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14. Attorneys for Defendants  
15. Exxon Corporation and  
16. Exxon Pipeline Company

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

15. In re )

16. The EXXON VALDEZ )

17. This Document Relates )  
18. to Action No. )

19. A89-135 )

20. Hugh R. Wisner, et al., )  
21. (P-78 and P-79); )

v. )

22. Exxon Corporation, et al., )  
23. (D-1 through D-7; D-10 )  
24. through D-17)

No. A89-095 Civil  
(Consolidated)

ANSWER OF EXXON  
CORPORATION AND EXXON  
PIPELINE COMPANY TO  
CLASS ACTION COMPLAINT  
FILED APRIL 13, 1989

25. Exxon Corporation, also erroneously sued herein as  
26. Exxon Co., USA, and for convenience identified in this answer as  
"Exxon", and Exxon Pipeline Company, for convenience, identified  
in this answer as "Exxon Pipeline", as their answer to the  
complaint herein admit, deny and allege as follows:

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By Deputy

1. As to each and every allegation denied herein for lack  
2. of information or belief, allege that they are without knowledge  
3. or information sufficient categorically to admit or deny the  
4. said allegation at this time, wherefore they deny each said  
5. allegation using the phrase "deny for lack of information or  
6. belief."

7.  
8. 1. Answering paragraph 1, admit that plaintiffs have  
9. demanded that all issues so triable be tried by a jury in this  
10. case, but do not waive their right to contest plaintiffs' jury  
11. demand.

12.  
13. Defense To Count I

14.  
15. 2. Admit the allegations of paragraph 2.

16.  
17. 3. Answering paragraph 3, Exxon and Exxon Pipeline  
18. are not required to respond to the allegations in paragraph 3.

19.  
20.  
21. 4. Answering paragraph 4, admit that plaintiffs  
22. purport to bring claims for relief based on the grounds alleged,  
23. but deny that plaintiffs can state a claim for relief based on  
24. said grounds.

1. 5. Deny each and every allegation of paragraph 5,  
2. except admit that this action may be brought in this district  
3. under 28 U.S.C. §1391.  
4.

5. 6. Deny for lack of information or belief the  
6. allegations in paragraph 6.  
7.

8. 7. Admit the allegations in paragraph 7.  
9.

10. 8. Deny the allegations of paragraph 8, except admit  
11. that Alyeska is a Delaware corporation the stock of which is  
12. owned by the Amerada Hess Pipeline Corporation, ARCO Pipe Line  
13. Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company,  
14. Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
15. Corporation, and Unocal Pipeline Company; and that the Owners of  
16. Alyeska are permittees under the Agreement and Grant of  
17. Right-of-Way for Trans-Alaska Pipeline.  
18.

19. 9. Deny the allegations of paragraph 9 except admit  
20. that Exxon Corporation is a corporation organized under the laws  
21. of the state of New Jersey, with its principal place of business  
22. in New York at 1251 Avenue of the Americas, New York, New York  
23. 10021, and that the principal business of Exxon Corporation is  
24. energy, involving exploration for the production of crude oil,  
25. natural gas and petroleum products and exploration for the  
26. mining and sale of coal.

10. Deny the allegations of paragraph 10, except admit that Exxon Shipping is a Delaware Corporation, that Exxon Corporation owns all of Exxon Shipping's stock, that the principal place of business of Exxon Shipping is Texas and that it is the owner and operator of the EXXON VALDEZ.

11. Deny the allegations of paragraph 11, except admit that Exxon Company, USA is an unincorporated division of Exxon Corporation responsible for the operation of Exxon Corporation's energy business within the United States, and that its headquarters is at 800 Bell Street, Houston, Texas.

12-17. Answering paragraphs 12 through 17, admit that plaintiffs purport to define certain terms, but deny the allegations and deny that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

18. Deny the allegations of paragraph 18, except admit that on Thursday evening, March 23, 1989, the EXXON VALDEZ, which is approximately 987 feet long and weighing approximately 211,000 deadweight tons, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

19. Deny the allegations in paragraph 19, except admit that the EXXON VALDEZ was loaded with approximately 1.2



1. million barrels of crude oil which had been shipped from  
2. Alaska's North Slope through the Trans-Alaska Pipeline.  
3.

4.           20.     Deny the allegations of paragraph 20, except  
5. admit that the EXXON VALDEZ passed through the Valdez Narrows  
6. under the direction of a harbor pilot, who subsequently  
7. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
8. of the vessel when the harbor pilot disembarked, and that  
9. Captain Hazelwood's duties as Master of the vessel were within  
10. the scope of his employment by Exxon Shipping.  
11.

12.           21.     Deny the allegations of paragraph 21, except  
13. admit that Captain Hazelwood left the bridge, leaving Gregory  
14. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
15. bridge, and that the duties of Cousins as third mate and Kagan  
16. as helmsman were within the scope of their employment by Exxon  
17. Shipping.  
18.

19.           22.     Deny the allegations of paragraph 22, except  
20. admit that the U.S. Coast Guard gave the EXXON VALDEZ permission  
21. to leave the southbound shipping lane for reasons that include  
22. earlier reports that it contained ice that had calved from a  
23. glacier to the northwest.  
24.  
25.  
26.

23. Deny the allegations of paragraph 23, except admit that the vessel travelled through the northbound lane and subsequently struck Bligh Reef.

24. Deny the allegations of paragraph 24, except admit that the vessel was outside the channel when it struck Bligh Reef, which punctured some of the tanks and damaged a portion of the hull.

25-26. Deny the allegations of paragraphs 25 and 26.

27. Deny the allegations of paragraph 27, except admit that the vessel was loaded with approximately 53,000,000 gallons of crude oil, that the grounding on Bligh Reef punctured eight of the vessel's oil tanks, causing the largest United States oil spill from a single vessel, and that approximately 258,000 barrels of crude oil were spilled into Prince William Sound.

28. Deny the allegations of paragraph 28.

29-30. Deny for lack of information or belief the allegations of paragraphs 29 and 30.

31. Deny the allegations of paragraph 31, except admit that some of the discharged crude oil has moved to areas

1. in the vicinity of the Kodiak Island Archipelago, and that  
2. islands in that archipelago are a habitat for water birds, sea  
3. and land mammals and fish and shellfish.

4.  
5. 32. Deny the allegations of paragraph 32.  
6.

7. 33-41. Deny for lack of information or belief the  
8. allegations of paragraphs 33 through 41, except admit that  
9. various plaintiffs purport to bring an action on behalf of  
10. classes of persons and entities described in the complaint.  
11.

12. 42. Answering paragraph 42, reallege and incorporate  
13. herein by reference each and every admission, denial and  
14. allegation contained in paragraphs 1 through 41, as if set out  
15. in full.  
16.

17. 43-47. Answering paragraphs 43 through 47, Exxon and  
18. Exxon Pipeline are not required to answer allegations made  
19. against Alyeska. If response were required, Exxon and Exxon  
20. Pipeline deny the allegations in paragraphs 43 through 47.  
21.

22. Defense to Count II  
23.

24. 48. Answering paragraph 48, reallege and incorporate  
25. herein by reference each and every admission, denial and  
26.

1. allegation contained in paragraphs 1 through 47, as if set out  
2. in full.

3.  
4. 49. Deny the allegations of paragraph 49, except  
5. admit that Exxon Shipping is the owner and operator of the EXXON  
6. VALDEZ.

7.  
8. 50. Deny for lack of information or belief the  
9. allegations of paragraph 50.

10.  
11. 51. Deny the allegations of paragraph 51.

12.  
13. 52. Deny for lack of information or belief the  
14. allegations of paragraph 52, except admit that the events about  
15. which plaintiffs complain caused some damages to sea otters and  
16. birds.

17.  
18. 53. Deny the allegations of Paragraph 53, except  
19. admit that 43 U.S.C. Section 1653(c), to the extent applicable,  
20. may impose upon certain entities strict liability for certain  
21. damages.

22.  
23. Defense to Count III

24.  
25. 54. Answering paragraph 54, reallege and incorporate  
26. herein by reference each and every admission, denial and

1. allegation contained in paragraphs 1 through 53, as if set out  
2. in full.

3.  
4. 55-62. Deny the allegations of paragraphs 55 through  
5. 62 insofar as they pertain to Exxon and Exxon Pipeline and deny  
6. for lack of information or belief said allegations insofar as  
7. they pertain to Alyeska or other defendants.

8.  
9. 63-64. Deny the allegations of paragraphs 63 through  
10. 64.

11.  
12. 65. Deny the allegations of paragraph 65 insofar as  
13. they pertain to Exxon and Exxon Pipeline and deny for lack of  
14. information or belief said allegations insofar as they pertain  
15. to other defendants.

16.  
17. 66-67. Deny the allegations of paragraphs 66 and 67.

18.  
19. Defense to Count IV

20.  
21. 68. Answering paragraph 68, reallege and incorporate  
22. herein by reference each and every admission, denial and  
23. allegation contained in paragraphs 1 through 67, as if set out  
24. in full.

69. Deny for lack of information or belief the allegations of paragraph 69, except admit that public records purport to show that Captain Hazelwood has been convicted for driving while under the influence of alcohol.

70. Deny the allegations of paragraph 70.

71-77. Deny the allegations of paragraphs 71 through 77.

Defense to Count V

78. Answering paragraph 78, reallege and incorporate herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 77, as if set out in full.

79. Deny the allegations of paragraph 79.

Defense to Count VI

80. Answering paragraph 80, reallege and incorporate herein by reference each and every denial, admission and allegation contained in paragraphs 1 through 79, as if set out in full.

1. 81. Deny the allegations of paragraph 81.  
2.

3. Defense to Count VII  
4.

5. 82. Answering paragraph 82, reallege and incorporate  
6. herein by reference each and every admission, denial and  
7. allegation contained in paragraphs 1 through 81, as if set out  
8. in full.  
9.

10. 83. Deny the allegations of paragraph 83, except  
11. admit that A.S. 46.03.826(4)(B) defines oil to be a hazardous  
12. substance and that approximately 258,000 barrels of crude oil  
13. were discharged into the Prince William Sound as a result of the  
14. grounding of the EXXON VALDEZ.  
15.

16. 84. Deny the allegations of paragraph 84.  
17.

18. 85. Deny the allegations of paragraph 85, except  
19. admit that Exxon owned the crude oil and that Exxon Shipping  
20. controlled the crude oil immediately prior to its release into  
21. the Prince William Sound.  
22.

23. 86. Deny for lack of information or belief the  
24. allegations in paragraph 86, except admit that the oil spill was  
25. not caused solely as a result of an act of God or an act of war.  
26.

87. Deny the allegations of paragraph 87.

88. Denies for lack of information or belief the allegations of paragraph 88, except admits that AS46.03.822, to the extent applicable and not preempted, may impose strict liability on certain entities for some damages.

Defense to Count VIII

89. Answering paragraph 89, reallege and incorporate herein by reference each and every denial, admission and allegation contained in paragraphs 1 through 88, as if set out in full.

90-93. Deny the allegations in paragraphs 90 through 93.

Defense to Count IX

94. Answering paragraph 94, reallege and incorporate herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 93, as if set out in full.

95-98. Deny the allegations in paragraphs 95 through 98.



1. Defense to Count X

2.  
3. 99. Answering paragraph 99, reallege and incorporate  
4. herein by reference each and every admission, denial and  
5. allegation contained in paragraphs 1 through 98, as if set out  
6. in full.

7.  
8. 100-102. Deny the allegations in paragraphs 100 through  
9. 102.

10.  
11. Defense to Count XI

12.  
13. 103. Answering paragraph 103, reallege and incorporate  
14. herein by reference each and every admission, denial and  
15. allegation contained in paragraphs 1 through 102, as if set out  
16. in full.

17.  
18. 104-107. Deny the allegations in paragraphs 104 through  
19. 107.

20.  
21. Defense to Count XII

22.  
23. 108. Answering paragraph 108, reallege and incorporate  
24. herein by reference each and every admission, denial and  
25. allegation contained in paragraphs 1 through 107, as if set out  
26. in full.

1. 109-112. Deny the allegations in paragraphs 109 through  
2. 112.

3. General Denial  
4.

5. 113. Deny each and every other allegation in plain-  
6. tiffs' complaint that was not specifically admitted herein.  
7.

8. Affirmative and Other Defenses  
9.

10. 114. The complaint and each count thereof fails to  
11. state claims upon which relief can be granted.  
12.

13. 115. Exxon and Exxon Pipeline are informed and believe  
14. that some plaintiffs lack standing to claim or recover for some  
15. of the damages alleged in the complaint.  
16.

17. 116. Independent of any legal obligation to do so,  
18. Exxon Shipping and Exxon are voluntarily paying claims for  
19. economic loss allegedly caused by the oil spill, and are  
20. incurring other expenses in connection with the oil spill.  
21. Exxon and Exxon Shipping are entitled to a setoff in the full  
22. amount of all such payments in the event that plaintiffs' claim  
23. encompass such expenditures.  
24.

25. 117. Certain persons engaged or employed in connection  
26. with activities related to containment and cleanup of the oil

1. released from the EXXON VALDEZ were thereby able to avoid or  
2. mitigate damage from the interruption of fishery and other  
3. activities. Payments received by such persons are a setoff  
4. against losses, if any, resulting from the interruption of  
5. fishery and other activities.

6.  
7. 118. To the extent that persons able to mitigate  
8. damages failed to do so, defendants cannot be held liable to  
9. such persons for avoidable losses.

10.  
11. 119. Claims by some persons or entities who may be  
12. within the purported classes have been settled and released.

13.  
14. 120. Plaintiffs' claims for punitive damages are un-  
15. constitutional under the United States Constitution, including,  
16. without limitation, Article I, Section 8; Amendment V; and  
17. Amendment XIV; and the Alaska Constitution, including, without  
18. limitation, Article I, Section 7 and Article I, Section 12.

19.  
20. 121. The damages alleged in the complaint were caused,  
21. in part, by the action of others not joined as defendants herein  
22. as to whom a right of contribution or indemnity should exist as  
23. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek  
24. leave of Court to join such additional persons as third party  
25. defendants on the basis of further discovery herein.

1. 122. Plaintiffs' claims sound in maritime tort and are  
2. subject to applicable admiralty limits on recovery of damages  
3. for remote economic loss unaccompanied by physical injury to  
4. person or property.

5.  
6. 123. Numerous persons and entities have filed lawsuits  
7. against Exxon and Exxon Pipeline relating to the oil spill, some  
8. of whom purport to represent the plaintiffs in this action. In  
9. the event of any judgment or judgments in such other lawsuits  
10. against Exxon or Exxon Pipeline and in favor of persons whose  
11. claims are encompassed in this action, such judgment or judg-  
12. ments will be res judicata as to the claims of such persons  
13. herein.

14.  
15. 124. Numerous persons and entities have filed other  
16. lawsuits against Exxon, Exxon Pipeline and various other defen-  
17. dants, and to the extent there is a recovery in said other law-  
18. suits encompassing claims made by plaintiffs herein, recovery on  
19. the claims herein is barred to the extent that it would repre-  
20. sent a multiple recovery for the same injury.

21.  
22. 125. Some or all of plaintiffs' claims for damages may  
23. be barred or reduced by the doctrine of comparative negligence.  
24.  
25.  
26.

1. 126. The amount of liability, if any, for the acts  
2. alleged is controlled by statute, including, without limitation,  
3. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).  
4.

5. 127. If punitive damages were to be awarded or civil  
6. or criminal penalties assessed in any other lawsuit against  
7. Exxon or Exxon Pipeline relating to the oil spill, such award  
8. bars imposition of punitive damages in this action.  
9.

