

FILED

MAY 10 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By llh Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

MASTER SERVICE LIST

AMENDED - MAY 9, 1989

This master service list will be distributed to all counsel whenever it is amended; and counsel shall be responsible for employing the current master service list.

Proof of service of all documents upon the parties to these consolidated cases shall be by affidavit or certification that:

Service of (TITLE OF DOCUMENT) has been made upon all counsel of record based upon the court's Master Service List of (DATE).

Counsel shall find listed on Exhibit A, attached hereto, the appropriate plaintiff and defendant number designation to be used when filing documents with the court.

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## CAUSE:

## PLAINTIFFS

## DEFENDANTS

AE 95... P-1 SEA HAWK SEAFOODS, INC., D-1 EXXON CORP., A New Jersey corp.,  
 P-2 COOK INLET PROCESSORS, INC., D-2 EXXON SHIPPING CO., a Delaware corp.,  
 P-3 SAGAYA CORP., D-3 ALYESKA PIPELINE SERVICE CO., a Delaware  
 P-4 McMURREN, WILLIAM, D-4 TRANS-ALASKA PIPELINE LIABILITY FUND,  
 P-5 McMURREN, PATRICK L., D-5 EXXON CO., USA,  
 P-6 KING, WILLIAM W., D-6 EXXON VALDEZ, her engines, tackle, gear  
 P-7 NORRIS, GEORGE C., equipment and appurtenances, in rem,  
 P-8 CRANZ, HUNTER, D-7 HAZELWOOD, JOSEPH, an individual,  
 P-9 FEENSTRA, RICHARD, D-8 COUSINS, GREGORY, an individual,  
 P-10 WILDERNESS SAILING SAFARIS, D-9 NELSON, GEORGE  
 P-11 SEAFOOD SALES, INC., D-10 EXXON PIPELINE CO., a Delaware corp.,  
 P-12 RAPID SYSTEMS PACIFIC, LTD. D-11 AMERADA HESS CORP.,  
 89-096... P-13 CRUZAN FISHERIES, INC., D-12 ARCO PIPE LINE CO.,  
 P-14 GROVE, STANLEY NORRIS, D-13 BRITISH PETROLEUM PIPELINES, INC.,  
 P-15 GROVE, ANTHONY, D-14 MOBIL ALASKA PIPELINE CO.,  
 A89-099... P-16 CORDOVA DISTRICT FISHERMAN D-15 PHILLIPS PETROLEUM CO.,  
 UNITED, INC., an Alaska corp., D-16 SOHIO ALASKA PIPELINE CO.,  
 P-17 PRINCE WILLIAM SOUND AQUA- D-17 UNION ALASKA PIPELINE CO.,  
 CULTURE CORP., an Alaska  
 non-profit corp.,

## CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE  
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

~~FOR ATTORNEYS SEE ATTACHED SERVICE LIST~~

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 P-21 McALLISTER, SCOTT, D-21 UNOCAL PIPELINE CO.  
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 89-104... P-23 MICHELLI, JACK, D-23 ALASKA, STATE OF, DEPT. OF ENVIRONMEN  
 P-24 McALLISTER, MICHAEL, CONSERVATION  
 P-25 YOAKUM, CHARLOTTE, D-24 SOHIO PETROLEUM CO.  
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 P-28 McALLISTER, THOMAS S.,  
 P-29 J & A ENTERPRISES, a Washington  
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 89-106... P-30 GORESON, MARTIN,  
 P-31 GORESON, JAMES R.,  
 P-32 MOORE, JEFFREY A.,  
 P-33 EWING, JAMES D.,  
 P-34 JENSEN, DOUG,  
 P-35 LOWELL, DANIEL,  
 P-36 WHITTIER SEAFOODS, INC., ....A89-149  
 P-37 CORDOVA AIR SERVICE, INC.  
 P-38 DEW DROP, F/V .....A89-149

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## STATISTICAL

DATE

RECEIPT NUMBER

C.D. NUMBER

CARD

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JS-5

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MAY 10 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-096 Civil (Cruzan)

MEMORANDUM OF DEFENDANT D-3 RE MOTION FOR  
PROTECTIVE ORDER REGARDING PRESERVATION OF EVIDENCE

Alyeska Pipeline Service Company ("Alyeska") respectfully submits the following Memorandum regarding the proposed Order for Preservation of Documents:

I. INTRODUCTORY COMMENT

On April 5, 1989, plaintiffs in Cruzan Fisheries, Inc., et al. v. Alyeska Pipeline Service Company, et al. (Civil Action No. A89-096) filed a Motion for Protective Order Pursuant to FRCP 26(c) that would generally provide for defendants'

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preservation of certain materials in connection with this litigation. In response to the plaintiffs' motion, and prior to any hearing, counsel for defendants Alyeska and Exxon initiated a series of discussions with plaintiffs' counsel to determine if a stipulated Protective Order could be agreed upon by all parties. As a result of these discussions -- the most recent of which took place on May 5, 1989, in a meeting of counsel representing a group of plaintiffs in this and other consolidated actions, Exxon, Alyeska, and the State of Alaska -- the parties are close to agreement on all but a few significant points.

Attached hereto as Exhibit A are the terms of the most recent discussion draft that were discussed at the May 5 meeting. As Alyeska understands the situation, plaintiffs' concerns are (1) the language in the draft which would make the preservation obligations reciprocal, (2) the exclusion of plaintiffs' language contained in Exhibit B, and (3) minor differences in preserving physical assets. The other terms and language have been agreed upon by all parties and could form the basis for a Partial Stipulation.

The following Memorandum, which is submitted pursuant to the Order of the Court, dated April 24, 1989, briefly details Alyeska's position on each of the items remaining in

dispute. In sum, Alyeska agrees strongly with the concept of an evidence preservation order that is reasonable, even-handed, and consistent with each parties' need to conduct ongoing business in an orderly fashion. As to the items remaining in dispute, the terms proposed by Alyeska and Exxon, and not opposed by the Trans-Alaska Pipeline Liability Fund, fulfill this concept. Accordingly, those terms -- as represented by the Proposed Order accompanying the Memorandum submitted by Exxon, incorporated herein by this reference -- should be adopted in full at this time to apply to all of the consolidated actions before this Court.

