

FILED

FEB 12 1990

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. 22

(Environmental Committee)

Environmental plaintiffs filed a motion for the establishment of an environmental committee. Plaintiffs' co-lead counsel responded, as did the defendants.

Environmental plaintiffs requested the immediate appointment of an independent environmental committee which would have the right to present matters to the court or to pursue discussions or discovery with the defendants independently of lead counsel. Plaintiffs' co-lead counsel strongly oppose the creation of any specific interest group based committee with authority to operate outside the structure established by the

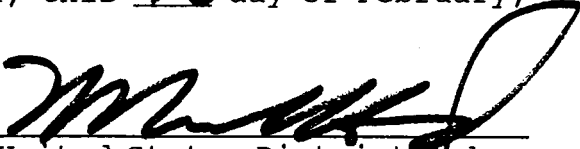
ORDER NO. 22 (Environmental Committee)

case management plan. Defendants object to any change in plaintiffs' organization which would require defendants to deal separately with different plaintiffs.

The court views the proposed environmental committee as a form of organization inconsistent with the functional structure of the case management plan. The court does not see the utility of injecting subject matter or specific interest groups into plaintiffs' organizational structure at this time. Environmental plaintiffs need to participate in the existing structure.

Environmental plaintiffs' motion for an environmental committee is denied without prejudice to its being renewed in 120 days if circumstances so require.

DATED at Anchorage, Alaska, this 10 day of February, 1990.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 12th day of February, 1990, service of Order No. 22, Environmental Committee, has been made upon all counsel of record based upon the court's master service list of November 11, 1989.

  
\_\_\_\_\_  
Deputy Clerk

FILED  
FEB 13 1990  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

MASTER SERVICE LIST

AMENDED - February 13, 1990

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

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

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

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

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DISTRICT	FILE NO.	OR	FILED DATE	J	DIV	R	JUDGE	MAG	COUNTY	JURY DEM.	DOCKET YR. NUMBER				
97X	3	89	095	1	03	30	89	3	890	1,000	7X08 7X09	02020	P3789 P5/89	89	095

CAUSE: PLAINTIFFS DEFENDANTS

- A89-095... P-1 SEA HAWK SEAFOODS, INC., D-1 EXXON CORP., A New Jersey corp.,
- P-2 COOK INLET PROCESSORS, INC. D-2 EXXON SHIPPING CO., a Delaware corp.,
- P-3 SAGAYA CORP., D-3 ALYESKA PIPELINE SERVICE CO., a Delaware corp.
- P-4 McMURREN, WILLIAM #560 D-4 TRANS-ALASKA PIPELINE LIABILITY FUND,
- P-5 McMURREN, PATRICK #560 D-5 EXXON CO., USA, #560
- P-6 KING, WILLIAM W. #560 D-6 EXXON VALDEZ, her engines, tackle, gear,
- P-7 NORRIS, GEORGE G. #560 D-7 HAZELWOOD, JOSEPH, an individual,
- P-8 CRANZ, HUNTER, D-8 COUSINS, GREGORY, an individual,
- P-9 FEENSTRA, RICHARD, D-9 NELSON, GEORGE
- P-10 AK WILDERNESS SAILING SAFARIS, D-10 EXXON PIPELINE CO., a Delaware corp.,
- P-11 SEAFOOD SALES, INC., D-11 AMERADA HESS CORP.,
- A89-095 P-12 RAPID SYSTEMS PACIFIC, LTD. D-12 ARCO PIPE LINE CO.,
- A89-096... P-13 CRUZAN FISHERIES, INC., D-13 BRITISH PETROLEUM PIPELINES, INC., #530
- P-14 GROVE, STANLEY NORRIS, D-14 MOBIL ALASKA PIPELINE CO.,
- P-15 GROVE, ANTHONY, D-15 PHILLIPS PETROLEUM CO., #530
- A89-099... P-16 CORDOVA DISTRICT FISHERMAN D-16 SOHIO ALASKA PIPELINE CO.,
- A89-095 P-17 PRINCE WILLIAM SOUND AQUA- D-17 UNION ALASKA PIPELINE CO., #530
- CULTURE CORP., an Alaska
- non-profit corp.,

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

FOR ATTORNEYS SEE ATTACHED SERVICE LIST

ATTORNEYS

- P-18 CHESHER, ELMER J., D-18 MURPHY, EDWARD,
- A89-102... P-19 SAMISH MARITIME, INC., A89-190 560 D-19 BP PIPELINES (ALASKA), INC.,
- A89-095 P-20 MID-WEST FISHERIES, INC. #560 A89-190 560 D-20 PHILLIPS ALASKA PIPELINE CORP.,
- A89-095 P-21 McALLISTER, SCOTT D-21 UNOCAL PIPELINE CO.
- A89-103... P-22 OLSEN, STEVEN T., D-22 ALASKA, STATE OF #316
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- P-26 JUDSON, LEE, A89-190 #560 D-25 EXXON TRANSPORTATION CO.
- P-27 HUGHES, LANTZ, A89-190 #560
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- P-35 LOWELL, DANIEL,
- P-36 WHITTIER SEAFOODS, INC., A89-149
- P-37 CORDOVA AIR SERVICE, INC.
- P-38 DEW DROP, F/V A89-149

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	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

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		<del>P-155 OWENS, CHARLES M.,</del> "	
		<del>P-156 GORMAN, KEVIN,</del> "	
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		<del>P-159 YORK, GREG,</del> "	
		<del>P-160 MORRIS, ERIC D.,</del> "	
		<del>P-161 GRAY, WILLIAM S.,</del> "	
		<del>P-162 VAN, MARK,</del> "	
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 13th day of February, 1990, service of the Master Service List, amended February 13, 1990, has been made upon all counsel of record based upon the court's master service list of February 13, 1990.

  
\_\_\_\_\_  
Deputy Clerk

Charles P. Flynn, Esq.  
BURR, PEASE & KURTZ  
810 N Street  
Anchorage, Alaska 99501  
(907) 276-6100

FILED  
FEB 20 1990  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re )  
          )                   Case AN-89-095 Civil  
          )                   (Consolidated)  
EXXON VALDEZ )

RE: Case Nos. A89-135; A89-136; A89-139;  
A89-144; A89-238; A89-239

ANSWER OF DEFENDANTS D-3, D-11, D-12,  
D-14, D-19, D-20 AND D-21 TO FIRST  
AMENDED CONSOLIDATED CLASS ACTION  
COMPLAINT OF PLAINTIFFS P-78, P-79  
P-80, P-95, P-96, P-113, P-167, and P-168

Defendants Alyeska Pipeline Service Company ("Alyeska")  
(D-3), Amerada Hess Pipeline Corporation (D-11), ARCO Pipe Line  
Company (D-12), BP Pipelines (Alaska), Inc. (D-19), Mobil Alaska  
Pipeline Company (erroneously named as MOBIL ALASKA PIPELINE CO.,  
INC.) (D-14), Phillips Alaska Pipeline Corporation (D-20) and  
Unocal Pipeline Company (erroneously named as UNOCAL PIPELINE CO.,  
INC.) (D-21) (hereinafter collectively referred to as "Defendants")  
respond to the First Amended Consolidated Class Action Complaint  
(the "Complaint") as follows. In so answering, Defendants speak  
only for themselves. As to all allegations with respect to other  
defendants, Defendants lack knowledge or information sufficient to

ALYESKA PIPELINE SERVICE COMPANY'S,  
ET AL., ANSWER TO FIRST AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT

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form a belief as to the truth of the allegations, and, therefore Defendants deny them.

JURISDICTION AND VENUE

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, based thereon, deny them.

2. Defendants admit that venue is proper in this district. Defendants deny the remaining allegations of paragraph 2 and further deny that there is any basis for an award of any damages as against Defendants or that they have damaged or are liable to plaintiffs in any manner or in any sum.

PARTIES PLAINTIFF

3. Defendants admit that plaintiff Kodiak Island Borough is a political subdivision of the State of Alaska incorporated under the laws of the State of Alaska. Defendants deny the remaining allegations of paragraph 3. Defendants specifically deny that plaintiff Kodiak Island Borough may bring this suit as parens patriae or a public trustee as alleged in more detail in paragraph 3.

4-10. Defendants deny that they have damaged or are liable to plaintiffs in any manner or in any sum. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 4 through 10 and, based thereon, deny them.

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ALYESKA PIPELINE SERVICE COMPANY'S,  
ET AL., ANSWER TO FIRST AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT - 2

PARTIES DEFENDANT

11-15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 11 through 15 and, based thereon, deny them.