10. 128. Some of plaintiffs' claims, including claims for  
11. punitive damages, are preempted by the comprehensive scheme of  
12. federal statutes and regulations, including its system of  
13. criminal and civil penalties, sanctions and remedies relevant to  
14. the oil spill, and its scheme relevant to protection of  
15. subsistence interests.  
16.

17. 129. Plaintiffs' claims for punitive damages are pre-  
18. cluded by the Alaska statutory scheme for civil and criminal  
19. penalties.  
20.

21. 130. Plaintiffs' claims for compensatory relief under  
22. state law are preempted by federal statutory and common law  
23. schemes for compensatory relief.  
24.

25. 131. Certain claims asserted by plaintiffs are not  
26. ripe for adjudication.

1. 132. Those portions of AS 46.03 that were enacted  
2. after the oil spill constitute an unlawful bill of attainder  
3. violative of Article I, Section 10 of the United States  
4. Constitution, and if applied to Exxon or to Exxon Pipeline would  
5. also violate the due process clauses of the United States and  
6. Alaska Constitutions, and the contract clause of the United  
7. States Constitution.

8.  
9. 133. Certain theories of relief may not be maintained  
10. because these theories are based upon the exercise by Exxon and  
11. Exxon Pipeline of federal and state constitutional rights to  
12. petition the federal and state governments with respect to the  
13. passage and enforcement of laws.

14.  
15. 134. Plaintiffs fail to satisfy the requirements for  
16. the injunctive relief they seek.

17.  
18. 135. Exxon and Exxon Shipping have acted pursuant to  
19. government approval and direction with regard to the containment  
20. and clean-up of the oil spill.

21.  
22. Prayer

23.  
24. WHEREFORE, Exxon and Exxon Pipeline pray for judgment  
25. as follows:  
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES  
550 WEST S AVE., SUITE 1000  
ANCHORAGE, ALASKA 99501-3510  
TELEPHONE (907) 274-0666

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26.

1. That plaintiffs take nothing and be granted no relief, legal or equitable;

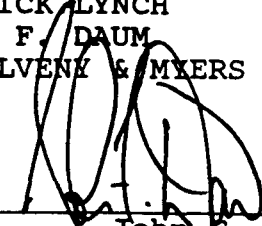
2. That Exxon and Exxon Pipeline be awarded their costs in this action; and

3. For such other and further relief as the Court deems just and proper.

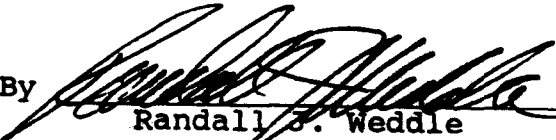
DATED: August 15, 1989

Respectfully submitted,

CHARLES W. BENDER  
PATRICK LYNCH  
JOHN F. DAUM  
O'MELVENY & MYERS

By   
John F. Daum

JOHN F. CLOUGH, III  
RANDALL J. WEDDLE  
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By   
Randall J. Weddle

Attorneys for Defendants  
Exxon Corporation and Exxon Pipeline Company

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Attorneys for Defendants  
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Exxon Pipeline Company

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UNITED STATES DISTRICT COURT  
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By \_\_\_\_\_ Deputy

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22. (P-80); ) CORPORATION AND EXXON
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25. (D-1 through D-5; D-7; D-10 ) FILED APRIL 16, 1989
26. through D-12; D-14; D-19 through D-21) )

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complaint herein admit, deny and allege as follows:



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2. of information or belief, allege that they are without knowledge  
3. or information sufficient categorically to admit or deny the  
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5. allegation using the phrase "deny for lack of information or  
6. belief."

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8. 1. Answering paragraph 1, admit that plaintiff has  
9. demanded that all issues so triable be tried by a jury in this  
10. case, but do not waive their right to contest plaintiffs' jury  
11. demand.

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13. Defense To Count I  
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15. 2. Answering paragraph 2, Exxon and Exxon Pipeline  
16. are not required to respond to the allegations in paragraph 2.  
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18. 3. Admit the allegations of paragraph 3.  
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20. 4. Answering paragraph 4, admit that plaintiff  
21. purports to bring claims for relief based on the grounds  
22. alleged, but deny that plaintiff can state a claim for relief  
23. based on said grounds.  
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26.

1. 5. Deny each and every allegation of paragraph 5,  
2. except admit that this action may be brought in this district  
3. under 28 U.S.C. §1391.  
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5. 6. Deny for lack of information or belief the  
6. allegations in paragraph 6.  
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8. 7. Admit the allegations in paragraph 7.  
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10. 8. Deny the allegations of paragraph 8, except admit  
11. that Alyeska is a Delaware corporation the stock of which is  
12. owned by the Amerada Hess Pipeline Corporation, ARCO Pipe Line  
13. Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company,  
14. Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
15. Corporation, and Unocal Pipeline Company; and that the Owners of  
16. Alyeska are permittees under the Agreement and Grant of  
17. Right-of-Way for Trans-Alaska Pipeline.  
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19. 9. Deny the allegations of paragraph 9 except admit  
20. that Exxon Corporation is a corporation organized under the laws  
21. of the state of New Jersey, with its principal place of business  
22. in New York at 1251 Avenue of the Americas, New York, New York  
23. 10021, and that the principal business of Exxon Corporation is  
24. energy, involving exploration for the production of crude oil,  
25. natural gas and petroleum products and exploration for the  
26. mining and sale of coal.

1. 10. Deny the allegations of paragraph 10, except  
2. admit that Exxon Shipping is a Delaware Corporation, that Exxon  
3. Corporation owns all of Exxon Shipping's stock, that the  
4. principal place of business of Exxon Shipping is Texas and that  
5. it is the owner and operator of the Exxon Valdez.  
6.

7. 11. Deny the allegations of paragraph 11, except  
8. admit that Exxon Company, USA is an unincorporated division of  
9. Exxon Corporation responsible for the operation of Exxon  
10. Corporation's energy business within the United States, and that  
11. its headquarters is at 800 Bell Street, Houston, Texas.  
12.

13. 12-17. Answering paragraphs 12 through 17, admit that  
14. plaintiff purports to define certain terms, but deny the  
15. allegations and deny that any subsequent use of those terms in  
16. the complaint is necessarily accurate or appropriate.  
17.

18. 18. Deny the allegations of paragraph 18, except  
19. admit that on Thursday evening, March 23, 1989, the EXXON  
20. VALDEZ, which is approximately 987 feet long and weighing  
21. approximately 211,000 deadweight tons, left the Port of Valdez,  
22. Alaska, the southern terminal facility of the Trans-Alaska  
23. Pipeline System, bound for Long Beach, California.  
24.

25. 19. Deny the allegations in paragraph 19, except  
26. admit that the EXXON VALDEZ was loaded with approximately 1.2

1. million barrels of crude oil which had been shipped from  
2. Alaska's North Slope through the Trans-Alaska Pipeline.  
3.

4.           20.    Deny the allegations of paragraph 20, except  
5. admit that the EXXON VALDEZ passed through the Valdez Narrows  
6. under the direction of a harbor pilot, who subsequently  
7. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
8. of the vessel when the harbor pilot disembarked, and that  
9. Captain Hazelwood's duties as Master of the vessel were within  
10. the scope of his employment by Exxon Shipping.  
11.

12.           21.    Deny the allegations of paragraph 21, except  
13. admit that Captain Hazelwood left the bridge, leaving Gregory  
14. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
15. bridge, and that the duties of Cousins as third mate and Kagan  
16. as helmsman were within the scope of their employment by Exxon  
17. Shipping.  
18.

19.           22.    Deny the allegations of paragraph 22, except  
20. admit that the U.S. Coast Guard gave the EXXON VALDEZ permission  
21. to leave the southbound shipping lane for reasons that include  
22. earlier reports that it contained ice that had calved from a  
23. glacier to the northwest.  
24.  
25.  
26.

1. 23. Deny the allegations of paragraph 23, except  
2. admit that the vessel travelled through the northbound lane and  
3. subsequently struck Bligh Reef.  
4.

5. 24. Deny the allegations of paragraph 24, except  
6. admit that the vessel was outside the channel when it struck  
7. Bligh Reef, which punctured some of the tanks and damaged a  
8. portion of the hull.  
9.

10. 25-26. Deny the allegations of paragraphs 25 and 26.  
11.

12. 27. Deny the allegations of paragraph 27, except  
13. admit that the vessel was loaded with approximately 53,000,000  
14. gallons of crude oil, that the grounding on Bligh Reef punctured  
15. eight of the vessel's oil tanks, causing the largest United  
16. States oil spill from a single vessel in United States history,  
17. and that approximately 258,000 barrels of crude oil were spilled  
18. into Prince William Sound.  
19.

20. 28. Deny the allegations of paragraph 28.  
21.

22. 29-30. Deny for lack of information or belief the  
23. allegations of paragraphs 29 and 30.  
24.

25. 31. Deny the allegations of paragraph 31, except  
26. admit that some of the discharged crude oil has moved to areas

1. in the vicinity of the Kodiak Island Archipelago, and that  
2. islands in that archipelago are a habitat for water birds, sea  
3. and land mammals and fish and shellfish.  
4.

5. 32. Deny the allegations of paragraph 32.  
6.

7. 33-41. Deny for lack of information or belief the  
8. allegations of paragraphs 33 through 41, except admit that  
9. plaintiff purports to bring an action on behalf of a class of  
10. persons and entities described in the complaint.  
11.

12. 42. Answering paragraph 42, reallege and incorporate  
13. herein by reference each and every admission, denial and  
14. allegation contained in paragraphs 1 through 41, as if set out  
15. in full.  
16.

17. 43-47. Answering paragraphs 43 through 47, Exxon and  
18. Exxon Pipeline are not required to answer allegations made  
19. against Alyeska. If response were required, Exxon and Exxon  
20. Pipeline deny the allegations in paragraph 43 through 47.  
21.

22. Defense to Count II  
23.

24. 48. Answering paragraph 48, reallege and incorporate  
25. herein by reference each and every admission, denial and  
26.



1. allegation contained in paragraphs 1 through 47, as if set out  
2. in full.

3.  
4. 49. Deny the allegations of paragraph 49, except  
5. admit that Exxon Shipping is the owner and operator of the EXXON  
6. VALDEZ.

7.  
8. 50. Deny for lack of information or belief the  
9. allegations of paragraph 50.

10.  
11. 51. Deny the allegations of paragraph 51.

12.  
13. 52. Deny for lack of information or belief the  
14. allegations of paragraph 52, except admit that the events about  
15. which plaintiff complains caused some damages to sea otters and  
16. birds.

17.  
18. 53. Deny the allegations of Paragraph 53, except  
19. admit that 43 U.S.C. Section 1653(c), to the extent applicable,  
20. may impose upon certain entities strict liability for certain  
21. damages.

22.  
23. Defense to Count III

24.  
25. 54. Answering paragraph 54, reallege and incorporate  
26. herein by reference each and every admission, denial and

1. allegation contained in paragraphs 1 through 53, as if set out  
2. in full.

3.  
4. 55-62. Deny the allegations of paragraphs 55 through  
5. 62 insofar as they pertain to Exxon and Exxon Pipeline and deny  
6. for lack of information or belief said allegations insofar as  
7. they pertain to Alyeska or other defendants.

8.  
9. 63-64. Deny the allegations of paragraphs 63 and 64.

10.  
11. 65. Deny the allegations of paragraph 65 insofar as  
12. they pertain to Exxon and Exxon Pipeline and deny for lack of  
13. information or belief said allegations insofar as they pertain  
14. to other defendants.

15.  
16. 66-67. Deny the allegations of paragraphs 66 and 67.

17.  
18. Defense to Count IV

19.  
20. 68. Answering paragraph 68, reallege and incorporate  
21. herein by reference each and every admission, denial and  
22. allegation contained in paragraphs 1 through 67, as if set out  
23. in full.

24.  
25. 69. Deny for lack of information or belief the  
26. allegations of paragraph 69, except admit that public records



1. purport to show that Captain Hazelwood has been convicted for  
2. driving while under the influence of alcohol.

3.

4. 70. Deny the allegations of paragraph 70.

5.

6. 71-77. Deny the allegations of paragraphs 71 through  
7. 77.

8.

9. Defense to Count V

10.

11. 78. Answering paragraph 78, reallege and incorporate  
12. herein by reference each and every admission, denial and  
13. allegation contained in paragraphs 1 through 77, as if set out  
14. in full.

15.

16. 79. Deny the allegations of paragraph 79.

17.

18. Defense to Count VI

19.

20. 80. Answering paragraph 80, reallege and incorporate  
21. herein by reference each and every denial, admission and  
22. allegation contained in paragraphs 1 through 79, as if set out  
23. in full.

24.

25. 81. Deny the allegations of paragraph 81.

26.

Defense to Count VII

82. Answering paragraph 82, reallege and incorporate herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 81, as if set out in full.

83. Deny the allegations of paragraph 83, except admit that A.S. 46.03.826(4)(B) defines oil to be a hazardous substance and that approximately 258,000 barrels of crude oil were discharged into the Prince William Sound as a result of the grounding of the EXXON VALDEZ.

84. Deny the allegations of paragraph 84.

85. Deny the allegations of paragraph 85, except admit that Exxon owned the crude oil and that Exxon Shipping controlled the crude oil immediately prior to its release into the Prince William Sound.

86. Deny for lack of information or belief the allegations in paragraph 86, except admit that the oil spill was not caused solely as a result of an act of God or an act of war.

87. Deny the allegations of paragraph 87.

1. 88. Deny for lack of information or belief the  
2. allegations of paragraph 88, except admit that AS 46.03.822, to  
3. the extent applicable and not preempted, may impose strict  
4. liability on certain entities for some damages.

5.  
6. Defense to Count VIII  
7.

8. 89. Answering paragraph 89, reallege and incorporate  
9. herein by reference each and every denial, admission and  
10. allegation contained in paragraphs 1 through 88, as if set out  
11. in full.

12.  
13. 90-93. Deny the allegations in paragraphs 90 through  
14. 93.

15.  
16. Defense to Count IX  
17.

18. 94. Answering paragraph 94, reallege and incorporate  
19. herein by reference each and every admission, denial and  
20. allegation contained in paragraphs 1 through 93, as if set out  
21. in full.

22.  
23. 95-98. Deny the allegations in paragraphs 95 through  
24. 98.

1. Defense to Count X  
2.

3. 99. Answering paragraph 99, reallege and incorporate  
4. herein by reference each and every admission, denial and  
5. allegation contained in paragraphs 1 through 98, as if set out  
6. in full.  
7.

8. 100-102. Deny the allegations in paragraphs 100 through  
9. 102.  
10.

11. Defense to Count XI  
12.

13. 103. Answering paragraph 103, reallege and incorporate  
14. herein by reference each and every admission, denial and  
15. allegation contained in paragraphs 1 through 102, as if set out  
16. in full.  
17.

18. 104-107. Deny the allegations in paragraphs 104 through  
19. 107.  
20.

21. General Denial  
22.

23. 108. Deny each and every other allegation in  
24. plaintiff's complaint that was not specifically admitted herein.  
25.  
26.

1. Affirmative and Other Defenses  
2.

3. 109. The complaint and each count thereof fails to  
4. state claims upon which relief can be granted.  
5.

6. 110. Exxon and Exxon Pipeline are informed and believe  
7. that some plaintiffs lack standing to claim or recover for some  
8. of the damages alleged in the complaint.  
9.

10. 111. Independent of any legal obligation to do so,  
11. Exxon Shipping and Exxon are voluntarily paying claims for  
12. economic loss allegedly caused by the oil spill, and are  
13. incurring other expenses in connection with the oil spill.  
14. Exxon, Exxon Shipping and Exxon Pipeline are entitled to a  
15. setoff in the full amount of all such payments in the event that  
16. plaintiffs' claims encompass such expenditures.  
17.