II. THE ORDER SHOULD APPLY TO ALL PARTIES IN THE  
CONSOLIDATED ACTIONS, INCLUDING THE PLAINTIFFS  
AND THE STATE OF ALASKA.

Plaintiffs' proposed order would apply only to the defendants, thereby allowing the plaintiffs to decide unilaterally what evidence they will or will not maintain. There is no justifiable reason, however, why plaintiffs should not also be subject to any Order the Court may enter. Whatever documentary or physical evidence covered by the Order may be in plaintiffs' possession is equally deserving of the Court's protection. Moreover, to the extent that the requirements of the Order result in a burden to the subject parties, that burden is simply a necessary incident of the litigation and, obviously, is one that the defendants will also face.

Plaintiffs may argue that there is no need for such an order with respect to them because they have the burden of proof on the issues of liability and damages. Given this burden, plaintiffs may argue, an order is necessary to compel defendants -- who would arguably possess the evidence relating to the liability issue -- to maintain that evidence for plaintiffs' use. Conversely, this argument goes, it is unnecessary to compel plaintiffs to maintain their own "damages" evidence since the loss or destruction of that evidence would presumably only harm them by preventing them from meeting their burden of proof.

The fatal flaw in this argument, however, is that all parties -- plaintiffs, defendants, and the State of Alaska -- are likely to possess evidence which would be necessary to the other parties. Plaintiffs are just as likely to have evidence, relating to both damages and liability issues, that would provide a basis for cross-examination or impeachment, as well as for various affirmative defenses which defendants may be in a position to assert. In short, if it is assumed that any party may possess, but not preserve, relevant and potentially adverse evidence, that assumption is equally applicable all parties, including to plaintiffs.

In light of the foregoing, defendants' Proposed Order would immediately include all named parties, including the named plaintiffs. In addition, provisions are made in Paragraph 4 of defendants' Proposed Order for application of the Order's terms to potential future plaintiff class members in the event of class certification. Realizing the additional difficulties that application to unnamed class members may raise, the terms of the proposed Order make special provision regarding notification of these parties and their maintenance of necessary evidence accountings (See Proposed Order, paragraph 6). Thus, there is no basis for any claim of undue burden on the part of plaintiffs' counsel.

Finally, although the State of Alaska is not a party to this specific action, the terms of the Order should be extended to include the State, and all of its relevant Departments and Agencies, pursuant to the provisions of Pretrial Order No. 1 in the consolidated actions. Again, there is no reason why relevant evidence possessed by the State, and within the scope of the Order, should not be subject to the protection of the Order. Indeed, counsel for the State has participated in the discussions of the proposed stipulated order. The State has not yet finalized its position, however. Inclusion of the State as a covered party at this time would, from the outset, promote efficiency and consistency in the conduct of the consolidated actions.

III. THE ORDER SHOULD BE MADE IMMEDIATELY APPLICABLE  
TO ALL PARTIES IN ALL CONSOLIDATED ACTIONS.

As noted above, the comprehensive terms contained in defendants' Proposed Order have been the subject of several discussions between both of defendants' counsel and counsel representing several plaintiff groups in these actions. Many of those terms have been agreed upon by all parties, and the remaining disputed terms are being fully briefed and presented for the Court's consideration on this motion.

Given this background, the entry of Defendants' Proposed Order as a general Pretrial Order, immediately applicable to all consolidated actions, is reasonable and proper. It seems indisputable that a consistent order in all of the actions is vitally important to the conduct of this litigation. By virtue of the lengthy discussions that have already been held among the parties, as well as the Court's consideration of these briefs, the significant issues have been thoroughly aired and all reasonable positions presented. As a result, no prejudice will arise in the application to named plaintiffs and their counsel in the other consolidated actions. Furthermore, in the event that a party in another action is concerned about the terms of the Proposed Order, Paragraph 7 thereof provides a ready provision for raising those concerns with the Court.



IV. PARTIES SHOULD NOT BE PRECLUDED FROM UTILIZING EQUIPMENT IN THE NORMAL COURSE OF BUSINESS.

The latest proposed drafts of plaintiffs and defendants differ with respect to the treatment of various items of physical evidence. Specifically, with respect to Exhibit B, the parties differ over: (1) whether equipment constituting potential physical evidence in this litigation may be used by parties in the normal course of business, including training or response to potential future oil spills (as opposed to being available only in the current response); and, (2) whether parties will be restricted in their ability to move such equipment out of the State of Alaska for any reason.

As to the first issue, Alyeska submits that an Order which would restrict its ability to utilize in a timely fashion any response equipment under its control for training or in the event of a future spill is manifestly inimical to public policy. Plaintiffs' proposal would do precisely that, since it would put Alyeska at risk of being found in contempt of the Court's Order even if destruction of the relevant physical evidence (such as booms, hoses, etc.) occurred inadvertently in the normal course of spill response or training. In contrast to the substantial burden this would place on Alyeska, there is, at best, only a minimal benefit which could conceivably be obtained. Moreover, since even plaintiffs' proposed terms would allow the use of this evidence (and its accompanying risk

of destruction) in the response to the existing spill, there is no logical reason to restrict such use in future efforts undertaken in the normal course of business.

Plaintiffs' logic in proposing the second restriction -- that is, the restriction on movement of physical evidence out of state -- is equally wrong. Since the parties remain under the Court's jurisdiction during the pendency of the actions, they also remain subject to any potential order from the Court requiring production of evidence for inspection under reasonable terms and at reasonable locations. If a party were to move an item of evidence out of state and another party subsequently sought its production within the state, an order for such production can be obtained, if necessary and appropriate. If, in turn, the party so ordered fails to produce the evidence, appropriate sanctions can be imposed. The cumbersome procedure outlined by plaintiffs in Exhibit B is, accordingly, wholly unnecessary and adds nothing to any parties' ability to gain access to physical evidence in the possession or control of other parties. It does, however, create the potential for serious burden on all parties, and their counsel. Furthermore, through its notification requirements, this paragraph may create a significant potential conflict with attorney-client and work-product privileges held by all parties.



