project, development or activity, in Alaska, State territorial waters, or in federal waters adjacent to Alaska, that involves the consumption, destruction, impairment, pollution of, or injury to, any Natural Resource other than a Natural Resource that is actually traded in a commercial market.

56. All Documents Related to the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the EXXON VALDEZ Oil Spill and the 1989 State/Federal Natural Resource Damage Assessment Plan for the EXXON VALDEZ oil spill.

57. All Documents Relating to any study, survey or research concerning any Natural Resource within the Area Arguably Affected by the Spill at any time after the Spill.

58. All Documents Relating to actual or potential methods for establishing contingent valuation of any alleged damage to any Natural Resource or Human Service including, without limitation, alleged damage within the Area Arguably Affected by the Spill.

59. All Documents Relating to any contingent valuation surveys conducted by any person or entity since January 1, 1980.

60. All Documents Relating to the validity, accuracy or reliability of contingent valuation as a method of determining the value of any Natural Resource or any non-market good.

61. All Documents Relating to the validity, accuracy, or reliability of any contingent valuation survey.

62. All Documents Relating to any valuation of, or effort to place a value on, any Natural Resource, whether or not involving the contingent valuation method, except valuations based solely on the commercial value of Natural Resources that are actually traded in a commercial market.

63. All Documents from January 1, 1985 to the present Relating to the price at which any resource or mineral good or commodity (including, without limitation, timber, forest products, minerals, animal pelts and products, or other organic or mineral goods or commodities) produced in any part of the Area Arguably Affected by the Spill was or could have been sold and all Documents Relating to markets for such resource, mineral good or commodity.

64. Any Documents from January 1, 1985 to the present relating to the price or valuation of any real property located in the Area Arguably Affected by the Spill.

65. All Documents Relating to any public opinion poll, focus group, random intercept survey or other survey, poll, device or procedure used by the State, the Agency, the federal government or the State or federal Resource Trustees for ascertaining the views of any segment of the population of the United States concerning the Spill, Defendants, the Clean Up, the market for Seafood, Alaska tourism, historic, archaeological, intrinsic,

Subsistence, research uses or Natural Resources within the Area Arguably Affected by the Spill or any other matter Related to the Spill.

66. All Documents from January 1, 1985 to the present Relating to the number of Persons who took any Organism of Any Species for sport--whether by hunting, trapping, fishing or otherwise--in the Area Arguably Affected by the Spill, and the number of Organisms of Any Species taken under any license or permit covering the taking for sport within the Area Arguably Affected by the Spill.

67. All Documents from January 1, 1985 to the present Relating to use of any Natural Resource in the Area Arguably Affected by the Spill, including, without limitation, actual or planned use of Seafood, timber, minerals, forest products, pelts, bodies of water, tracts of land or any mineral, flora or fauna found in the Area Arguably Affected by the Spill.

68. All Documents from January 1, 1985 to the present Relating to recreational activities in the Area Arguably Affected by the Spill, including, without limitation, the number of Persons visiting the Area in any season, the average expenditures by each

visitor, the projected increases or decreases in recreational uses, the environmental impacts of recreational uses and the amounts expended for recreational uses.

69. All Documents from January 1, 1985 to the present Relating to businesses in the Area Arguably Affected by the Spill, including, without limitation, the nature of businesses operating in the Area, the income of such businesses, any forecast for the growth or decline of activities by such businesses, or contingencies affecting the growth or decline of such businesses.

70. All Documents from January 1, 1985 to the present Relating to any Subsistence Use or recreational, personal, or commercial uses of the Area Arguably Affected by the Spill at any time prior to the Spill.

71. All Documents from January 1, 1985 to the present Relating to the value of any Natural Resources in the Area Arguably Affected by the Spill.

72. All Documents Relating to the catch, collection or other taking or harvesting of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including commercial, sport or subsistence taking or harvesting.

73. All Documents Relating to historic, actual or forecasted quantities (at any stage of development), survival rates, survival assumptions, non-harvest depletions of population, harvest or catch, escapement, growth rate, spawner and recruit estimates or other such population data for any Organism of Any Species.

74. All Documents Relating to historic, actual or forecasted revenues, costs, or earnings from capture, harvest or other taking of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including, without limitation, such data as it pertains to primary harvesters, processors, buyers, brokers, wholesalers, distributors, canners, exporters, or fish farmers.

75. All Documents from January 1, 1985 to the present Relating to any State, Agency or federal policies, regulations or laws in effect on or before March 24, 1989 (including, without limitation, the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of such policies, regulations, or laws) concerning the postponement or closure of any Fishery--commercial, sport or subsistence--for any reason, including the presence of any Oil or pollutant.

76. All Documents Relating to any activities by any person since 1985 to influence or attempt to influence the State or federal policies, regulations, or laws concerning the postponement or closure of any Fishery--commercial, sport or subsistence--for any reason, including the presence of any Oil or pollutant.

77. All Documents Relating to the State's so-called "zero tolerance" policy as to the opening for 1989 or thereafter of Fisheries within the Area Arguably Affected by the Spill, including, without limitation:

- a. the reasons or grounds for implementation of such policy;
- b. measures, other than closure, that might be used to accomplish the purpose of such policy;
- c. the liability of any Defendant to reimburse any Person affected by implementation of such policy;
- d. Communications by any Persons concerning such policy;
- e. the criteria for application of such policy;

- f. objections by any Person, within or outside of the State government, to the adoption or application of such policy;
- g. application of such policy to any specific case or situation;
- h. modification of such policy, actual or suggested;
- i. the test fishing program; and
- j. the effect of the Exxon claims program on the use of such policy.

78. All Documents Relating to or containing any Communications concerning a decision to open, to postpone the opening of, to close, or not to open any Fishery in 1989 or thereafter in any part of the Area Arguably Affected by the Spill.

79. All Documents Relating to the identification or quantification of any injuries or damages allegedly caused by the Spill or the Clean Up, including, without limitation, the following categories:

- a. injuries or damages to the public and private economies of the State or specific geographic areas within the State;
- b. injuries or damages to goodwill;
- c. injuries or damages to private businesses;
- d. injuries or damages, personal or economic, to individuals;
- e. injuries or damages to trade organizations;
- f. injuries or damages to commercial, scientific, educational, charitable, cultural or subsistence institutions or activities generating direct or indirect economic benefits to the State;
- g. injuries or damages to real property;
- h. injuries or damages to personal property;
- i. injuries or damages to Natural Resources;

- j. loss of governmental revenues sustained by the federal government, the State or any municipality, municipal subdivision or other governmental organization other than the State, including, without limitation, alleged loss of Oil and gas production tax revenue, corporate income tax revenue, and Oil production royalties; and
- k. costs of restoration or replacement of Natural Resources.

80. All Documents Relating to the economic effects of the Clean Up upon:

- a. workers employed in the Clean Up effort;
- b. communities within the Area Arguably Affected by the Spill;
- c. communities outside the Area Arguably Affected by the Spill; and
- d. the economy of the State.

81. All Documents Relating to economic benefits resulting from the Clean Up, including, without limitation, numbers of Persons employed, businesses supported by Clean Up wages, cash recirculation factors, visits to the State generated by the Clean Up (including visits by contractors or others working on the Clean Up, press and scientific visitors, tourists and governmental visitors), income to travel and hotel industries from Clean Up-Related visits and other such effects.

82. All Documents Relating to the movement of the EXXON VALDEZ at any time during its voyage from the Port of Valdez to San Diego, and all activities of any Person associated with that voyage, including, without limitation, its grounding, its rupture, or the loss of Oil therefrom, on or after March 23, 1989.

83. All Documents Relating to the performance of the Alyeska Marine Terminal, Alyeska management, or Alyeska personnel in connection with the loading or departure of the EXXON VALDEZ on March 23, 1989.

84. All Documents Relating to any Communications on or after March 22, 1989 with any Person who was on the EXXON VALDEZ at any time during the period March 22, 1989 through June 23, 1989, including, without limitation, any Communication with the master, officers or crew of the EXXON VALDEZ, or with any Agency, federal or state officers or agents aboard the EXXON VALDEZ.

85. All Documents from January 1, 1985 to the present Relating to the weather or the conditions or patterns of tides, currents or floating ice in the Area Arguably Affected by the Spill.