18. 112. Certain persons engaged or employed in connection  
19. with activities related to containment and cleanup of the oil  
20. released from the EXXON VALDEZ were thereby able to avoid or  
21. mitigate damage from the interruption of fishery and other  
22. activities. Payments received by such persons are a setoff  
23. against losses, if any, resulting from the interruption of  
24. fishery and other activities.  
25.  
26.

1. 113. To the extent that persons able to mitigate  
2. damages failed to do so, defendants cannot be held liable to  
3. such persons for avoidable losses.  
4.

5. 114. Claims by some persons or entities who may be  
6. within the purported classes have been settled and released.  
7.

8. 115. Plaintiff's claims for punitive damages are un-  
9. constitutional under the United States Constitution, including,  
10. without limitation, Article I, Section 8; Amendment V; and  
11. Amendment XIV; and the Alaska Constitution, including, without  
12. limitation, Article I, Section 7 and Article I, Section 12.  
13.

14. 116. The damages alleged in the complaint were caused,  
15. in part, by the action of others not joined as defendants herein  
16. as to whom a right of contribution or indemnity should exist as  
17. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek  
18. leave of Court to join such additional persons as third party  
19. defendants on the basis of further discovery herein.  
20.

21. 117. Plaintiff's claims sound in maritime tort and are  
22. subject to applicable admiralty limits on recovery of damages  
23. for remote economic loss unaccompanied by physical injury to  
24. person or property.  
25.  
26.

1. 118. Numerous persons and entities have filed lawsuits  
2. against Exxon and Exxon Pipeline relating to the oil spill, some  
3. of whom purport to represent the plaintiffs in this action. In  
4. the event of any judgment or judgments in such other lawsuits  
5. against Exxon or Exxon Pipeline and in favor of persons whose  
6. claims are encompassed in this action, such judgment or judg-  
7. ments will be res judicata as to the claims of such persons  
8. herein.

9.  
10. 119. Numerous persons and entities have filed other  
11. lawsuits against Exxon, Exxon Pipeline and various other defen-  
12. dants, and to the extent there is a recovery in said other law-  
13. suits encompassing claims made by plaintiff herein, recovery on  
14. the claims herein is barred to the extent that it would repre-  
15. sent a multiple recovery for the same injury.

16.  
17. 120. Some or all of plaintiff's claims for damages may  
18. be barred or reduced by the doctrine of comparative negligence.

19.  
20. 121. The amount of liability, if any, for the acts  
21. alleged is controlled by statute, including, without limitation,  
22. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

23.  
24. 122. If punitive damages were to be awarded or civil  
25. or criminal penalties assessed in any other lawsuit against  
26.

1. Exxon or Exxon Pipeline relating to the oil spill, such award  
2. bars imposition of punitive damages in this action.

3.  
4. 123. Some or all of plaintiff's claims, including  
5. claims for punitive damages, are preempted by the comprehensive  
6. scheme of federal statutes and regulations, including its system  
7. of criminal and civil penalties, sanctions and remedies relevant  
8. to the oil spill, and its scheme relevant to protection of  
9. subsistence interests.

10.  
11. 124. Plaintiff's claims for punitive damages are pre-  
12. cluded by the Alaska statutory scheme for civil and criminal  
13. penalties.

14.  
15. 125. Plaintiff's claims for compensatory relief under  
16. state law are preempted by federal statutory and common law  
17. schemes for compensatory relief.

18.  
19. 126. Certain claims asserted by plaintiff are not ripe  
20. for adjudication.

21.  
22. 127. Those portions of AS 46.03 that were enacted  
23. after the oil spill constitute an unlawful bill of attainder  
24. violative of Article I, Section 10 of the United States  
25. Constitution, and if applied to Exxon or to Exxon Pipeline would  
26. also violate the due process clauses of the United States and



1. Alaska Constitutions, and the contract clause of the United  
2. States Constitution.

3.  
4. 128. Certain theories of relief may not be maintained  
5. because these theories are based upon the exercise by Exxon and  
6. Exxon Pipeline of federal and state constitutional rights to  
7. petition the federal and state governments with respect to the  
8. passage and enforcement of laws.

9.  
10. 129. Plaintiffs fail to satisfy the requirements for  
11. the injunctive relief they seek.

12.  
13. 130. Exxon and Exxon Shipping have acted pursuant to  
14. government approval and direction with respect to the  
15. containment and clean-up of the oil spill.

16.  
17. Prayer

18.  
19. WHEREFORE, Exxon and Exxon Pipeline pray for judgment  
20. as follows:

21.  
22. 1. That plaintiffs take nothing and be granted no  
23. relief, legal or equitable;

24.  
25. 2. That Exxon and Exxon Pipeline be awarded their  
26. costs in this action; and

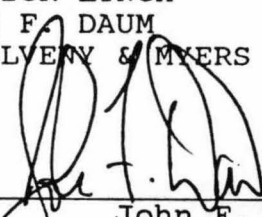
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TELEPHONE (907) 274-0666

3. For such other and further relief as the Court  
deems just and proper.

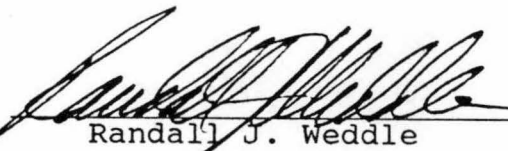
DATED: August 15, 1989

Respectfully submitted,

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Exxon Corporation and  
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FILED  
AUG 15 1989  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re	)	
	)	
The EXXON VALDEZ	)	No. A89-095 Civil
	)	(Consolidated)
This Document Relates	)	
to Action No.	)	
	)	
<u>A89-144</u>	)	
Ed Clarke, <u>et al.</u> ,	)	ANSWER OF EXXON
(P-113);	)	CORPORATION AND EXXON
	)	PIPELINE COMPANY TO
v.	)	CLASS ACTION COMPLAINT
Exxon Corporation, <u>et al.</u> ,	)	FILED APRIL 18, 1989
(D-1 through D-5; D-7; D-10	)	
<u>through D-12; D-14; D-19 through D-21)</u>	)	

Exxon Corporation, also erroneously sued herein as  
Exxon Co., USA, and for convenience identified in this answer as  
"Exxon", and Exxon Pipeline Company, for convenience, identified  
in this answer as "Exxon Pipeline", as their answer to the  
complaint herein admit, deny and allege as follows:

1. As to each and every allegation denied herein for lack  
2. of information or belief, allege that they are without knowledge  
3. or information sufficient categorically to admit or deny the  
4. said allegation at this time, wherefore they deny each said  
5. allegation using the phrase "deny for lack of information or  
6. belief."

7.  
8. 1. Answering paragraph 1, admit that plaintiff has  
9. demanded that all issues so triable be tried by a jury in this  
10. case, but do not waive their right to contest plaintiff's jury  
11. demand.

12.  
13. Defense To Count I  
14.

15. 2. Answering paragraph 2, Exxon and Exxon Pipeline  
16. are not required to respond to the allegations in paragraph 2.

17.  
18. 3. Admit the allegations of paragraph 3.

19.  
20. 4. Answering paragraph 4, admit that plaintiff  
21. purports to bring claims for relief based on the grounds  
22. alleged, but deny that plaintiff can state a claim for relief  
23. based on said grounds.  
24.  
25.  
26.

1.                   5.     Deny each and every allegation of paragraph 5,  
2.     except admit that this action may be brought in this district  
3.     under 28 U.S.C. §1391.  
4.

5.                   6.     Deny for lack of information or belief the  
6.     allegations in paragraph 6.  
7.

8.                   7.     Admit the allegations in paragraph 7.  
9.

10.                  8.     Deny the allegations of paragraph 8, except admit  
11.     that Alyeska is a Delaware corporation the stock of which is  
12.     owned by the Amerada Hess Pipeline Corporation, ARCO Pipe Line  
13.     Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company,  
14.     Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
15.     Corporation, and Unocal Pipeline Company; and that the Owners of  
16.     Alyeska are permittees under the Agreement and Grant of  
17.     Right-of-Way for Trans-Alaska Pipeline.  
18.

19.                  9.     Deny the allegations of paragraph 9 except admit  
20.     that Exxon Corporation is a corporation organized under the laws  
21.     of the state of New Jersey, with its principal place of business  
22.     in New York at 1251 Avenue of the Americas, New York, New York  
23.     10021, and that the principal business of Exxon Corporation is  
24.     energy, involving exploration for the production of crude oil,  
25.     natural gas and petroleum products and exploration for the  
26.     mining and sale of coal.

1. 10. Deny the allegations of paragraph 10, except  
2. admit that Exxon Shipping is a Delaware Corporation, that Exxon  
3. Corporation owns all of Exxon Shipping's stock, that the  
4. principal place of business of Exxon Shipping is Texas and that  
5. it is the owner and operator of the Exxon Valdez.

6.  
7. 11. Deny the allegations of paragraph 11, except  
8. admit that Exxon Company, USA is an unincorporated division of  
9. Exxon Corporation responsible for the operation of Exxon  
10. Corporation's energy business within the United States, and that  
11. its headquarters is at 800 Bell Street, Houston, Texas.

12.  
13. 12-17. Answering paragraphs 12 through 17, admit that  
14. plaintiff purports to define certain terms, but deny the  
15. allegations and deny that any subsequent use of those terms in  
16. the complaint is necessarily accurate or appropriate.

17.  
18. 18. Deny the allegations of paragraph 18, except  
19. admit that on Thursday evening, March 23, 1989, the EXXON  
20. VALDEZ, which is approximately 987 feet long and approximately  
21. 211,000 deadweight tons, left the Port of Valdez, Alaska, the  
22. southern terminal facility of the Trans-Alaska Pipeline System,  
23. bound for Long Beach, California.

24.  
25. 19. Deny the allegations in paragraph 19, except  
26. admit that the EXXON VALDEZ was loaded with approximately 1.2

1. million barrels of crude oil which had been shipped from  
2. Alaska's North Slope through the Trans-Alaska Pipeline.  
3.

4.           20.    Deny the allegations of paragraph 20, except  
5. admit that the EXXON VALDEZ passed through the Valdez Narrows  
6. under the direction of a harbor pilot, who subsequently  
7. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
8. of the vessel when the harbor pilot disembarked, and that  
9. Captain Hazelwood's duties as Master of the vessel were within  
10. the scope of his employment by Exxon Shipping.  
11.

12.           21.    Deny the allegations of paragraph 21, except  
13. admit that Captain Hazelwood left the bridge, leaving Gregory  
14. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
15. bridge, and that the duties of Cousins as third mate and Kagan  
16. as helmsman were within the scope of their employment by Exxon  
17. Shipping.  
18.

19.           22.    Deny the allegations of paragraph 22, except  
20. admit that the U.S. Coast Guard gave the EXXON VALDEZ permission  
21. to leave the southbound shipping lane for reasons that include  
22. earlier reports that it contained ice that had calved from a  
23. glacier to the northwest.  
24.  
25.  
26.



1. 23. Deny the allegations of paragraph 23, except  
2. admit that the vessel travelled through the northbound lane and  
3. subsequently struck Bligh Reef.  
4.

5. 24. Deny the allegations of paragraph 24, except  
6. admit that the vessel was outside the channel when it struck  
7. Bligh Reef, which punctured some of the tanks and damaged a  
8. portion of the hull.  
9.

10. 25-26. Deny the allegations of paragraphs 25 and 26.  
11.

12. 27. Deny the allegations of paragraph 27, except  
13. admit that the vessel was loaded with approximately 53,000,000  
14. gallons of crude oil, that the grounding on Bligh Reef punctured  
15. eight of the vessel's oil tanks, causing the largest United  
16. States oil spill from a single vessel, and that approximately  
17. 258,000 barrels of crude oil were spilled into Prince William  
18. Sound.  
19.

20. 28. Deny the allegations of paragraph 28.  
21.

22. 29-30. Deny for lack of information or belief the  
23. allegations of paragraphs 29 and 30.  
24.

25. 31. Deny the allegations of paragraph 31, except  
26. admit that some of the discharged crude oil has moved to areas



1. in the vicinity of the Kodiak Island Archipelago, and that  
2. islands in that archipelago are a habitat for water birds, sea  
3. and land mammals and fish and shellfish.

4.  
5. 32. Deny the allegations of paragraph 32.

6.  
7. 33-41. Deny for lack of information or belief the  
8. allegations of paragraphs 33 through 41, except admit that  
9. plaintiff purports to bring an action on behalf of a class of  
10. persons and entities described in the complaint.

11.  
12. 42. Answering paragraph 42, reallege and incorporate  
13. herein by reference each and every admission, denial and  
14. allegation contained in paragraphs 1 through 41, as if set out  
15. in full.

16.  
17. 43-47. Answering paragraphs 43 through 47, Exxon and  
18. Exxon Pipeline are not required to answer allegations made  
19. against Alyeska. If response were required, Exxon and Exxon  
20. Pipeline deny the allegations in paragraph 43 through 47.

21.  
22. Defense to Count II

23.  
24. 48. Answering paragraph 48, reallege and incorporate  
25. herein by reference each and every admission, denial and  
26.

1. allegation contained in paragraphs 1 through 47, as if set out  
2. in full.

3.  
4. 49. Deny the allegations of paragraph 49, except  
5. admit that Exxon Shipping is the owner and operator of the EXXON  
6. VALDEZ.

7.  
8. 50. Deny for lack of information or belief the  
9. allegations of paragraph 50.

10.  
11. 51. Deny the allegations of paragraph 51.

12.  
13. 52. Deny for lack of information or belief the  
14. allegations of paragraph 52, except admit that the events about  
15. which plaintiff complains caused some damages to sea otters and  
16. birds.

17.  
18. 53. Deny the allegations of Paragraph 53, except  
19. admit that 43 U.S.C. Section 1653(c), to the extent applicable,  
20. may impose upon certain entities strict liability for certain  
21. damages.

22.  
23. Defense to Count III

24.  
25. 54. Answering paragraph 54, reallege and incorporate  
26. herein by reference each and every admission, denial and

1. allegation contained in paragraphs 1 through 53, as if set out  
2. in full.

3.  
4. 55-62. Deny the allegations of paragraphs 55 through  
5. 62 insofar as they pertain to Exxon and Exxon Pipeline and deny  
6. for lack of information or belief said allegations insofar as  
7. they pertain to Alyeska or other defendants.

8.  
9. 63-64. Deny the allegations of paragraphs 63 and 64.

10.  
11. 65. Deny the allegations of paragraph 65 insofar as  
12. they pertain to Exxon and Exxon Pipeline and deny for lack of  
13. information or belief said allegations insofar as they pertain  
14. to other defendants.

15.  
16. 66-67. Deny the allegations of paragraphs 66 and 67.

17.  
18. Defense to Count IV

19.  
20. 68. Answering paragraph 68, reallege and incorporate  
21. herein by reference each and every admission, denial and  
22. allegation contained in paragraphs 1 through 67, as if set out  
23. in full.

24.  
25. 69. Deny for lack of information or belief the  
26. allegations of paragraph 69, except admit that public records

1. purport to show indicate that Captain Hazelwood has been  
2. convicted for driving while under the influence of alcohol.

3.  
4. 70. Deny the allegations of paragraph 70.

5.  
6. 71-77. Deny the allegations of paragraphs 71 through  
7. 77.

8.  
9. Defense to Count V

10.  
11. 78. Answering paragraph 78, reallege and incorporate  
12. herein by reference each and every admission, denial and  
13. allegation contained in paragraphs 1 through 77, as if set out  
14. in full.

15.  
16. 79. Deny the allegations of paragraph 79.

17.  
18. Defense to Count VI

19.  
20. 80. Answering paragraph 80, reallege and incorporate  
21. herein by reference each and every denial, admission and  
22. allegation contained in paragraphs 1 through 79, as if set out  
23. in full.

24.  
25. 81. Deny the allegations of paragraph 81.