In short, Alyeska opposes the restrictions on use and movement of physical evidence that the terms of plaintiffs' proposed Paragraphs 5 and 5a would impose. As indicated in defendant's Proposed Order, Alyeska would omit Paragraph 5a entirely and would alter the language of Paragraph 5 to permit appropriate use of the items in question.

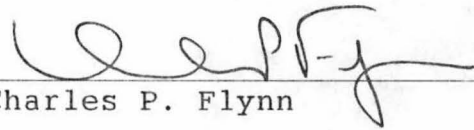
V. CONCLUSION

The Proposed Order submitted by defendants Alyeska and Exxon, and concurred in by defendant Trans-Alaska Pipeline Liability Fund provides a comprehensive, even-handed, and workable solution to the document preservation concerns of all parties in these actions. It eliminates the inequities and unnecessary burdens created by a few significant provisions of plaintiffs' latest proposed order, but otherwise incorporates many of the terms of that proposal as items of mutual agreement.

For all of the foregoing reasons, Alyeska respectfully requests that the Court enter the order accompanying the memo filed by the Exxon defendants in the instant action as well as all other actions which are part of the consolidated In re the EXXON VALDEZ litigation.

DATED: May 10, 1989.

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(D-11), ARCO Pipe Line Company  
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Petroleum Company (D-15), Sohio  
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and Union Alaska Pipeline Company  
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Attorneys for Defendants  
Exxon Corporation, Exxon Co., USA  
and Exxon Shipping Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. A89-096 Civil

STIPULATION AND ORDER  
REGARDING PRESERVATION  
OF EVIDENCE

STIPULATION AND ORDER REGARDING  
PRESERVATION OF EVIDENCE -1-  
DJS052AJ

EXHIBIT A  
Page 1 of 8 Pages

Plaintiffs and defendants, Alyeska Pipeline Service Company, Exxon Corporation, Exxon Co., USA and Exxon Shipping Company, by and through their respective counsel, hereby stipulate as follows:

1. (a) During the pendency of this litigation, each of the named parties herein and their respective officers, agents, servants, employees and attorneys, shall neither destroy nor permit the destruction of any document or physical evidence within the parties' possession, control or custody not otherwise protected from discovery by recognized evidentiary privileges, which relates, refers or pertains to or which may lead to evidence relevant to: (1) the Oil Spill Contingency Plan and/or its development, amendment or implementation; (2) the Exxon Valdez and its crew, its loading and voyage on or about and after March 23, 1989, and/or the oil spill in Prince William Sound resulting therefrom, which is the subject of this litigation (the "oil spill"); (3) the efforts by any person, entity or agency to clean up, contain and/or monitor the oil spill; (4) any investigation by any person, entity or agency into the circumstances, effects and/or causes of the oil spill; and (5) any claims or damages alleged to result, directly or indirectly, from the oil spill or its aftermath.

(b) Without limiting or affecting the immediate application of this Order to any existing documents or physical evidence, any document or physical evidence referred to in any discovery request made ~~[subsequent hereto]~~ in this litigation shall, from the time of the request, be treated for purposes of this Order as subject to this Order unless and until the Court rules otherwise or the parties, through their counsel, stipulate otherwise.

2. As used in this Order, "document" shall mean and include any writing, drawing, film, videotape, chart, photograph, phono or tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained and any other form of tangible preservation of information.

3. Counsel are to confer to resolve questions as to the scope of this Stipulation and Order regarding the preservation of documents or physical evidence which need not be preserved and as to an earlier date for permissible destruction of particular categories of documents or physical evidence. If counsel are unable to agree, any party may apply to the Court for clarification or relief from this Stipulation and Order upon reasonable notice. A party which, within 60 days after receipt

by counsel of record of written notice from another party that specified documents or things will be destroyed or altered, fails to indicate to counsel of record its written objection to such destruction or alteration, shall be deemed to have agreed to such destruction or alteration.

4. In the event that this matter is certified as a class action, the substance of the evidence preservation requirements of this Order shall be included in the initial notice to class members and the terms hereof shall immediately thereafter become binding on all such persons or entities who have not previously become subject thereto by virtue of their capacities as named plaintiffs. The form, contents and manner of such notification, and the financial responsibility therefor, will be addressed by the parties and/or the Court at a later date.

5. Destroying or permitting the destruction of physical evidence other than documents shall not be considered a violation of this Order when such destruction arises out of the usage of such physical evidence in the normal course of business, including, but not limited to, activities relating to the Prince William Sound oil spill cleanup or the cleanup of any other oil spill. By way of illustration, physical evidence subject to this paragraph includes oil spill cleanup and containment equipment, vessels, vehicles or containers used to transport or hold such



equipment, miscellaneous supplies (including, but not limited to clothing, bags, rags, etc.) utilized in oil spill cleanup and containment, and crude oil spilled from the Exxon Valdez.

6. During the pendency of this litigation, each of the parties herein and their respective officers, agents, servants, employees and attorneys, shall not relinquish custody or control of the originals of any documents subject to this Order to any governmental body or agency, or any other third party, without retaining a copy thereof and preparing a complete accounting of such transfer including an identification of the documents so transferred, the name and address of the person or entity to whom the documents were transferred, the name and address of the person who transferred the documents, the date of the transfer and the address of the location(s) to which the documents were transferred. The accountings shall be maintained by counsel for the respective named parties. In the event that this matter is certified as a class action, the unnamed class members shall themselves maintain their own accounting.

7. Any party to this Stipulation and Order may seek a modification of this Stipulation and Order from the Court, after counsel for the parties have consulted in good faith regarding any such proposed modification.