16. Alyeska admits that it is a Delaware corporation and maintains its principal place of business in Alaska. Defendants allege that the nature of the relationship between Alyeska and the other Defendants is set forth, inter alia, in the Operating Agreement and the Operator's Agreement relating to the Trans Alaska Pipeline System, both of which agreements were entered into as of May 20, 1977. Defendants allege that the provisions of those documents speak for themselves. Defendants further admit and allege that Alyeska submitted an oil spill contingency plan to the State of Alaska which the State of Alaska, acting by and through its Department of Environmental Conservation, approved on or about June 11, 1987 for a term of three years (the "Contingency Plan"). A portion of the Contingency Plan provided for a response to spills in Prince William Sound (the "PWS Contingency Plan"). The PWS Contingency Plan specified an organizational structure for dealing with oil spills in Prince William Sound. It also provided for the maintenance by Alyeska of certain described response equipment and described a series of guidelines in connection with potential response efforts to certain hypothetical oil spills based upon assumed environmental and other conditions. The terms of the Contingency Plan and the PWS Plan speak for themselves. Except as so expressly admitted, Defendants deny the remaining allegations of paragraph 16.

ALYESKA PIPELINE SERVICE COMPANY'S,  
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17-23. Each Defendant separately for itself admits that it is an Alyeska Owner Company and that its designated representative sits on the Alyeska Owners' Committee and further responds to the allegations of paragraphs 71-23 as they relate to that Defendant as follows:

(a) ARCO Pipe Line Company alleges that for purposes of its Alaskan operations it maintains its principal place of business at Long Beach, California;

(b) Mobil Alaska Pipeline Company alleges that it is misnamed in paragraph 20; and,

(c) Unocal Pipeline Company alleges that it is misnamed in paragraph 21.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 18 and therefore deny them.

24. Denied.

25. Defendants admit that paragraph 25 purports to define the term "Alyeska defendants". However, Defendants deny that such term is accurate, proper or relevant, except that, for the purpose of convenience in this Answer, Defendants are willing to agree to the definition of this term. Defendants affirmatively state, however, that they do not necessarily agree that the use of this term is necessary or appropriate. By agreeing to the general definition of this term, Defendants do not admit or intend to attach any particular legal significance to this definition and deny that plaintiffs are entitled to recover any damages from any of these Defendants.

ALYESKA PIPELINE SERVICE COMPANY'S,  
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26-28. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 26 through 28 and, based thereon, deny them.

CLASS ALLEGATIONS

29-33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 29 through 33 and, based thereon, deny them.

34-35. Denied

OPERATIVE FACTS

HISTORICAL BACKGROUND

36-43. Defendants admit that certain of the Alyeska defendants and/or affiliates thereof proposed to build a pipeline to transport oil from Prudhoe Bay for shipment to refineries on the West Coast. Defendants admit that attempts to develop the Prudhoe Bay oil field were met with concerns about the potential adverse impact of this development on the environment that might be disturbed and through which the crude oil would be transported. Defendants admit that certain portions of Prince William Sound are within the boundaries of the Chugach National Forest and the Nellie Juan-College Fjord Wilderness study area. Defendants allege that there was, and has been, extensive public and legislative debate, and that litigation was filed, concerning many aspects of the authorization, construction, operation and facility location of TAPS and the terminal at Valdez, Alaska. After full exploration of all the issues and after extensive studies by governmental agencies of, among other things, the environmental impact of the project, various federal and state agencies issued the necessary permits,

ALYESKA PIPELINE SERVICE COMPANY'S,  
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CONSOLIDATED CLASS ACTION COMPLAINT - 5



leases and other authorizations for construction and operation of the project. Defendants deny the remaining allegations of paragraphs 36 through 43.

44-45. Defendants admit that TAPS and the Valdez Marine Terminal began operating in 1977 under the control of Alyeska. Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged regarding "concerns" or other state-of-mind of the third parties mentioned in Paragraphs 44 and 45 and, based thereon, denies them. Defendants deny the remaining allegations of paragraphs 44 and 45.

46-47. Defendants adopt and incorporate by this reference the response to paragraph 16 above as if set forth in full herein. Except as so answered, Defendants deny the allegations of paragraphs 46 and 47.

48-49. Denied.

GROUNDING OF THE T/V EXXON VALDEZ AND THE OIL SPILL

50-65. Defendants allege that the EXXON VALDEZ left the Port of Valdez, Alaska at or about 9:30 p.m. on the evening of Thursday, March 23, 1989, laden with approximately 53 million gallons of North Slope crude oil that had been transported through TAPS. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 50 through 65 and therefore deny them.

POST SPILL RESPONSE BY THE ALYESKA AND EXXON DEFENDANTS

66. Defendants admit that oil spilled from the T/V EXXON VALDEZ spread over a large area and impacted various shorelines. Defendants lack knowledge or information sufficient to form a

ALYESKA PIPELINE SERVICE COMPANY'S,  
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belief as to the truth of the remaining allegations of paragraph 66 and therefore deny them.

67. Defendants deny the allegations of paragraph 67 and allege that those allegations do not accurately reflect the provisions of the PWS Contingency Plan nor the steps taken to fulfill that plan.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 and therefore deny them.

69. Defendants deny the allegations of paragraph 69 as they relate to Defendants. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 69 and therefore deny them.

THE EFFECTS AND DAMAGES TO PLAINTIFFS CAUSED BY THE SPILL

70-88. Defendants deny that they damaged plaintiffs in any sum or manner and further deny that they are liable on any basis to plaintiffs for any actions or omissions to act. Except as so expressly denied, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 70 through 88, inclusive, and therefore deny them.

FIRST CLAIM FOR RELIEF

Strict Liability

Trans-Alaska Pipeline Fund and Exxon Defendants

89. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 88, inclusive, as if set forth in full.

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ALYESKA PIPELINE SERVICE COMPANY'S,  
ET AL., ANSWER TO FIRST AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT - 7

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90-91. These paragraphs do not purport to contain allegations relating to any cause of action against Defendants, and Defendants, therefore, are not required to respond to them. In the event that a response were required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 90 and 91 and therefore deny them.

SECOND CLAIM FOR RELIEF

Negligence of the Exxon Defendants under TAPAA

92. Dependents adopt and incorporate by this reference the responses to paragraphs 1 through 91, inclusive, as if set forth in full.

93-95. These paragraphs do not purport to contain allegations relating to any cause of action against Defendants, and Defendants, therefore, are not require to respond to them. In the event that a response were required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 93 through 95 and therefore deny them.

THIRD CLAIM FOR RELIEF

Common Law Negligence of Exxon Defendants,

Hazelwood, Cousins and Murphy

96. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 95, inclusive, as if set forth in full.

97-108. These paragraphs do not purport to contain allegations relating to any cause of action against Defendants, and Defendants, therefore, are not required to respond to them. In the event that a response were required, Defendants lack knowledge or

ALYESKA PIPELINE SERVICE COMPANY'S,  
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information sufficient to form a belief as to the truth of the allegations of paragraphs 97 through 108 and therefore deny them.

FOURTH CLAIM FOR RELIEF

Common Law Negligence of the Alyeska Defendants

109. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 108, inclusive, as if set forth in full.

110-113. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

FIFTH CLAIM FOR RELIEF

Common Law Public Nuisance -- All Defendants except TAPS

114. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 113, inclusive, as if set forth in full.

115-121. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

SIXTH CLAIM FOR RELIEF

Statutory Private Nuisance -- All Defendants except TAPS

122. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 121, inclusive, as if set forth in full.

123-126. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

///



TENTH CLAIM FOR RELIEF

Restitution -- All Defendants except TAPS

142. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 141, inclusive, as if set forth in full.

143-146. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

ELEVENTH CLAIM FOR RELIEF

Negligent Misrepresentation

Exxon and Alyeska Defendants

147. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 146, inclusive, as if set forth in full.

148-154. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

TWELFTH CLAIM FOR RELIEF

Fraud -- Exxon and Alyeska Defendants

155. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 154, inclusive, as if set forth in full.

155-165. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

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THIRTEENTH CLAIM FOR RELIEF

Strict Liability under AS 46.03.822 -- Exxon Defendants

166. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 165, inclusive, as if set forth in full.

167-172. These paragraphs do not purport to contain allegations relating to any cause of action against Defendants, and Defendants, therefore, are not required to respond to them. In the event that a response were required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 167 through 172 and therefore deny them.

FOURTEENTH CLAIM FOR RELIEF

Strict Liability for Ultra Hazardous Activity

All Defendants except TAPS

173. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 172, inclusive, as if set forth in full.

174-175. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

FIFTEENTH CLAIM FOR RELIEF

Negligent or Intentional Failure to Contain Oil Spill

All Defendants except TAPS

176. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 175, inclusive, as if set forth in full.

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177-183. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

SIXTEENTH CLAIM FOR RELIEF

Right to Reimbursement under AS 46.09.060

Municipal Plaintiffs Only vs. All Defendants except TAPS

184. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 183, inclusive, as if set forth in full.

