

LAURI J. ADAMS
ERIC P. JORGENSEN
STEWART ELGIE
Sierra Club Legal
Defense Fund, Inc.
325 Fourth Street
Juneau, Alaska 99801
(907)586-2751

MICHAEL M. WENIG
RANDALL M. WEINER
Trustees for Alaska
725 Christensen Dr., #4
Anchorage, Alaska 99501-2101
(907)276-4244

FREDERICK P. FURTH
CRAIG C. CORBITT
Furth, Fahrner, Bluemle & Mason
201 Sansome Street, Suite 1000
San Francisco, CA 94104
(415)433-2070

Attorneys for Plaintiffs

FILED
AUG 23 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)
))
THE EXXON VALDEZ)
))
PRINCE WILLIAM SOUND CONSERVATION)
ALLIANCE, ALASKA CENTER FOR THE)
ENVIRONMENT, DEFENDERS OF WILDLIFE,)
GREENPEACE, U.S.A., NATIONAL)
AUDUBON SOCIETY, NATURAL RESOURCES)
DEFENSE COUNCIL, NORTHERN ALASKA)
ENVIRONMENTAL CENTER, SIERRA CLUB,)
and TRUSTEES FOR ALASKA,)
))
Plaintiffs,)
))
v.)
))
EXXON CORPORATION, EXXON SHIPPING)
COMPANY, and ALYESKA PIPELINE)
SERVICE COMPANY,)
))
Defendants.)

No. A89-095 Civil
(Consolidated)

A89-359 CIV
No. _____ Civil

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND PENALTIES

I. NATURE OF THE CASE

1. This case concerns the wreck of the vessel EXXON VALDEZ against Bligh Reef on March 24, 1989, and release of over 11 million gallons of crude oil into the pristine and productive waters of Prince William Sound, Alaska. The spill from the EXXON VALDEZ is the largest oil spill ever in North America and one of the largest oil spills yet to occur anywhere in the world. Plaintiffs, Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace USA, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, and Trustees for Alaska, seek to require defendants Exxon Corporation and Exxon Shipping Company (collectively "Exxon," unless otherwise noted) and defendant Alyeska Pipeline Service Company to abate, remove, and clean up the existing pollution resulting from the EXXON VALDEZ oil spill and to take all steps necessary to facilitate the complete restoration and replacement of the environment and natural resources damaged by that pollution and to require Exxon to pay civil penalties.

2. Plaintiffs' claims against Exxon and Alyeska for declaratory and injunctive relief and civil penalties are based on sections 301(a), 309(d), and 505(a), respectively, of the Federal Water Pollution Control Act of 1972 (commonly known and hereinafter referred to as the "Clean Water Act," or CWA), 33 U.S.C. §§ 1311(a), 1319(d), and 1365(a), and section 7002(a)(1)(B) of the

Solid Waste Disposal Act (commonly known and hereinafter referred to as the "Resource Conservation and Recovery Act" or "RCRA"), 42 U.S.C. § 6972(a)(1)(B).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the plaintiffs' first claim for relief pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a), 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201-2202.

4. This Court has jurisdiction over the plaintiffs' second claim for relief pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201-2202.

5. This Court is the proper venue for this action pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), 28 U.S.C. § 1391(b), and section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

III. PARTIES

6. Plaintiff Prince William Sound Conservation Alliance is an Alaska based non-profit membership corporation that works for the protection, exploration, and scientific study of Prince William Sound, and for public education regarding the natural resources of the Sound. Prince William Sound Conservation Alliance's business address is 301 Egan St., P.O. Box 1697, Valdez, Alaska 99686. It has approximately 150 members, many of whom reside in communities ringing Prince William Sound, including Whittier, Cordova, and Valdez, and who use and enjoy Prince William Sound and the Gulf of

Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect Prince William Sound Conservation Alliance's organizational interests, as well as its members' use and enjoyment of the lands, waters, fish and wildlife, and other natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEZ oil spill disaster. The Prince William Sound Conservation Alliance files this action on its own behalf and on behalf of its adversely affected members.

7. Plaintiff Alaska Center for the Environment is an Alaska based non-profit membership corporation that is dedicated to the conservation and protection of air and water quality, and other natural resources of Alaska and, particularly, Southcentral Alaska, including Prince William Sound, the Gulf of Alaska, and Cook Inlet. The Alaska Center for the Environment's business address is 700 H Street, Suite 4, Anchorage, Alaska 99501. It has approximately 1,000 members, most of whom reside in Alaska, and many of whom use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Alaska Center for the Environment's organizational interests, as well as its members' use and enjoyment of the natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEZ oil spill disaster. The Alaska Center for the Environment files this action on its own behalf and on behalf of its adversely affected members.

8. Plaintiff Defenders of Wildlife is a national non-profit membership corporation organized for the protection of wildlife, including marine mammals and migratory birds, their natural diversity, and the habitats important to the well-being of wildlife. Defenders of Wildlife's principal business address is 1233 Nineteenth St., N.W., Washington, D.C., 20036. Defenders of Wildlife has approximately 69,000 members, approximately 380 of whom reside in Alaska. Members of Defenders of Wildlife use and enjoy the coastal and marine environments of Prince William Sound and the Gulf of Alaska for recreation, wildlife viewing, scientific research, and public education purposes, among others. The defendants' unlawful actions adversely affect Defenders of Wildlife's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. Defenders of Wildlife files this action on its own behalf and on behalf of its adversely affected members.

9. Plaintiff Greenpeace, U.S.A. is a national non-profit membership corporation which works for the preservation of the natural environment of the coastal regions, the oceans, and marine life, including Prince William Sound and the Gulf of Alaska. Greenpeace's principal business address is 1436 U St., N.W., Washington, D.C., 20009. Greenpeace also maintains a regional office in Alaska, which is located at 711 H St., Suite 300, P.O. Box 104432, Anchorage, Alaska 99501. Greenpeace has approximately

1,400,000 supporters in the United States, including approximately 2,000 who live in Alaska. Members of Greenpeace use and enjoy the coastal and marine environments of Prince William Sound and the Gulf of Alaska. The defendants' unlawful actions adversely affect Greenpeace's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. Greenpeace files this action on its own behalf and on behalf of its adversely affected members.

10. Plaintiff National Audubon Society is a national non-profit membership corporation which is dedicated to the conservation and wise use of natural resources and the protection of the environment, including the environment of Prince William Sound and the Gulf of Alaska. The National Audubon Society's principal business address is 950 Third Avenue, New York, New York, 10022. The National Audubon Society also maintains a regional office in Alaska, which is located at 308 G Street, Suite 219, Anchorage, Alaska 99501. The National Audubon Society has approximately 580,000 members, including five chapters and approximately 2,600 members who reside in Alaska. Members of the National Audubon Society use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the National Audubon Society's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the

EXXON VALDEZ oil spill disaster. The National Audubon Society files this action on its own behalf and on behalf of its adversely affected members.

11. Plaintiff Natural Resources Defense Council is a non-profit membership organization incorporated under the laws of New York with its principal place of business at 122 E. 42nd St., New York, New York 10017. The Natural Resources Defense Council combines an interdisciplinary approach in protecting natural resources and has particular expertise in air and water pollution, toxic substances, and Alaska resources, among other issues. The Natural Resources Defense Council has approximately 97,500 members, including approximately 350 members who reside in Alaska. Members of the Natural Resources Defense Council use and enjoy the natural resources of Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Natural Resource Defense Council's organizational interests, as well as its members' use and enjoyment of the natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEX oil spill disaster.

12. Plaintiff Northern Alaska Environmental Center is an Alaska based non-profit membership corporation which is dedicated to the protection of the environment in Alaska and the wise use of its natural resources. The Northern Alaska Environmental Center's business address is 218 Driveway, Fairbanks, Alaska 99701. It has

approximately 600 members, most of whom reside in Alaska and many of whom use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the Northern Alaska Environmental Center's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. The Northern Alaska Environmental Center files this action on its own behalf and on behalf of its adversely affected members.

13. Plaintiff Sierra Club is a national non-profit membership corporation dedicated to the exploration, enjoyment and protection of the public lands and waters, including the coastal and marine environments of Prince William Sound, and the national parks, national wildlife refuges, state parks, state critical habitat areas, state game sanctuaries, and the coastal and marine environments of the Gulf of Alaska. The Sierra Club's principal business address is 730 Polk Street, San Francisco, California 94109. The Sierra Club also maintains a regional office in Alaska, which is located at 241 E. Fifth St., Suite 205, Anchorage, Alaska 99501. The Sierra Club has approximately 495,425 members, approximately 1,645 of which are members of the Alaska Chapter of the Sierra Club. Members of the Sierra Club use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the Sierra Club's organizational interests, as well as its members' use

and enjoyment of the public lands and waters damaged by the EXXON VALDEZ oil spill disaster. The Sierra Club files this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff Trustees for Alaska is an Alaska based non-profit corporation that provides legal services to promote the rational use and protection of Alaska's natural resources and compliance with federal and state environmental laws. Trustees for Alaska's business address is 725 Christensen Drive, Suite 4, Anchorage, Alaska 99501. It has approximately 1,100 members, many of whom reside in Alaska and use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Trustees for Alaska's organizational interests, as well as its members' use and enjoyment of the lands and waters, fish and wildlife, and other natural resources damaged by the EXXON VALDEZ oil spill disaster. Trustees for Alaska files this action on its own behalf and on behalf of its adversely affected members.

15. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at New York, New York. Exxon Corporation is a multinational corporation engaged in the business of exploration for and production, transportation, and sale of oil and natural gas and other petroleum products. Exxon Company, USA is a division of Exxon Corporation with its principal place of business at Houston, Texas. Exxon Company, USA is responsible for the Corporation's oil

and gas operations in the United States. Exxon Corporation, directly and through Exxon Company, USA, is the owner of the crude oil spilled from the vessel EXXON VALDEZ and, through its wholly controlled subsidiary, Exxon Shipping Company, is the owner and operator of the vessel EXXON VALDEZ.