Dated: May \_\_\_, 1989

PRESTON, THORGRIMSON,  
ELLIS & HOLMAN

By \_\_\_\_\_

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Attorneys for Plaintiffs

Dated: May \_\_\_, 1989

BOGLE & GATES

By \_\_\_\_\_  
Douglas J. Serdahely

Attorneys for Defendants  
Exxon Corporation, Exxon Co., USA  
and Exxon Shipping Company

Dated: May \_\_\_, 1989

BURR, PEASE & KURTZ, P.C.

By \_\_\_\_\_  
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Attorneys for Defendant  
Alyeska Pipeline Service Company

STIPULATION AND ORDER REGARDING  
PRESERVATION OF EVIDENCE -7-  
DJS052AJ

EXHIBIT A  
Page 7 of 8 Pages

NON-OPPOSITION

Defendant Trans-Alaska Pipeline Liability Fund does not oppose this Stipulation and Order.

Dated: May \_\_\_, 1989

GROH, EGGERS & PRICE

By \_\_\_\_\_  
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Anchorage, Alaska 99503  
(907) 272-6474

Attorneys for Defendant  
Trans-Alaska Pipeline  
Liability Fund

ORDER

IT IS SO ORDERED.

Dated: May \_\_\_, 1989

\_\_\_\_\_  
United States District Judge

STIPULATION AND ORDER REGARDING  
PRESERVATION OF EVIDENCE -8-  
DJS052AJ

EXHIBIT A  
Page 8 of 8 Pages

APR 14 '89 10:41 PRESTON  
FROM BERGER MONTAGUE PC

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CROUZAN FISHERIES, INC. )  
STANLEY NORRIS GROVE, and )  
ANTHONY GROVE, )  
on behalf of themselves )  
and all others similarly )  
situated, )  
Plaintiffs, )

v. )

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

CLASS ACTION

CIVIL ACTION NO. A89-096

STIPULATION AND ORDER  
REGARDING PRESERVATION  
OF EVIDENCE

EXHIBIT B

Page 1 of 4 Pages

5. (a) The destruction of the following identified physical things shall not be considered a violation of this stipulation and Order, when such destruction is caused inadvertently and without intention in connection with, or arising out of, the usage of these physical things in the course of the [present Prince William Sound] oil spill clean-up efforts: (i) oil spill clean-up and containment

equipment and, (ii) vessels, vehicles, or containers used to transport or hold such equipment. In the event that oil spill clean-up and containment equipment, or, vessels, vehicles or containers used to transport or hold such equipment, are inadvertently destroyed pursuant to this subparagraph, then, in that event, defendants shall make a good faith effort to keep a record to sufficiently identify the physical evidence so destroyed.

(b) Destroying or permitting the destruction of either (i) clothing, bags or rags utilized in the oil spill clean-up efforts; or, (ii) crude oil spilled from the Exxon Valdez, shall not be considered a violation of this Stipulation and Order.

6. (a) Defendants may not move any physical evidence out of the State of Alaska, without first following the procedure set forth in Paragraph 3 above to either obtain the consent of counsel or an appropriate Court Order.

(b) In the event that either counsel's consent or a Court Order is obtained, defendants shall keep the following record and inventory of the physical evidence to be removed. The record and inventory shall consist of:

(1) A statement of where the physical evidence is to be moved;

(2) An inventory of the physical evidence;

(3) Dated photographs of the physical evidence before it was removed to document the condition of the physical

evidence prior to its removal; and,

(4) The name and address of the person or entity who will have control of the physical evidence after its removal.

FILED

MAY 10 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By YKL Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-096 Civil

PARTIAL STIPULATION BETWEEN DEFENDANTS  
EXXON (D-1, D-2 AND D-5) AND ALYESKA (D-3)  
REGARDING PRESERVATION OF EVIDENCE

Defendants Exxon Corporation, Exxon Company, USA and Exxon Shipping Company ("Exxon") (D-1, D-2 and D-5) and Alyeska Pipeline Service Company ("Alyeska") (D-3), by and through their respective counsel, hereby stipulate to the entry of the following order as follows:

PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
DJS052AJ

-1-

BOGLE & GATES

2001  
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195

1. (a) All documents preserved by the parties from the commencement of this litigation through May 1, 1989, shall remain preserved unless and until otherwise agreed upon by the parties or ordered by the Court as set forth in paragraph 3 below.

(b) Subsequent to May 1, 1989, and during the pendency of this litigation, each of the named parties herein and their respective officers, agents, servants, employees and attorneys, shall neither destroy nor permit the destruction of any document or physical evidence within the parties' possession, control or custody not otherwise protected from discovery by recognized evidentiary privileges, which relates, refers or pertains to or which may lead to evidence relevant to: (1) any Prince William Sound oil spill contingency plan and/or its development, amendment or implementation; (2) the Exxon Valdez and its crew, its loading and voyage on or about and after March 23, 1989, and/or the oil spill in Prince William Sound resulting therefrom, which is the subject of this litigation (the "oil spill"); (3) the efforts by any person, entity or agency to clean up, contain and/or monitor the oil spill; (4) any investigation by any person, entity or agency into the circumstances, effects and/or causes of the oil spill; and (5) any claims or damages alleged to result, directly or indirectly, from the oil spill or its aftermath.

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PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
DJS052AJ

-2-



(c) Documents specifically excluded from paragraphs 1(a) and 1(b) above are interim drafts of writings, telephone message slips and electronically recorded or transmitted messages pertaining to the subjects set forth in paragraph 1(b) above, provided that at least one copy of the final writings, the original telephone logbooks and the electronically recorded or transmitted messages (whether in "hard copy" form or by electronic storage) be preserved.

(d) Without limiting or affecting the immediate application of this Order to any existing documents or physical evidence, any document or physical evidence referred to in any discovery request made in this litigation shall, from the time of the request, be treated for purposes of this Order as subject to this Order unless and until the Court rules otherwise or the parties, through their counsel, stipulate otherwise.

2. As used in this Order, "document" shall mean and include any writing, drawing, film, videotape, chart, photograph, phono or tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained and any other form of tangible preservation of information.