86. All Documents Relating to mapping of the Area Arguably Affected by the Spill, including, without limitation, any maps purporting to show the location, quantity or condition of any Oil or other chemical resulting from the Spill or the Clean Up at any point in time.

87. All maps, charts, diagrams, photographs, aerial photographs, computer images, or any other depictions of the geography, topography or conditions of the Area Arguably Affected by the Spill, made or created from January 1, 1985 to the present, including, without limitation, trajectories or other depictions, whether projected or actual of the Spill, and Documents relating thereto.

88. All Documents prepared from January 1, 1969 to the present Relating to the preparation, negotiation, drafting or approval of the federal Agreement and Grant of Right of Way ("Federal Right of Way"), dated January 23, 1974, the State

Right-of-Way Lease ("State Right of Way"), dated May 3, 1974, or any Exhibit, stipulation, addendum or amendment Relating to these Documents.

89. All Documents prepared from January 1, 1969 to the present that record or Discuss any Communication, Statement or representation made up to and including March 24, 1989 by any Defendant, any party to the litigation (including the State), the Agency, any federal agency, or any other Person referring to the Federal Right of Way, State Right of Way or any exhibit, stipulation, addendum or amendment Relating to these Documents.

90. All Documents Relating to any Statement (whether or not authorized) made by or on behalf of any Person, in a public setting concerning Alyeska's or Exxon's legal rights and obligations under State or federal Oil pollution statutes or regulations.

91. All Documents Relating to any activities by any person to influence or attempt to influence State or federal policies, procedures, statutes or regulations Relating to the discharge of Oil, the clean up of Oil, or restoration of the environment for the discharge of Oil, including, without limitation, harm to any Organism of Any Species.

92. All Documents from January 1, 1977 to the present Relating to any State or federal statutes or regulations in effect before or after March 24, 1989 pertaining to liability for or assessment of Natural Resources damages.

93. All Documents Relating to all press releases prepared or distributed by the Agency or any other Person Relating to the Spill.

94. All Documents Relating to, or containing any information given to, the Exxon Valdez oil spill investigation conducted by the National Transportation Safety Board, Docket No. DCA 89 MM 040.

95. All Documents Relating to, or containing any information given to, the Alaska Oil Spill Commission or the investigation it conducted.

96. All Documents, including drafts, Relating to the report jointly submitted to President Bush on or about April 30, 1990 by the U.S. Department of Transportation and the U.S. Environmental Protection Agency regarding the Spill or Clean Up.

97. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant that took place during the period March 23, 1989 through March 30, 1989 Relating to the Spill or Clean Up.

98. All reports, and Documents Relating to such reports that the Agency or any other Persons have submitted to any governmental entity or other Person from March 24, 1989 to the present that Relate to the Spill.

99. All Documents relating to any information requests received or promulgated by the Agency concerning the Spill, including but not limited to Freedom of Information Act (FOIA) requests, requests for disclosure of public records under AS 09.25.110, and other formal or informal letter requests, together with:

- a. Any and all lists, indices, receipt or intake logs, or summaries of said requests.
- b. Any and all documents that have been produced in response to said requests; and
- c. Any and all lists, indices, or summaries of the documents that have been produced in response to said requests.

100. All Documents that state, set forth or Discuss any alcohol or drug policies that have been proposed, considered or implemented by the Agency or Person.

101. All Documents Relating to archaeological, historical, or cultural sites or artifacts in the Area Arguably Affected by the Spill, including, without limitation, all Documents that:

- a. Discuss, list, describe, or locate such sites or artifacts;
- b. Discuss ownership or selection of such sites pursuant to 43 U.S.C. § 1613(h)(i);
- c. Discuss damage to such sites or artifacts by the Spill or any other event.

FILED
FILED

DEC 13 1990
DEC 3 1990
UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT OF ALASKA
By DISTRICT OF ALASKA Deputy
By 22 Deputy

Attorneys for Defendant
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re) Case No. A89-095 Civil
)
the EXXON VALDEZ) (Consolidated)
)

RE: ALL CASES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL) Case No. 3AN-89-2533 Civil
SPILL LITIGATION)
) (Consolidated)
This Document Relates to:)
ALL CASES)
)

BOGLE & GATES

Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
(907) 276-4557

RE-NOTICE OF TAKING DEPOSITION

1104 43

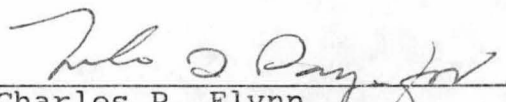
To: Harold Berger, Esq.
Charles W. Ray, Esq.
as Co-chairs of Plaintiffs' Discovery Committee and as
Designated Recipients of Discovery Matters for all Plaintiffs

PLEASE TAKE NOTICE that the Defendants in the above matter, pursuant to Rules 26, 30 and 45 of the Alaska Rules of Civil Procedure, and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure and the Discovery Plan, will take the oral deposition of the United States Forest Service Records Custodian before a Notary Public or some other person qualified to take oaths in the offices of Gibson, Dunn and Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. on Thursday, the 24th day of January, 1991, at the hour of 9:00 o'clock a.m. The deposition is expected to last one day.


Deponent is requested to bring with him or her to this deposition the records described in the attached Schedule A.

DATED: December 13, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants

By 
Charles P. Flynn
Co-member of Defendants'
Coordinating Committee

BOGLE & GATES

By 
Douglas J. Serdahely
Defendants' Liaison Counsel and
Co-member of Defendants'
Coordinating Committee

BOGLE & GATES

Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
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FOREST SERVICE

SCHEDULE A

I.

INSTRUCTIONS

1. This Subpoena Duces Tecum ("Subpoena") requires the production of all responsive Documents in the custody, possession, or control of the Agency (as defined below) regardless of whether such Documents concern the Agency, and regardless of whether such Documents were generated by or on behalf of the Agency, or by another Person.

2. For each Document withheld from production on a claim of privilege or work product protection, specify the privilege or work product protection(s) that You claim, and provide the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; and (e) the basis for Your privilege claim. If the claimed privilege or work product protection applies only to a particular phrase, sentence, paragraph, or section of a responsive Document, produce the entire Document with the allegedly protected portion redacted and a legend indicating that the withheld portion is a subject of a specified privilege or protection.

3. If any Document that was, or might have been, responsive to this subpoena was destroyed, erased, surrendered, or otherwise removed from Your custody, possession, or control at any time after March 23, 1989, please provide, to the maximum extent possible, the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; (e) the circumstances surrounding the removal of the Document from Your custody, possession, or control; and (f) the Identity of the person(s) having knowledge of such removal from Your custody, possession, or control.

4. Each request herein seeks production of responsive Documents in the file and in the order in which each Document was kept in the ordinary course of business.

5. The words "and" and "or" shall be individually interpreted as meaning "and/or" in every instance and shall not be interpreted disjunctively to exclude any Document that would be within the scope of any request if the word "and" were read separately or, alternatively, if the word "or" were read separately. Additionally, the singular shall mean the plural and the plural shall mean the singular throughout these requests.

6. Unless otherwise indicated, the Subpoena calls for Documents prepared during the period from January 1, 1975 to the present.

II.

DEFINITIONS

1. "ADEC" means the Alaska Department of Environmental Conservation and any predecessor entities.

2. "Agency" means any department, division, office or branch within the United States Forest Service, together with all Agency employees, contractors, consultants, and other third parties retained, hired by or working with the Agency, and all predecessor entities of the Agency.

3. "Alaska," "State of Alaska," and "State," except when used as a geographic term, mean the executive branch of the State of Alaska, present or former departments, agencies, corporations, offices, instrumentalities, boards, authorities, commissions, committees, and divisions; the Alaska State Legislature; the Legislative Affairs Agency or other legislative agencies; the Office of the Governor; Office of the Lieutenant Governor; Department of Administration; Department of Commerce & Economic Development; Department of Community & Regional Affairs; Department of Corrections; Department of Education; Department of Environmental Conservation; Department of Fish & Game; Department of Health & Social Services; Department of Law; Department of Labor; Department of Military and Veteran's Affairs; Department of Natural Resources; Department of Public Safety; Department of Revenue; Department of Transportation; the Oil Spill Commission; the

Pipeline Coordinator's Office; any official, employee, member, independent contractor, or agent of any of the foregoing entities; and any predecessor in interest of any of the foregoing.