1. Defense to Count VII  
2.

3.           82.     Answering paragraph 82, reallege and incorporate  
4. herein by reference each and every admission, denial and  
5. allegation contained in paragraphs 1 through 81, as if set out  
6. in full.

7.  
8.           83.     Deny the allegations of paragraph 83, except  
9. admit that A.S. 46.03.826(4)(B) defines oil to be a hazardous  
10. substance and that approximately 258,000 barrels of crude oil  
11. were discharged into the Prince William Sound as a result of the  
12. grounding of the EXXON VALDEZ.

13.  
14.           84.     Deny the allegations of paragraph 84.  
15.

16.           85.     Deny the allegations of paragraph 85, except  
17. admit that Exxon owned the crude oil and that Exxon Shipping  
18. controlled the crude oil immediately prior to its release into  
19. the Prince William Sound.

20.  
21.           86.     Deny for lack of information or belief the  
22. allegations in paragraph 86, except admit that the oil spill was  
23. not caused solely as a result of an act of God or an act of war.

24.  
25.           87.     Deny the allegations of paragraph 87.  
26.

1. 88. Deny for lack of information or belief the  
2. allegations of paragraph 88, except admit that AS 46.03.822, to  
3. the extent applicable and not preempted, may impose strict  
4. liability on certain entities for some damages.  
5.

6. Defense to Count VIII  
7.

8. 89. Answering paragraph 89, reallege and incorporate  
9. herein by reference each and every denial, admission and  
10. allegation contained in paragraphs 1 through 88, as if set out  
11. in full.  
12.

13. 90-93. Deny the allegations in paragraphs 90 through  
14. 93.  
15.

16. Defense to Count IX  
17.

18. 94. Answering paragraph 94, reallege and incorporate  
19. herein by reference each and every admission, denial and  
20. allegation contained in paragraphs 1 through 93, as if set out  
21. in full.  
22.

23. 95-98. Deny the allegations in paragraphs 95 through  
24. 98.  
25.  
26.

1. Defense to Count X

2.  
3. 99. Answering paragraph 99, reallege and incorporate  
4. herein by reference each and every admission, denial and  
5. allegation contained in paragraphs 1 through 98, as if set out  
6. in full.

7.  
8. 100-102. Deny the allegations in paragraphs 100 through  
9. 102.

10.  
11. Defense to Count XI

12.  
13. 103. Answering paragraph 103, reallege and incorporate  
14. herein by reference each and every admission, denial and  
15. allegation contained in paragraphs 1 through 102, as if set out  
16. in full.

17.  
18. 104-107. Deny the allegations in paragraphs 104 through  
19. 107.

20.  
21. General Denial

22.  
23. 108. Deny each and every other allegation in  
24. plaintiff's complaint that was not specifically admitted herein.

1. Affirmative and Other Defenses

2.  
3. 109. The complaint and each count thereof fails to  
4. state claims upon which relief can be granted.  
5.

6. 110. Exxon and Exxon Pipeline are informed and believe  
7. that plaintiff lacks standing to claim or recover for some  
8. damages based on the allegations of the complaint.  
9.

10. 111. Independent of any legal obligation to do so,  
11. Exxon Shipping and Exxon are voluntarily paying claims for  
12. economic loss allegedly caused by the oil spill, and are  
13. incurring other expenses in connection with the oil spill.  
14. Exxon, Exxon Shipping and Exxon Pipeline are entitled to a  
15. setoff in the full amount of all such payments in the event that  
16. plaintiffs' claims encompass such expenditures.  
17.

18. 112. Certain persons engaged or employed in connection  
19. with activities related to containment and cleanup of the oil  
20. released from the EXXON VALDEZ were thereby able to avoid or  
21. mitigate damage from the interruption of fishery and other  
22. activities. Payments received by such persons are a setoff  
23. against losses, if any, resulting from the interruption of  
24. fishery and other activities.  
25.  
26.



1. 113. To the extent that persons able to mitigate  
2. damages failed to do so, defendants cannot be held liable to  
3. such persons for avoidable losses.  
4.

5. 114. Claims by some persons or entities who may be  
6. within the purported classes have been settled and released.  
7.

8. 115. Plaintiff's claims for punitive damages are un-  
9. constitutional under the United States Constitution, including,  
10. without limitation, Article I, Section 8; Amendment V; and  
11. Amendment XIV; and the Alaska Constitution, including, without  
12. limitation, Article I, Section 7 and Article I, Section 12.  
13.

14. 116. The damages alleged in the complaint were caused,  
15. in part, by the action of others not joined as defendants herein  
16. as to whom a right of contribution or indemnity should exist as  
17. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek  
18. leave of Court to join such additional persons as third party  
19. defendants on the basis of further discovery herein.  
20.

21. 117. Plaintiff's claims sound in maritime tort and are  
22. subject to applicable admiralty limits on recovery of damages  
23. for remote economic loss unaccompanied by physical injury to  
24. person or property.  
25.  
26.

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1. 118. Numerous persons and entities have filed lawsuits  
2. against Exxon and Exxon Pipeline relating to the oil spill, some  
3. of whom purport to represent the plaintiffs in this action. In  
4. the event of any judgment or judgments in such other lawsuits  
5. against Exxon or Exxon Pipeline and in favor of persons whose  
6. claims are encompassed in this action, such judgment or judg-  
7. ments will be res judicata as to the claims of such persons  
8. herein.

9.  
10. 119. Numerous persons and entities have filed other  
11. lawsuits against Exxon, Exxon Pipeline and various other defen-  
12. dants, and to the extent there is a recovery in said other law-  
13. suits encompassing claims made by plaintiffs herein, recovery on  
14. the claims herein is barred to the extent that it would repre-  
15. sent a multiple recovery for the same injury.

16.  
17. 120. Some or all of plaintiff's claims for damages may  
18. be barred or reduced by the doctrine of comparative negligence.

19.  
20. 121. The amount of liability, if any, for the acts  
21. alleged is controlled by statute, including, without limitation,  
22. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

23.  
24. 122. If punitive damages were to be awarded or civil  
25. or criminal penalties assessed in any other lawsuit against  
26.

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1. Exxon or Exxon Pipeline relating to the oil spill, such award  
2. bars imposition of punitive damages in this action.

3.  
4. 123. Some or all of plaintiff's claims, including  
5. claims for punitive damages, are preempted by the comprehensive  
6. scheme of federal statutes and regulations, including its system  
7. of criminal and civil penalties, sanctions and remedies relevant  
8. to the oil spill, and its scheme relevant to the protection of  
9. subsistence interests.

10.  
11. 124. Plaintiff's claims for punitive damages are pre-  
12. cluded by the Alaska statutory scheme for civil and criminal  
13. penalties.

14.  
15. 125. Plaintiff's claims for compensatory relief under  
16. state law are preempted by federal statutory and common law  
17. schemes for compensatory relief.

18.  
19. 126. Certain claims asserted by plaintiff are not ripe  
20. for adjudication.

21.  
22. 127. Those portions of AS 46.03 that were enacted  
23. after the oil spill constitute an unlawful bill of attainder  
24. violative of Article I, Section 10 of the United States  
25. Constitution, and if applied to Exxon or to Exxon Pipeline would  
26. also violate the due process clauses of the United States and

1. Alaska Constitutions, and the contract clause of the United  
2. States Constitution.

3.  
4. 128. Certain theories of relief may not be maintained  
5. because these theories are based upon the exercise by Exxon and  
6. Exxon Pipeline of federal and state constitutional rights to  
7. petition the federal and state governments with respect to the  
8. passage and enforcement of laws.

9.  
10. 129. Plaintiffs fail to satisfy the requirements for  
11. the injunctive relief they seek.

12.  
13. 130. Exxon and Exxon Shipping have acted pursuant to  
14. government approval and direction with regard to the containment  
15. and clean-up of the oil spill.

16.  
17. Prayer

18.  
19. WHEREFORE, Exxon and Exxon Pipeline pray for judgment  
20. as follows:

21.  
22. 1. That plaintiff take nothing and be granted no  
23. relief, legal or equitable;

24.  
25. 2. That Exxon and Exxon Pipeline be awarded their  
26. costs in this action; and

1. 3. For such other and further relief as the Court  
2. deems just and proper.  
3.

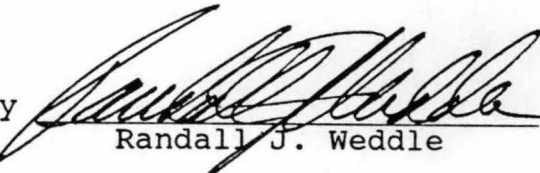
4. DATED: August 15, 1989

Respectfully submitted,

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11. Attorneys for Defendants  
12. Exxon Corporation and  
13. Exxon Pipeline Company

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re )

The EXXON VALDEZ )

No. A89-095 Civil  
(Consolidated)

This Document Relates )  
to Action No. )

A89-139 )

Old Harbor Native Corporation, )  
et al., (P-95 and P-96); )  
v. )

ANSWER OF EXXON  
CORPORATION AND EXXON  
PIPELINE COMPANY TO  
CLASS ACTION COMPLAINT  
FILED APRIL 19, 1989

Exxon Corporation, et al., )  
(D-1 through D-5; D-7; D-10 )  
through D-12; D-14; D-19 through D-21) )

Exxon Corporation, also erroneously sued herein as  
Exxon Co., USA, and for convenience identified in this answer as  
"Exxon", and Exxon Pipeline Company, for convenience, identified  
in this answer as "Exxon Pipeline", as their answer to the  
complaint herein admit, deny and allege as follows:

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

1. As to each and every allegation denied herein for lack  
2. of information or belief, allege that they are without knowledge  
3. or information sufficient categorically to admit or deny the  
4. said allegation at this time, wherefore they deny each said  
5. allegation using the phrase "deny for lack of information or  
6. belief."

7.  
8. 1. Answering paragraph 1, admit that plaintiffs have  
9. demanded that all issues so triable be tried by a jury in this  
10. case, but do not waive their right to contest plaintiffs' jury  
11. demand.

12.  
13. Defense To Count I  
14.

15. 2. Answering paragraph 2, Exxon and Exxon Pipeline  
16. are not required to respond to the allegations in paragraph 2.  
17.

18. 3. Admit the allegations of paragraph 3.  
19.

20. 4. Answering paragraph 4, admit that plaintiffs  
21. purport to bring claims for relief based on the grounds alleged,  
22. but deny that plaintiffs can state a claim for relief based on  
23. said grounds.  
24.  
25.  
26.



1.           5.    Deny each and every allegation of paragraph 5,  
2. except admit that this action may be brought in this district  
3. under 28 U.S.C. §1391.  
4.

5.           6.    Deny for lack of information or belief the  
6. allegations in paragraph 6.  
7.

8.           7.    Admit the allegations in paragraph 7.  
9.

10.          8.    Deny the allegations of paragraph 8, except admit  
11. that Alyeska is a Delaware corporation the stock of which is  
12. owned by the Amerada Hess Pipeline Corporation, ARCO Pipe Line  
13. Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company,  
14. Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
15. Corporation, and Unocal Pipeline Company; and that the Owners of  
16. Alyeska are permittees under the Agreement and Grant of  
17. Right-of-Way for Trans-Alaska Pipeline.  
18.

19.          9.    Deny the allegations of paragraph 9 except admit  
20. that Exxon Corporation is a corporation organized under the laws  
21. of the state of New Jersey, with its principal place of business  
22. in New York at 1251 Avenue of the Americas, New York, New York  
23. 10021, and that the principal business of Exxon Corporation is  
24. energy, involving exploration for the production of crude oil,  
25. natural gas and petroleum products and exploration for the  
26. mining and sale of coal.



1. 10. Deny the allegations of paragraph 10, except  
2. admit that Exxon Shipping is a Delaware Corporation, that Exxon  
3. Corporation owns all of Exxon Shipping's stock, that the  
4. principal place of business of Exxon Shipping is Texas and that  
5. it is the owner and operator of the Exxon Valdez.

6.  
7. 11. Deny the allegations of paragraph 11, except  
8. admit that Exxon Company, USA is an unincorporated division of  
9. Exxon Corporation responsible for the operation of Exxon  
10. Corporation's energy business within the United States, and that  
11. its headquarters is at 800 Bell Street, Houston, Texas.

12.  
13. 12-17. Answering paragraphs 12 through 17, admit that  
14. plaintiffs purport to define certain terms, but deny the  
15. allegations and deny that any subsequent use of those terms in  
16. the complaint is necessarily accurate or appropriate.

17.  
18. 18. Deny the allegations of paragraph 18, except  
19. admit that on Thursday evening, March 23, 1989, the EXXON  
20. VALDEZ, which is approximately 987 feet long and weighing  
21. approximately 211,000 deadweight tons, left the Port of Valdez,  
22. Alaska, the southern terminal facility of the Trans-Alaska  
23. Pipeline System, bound for Long Beach, California.

24.  
25. 19. Deny the allegations in paragraph 19, except  
26. admit that the EXXON VALDEZ was loaded with approximately 1.2

1. million barrels of crude oil which had been shipped from  
2. Alaska's North Slope through the Trans-Alaska Pipeline.  
3.

4.           20.    Deny the allegations of paragraph 20, except  
5. admit that the EXXON VALDEZ passed through the Valdez Narrows  
6. under the direction of a harbor pilot, who subsequently  
7. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
8. of the vessel when the harbor pilot disembarked, and that  
9. Captain Hazelwood's duties as Master of the vessel were within  
10. the scope of his employment by Exxon Shipping.  
11.

12.           21.    Deny the allegations of paragraph 21, except  
13. admit that Captain Hazelwood left the bridge, leaving Gregory  
14. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
15. bridge, and that the duties of Cousins as third mate and Kagan  
16. as helmsman were within the scope of their employment by Exxon  
17. Shipping.  
18.

19.           22.    Deny the allegations of paragraph 22, except  
20. admit that the U.S. Coast Guard gave the EXXON VALDEZ permission  
21. to leave the southbound shipping lane for reasons that include  
22. earlier reports that it contained ice that had calved from a  
23. glacier to the northwest.  
24.  
25.  
26.

1. 23. Deny the allegations of paragraph 23, except  
2. admit that the vessel travelled through the northbound lane and  
3. subsequently struck Bligh Reef.

4.  
5. 24. Deny the allegations of paragraph 24, except  
6. admit that the vessel was outside the channel when it struck  
7. Bligh Reef, which punctured some of the tanks and damaged a  
8. portion of the hull.

9.  
10. 25-26. Deny the allegations of paragraphs 25 and 26.

11.  
12. 27. Deny the allegations of paragraph 27, except  
13. admit that the vessel was loaded with approximately 53,000,000  
14. gallons of crude oil, that the grounding on Bligh Reef punctured  
15. eight of the vessel's oil tanks, causing the largest United  
16. States oil spill from a single vessel, and that approximately  
17. 258,000 barrels of crude oil were spilled into Prince William  
18. Sound.

19.  
20. 28. Deny the allegations of paragraph 28.

21.  
22. 29-30. Deny for lack of information or belief the  
23. allegations of paragraphs 29 and 30.

24.  
25. 31. Deny the allegations of paragraph 31, except  
26. admit that some of the discharged crude oil has moved to areas

1. in the vicinity of the Kodiak Island Archipelago, and that  
2. islands in that archipelago are a habitat for water birds, sea  
3. and land mammals and fish and shellfish.

4.  
5. 32. Deny the allegations of paragraph 32.

6.  
7. 33-41. Deny for lack of information or belief the  
8. allegations of paragraphs 33 through 41, except admit that  
9. various plaintiffs purport to bring an action on behalf of  
10. classes of persons and entities described in the complaint.

11.  
12. 42. Answering paragraph 42, reallege and incorporate  
13. herein by reference each and every admission, denial and  
14. allegation contained in paragraphs 1 through 41, as if set out  
15. in full.