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PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
DJS052AJ

-3-

3. Counsel are to confer to resolve questions as to the scope of this Stipulation and Order regarding the preservation of documents or physical evidence which need not be preserved and as to an earlier date for permissible destruction of particular categories of documents or physical evidence. If counsel are unable to agree, any party may apply to the Court for clarification or relief from this Stipulation and Order upon reasonable notice. A party which, within 60 days after receipt by counsel of record of written notice from another party that specified documents or things will be destroyed or altered, fails to indicate to counsel of record its written objection to such destruction or alteration, shall be deemed to have agreed to such destruction or alteration.

4. In the event that this matter is certified as a class action, the substance of the evidence preservation requirements of this Order shall be included in the initial notice to class members and the terms hereof shall immediately thereafter become binding on all such persons or entities who have not previously become subject thereto by virtue of their capacities as named plaintiffs. The form, contents and manner of such notification, and the financial responsibility therefor, will be addressed by the parties and/or the Court at a later date.

BOGLE & GATES

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PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
DJS052AJ

-4-

5. Destroying or permitting the destruction of physical evidence other than documents shall not be considered a violation of this Order when such destruction arises out of the usage of such physical evidence in the normal course of business, including, but not limited to, activities relating to the Prince William Sound oil spill cleanup or the cleanup of any other oil spill. By way of illustration, physical evidence subject to this paragraph includes oil spill cleanup and containment equipment, vessels, vehicles or containers used to transport or hold such equipment, miscellaneous supplies (including, but not limited to, clothing, bags, rags, etc.) utilized in oil spill cleanup and containment, and crude oil spilled from the Exxon Valdez.

6. During the pendency of this litigation, each of the parties herein and their respective officers, agents, servants, employees and attorneys, shall not relinquish custody or control of the originals of any documents subject to this Order to any governmental body or agency, or any other third party, without retaining a copy thereof and preparing a complete accounting of such transfer including an identification of the documents so transferred, the name and address of the person or entity to whom the documents were transferred, the name and address of the person who transferred the documents, the date of the transfer and the address of the location(s) to which the documents were transferred. The term "original" document is defined to mean the

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PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
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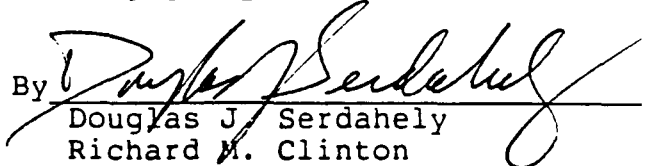
-5-

first document (whether a copy or otherwise) which a party has received or taken possession of. The accountings shall be maintained by counsel for the respective named parties. In the event that this matter is certified as a class action, the unnamed class members shall themselves maintain their own accounting.

7. Any party to this Stipulation and Order may seek a modification of this Stipulation and Order from the Court, after counsel for the parties have consulted in good faith regarding any such proposed modification.

Dated: May 16<sup>th</sup>, 1989

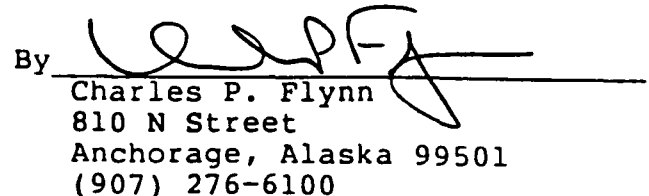
BOGLE & GATES

By   
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Richard M. Clinton

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Exxon Company, USA  
and Exxon Shipping Company  
(D-1, D-2 and D-5)

Dated: May \_\_, 1989

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PARTIAL STIPULATION REGARDING  
PRESERVATION OF EVIDENCE  
DJS052AJ

FILED

MAY 10 1989

Laurence Keyes  
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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By flc Deputy

Attorneys for Plaintiffs Cruzan Fisheries, Inc.,  
Stanley Norris Grove and Anthony Grove

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-096 Civil  
P-[13] through P-[15] Proposed Order and  
Supporting Memorandum Submitted in Accordance With  
Document Retention Order of April 24, 1989 and  
Motion for Protective Order Regarding Preservation  
of Evidence Against D-[1] through D-[5]

I. INTRODUCTION

Pursuant to the Court's Document Retention Order of April 24, 1989, counsel for the plaintiffs and defendants met on May 5, 1989 to review that Order and to address any disagreements which the parties then had regarding the record retention procedures to be implemented during the pendency of this litigation. Because there are certain issues still unresolved between the parties, plaintiffs respectfully submit this Memorandum in Support of their proposed Order for

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the preservation of records and tangible things (a copy of which is attached hereto as Exhibit "A").<sup>1</sup>

## II. DISCUSSION

### A. Any Order Regarding the Establishment of Procedures For the Preservation of Records or Other Tangible Evidence Should Apply Only to Defendants

Paragraph one (1) of plaintiffs' proposed Order limits the application of any procedures established by this Court for the preservation of records or other tangible evidence to only the defendants. In distinction to this limitation, defendants' proposed Order not only includes the class representative,<sup>2</sup> but also all putative class members in the event that this matter is certified as a class action.<sup>3</sup> For the following reasons, however, plaintiffs submit that neither they nor any other class members should be included within the scope of a preservation Order setting forth procedures to ensure against the destruction of evidence.

First, the paramount interest of any preservation Order which might issue in this case is to ensure the perpetuation of evidence that relates to either the grounding of the Exxon Valdez, the environmental effects of the resulting oil spill, the handling of the ensuing clean-up, or the planning for the contingency of an oil spill from this or any other ocean-going vessel transporting crude oil from the

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<sup>1</sup>. Defendants' proposed form of Order that was the subject of the parties' discussions is also attached hereto as Exhibit "B".

<sup>2</sup>See Exhibit "B", paras. 1(b) and 6.

<sup>3</sup>See Exhibit "B", para. 4.

terminus of the Trans-Alaska Pipeline at Valdez, Alaska. In this regard, there can be no question that neither the class representatives nor the class members they seek to represent has played any role in either causing this disaster, measuring its environmental effect on a wide-scale basis to assess damages, or aggravating that effect through allegedly inadequate clean-up efforts. Rather, it is defendants, and defendants alone, who have been the "actors" involved in all of the operating events giving rise to plaintiffs' claims for injunctive relief and monetary damages; and thus, defendants and defendants alone, who have exclusive control (be it actual or constructive) of most, if not all, of the records or physical evidence which relate to these issues.