4. "Alaskan Territorial Waters" or "State Territorial Waters" means any waters, Fresh or Marine, over which the State claims police power jurisdiction.

5. "Area Arguably Affected by the Spill" means the lands and waters of Prince William Sound, Cook Inlet, the Kodiak Archipelago, the Kenai Peninsula, the Alaska Peninsula, the Aleutian Chain, and the Gulf of Alaska and adjacent lands and waters.

6. "Baseline Condition" means the condition or conditions that would have existed within the Area Arguably Affected by the Spill had the Spill not occurred, but includes, without limitation, any conditions that You claim are "baseline conditions" for purposes of ascertaining change or injury to any Person, thing, organism or Natural Resource.

7. "Chemical Dispersant" means any chemical agent that is used to emulsify, disperse, or solubilize Oil into water, or promote the surface spreading of Oil to facilitate emulsification of Oil or its dispersion into water.

8. "Clean Up" means all actions, private and public, voluntary, regulatory or mandatory, that have been taken (or will be taken) to contain, control, recover, treat, disperse, burn, manage, remove, respond to, dissipate, clean, or remediate Oil or

other contaminants or pollutants resulting from the Spill or from any of the foregoing activities Relating to the Spill, and to restore or rehabilitate Natural Resources injured by the Spill.

9. "Commercial fishing" means the extraction of Fish from the water for profit.

10. "Commercial Fishermen" means all Persons engaged in Commercial fishing.

11. "Communication" means any transfer of information whether oral, written or electronic.

12. "Defendants" means the following parties named as defendants in the above-captioned litigation: Alyeska Pipeline Service Company, Amerada Hess Corporation, ARCO Pipe Line Company, Mobil Alaska Pipeline Company, SOHIO Alaska Pipeline Company, BP Pipelines (Alaska), Inc., Phillips Alaska Pipeline Corporation, UNOCAL Pipeline Company, Exxon Shipping Company, Exxon Corporation (including, without limitation, its division Exxon Company, U.S.A.) and Exxon Pipeline Company.

13. "Discuss" or "Discussion" means any communication concerning or Relating to the subject matter specified as the subject of or under such "Discussion."

14. "Document" has the same meaning as "writings or recordings" and "photographs" as specified in Rules 1001(1) and 1001(2) of the Alaska Rules of Evidence, including, without limitation, any data in digital notation of any kind useable by a computer or electronic word processor.

15. "File" means, any procedure, convention or mechanism used to aggregate, group or store Documents or sets of Documents, whether by topic, by date or otherwise.

16. "Fish" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal.

17. "Fisheries" means the taking of Fish of a particular type or species, by particular means or at a particular place or time; the business of catching and selling Fish; or the place where Fish are caught.

18. "Fresh Water" means any non-Marine water environment.

19. "Human Services" means any value that a Natural Resource has for human beings, the loss or reduction of which or the restoration of which is alleged to be recoverable or is alleged to provide a measure of recovery in this action.

20. "Identity" means the name of any Person or entity, the employment and title of any Person and the last known business address and telephone number of the Person or entity.

21. "Intrusive Clean Up Technique" means any technique such as removal of sediment for rock washing, which involves gross movement or surface or subsurface sediment.

22. "Marine" means a saltwater environment.

23. "Natural Resources" means land, Fish, wildlife, vegetation and other biota, air, water, groundwater, drinking water supplies and other such resources belonging to managed by, held in

trust by, appertaining to, or otherwise controlled by the United States, the State of Alaska, or any Indian Tribe.

24. "NRDA" means any systematic process of collecting, compiling, and analyzing information, statistics, or data to determine damages for injuries to Natural Resources, conducted by the State or federal government or any other Person in connection with the Spill.

25. "Oil" means petroleum, including crude oil, or any fraction thereof, and any other hydrocarbon, together with any and all chemicals or additives contained therein.

26. "Oil spill" means an Oil spill in a Marine environment, unless otherwise provided.

27. "Organism of Any Species" means any or all organisms of a species (animal or plant), other than humans, including microorganisms, wherever or whenever located, if such organism at any time originates in, migrates from, passes through, or returns to any part of the Area Arguably Affected by the Spill.

28. "Person" refers to and includes any natural Person, individual, firm, association, partnership, joint venture, corporation, company, estate, trust, receiver, syndicate, proprietorship, municipal or other governmental corporation or agency, including groups and combinations of the same acting as a unit.

29. "Prespill Condition" means the condition or conditions that existed within the Area Arguably Affected by the Spill before the Spill.

30. "Relate to," "Relates to," "Related to" and "Relating to" means Discussing, recording, analyzing, describing, summarizing, referring to, containing or commenting on the subject matter referred to in each Request.

31. "Seafood" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal, vegetation (including kelp) or any other aquatic or Marine flora or fauna, or the products thereof, used or sold for human consumption, ornament or other use.

32. "Spill" means the Oil Spill described on p. 1 of Proposed Probable Cause, Findings & Recommendations of the State of Alaska in National Transportation Safety Board Docket No. DCA 89 MM 040, attached as Attachment "A".

33. "Sport fishing" means the taking or possession of or attempting to take or possess for enjoyment or personal use, not for sale, barter or subsistence, of any Fresh Water, Marine, or anadromous Fish, shellfish, vegetation (including kelp), or any other aquatic or Marine flora or fauna. "Sport fishing" includes the taking of any such Fish, shellfish or other flora or fauna even where such Fish, shellfish or other flora or fauna is released or replanted after such taking.

34. "Statement" means any Document that records declarations or admissions of a Person, whether or not given by the Person or signed by the Person.

35. "Subsistence Use" means the non-commercial, non-sport, non-recreational customary and traditional uses of Fresh Water, terrestrial, or Marine resources by Persons in the State for

direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, or the making and selling of handicraft articles out of edible or non-edible by-products of Fish and wildlife resources taken for personal or family consumption or for customary trade, barter or sharing, the proceeds of which are used for personal or family consumption.

36. "Subsistence fishing" means the taking or possession of Fresh Water or Marine Fish, shellfish, or vegetation (including kelp), or any other aquatic or Marine flora or fauna, or the products thereof, by gillnet, seine, fishwheel, longline, hook & line, gill or dip net, or any other means defined by the Alaska Board of Fisheries, for Subsistence Use.

37. "You", "Yours" and "Yourself" means the responding Agency.

38. "VTS" means the vessel traffic system operated by the United States Coast Guard in Prince William Sound.

III.

DOCUMENTS REQUESTED

1. All Documents from January 1, 1969 up to and including March 24, 1989 Relating to the actual or potential environmental impacts on any marine environment of a Trans Alaska Pipeline to Valdez, or any alternative to such a pipeline, including, without limitation:

a. All Documents Relating to the advantages, disadvantages, risks and contingencies of transporting Alaska North Slope crude oil by vessel;

b. All Documents Relating to any environmental impact statements or negative declarations, including without limitation all drafts, comments, evaluations, criticism or endorsement thereof.

2. All Documents Relating to any changes in the shoreline or the bottom of Prince William Sound.

3. All Oil spill contingency plans in effect on or before March 24, 1989 applying to the State or the territorial waters of the State.

4. All Documents Relating to the preparation, review, evaluation, analysis, critique, rejection, approval or implementation of, or the interrelationships among, any of the following Oil spill contingency plans (including, without limitations, all memoranda of understanding or interpretative memoranda of the Agency or any other Person Relating to the responsibilities for oil spill response and clean-up under such plans):

- a. the National Contingency Plan;
- b. the Regional Contingency Plan applicable to Alaska or State Territorial Waters;
- c. the State of Alaska Oil and Hazardous Substances Pollution Contingency Plan;
- d. the Captain of the Port (Prince William Sound) Pollution Action Plan;
- e. the Alyeska Oil Spill Contingency Plan;
- f. the Alaska Emergency Plan;
- g. the Exxon Shipping Company Headquarters Casualty Response Plan;
- h. any Oil spill contingency plan submitted to the State by any of the Defendants (whether or not still in effect).

5. All Documents Relating to the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of State or Agency policies or

regulations in effect on or before March 24, 1989 concerning compliance with State or federal law requiring Persons owning or operating tank vessels or tank vessel loading facilities to maintain or carry out an approved Oil spill contingency plan with regard to the Marine transport of Oil.