185-187. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

SEVENTEENTH CLAIM FOR RELIEF

Intentional or Negligent Infliction of Emotional Distress

All Defendants except TAPS

188. Defendants adopt and incorporate by this reference the responses to paragraphs 1 through 187, inclusive, as if set forth in full.

189-191. Defendants deny the allegations therein and further deny that they have damaged plaintiffs in the amount or manner alleged or in any other amount or manner.

EIGHTEENTH CLAIM FOR RELIEF

Punitive Damages except TAPS

192. Defendants adopt and incorporate by this reference the responses to Complaint paragraphs 1 through 191, inclusive, as if set forth in full.

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ALYESKA PIPELINE SERVICE COMPANY'S,  
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193. Defendants deny the allegations therein and further deny that they have any liability for punitive damages in any sum or at all.

FIRST SEPARATE AND ADDITIONAL DEFENSE

(Failure to State a Claim)

The Complaint and each purported Claim thereof fail to state a claim against Defendants upon which relief can be granted.

SECOND SEPARATE AND ADDITIONAL DEFENSE

(Lack of Standing)

Plaintiffs lack standing to assert claims for relief on the grounds alleged in one or more of the causes of action set forth in the Complaint.

THIRD SEPARATE AND ADDITIONAL DEFENSE

(Setoff)

If plaintiffs receive payment in full or partial satisfaction of the claims described in this action, and in the event of any recovery against Defendants herein, Defendants are entitled to setoff in the full amount of such payments.

FOURTH SEPARATE AND ADDITIONAL DEFENSE

(Release, Accord and Satisfaction)

If plaintiffs receive payment in full or partial satisfaction of the claims described in this action and execute releases of such claims, any such payments operate as an accord, satisfaction, and release of such claims, in whole or in part, and any such releases should bar such claims against Defendants.

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ALYESKA PIPELINE SERVICE COMPANY'S,  
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FIFTH SEPARATE AND ADDITIONAL DEFENSE

(Other Actions Pending)

Defendants are informed and believe, and thereon allege, that plaintiffs have filed, or are putative members of purported classes in, some or all of the plaintiffs' other actions in this Court and in other courts alleging claims for recovery for the damages or injuries alleged herein. Accordingly, Defendants are entitled to an abatement of this action, or, in the event of any recovery by plaintiffs in such other actions as compensation for the damages or injuries alleged herein, to a setoff in the full amount of such recovery.

SIXTH SEPARATE AND ADDITIONAL DEFENSE

(Failure to Mitigate)

Defendants are entitled to a reduction in any damages that may be awarded against it by virtue of, and to the full extent of, any failure by plaintiffs to mitigate damages.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

(Acts or omissions of third-parties)

Any discharge of oil as alleged in the Complaint was caused solely by the acts or omissions of parties other than Defendants who were not employees, agents, or otherwise under the control of Defendants.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

(Acts at direction of the government)

Defendants have no liability to plaintiffs for any acts or omissions undertaken at the direction of governmental

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authorities including, but not limited to, the United States Coast Guard and the Alaska Department of Environmental Conservation.

NINTH SEPARATE AND ADDITIONAL DEFENSE

(Conditions Beyond Control of Defendant)

Defendants are not liable or otherwise responsible for any injury or damages resulting from any discharge of oil as alleged in the Complaint to the extent that such injury or damage resulted from, or could have been prevented but for, environmental and other conditions beyond the control of Defendants that hindered, rendered ineffective, or prevented response efforts.

TENTH SEPARATE AND ADDITIONAL DEFENSE

(Acts of Third-Parties and

Conditions Beyond Control of Defendant)

Some or all of any alleged injury or harm resulting from the discharge of oil as alleged in the Complaint were caused solely by a combination of the acts of third-parties (including governmental authorities) and environmental and other conditions beyond the control of Defendants that hindered, rendered ineffective, or prevented response efforts.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

(No liability for nuisance)

Defendants never owned nor operated the T/V EXXON VALDEZ, did not own the oil discharged from the T/V EXXON VALDEZ at the time of or immediately prior to the spill, and never discharged, caused to be discharged, or permitted any discharge of oil as alleged in the Complaint. Therefore, Defendants cannot be

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ALYESKA PIPELINE SERVICE COMPANY'S,  
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CONSOLIDATED CLASS ACTION COMPLAINT - 16

held liable for any claims of nuisance, whether arising under common law or statute.

TWELFTH SEPARATE AND ADDITIONAL DEFENSE

(Punitive Damages Unlawful and Unconstitutional)

The claims herein for punitive or exemplary damages should be denied because the award of such damages herein would be contrary to law and unconstitutional under various provisions of the United States Constitution and the Alaska Constitution including, without limitation, Article 1, Section 7, and Article 1, Section 12.

THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Applicable Law)

Certain claims of plaintiffs are barred or limited by the comprehensive system of federal statutes and regulations and by maritime and admiralty law.

FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE

h (Contributory Fault)

Plaintiffs were themselves at fault with respect to the matters alleged in the Complaint, and such contributory fault operates to reduce, in whole or in part, any right to recover herein.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray judgment against plaintiffs as follows:

1. That plaintiffs take nothing by way of their

Complaint;

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ALYESKA PIPELINE SERVICE COMPANY'S,  
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CONSOLIDATED CLASS ACTION COMPLAINT - 17

2. That the Complaint be dismissed with prejudice as to Defendants.

3. For costs of suit herein, including attorneys' fees as available under all applicable statutes and principles of law; and

4. For such other and further relief as the Court may deem just and proper.

DATED: February 20, 1990

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By: \_\_\_\_\_



Charles P. Flynn

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1983A:may  
2/20/90

ALYESKA PIPELINE SERVICE COMPANY'S,  
ET AL., ANSWER TO FIRST AMENDED  
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JURY TRIAL DEMAND

While no answer is required to plaintiffs' demand for trial by jury, Exxon Shipping does not waive its right to contest plaintiffs' jury demand.

JURISDICTION AND VENUE

1. Answering paragraph 1, Exxon Shipping admits that the Court has jurisdiction over plaintiffs' claims.

2. Answering paragraph 2, Exxon Shipping admits that it resides in this district for venue purposes and that certain claims for injuries caused by the oil spill arose in this district. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 2.

PARTIES PLAINTIFF

3-10. Answering paragraphs 3 through 10, Exxon Shipping admits that plaintiff Kodiak Island Borough is a political subdivision of the State of Alaska. Except as expressly admitted,

ANSWER OF EXXON SHIPPING COMPANY  
TO FIRST AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT DATED  
DECEMBER 4, 1989

Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 3 through 10.

PARTIES DEFENDANT

11. Answering paragraph 11, Exxon Shipping admits that Exxon Corporation ("Exxon Corp.") is a New Jersey corporation with its principal place of business in New York. Exxon Shipping admits that the principal business of Exxon Corp. is energy, including exploration for and production of crude oil, natural gas and petroleum products. Exxon Shipping admits that Exxon Company, U.S.A. ("Exxon USA") is an unincorporated division of Exxon Corp. and is responsible for the operation of Exxon Corp.'s energy business within the United States. Exxon Shipping admits that Exxon Corp. owns the stock of Exxon Shipping. Exxon Shipping further admits that Exxon Corp. was the owner of the crude oil cargo on board the EXXON VALDEZ on March 24, 1989, some of which was discharged into the waters of Prince William Sound. Except as expressly admitted, denies the allegations in paragraph 11.

12. Answering paragraph 12, Exxon Shipping admits that it is a wholly-owned domestic maritime subsidiary of Exxon Corp., separately incorporated in Delaware, and that it has executive

ANSWER OF EXXON SHIPPING COMPANY  
TO FIRST AMENDED CONSOLIDATED  
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offices in Houston, Texas. Exxon Shipping further admits that it is the registered owner and operator of the vessels EXXON VALDEZ and EXXON BATON ROUGE. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 12.

13. Answering paragraph 13, Exxon Shipping admits that Exxon Transportation Company ("Exxon Transportation") was a Delaware corporation that was merged into Exxon Shipping on July 2, 1982. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 13.

14. Answering paragraph 14, Exxon Shipping admits that plaintiffs purport to define certain terms, but denies that any subsequent use of such terms in the First Amended and Consolidated Class Action Complaint is necessarily accurate or appropriate.