16. Defendant Exxon Shipping Company is a maritime subsidiary of, and is wholly controlled by, Exxon Corporation and is organized under the laws of the State of Delaware, with its principal place of business at Houston, Texas. Exxon Shipping Company is an owner and operator of the vessel EXXON VALDEZ.

17. Defendant Alyeska Pipeline Service Company (hereinafter "Alyeska"), is a corporation organized under the laws of Delaware, with its principal place of business at Anchorage, Alaska. Alyeska is owned and controlled by subsidiaries of seven major oil and gas companies, including Exxon Corporation. Alyeska operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska. Alyeska was responsible for preparing adequate oil spill contingency plans for the pipeline, terminal and Prince William Sound and for emergency response to the release of oil from the EXXON VALDEZ and clean-up of the oil from the environment.

IV. FACTS

18. On the evening of March 23, 1989, the vessel EXXON VALDEZ left the Alyeska Terminal at the port of Valdez, Alaska, the southern terminus of the Trans-Alaska Pipeline System, bound for Long Beach, California.

19. The 987 foot vessel's eleven oil tanks were carrying approximately 53,094,510 gallons of crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline.

20. At about 12:04 a.m. on March 24, 1989, the vessel struck Bligh Reef, just offshore of Bligh Island, on the southeastern side of Valdez Arm in Prince William Sound, roughly 25 miles from the Alyeska terminal in Valdez. The grounding and subsequent efforts by the captain and crew to free the vessel from the reef tore holes in three saltwater ballast tanks extending the full length of the vessel, and cut open at least eight of the vessel's eleven oil cargo tanks.

21. Immediately following the initial grounding at 12:04 a.m. on March 24, the vessel released crude oil into the waters of Prince William Sound at a rate of about 20,000 barrels per hour. By roughly 3:30 a.m., the vessel had released approximately 138,000 barrels of crude oil into Prince William Sound. By early the next morning, the oil spilled from the vessel had formed a slick roughly 1,000 feet wide and four to five miles long. The spilled oil, driven by the winds, tides, and currents, continued to spread out over the waters of Prince William Sound, and began coating beaches on Little Smith, Naked, and Knight Islands within a matter of days. Within a week of the spill, the oil slick had moved in a southwesterly direction through the entrance to the Sound past Montague and LaTouche Islands and out into the Gulf of Alaska. The

oil has moved hundreds of miles along the coast of Alaska in the weeks since the vessel went aground on Bligh Reef, coating beaches on the Kenai and Alaska Peninsulas, Kodiak Island and Lower Cook Inlet, in addition to the hundreds of miles of coastline covered with oil inside the Sound. All told, the vessel lost at least 11 million gallons of crude oil during the days following the March 24 grounding.

V. IMPACTS OF THE SPILL

22. In the days and weeks following the EXXON VALDEZ's grounding on Bligh reef, the oil spilled from the vessel spread over and polluted thousands of square miles of the ocean surface, affected approximately 1,800 miles of coastline both inside and outside Prince William Sound, contaminated the ocean bottom and sediments and the near shore sub-tidal zone, and it continues to affect new areas as time goes on. The areas which have been affected thus far include: the proposed College Fjords-Nellie Juan wilderness area in the Chugach National Forest in western Prince William Sound; the Kenai Fjords and Katmai National Parks and Preserves; portions of the Becharof, Alaska Peninsula, Aniakchak, Alaska Maritime, and Kodiak National Wildlife Refuges; special-status State areas including the Katchemak Bay State Park and Critical Habitat Area, Shuyak Island State Park, and the McNeil River State Game Sanctuary.

23. The continuing presence of the oil in the water, on the ocean floor, and on the coastline has had the following effects on the environment, among others:

(a) The water in the areas where the oil has spread has become polluted with toxic crude oil and its constituents. As it has weathered, some of the oil has become entrained in the water column, where it will continue to pollute the ocean for years in the future. Oil which has contaminated the shoreline and bottom sediments will continue to be released into the water column in the future, thus further polluting the water for many years to come.

(b) Living natural organisms of Prince William Sound and the areas beyond the Sound have been (i) killed outright, (ii) damaged, (iii) had their reproductive cycles disrupted, or (iv) displaced by smothering, adsorption, absorption, ingestion, or otherwise coming in contact with oil from the spill, directly or indirectly. These resources include, among others: (i) marine mammals, including whales, sea otters, seals, sea lions, and porpoises; (ii) birds, including bald eagles, migratory birds, waterfowl, shorebirds, and seabirds such as auks, puffins, guillemots, murrelets, murrees, loons, grebes, and sea ducks; (iii) terrestrial mammals, including bears, Sitka black-tailed deer, river otters and mink; (iv) commercial and non-commercial sea life and intertidal dwellers, including fish and shellfish species, and pelagic

and benthic organisms such as plankton, jellyfish, squid, bottom dwelling invertebrates, sea grasses, seaweed, and algae. Deaths and chronic damage to these species will continue as long as the toxic crude oil, and its constituents, remains in the environment where it can adversely affect each of these living organisms.

(c) The food chain for all the living resources which reside in, spend part of their life cycle in, or migrate through, the waters and coastline contaminated with oil has been and will continue to be adversely affected as long as the toxic crude oil, and its constituents, remains in the environment or bioaccumulates and/or biomagnifies in species which serve as food sources of other living resources.

(d) The waters and coastline of Prince William Sound and the areas beyond the Sound which have been contaminated with oil have been so polluted, and the natural beauty and living resources of the area so damaged and destroyed, that the plaintiffs' members and others' use and enjoyment of the natural resources of the area for purposes such as fishing and hunting, wildlife viewing, camping and other recreational pursuits, scientific research, and public education, have been significantly reduced, and in some cases eliminated, and will be for years to come.

VI. CLEAN-UP EFFORTS

24. From the very outset of the oil spill disaster, when the vessel EXXON VALDEZ went aground on Bligh Reef on March 24, 1989, Alyeska's and Exxon's response and clean-up efforts have been unreasonably slow and inadequate.

25. At the time the oil spill occurred, Alyeska had in place oil discharge contingency plans, which are required under Alaska law. The contingency plans described how Alyeska would respond to oil spills that might occur along the Trans-Alaska pipeline, at the oil terminal in Valdez, or in Prince William Sound. The plans and their modifications represented that:

- (a) Alyeska had the best technology available to contain and clean up oil spills;
- (b) Alyeska could promptly encircle and contain an oil spill;
- (c) Alyeska had the equipment available to exclude spilled oil from more than 130 environmentally sensitive sites, including fish hatcheries, fish spawning grounds, and important marine mammal and bird use areas;
- (d) Alyeska could clean up a spill of 100,000 barrels of oil in Prince William Sound within 48 hours;
- (e) Alyeska could respond initially to an oil spill event in Prince William Sound within five hours;
- (f) In the event of a 200,000 barrel oil spill, Alyeska would have two oil skimmers and 4,500 feet of boom at the spill scene within three hours and that a barge, a third skimmer,

and 3,000 additional feet of boom would be at the scene within five hours.

26. Contrary to the representations in Alyeska's existing oil discharge contingency plans, Alyeska was not in compliance with the requirements of the plans at the time of the vessel EXXON VALDEZ oil spill, and did not have the resources available to conduct an adequate clean-up operation.

27. Alyeska's oil discharge contingency plans were inadequate to ensure the containment and clean-up of a major oil spill the size of the EXXON VALDEZ disaster and were not based on realistic scenarios for an oil spill in Prince William Sound.

28. Alyeska's and Exxon's response to the oil spill was inadequate. The crew of the EXXON VALDEZ notified the Coast Guard office in Valdez of the spill at 12:28 a.m. on March 24. Despite the requirement in Alyeska's own oil discharge contingency plan that the initial response effort to an oil spill event in Prince William Sound be in place at the vessel within five hours of notification, Alyeska failed to respond until well after the time required.

29. At the time the spill occurred, Alyeska's only containment barge was stripped for repairs at the Valdez terminal and was not operational. Alyeska had failed to notify the State of Alaska that the equipment had been taken out of service, as required by its contingency plan. Neither Alyeska nor Exxon had immediate access to the booms, skimmers, and other equipment and

trained personnel needed to contain and remove the oil, and to protect the environmentally sensitive areas of Prince William Sound and other areas in Alaska, when the spill occurred.

30. When Alyeska's initial response equipment did arrive at the vessel Exxon Valdez several hours late, the booms and other equipment were not sufficient to encircle the vessel, contain the spill, or remove the oil. Despite the fact that the weather was calm for the first two days following the spill, and therefore ideal for containment and removal, Exxon and Alyeska failed to contain or remove the oil.

31. Sufficient boom was not deployed even to surround the vessel until the second day of the spill. By that point, the oil slick was already at least 1,000 feet wide and four to five miles long extending away from the vessel.

32. In order to offset their lack of adequate oil storage capacity for the response operation, Exxon allowed the vessel EXXON BATON ROUGE to pump its ballast into Prince William Sound in preparation for lightening crude oil from the EXXON VALDEZ. This incident caused the discharge of oil, oily water and/or toxic substances into Prince William Sound which mingled with the oil spilled from the EXXON VALDEZ.

33. On information and belief, neither Alyeska nor Exxon efficiently or effectively requisitioned or made use of commercial vessels and manpower, or clean-up equipment which was on hand or could be requisitioned quickly, to contain the spread of the oil

and clean it up as much as possible before it spread, despite numerous offers of assistance by individuals and clean-up equipment manufacturers.

34. As a result of Alyeska's and Exxon's failures to contain and recover the spilled oil efficiently and effectively, the oil slick continued to move through Prince William Sound, polluting the water, contaminating the ocean bottom, and heavily oiling beaches on the western side of the Sound and at Little Smith, Naked, Ingot, Knight, Seal, Eleanor, Green, Montague, and LaTouche Islands, among others. The oil then proceeded out through the entrance to the Sound into the Gulf of Alaska and down the Gulf coastline in a westerly direction, contaminating the shoreline, water, and ocean bottom there as well.