6. All Documents Relating to the Regional Response Team for Alaska, including, but not limited to, all Documents Relating to the pre-approval process by the Regional Response Team for the use of dispersants in the State, State territorial waters, or the waters of the United States.

7. All Documents Relating to the use of scenarios in Oil spill response contingency planning.

8. All Documents Relating to the risk or likelihood of Oil spills, or the likely or possible size or magnitude of such Oil spills, in the State or on State Territorial Waters.

9. All Documents Relating to the Oil spill containment and clean up responsibilities and the readiness of the State, the Agency, the United States (including, without limitation, the U.S. Coast Guard and the U.S. Environmental Protection Agency), Alyeska, Exxon Shipping Co., Exxon Pipeline Co., Exxon Corporation, or any other Person during the period from January 1, 1969 up to and

including March 24, 1989, whether under statute, regulation, contingency plan, contract, or otherwise, for any Oil Spill in the State or on State territorial waters including, without limitation:

- a. All Documents Relating to any obligation of any of the Defendants to respond to Oil spills in Prince William Sound;
- b. All Documents Relating to the readiness of any other Person to respond to any Oil spill under its Oil spill contingency plan;
- c. All Documents Relating to whether, in responding to an Oil spill, Alyeska acted, or would act, in its individual capacity or as agent for another party.
- d. All Documents Relating to any planned, considered, expected or actual transfer or non-transfer of operational control over any response to an Oil spill from Alyeska to the spiller or transporter of the Oil, the Coast Guard or any other party.

- e. All Documents Relating to any Oil spill response exercises or drills that occurred up to and including March 24, 1989.

10. All Documents from January 1, 1989 to the present which identify personnel of, and positions in, the Agency whose responsibilities include oil spill response duties.

11. All Documents Relating to any means, methods, techniques or procedures, to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation:

- a. Chemical Dispersants;
- b. In situ burning;
- c. Booming;
- d. Skimming;
- e. Chemical beach cleaning agents;
- f. Water washing;

- g. Bioremediation, including chemical stimulation of biological agents;
- h. Intrusive Clean Up Technique;
- i. Weathering;
- j. Non-intervention; and
- k. Natural restoration.

12. All Documents Relating to any request or application to the State, the Agency or the federal government for authorization or approval of the use of any means or method to contain, control, recover or clean up spilled Oil on bodies of water (whether Fresh or Marine), and the State's or federal government's response to such request or application, including, without limitation, any testing or pilot studies done of any of the techniques listed in Request No. 11.

13. All Documents Relating to the actual or predicted effect on the environment (other than the removal, clean up, or dispersal of Oil) of any means, methods, techniques or procedures to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation, any of the techniques listed in Request No. 11.

14. All Documents Relating to the preparation, drafting or negotiation of any guidelines, policies, regulations or procedures in effect up to and including March 24, 1989 for the use of chemical dispersants in connection with the clean up of Oil spills.

15. All Documents Relating to the capability, efficiency, or effectiveness of any equipment or machinery that could be used in cleaning up, recovering, removing, containing, dispersing, or otherwise disposing of an Oil spill.

16. All Documents Relating to the speed or rate at which, or time period within which, any actual or hypothetical Oil spill, or any portion thereof, was or could be cleaned up, recovered, removed or otherwise disposed of by any spill response means or technology, including, without limitation, any of the techniques listed in Request No. 11.

17. All Documents Relating to any actual, calculated, estimated or assumed recovery rate of any skimmer or other mechanical recovery equipment.

18. All Documents Relating to the State's, the Agency's or the federal government's policies or positions regarding considerations relevant to oil spill response decision-making, including but not limited to:

- a. Personnel safety;
- b. Vessel safety;
- c. Lightering;
- d. Environmental impacts and trade-offs;
- e. Federal control of spill response;
- f. State participation in spill response;
- g. Participation in spill response activities by third parties; and
- h. Spill response by, and legal responsibility of the spiller.

19. All Documents Relating to the Oil spill resulting from the grounding of the T.V. Glacier Bay in Cook Inlet on or about July 2, 1987, the cleanup or restoration of natural resources after that spill, or the damages alleged to have resulted from it.

20. All Documents prepared from January 1, 1969 to the present Relating to any Oil spill in the Port of Valdez or in Prince William Sound (whether actual, predicted or hypothetical) or any Person's response to, or plan, capabilities or state of preparedness for, responding to such a spill.

21. All Documents Relating to any Person's response to, or the clean up or environmental impacts of, any Oil spill in excess of 25,000 barrels other than the Spill.

22. All Documents Relating to the training or instruction of employees, members or contractors of any Person concerning the clean-up of any Oil spill in excess of 25,000 barrels, including, without limitation, all manuals, memoranda, and other Communications and Documents Relating to these manuals and memoranda.

23. For every Oil Spill in excess of 25,000 barrels, produce all final reports issued by the federal on-scene coordinators assigned to those spills, together with all "POLREPS" generated by the Agency, or any other federal agency, relating to those spills.

24. All Documents Relating to the wreck of the LEE WANG SIN which occurred near Prince of Wales Island, Alaska on or about December 25, 1989, including but not limited to the Federal On-Scene Coordinator's report and all "POLREPS" generated regarding this incident.

25. All Documents Related to the actual or predicted fate or effects of any Oil spill in excess of 25,000 barrels on any Person or Natural Resource.

26. All Documents Relating to the State's, the Agency's or the federal government's experience with any Oil spill in excess of 25,000 barrels, including, without limitation, any regulatory, administrative or other governmental action taken or discussed by the State, the Agency or the federal government in response to such Oil spill.

27. All Documents Relating to the experience of the Agency with any Oil spill in excess of 25,000 barrels, including, without limitation, any studies of the effects of such spills on any Organism of Any Species.

28. All Documents Relating to any advice, assistance, technical support, personnel or consultation provided by the Agency to any other Person Relating to any Oil Spill in excess of 25,000 barrels.

29. All Documents Relating to any change in, or events, circumstances or conditions causing a change in, Alyeska's Oil spill response capabilities or state of readiness taking place up to and including March 24, 1989.

30. All Documents Relating to the response to the Spill including, without limitation, the following subject matters:

- a. Clean-up, restoration and containment measures and activities or any other action taken by the Agency or its agents, contractors or consultants in any way Related to the EXXON VALDEZ oil spill.

- b. The efforts of any Person besides the Agency in connection with the Spill or Clean Up, including, without limitation, any Defendant, the Coast Guard, and the Regional Response Team;
- c. The transfer of Clean Up and containment efforts from Alyeska to Exxon Shipping or other Exxon entities;
- d. The organizational relationships among any State or federal agencies, offices or task forces involved in the Clean Up, including, without limitation, the chain of command and the process by which responsibility for various aspects of the Clean Up was assigned;
- e. The quantity of Oil originating from the EXXON VALDEZ that exists at the present, or that did exist, in any part of the Area Arguably Affected by the Spill from March 24, 1989 to the present, including, without limitation, any calculation of the quantity of Oil recovered or dissipated during the Clean Up, and any calculation of the quantity of Oil

originating from the EXXON VALDEZ that remains in the environment in the Area Arguably Affected by the Spill;

- f. The quantity of Oil or chemicals introduced into the environment as part of the Clean Up;
- g. Field surveillance or studies done by any Person in connection with the Clean Up;
- h. Tests or other efforts to identify the source of any Oil or other chemical found during 1989 or thereafter within the Area Arguably Affected By The Spill;
- i. The collection or preservation of any remains of flora or fauna allegedly killed as a result of the Spill or the Clean Up;
- j. Tests, research or studies to determine the effectiveness of the Clean Up or the amount of Oil claimed to be from the Spill that remained in the environment; and
- k. The effects of any Oil claimed to be from the Spill on any Organism of Any Species.

31. All Documents Relating to efforts of any Person to control or manage the Spill, including, without limitation, use or application of any of the techniques listed in Request No. 11.

32. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant Relating to the Spill or Clean Up.

33. All Documents Relating to means, methods or agents for the Clean Up or other remediation of the Spill or restoration of any area or resource allegedly affected by the Spill.