15. Answering paragraph 15, Exxon Shipping admits the allegations of paragraph 15.

16. Answering paragraph 16, Exxon Shipping admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation with its principal place of business in Alaska and that Alyeska operates the Trans-Alaska Pipeline System ("TAPS") including the terminal facilities at the Port of Valdez, Alaska. Exxon Shipping admits that Alyeska is owned by certain permittees under the Agreement and Grant of Right-of-Way for TAPS, and that

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designated representatives of the permittees sat on a committee called the Alyeska Owners Committee. Exxon Shipping further admits that Alyeska prepared an oil spill contingency plan in 1977, and that the plan and subsequent modifications thereof were approved by the State of Alaska and the federal government, and that Alyeska's approved oil spill contingency plan was in effect for Prince William Sound at the time of the grounding of the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 16.

17-18. Answering paragraphs 17 and 18, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 17 and 18.

19. Answering paragraph 19, Exxon Shipping admits that Exxon Pipeline Co., Inc. ("Exxon Pipeline") is a Delaware corporation with its principal place of business in Houston, Texas. Exxon Shipping further admits that Exxon Pipeline is a permittee under the Agreement and Grant of Right-of-Way for TAPS and that at certain times its designated representative sat on the Alyeska Owners Committee. Except as expressly admitted, Exxon

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Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 19.

20-23. Answering paragraph 20 through 23, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 20 through 23.

24. Answering paragraph 24, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Pipeline. Insofar as the allegations in paragraph 24 purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 24.

25. Answering paragraph 25, Exxon Shipping admits that plaintiffs purport to refer to certain defendants as the "Alyeska defendants." Except as expressly admitted, Exxon Shipping denies the allegations and further denies that any subsequent use of such reference in the First Amended and Consolidated Class Action Complaint is necessarily accurate or appropriate.

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26. Answering paragraph 26, Exxon Shipping admits that it employed Joseph Hazelwood as the Master of the EXXON VALDEZ and that his duties as Master were within the scope of his employment by Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 26.

27. Answering paragraph 27, Exxon Shipping admits that it employed Gregory Cousins as the Third Mate on the EXXON VALDEZ, that his duties as Third Mate were within the scope of his employment by Exxon Shipping, and that he was on watch at the time of the grounding of the vessel. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 27.

28. Answering paragraph 28, Exxon Shipping admits the allegations in paragraph 28.

#### CLASS ALLEGATIONS

28-33. Answering paragraphs 29 through 33, Exxon Shipping admits that plaintiffs purport to bring suit on behalf of certain alleged classes as set forth therein. Except as expressly admitted, Exxon Shipping denies that the classes alleged are proper classes and further denies that plaintiffs or any of them may bring this action on behalf of the classes alleged, or of any classes.

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34-35. Answering paragraphs 34 and 35, Exxon Shipping denies each and every allegation of paragraphs 34 and 35.

ALLEGED OPERATIVE FACTS

ALLEGED HISTORICAL BACKGROUND

36. Answering paragraph 36, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 36.

37-38. Answering paragraphs 37 and 38, Exxon Shipping admits during the legal and legislative process which culminated in the authorization for TAPS, various concerns were expressed by opponents of the project, some of whom expressed environmental concerns. Except as expressly admitted, Exxon Shipping denies the allegations in paragraphs 37 and 38.

39. Answering paragraph 39, Exxon Shipping admits that portions of Prince William Sound are within the boundaries of the Chugach National Forest and the Nellie Juan-College Fjord Wilderness study area. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 39.

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40. Answering paragraph 40, Exxon Shipping admits that certain parties filed lawsuits, and on February 9, 1973, the Court of Appeals for the District of Columbia held that a grant of right-of-way by the Secretary of the Interior would violate the width limitations of Section 28 of the Mineral Lands Leasing Act of 1920, and that as a result of this legal impediment, the owners of Alyeska sought legislation from Congress authorizing the TAPS project and that the TAPS Authorization Act was signed into law on November 16, 1973, 43 U.S.C. §§ 1651 *et seq.* Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 40.

41. Answering paragraph 41, Exxon Shipping admits that during the legal and legislative processes which culminated in authorization for TAPS, various concerns were expressed by opponents of the project, some of whom expressed environmental concerns. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 41.

42. Answering paragraph 42, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 42.

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43. Answering paragraph 43, Exxon Shipping admits that the TAPS Authorization Act was signed into law on November 16, 1973, and that the Secretary of the Interior granted the owners of Alyeska a permit for the TAPS project, including a tanker terminal at the Port of Valdez, pursuant to the Agreement and Grant of Right-of-Way for TAPS, entered into on January 23, 1974. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 43.

44. Answering paragraph 44, Exxon Shipping admits that Alyeska began operating TAPS, including the tanker oil terminal, in 1977. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 44.

45. Answering paragraph 45, Exxon Shipping denies the allegations as they pertain to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations pertain to other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 45.

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46. Answering paragraph 46, Exxon Shipping admits that Alyeska prepared an oil spill contingency plan in 1977 and that the plan and subsequent modifications thereof were approved by the State of Alaska and the federal government, and that the plan is a public record that speaks for itself. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 46.

47. Answering paragraph 47, Exxon Shipping admits that the Alyeska plan includes a scenario discussing a hypothetical 200,000 barrel oil spill. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 47.

48-49. Answering paragraphs 48 and 49, Exxon Shipping denies the allegations in paragraphs 48 and 49 insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations in paragraphs 48 and 49 purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 48 and 49.

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GROUNDING OF THE EXXON VALDEZ AND THE OIL SPILL

50. Answering paragraph 50, Exxon Shipping admits that the EXXON VALDEZ is a very large crude oil carrier of approximately 211,000 deadweight tons, that she is approximately 987 feet long, 166 feet in beam, and that her depth from deck to keel is 88 feet. Exxon Shipping further admits that the EXXON VALDEZ was built by the National Steel and Shipbuilding Company of San Diego, California in 1986. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 50.

51. Answering paragraph 51, Exxon Shipping admits that on March 23, 1989, while berthed at Valdez, Alaska, the EXXON VALDEZ had been loaded with approximately 53,000,000 gallons of Alaska North Slope crude oil that had been extracted from the oil fields on the North Slope of Alaska, including those located at Prudhoe Bay, and transported to terminal facilities at Valdez, Alaska through TAPS. Exxon Shipping admits that TAPS is owned and operated by Alyeska. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 51.

52. Answering paragraph 52, Exxon Shipping admits that at approximately 9:15 p.m. on March 23, 1989, the EXXON VALDEZ departed Valdez, Alaska bound for Long Beach, California. Exxon

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Shipping admits that at the time the EXXON VALDEZ departed she was piloted by Edward Murphy, a state licensed marine pilot, and that Captain Hazelwood was her Master. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 52.

53. Answering paragraph 53, Exxon Shipping admits that prior to boarding the EXXON VALDEZ on March 23, 1989, Captain Hazelwood drank some alcoholic beverages in Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 53.

54. Answering paragraph 54, Exxon Shipping denies the allegations in paragraph 54.

55. Answering paragraph 55, Exxon Shipping admits that Captain Hazelwood left the bridge of the EXXON VALDEZ after the vessel departed Valdez, Alaska, and returned to the bridge shortly before pilot Murphy disembarked. Exxon Shipping further admits that when pilot Murphy disembarked he relinquished control of the EXXON VALDEZ to Captain Hazelwood. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 55.

56-60. Answering paragraphs 56 through 60, Exxon Shipping admits that the EXXON VALDEZ left the normal southbound shipping lane because informed of the presence of ice; that Captain Hazelwood informed the Coast Guard of the change in the

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vessel's course; that the EXXON VALDEZ went across the northbound shipping lane and out of the vessel traffic lanes; that at approximately 11:50 p.m. the EXXON VALDEZ was on a course of 180 degrees; that Captain Hazelwood instructed Third Mate Cousins to start turning back into the vessel traffic lanes when the vessel was abeam of Busby Island Light; that had the EXXON VALDEZ commenced its turn back into the vessel traffic lanes abeam of Busby Island Light, it could have easily cleared Bligh Reef; that Captain Hazelwood left the bridge some time after 11:50 p.m.; that at some time after 11:50 p.m. Helmsman Harry Claar was relieved by Helmsman Robert Kagan; that the duties of Cousins as Third Mate and Claar and Kagan as Helmsman were within the scope of their employment by Exxon Shipping; that Bligh Reef is a navigational hazard depicted on charts which were aboard the EXXON VALDEZ; that the EXXON VALDEZ struck Bligh Reef shortly after midnight on March 24, 1989; that the grounding ruptured eight of the vessel's cargo tanks and three water ballast tanks; and that Captain Hazelwood was not on the bridge at the time of the initial impact on Bligh Reef. Except as expressly admitted, Exxon Shipping denies the allegations of paragraphs 56 through 60.

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61-62. Answering paragraphs 61 and 62, Exxon Shipping admits that following the grounding, various rudder orders and forward and stop engine commands were given for a period of approximately 12 minutes. Except as expressly admitted, Exxon Shipping denies the allegations in paragraphs 61 and 62.