36. In the days following the spill, Alyeska and Exxon failed to expeditiously deploy sufficient boom or take other effective protective actions with respect to virtually any of over a hundred identified environmentally sensitive areas in Prince William Sound or outside the Sound which were in the path of the advancing oil slick. Fishermen and the State of Alaska mounted their own emergency, last-ditch effort to save major salmon hatcheries at Main Bay, Sawmill Bay, and Esther Island. As a result of Alyeska's and Exxon's failure to protect sensitive areas quickly enough, marine mammal pupping and haul-out areas, bird rookeries, and exceptionally productive bays and lagoons were severely contaminated by oil days after the original spill occurred, as the

wind and tides continued to drive the oil around the islands of the Sound and out into the Gulf of Alaska.

37. Exxon submitted its first shoreline clean-up plan for Prince William Sound to the Coast Guard on April 15, 1989. Exxon submitted a revised version of the Prince William Sound plan on May 1, 1989. On May 24, 1989, Exxon submitted another amendment for the Prince William Sound plan and, for the first time, submitted separate shoreline plans to the Coast Guard covering affected areas outside Prince William Sound, including the Homer-Lower Kenai Peninsula, Seward, and Kodiak areas. Thus, Exxon was unreasonably slow in developing and implementing shoreline clean-up strategies in Prince William Sound and the Gulf of Alaska. It lost valuable time early in the spill event when clean-up activities could have been most effective.

38. The shoreline plans set out Exxon's operational plans for shoreline clean-up, including equipment, personnel, and clean-up techniques, but they contain no plans for rehabilitating and restoring the environment. The plans also do not include a process for identifying impacts to, let alone clean-up and restoration of, any affected areas other than shorelines. In addition, the plans fail to consider an adequate range of methods for cleaning the wide variety of affected shorelines.

39. Exxon's shoreline plans are inadequate to ensure a full clean-up of the oil contaminating the coastline of Prince William Sound and the Gulf of Alaska and restoration of the environment.

Among other deficiencies, Exxon's shoreline clean-up plans fail to give adequate consideration to ecological recovery objectives for the different species of marine organisms which inhabit the areas affected by oil. The plans fail to set out how such objectives will be used to decide when, how, and whether to apply specific clean-up techniques to particular oiled areas. Exxon's shoreline clean-up plans also fail to consider or to set out any mechanism for gathering sufficient information about the particular organisms which inhabit or utilize the intertidal and near-shore areas of each oiled coastal segment, their concentrations, and the relative importance and sensitivity of those species at different times to particular clean-up techniques. Because of these significant problems with the plans, Exxon cannot determine whether particular clean-up activities are in fact having a beneficial or detrimental effect on the environment over the short and/or long term; nor can informed decisions be made regarding the steps necessary to complete restoration of the natural environment in the affected areas.

40. The oil contaminating the coastline of Prince William Sound and the Gulf of Alaska coastline outside the Sound has not been removed or the environment restored by Exxon's shoreline treatment efforts to date. In many places, even after a beach has been "treated" several times pursuant to Exxon's shoreline clean-up plan, oil is still visible standing in pools among the rocks, and oil which has soaked down into the beach sediments -- in some

places as deep as 2 feet below the surface -- continues to percolate upwards to re-oil the surface as the tides move in and out of the area. In many areas, beaches observed a few days after "treatment" is considered complete by Exxon cannot be distinguished from untreated beaches. Exxon and Alyeska have failed to mobilize sufficient resources, or devote sufficient effort, to clean adequately all affected shorelines this year. Moreover, Exxon and Alyeska have unreasonably failed to devote sufficient effort to clean some of the most sensitive or heavily oiled beaches, instead treating many beaches of lesser importance first.

41. Exxon's conduct of the shoreline clean-up has caused and contributed to additional adverse impacts on the environment over and above the effects of the original oil contamination from the EXXON VALDEZ. These impacts include, among others:

- (a) physical trampling of shoreline organisms by workers and equipment;
- (b) scalding, and washing away of living organisms along the shoreline and in the intertidal zone with the high-pressure and high-temperature washing and flushing methods;
- (c) tracking of oil from contaminated areas to uncontaminated areas by the workers and equipment;
- (d) erosion of beaches subjected to high pressure washing;
- (e) sedimentation of the near-shore areas with oiled beach material washed off in the clean-up, leading to additional smothering and contamination of sub-tidal zone organisms;

- (f) washing of oil back into the near-shore marine environment, where it may cause more biological harm than on the beaches, and driving it deeper into the substrate where it will be even more difficult to remove;
- (g) failure to recapture much of the oil which is washed from the beaches during the clean-up due to Exxon's failure to deploy booms adequately or at all, failure to repair booms that break, or to clean oiled booms, inadequate oil recovery operations near the coastline being cleaned, and leaking booms which allow the oil to escape back into the marine environment;
- (h) physical and noise disturbance of species already adversely affected by the oil spill, including, particularly, marine mammals, birds, bears and deer;
- (i) failure to work at the appropriate tide levels to avoid contamination of rich marine communities in previously un-oiled areas;
- (j) leaving garbage and oily waste materials at the work sites along the coastline after the treatment has been completed;
- (k) impacts to the inter-tidal and near-shore areas from landing skiffs and anchoring barges;
- (l) additional oil and other contaminants spilled, leaked and discharged from clean-up vessels and equipment;

(m) impacts from workers, both on-duty and off-duty, entering into relatively untrammelled uplands;

(n) wholesale removal of whole sections of beach, including stream banks, killing countless organisms and releasing oily sediments into the water.

42. Exxon and Alyeska have failed to follow the advice and direction provided by the Coast Guard and other federal and state agencies regarding the resources and steps necessary to complete an adequate clean-up of affected areas.

43. Exxon and Alyeska have failed to prepare adequate plans to ensure the complete cleanup of the affected environment after September, 1989, and have failed to take the steps necessary to facilitate the complete restoration or replacement of damaged resources. As a result, Exxon and Alyeska cannot assure that the affected environment will be cleaned up or restored.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF - CLEAN WATER ACT

A. PROHIBITION AGAINST UNAUTHORIZED DISCHARGES

44. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1 to 43.

45. Section 101(a) of the CWA states that the objective of the Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). That section also declares, as a national policy, that the

discharge of pollutants into the navigable waters be "eliminated" by 1985. Id.

46. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that the "discharge of any pollutant by any person shall be unlawful" unless the discharge falls within one or more categories authorized by specific provisions of the CWA.

47. Section 502(5) of the CWA defines the term "person" to include an "individual, corporation," or "association." 33 U.S.C. § 1362(5).

48. Section 502(19) of the CWA defines the term "pollution" as "the man-made or man-induced alteration of the chemical, physical, biological . . . integrity of water." 33 U.S.C. § 1362(19). Section 502(6) defines the term "pollutant" broadly to include "biological materials" and "chemical" and other "waste[s] discharged into water." 33 U.S.C. § 1362(6).

49. Section 502(12) of the CWA defines the term "discharge of a pollutant" as including "any addition of any pollutant to navigable waters from any point source. . . ." 33 U.S.C. § 1362(12).

50. Section 502(7) of the CWA defines the term "navigable waters" as "waters of the United States, including the territorial seas." Section 502(8), in turn, defines "territorial seas" as the "belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters,

and extending seaward a distance of three miles." 33 U.S.C. § 1362(7) and (8).

51. Section 502(14) of the CWA defines the term "point source" as a "discernible, confined and discrete conveyance, including but not limited to any . . . discrete fissure . . . vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

B. CITIZEN SUITS FOR CIVIL PENALTIES AND TO ENJOIN ONGOING VIOLATIONS OF SECTION 301(a)

52. Section 505(a) of the CWA provides that "any citizen may commence a civil action on his own behalf -- (1) against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation under [the CWA]" 33 U.S.C. § 1365(a). Section 505(a) also authorizes district courts to "enforce such an effluent standard or limitation . . . and to apply any appropriate civil penalties under section [309(d)] of [the CWA]." Id.

53. Section 309(d) of the CWA provides that "[a]ny person who violates section [301] of [the Act] . . . shall be subject to a civil penalty not to exceed \$25,000 per day for each violation." 33 U.S.C. § 1319(d).

54. Section 505(g) of the CWA defines the term "citizen," for purposes of section 505, as "a person or persons having an interest which is or may be adversely affected." 33 U.S.C. § 1365(g).

55. Section 505(f) of the CWA defines the term "effluent standard or limitation" to include "an unlawful act under subsection (a) of section [301]" of the Act. 33 U.S.C. § 1365(f).

56. Section 505(b)(1)(A) of the CWA provides that "[n]o action may be commenced -- (1) under subsection (a)(1) of this section . . . prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order" 33 U.S.C. § 1365(b)(1)(A).

C. VIOLATIONS OF THE CLEAN WATER ACT

57. Plaintiffs are "citizens" within the meaning of section 505(a) and (g) of the CWA, 33 U.S.C. § 1365(a) and (g).

58. The Exxon defendants are "persons" within the meaning of sections 301(a) and 502(5) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(5).

59. The waters of Prince William Sound and within the line marking the outer limit of the United States territorial seas along the coast of Alaska are "navigable waters," within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

60. The release of more than 11 million gallons of oil from the EXXON VALDEZ, beginning March 24, 1989 and occurring continuously or intermittently until the EXXON VALDEZ left the navigable waters of the United States adjacent to Alaska, constitutes the discharge of a pollutant from a point source into navigable waters, within the meaning of sections 301(a) and 502(6), (7), (12), and (14) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(6), (7), (12), and (14).

61. The discharge of oil from the EXXON VALDEZ does not fall within one or more of the enumerated exceptions in section 301(a) of the CWA, 33 U.S.C. § 1311(a), to the general prohibition in that section of discharges of pollutants from a point source.