34. All Documents Relating to contracts, receipts or other evidence of payment or charge of any expense alleged to have been incurred by the Agency or any other Person as a result of the Spill or the Clean Up.

35. All Documents Relating to the EXXON VALDEZ oil spill received by your Agency from any Person.

36. All incident reports and reports of interviews Related to the EXXON VALDEZ oil spill or Clean-up, and all Documents Related to such reports.

37. All Documents Relating to any activities by any of the following organizations which are related to the Exxon Valdez oil spill:

- a. The National Response Team;
- b. The Alaska Regional Response Team;
- c. The Multi-Agency Committee (MAC) or the Inter-Agency Department.

38. All Documents which in any way Relate to the impact upon the environment of the EXXON VALDEZ oil spill and the associated Clean-up and response.

39. All Documents from January 1, 1985 to the present Relating to the Baseline or Pre-spill Condition of any Organism of Any Species, or of any other Natural Resources, or Human Services within the Area Arguably Affected by the Spill, including, without limitation, the level of Oil in any waters within the Area Arguably Affected by the Spill.

40. All Documents from January 1, 1985 to the present Relating to the habitat, life patterns or populations of any Organism of Any Species in or around the Area Arguably Affected by the Spill.

41. All Documents from January 1, 1985 to the present Relating to the causes or possible causes of any variations in the population of any Organism of Any Species, or in the level of any Natural Resource or Human Service in or around the Area Arguably Affected by the Spill, including, without limitation, such causes as low temperatures, storms, predators, disease, reproductive failure, drift netting, otter expansion, increased development or tourism, the Spill or the Clean Up.

42. All Documents from January 1, 1985 to the present Relating to events or circumstances other than the Spill or Clean Up that are, have been, may have been or may be detrimental to any Organism of Any Species, or to the level of any other Natural Resource or any Human Service in the Area Arguably Affected by the Spill, including, without limitation, such events or circumstances as climatic variations, other Marine and non-Marine oil spills, pollution attributable to the development of Valdez or other areas, ocean drift net operations, predators, diseases, changes in breeding patterns or nesting patterns, the development or operation of Fish hatcheries, human use or development or the like.

43. All Documents Relating to any research protocols, sampling, testing or analytical methodologies, and quality control/quality assurance methodologies and other means and methodologies used in any study, survey or research concerning any

Natural Resource or Human Services within the Area Arguably Affected by the Spill at any time after March 24, 1989, or the results of such study, survey or research.

44. All Documents Related to any Organism of any Species which was killed, injured, sacrificed or otherwise harmed or damaged as part of any research, studies or investigation Related to the Spill or the Cleanup.

45. All Documents from January 1, 1985 to the present Relating to samples or specimens of any Natural Resource taken from the Area Arguably Affected by the Spill, together with all Documents and Communications that Relate to such samples or specimens or the information derived therefrom.

46. All Documents Relating to the post-Spill viability of any Organism of any Species within the Area Arguably Affected by the Spill including, without limitation, incubation success, egg to fry survival, or other information relating to successful or unsuccessful regeneration of individual members of any Organism of Any Species.

47. All Documents Relating to the projected or forecasted duration of any effect of the Spill or the Clean Up, including, without limitation, any prediction of the time during

which the presence of Oil or other substance originating from the EXXON VALDEZ will have an effect, favorable or unfavorable, on Natural Resources in the Area Arguably Affected by the Spill.

48. All Documents from January 1, 1985 to the present Relating to the chemistry of waters in the Area Arguably Affected by the Spill, including, without limitation, the presence or absence of Oil, toxins, contaminants, or hazardous substances, the salinity, oxygenation, turbidity or temperature of such waters, or any colloids in suspension in such waters.

49. All Documents from January 1, 1985 to the present Relating to the sources--natural or man-made--of any Oil in the waters, subsurface sediments, air or uplands of the Area Arguably Affected by the Spill.

50. All Documents from January 1, 1985 to the present Relating to the source of any Oil or other chemical found prior to 1989, and separately after January 1, 1989, within the Area Arguably Affected by the Spill, including, without limitation, any tests of sheens, Oil, tar, mousse, or tar balls to "fingerprint" the character of the source Oil.

51. All Documents Relating to the chemistry of, or pollutants or contaminants contained on or in, water (Fresh and Marine), sediment, land, or shoreline surface within the Area Arguably Affected by the Spill at any time after March 24, 1989.

52. All Documents Relating to the involvement of any Person in the assessment of alleged Natural Resource damages resulting from the Spill or Clean Up, including, without limitation, all Documents and Communications furnished to the Persons purporting to act as trustees for Natural Resources under federal or State law, all Documents related to the agreement between Exxon Shipping, the State and federal trustees dated April 13, 1989 regarding participation in the NRDA process and all other understandings or agreements between Exxon Shipping and the Natural Resource Trustees, written or oral.

53. All Documents Relating to the issuance of permits to scientists or investigators for research concerning changes in the state or condition of Natural Resources within or about the Area Arguably Affected by the Spill subsequent to the Spill, including, without limitation, Documents Relating to the terms and conditions imposed or to be imposed in such permits, and reports submitted to the State or federal government in compliance with such permits.

54. All Documents Relating to permits, licenses, or other authorizations, of any type, issued since January 1, 1980, to any person or entity for any project, development or activity, in Alaska, State territorial waters, or in federal waters adjacent to Alaska, that involves the consumption, destruction, impairment, pollution of, or injury to, any Natural Resource other than a Natural Resource that is actually traded in a commercial market.

55. All Documents Related to the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the EXXON VALDEZ Oil Spill and the 1989 State/Federal Natural Resource Damage Assessment Plan for the EXXON VALDEZ oil spill.

56. All Documents Relating to any study, survey or research concerning any Natural Resource within the Area Arguably Affected by the Spill at any time after the Spill.

57. All Documents Relating to actual or potential methods for establishing contingent valuation of any alleged damage to any Natural Resource or Human Service including, without limitation, alleged damage within the Area Arguably Affected by the Spill.

58. All Documents Relating to any contingent valuation surveys conducted by any person or entity since January 1, 1980.

59. All Documents Relating to the validity, accuracy or reliability of contingent valuation as a method of determining the value of any Natural Resource or any non-market good.

60. All Documents Relating to the validity, accuracy, or reliability of any contingent valuation survey.

61. All Documents Relating to any valuation of, or effort to place a value on, any Natural Resource, whether or not involving the contingent valuation method, except valuations based solely on the commercial value of Natural Resources that are actually traded in a commercial market.

62. All Documents from January 1, 1985 to the present Relating to the price at which any resource or mineral good or commodity (including, without limitation, timber, forest products, minerals, animal pelts and products, or other organic or mineral goods or commodities) produced in any part of the Area Arguably Affected by the Spill was or could have been sold and all Documents Relating to markets for such resource, mineral good or commodity.

63. Any Documents from January 1, 1985 to the present relating to the price or valuation of any real property located in the Area Arguably Affected by the Spill.

64. All Documents Relating to any public opinion poll, focus group, random intercept survey or other survey, poll, device or procedure used by the State, the Agency, the federal government or the State or federal Resource Trustees for ascertaining the views of any segment of the population of the United States concerning the Spill, Defendants, the Clean Up, the market for Seafood, Alaska tourism, historic, archaeological, intrinsic, Subsistence, research uses or Natural Resources within the Area Arguably Affected by the Spill or any other matter Related to the Spill.

65. All Documents from January 1, 1985 to the present Relating to the number of Persons who took any Organism of Any Species for sport--whether by hunting, trapping, fishing or otherwise--in the Area Arguably Affected by the Spill, and the number of Organisms of Any Species taken under any license or permit covering the taking for sport within the Area Arguably Affected by the Spill.

66. All Documents from January 1, 1985 to the present Relating to actual use of or Committed Use of any Natural Resource in the Area Arguably Affected by the Spill, including, without limitation, actual or planned use of Seafood, timber, minerals, forest products, pelts, bodies of water, tracts of land or any mineral, flora or fauna found in the Area Arguably Affected by the Spill.

67. All Documents from January 1, 1985 to the present Relating to recreational activities in the Area Arguably Affected by the Spill, including, without limitation, the number of Persons visiting the Area in any season, the average expenditures by each visitor, the projected increases or decreases in recreational uses, the environmental impacts of recreational uses and the amounts expended for recreational uses.

