

Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

FOR REFERENCE

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FOR REFERENCE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
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LEGAL NOTICE

TO: ALL PERSONS AND ENTITIES WHO HAVE ASSERTED CLAIMS AGAINST EXXON CORPORATION AND/OR EXXON SHIPPING COMPANY ARISING OUT OF OR RELATED TO THE EXXON VALDEZ OIL SPILL OF MARCH 24, 1989, AND OTHERS REQUIRING NOTICE

**NOTICE OF COURT HEARING ON PLAINTIFFS' REQUEST FOR APPROVAL OF PROPOSED
DISTRIBUTION PLANS OF RECOVERIES BY PLAINTIFFS IN THE EXXON VALDEZ OIL SPILL LITIGATION
AND OF COURT HEARING ON PLAINTIFFS' REQUEST FOR CONFIRMATION OF
AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY
LAWSUITS NOW PENDING IN THIS COURT

This notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure, and by Order of the United States District Court for the District of Alaska.

This notice is to inform you that the Court has given preliminary approval to distribution plans for claim categories specified in the Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The "Exxon Valdez" Oil Spill, which was filed with the Court on January 12, 1996 and approved as modified by the Court on June 11, 1996 ("Allocation Plan"). Each distribution plan proposes a method for distributing allocations to each claim category approved in the Allocation Plan. This notice describes which distribution plans have been preliminarily approved by the Court; informs you how to present objections, statements of support or other comments for consideration at the Court hearing on final approval of the distribution plans; and informs you how to present objections, statements of support or other comments for consideration at the Court hearing on final approval of the plaintiffs' request for confirmation of an award of attorneys' fees and expenses.

Distribution plans have been preliminarily approved by the Court for the following claim categories as defined in the Allocation Plan:

Aquaculture Associations
Businesses
Cannery Workers
Municipalities
Native Subsistence Claimants
Personal Injury
Personal Property
Signatory Native Corporations
Real Property
Recreational Use
Subsistence
Tenders
Chignik Salmon Seine
Cook Inlet Dungeness Crab
Cook Inlet Miscellaneous Finfish
Cook Inlet Pot Shrimp
Lower Cook Inlet Roe Herring
Cook Inlet Salmon Drift
Cook Inlet Salmon Seine
Cook Inlet Salmon Set
Cook Inlet Tanner Crab

Kodiak Dungeness Crab
Kodiak Food Bait Herring
Kodiak Miscellaneous Finfish
Kodiak Miscellaneous Shellfish & Kelp
Kodiak Roe Herring Drift
Kodiak Roe Herring Seine
Kodiak Salmon Beach Seine
Kodiak Salmon Seine
Kodiak Salmon Set Net
Kodiak Scallops
Prince William Sound Dungeness Crab
Prince William Sound Food Bait Herring
Prince William Sound King Crab
Prince William Sound 1989 Fund
Prince William Sound Miscellaneous Finfish
Prince William Sound Miscellaneous Shellfish and
Aqua Farm Permits
Prince William Sound Pot Shrimp
Prince William Sound Roe Herring Drift
Prince William Sound Roe Herring Seine
Prince William Sound Roe on Kelp Pounds

Prince William Sound Sablefish
Prince William Sound Salmon Drift
Prince William Sound Salmon Seine
Prince William Sound Salmon Set
Prince William Sound Tanner Crab
Prince William Sound Trawl Shrimp
Prince William Sound Wild Roe on Kelp
Prince William Sound and Cook Inlet Halibut

Unhoiled Fisheries:

(Bristol Bay Roe Herring, Bristol Bay Salmon, Cape Romanzoff
Roe Herring, Chignik Herring Seine, Upper Cook Inlet Roe
Herring, Halibut, Kotzebue Salmon, Kuskokwim Roe Herring,
Kuskokwim Salmon, Lower Yukon Salmon, Norton Sound Roe
Herring, Norton Sound Salmon, Peninsular Aleutians Roe
Herring, Peninsular Aleutians Salmon, Southeast Roe Herring,
Southeast Salmon, Upper Yukon Salmon)

The Court will consider final approval of the distribution plans and plaintiffs' request for confirmation of an award of attorneys' fees and expenses, at a hearing to be held on August 13, 1997.

**THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE
MERITS OF ANY OF THE DISTRIBUTION PLANS OR THE PLAINTIFFS' REQUEST FOR CONFIRMATION OF AN
AWARD OF ATTORNEYS' FEES AND EXPENSES**

I. BACKGROUND

In numerous lawsuits filed both in the State and Federal Courts, plaintiffs, on behalf of themselves and classes of persons similarly situated, asserted claims against Exxon Corporation and Exxon Shipping Company (hereinafter collectively referred to as "Exxon"), and Joseph Hazelwood for damages arising out of the **Exxon Valdez** oil spill. Trial in the United States District Court for the District of Alaska was held from May through September of 1994, consisting of three phases -- Phase I, Phase II-A and -B, and Phase III.

In Phase I the jury determined that Exxon and Joseph Hazelwood were reckless in connection with events leading up to the spill, thus exposing them to possible award of punitive damages.

Phase II-A was tried on behalf of all class members and direct action plaintiffs whose claims involved lost harvest claims for salmon or herring in Prince William Sound, Kodiak, Upper Cook Inlet or Chignik, claims for reduced price for salmon or herring in these areas, and claims for the devaluation of certain limited entry salmon or herring permits in these areas. On August 11, 1994, the jury returned its verdict in Phase II(a) of the case, awarding the plaintiffs \$286,787,739.22 in compensatory damages for these claims.