62. Each day that oil is discharged from the EXXON VALDEZ represents a distinct violation of section 301(a) of the CWA, 33 U.S.C. §1311(a).

63. Because a significant portion of the more than 11 million gallons of oil spilled from the EXXON VALDEZ remains in the environment and is susceptible to being removed from the environment, the EXXON VALDEZ spill represents an ongoing and continuing violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for purposes of sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a).

64. Each day that oil from the EXXON VALDEZ remains in the environment and is susceptible to being removed is a distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

65. Neither the Administrator of the United States Environmental Protection Agency (EPA), nor the State of Alaska, has commenced and is diligently prosecuting a civil or criminal action against Exxon in a court of the United States or a State to require compliance with the Clean Water Act, for purposes of section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B).

D. NOTICE OF VIOLATION

66. Pursuant to section 505(b)(1) of the CWA, 33 U.S.C.

§ 1365(b)(1), on April 18, 1989, plaintiffs issued to Exxon, to the Administrator of the EPA, and to the State of Alaska -- by both certified and registered mail -- a notice of violation of section 301(a) of the CWA. A copy of that notice is attached as Plaintiffs' Exhibit 1.

67. More than sixty days have passed since the issuance of the notice and, therefore, plaintiffs have satisfied the notice requirements in section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A).

SECOND CLAIM FOR RELIEF - RESOURCE

CONSERVATION AND RECOVERY ACT

68. Plaintiffs reallege and incorporate herein by reference the allegations in paragraphs 1 to 43.

69. Section 7002(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a), provides that "any person may commence a civil action on his own behalf --

(1)(B) against any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . .

70. Section 1004(3) of RCRA defines the term "disposal" to include:

the discharge, . . . spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

71. Section 1004(27) of RCRA defines the term "solid waste" as "garbage, refuse, . . . and other discarded material, including solid, liquid, [or] semisolid . . . material resulting from industrial, commercial, [or] mining . . . operations. . . ." 42 U.S.C. § 6903(27).

72. Section 1004(15) of RCRA defines the term "person" to include individuals, corporations, and associations. 42 U.S.C. § 6903(15).

73. Section 7002(a) of RCRA authorizes this Court to:

restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste . . . , to order such person to take such other action as may be necessary, or both,

42 U.S.C. § 6972(a).

74. Each of the plaintiffs are "persons," within the meaning of section 1004(15) of RCRA. 42 U.S.C. § 6903(15).

75. Exxon and Alyeska are corporations, and as such, are "persons," within the meaning of section 1004(15) of RCRA. 42 U.S.C. § 6903(15).

76. The oil spilled from the EXXON VALDEZ into Prince William Sound, along the coast of the Gulf of Alaska, and other areas of Alaska, is a "solid waste," within the meaning of section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

77. Exxon and Alyeska are contributing or have contributed to the past or present handling, treatment, and disposal of such solid waste, for purposes of section 7002(a)(1)(B) of RCRA, 42

U.S.C. § 6972(a)(1)(B), by spilling the oil from the EXXON VALDEZ and taking or failing to take various steps to control and remove the oil from the environment.

78. The spilling of oil from the EXXON VALDEZ, the continuing presence of oil in the environment, and the techniques used to control and remove the oil have created and are creating conditions which may present "an imminent and substantial endangerment to health or the environment" within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. §6972(a)(1)(B).

79. Pursuant to section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), on April 18, 1989, plaintiffs gave notice of the endangerment to the environment to defendants Exxon and Alyeska and to the Administrator of the EPA and the State of Alaska by certified and registered mail. A copy of that notice is attached to this complaint as Plaintiffs' Exhibit 1.

80. On information and belief, a copy of the notice was received by Exxon, Alyeska, the Administrator of the EPA, and by the State of Alaska, on or before April 21, 1989.

81. More than ninety days have passed since plaintiffs notified Exxon, Alyeska, the Administrator of the EPA, and the State of Alaska of the endangerment and, therefore, plaintiffs have satisfied the notice requirements of section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A).

82. On information and belief, the Administrator of the EPA has not (a) commenced and diligently prosecuted a claim under RCRA

section 7003 or section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (b) engaged in a removal action under CERCLA section 104, (c) incurred costs to initiate a Remedial Investigation and Feasibility Study (RIFS) under CERCLA section 104 and diligently proceeded with a remedial action under CERCLA, or (d) obtained a court order or issued an administrative order under RCRA section 7003 or CERCLA section 106 pursuant to which a responsible party is diligently conducting a removal action, RIFS, or proceeding with a remedial action. 42 U.S.C. § 6972(b)(2)(B).

83. On information and belief, the State of Alaska has not (a) commenced and diligently prosecuted a claim under RCRA section 7002(a)(1)(B), (b) engaged in a removal action under CERCLA section 104, or (c) incurred costs to initiate a RIFS under CERCLA section 104 and diligently proceeded with a remedial action under CERCLA. 42 U.S.C. § 6972(b)(2)(C).

VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request the Court to grant the following relief:

(a) a declaration that each day that oil is released from the EXXON VALDEZ constitutes a distinct violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for which Exxon is liable;

(b) a declaration that the continuing presence in the environment of oil spilled from the EXXON VALDEZ is an ongoing

violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for which Exxon is liable;

(c) a declaration that the oil spilled from the EXXON VALDEZ is a solid waste and that the oil spill and defendants' efforts to control and clean up that spill have contributed to and are contributing to an imminent and substantial endangerment to health and the environment, for purposes of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B);

(d) a preliminary and permanent injunction requiring Exxon and Alyeska to abate and remove from the environment the pollution resulting from the discharge of oil from the EXXON VALDEZ, to undertake a thorough evaluation of clean-up techniques and the development of a complete clean-up plan, to protect the natural resources of the region from further and future harm, to take all steps necessary to facilitate the complete restoration of the environment and ensure that all oil clean-up activities are consistent with and advance such restoration, and to acquire equivalent resources for those that cannot fully be restored;

(e) an order directing Exxon to pay civil penalties in the full amount authorized by sections 505 and 309 of the Clean Water Act, 33 U.S.C. §§ 1365, 1319;

(f) an award to plaintiffs of their costs of litigation and attorneys and expert witness fees;

(g) and any other relief the Court deems necessary and proper.

Respectfully submitted,

DATED: August 23, 1989

Lauri J. Adams

LAURI J. ADAMS

ERIC P. JORGENSEN

STEWART ELGIE

Sierra Club Legal Defense Fund, Inc.

325 4th St.

Juneau, Alaska 99801

(907) 586-2751

DATED: August 23, 1989

Michael M. Wenig

MICHAEL M. WENIG

RANDALL M. WEINER

Trustees for Alaska

725 Christensen Dr., #4

Anchorage, Alaska 99501-2101

(907) 276-4244

DATED: August 23, 1989

Craig C. Corbitt

FREDERICK P. FURTH

CRAIG C. CORBITT

Furth, Fahrner, Bluemle & Mason

201 Sansome Street, Suite 1000

San Francisco, California 94104

(415) 433-2070



SIERRA CLUB LEGAL DEFENSE FUND, INC.

Sunrise, Mt. McKinley

Ansel Adams

325 4th Street

Juneau, Alaska 99801

(907) 586-2751

FAX (907) 463-5891

ALASKA OFFICE

Lauri J. Adams
Eric P. Jorgensen
Staff Attorneys

Stewart Elgie
Law Associate

Other Offices

SAN FRANCISCO OFFICE

2044 Fillmore St.
San Francisco, CA 94115
(415) 507-6100

ROCKY MOUNTAIN OFFICE

1600 Broadway St.
Suite 1600
Denver, CO 80202
(303) 863-9898

WASHINGTON, DC OFFICE

1531 P Street, N.W.
Suite 200
Washington, DC 20005
(202) 667-4500

NORTHWEST OFFICE

216 First Avenue South
Suite 330
Seattle, WA 98104
(206) 343-7340

HAWAII OFFICE

212 Merchant St.
Suite 202
Honolulu, HI 96813
(808) 599-2430

L.G. Rawl, Chairman
Exxon Corporation
1251 Avenue of the Americas
New York, New York 10020

Frank Iarossi, President
Exxon Shipping Company
800 Bell Street
Houston, Texas 77002-7426

G. M. Nelson, President
Alyeska Pipeline Service Co.
1835 Bragaw Street
Anchorage, Alaska 99512

Admiral Paul Yost, Commandant
U.S. Coast Guard
2100 Second Street SW
Washington, D.C. 20053-0001

Rear Admiral Edward Nelson, Jr.,
United States Coast Guard
Commander 17th Coast Guard District
P.O. Box 3-5000
Juneau, Alaska 99802

April 18, 1989

William Reilly, Administrator
U.S. Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Robie G. Russel
Regional Administrator
U.S. Environmental Protection Agency
Region X
1600 6th Avenue
Seattle, Washington 98101

Richard Thornburg
Attorney General of the United States
U.S. Department of Justice
Constitution Avenue and Tenth St. NW
Washington, D.C. 20530

Samuel Skinner, Secretary
U.S. Department of Transportation
400 Seventh Street S.W.
Washington, D.C. 20590

Commissioner Dennis Kelso
Alaska Department of
Environmental Conservation
P.O. Box O
Juneau, Alaska 99811-1800

Gentlemen:

This is to notify you of violations of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6991i, and the Clean Water Act, 33 U.S.C. §§ 1251-1387, occurring in relation to the catastrophic oil spill from the tanker *Exxon Valdez* in Prince William Sound, Alaska. This notice is being provided by the Sierra Club Legal Defense Fund and Trustees for Alaska on behalf of our clients Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Oceanic Society-Friends of the Earth, U.S.-Environmental Policy Institute, Sierra Club, The Wilderness Society, and Trustees for Alaska.