68. All Documents from January 1, 1985 to the present Relating to businesses in the Area Arguably Affected by the Spill, including, without limitation, the nature of businesses operating in the Area, the income of such businesses, any forecast for the growth or decline of activities by such businesses, or contingencies affecting the growth or decline of such businesses.

69. All Documents from January 1, 1985 to the present Relating to any Subsistence Use or recreational, personal, or commercial uses of the Area Arguably Affected by the Spill at any time prior to the Spill.

70. All Documents from January 1, 1985 to the present Relating to the value of any Natural Resources in the Area Arguably Affected by the Spill.

71. All Documents Relating to the catch, collection or other taking or harvesting of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including commercial, sport or subsistence taking or harvesting.

72. All Documents Relating to historic, actual or forecasted quantities (at any stage of development), survival rates, survival assumptions, non-harvest depletions of population, harvest or catch, escapement, growth rate, spawner and recruit estimates or other such population data for any Organism of Any Species.

73. All Documents Relating to historic, actual or forecasted revenues, costs, or earnings from capture, harvest or other taking of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including, without limitation, such data as it pertains to primary harvesters, processors, buyers, brokers, wholesalers, distributors, canners, exporters, or fish farmers.

74. All Documents Relating to forecasts or projections of recreational activities in the Area Arguably Affected by the Spill at any time after March 24, 1989, including, without limitation, the number of Persons expected to visit such Area in any season, average expenditures, projected increases or decreases

in recreational uses, environmental impacts of recreational uses and amounts expended for recreational uses, and revenues, costs and income from projected recreational activities.

75. All Documents Relating to the identification or quantification of any injuries or damages allegedly caused by the Spill or the Clean Up, including, without limitation, the following categories:

- a. injuries or damages to the public and private economies of the State or specific geographic areas within the State;
- b. injuries or damages to goodwill;
- c. injuries or damages to private businesses;
- d. injuries or damages, personal or economic, to individuals;
- e. injuries or damages to trade organizations;

- f. injuries or damages to commercial, scientific, educational, charitable, cultural or subsistence institutions or activities generating direct or indirect economic benefits to the State;
- g. injuries or damages to real property;
- h. injuries or damages to personal property;
- i. injuries or damages to Natural Resources;
- j. loss of governmental revenues sustained by the federal government, the State or any municipality, municipal subdivision or other governmental organization other than the State, including, without limitation, alleged loss of Oil and gas production tax revenue, corporate income tax revenue, and Oil production royalties; and
- k. costs of restoration or replacement of Natural Resources.

76. All Documents Relating to the economic effects of the Clean Up upon:

- a. workers employed in the Clean Up effort;
- b. communities within the Area Arguably Affected by the Spill;
- c. communities outside the Area Arguably Affected by the Spill; and
- d. the economy of the State.

77. All Documents Relating to economic benefits resulting from the Clean Up, including, without limitation, numbers of Persons employed, businesses supported by Clean Up wages, cash recirculation factors, visits to the State generated by the Clean Up (including visits by contractors or others working on the Clean Up, press and scientific visitors, tourists and governmental visitors), income to travel and hotel industries from Clean Up-Related visits and other such effects.

78. All Documents Relating to the performance of the Alyeska Marine Terminal, Alyeska management, or Alyeska personnel in connection with the loading or departure of the EXXON VALDEZ on March 23, 1989.

79. All Documents Relating to any Communications on or after March 22, 1989 with any Person who was on the EXXON VALDEZ at any time during the period March 22, 1989 through June 23, 1989, including, without limitation, any Communication with the master, officers or crew of the EXXON VALDEZ, or with any Agency, federal or state officers or agents aboard the EXXON VALDEZ.

80. All Documents from January 1, 1985 to the present Relating to the weather or the conditions or patterns of tides, currents or floating ice in the Area Arguably Affected by the Spill.

81. All Documents Relating to mapping of the Area Arguably Affected by the Spill, including, without limitation, any maps purporting to show the location, quantity or condition of any Oil or other chemical resulting from the Spill or the Clean Up at any point in time.

82. All maps, charts, diagrams, photographs, aerial photographs, computer images, or any other depictions of the geography, topography or conditions of the Area Arguably Affected by the Spill, made or created from January 1, 1985 to the present, including, without limitation, trajectories or other depictions, whether projected or actual of the Spill, and Documents relating thereto.

83. All Documents prepared from January 1, 1969 to the present Relating to the preparation, negotiation, drafting or approval of the federal Agreement and Grant of Right of Way ("Federal Right of Way"), dated January 23, 1974, the State Right-of-Way Lease ("State Right of Way"), dated May 3, 1974, or any Exhibit, stipulation, addendum or amendment Relating to these Documents.

84. All Documents prepared from January 1, 1969 to the present that record or Discuss any Communication, Statement or representation made up to and including March 24, 1989 by any Defendant, any party to the litigation (including the State), the Agency, any federal agency, or any other Person referring to the Federal Right of Way, State Right of Way or any exhibit, stipulation, addendum or amendment Relating to these Documents.

85. All Documents Relating to any Statement (whether or not authorized) made by or on behalf of any Person, in a public setting concerning Alyeska's or Exxon's legal rights and obligations under State or federal Oil pollution statutes or regulations.

86. All Documents Relating to any activities by any person to influence or attempt to influence State or federal policies, procedures, statutes or regulations Relating to the

discharge of Oil, the clean up of Oil, or restoration of the environment for the discharge of Oil, including, without limitation, harm to any Organism of Any Species.

87. All Documents from January 1, 1977 to the present Relating to any State or federal statutes or regulations in effect before or after March 24, 1989 pertaining to liability for or assessment of Natural Resources damages.

88. All Documents Relating to all press releases prepared or distributed by the Agency or any other Person Relating to the Spill.

89. All Documents Relating to, or containing any information given to, the Exxon Valdez oil spill investigation conducted by the National Transportation Safety Board, Docket No. DCA 89 MM 040.

90. All Documents Relating to, or containing any information given to, the Alaska Oil Spill Commission or the investigation it conducted.

91. All Documents, including drafts, Relating to the report jointly submitted to President Bush on or about April 30, 1990 by the U.S. Department of Transportation and the U.S. Environmental Protection Agency regarding the Spill or Clean Up.

92. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant that took place during the period March 23, 1989 through March 30, 1989 Relating to the Spill or Clean Up.

93. All reports, and Documents Relating to such reports that the Agency or any other Persons have submitted to any governmental entity or other Person from March 24, 1989 to the present that Relate to the Spill.

94. All Documents relating to any information requests received or promulgated by the Agency concerning the Spill, including but not limited to Freedom of Information Act (FOIA) requests, requests for disclosure of public records under AS 09.25.110, and other formal or informal letter requests, together with:

- a. Any and all lists, indices, receipt or intake logs, or summaries of said requests.
- b. Any and all documents that have been produced in response to said requests; and

- c. Any and all lists, indices, or summaries of the documents that have been produced in response to said requests.

95. All Documents that state, set forth or Discuss any alcohol or drug policies that have been proposed, considered or implemented by the Agency.

96. All Documents Relating to archaeological, historical, or cultural sites or artifacts in the Area Arguably Affected by the Spill, including, without limitation, all Documents that:

- a. Discuss, list, describe, or locate such sites or artifacts;
- b. Discuss ownership or selection of such sites pursuant to 43 U.S.C. § 1613(h)(i);
- c. Discuss damage to such sites or artifacts by the Spill or any other event or Person.

DEC 14 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

In re
the EXXON VALDEZ

1136

Motion for Status Conference

Plaintiff Lakosh has also moved for a status conference in connection with his motion for a temporary restraining order and motion for pro bono appointment of counsel. The court deems it unnecessary to have a status conference in connection with either of these motions. A status conference is unnecessary, and the motion for such a conference is denied.

Motion for Temporary Restraining Order

Plaintiff Lakosh's motion for temporary restraining order is denied. Liaison counsel shall provide services for plaintiff Lakosh on the same bases as other plaintiffs. The court has excused plaintiff from paying costs to the court, but that does not justify forcing other plaintiffs to subsidize Mr. Lakosh. As to the motion for appointment of pro bono counsel, this motion has been separately denied. The court urges plaintiff Lakosh to align himself with some plaintiff's attorney (there are many in this case). This is likely to be a fee-generating case, for which reason the court declined to refer the request to the Federal Pro Bono Program.