63. Answering paragraph 63, Exxon Shipping admits that as a result of the grounding, eight of the eleven cargo tanks of the EXXON VALDEZ and three of her saltwater ballast tanks were ruptured and approximately 11 million gallons of oil were spilled into the waters of Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 63.

64-65. Answering paragraphs 64 and 65, Exxon Shipping denies the allegations in paragraphs 64 and 65.

POST SPILL RESPONSE BY THE ALYESKA AND EXXON DEFENDANTS

66. Answering paragraph 66, Exxon Shipping admits that the oil spill was driven by wind, tides and currents and spread to certain beaches, shorelines and islands of portions of Prince William Sound and beyond, Kodiak Island and Lower Cook Inlet. Exxon Shipping admits that plaintiffs purport to refer to such areas as the "affected area," but denies that any subsequent use of such terms in the First Amended Class Action Complaint is

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necessarily accurate or appropriate. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 66.

67. Answering paragraph 67, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations in paragraph 67 purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 67.

68. Answering paragraph 68, Exxon Shipping admits that pursuant to Coast Guard authorization and in accordance with law the EXXON BATON ROUGE pumped ballast water that contained some oil into Prince William Sound to allow the EXXON BATON ROUGE to lighten crude oil from the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 68.

69. Answering paragraph 69, Exxon Shipping admits that throughout the summer of 1989, Exxon Corp. engaged in a major effort to clean the beaches, shoreline and tidelands which were affected by the oil and that because of the approach of cold weather and unsafe sea and climatic conditions, and with the

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concurrence of the Coast Guard, the extent of the cleanup operations was restricted for the 1989-1990 winter season. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 69 as they pertain to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations pertain to other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations of paragraph 69.

THE ALLEGED EFFECTS AND DAMAGES TO PLAINTIFFS

ALLEGED DAMAGES TO COMMERCIAL FISHING CLASS

70. Answering paragraph 70, Exxon Shipping admits that after the grounding of the EXXON VALDEZ, the State of Alaska Department of Fish and Game closed or restricted fishing for certain seafood in the waters in Prince William Sound and around Kodiak Island. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 70.

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71-74. Answering paragraphs 71 through 74, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 71 through 74.

DAMAGE TO THE MUNICIPAL GOVERNMENT CLASS

75-76. Answering paragraphs 75 and 76, Exxon Shipping alleges that some of the allegations state legal conclusions to which no response is required, and that if an answer is required, the allegations are denied. Exxon Shipping admits that AS 46.03.822(a) provides in accordance with its terms. Except as expressly admitted or denied, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies the allegations in paragraphs 75 and 76.

77-81. Answering paragraphs 77 through 81, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 77 through 81.

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ALLEGED DAMAGE TO THE LANDOWNER CLASS

82-84. Answering paragraphs 82 through 84, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 82 through 84.

ALLEGED DAMAGE TO THE AREA BUSINESS CLASS

85-86. Answering paragraphs 85 and 86, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 85 and 86.

ALLEGED DAMAGE TO KODIAK SALMON PACKERS, INC.

87-88. Answering paragraphs 87 and 88, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 87 and 88.

FIRST CLAIM FOR RELIEF

89. Answering paragraph 89, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 88 as though set forth in full at this place.

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90. Answering paragraph 90, Exxon Shipping admits that regulations promulgated by the Secretary of the Interior pursuant to the TAPS Authorization Act provide according to their terms. Except as expressly admitted, Exxon Shipping denies the allegations of paragraph 90.

91. Answering paragraph 91, Exxon Shipping admits that 43 U.S.C. § 1653(c), if applicable, may impose strict liability upon certain parties for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91, and on that basis, denies them.

SECOND CLAIM FOR RELIEF

92. Answering paragraph 92, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 91 as though set forth in full at this place.

93. Answering paragraph 93, Exxon Shipping admits that it is the registered owner and operator of the EXXON VALDEZ and the EXXON BATON ROUGE. Except as expressly admitted, Exxon Shipping denies the allegations of paragraph 93.

94-95. Answering paragraphs 94 and 95, Exxon Shipping denies the allegations of paragraphs 94 and 95.

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THIRD CLAIM FOR RELIEF

96-97. Answering paragraphs 96 and 97, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 95 as though set forth in full at this place.

98-108. Answering paragraphs 98 through 108, Exxon Shipping denies the allegations in paragraphs 98 through 108 as they pertain to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations pertain to other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 98 through 108.

FOURTH CLAIM FOR RELIEF

109. Answering paragraph 109, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 108 as though set forth in full at this place.

110-113. Answering paragraphs 110 through 113, Exxon Shipping alleges that no response is required and, if a response is required, Exxon Shipping lacks knowledge or information

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sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 110 through 113.

FIFTH CLAIM FOR RELIEF

114. Answering paragraph 114, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 113 as though set forth in full at this place.

115-121. Answering paragraphs 115 through 121, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 115 through 121.

SIXTH CLAIM FOR RELIEF

122. Answering paragraph 122, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 121 as though set forth in full at this place.

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123-126. Answering paragraphs 123 through 126, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 123 through 126.

SEVENTH CLAIM FOR RELIEF

127. Answering paragraph 127, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 126 as though set forth in full at this place.

128-131. Answering paragraphs 128 through 131, Exxon Shipping denies the allegations as they pertain to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 128 through 131.

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EIGHTH CLAIM FOR RELIEF

132. Answering paragraph 132, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 131 as though set forth in full at this place.

133-138. Answering paragraphs 133 through 138, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 133 through 138.

NINTH CLAIM FOR RELIEF

139. Answering paragraph 139, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 138 as though set forth in full at this place.

140-141. Answering paragraphs 140 and 141, Exxon Shipping denies the allegations as they pertain to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations

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purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 140 and 141.

TENTH CLAIM FOR RELIEF

142. Answering paragraph 142, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 141 as though set forth in full at this place.

143-146. Answering paragraphs 143 through 146, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 143 through 146.

ELEVENTH CLAIM FOR RELIEF

147. Answering paragraph 147, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 146 as though set forth in full at this place.

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148-154. Answering paragraphs 148 through 154, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 148 through 154.

TWELFTH CLAIM FOR RELIEF

155. Answering paragraph 155, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 154 as though set forth in full at this place.

156-165. Answering paragraphs 156 through 165, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 156 through 165.

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THIRTEENTH CLAIM FOR RELIEF

166. Answering paragraph 166, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 165 as though set forth in full at this place.

167. Answering paragraph 167, Exxon Shipping admits that the crude oil discharged from the EXXON VALDEZ was "oil" as that term is defined in AS 46.03.826(4) and (5), and that AS 46.03.826 provides in accordance with its terms. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 167.

168. Answering paragraph 168, Exxon Shipping admits that Exxon Corp., Exxon Shipping and Exxon Pipeline are persons within the definition of "person" in AS 46.03.900(18). Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 168.

169. Answering paragraph 169, Exxon Shipping admits that Exxon Corp. was<sup>n</sup> the owner of the oil discharged from the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 169.

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170. Answering paragraph 170, Exxon Shipping admits that Exxon Shipping had control over the crude oil cargo of the EXXON VALDEZ just prior to the spill. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 170.

171. Answering paragraph 171, Exxon Shipping admits that oil was discharged from the EXXON VALDEZ, and ballast water that contained some oil was discharged pursuant to Coast Guard authorization and in accordance with law from the EXXON BATON ROUGE, into the waters of Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 171.

172. Answering paragraph 172, Exxon Shipping admits that AS 46.03.822, if applicable and if not preempted, may impose strict liability upon certain parties for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 172.

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FOURTEENTH CLAIM FOR RELIEF

173. Answering paragraph 173, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 172 as though set forth in full at this place.

174-175. Answering paragraphs 174 and 175, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 174 and 175.

FIFTEENTH CLAIM FOR RELIEF

176. Answering paragraph 176, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 175 as though set forth in full at this place.

177-183. Answering paragraphs 177 through 183, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon

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Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 177 through 183.

SIXTEENTH CLAIM FOR RELIEF

184. Answering paragraph 184, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 183 as though set forth in full at this place.

185-186. Answering paragraphs 185 and 186, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 185 and 186.

187. Answering paragraph 187, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any<sup>h</sup> other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 187.

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SEVENTEENTH CLAIM FOR RELIEF

188. Answering paragraph 188, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 187 as though set forth in full at this place.

189-191. Answering paragraphs 189 through 191, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 189 through 191.

EIGHTEENTH CLAIM FOR RELIEF

192. Answering paragraph 192, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 191 as though set forth in full at this place.

193. Answering paragraph 193, Exxon Shipping denies the allegations insofar as they purport to apply to Exxon Corp., Exxon Shipping and Exxon Pipeline. Insofar as the allegations purport to apply to any other defendant, Exxon Shipping lacks knowledge

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or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 193.