EXHIBIT 1

Crude oil from the tanker Exxon Valdez is a solid and hazardous waste which is being and has been handled, stored, treated, transported and disposed of in a manner which may present an imminent and substantial endangerment to health or the environment within the meaning of section 7002(a)(1)(B) of the Solid Waste Disposal Act, 42 U.S.C. § 6972(a)(1)(B). The approximately 10 million gallons of crude oil that has escaped from the tanker beginning on March 24, 1989, and continuing since then has caused and will continue to cause severe adverse impacts to fish and wildlife and the formerly pristine environment which is their habitat.

The spill has contaminated large areas of Prince William Sound and the Gulf of Alaska, and many miles of coastline in south central Alaska, including Kenai Fjords and Katmai National Parks. Thousands of seabirds and marine mammals have been and will continue to be injured and killed. Fish populations in the region may be severely affected and even terrestrial animals, such as bears, deer, and bald eagles, are likely to be harmed from ingesting contaminated plants, animals, and fish, and from habitat loss. Adverse impacts to public health may also result from exposure to the spilled oil and contaminated fish and wildlife.

These and other threats to the environment have been and are being caused by the continuing presence of the oil from the tanker in the water and on land, the ineffective clean-up measures being undertaken, the abandonment of oil not recovered, the inadequate program for storage, treatment, and disposal of the recovered oil and oil-contaminated materials, and inadequate oil spill contingency plans.

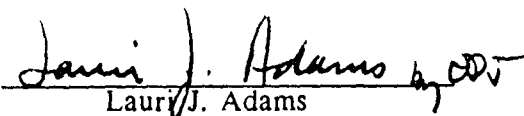
Alyeska Pipeline Service Company bore the original responsibility for immediate response to the spill. Exxon Corporation and Exxon Shipping Company are also responsible for the spill as owners of the tanker Exxon Valdez and the oil it contained. Several federal and state agencies are responsible for undertaking necessary approvals and response measures, including the U.S. Coast Guard, U.S. Environmental Protection Agency, and the Alaska Department of Environmental Conservation.

The discharge of oil from the tanker Exxon Valdez is also an unauthorized discharge of a pollutant into navigable waters in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311. This unlawful discharge began on March 24, 1989 and, to the best of our knowledge, is continuing. Exxon Corporation and Exxon Shipping Company are responsible for this violation.

This notice of violations is being provided pursuant to the Clean Water Act, § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), and the Solid Waste Disposal Act, § 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), which require 60 and 90 days notice, respectively, of alleged violations prior to the commencement of a citizen suit. This notice is provided on behalf of the above listed organizations (the addresses of which are included on the attached list) by the Sierra Club Legal Defense Fund, 325 Fourth Street, Juneau, Alaska, 99801, (907) 586-2751, and Trustees for Alaska, 725 Christensen Drive, Suite 4, Anchorage, Alaska, 99501, (907) 276-4244.

Sincerely yours,

SIERRA CLUB LEGAL DEFENSE FUND, INC.
TRUSTEES FOR ALASKA

By: Lauri J. Adams 
Lauri J. Adams

cc: C T Corporation System, Registered Agent

Notice is provided on behalf of the following organizations:

Prince William Sound
Conservation Alliance
P.O. Box 1697
Valdez, AK 99686
Nan Eagleson, President
(907) 835-5175

Alaska Center for the Environment
700 H Street #4
Anchorage, AK 99501
Sue Libenson, Executive Director
(907) 274-3621

Defenders of Wildlife
1244 - 19th St., N.W.
Washington, DC 20036
Dr. Rupert Cutler, President
(202) 659-9510

Greenpeace U.S.A., Inc.
1436 U St. N.W.
Washington, DC 20009
Peter Bahouth, Executive Director
(202) 462-1177

National Audubon Society
950 Third Avenue
New York, NY 10222
Peter Berle, Executive Director
(212) 832-3200

Natural Resources Defense Council, Inc.
122 East 42nd Street
New York, NY 10168
John H. Adams, Executive Director
(212) 949-0049

Northern Alaska Environmental Center
218 Driveway
Fairbanks, AK 99701
Rex Blazer, Executive Director
(907) 452-5021

Oceanic Society
Friends of the Earth, U.S.
Environmental Policy Institute
218 D Street, S.E.
Washington, DC 20003
Michael Clark, President
(202) 544-2600

Sierra Club
730 Polk Street
San Francisco, CA 94109
Michael L. Fischer, Executive Director
(415) 776-2211

The Wilderness Society
1400 I Street, N.W., 10th Floor
Washington, DC 20005
George Frampton, President
(202) 842-3400

Trustees for Alaska
725 Christensen Drive, Suite 4
Anchorage, AK 99501
Randall Weiner, Executive Director
(907) 276-4244

WILLIAM BIXBY
ROBERT M. COWAN
RICHARD F. GERRY
BIXBY, COWAN & GERRY
CASEY, GERRY, CASEY, WESTBROOK, REED & HUGHES
Attorneys at Law
705 Second Avenue
Cordova, AK 99574
AKPLD/9999

Attorneys for Plaintiff

FILED
AUG 23 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

UNITED STATES DISTRICT COURT
FOR THE STATE OF ALASKA

ERNEST W. POOLE,

Plaintiff,

v.

EXXON CORPORATION, a New Jersey
Corporation; EXXON SHIPPING
COMPANY, a Delaware Corporation;
ALYESKA PIPELINE SERVICE
COMPANY, a Delaware Corporation;
JOSEPH J. HAZELWOOD, and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. A 89 - 361 CIV

COMPLAINT

Plaintiff ERNEST W. POOLE by his attorneys, brings this action on his own behalf to recover damages, injunctive relief and costs of suit from the defendants named herein, and complains and alleges as follows:

ROBERT MERLE COWAN
ATTORNEY AT LAW
P.O. BOX 1681
KENAI, ALASKA 99611
(907) 283-7187

THE PARTIES

1. Plaintiff, a resident of Alaska, is engaged in the business of commercial fishing in Prince William Sound and has been damaged by the acts and conduct of the defendants as alleged herein.

2. Defendant ALYESKA PIPELINE SERVICE COMPANY, a Delaware Corporation, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System that includes: Amerada Hess Corporation, ARCO Pipeline Company, British Petroleum Pipelines, Inc., EXXON Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, Exxon Corporation, Exxon USA, and Exxon Shipping Company. ALYESKA PIPELINE SERVICE COMPANY ("ALYESKA") owns and operates the Trans-Alaskan Pipeline System, including the terminal at Valdez, Alaska, and loaded the EXXON VALDEZ with north slope crude oil at the Valdez Terminal on March 23, 1989.

3. Defendant EXXON CORPORATION, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020. EXXON CORPORATION, which is engaged in the business of operating petroleum companies through its subsidiaries and divisions, includ-

ing those in the State of Alaska, is an owner and operator of the vessel known as the EXXON VALDEZ, which operates out of Alaskan waters on a continuous and systematic basis, and is the owner of the crude oil being transported on the EXXON VALDEZ at all times mentioned herein.

4. Defendant EXXON SHIPPING COMPANY, a Delaware Corporation, and Maritime subsidiary of defendant EXXON CORPORATION, has its principal place of business at 811 Dallas Avenue, Houston, Texas 77002, and is an owner and operator of the vessel known as the EXXON VALDEZ, which operates in Alaskan waters.

5. Defendant EXXON CO., USA, is a division of defendant EXXON CORPORATION, with its principal place of business at 800 Bell Avenue, Houston, Texas 77002. EXXON CO., USA, is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States, including Alaska, and is an owner and operator of the vessel known as EXXON VALDEZ.

6. Defendant JOSEPH J. HAZELWOOD is a resident of the State of New York, and is or was employed by EXXON in the State of Alaska as Captain for the vessel EXXON VALDEZ. Defendant HAZELWOOD was acting within the scope of his employment, and as an agent of EXXON when the vessel ran aground March 24, 1989.

7. Does 1 through 49, inclusive, are insurance companies, sureties, or guarantors of financial responsibility for defendant EXXON and engaged in business in the State of Alaska. The true names and capacities of these parties are unknown to plaintiff at this time. Plaintiff therefore sues said defendants by such fictitious names, and when the true names and capacities of said defendants have been ascertained, plaintiff will amend this complaint accordingly.

8. The true names and/or capacities of Does 50 through 100, whether individual, corporate, associate, are unknown to plaintiff at this time, who therefore, sues said defendants by fictitious names, and when the true names and capacities of said defendants have been ascertained, plaintiff will amend this complaint accordingly. Plaintiff is informed and believes and thereupon alleges, upon such information and belief, that each defendant designated herein as Doe is responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to plaintiff, as hereinafter alleged.

DEFINITIONS

9. As used herein, the terms "EXXON", "defendant EXXON" and "the EXXON defendants" refer collectively to defendants EXXON CORPORATION, EXXON SHIPPING COMPANY, and EXXON USA.

10. As used herein, the terms "rupture" and "spill" refer to the rupture of the hull and oil tanks of the EXXON VALDEZ on March 24, 1989 and the consequent release of 11,000,000 gallons of crude oil into Prince Williams Sound, damaging numerous types of commercial fisheries therein and elsewhere in Alaskan waters.

11. As used herein, the term "terminal facilities" refers to those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is taken from the pipeline and loaded onto vessels or placed in storage for future loading onto vessels.

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

13. As used herein, the term "vessel" refers to the vessel EXXON VALDEZ, being used as a means of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and carrying oil that had been transported through the Trans-Alaskan Pipeline System.

OPERATIVE FACTS

14. On Thursday, March 23, 1989, Captain Joseph J. Hazelwood, while ashore at Valdez, Alaska, consumed numerous alcoholic beverages, becoming intoxicated.

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

16. The vessel's twelve oil tanks were filled to capacity with approximately 53 million gallons of Alaskan crude oil which had been shipped from Alaska's north slope through the Trans-Alaska Pipeline. This crude oil was owned by EXXON.

17. The EXXON VALDEZ passed through the harbor and Valdez Narrows under the command of Harbor Pilot EDWARD MURPHY. After piloting the ship out of the harbor, defendant MURPHY turned over command to Captain JOSEPH J. HAZELWOOD who was on the bridge and in an obviously intoxicated state. Defendant MURPHY disembarked at the southern end of the Narrows, leaving the vessel in the command of the obviously intoxicated defendant HAZELWOOD.