16.  
17. 43-47. Answering paragraphs 43 through 47, Exxon and  
18. Exxon Pipeline are not required to answer allegations made  
19. against Alyeska. If response were required, Exxon and Exxon  
20. Pipeline deny the allegations in paragraph 43 through 47.

21.  
22. Defense to Count II

23.  
24. 48. Answering paragraph 48, reallege and incorporate  
25. herein by reference each and every admission, denial and

1. allegation contained in paragraphs 1 through 47, as if set out  
2. in full.

3.  
4. 49. Deny the allegations of paragraph 49, except  
5. admit that Exxon Shipping is the owner and operator of the EXXON  
6. VALDEZ.

7.  
8. 50. Deny for lack of information or belief the  
9. allegations of paragraph 50.

10.  
11. 51. Deny the allegations of paragraph 51.

12.  
13. 52. Deny for lack of information or belief the  
14. allegations of paragraph 52, except admit that the events about  
15. which plaintiffs complain caused some damages to sea otters and  
16. birds.

17.  
18. 53. Deny the allegations of Paragraph 53, except  
19. admit that 43 U.S.C. Section 1653(c), to the extent applicable,  
20. may impose upon certain entities strict liability for certain  
21. damages.

22.  
23. Defense to Count III

24.  
25. 54. Answering paragraph 54, reallege and incorporate  
26. herein by reference each and every admission, denial and

1. allegation contained in paragraphs 1 through 53, as if set out  
2. in full.

3.  
4. 55-62. Deny the allegations of paragraphs 55  
5. through 62 insofar as they pertain to Exxon and Exxon Pipeline  
6. and deny for lack of information or belief said allegations  
7. insofar as they pertain to Alyeska or other defendants.

8.  
9. 63-64. Deny the allegations of paragraphs 63 and 64.

10.  
11. 65. Deny the allegations of paragraph 65 insofar as  
12. they pertain to Exxon and Exxon Pipeline and deny for lack of  
13. information or belief said allegations insofar as they pertain  
14. to other defendants.

15.  
16. 66-67. Deny the allegations of paragraphs 66 and 67.

17.  
18. Defense to Count IV

19.  
20. 68. Answering paragraph 68, reallege and incorporate  
21. herein by reference each and every admission, denial and  
22. allegation contained in paragraphs 1 through 67, as if set out  
23. in full.

24.  
25. 69. Deny for lack of information or belief the  
26. allegations of paragraph 69, except admit that public records

1. purport to show that Captain Hazelwood has been convicted for  
2. driving while under the influence of alcohol.

3.  
4.           70.    Deny the allegations of paragraph 70.

5.  
6.           71-77. Deny the allegations of paragraphs 71 through  
7. 77.

8.  
9.   Defense to Count V

10.  
11.           78.    Answering paragraph 78, reallege and incorporate  
12. herein by reference each and every admission, denial and  
13. allegation contained in paragraphs 1 through 77, as if set out  
14. in full.

15.  
16.           79.    Deny the allegations of paragraph 79.

17.  
18.   Defense to Count VI

19.  
20.           80.    Answering paragraph 80, reallege and incorporate  
21. herein by reference each and every denial, admission and  
22. allegation contained in paragraphs 1 through 79, as if set out  
23. in full.

24.  
25.           81.    Deny the allegations of paragraph 81.

26.



Defense to Count VII

82. Answering paragraph 82, reallege and incorporate herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 81, as if set out in full.

83. Deny the allegations of paragraph 83, except admit that AS 46.03.826(4)(B) defines oil to be a hazardous substance and that approximately 258,000 barrels of crude oil were discharged into the Prince William Sound as a result of the grounding of the EXXON VALDEZ.

84. Deny the allegations of paragraph 84.

85. Deny the allegations of paragraph 85, except admit that Exxon owned the crude oil and that Exxon Shipping controlled the crude oil immediately prior to its release into the Prince William Sound.

86. Deny for lack of information or belief the allegations in paragraph 86, except admit that the oil spill was not caused solely as a result of an act of God or an act of war.

87. Deny the allegations of paragraph 87.



1. 88. Deny for lack of information or belief the  
2. allegations of paragraph 88, except admit that A.S. 46.03.822,  
3. to the extent applicable and not preempted, may impose strict  
4. liability on certain entities for some damages.

5.  
6. Defense to Count VIII  
7.

8. 89. Answering paragraph 89, reallege and incorporate  
9. herein by reference each and every denial, admission and  
10. allegation contained in paragraphs 1 through 88, as if set out  
11. in full.

12.  
13. 90-93. Deny the allegations in paragraphs 90 through  
14. 93.

15.  
16. Defense to Count IX  
17.

18. 94. Answering paragraph 94, reallege and incorporate  
19. herein by reference each and every admission, denial and  
20. allegation contained in paragraphs 1 through 93, as if set out  
21. in full.

22.  
23. 95-98. Deny the allegations in paragraphs 95 through  
24. 98.

1. Defense to Count X

2.  
3.           99.     Answering paragraph 99, reallege and incorporate  
4. herein by reference each and every admission, denial and  
5. allegation contained in paragraphs 1 through 98, as if set out  
6. in full.

7.  
8.           100-102. Deny the allegations in paragraphs 100 through  
9. 102.

10.  
11. Defense to Count XI

12.  
13.           103.     Answering paragraph 103, reallege and incorporate  
14. herein by reference each and every admission, denial and  
15. allegation contained in paragraphs 1 through 102, as if set out  
16. in full.

17.  
18.           104-107. Deny the allegations in paragraphs 104 through  
19. 107.

20.  
21. General Denial

22.  
23.           108.     Deny each and every other allegation in plain-  
24. tiffs' complaint that was not specifically admitted herein.

1. Affirmative and Other Defenses

2.  
3. 109. The complaint and each count thereof fails to  
4. state claims upon which relief can be granted.  
5.

6. 110. Exxon and Exxon Pipeline are informed and believe  
7. that some plaintiffs lack standing to claim or recover for some  
8. of the damages alleged in the complaint.  
9.

10. 111. Independent of any legal obligation to do so,  
11. Exxon Shipping and Exxon are voluntarily paying claims for loss  
12. allegedly caused by the oil spill, and are incurring other  
13. expenses in connection with the oil spill. Exxon, Exxon Ship-  
14. ping and Exxon Pipeline are entitled to a setoff in the full  
15. amount of all such payments in the event that plaintiffs' claims  
16. encompass such expenditures.  
17.

18. 112. Certain persons engaged or employed in connection  
19. with activities related to containment and cleanup of the oil  
20. released from the EXXON VALDEZ were thereby able to avoid or  
21. mitigate damage from the interruption of fishery and other  
22. activities. Payments received by such persons are a setoff  
23. against losses, if any, resulting from the interruption of  
24. fishery and other activities.  
25.  
26.

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25.  
26.

113. To the extent that persons able to mitigate damages failed to do so, defendants cannot be held liable to such persons for avoidable losses.

114. Claims by some persons or entities who may be within the purported classes have been settled and released.

115. Plaintiffs' claims for punitive damages are unconstitutional under the United States Constitution, including, without limitation, Article I, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, Section 7 and Article I, Section 12.

116. The damages alleged in the complaint were caused, in part, by the action of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery herein.

117. Plaintiffs' claims sound in maritime tort and are subject to applicable admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

1. 118. Numerous persons and entities have filed lawsuits  
2. against Exxon and Exxon Pipeline relating to the oil spill, some  
3. of whom purport to represent the plaintiffs in this action. In  
4. the event of any judgment or judgments in such other lawsuits  
5. against Exxon or Exxon Pipeline and in favor of persons whose  
6. claims are encompassed in this action, such judgment or judg-  
7. ments will be res judicata as to the claims of such persons  
8. herein.

9.  
10. 119. Numerous persons and entities have filed other  
11. lawsuits against Exxon, Exxon Pipeline and various other defen-  
12. dants, and to the extent there is a recovery in said other law-  
13. suits encompassing claims made by plaintiffs herein, recovery on  
14. the claims herein is barred to the extent that it would repre-  
15. sent a multiple recovery for the same injury.

16.  
17. 120. Some or all of plaintiffs' claims for damages may  
18. be barred or reduced by the doctrine of comparative negligence.

19.  
20. 121. The amount of liability, if any, for the acts  
21. alleged is controlled by statute, including, without limitation,  
22. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

23.  
24. 122. If punitive damages were to be awarded or civil  
25. or criminal penalties assessed in any other lawsuit against  
26.

1. Exxon or Exxon Pipeline relating to the oil spill, such award  
2. bars imposition of punitive damages in this action.

3.  
4. 123. Some or all of plaintiffs' claims, including  
5. claims for punitive damages, are preempted by the comprehensive  
6. scheme of statutes and federal regulations, including its system  
7. of criminal and civil penalties, sanctions and remedies relevant  
8. to the oil spill, and its scheme relevant to protection of  
9. subsistence interests.

10.  
11. 124. Plaintiffs' claims for punitive damages are pre-  
12. cluded by the Alaska statutory scheme for civil and criminal  
13. penalties.

14.  
15. 125. Plaintiffs' claims for compensatory relief under  
16. state law are preempted by federal statutory and common law  
17. schemes for compensatory relief.

18.  
19. 126. Certain claims asserted by plaintiffs are not  
20. ripe for adjudication.

21.  
22. 127. Those portions of AS 46.03 that were enacted  
23. after the oil spill constitute an unlawful bill of attainder  
24. violative of Article I, Section 10 of the United States  
25. Constitution, and if applied to Exxon or to Exxon Pipeline would  
26. also violate the due process clauses of the United States and

1. Alaska Constitutions, and the contract clause of the United  
2. States Constitution.

3.  
4. 128. Certain theories of relief may not be maintained  
5. because these theories are based upon the exercise by Exxon and  
6. Exxon Pipeline of federal and state constitutional rights to  
7. petition the federal and state governments with respect to the  
8. passage and enforcement of laws.

9.  
10. 129. Plaintiffs fail to satisfy the requirements for  
11. the injunctive relief they seek.

12.  
13. 130. Exxon and Exxon Shipping have acted pursuant to  
14. government approval and direction with respect to the  
15. containment and clean-up of the oil spill.

16.  
17. 131. ANILCA, 16 U.S.C. § 3111, et seq. provides the  
18. exclusive federal vehicle for Alaskan natives and rural Alaskans  
19. to seek protection from harm, attributable to this oil spill, to  
20. federally recognized subsistence interests.

21.  
22. 132. The corporate plaintiffs herein lack the capacity  
23. to commence and maintain this action insofar as they have failed  
24. to allege and prove that they have paid their Alaska biennial  
25. corporate taxes last due and have filed biennial reports for the  
26. last reporting period.



1. Prayer

2.  
3. WHEREFORE, Exxon and Exxon Pipeline pray for judgment  
4. as follows:

5.  
6. 1. That plaintiffs take nothing and be granted no  
7. relief, legal or equitable;

8.  
9. 2. That Exxon and Exxon Pipeline be awarded their  
10. costs in this action; and

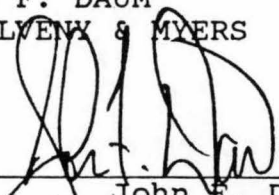


1. 3. For such other and further relief as the Court  
2. deems just and proper.  
3.

4. DATED: August 15, 1989

Respectfully submitted,

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JOHN F. DAUM  
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By   
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Exxon Corporation

FILED  
AUG 15 1989  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ALASKA

15.	In re	)	No. A89-095
		)	(Consolidated)
16.	The EXXON VALDEZ	)	
		)	ANSWER OF EXXON CORPORATION
17.	This Document Relates	)	TO FIRST AMENDED COMPLAINT
	To Action No.:	)	FILED MAY 8, 1989 AND
18.		)	REMOVED TO FEDERAL COURT ON
	<u>A89-200</u>	)	MAY 23, 1989
19.		)	
	ROBERT A. MAXWELL, <u>et al.</u>	)	
20.	(P-165 and P-166);	)	
		)	
21.	v.	)	
		)	
22.	EXXON CORPORATION, <u>et al.</u> ,	)	
	(D-1 through D-4).	)	
23.		)	

1. Exxon Corporation, for convenience identified in this  
2. answer as "Exxon", as its answer to the complaint herein admits,  
3. denies and alleges as follows:  
4.

5. As to each and every allegation denied herein for lack  
6. of information or belief, Exxon alleges that it is without  
7. knowledge or information sufficient categorically to admit or  
8. deny the said allegation at this time, wherefore it denies each  
9. said allegation using the phrase "denies for lack of information  
10. or belief."  
11.

12. Defense To First Cause of Action  
13.

14. 1. Denies for lack of information or belief each and  
15. every allegation of paragraph 1.  
16.

17. 2. Denies each and every allegation of paragraph 2,  
18. except admits that Exxon is a corporation organized under the  
19. laws of the State of New Jersey with its principal place of  
20. business at 1251 Avenue of the Americas, New York, New York  
21. 10020, and, that the principal business of Exxon is energy,  
22. involving exploration for and production of crude oil, natural  
23. gas and petroleum products, and exploration for and mining and  
24. sale of coal.  
25.  
26.

1. 3. Denies each and every allegation of paragraph 3,  
2. except admits that Exxon Shipping Company ("Exxon Shipping") is  
3. a Delaware Corporation with its principal place of business in  
4. the State of Texas, that Exxon Shipping is the owner and  
5. operator of the vessel known as the EXXON VALDEZ, that Exxon  
6. Shipping does business in the State of Alaska and that Exxon  
7. owns all of Exxon Shipping's stock.

8.  
9. 4. Admits the allegations of paragraph 4.

10.  
11. 5. Denies each and every allegation of paragraph 5,  
12. except admits that Alyeska Pipeline Service Co. ("Alyeska") is a  
13. Delaware Corporation, that Alyeska is owned by Amerada Hess  
14. Pipeline Corporation, ARCO Pipe Line Company, B.P. Pipelines  
15. (Alaska), Inc., Exxon Pipeline Company ("Exxon Pipeline"), Mobil  
16. Alaska Pipeline Company, Phillips Alaska Pipeline Corporation  
17. and Unocal Pipeline Company, that the owners of Alyeska are  
18. permittees under the Agreement and Grant of Right-of-Way for  
19. Trans-Alaska Pipeline and that Alyeska operates the Trans-Alaska  
20. Pipeline System, including the terminal facility at the Port of  
21. Valdez where the EXXON VALDEZ was loaded with North Slope crude  
22. oil on or about March 23, 1989.

23.  
24. 6. Admits the allegations of paragraph 6.  
25.  
26.

1. 7. Denies for lack of information or belief each and  
2. every allegation of paragraph 7, except admits that on March 23  
3. and March 24, 1989 the EXXON VALDEZ was under the command of  
4. Joseph J. Hazelwood ("Hazelwood"), that the EXXON VALDEZ  
5. departed the Port of Valdez on March 23, 1989 under the  
6. direction of a licensed harbor pilot, that, after navigating the  
7. Valdez narrows the pilot disembarked, that thereafter Hazelwood  
8. departed the bridge leaving Gregory Cousins ("Cousins"), the  
9. third mate, and Robert Kagan, the helmsman, on the bridge, that  
10. Hazelwood Cousins and Kagan were employees of Exxon Shipping,  
11. and that their duties on the vessel were within the scope of  
12. their employment.  
13.

14. 8. Denies for lack of information or belief each and  
15. every allegation of paragraph 8, except admits that the vessel  
16. received Coast Guard permission to leave the normal southbound  
17. shipping lane due in part to the reported presence of ice, that  
18. the EXXON VALDEZ went beyond the northbound shipping lane into  
19. the area of Bligh Reef, which reef is depicted on charts, and  
20. that the vessel was bound for Long Beach, California.  
21.