PRAYER FOR RELIEF

194. Answering plaintiffs' prayer for relief, Exxon Shipping denies plaintiffs' entitlement to the relief they seek.

GENERAL DENIAL

195. Exxon Shipping denies each and every other allegation in plaintiffs' First Amended Consolidated Class Action Complaint that was not specifically admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corp. have paid and continue to pay many claims for economic loss allegedly caused by the oil spill, and incurred and continue to incur other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiffs' claims encompass such expenditures.

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2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by plaintiffs' claims in this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

3. Some or all of plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence or comparative fault.

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the EXXON VALDEZ, or other activities or matters related to the oil spill.

6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Exxon Shipping has acted pursuant to government approval, direction, and supervision, and has no liability to plaintiffs for any acts undertaken or omissions with such approval, direction, or supervision.

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

9. Plaintiffs' claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

10. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

11. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable admiralty restrictions, including without limitation, restrictions on granting of injunctive relief and on damages for remote economic loss unaccompanied by physical injury to person or property.

12. Plaintiffs' claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article I, Section 7; and Article I, Section 12.

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13. If punitive damages were to be awarded or civil or criminal penalties assessed in any proceeding against Exxon Shipping relating to the oil spill, such award bars imposition of punitive damages in this action.

14. Certain claims asserted by plaintiffs are not ripe for adjudication.

15. Plaintiffs fail to satisfy the requirements for injunctive relief.

16. Plaintiffs' claims for punitive damages are precluded by the Alaska common law and statutory scheme for civil and criminal penalties relevant to the oil spill.

17. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon Shipping would also violate the due process clauses and contract clauses of the United States and Alaska Constitutions.

18. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive system of federal statutes, regulations and common law, including

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criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

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

20. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional rights to petition the state and federal governments with respect to the passage and enforcement of laws.

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

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

23. Claims by some persons or entities purportedly encompassed by plaintiffs' claims herein have been settled and released, or, in the alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims against Exxon.

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

25. Plaintiffs are not entitled to bring this action, or to recover the damages they seek, in the capacity of *parens patriae* or as public trustee.

26. Certain of the damages that plaintiffs seek to recover are general costs of government and not properly recoverable as damages.

27. In the event plaintiffs' complaint is deemed to assert claims for damage to subsistence interests, ANILCA, 16 U.S.C. § 3111, *et seq.*, provides the exclusive federal vehicle for

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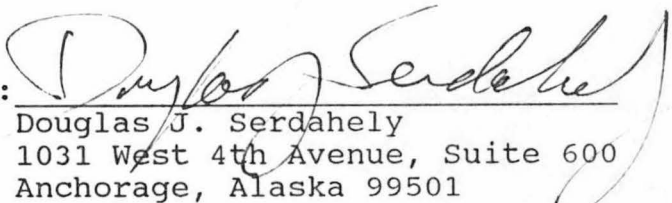
Alaska Natives and rural Alaskans to seek protection for federally recognized subsistence interests harmed by the oil spill, and therefore, all other alleged bases to recover such losses are barred.

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint and be granted no relief, legal or equitable;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping be awarded its costs in this action, including attorney's fees; and
4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED at Anchorage, Alaska this 28<sup>th</sup> day of February, 1990.

BOGLE & GATES  
Attorneys for Defendant  
Exxon Shipping Company (D-2)

By:   
Douglas J. Serdahely  
1031 West 4th Avenue, Suite 600  
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DECEMBER 4, 1989

FILED

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FFR 20 1990

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 )  
\_\_\_\_\_ )

NO. A89-095 Civil  
(Consolidated)

ANSWER OF DEFENDANT D-1  
TO FIRST AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT, FILED  
DECEMBER 4, 1989, BY P-78, 79,  
80, 95, 96, 113, 167 AND 168

This Document Relates  
To Nos.:

- A89-135
- A89-136
- A89-139
- A89-144
- A89-238
- A89-239

**BANKSTON, McCOLLUM & FOSSEY**  
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ATTORNEYS AT LAW  
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ANCHORAGE, ALASKA 99501  
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Exxon Corporation, for convenience identified in this answer as "Exxon," as its answer to the complaint herein admits, denies and alleges as follows:

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

Defense To First Claim for Relief

1. Answering the allegations of paragraph 1, admits that the Court has jurisdiction over plaintiffs' claims.
2. Answering the allegations of paragraph 2, admits that this civil action may be brought in this district, and that this defendant was and is doing business in this district.
- 3-10. Denies for lack of information and belief the allegations of paragraphs 3 through 10, except admits that Kodiak Island Borough is a political subdivision of the State of Alaska.

11. Denies each and every allegation of paragraph 11, except admits that Exxon is a corporation organized under the laws of the State of New Jersey with its principal place of business at 1251 Avenue of the Americas, New York, NY 10020, and that the principal business of Exxon is energy, involving exploration for and production of crude oil, natural gas and petroleum products; that Exxon Company, U.S.A. is an unincorporated division of Exxon, with its headquarters at 800 Bell Street, Houston, Texas, and is responsible for Exxon's energy business within the United States; that Exxon is the owner of all the stock of Exxon Shipping Company; and that Exxon was owner of the crude oil cargo on board the EXXON VALDEZ on March 24, 1989, some of which was discharged into the waters of Prince William Sound.

12. Denies each and every allegation of paragraph 12, except admits that Exxon Shipping Company ("Exxon Shipping") is a Delaware corporation with its executive office in Houston, Texas; that Exxon owns all of the stock of Exxon Shipping Company; and that Exxon Shipping is the registered owner and operator of the vessels EXXON VALDEZ and EXXON BATON ROUGE.

13. Denies each and every allegation of paragraph 13, except admits that Exxon Transportation Company ("Exxon



Transportation") was a Delaware corporation that was merged into Exxon Shipping on July 2, 1982.

14. Answering paragraph 14, admits that plaintiffs purport to define certain terms, but denies the allegations and denies that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

15. Admits the allegations of paragraph 15.

16. Denies each and every allegation of paragraph 16, except admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation with its principal place of business in Alaska; that Alyeska is owned by Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, B.P. Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and Unocal Pipeline Company; that there was an Owners Committee composed of representatives of each of the owners of Alyeska; that Alyeska operates the Trans Alaska Pipeline System, including the terminal at Valdez; that Alyeska prepared an oil spill contingency plan in 1977, and that the plan and subsequent modifications thereof were approved by the State of Alaska and the federal government; and that Alyeska's approved oil spill



contingency plan was in effect for Prince William Sound at the time of the grounding of the EXXON VALDEZ.

17-23. Admits the allegations of paragraphs 17 through 23.

24. Denies each and every allegation of paragraph 24.

25. Answering paragraph 25, admits that plaintiffs purport to define certain terms, but denies the allegations and denies that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

26. Denies each and every allegation of paragraph 26, except admits that Captain Joseph Hazelwood was the Master of the EXXON VALDEZ, and that Captain Hazelwood's duties as the Master of the EXXON VALDEZ were within the scope of his employment by Exxon Shipping Company.

27. Denies each and every allegation of paragraph 27, except admits that Gregory Cousins was Third Mate of the EXXON VALDEZ; that Cousins' duties as Third Mate were within the scope of his employment by Exxon Shipping Company; and that Cousins was on watch at the time of the grounding of the vessel.

28. Admits the allegations of paragraph 28.

29-33. Denies each and every allegation of paragraphs 29 through 33, except admits that plaintiffs purport to bring suit on behalf of certain alleged classes; denies that the classes alleged are proper classes and denies that plaintiffs or any of them may bring this action on behalf of the classes alleged, or of any classes.

34-35. Denies each and every allegation of paragraphs 34 and 35.

36. Denies each and every allegation of paragraph 36, except admits that the Prudhoe Bay oil field was discovered in 1968 by Atlantic Richfield Company and by Exxon; and that the building of a pipeline from the North Shore of Alaska to Valdez was proposed and supported by Exxon and many others, including most citizens of Alaska and the state and federal governments.

37-38. Denies each and every allegation of paragraphs 37 and 38, except admits that during the legal and legislative processes which culminated in authorization for the Trans Alaska Pipeline System, various concerns were expressed by opponents of the project, some of whom expressed environmental concerns.

39. Answering paragraph 39, admits that Prince William Sound has a shoreline of more than 2000 miles, with many islands, bays, and estuaries; that it is subject to the action of the tides; and that portions of the islands and coast of Prince William Sound lie within Chugach National Forest and the Nellie Juan-College Fjords Wilderness.