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

19. The U.S. Coast Guard gave the EXXON VALDEZ permission to leave the normal deep-water southbound shipping lane of the channel, due to earlier reports that it contained icebergs that had calved from a glacier to the northwest, and went into the northbound lane of the channel.

20. The ship was steered east through the empty northbound lane, outside the normally travelled channel, and into a charted area of rock reefs.

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

22. Although the ship was still navigable after the first impact, she was so far east of deep water that when Cousins tried to turn the EXXON VALDEZ back toward the west, she struck a second part of the shallow reef. This

second impact grounded the ship completely stopping her progress.

23. The scraping impact and grounding of the EXXON VALDEZ upon Bligh Reef cut open at least 8 of the ship's twelve oil tanks, which held 53 million gallons of crude oil, causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil have been discharged into Prince William Sound contaminating thousands of square miles of Alaskan waters.

24. Nine hours after the vessel ran aground on Bligh Reef, federal investigators submitted Captain HAZELWOOD to blood and urine alcohol tests from which they determined that he had been legally drunk at the time of the accident, and in violation of Coast Guard regulations pertaining to operation of commercial vessels at sea while under the influence of alcohol.

25. The damage caused by the spill to property, trades and businesses, quality of life, and fishing and marine life, will last for years. The region's rocky jagged coastline has entrained pockets of oil as the slick washed ashore, creating opportunities for re-pollution over a protracted time into the future.

26. Damages to plaintiff caused by this discharge of millions of gallons of thick, North Slope crude oil, include but are not limited to damage to marine life, including all five species of Herring, Salmon, Bottom Fish, Shrimp and Crab, relied upon by plaintiff for economic purposes.

COUNT I
(Alaska Environmental Conservation Act)
(Plaintiff v. EXXON, ALYESKA and DOES 1 through 49)

27. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

28. Pursuant to AS 46.03.826, oil is defined as a hazardous substance.

29. At all relevant times mentioned herein, defendants had control over the hazardous substance.

30. The damages to plaintiff were neither caused by an act of war, nor by the negligence of the United States, any other governmental entity, nor by plaintiff.

31. Pursuant to AS 46.03.822, defendants are strictly liable to plaintiff for damages sustained as a result of the discharge of oil from the EXXON VALDEZ.

32. As a direct and proximate result of such discharge, plaintiff has suffered severe injuries to his person and economic welfare in an amount which exceeds the

minimum jurisdictional limits of this court.

33. Pursuant to AS 46.03.824, defendants are liable to plaintiff for all damages sustained as a result of the spill, including but not limited to loss of income, loss of the means of producing income, loss of enjoyment of life, emotional distress, and loss of economic benefit.

34. Defendants DOES 1 through 49 are liable for all damages sustained by plaintiff pursuant to AS 46.04.040(e).

COUNT II
(Common Law Strict Liability)
(Plaintiff v. EXXON and ALYESKA)

35. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

36. At all relevant times mentioned herein, defendants had control over 53 million gallons of oil contained within the single hull of tanker EXXON VALDEZ.

37. Defendants, in producing and transporting oil, were engaged in an abnormally dangerous and ultrahazardous activity and therefore owed to plaintiff an absolute duty to conduct their activities in a safe and proper manner. Defendants breached this absolute duty by causing or allowing or contributing to the discharge and dispersion of oil, a hazardous substance, upon and into the waters

and surface and subsurface lands in an around Prince William Sound.

38. As a direct and proximate result of the spill, plaintiff has suffered severe injuries to his person and economic welfare.

39. Defendants are liable to plaintiff for all loss of prospective economic advantage occasioned by dimunition of aquatic life resulting from the spill.

COUNT III
(Negligence)
(Plaintiff v. EXXON, ALYESKA, and HAZELWOOD)

40. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

41. Defendants EXXON and ALYESKA owed a duty to plaintiff to conduct their oil operations in a manner not involving unreasonably great risk of harm to the region's rich aquatic life upon which plaintiff relies for his economic and personal well-being. Defendants were clearly aware of the potential disaster to the economic livelihood of plaintiff from an oil spill.

42. Defendants EXXON, ALYESKA and HAZELWOOD violated the duty owed to plaintiff to exercise the ordinary care and diligence of a reasonable and prudent operator of a super tanker in the Prince William Sound area.

43. Defendant EXXON breached this duty by the entrustment and continued employment of Captain JOSEPH J. HAZELWOOD, who has previously been convicted of charges involving drinking and driving twice in the past five years and had his drivers license suspended or revoked three times in that same period and the entrustment to him of the command of the EXXON VALDEZ, one of the largest vessels in the EXXON Fleet³.

44. Defendant EXXON knew or should have known, based on HAZELWOOD's previous convictions for drinking and driving, as well as the revocation or suspension of his drivers license three times in the same five year period, that HAZELWOOD did not possess the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care.

45. At all relevant times herein, Gregory Cousins and Captain HAZELWOOD were employees of defendant EXXON and acting within the scope of their employment.

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

47. Captain HAZELWOOD and third mate Cousins knew or should have known that Cousins did not possess the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care.

48. Captain HAZELWOOD and third mate Cousins knew or should have known that it was not only unreasonably dangerous for HAZELWOOD to be intoxicated while commanding a commercial vessel, but also in violation of applicable Coast Guard rules and regulations.

49. Defendant EXXON acted outrageously and with reckless, wanton and willful disregard to the rights and economic well-being of plaintiff in the ownership and operation of the EXXON VALDEZ, for which plaintiff is entitled to punitive damages.

COUNT IV
(Negligence)
(Plaintiff v. EXXON)

50. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

51. Defendant EXXON owed a duty to plaintiff to conduct their oil transportation activities in a reasonably prudent manner.

52. Defendants knew or should have known, that the single hull construction of the tanker EXXON VALDEZ was not sufficient to allow it to safely engage in the trade

for which it was intended.

53. Defendant EXXON knew or should have known of the ecological sensitivity of the waters in which the EXXON VALDEZ was operating. Moreover, defendant EXXON knew or should have known of plaintiff's dependence on the quality of those waters for his personal well-being and economic livelihood.

54. Defendant EXXON breached the duty owed to plaintiff, and failed to exercise the care of a reasonable and prudent oil transporter, by utilizing a single hull tanker to transport vast quantities of oil in Alaskan waters.

COUNT V
(Negligence)
(Plaintiff v. EXXON and ALYESKA)

55. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

56. Defendant ALYESKA PIPELINE SERVICE COMPANY shared responsibility with EXXON for oil spill contingency plans in the area where the spill occurred. ALYESKA has specific responsibility in carrying out these contingency plans. Long before the spill from the EXXON VALDEZ, ALYESKA had consciously let its contingency plan response capability dwindle to an inadequate state. For example, an important

clean-up barge was being repaired at the time of the EXXON VALDEZ disaster and thus was not available for the clean-up and no alternative barge was provided. ALYESKA had apparently not reported this to the State of Alaska. ALYESKA's actions in failing to act promptly to contain the spill made the disaster even worse. EXXON was also aware that ALYESKA's contingency plans and equipment were not in proper readiness. Further, EXXON's own clean-up efforts were grossly inadequate allowing the oil spill to spread, thus aggravating damages.

57. Defendants ALYESKA and EXXON owed a duty to plaintiff to provide and maintain an emergency clean-up plan, which upon information and belief, required them to be on-site within five hours after the spill.

58. Defendants EXXON and ALYESKA breached this duty, for 18 hours after the rupture, essentially nothing was in place. Instead, it took nearly an entire day for EXXON and ALYESKA representatives to start placing barrier booms around the slick. By that time, the spill had become too large to contain.

59. The negligence of defendants ALYESKA and EXXON in the control and clean-up operations, specifically include, but are not limited to:

(A) Failure to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil;

(B) Not adequately planning the ensuing clean-up effort;

(C) Not adequately carrying out the ensuing clean-up effort;

(D) Unreasonably delaying the ensuing clean-up effort;

(E) Choosing inadequate tactics in the ensuing clean-up effort; and

(F) Possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up effort;

All of which served to aggravate and compound the damages to plaintiff.

60. Defendants EXXON and ALYESKA acted outrageously, recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiff in the creation, control and clean-up of this spill. The reckless and conscious indifference of defendants' actions entitled to plaintiff to exemplary and punitive damages.

COUNT VI

(Private Nuisance)
(Plaintiff v. EXXON and ALYESKA)

61. Plaintiff realleges and herein incorporates by reference each and every allegation contained above.

62. The acts and omissions of defendants created a private nuisance through substantial interference with the use and enjoyment of plaintiff's interest in property used by and for the benefit of plaintiff.

63. This substantial interference with the use and enjoyment of plaintiff's interest in property includes, but is not limited to, inter alia, injury or loss to real and personal property, loss of income, loss of means of producing income, and loss of economic benefit.

64. The substantial interference with plaintiff's interest was caused by the actions and omissions of the defendants for which they are liable to plaintiff for damages sustained.

COUNT VII

(Public Nuisance)
(Plaintiff v. EXXON and ALYESKA)

65. Plaintiff realleges and incorporates herein by reference each and every allegations contained above.

66. The acts and omissions of the defendants has created a public nuisance through which plaintiff has suffered damages different in kind from that of the general public. By reason of plaintiff's special rights and status with respect to the cultivation and harvest of fish, defendants have unreasonably interfered with the rights of plaintiff to water that is free from pollution and contamination by oil.

67. Due to plaintiff's rights to the marine resources from the waters in and around Price William Sound, the nuisance created by defendant has resulted in a special injury to plaintiff, which different in kind and degree from that suffered by the general public.

68. The substantial interference with plaintiff's interest were caused by the actions and omissions of the defendants for which they are liable to plaintiff for damages sustained.