22. 9. Denies each and every allegation of paragraph 9,  
23. except admits that the EXXON VALDEZ went aground on Bligh Reef  
24. causing the rupture of certain of its cargo tanks.  
25.  
26.

1. 10. Denies each and every allegation of paragraph 10,  
2. except admits that the vessel was transporting approximately 53  
3. million gallons of crude oil, that the grounding of the EXXON  
4. VALDEZ resulted in the discharge into Prince William Sound of  
5. approximately 258,000 barrels of crude oil, the largest spill in  
6. the United States from a single vessel, that the grounding  
7. punctured eight of the vessel's cargo tanks and that the spill  
8. has spread to areas in the vicinity of Kodiak Island.  
9.

10. 11. Denies each and every allegation of paragraph 11,  
11. except admits that Governor Cowper declared a disaster emergency  
12. on or about Sunday, March 26, 1989.  
13.

14. 12. Denies each and every allegation of paragraph 12.  
15.

16. 13. Denies for lack of information or belief each and  
17. every allegation of paragraph 13.  
18.

19. 14. Denies each and every allegation of paragraph 14,  
20. except admits that Exxon Shipping was and is owner of the EXXON  
21. VALDEZ and employed Hazelwood, Cousins and the crew of the  
22. vessel at the time of the grounding.  
23.

24. 15. Denies each and every allegation of paragraph 15.  
25.  
26.

1. 16. Denies each and every allegation of paragraph 16,  
2. except admits that the oil discharged from the EXXON VALDEZ was  
3. transported through the Trans-Alaska Pipeline and loaded on the  
4. vessel at the terminal facilities at the Port of Valdez, Alaska.  
5.

6. 17. Denies for lack of information or belief each and  
7. every allegation of paragraph 17, except admits that the  
8. discharge of oil from the EXXON VALDEZ was not caused by an act  
9. of war.  
10.

11. 18. Denies for lack of information on belief each and  
12. every allegation of paragraph 18.  
13.

14. 19. Denies each and every allegation of paragraph 19,  
15. except admits that 43 U.S.C. § 1653(c), to the extent  
16. applicable, may impose strict liability on certain persons for  
17. certain damages.  
18.

19. Defense To Second Cause of Action  
20.

21. 20-26. Denies each and every allegation of paragraphs  
22. 20 through 26 insofar as they pertain to Exxon and Exxon  
23. Shipping Company and deny for lack of information or belief said  
24. allegations insofar as they pertain to other defendants.  
25.  
26.

1. Defense To Third Cause of Action

2.  
3.           27.     Denies for lack of information or belief each and  
4. every allegation of paragraph 27, except admits that public  
5. records purport to show that Hazelwood has been convicted for  
6. driving while under the influence of alcohol.

7.  
8.           28-33.   Denies each and every allegation of paragraphs  
9. 28 through 33.

10.  
11. Defense To Fourth Cause of Action

12.  
13.           34.     Denies each and every allegation of paragraph 34,  
14. except admits that approximately 258,000 barrels of crude oil  
15. were released into Prince William Sound as a result of the  
16. grounding of the EXXON VALDEZ and that A.S. 46.03.826(4) defines  
17. the term hazardous substance as including oil.

18.  
19.           35.     Denies each and every allegation of paragraph 35.

20.  
21.           36.     Denies each and allegation of paragraph 36,  
22. except admits that Exxon owned the crude oil cargo of the EXXON  
23. VALDEZ and that Exxon Shipping had control of the crude oil  
24. immediately prior to its discharge into Prince William Sound.



1. 37. Denies for lack of information or belief the  
2. allegations of paragraph 37, except admits that the spill was  
3. not caused solely as a result of an act of war.

4.  
5. 38. Denies each and every allegation of paragraph 38

6.  
7. 39. Denies for lack of information or belief each and  
8. every allegation of paragraph 39.

9.  
10. General Denial

11.  
12. 40. Denies each and every other allegation in plain-  
13. tiffs' complaint that was not specifically admitted herein.

14.  
15. Affirmative and Other Defenses

16.  
17. 41. The complaint and each count thereof fails to  
18. state claims upon which relief can be granted.

19.  
20. 42. Exxon is informed and believes that plaintiffs  
21. lack standing to claim or recover damages based on the  
22. allegations of the complaint.

23.  
24. 43. Independent of any legal obligation to do so,  
25. Exxon Shipping and Exxon are voluntarily paying claims for  
26. economic loss allegedly caused by the oil spill, and are

1. incurring other expenses in connection with the oil spill.  
2. Exxon and Exxon Shipping are entitled to a setoff in the full  
3. amount of all such payments in the event that plaintiffs' claims  
4. encompass such expenditures.

5.  
6. 44. Certain persons engaged or employed in connection  
7. with activities related to containment and clean up of the oil  
8. released from the EXXON VALDEZ were thereby able to avoid or  
9. mitigate damage from the interruption of fishery and other  
10. activities. Payments received by such persons are a set off  
11. against losses, if any, resulting from the interruption of  
12. fishery and other activities.

13.  
14. 45. To the extent that persons able to mitigate  
15. damages failed to do so, defendants cannot be held liable to  
16. such persons for avoidable losses.

17.  
18. 46. Plaintiffs' claims for punitive damages are un-  
19. constitutional under the United States Constitution, including,  
20. without limitation, Article I, Section 8; Amendment V; and  
21. Amendment XIV; and the Alaska Constitution, including, without  
22. limitation, Article I, Section 7 and Article I, Section 12.

23.  
24. 47. The damages alleged in the complaint were caused,  
25. in part, by the action of others not joined as defendants herein  
26. as to whom a right of contribution or indemnity should exist as

1. to Exxon. Exxon may seek leave of Court to join such additional  
2. persons as third party defendants on the basis of further  
3. discovery herein.

4.  
5. 48. Plaintiffs' claims sound in maritime tort and are  
6. subject to applicable admiralty limits on recovery of damages  
7. for remote economic loss unaccompanied by physical injury to  
8. person or property.

9.  
10. 49. Numerous persons and entities have filed class  
11. action lawsuits against Exxon relating to the oil spill, some of  
12. whom purport to represent the plaintiffs in this action. In the  
13. event of any judgment in such other lawsuits against Exxon and  
14. in favor of plaintiffs herein, such judgment will be res  
15. judicata as to the claims of plaintiff herein.

16.  
17. 50. Numerous persons and entities have filed other  
18. lawsuits against Exxon, and various other defendants, and to the  
19. extent there is a recovery in said other lawsuits encompassing  
20. claims made by plaintiffs herein, recovery on the claims herein  
21. is barred to the extent that it would represent a multiple  
22. recovery for the same injury.

23.  
24.  
25. 51. Some or all of plaintiffs' claims for damages may  
26. be barred or reduced by the doctrine of comparative negligence.

1. 52. The amount of liability, if any, for the acts  
2. alleged is controlled by statute, including, without limitation,  
3. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).  
4.

5. 53. If punitive damages were to be awarded or civil  
6. or criminal penalties assessed in any other lawsuit against  
7. Exxon relating to the oil spill, such award bars imposition of  
8. punitive damages in this action.  
9.

10. 54. Some or all of plaintiffs' claims, including  
11. claims for punitive damages, are preempted by the comprehensive  
12. scheme of federal statutes and regulations, including its system  
13. of criminal and civil penalties, sanctions and remedies relevant  
14. to the oil spill, and its scheme relevant to protection of  
15. subsistence interests.  
16.

17. 55. Plaintiffs' claims for punitive damages are pre-  
18. cluded by the Alaska statutory scheme for civil and criminal  
19. penalties.  
20.

21. 56. Plaintiffs' claims for compensatory relief under  
22. state law are preempted by federal statutory and common law  
23. schemes for compensatory relief.  
24.

25. 57. Certain claims asserted by plaintiffs are not  
26. ripe for adjudication.

1. 58. Those portions of AS 46.03 that were enacted  
2. after the oil spill constitute an unlawful bill of attainder  
3. violative of Article I, Section 10, and if applied to Exxon  
4. would also violate the due process clauses of the United States  
5. and Alaska Constitutions, and the contract clause of the United  
6. States Constitution.

7.  
8. 59. Plaintiffs fail to satisfy the requirements for  
9. the injunctive relief they seek.

10.  
11. Prayer

12.  
13. WHEREFORE, Exxon prays for judgment as follows:

14.  
15. 1. That plaintiffs take nothing and be granted no  
16. relief, legal or equitable;

17.  
18. 2. That Exxon be awarded its costs in this action;  
19. and

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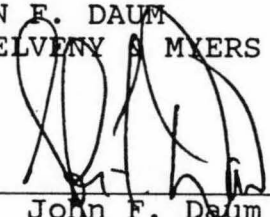
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26.

3. For such other and further relief as the Court  
deems just and proper.

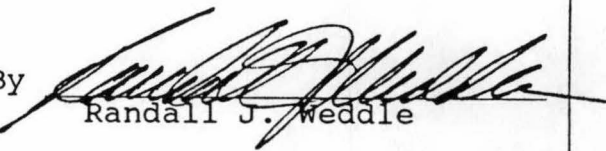
DATED: August 15, 1989

Respectfully submitted,

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8. Attorneys for Defendant
9. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

- |                                            |   |                        |
|--------------------------------------------|---|------------------------|
| 13. In re                                  | ) |                        |
| 14. The EXXON VALDEZ                       | ) |                        |
| 15. This Document Relates                  | ) | No. A89-095 Civil      |
| 16. to Action No.                          | ) | (Consolidated)         |
| 17. <u>A89-239</u>                         | ) |                        |
| 18. Kodiak Island Borough, <u>et al.</u> , | ) | ANSWER OF EXXON        |
| (P-80);                                    | ) | CORPORATION TO CLASS   |
| v.                                         | ) | ACTION COMPLAINT FILED |
| 19. Exxon Corporation, <u>et al.</u> ,     | ) | MAY 30, 1989 AND       |
| (D-1 through D-5; D-7 and D-18)            | ) | REMOVED TO FEDERAL     |
|                                            | ) | COURT ON JUNE 12, 1989 |

21. Exxon Corporation, also erroneously sued herein as
22. Exxon Co., USA, and for convenience identified in this answer as
23. "Exxon", as its answer to the complaint herein admits, denies
24. and alleges as follows:
- 25.
- 26.

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

1. As to each and every allegation denied herein for lack  
2. of information or belief, alleges that it is without knowledge  
3. or information sufficient categorically to admit or deny the  
4. said allegation at this time, wherefore it denies each said  
5. allegation using the phrase "denies for lack of information or  
6. belief."

7.  
8. Defense To Count I

9.  
10. 1. Answering paragraph 1, Exxon is not required to  
11. respond to the allegations in paragraph 1.

12.  
13. 2. Answering paragraph 2, admits that plaintiff  
14. purports to bring claims for relief based on the grounds  
15. alleged, but denies that plaintiff can state a claim for relief  
16. based on said grounds.

17.  
18. 3. Denies for lack of information or belief the  
19. allegations in paragraph 3.

20.  
21. 4. Admits the allegations in paragraph 4.

22.  
23. 5. Denies the allegations of paragraph 5, except  
24. admits that Alyeska is a Delaware corporation the stock of which  
25. is owned by the Amerada Hess Pipeline Corporation, ARCO Pipe  
26. Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline



1. Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
2. Corporation, and Unocal Pipeline Company; and that the Owners of  
3. Alyeska are permittees under the Agreement and Grant of  
4. Right-of-Way for Trans-Alaska Pipeline.

5.  
6. 6. Denies the allegations of paragraph 6 except  
7. admits that Exxon Corporation is a corporation organized under  
8. the laws of the state of New Jersey, with its principal place of  
9. business in New York at 1251 Avenue of the Americas, New York,  
10. New York 10021, and that the principal business of Exxon  
11. Corporation is energy, involving exploration for the production  
12. of crude oil, natural gas and petroleum products and exploration  
13. for the mining and sale of coal.

14.  
15. 7. Denies the allegations of paragraph 7, except  
16. admits that Exxon Shipping is a Delaware Corporation, that Exxon  
17. Corporation owns all of Exxon Shipping's stock, that the  
18. principal place of business of Exxon Shipping is Texas and that  
19. it is the owner and operator of the Exxon Valdez.

20.  
21. 8. Denies the allegations of paragraph 8, except  
22. admits that Exxon Company, USA is an unincorporated division of  
23. Exxon Corporation responsible for the operation of Exxon  
24. Corporation's energy business within the United States, and that  
25. its headquarters is at 800 Bell Street, Houston, Texas.

26.

1. 9. Denies the allegations of paragraph 9, except  
2. admits that Joseph Hazelwood was Master of the EXXON VALDEZ and  
3. that his duties as Master were within the scope of his  
4. employment by Exxon Shipping.  
5.

6. 10. Admits the allegations of paragraph 10, except  
7. denies for lack of information or belief that defendant Murphy  
8. is a resident of the State of Alaska.  
9.

10. 11-16. Answering paragraphs 11 through 16, admits that  
11. plaintiff purports to define certain terms, but denies the  
12. allegations and denies that any subsequent use of those terms in  
13. the complaint is necessarily accurate or appropriate.  
14.

15. 17. Denies the allegations of paragraph 17, except  
16. admits that on Thursday evening, March 23, 1989, the EXXON  
17. VALDEZ, which is approximately 987 feet long and weighing  
18. approximately 211,000 deadweight tons, left the Port of Valdez,  
19. Alaska, the southern terminal facility of the Trans-Alaska  
20. Pipeline System, bound for Long Beach, California.  
21.

22. 18. Denies the allegations in paragraph 18, except  
23. admits that the EXXON VALDEZ was loaded with approximately 1.2  
24. million barrels of crude oil which had been shipped from  
25. Alaska's North Slope through the Trans-Alaska Pipeline.  
26.

1.           19.     Denies the allegations of paragraph 19 except  
2. admits that the EXXON VALDEZ passed through the Valdez Narrows  
3. under the direction of a harbor pilot, who subsequently  
4. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
5. of the vessel when the harbor pilot disembarked, and that  
6. Captain Hazelwood's duties as Master of the vessel were within  
7. the scope of his employment by Exxon Shipping.  
8.

9.           20.     Denies the allegations of paragraph 20, except  
10. admits that Captain Hazelwood left the bridge, leaving Gregory  
11. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
12. bridge, and that the duties of Cousins as third mate and Kagan  
13. as helmsman were within the scope of their employment by Exxon  
14. Shipping.  
15.

16.          21.     Denies the allegations of paragraph 21, except  
17. admits that the U.S. Coast Guard gave the EXXON VALDEZ  
18. permission to leave the southbound shipping lane for reasons  
19. that include earlier reports that it contained ice that had  
20. calved from a glacier to the northwest.  
21.

22.          22.     Denies the allegations of paragraph 22, except  
23. admits that the vessel travelled through the northbound lane and  
24. subsequently struck Bligh Reef.  
25.  
26.

1. 23. Denies the allegations of paragraph 23, except  
2. admits that the vessel was outside the channel when it struck  
3. Bligh Reef, which punctured some of the tanks and damaged a  
4. portion of the hull.  
5.

6. 24-25. Denies the allegations of paragraphs 24 and 25.  
7.

8. 26. Denies the allegations of paragraph 26, except  
9. admits the grounding on Bligh Reef punctured eight of the  
10. vessel's oil tanks, causing the largest United States oil spill  
11. from a single vessel, and that approximately 258,000 barrels of  
12. crude oil were spilled into Prince William Sound.  
13.

14. 27. Denies the allegations of paragraph 27.  
15.

16. 28-29. Denies for lack of information or belief the  
17. allegations of paragraphs 28 and 29.  
18.