Second, the fact that the class representatives and other putative class members may have documentary or other evidence to buttress their individual claims for damages clearly does not compel the conclusion that any proposed Order regarding evidence retention procedures should apply to them as well as the defendants. To the contrary, the type of documentary or other evidence which plaintiffs may have is only relevant to prove amount of any particular plaintiff's claim and has no direct bearing upon the essential class-wide liability and damage issues connected to either the grounding of the Exxon Valdez, the effect of the resulting oil spill, the handling of the ensuing clean-up, or the planning for the contingency of any oil spill.

Third, inclusion of the class representatives or the putative class members within the scope of this Court's Order might indirectly cause an unjust hardship by permitting defendants to subsequently move before this Court to preclude the claims of certain class members who inadvertently destroyed or lost the record or other evidence supporting their losses. While damages can ordinarily be proven to a trier-of-fact in one of several ways (including, for example, through either the presentation of documents or oral testimony, its evidentiary form is not usually determinative of its admissibility (only its weight). However, if the class representatives and putative class members were subject to any proposed Order and did in fact fail to preserve certain evidence, their claims could conceivably be barred as a sanction for their having unintentionally run afoul of this Court's interdiction.

In sum, there is no meaningful or demonstrable reason for subjecting either the class representatives or putative class members to any Order concerning the preservation of evidence during the pendency of this litigation when it is considered that much, if not all, of the documentary or physical evidence relating to proof of the class-wide liability and damage issues are already, or will in the future be, in defendants' possession by virtue of their singular involvement in the events giving rise to all of the claims. Moreover, inclusion of either the class representatives or putative class members within the scope of



any proposed preservation Order only serves to submit them to the substantial risk of some unintended and arcane interpretation of the Order's language.

Conversely, there can be little or no doubt that plaintiffs or putative class members who deliberately or inadvertently fail to preserve documentary or other evidence in support of the amount of their own individual claims are submitting themselves to the obvious risk that they may ultimately be unable to prove the total amount of their losses. This fact alone should assure defendants that the plaintiffs and the putative class members will be vigilant in preserving any evidence relating to proof of those claims.

B. The Scope of Any Order Regarding The Establishment of Procedures for the Preservation of Records or Other Tangible Evidence Should Protect Against the Likelihood of Real, Substantial and Irreparable Harm.

1. Documents or Physical Evidence that Are Purportedly Protected From Discovery By Recognized Evidentiary Privileges Must Be Protected from Destruction

Paragraph two (2), subpart "a", of Plaintiff's Proposed Order delimits the outermost reach of the protection afforded against the possible destruction of either documentary or physical evidence. It seeks to apply its prophylaxis to any documentary or physical evidence regarding (or capable of leading to further information regarding) the grounding of the Exxon Valdez, the effect of the resulting oil spill, the handling of the ensuing clean-up, or the planning for the contingency of an oil spill--whether or not this documentary

or physical evidence is arguably protected from discovery by any recognized evidentiary privilege.<sup>4</sup>

If any preservation Order fails to include within its protective ambit evidence that might possibly be considered privileged (and thus, not discoverable), there would exist no available means for plaintiffs or other class members to effectively challenge any asserted privilege after the destruction of that document or thing. Likewise, even assuming Plaintiffs or other class members could successfully challenge the defendants assertion of privilege concerning a particular document or thing after its destruction, there exists the likelihood of real, substantial and irreparable harm because of the impracticability for plaintiffs to either directly or indirectly obtain that same information from some other source.

## 2. Interim Drafts of Writings and Telephone Message Slips Must be Protected from Destruction

In addition to excluding from any preservation Order evidence that ultimately may or may not be determined to be privileged, defendants would also specifically exclude from the Order's protection any "interim drafts of writings and telephone message slips, provided that the final writings and an original logbook or other recording of telephone message slips are preserved."<sup>5</sup>

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<sup>4</sup>But, see, Exhibit "B", para. 1(b)

<sup>5</sup>See Exhibit "B", para. 1(b).

However, before seeking this Court's imprimatur to presumably destroy evidence, defendants should be required to demonstrate not only the information that these documents contain, but also their purported burden in conserving these documents as opposed to their purported need to destroy them. No less specificity would be required to be shown by defendants in identifying these documents if they were merely interposing an objection to their production - - which, of course, they are not.

3. Physical Evidence Utilized By Defendants in Connection With The Oil Spill Clean-Up Must Be Protected From Destruction Unless These Physical Things Are Specifically Exempted From The Preservation Order By Express Terms Or The Parties' Subsequent Agreement

Paragraph five (5) of Plaintiffs' proposed Order attempts to balance the vicissitudes of managing defendants' ongoing clean-up efforts (including the speed with which these efforts must be completed) against the public importance of the issues at stake in this litigation and its special evidentiary needs. this balance is achieved by permissibly excusing the destruction of certain physical evidence utilized by defendants in connection with their clean-up activities;<sup>6</sup> and further, providing a self-executing means for all of the involved parties to immediately address

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<sup>6</sup>See Exhibit "A", para. 5 subpart (a) [re: inadvertent destruction of oil spill clean-up and containment equipment, or vessels, vehicles or containers used to transport or hold such equipment and subpart (b) [re: intentional destruction of clothing, bags or rags, or, crude oil spilled from the Exxon Valdez]

each situation as it arises to consensually permit the destruction of additional physical evidence.<sup>7</sup>

As this Court itself has recently recognized in Pre-trial Order No.1, "[p]resent indications are that these consolidated cases have the potential for being the largest and most complex ever filed in this court."<sup>8</sup> Given these circumstances, defendants' provision totally exempting the destruction of any physical evidence utilized "in the normal course of business"<sup>9</sup> might inevitably eviscerate the very protections any preservation Order intended to provide. Instead, the parties should be trusted to resolve each matter as it may present itself in order to avoid the imposition of an overbroad provision that will certainly cause more harm in its application than the harm it seeks to prevent. This is especially so considering this Court's exhortation that this "case will call for an extraordinary level of effort and cooperation on the part of all counsel to the end that the rights of all plaintiffs and defendants may be promptly and effectively determined".<sup>10</sup>

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<sup>7</sup>See Exhibit "A", para. 3 [re: obligatory consultation between counsel to resolve all questions and request for Court intervention only absent the parties' ability to agree].