COUNT VIII

(Negligent Interference with Plaintiff's Perspective
Economic Advantage)

(Plaintiff v. EXXON, ALYESKA and HAZELWOOD)

69. Plaintiff realleges each and every allegation contained in paragraphs 1 through 68, above, and incorpo-

rated them herein by reference.

70. All of the acts and omissions of defendants set forth above, negligently and substantially interfered with plaintiff's perspective economic advantages, where defendants had a duty to use care and avoid risk. The damages to plaintiff's economic future caused by defendants were reasonably foreseeable. Defendants knew, or should have known, that their conduct would injure plaintiff's perspective economic advantage. By reason of plaintiff's special rights and status with respect to the cultivation and harvest of fish, defendants have unreasonably interfered with the future of plaintiff's economic situation.

71. The substantial interference with plaintiff's perspective economic advantage includes, but is not limited to: injury or loss to personal property, loss of income, loss of future income, loss of means of producing the income, and loss of economic benefit. That such damages are a direct, indirect, and proximate cause of the acts and omissions of defendants set forth above. As a result, defendants are liable to plaintiff for all damages incurred or that will be incurred in the future as a result of defendants' conduct.

COUNT IX

(Negligent Infliction of Emotional Distress)
(Plaintiff v. EXXON, ALYESKA and HAZELWOOD)

73. Plaintiff realleges each and every allegation contained in paragraphs 1 through 72 above, and hereby incorporates them herein by reference.

74. The acts and omissions of defendants were so outrageous and shocking that it exceeds all reasonable bounds of decency tolerated by the average member of the community, and said conduct caused severe mental stress to plaintiff. Defendants acted negligently, recklessly and with utter disregard of the consequences that might follow from the conduct, inflicting mental anguish and emotional distress upon plaintiff. By reason of plaintiff's special rights and status with respect to the cultivation and harvest of fish, defendants have unreasonably, negligently and recklessly interfered with plaintiff's peaceful state of mind, and have inflicted serious and substantial emotional injuries upon plaintiff. Due to defendants' conduct, they are liable for any and all emotional and mental damages incurred by plaintiff. Defendants were placed in a position of trust and they abused the position that gave them the power to damage plaintiff's interest and inflict emotional distress.

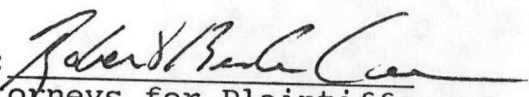
RELIEF SOUGHT

WHEREFORE, plaintiff prays that this court grant relief as follows:

- A. Award compensatory and punitive damages under all counts to plaintiff in an amount to be determined by the finder of fact;
- B. Award attorneys fees, prejudgment interest, and costs of this action;
- C. Enter declaratory and injunctive relief to abate the nuisance arising out of defendant's wrongful acts and omissions as alleged herein, and order defendants to pay for ongoing control, containment, clean-up, restoration and monitoring of oil contamination and adverse effects resulting therefrom under the jurisdiction of this court; and
- D. Award such other and further relief as this court deems just and proper.

Dated August 18, 1989.

WILLIAM BIXBY
ROBERT M. COWAN
RICHARD F. GERRY
BIXBY, COWAN & GERRY
CASEY, GERRY, CASEY,
WESTBROOK, REED & HUGHES

By: 
Attorneys for Plaintiffs

ROBERT MERLE COWAN
ATTORNEY AT LAW
P.O. BOX 1681
KENAI, ALASKA 99611
(907) 283-7187

FILED

AUG 25 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

PRE-TRIAL ORDER NO. 4
Scheduling & Planning

Pursuant to the court's General Order No. 10, an initial pre-trial conference for the purpose of scheduling and planning was convened at 8:30 a.m. on August 24, 1989. The conference was attended by Presiding Superior Court Judge Brian C. Shortell in consideration of the fact that the district court and the superior court judges perceive that scheduling and planning for state and federal cases should, to the maximum degree feasible, proceed in tandem. A copy of the agenda for the conference is attached hereto, as is a list of those who attended the conference.

501

1 I.

2 Organization of Plaintiffs

3 On the basis of the memoranda which were submitted in
4 preparation for the scheduling and planning conference and the
5 discussions which took place at the conference, the judges of the
6 superior court and this court have determined that there shall be
7 one plaintiffs' organization and one defendants' organization
8 which will serve the courts in the management of both the federal
9 and state court cases which flow from the grounding of the Exxon
10 Valdez.

11 The court has determined to defer action on plaintiffs'
12 proposed pre-trial order for their organization.

13 Plaintiffs shall serve on all parties and file with the
14 court, on or before September 5, 1989, their proposal for the
15 membership and duties, or "charter", for a plaintiffs' coordinat-
16 ing committee. The proposal shall include the names of those
17 persons who will chair subcommittees and, to the extent that
18 plaintiffs are able, the names of the members of those committees
19 which are to be organized at this time such as the case manage-
20 ment committee (plaintiffs' proposed "executive board"), the
21 discovery committee, and the law and motions committees. To the
22 extent that such information has not already been submitted,
23 resumes of plaintiffs' coordinating committee members and sub-
24 committee members shall be supplied to the court.

25 The proposed plan shall designate plaintiffs' liaison
26 counsel and shall specify the functions and duties which plain-

1 tiffs' coordinating committee anticipate liaison counsel perform-
2 ing.

3 The court wishes to emphasize, with respect to both
4 liaison counsel and the chair or lead counsel of subcommittees
5 that the court has concern that these positions be held by
6 counsel who are prepared and able to devote full time to their
7 assignments as and when necessary, and that such liaison counsel
8 and lead counsel have the experience and stature necessary to
9 demand and obtain the respect and confidence of all other counsel
10 and the court.

11 In the interest of and with the expectation that dis-
12 covery will commence immediately after certain other proceedings
13 hereinafter specified, the court would have counsel confer for
14 the purpose of proposing a slate of candidates for Discovery
15 Master for the case as a part of the September 5, 1989, filing.
16 If counsel are able to agree on a slate of candidates, a joint
17 submission may be made; otherwise, the court will receive addi-
18 tional suggestions in responses for which provision is made
19 hereinafter.

20 The plaintiffs' foregoing submission may be accompanied
21 by an explanatory memorandum of no more than five (5) pages in
22 length.

23 On or before September 18, 1989, any plaintiff who is
24 not in full agreement with the filing of plaintiffs who have
25 heretofore informally organized themselves may serve and file a
26

1 response to the plaintiffs' plan of organization. Such responses
2 shall not be in excess of five (5) pages in length.

3 On or before September 28, 1989, defendants may serve
4 their responses, if any, to plaintiffs' organization plan. Such
5 responses shall not be in excess of five (5) pages in length.

6 The presently organized plaintiffs may file a final
7 reply memorandum of no more than five (5) pages in length on or
8 before October 4, 1989.

9 II.

10 Organization of Defendants

11 Employing the same foregoing schedule for the filing of
12 memoranda, and with the same limits with respect to the length of
13 memoranda, defendants shall serve and file, by September 5, 1989,
14 their designation of liaison counsel and their proposal for
15 organization of defense counsel, including such matters as the
16 designation of lead counsel for purposes of defendants' discovery
17 and coordination with the plaintiffs' lead counsel for discovery.

18 III.

19 Discovery

20 Discovery in these consolidated cases shall remain
21 stayed until further order of the court; provided, however, that
22 plaintiffs and defendants have informally agreed to certain
23 exchanges of documents. The parties are at liberty to proceed
24 with such informal discovery as they have agreed upon.

25 On or before October 23, 1989, plaintiffs and defen-
26 dants shall, if an agreement is reached, submit their joint,

1 proposed discovery plan, procedures for discovery, and discovery
2 schedule. To the extent that there is disagreement with any such
3 foregoing filing, plaintiffs or defendants may serve and file
4 responses with respect to the foregoing on or before November 2,
5 1989. The proponents of the discovery plan, procedures, and
6 schedule may file a reply memorandum on or before November 7,
7 1989. Any explanatory memorandum accompanying the initial filing
8 and responsive memoranda shall not be over five pages in length.

9 IV.

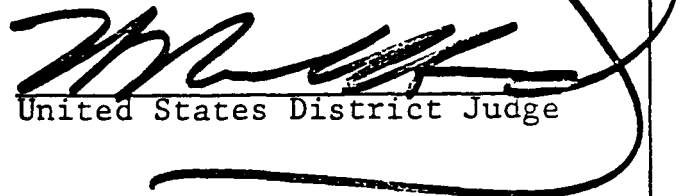
10 Motions for Class Certification

11 Motions for certification of class actions shall be
12 served and filed on before September 22, 1989. It is contem-
13 plated that separate motions will be filed in the state and in
14 the federal actions. The court will defer approval of a schedule
15 for briefing of such motions pending the anticipated report and
16 plan for discovery. It is contemplated that some limited discov-
17 ery with respect to class actions may be necessary; and, if so,
18 it shall be incorporated into the foregoing discovery schedule as
19 a first priority. Separately or as a part of the foregoing
20 discovery plan, the court will receive, on or before October 23,
21 1989, a proposed schedule for the disposition of motions to
22 certify class actions.

23 The court compliments counsel for their efforts in
24 moving these cases forward. The court will conduct such further
25 pre-trial conferences or discovery conferences as may be deemed
26

1 necessary as a consequence of the filings contemplated by this
2 order.