19. 30. Denies the allegations of paragraph 30, except  
20. admits that some of the discharged crude oil has moved to areas  
21. in the vicinity of the Kodiak Island Archipelago, and that  
22. islands in that archipelago are a habitat for water birds, sea  
23. and land mammals and fish and shellfish.  
24.

25. 31. Denies the allegations of paragraph 31.  
26.

1. 32-40. Denies for lack of information or belief the  
2. allegations of paragraphs 32 through 40, except admits that  
3. various plaintiffs purport to bring an action on behalf of  
4. classes of persons and entities described in the complaint.  
5.

6. 41. Answering paragraph 41, realleges and  
7. incorporates herein by reference each and every admission,  
8. denial and allegation contained in paragraphs 1 through 40, as  
9. if set out in full.  
10.

11. 42-46. Answering paragraphs 42 through 46, Exxon is  
12. not required to answer allegations made against Alyeska. If  
13. response were required, Exxon denies the allegations in  
14. paragraph 42 through 46.  
15.

16. Defense to Count II  
17.

18. 47. Answering paragraph 47, realleges and  
19. incorporates herein by reference each and every admission,  
20. denial and allegation contained in paragraphs 1 through 46, as  
21. if set out in full.  
22.

23. 48. Denies the allegations of paragraph 48, except  
24. admits that Exxon Shipping is the owner and operator of the  
25. EXXON VALDEZ.  
26.

1. 49. Denies for lack of information or belief the  
2. allegations of paragraph 49.

3.  
4. 50. Denies the allegations of paragraph 50.

5.  
6. 51. Denies for lack of information or belief the  
7. allegations of paragraph 51, except admits that the events about  
8. which plaintiffs complain caused some damages to sea otters and  
9. birds.

10.  
11. 52. Denies the allegations of Paragraph 52, except  
12. admits that 43 U.S.C. Section 1653(c), to the extent applicable,  
13. may impose upon certain entities strict liability for certain  
14. damages.

15.  
16. Defense to Count III

17.  
18. 53. Answering paragraph 53, realleges and  
19. incorporates herein by reference each and every admission,  
20. denial and allegation contained in paragraphs 1 through 52, as  
21. if set out in full.

22.  
23. 54-61. Denies the allegations of paragraphs 54 through  
24. 61 insofar as they pertain to Exxon and denies for lack of  
25. information or belief said allegations insofar as they pertain  
26. to Alyeska or other defendants.

1. 62-63. Denies the allegations of paragraphs 62 and 63.

2.

3. 64. Denies the allegations of paragraph 64 insofar as  
4. they pertain to Exxon and denies for lack of information or  
5. belief said allegations insofar as they pertain to other  
6. defendants.

7.

8. 65-66. Denies the allegations of paragraphs 65 and 66.

9.

10. Defense to Count IV

11.

12. 67. Answering paragraph 67, realleges and  
13. incorporates herein by reference each and every admission,  
14. denial and allegation contained in paragraphs 1 through 66, as  
15. if set out in full.

16.

17. 68. Denies for lack of information or belief the  
18. allegations of paragraph 68, except admits that public records  
19. purport to show that Captain Hazelwood has been convicted for  
20. driving while under the influence of alcohol.

21.

22. 69. Denies the allegations of paragraph 69.

23.

24. 70. Denies the allegations of paragraph 70.

25.

26.

1. 71-77. Denies the allegations of paragraphs 71 through  
2. 77.

3.  
4. Defense to Count V

5.  
6. 78. Answering paragraph 78, realleges and  
7. incorporates herein by reference each and every admission,  
8. denial and allegation contained in paragraphs 1 through 77, as  
9. if set out in full.

10.  
11. 79. Denies the allegations of paragraph 79.

12.  
13. Defense to Count VI

14.  
15. 80. Answering paragraph 80, realleges and  
16. incorporates herein by reference each and every denial,  
17. admission and allegation contained in paragraphs 1 through 79,  
18. as if set out in full.

19.  
20. 81. Denies the allegations of paragraph 81.

21.  
22. Defense to Count VII

23.  
24. 82. Answering paragraph 82, realleges and  
25. incorporates herein by reference each and every admission,  
26.



1. denial and allegation contained in paragraphs 1 through 81, as  
2. if set out in full.

3.  
4. 83. Denies the allegations of paragraph 83, except  
5. admits that A.S. 46.03.826(4)(B) defines oil to be a hazardous  
6. substance and that approximately 258,000 barrels of crude oil  
7. were discharged into the Prince William Sound as a result of the  
8. grounding of the EXXON VALDEZ.

9.  
10. 84. Denies the allegations of paragraph 84.

11.  
12. 85. Denies the allegations of paragraph 85, except  
13. admits that Exxon owned the crude oil and that Exxon Shipping  
14. controlled the crude oil immediately prior to its release into  
15. the Prince William Sound.

16.  
17. 86. Denies for lack of information or belief the  
18. allegations in paragraph 86, except admits that the oil spill  
19. was not caused solely as a result of an act of war.

20.  
21. 87. Denies the allegations of paragraph 87.

22.  
23. 88. Denies for lack of information or belief the  
24. allegations of paragraph 88, except admits that AS 46.03.822, to  
25. the extent applicable and not preempted, may impose strict  
26. liability on certain entities for some damages.

1. Defense to Count VIII

2.  
3.           89.     Answering paragraph 89, realleges and  
4. incorporates herein by reference each and every denial,  
5. admission and allegation contained in paragraphs 1 through 88,  
6. as if set out in full.

7.  
8.           90-93. Denies the allegations in paragraphs 90 through  
9. 93.

10.  
11. Defense to Count IX

12.  
13.           94.     Answering paragraph 94, realleges and  
14. incorporates herein by reference each and every admission,  
15. denial and allegation contained in paragraphs 1 through 93, as  
16. if set out in full.

17.  
18.           95-98. Denies the allegations in paragraphs 95 through  
19. 98.

20.  
21. Defense to Count X

22.  
23.           99.     Answering paragraph 99, realleges and  
24. incorporates herein by reference each and every admission,  
25. denial and allegation contained in paragraphs 1 through 98, as  
26. if set out in full.

1. 100-102. Denies the allegations in paragraphs 100  
2. through 102.

3.  
4. Defense to Count XI  
5.

6. 103. Answering paragraph 103, realleges and  
7. incorporates herein by reference each and every admission,  
8. denial and allegation contained in paragraphs 1 through 102, as  
9. if set out in full.

10.  
11. 104-107. Denies the allegations in paragraphs 104  
12. through 107.

13.  
14. General Denial  
15.

16. 108. Denies each and every other allegation in plain-  
17. tiff's complaint that was not specifically admitted herein.

18.  
19. Affirmative and Other Defenses  
20.

21. 109. The complaint and each count thereof fails to  
22. state claims upon which relief can be granted.

23.  
24. 110. Exxon is informed and believes that plaintiff  
25. lacks standing to claim or recover for some of the damages  
26. alleged in the complaint.

1. 111. Independent of any legal obligation to do so,  
2. Exxon Shipping and Exxon are voluntarily paying claims for  
3. economic loss allegedly caused by the oil spill, and are  
4. incurring other expenses in connection with the oil spill.  
5. Exxon and Exxon Shipping are entitled to a setoff in the full  
6. amount of all such payments in the event that plaintiff's claims  
7. encompass such expenditures.

8.  
9. 112. Certain persons engaged or employed in connection  
10. with activities related to containment and cleanup of the oil  
11. released from the EXXON VALDEZ were thereby able to avoid or  
12. mitigate damage from the interruption of fishery and other  
13. activities. Payments received by such persons are a setoff  
14. against losses, if any, resulting from the interruption of  
15. fishery and other activities.

16.  
17. 113. To the extent that persons able to mitigate  
18. damages failed to do so, defendants cannot be held liable to  
19. such persons for avoidable losses.

20.  
21. 114. Claims by some persons or entities who may be  
22. within the purported classes have been settled and released.

23.  
24. 115. Plaintiff's claims for punitive damages are un-  
25. constitutional under the United States Constitution, including,  
26. without limitation, Article I, Section 8; Amendment V; and

1. Amendment XIV; and the Alaska Constitution, including, without  
2. limitation, Article I, Section 7 and Article I, Section 12.

3.  
4. 116. The damages alleged in the complaint were caused,  
5. in part, by the action of others not joined as defendants herein  
6. as to whom a right of contribution or indemnity should exist as  
7. to Exxon. Exxon may seek leave of Court to join such additional  
8. persons as third party defendants on the basis of further  
9. discovery herein.

10.  
11. 117. Plaintiff's claims sound in maritime tort and are  
12. subject to applicable admiralty limits on recovery of damages  
13. for remote economic loss unaccompanied by physical injury to  
14. person or property.

15.  
16. 118. Numerous persons and entities have filed lawsuits  
17. against Exxon relating to the oil spill, some of whom purport to  
18. represent the plaintiffs in this action. In the event of any  
19. judgment or judgments in such other lawsuits against Exxon and  
20. in favor of persons whose claims are encompassed in this action,  
21. such judgment or judgments will be res judicata as to the claims  
22. of such persons herein.

23.  
24. 119. Numerous persons and entities have filed other  
25. lawsuits against Exxon and various other defendants, and to the  
26. extent there is a recovery in said other lawsuits encompassing

1. claims made by plaintiffs herein, recovery on the claims herein  
2. is barred to the extent that it would represent a multiple  
3. recovery for the same injury.  
4.

5.           120.     Some or all of plaintiff's claims for damages may  
6. be barred or reduced by the doctrine of comparative negligence.  
7.

8.           121.     The amount of liability, if any, for the acts  
9. alleged is controlled by statute, including, without limitation,  
10. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).  
11.

12.           122.     If punitive damages were to be awarded or civil  
13. or criminal penalties assessed in any other lawsuit against  
14. Exxon relating to the oil spill, such award bars imposition of  
15. punitive damages in this action.  
16.

17.           123.     Some of plaintiff's claims, including claims for  
18. punitive damages, are preempted by the comprehensive scheme of  
19. federal statutes and regulations, including its system of  
20. criminal and civil penalties, sanctions and remedies relevant to  
21. the oil spill, and its scheme relevant to protection of  
22. subsistence interests.  
23.

24.           124.     Plaintiff's claims for punitive damages are pre-  
25. cluded by the Alaska statutory scheme for civil and criminal  
26. penalties.

1. 125. Plaintiff's claims for compensatory relief under  
2. state law are preempted by federal statutory and common law  
3. schemes for compensatory relief.  
4.

5. 126. Certain claims asserted by plaintiff are not ripe  
6. for adjudication.  
7.

8. 127. Those portions of AS 46.03 that were enacted  
9. after the oil spill constitute an unlawful bill of attainder  
10. violative of Article I, Section 10 of the United States  
11. Constitution, and if applied to Exxon would also violate the due  
12. process clauses of the United States and Alaska Constitutions,  
13. and the contract clause of the United States Constitution.  
14.

15. 128. Certain theories of relief may not be maintained  
16. because these theories are based upon the exercise by Exxon of  
17. federal and state constitutional rights to petition the federal  
18. and state governments with respect to the passage and  
19. enforcement of laws.  
20.

21. 129. Plaintiff has previously filed an action against  
22. Exxon, which action was filed April 16, 1989, and is now pending  
23. in this Court as Action A89-136. Exxon is entitled to an  
24. abatement of this action, or, in the event of any recovery by  
25. plaintiff in such other action as compensation for the damages  
26.

1. alleged herein, Exxon is entitled to a setoff in the full amount  
2. of such recovery.

3.  
4. 130. Exxon and Exxon Shipping have acted pursuant to  
5. government approval and direction with regard to the containment  
6. and clean-up of the oil spill.

7.  
8. 131. Plaintiffs fail to satisfy the requirements of  
9. the injunctive relief they seek.

10.  
11. Prayer

12.  
13. WHEREFORE, Exxon prays for judgment as follows:

14.  
15. 1. That plaintiff take nothing and be granted no  
16. relief, legal or equitable;

17.  
18. 2. That Exxon be awarded its costs in this action;  
19. and



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24.  
25.  
26.

3. For such other and further relief as the Court  
deems just and proper.

DATED: August 15, 1989

Respectfully submitted,

CHARLES W. BENDER  
PATRICK LYNCH  
JOHN F. DAUM  
O'MELVENY & MYERS

By   
John F. Daum

JOHN F. CLOUGH, III  
RANDALL J. WEDDLE  
FAULKNER, BANFIELD, DOOGAN &  
HOLMES

By   
Randall J. Weddle

Attorneys for Defendant Exxon  
Corporation

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By                      Deputy

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2. PATRICK LYNCH  
3. JOHN F. DAUM  
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11. 550 W. 7th Avenue, Suite 1000  
12. Anchorage, Alaska 99501-3510  
13. (907) 274-0666

14. Attorneys for Defendant  
15. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

14. In re )

15. The EXXON VALDEZ )

No. A89-095 Civil  
(Consolidated)

16. This Document Relates )  
17. to Action No. )

18. A89-238 )

19. Hugh R. Wisner, et al., )  
(P-78 and P-79; P-95 and P-96;  
20. P167 and P 168) )

v. )

21. Exxon Corporation, et al., )  
(D-1 through D-5; D-7 and D-18 )

ANSWER OF EXXON  
CORPORATION TO CLASS  
ACTION COMPLAINT  
FILED MAY 30, 1989  
AND REMOVED TO  
FEDERAL COURT ON  
JUNE 12, 1989

22. \_\_\_\_\_ )  
23. Exxon Corporation, also erroneously sued herein as  
24. Exxon Co., USA, and for convenience identified in this answer as  
25. "Exxon", as its answer to the complaint herein admits, denies  
26. and alleges as follows:

1. As to each and every allegation denied herein for lack  
2. of information or belief, alleges that it is without knowledge  
3. or information sufficient categorically to admit or deny the  
4. said allegation at this time, wherefore it denies each said  
5. allegation using the phrase "denies for lack of information or  
6. belief."

7.  
8. Defense To Count I

9.  
10. 1. Answering paragraph 1, Exxon is not required to  
11. respond to the allegations in paragraph 1.

12.  
13. 2. Answering paragraph 2, admits that plaintiffs  
14. purport to bring claims for relief based on the grounds alleged,  
15. but denies that plaintiffs can state a claim for relief based on  
16. said grounds.

17.  
18. 3. Denies for lack of information or belief the  
19. allegations in paragraph 3.

20.  
21. 4. Admits the allegations in paragraph 4.

22.  
23. 5. Denies the allegations of paragraph 5, except  
24. admits that Alyeska is a Delaware corporation the stock of which  
25. is owned by the Amerada Hess Pipeline Corporation, ARCO Pipe  
26. Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline

1. Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline  
2. Corporation, and Unocal Pipeline Company; and that the Owners of  
3. Alyeska are permittees under the Agreement and Grant of  
4. Right-of-Way for Trans-Alaska Pipeline.  
5.

6.           6.    Denies the allegations of paragraph 6 except  
7. admits that Exxon Corporation is a corporation organized under  
8. the laws of the state of New Jersey, with its principal place of  
9. business in New York at 1251 Avenue of the Americas, New York,  
10. New York 10021, and that the principal business of Exxon  
11. Corporation is energy, involving exploration for the production  
12. of crude oil, natural gas and petroleum products and exploration  
13. for the mining and sale of coal.  
14.

15.           7.    Denies the allegations of paragraph 7, except  
16. admits that Exxon Shipping is a Delaware Corporation, that Exxon  
17. Corporation owns all of Exxon Shipping's stock, that the  
18. principal place of business of Exxon Shipping is Texas and that  
19. it is the owner and operator of the Exxon Valdez.  
20.

21.           8.    Denies the allegations of paragraph 8, except  
22. admits that Exxon Company, USA is an unincorporated division of  
23. Exxon Corporation responsible for the operation of Exxon  
24. Corporation's energy business within the United States, and that  
25. its headquarters is at 800 Bell Street, Houston, Texas.  
26.