Petition to Depose Adverse Parties in Anticipation of Action

Finally, plaintiff Lakosh has petitioned the court for leave to depose adverse parties--in particular, the members of the Board of Trustees of the Trans-Alaska Pipeline Liability Fund and a senior Fund administrator. The Fund opposes the motion. In a reply memorandum, plaintiff Lakosh indicates that the general thrust of the proposed deposition testimony is inquiry into "why the TAPLF

refused to even consider the restitution claim for more than 12 months and instead referred Plaintiff to ESC." Lakosh Reply Memorandum at 2 (filed December 10, 1990).

The petition is denied. It is entirely clear to the court from other filings made by the Fund (see, in particular, the Fund's statement of position regarding claims of Thomas A. Lakosh (P108), filed November 20, 1990 (Clerk's Docket No. 1062)) that the Fund currently has a claim from Mr. Lakosh under active consideration. It is also the court's perception that the latter claim is probably quite different from that originally filed on Mr. Lakosh's behalf when he was represented by counsel. See Complaint in No. A89-140 Civil (Clerk's Docket No. 60). Seemingly, the depositions which Mr. Lakosh would take have to do not with alleged spill damage, but with alleged payments due him for cleanup efforts taken by him. The court has serious doubt that the latter proceedings even belong with these consolidated cases. The court is currently handling several claims against Exxon stemming from cleanup efforts, and it is the court's intention that the instant consolidated cases not be rendered more complicated and complex than they already are by the inclusion of an extraneous class of contract or like claims.

Suffice it to say for this writing that the petition for leave to take depositions appears to be one brought pursuant to Rule 27(a), Federal Rules of Civil Procedure. The court is not satisfied that perpetuation of the testimony from the designated deponents is necessary in order to prevent a failure or delay of

justice. Rule 27(a)(3), Federal Rules of Civil Procedure. Quite the contrary, it appears to the court that the taking of these depositions has the possibility of disrupting the claims evaluation process of the Fund, and the court declines to do that.

The petition to depose adverse parties in anticipation of litigation is denied.

DATED at Anchorage, Alaska, this 14 day of December, 1990.


United States District Judge

cy: D. Serdahley
L. Miller
D. Ruskin

FILED

DEC 14 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	
)	
the EXXON VALDEZ)	No. A89-095 Civil
)	
)	(Consolidated)
)	

ORDER NO. 35

Motions for Class Certification;
Motion for Judgment on the Pleadings

The court has before it two motions for class certification, filed by two groups of plaintiffs,¹ and a motion for judgment on the pleadings, filed by the Alyeska defendants.²

¹ Motion #1 was filed by "Class Action Plaintiffs". Motion #2 was filed by "P-78, P-79, P-80, P-95, P-96, P-113, P-167 and P-168 Class Action Plaintiffs" (hereinafter referred to as the "Wisner plaintiffs").

² Alyeska Pipeline Service Co. (D-3), Amerada Hess Pipeline Corp. (D-11), Arco Pipe Line Co. (D-12), BP Pipelines (Alaska), Inc. (D-19), Mobil Alaska Pipeline Co. (D-14), Phillips Alaska Pipeline Corp. (D-20), Unocal Pipeline Co. (D-21), and George M. Nelson (D-9).

Oral argument on both motions for class certification and on Alyeska's motion for judgment on the pleadings, as well as on similar motions filed in state court, was heard jointly with the state court. At the conclusion of oral argument, this court delivered certain comments preliminary to any ruling on the pending motions. Those comments were to the effect that the court had tentatively concluded that all plaintiffs would be required to pursue their remedies under the Trans-Alaska Pipeline Authorization Act (TAPAA), 43 U.S.C. §§ 1651-1655, before proceeding to litigate their claims under other law.

Counsel were afforded an opportunity to respond to this tentative ruling through supplemental briefs. Plaintiffs filed one joint response, as did defendants. With leave of court, the Trans-Alaska Pipeline Liability Fund filed a separate response. Also with leave of court, amicus curiae briefs were filed by the United States and by Faegre & Benson, the plaintiffs' lead counsel in In re the Glacier Bay, No. A88-115 Civil (D. Alaska). In addition, counsel for certain commercial fishermen plaintiffs filed a declaration regarding alternate dispute resolution in progress.

Motion for Judgment on the Pleadings

As the court announced at the hearing, it has concluded that, as between plaintiffs and the Fund, TAPAA creates a form of administrative remedy that was intended by Congress to quickly and efficiently compensate those damaged by a spill of TAPS oil. So far, that administrative remedy has not worked well. Counsel,

through their supplemental briefs, have shed little light on how the court might make that remedy work.

Under federal law, it is a settled rule of judicial administration that parties must exhaust prescribed administrative remedies before they are entitled to judicial relief. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). The policies advanced by the exhaustion doctrine include deference to statutory schemes created by Congress and promotion of judicial economy, both of which are considerations in this case. T.I.M.E.-DC, Inc. v. Management-Labor Welfare & Pension Funds, 756 F.2d 939, 945 (2d Cir. 1985).

Commonly an exception is made to the exhaustion doctrine when the prescribed nonjudicial remedy is inadequate. Id. Plaintiffs may have concluded that the agreement between the Fund and Exxon Shipping Company (ESC) for ESC to administer the claims made against the Fund created just such an exception to the exhaustion doctrine. However, this court has not been made aware of any circumstance, including the Fund's agreement with ESC, that would justify excusing the Fund from promptly performing its statutory obligation under 43 U.S.C. § 1653(c)(3) to receive, adjust, and pay all claims flowing from the wreck of the Exxon Valdez.³ The Fund cannot avoid this responsibility.

³ The court anticipates that the plaintiffs' claims against the Fund in In re the Glacier Bay, No. A88-115 Civil, will be handled differently. Glacier Bay is distinguished from this case by the fact that the Glacier Bay plaintiffs were required to file
(continued...)

At this time, the court has not reached a final decision on Alyeska's motion for judgment on the pleadings. However, certain aspects of the motion being considered by the court could be resolved in a manner that would place a high premium on whether a plaintiff had asserted his claim under TAPAA as Congress intended. TAPAA claims must be filed "within two years from the date of discovery of the damages caused by an incident, or of the date of the incident causing the damages, whichever is earlier." 43 C.F.R. § 29.9(g) (1988). Lest an opportunity be lost, all plaintiffs should timely file their TAPAA claims if they mean to do so.

Regardless of the court's ultimate decision on whether plaintiffs must have filed a TAPAA claim in order to preserve other remedies, the United States, which is presently not a party, has recourse to other federal statutory remedies, including those under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376, which would not be impacted by that decision. Congress was not primarily concerned with providing recovery for the United States when it established the Fund. In fact, if the United States were to file a TAPAA claim under the circumstances of this case, it would only contribute to defeating the goal of compensating private parties who have fewer options for recovery and, more importantly,

³(...continued)
suit because the vessel owner and operator refused to pay claims against their \$14 million liability. Section 1653(c)(3) was not amended to make the Fund responsible for payment of that \$14 million until after the Glacier Bay plaintiffs were prepared for trial.

who are more in need of early payment of just claims than is the United States.

Likewise, Congress did not create the Fund to compensate a vessel owner and operator for claims acquired by the vessel owner and operator as a result of subrogation from payment of claims on which the vessel owner and operator have potential continuing liability due to alleged negligence. See 43 C.F.R. § 29.2(a) (1988).

During the short time that remains for the Fund to adjust and pay TAPAA claims, all proceedings against the Fund are stayed until further order of the court. Proceedings against other defendants are not stayed.

The Fund is directed to file a monthly report summarizing its activities regarding the Exxon Valdez oil spill claims. The first report is due January 3, 1991, with subsequent reports due on the first working day of each month until the court directs otherwise. The court means to monitor the claims adjustment process to ensure, to the extent possible, realization of Congress' expectation for the Fund.⁴ The Fund, not ESC, is to receive, process, and adjust the claims.

Motions for Class Certification

This court has reached a decision on the motions for class certification.

⁴ Claimants or the Fund may apply to the court for assistance at any time.