<sup>8</sup>See Pre-Trial Order No. 1, at p.9.

<sup>9</sup>See Exhibit "B", para. 5. Indeed, as proposed in defendants' Order this amorphous provision (i.e., "in the normal course of business") need not even apply to activities related to the Prince William Sound oil spill clean-up or the clean-up of any other spill.

<sup>10</sup>See Pre-Trial Order No. 1, at p. 9.

4. "Accountings" Must Be Prepared by Defendants in the Event of either: The Removal of Physical Evidence from this State; Or, The Transference of Documents Or Physical Evidence To The Custody of Third-Persons.

Both paragraphs six (6) and seven (7) of plaintiffs' proposed Order set forth the manner in which defendants should account for protected evidence in the event of either its removal from the State of Alaska or its transference to any governmental body or other third-person. The proscriptions of paragraph six (6) are specifically limited to physical evidence, while those contained in paragraph seven (7) apply to both documentary and tangible things.

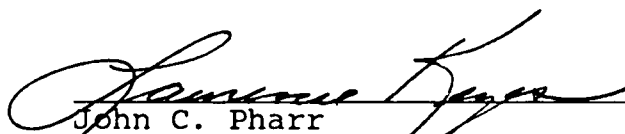
Because of the multiple investigative efforts now involving hundreds of individuals and diverse federal and private entities, defendants may well be required to remove physical evidence from this forum in order to furnish it to these out-of-state third-parties. In that event, only the safeguards enumerated in paragraph six (6) can adequately ensure against this evidence being lost, destroyed or forever altered in a fashion which might irreparably harm plaintiffs and the plaintiff class in their own case investigation.

Paragraph seven (7) likewise provides for an "accounting" procedure. While it applies to both documents or things transferred to third-persons, it requires no prior agreement between counsel. It is also less stringent as far as any proposed requirement for the photographing of physical evidence since there is presumptively better control, and hence less chance for the destruction, of items remaining in Alaska.

III. CONCLUSION

In consequence of all of the foregoing, plaintiffs and the plaintiff Class respectfully request that this Honorable Court enter an Order regarding the establishment of procedures for preserving both documentary and physical evidence in the form attached hereto as Exhibit "A".

Respectfully submitted this 10th day of May, 1989.



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Attorneys for Plaintiffs Cruzan Fisheries, Inc.,  
Stanley Norris Grove and Anthony Grove

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Case No. A89-096 Civil

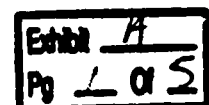
PROPOSED ORDER REGARDING PRESERVATION OF EVIDENCE

THIS MATTER having come before the Court and the  
Court being otherwise fully advised in the premiss, it is  
hereby:

ORDERED:

1. During the pendency of this litigation, Defendants,  
their respective officers, agents, servants, employees, and  
attorneys, shall neither alter, destroy, nor permit the  
destruction of, or in any other fashion change, any document  
or physical thing, in the actual or constructive care,  
custody, or control of such person, wherever such document or  
physical thing is located.

2. (a) This Order pertains only to documents and  
physical things or evidence containing, demonstrating, or  
showing information that relates, refers, or pertains to, or



which may lead to the discovery of information relating, referring, or pertaining to, any oil spill Contingency Plan and its development, amendment, or implementation; the Exxon Valdez, its crew, its loading and voyage on or about March 23, 1989, or the oil spill in Prince William Sound resulting therefrom, which is the subject of this litigation (the "oil spill"): the efforts by any persons, entity, or agency to clean-up, contain or monitor the oil spill; any investigation by any person, entity, or agency into the circumstances, effects, or causes of the oil spill; and, any claims or damages alleged to result, directly or indirectly, from the oil spill or its aftermath.

(b) Without limiting or affecting the immediate application of this Order to any existing documents or physical thing or evidence as described above, any document and physical thing or evidence referred to in any discovery request made during this litigation shall, from the time of the request, be treated for purposes of this Order as being subject to this Order, unless and, until the Court rules otherwise or the parties, through their counsel, stipulate otherwise.

3. Counsel are to confer to resolve questions as to what documents or physical evidence are outside the scope of this Order regarding preservation of evidence or otherwise need not be preserved and as to an earlier date for permissible destruction of particular categories of documents or physical evidence. If counsel are unable to agree, any



party may apply to the Court for clarification or relief from this Order upon reasonable notice. A party which, within 60 days after receiving written notice from another party that specified documents or things will be destroyed or altered, fails to indicate in writing its objection, shall be deemed to have agreed to such destruction or alteration.

4. As used in this Order, "documents" shall mean and include any writing, drawing, film, videotape, chart, photograph, phono or tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained and any other form of tangible preservation of information.

5. (a) The destruction of the following identified physical things shall not be considered a violation of this Order, when such destruction is caused inadvertently and without intention in connection with, or arising out of, the usage of these physical things in the course of the present Prince William Sound oil spill clean-up efforts: (i) oil spill clean-up and containment equipment and, (ii) vessels, vehicles, or containers used to transport or hold such equipment. In the event that oil spill clean-up and containment equipment, or vessels, vehicles or containers used to transport or hold such equipment are inadvertently destroyed pursuant to this subparagraph, then, in that event,

defendants shall make a good faith effort to keep a record to sufficiently identify the physical evidence so destroyed.

(b) Destroying or permitting the destruction of either (i) clothing, bags or rags utilized in the oil spill clean-up efforts; or, (ii) crude oil spilled from the Exxon Valdez, shall not be considered a violation of this Order.