40. Denies each and every allegation of paragraph 40, except admits that on March 26, 1970, the Wilderness Society, the Friends of the Earth and the Environmental Defense Fund filed a complaint for declaratory and injunctive relief against the Secretary of the Interior, alleging that permits for the proposed Trans-Alaska Pipeline System would violate the right-of-way width restriction of Section 28 of the Mineral Leasing Act of 1920; that on April 28, 1970, the District Court for the District of Columbia issued a preliminary injunction enjoining issuance of a permit for the project; that on April 24, 1971, the Cordova Fishermen's Union filed an action against the Secretary of the Interior in the District Court for the District of Columbia, also asserting that issuance of a permit would violate the Mineral Leasing Act of 1920 and the National Environmental Protection Act; that on February 9, 1973, the Court of Appeals for the District of Columbia held that a grant of right-of-way by the Secretary of the Interior would violate

the width limitations of Section 28 of the Mineral Lands Leasing Act of 1920, that as a result of this legal impediment, the owners of Alyeska sought legislation from Congress authorizing the TAPS project; that the TAPS Authorization Act was signed into law on November 16, 1973, 43 U.S.C. §§ 1651, et seq., directing the Secretary of the Interior and other appropriate federal officers and agencies to issue and take all necessary actions to administer and enforce rights-of-way, permits, leases and other authorizations necessary for the Trans-Alaska Oil Pipeline System; and that the Secretary of the Interior granted the owners of Alyeska a permit for the TAPS project, pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, entered into on January 23, 1974.

41. Denies each and every allegation of paragraph 41, except admits that during the legal and legislative processes which culminated in authorization for the Trans Alaska Pipeline System, various concerns were expressed by opponents of the project, some of whom expressed environmental concerns.

42. Denies each and every allegation of paragraph 42, except admits that in passing the TAPS Authorization Act, Congress expressly declared that the early development and delivery of oil and gas from Alaska's North Slope to domestic markets was in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign

sources and that the earliest possible construction of a Trans-Alaska Oil Pipeline from the North Slope of Alaska to Port Valdez would make the extensive proven and potential reserves of low-sulfur oil available for domestic use and would best serve the national interest; and admits that the owners of Alyeska, as permittees under the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, expressed the intent to employ all practicable means and measures to preserve and protect the environment, to balance environmental amenities and values with economic practicalities and technical capabilities, and to construct, operate and maintain TAPS in accordance with sound engineering practice.

43. Denies each and every allegation of paragraph 43, except admits that the TAPS Authorization Act was signed into law on November 16, 1973, 43 U.S.C. §§ 1651, et seq., directing the Secretary of the Interior and other appropriate federal officers and agencies to issue and take all necessary actions to administer and enforce rights-of-way, permits, leases and other authorizations necessary for the Trans-Alaska Oil Pipeline System; and that the Secretary of the Interior granted the owners of Alyeska a permit for the TAPS project, pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, entered into on January 23, 1974.

44. Denies each and every allegation of paragraph 44, except admits that TAPS and the Valdez terminal began operating in 1977; and that at some times certain groups or individuals have expressed concern about environmental risks associated with certain aspects of TAPS.

45. Denies the allegations of paragraph 45 as they pertain to Exxon and denies said allegations for lack of information and belief as they pertain to others.

46-47. Denies each and every allegation of paragraphs 46 and 47, except admits that Alyeska prepared an oil spill contingency plan in 1977; that the plan and subsequent modifications thereof were approved by the State of Alaska and the federal government; and that Alyeska's oil spill contingency plan and subsequent modifications thereof provide in accordance with their terms.

48-49. Denies each and every allegation of paragraphs 48 and 49 as they pertain to Exxon, and denies said allegations for lack of information or belief as they pertain to other defendants.

50. Denies each and every allegation of paragraph 50, except admits that the EXXON VALDEZ is a very large crude oil carrier, of approximately 211,000 dead weight tons; that it was



built in San Diego in 1986 by National Steel and Shipbuilding Company; and that it is 987 feet long and 166 feet in beam, with a depth from deck to keel of 88 feet.

51-52. Denies each and every allegation of paragraphs 51 and 52, except admits that the EXXON VALDEZ left the Valdez terminal at approximately 9:15 p.m. on March 23, 1989, bound for Long Beach, California; that it carried a cargo of crude oil that had been transported through the Trans Alaska Pipeline System; that from the time it left the terminal until the vessel passed through the Valdez Narrows, the EXXON VALDEZ was navigated under the direction of William Edward Murphy, a state-licensed marine pilot; and that it was under the command of Captain Hazelwood.

53. Denies each and every allegation of paragraph 53, except admits that Captain Hazelwood consumed one or more alcoholic beverages in Valdez prior to the vessel's departure from Valdez.

54. Denies each and every allegation of paragraph 54.

55. Denies the allegations of paragraph 55 as they pertain to Exxon, and denies said allegations for lack of



information and belief as they pertain to others, except admits that Captain Hazelwood left the bridge after the vessel got underway; and that Captain Hazelwood returned to the bridge several minutes before Pilot Murphy disembarked near Rocky Point at 11:24 p.m.

56-60. Denies for lack of information and belief the allegations of paragraph 56 through 60, except admits that the EXXON VALDEZ left the normal southbound shipping lane because informed of the presence of ice; that Captain Hazelwood informed the Coast Guard of the change in the vessel's course; that the EXXON VALDEZ went across the northbound shipping lane and out of the vessel traffic lanes; that at approximately 11:50 p.m. the EXXON VALDEZ was on a course of 180 degrees; that Captain Hazelwood instructed Third Mate Cousins to start turning back into the vessel traffic lanes when the vessel was abeam of Busby Island Light; that had the EXXON VALDEZ commenced its turn back into the vessel traffic lanes abeam of Busby Island Light, it could have easily cleared Bligh Reef; that Captain Hazelwood left the bridge some time after 11:50 p.m.; that at some time after 11:50 p.m. Helmsman Harry Claar was relieved by Helmsman Robert Kagan; that the duties of Cousins as Third Mate and Claar and Kagan as Helmsman were within the scope of their employment by Exxon Shipping Company; that Bligh Reef is a navigational hazard depicted on charts which were aboard the EXXON VALDEZ;

that the EXXON VALDEZ struck Bligh Reef shortly after midnight on March 24, 1989; that the grounding ruptured eight of the vessel's cargo tanks and three water ballast tanks; and that Captain Hazelwood was not on the bridge at the time of the initial impact on Bligh Reef.

61-62. Denies for lack of information and belief the allegations of paragraphs 61 and 62, except admits that following the grounding various rudder orders and forward and stop engine commands were given for a period of approximately 12 minutes.

63. Denies each and every allegation of paragraph 63, except admits that eight of the cargo tanks and three water ballast tanks of the EXXON VALDEZ were ruptured by the grounding of the vessel; and that approximately 258,000 barrels of oil were discharged into the waters of Prince William Sound.

64-65. Denies the allegations of paragraphs 64 and 65 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

66. Denies for lack of information and belief the allegations of paragraph 66, except admits that oil has been

discharged onto beaches, shorelines and islands of portions of Prince William Sound and of the Gulf of Alaska.

67. Denies the allegations of paragraph 67 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to other defendants, except admits that during the first 48 hours after the grounding of the EXXON VALDEZ, weather conditions were well suited to the use of chemical dispersants to disperse crude oil discharged from the EXXON VALDEZ and to the use of in situ burning; that Exxon Shipping undertook all feasible measures permitted by governmental authorities in order to prevent further spills and to contain and clean up the crude oil that did spill; that not all oil was recovered from the waters of Prince William Sound; that approximately 258,000 barrels of crude oil were discharged from the EXXON VALDEZ; and that Alyeska's oil spill contingency plan, as approved by the state and federal governments, indicated that a<sup>h</sup> spill involving in excess of 200,000 barrels could not be entirely contained even under the most favorable conditions.

68. Denies each and every allegation of paragraph 68, except admits that crude oil from the EXXON VALDEZ was lightered to the EXXON BATON ROUGE; and that ballast water from the EXXON BATON ROUGE was discharged into Prince William Sound pursuant to

explicit authorization from the relevant government officials and in accordance with law.

69. Denies the allegations of paragraph 69 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to other defendants, except admits that because of the approach of cold weather and unsafe sea and climatic conditions, and with the concurrence of the Coast Guard, the extent of clean up operations has been restricted for the winter season.

70. Denies each and every allegation of paragraph 70, except admits that the State of Alaska restricted fishing in the waters of Prince William Sound.

71-74. Denies for lack of information and belief the allegations of paragraphs 71 through 74.

75-76. Denies for lack of information and belief the allegations of paragraphs 75 and 76, except admits that AS 46.03.822(a) provides in accordance with its terms.

77-88. Denies for lack of information and belief the allegations of paragraphs 77 through 88.