3 DATED at Anchorage, Alaska, this 25 th day of August
4 1989.

5 
6 United States District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PRE-TRIAL CONFERENCE

August 24, 1989

AGENDA

1. Special Instructions for Conference
 - a. Counsel to sign roll sheet
 - b. Counsel to identify themselves and the client represented when speaking
 - c. Proceeding not recorded
2. Introduction
 - a. General comments
 - b. Specific purpose for this conference: Planning or organization v. scheduling
 - c. Are there Plaintiffs' counsel who are not in attendance?
3. Use of Same Organization Procedures for State and Federal Cases
 - a. United Plaintiffs' suggestion of consolidation for pre-trial purposes
 - b. Parallel committee structure and schedule
 - c. Joint proceedings:
 - 1) Pre-trial conferences
 - 2) Motion practice
 - d. Joint use of settlement and discovery masters
4. Form of Organization
 - a. Proposal of United Plaintiffs (modified by the Court)
 - 1) Selection of Plaintiffs Coordinating Committee
 - a) Composed of _____ members, plus liaison counsel

- b) Seats jointly held by local counsel and by affiliated out-of-state counsel

2) Composition of PCC

- a) Class action fishermen
- b) Non-class action fishermen
- c) Processors
- d) Municipalities
- e) Subsistence fishermen and Native Alaskans
- f) Other class actions and other businesses affected
- g) State of Alaska
- h) Other

3) Duties of PCC

- a) Propose necessary subcommittees by _____
 - (1) Discovery Committee
 - (2) Law/Motions Committee
 - (3) Damages Committee
 - (4) Others, as needed
- b) Propose Plaintiffs' liaison counsel (more than one proposal preferred)
- c) Coordinate efforts of Plaintiffs' counsel
- d) Propose settlement and discovery masters

b. Organization of Defendants' counsel

- 1) Liaison counsel for Defendants
- 2) Coordination of defense counsel

5. Case Management Miscellaneous Items

- a. Court will not accept courtesy copies or letters
- b. Duplicate or similar cases need to be consolidated

c. Parties:

- 1) Dismiss non-existent Defendants
- 2) Dismissal by Plaintiffs must be reflected on docket sheet

d. Initial scheduling

- 1) Simplified statement of Plaintiffs' theories and claims, and Defendants' defenses
- 2) Stipulation of facts
- 3) Utilization of special masters
- 4) Discovery plan
- 5) Document depositories
- 6) Anticipated motions
- 7) Settlement and alternate dispute resolution procedures

e. Time records

6. Next Pre-Trial Conference

ROLL SHEET

John D. Lowery
Susan E. Reeves
Cala J. Wilkins

PICK CLINON
DOUG SERDARELY

PATRICK Kynel
John Clough

Charles Matthews

FRANK GREGG

Frank K...
Michael W. D...
Peter Byrnes

Michael W. D...
Peter Byrnes

BRAOLEY S. KELLER

DAVID BERGER

Arnold Berger

Steve Krentsch

JAMES R. STEVENS, JR.

C. P. FLYNN

Richard J. JARASHOW

ROBERT S. WYBLEN

WILLIAM D. CONNELL

ALFRED T. SMITH

CLIFF GROH

G. KENT EDWARDS

Edward J. Jensen

DANIEL C. GIRARD

CHARLES D. KENTIAK

LAUREN ROOMS

MICHAEL WENIG

Fred Boness

MATT JAMIN

Bill Xump

BOGLA & GATAS Exxon Shipping
" " " "

O'Melveny & Myers Exxon
Falkner, Bergel
Exxon

DERIVATIVE PLTFs

- Class Action Plaintiff

Hartig Rhodics
Byrnes - Keller
"

BERGER & Hartig
Berger & M...
Comm - Berg
EXXON

Burnie, Pease & Kurtz
Haydel Gaudin. Posit...
G...
" " "

ALYSONA P...
Gron Eggers - TAPLE
Hartig Rhodics

ATTY - SECF
Kieff, Gabraser & Hormann
KESHAR & SLICE

STEVEN L...
TRUSTEES FOR ALASKA
State of Alaska, P...
KUSAK ISLAND...

ALASKA...
" " "

ROLL SHEET

Eric Thompson
~~David B...~~

State (illegal) Defense Fund
EXXON

RANDALL WEDDEK

Exxon

MARK BLEDSOE

PLAINTIFF CLASS

Bonus m. m. m. m. m.

Natl. Fed. of Wildlife

Jeffrey Ke...

K. L. G. ...

Ken R...

State of Alaska

F. ...

Natl. Wildlife Fed. et al

Jeffrey F...

Kodiak D...

Robert Stoll

Plaintiff Class

JERRY S. COHEN

& Kate ...

JOHN A COCHRAN

MARK VAN DISSON Pff.

Leonard M Ring

Plaintiff ...

Brian N. Toder

Plaintiff's class ...

RICHARD F. GERRY

POOR

Robert M. Cowan

" "

J. Caraway

Van Dyessche

Alan S. ...

Milberg Weiss

MELVIN I. WEISS

MILBERG WEISS (IT class)

Steve Berman

Bettis Patterson (IT class)

David Deane

D-4

Kurt ...

Insurance

Robert Ellis

"

Randall A. SCARLETT

PLAINTIFFS

MC Belli

"

MELVIN M. Belli Sr

"

Steve Smith

"

~~Ken Schoolcraft~~

"

Ken Schoolcraft

Cooper ...

Dick Berlin

"

WENLEY WILSHEA

MAXWELL ET AL - THE

Officer H. ...

NY Dept of Justice

Gus Ron Nelson
L. EASTAUGH
John T. Hayden
Charles M. Cole
Mike Bullock
LYNN L. SARKO
JOHN G. YOUNG
L. G. Hill
Jim [unclear]
C. M. [unclear]

U S Coast Guard
H. Tuckey
L. W. [unclear]
Don S. PIER
Bradley S. Meyer
K. [unclear]
R. [unclear]
C. [unclear]

L. [unclear]
Sigler
Whitson
Smayn
Clunk [unclear]
Jeff [unclear]
Randy Farleigh
G. [unclear]
Vini [unclear]
Vani [unclear]
W. W. [unclear]
B. [unclear]

Jim M. [unclear]
Kenneth L. Adams
Serge J. [unclear]
George N. [unclear]
CARL V. D. BAUMANN
Robert A. [unclear]
C. B. [unclear]
James W. Johnson
Nancy Wilson
Nelson, [unclear]
M. [unclear]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 25th day of August, 1989, service of Pretrial
Order No. 4 has been made upon all counsel of record based upon
the court's master service list of August 25th, 1989.



Deputy Clerk

1 some instances, for example, the court suspects that the named
2 defendant is a nonexistent entity. Employing the detailed infor-
3 mation appended hereto, counsel for plaintiffs and defendants
4 will please confer with one another for the purpose of dismissing
5 out of the litigation nonexistent entities. There are other
6 instances where the court perceives that a named party, for no
7 discernable reason, has neglected to answer. If the explanation
8 is the absence of service, plaintiffs will please so advise the
9 court and indicate what action is being taken to effect service.
10 As to defendants who have been served and who have appeared, but
11 have not answered, those defendants shall show cause why their
12 default should not be entered. The foregoing filings shall be
13 made on or before September 11, 1989.

14 DATED at Anchorage, Alaska, this 25 day of August,
15 1989.

16 
17 United States District Judge
18
19
20
21
22
23
24
25
26

ATTACHMENT A

<u>A89-096</u>	D5 no answer (Exxon Co. USA)
<u>A89-103</u>	D5 no answer (Exxon Co. USA)
<u>A89-106</u>	D4 no answer (Fund) D5 no answer (Exxon Co. USA) D6 no answer (Exxon Valdez)
<u>A89-107</u>	D5 no answer (Exxon Co. USA)
<u>A89-108</u>	D5 no answer (Exxon Co. USA)
<u>A89-109</u>	D7 no answer (Hazelwood) D8 no answer (Cousins)
<u>A89-110</u>	D5 no answer (Exxon Co. USA)
<u>A89-111</u>	D7 no answer (Hazelwood) D8 no answer (Cousins) D18 no answer (Murphy)
<u>A89-117</u>	D7 no answer (Hazelwood) D8 no answer (Cousins)
<u>A89-118</u>	D7 no answer (Hazelwood) D8 no answer (Cousins)
<u>A89-125</u>	D5 no answer (Exxon Co. USA)
<u>A89-126</u>	D5 no answer (Exxon Co. USA)
<u>A89-129</u>	D7 no answer (Hazelwood) D8 no answer (Cousins)
<u>A89-135</u>	D5 no answer (Exxon Co. USA) D6 no answer (Exxon Valdez) D7 no answer (Hazelwood) D13 no answer (British Petroleum) D15 no answer (Phillips Petroleum) D16 no answer (Sohio Alaska) D17 no answer (Union Alaska)

A89-136 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D13 no answer (British Petroleum)
D15 no answer (Phillips Petroleum)
D16 no answer (Sohio Alaska)
D17 no answer (Union Alaska)

A89-138 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D8 no answer (Cousins)
D18 no answer (Murphy)

A89-139 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)

A89-140 D5 no answer (Exxon Co. USA)

A89-144 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)

A89-145 D7 no answer (Hazelwood)
D8 no answer (Cousins)
D18 no answer (Murphy)

A89-147 D5 no answer (Exxon Co. USA)

A89-165 D5 no answer (Exxon Co. USA)
D13 no answer (British Petroleum)
D15 no answer (Phillips Petroleum)
D17 no answer (Union Alaska)
D24 no answer (Sohio Petroleum)

A89-166 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D8 no answer (Cousins)

A89-173 D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D8 no answer (Cousins)

A89-189 D3 no answer (Alyeska)
D7 no answer (Hazelwood)
D8 no answer (Cousins)

A89-190 D3 no answer (Alyeska)

A89-238

D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D18 no answer (Murphy)

A89-239

D5 no answer (Exxon Co. USA)
D7 no answer (Hazelwood)
D18 no answer (Murphy)

A89-264

D5 no answer (Exxon Co. USA)

A89-270

D5 no answer (Exxon Co. USA)
D13 no answer (British Petroleum)
D15 no answer (Phillips Petroleum)
D17 no answer (Union Alaska)
D24 no answer (Sohio Petroleum)

A89-271

D3 no answer (Alyeska)
D7 no answer (Hazelwood)
D8 no answer (Cousins)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 25th day of August, 1989, service of Order
No. 11 has been made upon all counsel of record based upon the
court's master service list of August 25th, 1989.



Deputy Clerk