6. (a) Defendants may not move any physical evidence out of the State of Alaska, without first following the procedure set forth in Paragraph 3 above to either obtain the consent of counsel or an appropriate Court Order.

(b) In the event that either counsels' consent or a Court Order is obtained, defendants shall keep the following record and inventory of the physical evidence to be removed. The record and inventory shall consist of:

(1) A statement of where the physical evidence is to be moved.

(2) An inventory of the physical evidence;

(3) Dated photographs of the physical evidence before it was removed to document the condition of the physical evidence prior to its removal; and,

(4) The name and address of the person or entity who will have control of the physical evidence after its removal.

7. During the pendency of this litigation, defendants, their respective officers, agents, servants, employees, and attorneys shall not relinquish custody or control of either the originals or copies of any documents, or, any physical

evidence, which are subject to this Order, to any governmental body or agency, or any other third party, without retaining a copy of any such document, and, preparing a complete accounting of any such transfer (that includes an identification of the documents or physical evidence so transferred, the name and address of the person or entity to whom the documents or physical evidence were transferred, the name and address of the person who transferred the documents or physical evidence, the date of the transfer, and the address of the location(s) to which the documents or physical evidence were transferred). This accounting shall be maintained by counsel for the named parties.

8. Any party may seek a modification of this Order from the Court, after counsel for the parties have consulted in good faith regarding any such proposed modification.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
United States District Judge

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Exhibit	<u>A</u>
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

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Re Case No. A89-096 Civil

ORDER REGARDING PRESERVATION OF EVIDENCE

The Court, having carefully considered the parties' Partial Stipulation Regarding the Preservation of Evidence, supporting and opposing memoranda and proposed orders,

Hereby orders as follows:

1. (a) All documents preserved by the parties from the commencement of this litigation through May 1, 1989, pursuant to interim agreements, stipulations and/or the Court's interim document retention Order entered herein on April 24, 1989, shall

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remain preserved unless and until otherwise agreed upon by the parties or ordered by the Court as set forth in paragraph 3 below.

(b) Subsequent to May 1, 1989, and during the pendency of this litigation, each of the named parties herein and their respective officers, agents, servants, employees and attorneys, shall neither destroy nor permit the destruction of any document or physical evidence within the parties' possession, control or custody not otherwise protected from discovery by recognized evidentiary privileges, which relates, refers or pertains to or which may lead to evidence relevant to: (1) the Oil Spill Contingency Plan and/or its development, amendment or implementation; (2) the Exxon Valdez and its crew, its loading and voyage on or about and after March 23, 1989, and/or the oil spill in Prince William Sound resulting therefrom, which is the subject of this litigation (the "oil spill"); (3) the efforts by any person, entity or agency to clean up, contain and/or monitor the oil spill; (4) any investigation by any person, entity or agency into the circumstances, effects and/or causes of the oil spill; and (5) any claims or damages alleged to result, directly or indirectly, from the oil spill or its aftermath. Documents specifically excluded from this provision are interim drafts of writings and telephone message slips, provided that the final writings and an original logbook or other recording of telephone message slips are preserved.

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(c) Without limiting or affecting the immediate application of this Order to any existing documents or physical evidence, any document or physical evidence referred to in any discovery request made in this litigation shall, from the time of the request, be treated for purposes of this Order as subject to this Order unless and until the Court rules otherwise or the parties, through their counsel, stipulate otherwise.

2. As used in this Order, "document" shall mean and include any writing, drawing, film, videotape, chart, photograph, phono or tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained and any other form of tangible preservation of information.

3. Counsel are to confer to resolve questions as to the scope of this Stipulation and Order regarding the preservation of documents or physical evidence which need not be preserved and as to an earlier date for permissible destruction of particular categories of documents or physical evidence. If counsel are unable to agree, any party may apply to the Court for clarification or relief from this Stipulation and Order upon reasonable notice. A party which, within 60 days after receipt by counsel of record of written notice from another party that

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specified documents or things will be destroyed or altered, fails to indicate to counsel of record its written objection to such destruction or alteration, shall be deemed to have agreed to such destruction or alteration.

4. In the event that this matter is certified as a class action, the substance of the evidence preservation requirements of this Order shall be included in the initial notice to class members and the terms hereof shall immediately thereafter become binding on all such persons or entities who have not previously become subject thereto by virtue of their capacities as named plaintiffs. The form, contents and manner of such notification, and the financial responsibility therefor, will be addressed by the parties and/or the Court at a later date.

5. Destroying or permitting the destruction of physical evidence other than documents shall not be considered a violation of this Order when such destruction arises out of the usage of such physical evidence in the normal course of business, including, but not limited to, activities relating to the Prince William Sound oil spill cleanup or the cleanup of any other oil spill. By way of illustration, physical evidence subject to this paragraph includes oil spill cleanup and containment equipment, vessels, vehicles or containers used to transport or hold such

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equipment, miscellaneous supplies (including, but not limited to, clothing, bags, rags, etc.) utilized in oil spill cleanup and containment, and crude oil spilled from the Exxon Valdez.

6. During the pendency of this litigation, each of the parties herein and their respective officers, agents, servants, employees and attorneys, shall not relinquish custody or control of the originals of any documents subject to this Order to any governmental body or agency, or any other third party, without retaining a copy thereof and preparing a complete accounting of such transfer including an identification of the documents so transferred, the name and address of the person or entity to whom the documents were transferred, the name and address of the person who transferred the documents, the date of the transfer and the address of the location(s) to which the documents were transferred. The term "original" document is defined to mean the first document (whether a copy or otherwise) which a party has received or taken possession of. The accountings shall be maintained by counsel for the respective named parties. In the event that this matter is certified as a class action, the unnamed class members shall themselves maintain their own accounting.

7. Any party to this Stipulation and Order may seek a modification of this Stipulation and Order from the Court, after counsel for the parties have consulted in good faith regarding any such proposed modification.

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DATED at Anchorage, Alaska, this \_\_\_\_ day of May, 1989.

Hon. H. Russel Holland  
United States District Judge

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Exhibit B  
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