89. Answering paragraph 89, realleges and incorporates herewith by reference each and every admission, denial and allegation contained in paragraphs 1 through 88 hereof, as if set out in full.

90. Denies each and every allegation of paragraph 90, except admits that regulations promulgated by the Secretary of the Interior pursuant to the Trans Alaska Pipeline Authorization Act provide according to their terms.

91. Denies the allegations of paragraph 91 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to other defendants except admits that 46 U.S.C. § 1653(c), if applicable, may impose liability on certain parties under certain circumstances for certain damages.

Defense to Second Claim for Relief

92. Answering paragraph 92, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 91 hereof, as if set out in full.

93. Denies each and every allegation of paragraph 93, except admits that Exxon Shipping is the registered owner and operator of the EXXON VALDEZ and the EXXON BATON ROUGE.

94-95. Denies each and every allegation of paragraphs 94 and 95.

Defense to Third Claim for Relief

96-97. Answering paragraphs 96 and 97, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 95 hereof, as if set out in full.

98-108. Denies the allegations of paragraphs 98 through 108 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Fourth Claim for Relief

109. Answering paragraph 109, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 108 hereof, as if set out in full.



110-13. Makes no response to the allegations of paragraphs 110 through 113 on the ground that said allegations are not directed to Exxon; to the extent a response to said allegations may be required, denies said allegations for lack of information and belief.

Defense to Fifth Claim for Relief

114. Answering paragraph 114, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 113 hereof, as if set out in full.

115-21. Denies the allegations of paragraphs 115 through 121 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Sixth Claim for Relief

122. Answering paragraph 122, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 121 hereof, as if set out in full.



123-26. Denies the allegations of paragraphs 123 through 126 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Seventh Claim for Relief

127. Answering paragraph 127, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 126 hereof, as if set out in full.

128-31. Denies the allegations of paragraphs 128 through 131 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Eighth Claim for Relief

132. Answering paragraph 132, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 131 hereof, as if set out in full.

133-38. Denies the allegations of paragraphs 133 through 138 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Ninth Claim for Relief

139. Answering paragraph 139, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 138 hereof, as if set out in full.

140-41. Denies the allegations of paragraphs 140 and 141 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Tenth Claim for Relief

142. Answering paragraph 142, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 141 hereof, as if set out in full.

143-146. Denies the allegations of paragraphs 143 through 146 as they pertain to Exxon, and denies said

allegations for lack of information and belief as they pertain to others.

Defense to Eleventh Claim for Relief

147. Answering paragraph 147, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 146 hereof, as if set out in full.

148-54. Denies the allegations of paragraph 148 through 154 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Twelfth Claim for Relief

155. Answering paragraph 155, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 154 hereof, as if set out in full.

156-65. Denies the allegations of paragraphs 156 through 165 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense to Thirteenth Claim for Relief

166. Answering paragraph 166, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 165 hereof, as if set out in full.

167. Denies the allegations of paragraph 167, except admits that the crude oil discharged from the EXXON VALDEZ was "oil" as that term is used and defined in A.S. 46.03.826(4)(B) and (5); and that A.S. 46.03.826 provides in accordance with its terms.

168. Admits the allegations of paragraph 168, except denies that Exxon Transportation is a person within the meaning of AS 46.03.900(18).

169. Denies the allegations of paragraph 169, except admits that the crude oil discharged from the EXXON VALDEZ was owned by Exxon.

170-72. Denies the allegations of paragraphs 170 through 172 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain

to others, except admits that the oil discharged from the Exxon Valdez was discharged into Prince William Sound and that AS 46.03.822, if applicable and if not preempted, may impose liability on certain parties under certain circumstances for certain damages.

Defense To Fourteenth Claim for Relief

173. Answering paragraph 173, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 172 hereof, as if set out in full.

174-75. Denies the allegations of paragraphs 174 and 175 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense To Fifteenth Claim for Relief

176. Answering paragraph 176, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 175 hereof, as if set out in full.

177-83. Denies the allegations of paragraphs 177 through 183 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense To Sixteenth Claim for Relief

184. Answering paragraph 184, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 183 hereof, as if set out in full.

185-87. Denies the allegations of paragraphs 185 through 187 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

Defense To Seventeenth Claim for Relief

188. Answering paragraph 188, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 187 hereof, as if set out in full.

189-91. Denies the allegations of paragraphs 189 through 191 insofar as they pertain to Exxon, and denies said allegations for lack of information or belief insofar as they pertain to others.

Defense To Eighteenth Claim for Relief

192. Answering paragraph 192, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 191 hereof, as if set out in full.

193. Denies the allegations of paragraph 193 as they pertain to Exxon, and denies said allegations for lack of information and belief as they pertain to others.

General Denial

194. Denies each and every other allegation in plaintiffs' complaint that was not specifically admitted herein.



Affirmative and Other Defenses

195. The complaint, and each count thereof, fails to state claims upon which relief can be granted.

196. Exxon is informed and believes that plaintiffs lack standing to claim or recover some damages claimed, based on the allegations of the complaint.

197. Independent of any legal obligation to do so, Exxon Shipping and Exxon are paying claims for alleged economic loss allegedly caused by the oil spill, and have incurred and will continue to incur other expenses in connection with the oil spill. Exxon is entitled to a setoff in the full amount of all such payments in the event that plaintiffs' claims encompass such expenditures.

198. Certain persons were able to avoid or mitigate damage from the interruption of fishery and other activities, because they were engaged or employed in connection with activities related to containment and clean up of the oil released from the EXXON VALDEZ. Payments received by such persons are a set off against losses, if any, resulting from the interruption of fishery and other activities.

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

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

201. Plaintiffs' claims sound in maritime tort and are subject to applicable admiralty restrictions, including without limitation restrictions on the granting of injunctive relief and on damages for remote economic loss unaccompanied by physical injury to person or property.

202. Claims by some persons or entities purportedly encompassed by plaintiffs' claims herein have been settled and released, or, in the alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims against Exxon.

203. Numerous persons and entities have filed lawsuits against Exxon relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any

judgment or judgments in such other lawsuits against Exxon and in favor of persons whose claims are encompassed in this action, such judgment or judgments will be res judicata as to claims of plaintiffs herein.

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

205. Some or all of plaintiffs' claims for damages may be barred or reduced by the doctrines of comparative negligence or comparative fault.

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

207. If punitive damages were to be awarded or civil or criminal penalties assessed in any proceeding against Exxon relating to the oil spill, such award bars imposition of punitive damages in this action.

208. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of federal statutes, regulations and common law, including criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

209. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties.

210. Plaintiffs' claims for compensatory relief under state law are preempted by federal statutory and common law schemes for compensatory relief.

211. Certain claims asserted by plaintiffs are not ripe for adjudication.

212. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article I, Section 10 of the United States Constitution and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon would also violate the due process clauses and the contract clauses of the United States and Alaska Constitutions.

213. Certain theories of relief may not be maintained because these theories are based upon the exercise by Exxon of federal and state constitutional rights to petition the federal and state governments with respect to the passage and enforcement of laws.

214. Defendants have acted pursuant to government approval, direction and supervision, and have no liability to plaintiffs for any acts undertaken or omissions made with such approval, direction, or supervision.

215. Plaintiffs fail to satisfy the requirements for the injunctive relief they seek.

216. Plaintiffs are not entitled to bring this action, or to recover the damages they seek, in the capacity of parens patriae or as public trustee.

217. Certain of the damages that plaintiffs seek to recover are general costs of government and not properly recoverable as damages.

218. The damages alleged in the complaint were caused, in part, by the action of others not joined as defendants herein

as to whom a right of contribution or indemnity should exist as to Exxon. Exxon may seek leave of court to join such additional persons as third party defendants on the basis of further discovery herein.

219. In the event Plaintiffs' complaint is deemed to assert claims for damage to subsistence interests, ANILCA, 16 U.S.C. § 3111, et seq., provides the exclusive federal vehicle for Alaska natives and rural Alaskans to seek protection for federally recognized subsistence interests harmed by the oil spill, and therefore all other alleged bases to recover such losses are barred.

220. Certain corporate plaintiffs herein lack the capacity to commence and maintain this action insofar as they have failed to allege and prove that they have paid their Alaska biennial corporate taxes last due and have filed biennial reports for the last reporting period.



Prayer

WHEREFORE, Exxon prays for judgment as follows:

1. That plaintiffs take nothing on their complaint and be granted no relief, legal or equitable;
2. That Exxon be awarded its costs in this action including a reasonable attorney fee; and
3. For such other and further relief as the Court deems just and proper.

DATED: February 20, 1990

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

and

WILLIAM M. BANKSTON  
BANKSTON, McCOLLUM &  
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By



William M. Bankston

Attorneys for Defendant Exxon  
Corporation