1. 9. Denies the allegations of paragraph 9, except  
2. admits that Joseph Hazelwood was Master of the EXXON VALDEZ and  
3. that his duties as Master were within the scope of his  
4. employment by Exxon Shipping.  
5.

6. 10. Admits the allegations of paragraph 10, except  
7. denies for lack of information or belief that Murphy is a  
8. resident of the State of Alaska.  
9.

10. 11-16. Answering paragraphs 11 through 16, admits that  
11. plaintiffs purport to define certain terms, but denies the  
12. allegations and denies that any subsequent use of those terms in  
13. the complaint is necessarily accurate or appropriate.  
14.

15. 17. Denies the allegations of paragraph 17, except  
16. admits that on Thursday evening, March 23, 1989, the EXXON  
17. VALDEZ, which is approximately 987 feet long and weighing  
18. approximately 211,000 deadweight tons, left the Port of Valdez,  
19. Alaska, the southern terminal facility of the Trans-Alaska  
20. Pipeline System, bound for Long Beach, California.  
21.

22. 18. Denies the allegations in paragraph 18, except  
23. admits that the EXXON VALDEZ was loaded with approximately 1.2  
24. million barrels of crude oil which had been shipped from  
25. Alaska's North Slope through the Trans-Alaska Pipeline.  
26.

1. 19. Denies the allegations of paragraph 19, except  
2. admits that the EXXON VALDEZ passed through the Valdez Narrows  
3. under the direction of a harbor pilot, who subsequently  
4. disembarked; that Captain Joseph J. Hazelwood was on the bridge  
5. of the vessel when the harbor pilot disembarked, and that  
6. Captain Hazelwood's duties as Master of the vessel were within  
7. the scope of his employment by Exxon Shipping.

8.  
9. 20. Denies the allegations of paragraph 20, except  
10. admits that Captain Hazelwood left the bridge, leaving Gregory  
11. Cousins, the third mate, and Robert Kagan, the helmsman, on the  
12. bridge, and that the duties of Cousins as third mate and Kagan  
13. as helmsman were within the scope of their employment by Exxon  
14. Shipping.

15.  
16. 21. Denies the allegations of paragraph 21, except  
17. admits that the U.S. Coast Guard gave the EXXON VALDEZ  
18. permission to leave the southbound shipping lane for reasons  
19. that include earlier reports that it contained ice that had  
20. calved from a glacier to the northwest.

21.  
22. 22. Denies the allegations of paragraph 22, except  
23. admits that the vessel travelled through the northbound lane and  
24. subsequently struck Bligh Reef.

1. 23. Denies the allegations of paragraph 23, except  
2. admits that the vessel was outside the channel when it struck  
3. Bligh Reef, which punctured some of the tanks and damaged a  
4. portion of the hull.

5.  
6. 24-25. Denies the allegations of paragraphs 24 and 25.  
7.

8. 26. Denies the allegations of paragraph 26, except  
9. admits that the grounding on Bligh Reef punctured eight of the  
10. vessel's oil tanks, causing the largest United States oil spill  
11. from a single vessel, and that approximately 258,000 barrels of  
12. crude oil were spilled into Prince William Sound.

13.  
14. 27. Denies the allegations of paragraph 27.  
15.

16. 28-29. Denies for lack of information or belief the  
17. allegations of paragraphs 28 and 29.  
18.

19. 30. Denies the allegations of paragraph 30, except  
20. admits that some of the discharged crude oil has moved to areas  
21. in the vicinity of the Kodiak Island Archipelago, and that  
22. islands in that archipelago are a habitat for water birds, sea  
23. and land mammals and fish and shellfish.

24.  
25. 31. Denies the allegations of paragraph 31.  
26.

32-40. Denies for lack of information or belief the allegations of paragraphs 32 through 40, except admits that various plaintiffs purport to bring an action on behalf of classes of persons and entities described in the complaint.

41. Answering paragraph 41, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 40, as if set out in full.

42-46. Answering paragraphs 42 through 46, Exxon is not required to answer allegations made against Alyeska. If response were required, Exxon denies the allegations in paragraph 42 through 46.

Defense to Count II

47. Answering paragraph 47, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 47, as if set out in full.

48. Denies the allegations of paragraph 48, except admits that Exxon Shipping is the owner and operator of the EXXON VALDEZ.



1. 49. Denies for lack of information or belief the  
2. allegations of paragraph 49.  
3.

4. 50. Denies the allegations of paragraph 50.  
5.

6. 51. Denies for lack of information or belief the  
7. allegations of paragraph 51, except admits that the events about  
8. which plaintiffs complain caused some damages to sea otters and  
9. birds.  
10.

11. 52. Denies the allegations of Paragraph 52, except  
12. admits that 43 U.S.C. Section 1653(c), to the extent applicable,  
13. may impose upon certain entities strict liability for certain  
14. damages.  
15.

16. Defense to Count III  
17.

18. 53. Answering paragraph 53, realleges and  
19. incorporates herein by reference each and every admission,  
20. denial and allegation contained in paragraphs 1 through 52, as  
21. if set out in full.  
22.

23. 54-61. Denies the allegations of paragraphs 54 through  
24. 61 insofar as they pertain to Exxon and denies for lack of  
25. information or belief said allegations insofar as they pertain  
26. to Alyeska or other defendants.

1. 62-63. Denies the allegations of paragraphs 62 and 63

2.  
3. 64. Denies the allegations of paragraph 64 insofar as  
4. they pertain to Exxon and denies for lack of information or  
5. belief said allegations insofar as they pertain to other  
6. defendants.

7.  
8. 65-66. Denies the allegations of paragraphs 65 and 66.

9.  
10. Defense to Count IV

11.  
12. 67. Answering paragraph 67, realleges and  
13. incorporates herein by reference each and every admission,  
14. denial and allegation contained in paragraphs 1 through 66, as  
15. if set out in full.

16.  
17. 68. Denies for lack of information or belief the  
18. allegations of paragraph 68, except admits that public records  
19. purport to show that Captain Hazelwood has been convicted for  
20. driving while under the influence of alcohol.

21.  
22. 69. Denies the allegations of paragraph 69.

23.  
24. 70. Denies the allegations of paragraph 70.

1. 71-77. Denies the allegations of paragraphs 71 through  
2. 77.

3.  
4. Defense to Count V  
5.

6. 78. Answering paragraph 78, realleges and  
7. incorporates herein by reference each and every admission,  
8. denial and allegation contained in paragraphs 1 through 77, as  
9. if set out in full.

10.  
11. 79. Denies the allegations of paragraph 79.

12.  
13. Defense to Count VI  
14.

15. 80. Answering paragraph 80, realleges and  
16. incorporates herein by reference each and every denial,  
17. admission and allegation contained in paragraphs 1 through 79,  
18. as if set out in full.

19.  
20. 81. Denies the allegations of paragraph 81.

21.  
22. Defense to Count VII  
23.

24. 82. Answering paragraph 82, realleges and  
25. incorporates herein by reference each and every admission,  
26.

1. denial and allegation contained in paragraphs 1 through 81, as  
2. if set out in full.

3.  
4. 83. Denies the allegations of paragraph 83, except  
5. admits that A.S. 46.03.826(4)(B) defines oil to be a hazardous  
6. substance and that approximately 258,000 barrels of crude oil  
7. were discharged into the Prince William Sound as a result of the  
8. grounding of the EXXON VALDEZ.

9.  
10. 84. Denies the allegations of paragraph 84.

11.  
12. 85. Denies the allegations of paragraph 85, except  
13. admits that Exxon owned the crude oil and that Exxon Shipping  
14. controlled the crude oil immediately prior to its release into  
15. the Prince William Sound.

16.  
17. 86. Denies for lack of information or belief the  
18. allegations in paragraph 86, except admits that the oil spill  
19. was not caused solely as a result of an act of war.

20.  
21. 87. Denies the allegations of paragraph 87.

22.  
23. 88. Denies for lack of information or belief the  
24. allegations of paragraph 88, except admits that AS46.03.822, to  
25. the extent applicable and not preempted, may impose strict  
26. liability on certain entities for some damages.

1. Defense to Count VIII

2.  
3. 89. Answering paragraph 89, realleges and  
4. incorporates herein by reference each and every denial,  
5. admission and allegation contained in paragraphs 1 through 88,  
6. as if set out in full.

7.  
8. 90-93. Denies the allegations in paragraphs 90 through  
9. 93.

10.  
11. Defense to Count IX

12.  
13. 94. Answering paragraph 94, realleges and  
14. incorporates herein by reference each and every admission,  
15. denial and allegation contained in paragraphs 1 through 93, as  
16. if set out in full.

17.  
18. 95-98. Denies the allegations in paragraphs 95 through  
19. 98.

20.  
21. Defense to Count X

22.  
23. 99. Answering paragraph 99, realleges and  
24. incorporates herein by reference each and every admission,  
25. denial and allegation contained in paragraphs 1 through 98, as  
26. if set out in full.

1. 100-102. Denies the allegations in paragraphs 100  
2. through 102.

3.  
4. Defense to Count XI  
5.

6. 103. Answering paragraph 103, reallege and incorporate  
7. herein by reference each and every admission, denial and  
8. allegation contained in paragraphs 1 through 102, as if set out  
9. in full.

10.  
11. 104-107. Denies the allegations in paragraphs 104  
12. through 107.

13.  
14. General Denial  
15.

16. 108. Denies each and every other allegation in plain-  
17. tiffs' complaint that was not specifically admitted herein.

18.  
19. Affirmative and Other Defenses  
20.

21. 109. The complaint and each count thereof fails to  
22. state claims upon which relief can be granted.

23.  
24. 110. Exxon is informed and believes that some  
25. plaintiffs lack standing to claim or recover for some of the  
26. damages alleged in the complaint.

1. 111. Independent of any legal obligation to do so,  
2. Exxon Shipping and Exxon are voluntarily paying claims for  
3. economic loss allegedly caused by the oil spill, and are  
4. incurring other expenses in connection with the oil spill.  
5. Exxon and Exxon Shipping are entitled to a setoff in the full  
6. amount of all such payments in the event that plaintiffs' claim  
7. encompass such expenditures.

8.  
9. 112. Certain persons engaged or employed in connection  
10. with activities related to containment and cleanup of the oil  
11. released from the EXXON VALDEZ were thereby able to avoid or  
12. mitigate damage from the interruption of fishery and other  
13. activities. Payments received by such persons are a setoff  
14. against losses, if any, resulting from the interruption of  
15. fishery and other activities.

16.  
17. 113. To the extent that persons able to mitigate  
18. damages failed to do so, defendants cannot be held liable to  
19. such persons for avoidable losses.

20.  
21. 114. Claims by some persons or entities who may be  
22. within the purported classes have been settled and released.

23.  
24. 115. Plaintiffs' claims for punitive damages are un-  
25. constitutional under the United States Constitution, including,  
26. without limitation, Article I, Section 8; Amendment V; and

1. Amendment XIV; and the Alaska Constitution, including, without  
2. limitation, Article I, Section 7 and Article I, Section 12.

3.  
4. 116. The damages alleged in the complaint were caused,  
5. in part, by the action of others not joined as defendants herein  
6. as to whom a right of contribution or indemnity should exist as  
7. to Exxon. Exxon may seek leave of Court to join such additional  
8. persons as third party defendants on the basis of further  
9. discovery herein.

10.  
11. 117. Plaintiffs' claims sound in maritime tort and are  
12. subject to applicable admiralty limits on recovery of damages  
13. for remote economic loss unaccompanied by physical injury to  
14. person or property.

15.  
16. 118. Numerous persons and entities have filed lawsuits  
17. against Exxon relating to the oil spill, some of whom purport to  
18. represent the plaintiffs in this action. In the event of any  
19. judgment or judgments in such other lawsuits against Exxon and  
20. in favor of persons whose claims are encompassed in this action,  
21. such judgment or judgments will be res judicata as to the claims  
22. of such persons herein.

23.  
24. 119. Numerous persons and entities have filed other  
25. lawsuits against Exxon, and various other defendants, and to the  
26. extent there is a recovery in said other lawsuits encompassing



1. claims made by plaintiffs herein, recovery on the claims herein  
2. is barred to the extent that it would represent a multiple  
3. recovery for the same injury.  
4.

5.           120.     Some or all of plaintiffs' claims for damages may  
6. be barred or reduced by the doctrine of comparative negligence.  
7.

8.           121.     The amount of liability, if any, for the acts  
9. alleged is controlled by statute, including, without limitation,  
10. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).  
11.

12.           122.     If punitive damages were to be awarded or civil  
13. or criminal penalties assessed in any other lawsuit against  
14. Exxon relating to the oil spill, such award bars imposition of  
15. punitive damages in this action.  
16.

17.           123.     Some of plaintiffs' claims, including claims for  
18. punitive damages, are preempted by the comprehensive scheme of  
19. federal statutes and regulations, including its system of  
20. criminal and civil penalties, sanctions and remedies relevant to  
21. the oil spill, and its scheme relevant to protection of  
22. subsistence interests.  
23.

24.           124.     Plaintiffs' claims for punitive damages are pre-  
25. cluded by the Alaska statutory scheme for civil and criminal  
26. penalties.

1. 125. Plaintiffs' claims for compensatory relief under  
2. state law are preempted by federal statutory and common law  
3. schemes for compensatory relief.

4.  
5. 126. Certain claims asserted by plaintiffs are not  
6. ripe for adjudication.

7.  
8. 127. Those portions of AS 46.03 that were enacted  
9. after the oil spill constitute an unlawful bill of attainder  
10. violative of Article I, Section 10 of the United States  
11. Constitution, and if applied to Exxon would also violate the due  
12. process clauses of the United States and Alaska Constitutions,  
13. and the contract clause of the United States Constitution.

14.  
15. 128. Certain theories of relief may not be maintained  
16. because these theories are based upon the exercise by Exxon of  
17. federal and state constitutional rights to petition the federal  
18. and state governments with respect to the passage and  
19. enforcement of laws.

20.  
21. 129. Plaintiffs Hugh R. Wisner and Larry L. Dooley  
22. have previously filed an action against Exxon, which action was  
23. filed on April 13, 1989, and is now pending in this Court as  
24. Action A89-135. Plaintiffs Old Harbor Native Corporation and  
25. Lenhart J. Grothe have previously filed an action against Exxon,  
26. which action was filed on April 19, 1989, and is now pending in

1. this Court as Action A89-139. Exxon is entitled to an abatement  
2. of this action as to said plaintiffs, or, in the event of any  
3. recovery by said plaintiffs in such other actions as  
4. compensation for the damages alleged herein, Exxon is entitled  
5. to a setoff in the full amount of such recovery.

6.  
7. 130. Plaintiffs fail to satisfy the requirements for  
8. the injunctive relief they seek.

9.  
10. 131. Exxon and Exxon Shipping have acted pursuant to  
11. government approval and direction with regard to the containment  
12. and clean-up of the oil spill.

13.  
14. 132. The corporate plaintiffs herein lack the capacity  
15. to commence and maintain this action insofar as they have failed  
16. to allege and prove that they have paid their Alaska biennial  
17. corporate taxes last due and have filed biennial reports for the  
18. last reporting period.

19.  
20. Prayer

21.  
22. WHEREFORE, Exxon prays for judgment as follows:

23.  
24. 1. That plaintiffs take nothing and be granted no  
25. relief, legal or equitable;

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26.

2. That Exxon be awarded its costs in this action;

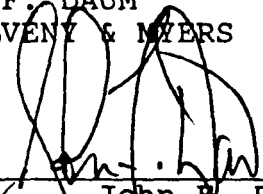
and

3. For such other and further relief as the Court  
deems just and proper.

DATED: August 15, 1989

Respectfully submitted,

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