The class action plaintiffs moved for voluntary certification of seven classes under Rule 23(b)(3), Federal Rules of Civil Procedure, for compensatory damages claims. The class action plaintiffs also moved for mandatory certification under Rule 23(b)(2) or, alternatively, for voluntary certification under Rule 23(b)(3), for equitable or injunctive relief claims.

The Wisner plaintiffs moved for voluntary certification of four classes under Rule 23(b)(3) for all compensatory and punitive damages claims. The Wisner plaintiffs also moved for mandatory certification under Rule 23(b)(2) for equitable or injunctive relief claims.

Rule 23(b)(2) authorizes class actions when "the party opposing the class has acted or refused to act on grounds generally applicable to the class" which make injunctive or declaratory relief appropriate. Class certification under Rule 23(b)(2) is not proper where the action seeks money damages as a major portion of the requested relief. Wilcox Development Co. v. First Interstate Bank, 97 F.R.D. 440, 444 (D. Or. 1983); accord, McDonnell Douglas Corp. v. United States District Court, 523 F.2d 1083, 1087 (9th Cir. 1975); Walsh v. Ford Motor Co., 106 F.R.D. 378, 392 (D.D.C. 1985) (Rule 23(b)(2) is not available when equitable relief is the fallback position).

With the exception of the federal environmental plaintiffs and the use and enjoyment class plaintiffs, the claims of the remaining plaintiffs are primarily for monetary damages. However,

the environmentalists object to a (b)(2) class, and it is unclear at this point whether the use and enjoyment class is even still being urged. Therefore, certification of any of the proposed (b)(2) classes would not be appropriate.

Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." The key determination regarding class certification under Rule 23(b)(3) in this case is whether the class action is superior to, and not just as good as, other available methods for handling the controversy. Beebe v. Pacific Realty Trust, 99 F.R.D. 60, 73 (D. Or. 1983). In considering whether the class action device is superior to other available methods, the court must examine, among other things, the problem of manageability, which includes the entire range of practical problems that may render a class action inappropriate. In re U.S. Financial Securities Litigation, 69 F.R.D. 24, 25 (S.D. Cal. 1975).

This court does not perceive that common questions of fact predominate. This case is largely, if not exclusively, about damages. As to those damages, individual issues predominate.

Certifying many separate classes, as both motions propose, is not superior to other available methods. Numerous classes would assuredly generate confusion in what is already complicated litigation, with no countervailing benefits. Among the problems

with numerous classes is the fact that some plaintiffs fit into more than one proposed class. The plaintiffs have not persuaded the court that the class action route is superior to other routes available under the Manual for Complex Litigation, Second. Therefore, certification of the proposed (b)(3) classes would not be appropriate at this time.

The court has consolidated all cases and has, and will, manage the case under the Manual for Complex Litigation, Second. This gives the court and the parties great flexibility in efficiently deciding common legal issues. It gives the court and the parties maximum latitude for creative management of that which remains after the administrative process is completed.

Both motions for class certification are denied at this time without prejudice to class certification being renewed after the TAPAA claims have been adjusted by the Fund. The proponents of each motion for class certification are to confer and submit to this court, no later than January 2, 1991, a proposed notice to the putative class members. The notice that the classes are not certified should also inform putative class members of their need to file a timely TAPAA claim with the Fund.

DATED at Anchorage, Alaska, this 14 day of December, 1990.

cy; D. Serdahley
L. Miller
D. Ruskin


United States District Judge

FILED

DEC 14 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re
the EXXON VALDEZ

No. A89-095 Civil
(Consolidated)

ORDER NO. 36

Lakosh (P-108) Motion to Appeal
Denial of Claim

In its Order No. 30, dated October 30, 1990, this court advised plaintiff Lakosh that his motion to appeal the denial of his claim by the Trans-Alaska Pipeline Liability Fund would be held in abeyance until plaintiff could demonstrate to the court that he in fact filed a claim with the Fund and that the Fund denied the claim.

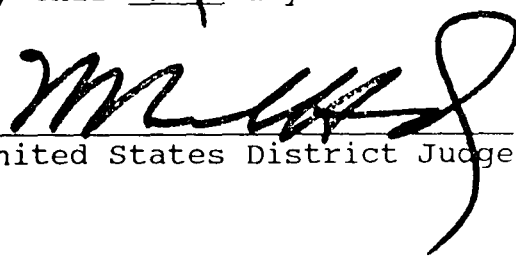
The Fund filed a response which verified that plaintiff did have a claim filed with the Fund. The Fund also stated that it would render a written decision after receipt of plaintiff's final submission of supporting materials. (Clerk's Docket No. 1062 at 4.)

ORDER NO. 36

There is no evidence that the Fund has rendered its decision yet. An appeal is not appropriate prior to the issuance of the Fund's written decision.

The motion to appeal denial of claim filed by plaintiff Lakosh (P-108) is denied as being premature.

DATED at Anchorage, Alaska, this 14 day of December, 1990.


United States District Judge

cy; D. Serdahley
L. Miller
D. Ruskin

Douglas J. Serdahely
Liaison Counsel for Defendants
and Co-Member of Defendants'
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Burr, Pease & Kurtz
810 N Street
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(907) 276-6100

Attorneys for Defendant
Exxon Shipping Company (D-2)

FILED

DEC 19 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	Case No. A89-095 Civil
)	
the EXXON VALDEZ)	(Consolidated)
_____)	

RE: ALL CASES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL)	Case No. 3AN-89-2533 Civil
SPILL LITIGATION)	
)	(Consolidated)
This Document Relates to:)	
ALL CASES)	
_____)	

RE-RE-NOTICE OF TAKING DEPOSITION

BOGLE & GATES

Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
(907) 276-4557

1113

2

To: Harold Berger, Esq.
Charles W. Ray, Esq.
as Co-chairs of Plaintiffs' Discovery Committee and as
Designated Recipients of Discovery Matters for all Plaintiffs

PLEASE TAKE NOTICE that the Defendants in the above matter, pursuant to Rules 26, 30 and 45 of the Alaska Rules of Civil Procedure, and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure and the Discovery Plan, will take the oral deposition of the United States Coast Guard Records Custodian before a Notary Public or some other person qualified to take oaths in the offices of Gibson, Dunn and Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. on Monday, the 21st day of January, 1991, at the hour of 9:00 o'clock a.m. The deposition is expected to last one day.

Deponent is requested to bring with him or her to this deposition the records described in the attached Schedule A.

DATED: December 19, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants

By Charles P. Flynn / off
Charles P. Flynn
Co-member of Defendants'
Coordinating Committee

BOGLE & GATES

By Douglas J. Serdahely
Douglas J. Serdahely
Defendants' Liaison Counsel and
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FILED

DEC 19 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re) Case No. A89-095 Civil
THE EXXON VALDEZ) (Consolidated)
_____)

Re All Cases

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL SPILL)
LITIGATION)
_____)
This Document Relates to)
All Cases)
_____) Case No. 3AN-89-2533 Civ.
(CONSOLIDATED)

RE NOTICE OF TAKING DEPOSITION

To: Harold Berger, Esq.
Charles W. Ray, Esq.
as Co-chairs of Plaintiffs' Discovery Committee and as
Designated Recipients of Discovery Matters for all Plaintiffs

PLEASE TAKE NOTICE that the Defendants in the above
matter, pursuant to Rules 26, 30 and 45 of the Alaska Rules of

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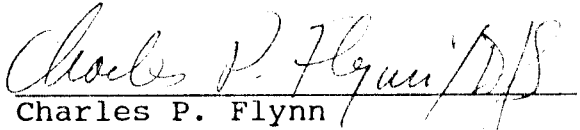
1114 2

Civil Procedure, and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure and the Discovery Plan, will take the oral deposition of the Minerals Management Service Records Custodian before a Notary Public or some other person qualified to take oaths in the offices of Gibson, Dunn, and Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. or such other place as Defendants may designate, on Friday, the 1st day of February, 1991, at the hour of 9:00 a.m. The deposition is expected to last one day.


Deponent is requested to bring with him or her to this deposition the records described in the attached Schedule A.

DATED: December 19, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants

By 
Charles P. Flynn
Co-member of Defendants' Coordinating Committee

BOGLE & GATES

By 
Douglas J. Serdahely
Defendants' Liaison Counsel and
Co-member of Defendants' Coordinating Committee

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