During the course of Phase II-A, Phase II-B, which was to have tried the claims of the Alaska Native Class for damages to their subsistence harvest, was settled for twenty million dollars (\$20,000,000.00). Notice was given and 717 individual Natives opted out of the settlement in order to have their claims determined as a part of Phase IV.

After the verdict in Phase II-A and the settlement of Phase II-B, the trial of Phase III was held. Previously the Court had certified a Mandatory Punitive Damages Class comprised of all individuals or entities who possess or have asserted claims for punitive damages against Exxon (including claims asserted in either Federal or State courts in Alaska) arising out of or related to the **Exxon Valdez** oil spill. On September 16, 1994, the jury returned its verdict in Phase III, awarding the Plaintiffs \$5 billion in punitive damages against Exxon and \$5,000 in punitive damages against Joseph Hazelwood. This verdict was rendered on behalf of all members of the Mandatory Punitive Damages Class.

Phase IV was to try the claims of commercial fishers whose claims were not tried as a part of Phase II-A, Native Alaskans who had opted out of the settlement class in connection with Phase II-B (who are now encompassed in the Native Opt-Out Settlement Class), landowners, and certain Native Corporations. Instead, the claims of the Native Opt-Out Settlement Class for damages flowing from injury to subsistence harvests were settled for \$2.55 million and approved by this Court. All other Phase IV claims were also settled and approved by this Court. The Phase IV settlement was for three million five hundred seven thousand nine hundred eighty-one dollars (\$3,507,981.00), which was subject to various offsets on account of money already paid to plaintiffs by the Trans-Alaska Pipeline Liability Fund, the Exxon Claims Program, and Alyeska Pipeline Service Company. As a result of those offsets, the settlement did not result in any cash payment by Exxon, and Phase IV claimants were ordered to look to the Allocation Plan for their recoveries. Separate settlements totaling \$2.172 million were obtained by certain municipalities, who brought suit in state court.

On September 24, 1996, this Court entered final judgment, which was later amended on January 18, 1997 and re-entered on January 30, 1997. The amended final judgment awarded compensatory damages after offsets for Phase II-A in the amount of nineteen million five hundred ninety thousand two hundred fifty-seven dollars (\$19,590,257.00), prejudgment interest on the Phase II compensatory damage award in the amount of thirty-seven million nine hundred seventy-one thousand forty-three and 91/100 dollars (\$37,971,043.91), punitive damages pursuant to Phase III of the trial against defendant Joseph Hazelwood in the sum of five thousand dollars (\$5,000.00) and against Exxon in the sum of five billion dollars (\$5,000,000,000.00). The amended final judgment awarded interest pursuant to 28 U.S.C. § 1961 and costs in favor of the plaintiffs against Exxon in the amount of six hundred ninety thousand three hundred fifty-four and 66/100 dollars (\$690,354.66).

Prior to the trials, the Court granted summary judgments rejecting certain categories of economic damage claims as precluded by federal maritime law in the absence of physical injury to person or property, as well as claims of Alaska Natives for impairment of their subsistence way of life and plaintiffs' claims for non-economic damages. Claimants in these categories, and others with appellate rights, were included in the Allocation Plan.

The Allocation Plan was approved by the Court on June 11, 1996. The Court allocated to non-signatory Native Corporations 4.277% of plaintiffs' punitive damage recoveries, rather than the 3% proposed by plaintiffs' counsel. Signatory plaintiffs are those who joined in a joint prosecution agreement, either individually or as class members. Non-signatories include six Native Corporations (Chenega, Chugach Alaska, English Bay, Eyak, Port Graham, and Tatitlek), as well as "pro per" plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh, and Rainbow King Lodge.

Of the 4.277% allocated to non-signatories, 2.457% was allocated to Chugach Alaska, Eyak, and Tatitlek. The remaining 1.82% was allocated to Chenega, English Bay, and Port Graham (collectively referred to as the "Fortier Group"). The Fortier Group then appealed its 1.82% allocation to the Ninth Circuit Court of Appeals, but it has since agreed to settle its appeal for a total allocation of 2.18%. Thus, the total non-signatory share has increased from 4.277% to 4.637%, thus reducing the signatory share from 95.723% to 95.363%.

The signatory plaintiffs' 95.363% share of plaintiffs' punitive damage recoveries will be divided among the claims categories in the percentages stated in the Allocation Plan,¹ as will all compensatory damage recoveries by signatory plaintiffs, whether obtained at trial or from other sources such as the Exxon Claims Program, Trans-Alaska Pipeline Liability Fund, or settlement of individual or class lawsuits. Recoveries involved include any amounts already received by claimants, such as the Alyeska Settlement Fund payments, settlement amounts already received but not yet distributed, and other amounts which may or may not be recovered in the future.

II. DISTRIBUTION PLANS

The distribution plans propose methods and formulas for distributing the allocations to individual claimants within each claim category included in the Allocation Plan. Each plan is specific to a claim category and has been developed following extensive discussions and communications with members of each claim category. Because the Allocation Plan fixed the percentage allocation to each claim category, only putative claimants within a particular claim category have any financial interest in how particular allocations are distributed, and therefore, only the putative members of a particular claim category have standing to object to any particular distribution plan.

As with the Allocation Plan, plaintiffs' court-appointed lead counsel and the case-wide Executive Committee have overseen the design and construction of each distribution plan as recommended by the Allocation Committee. The Allocation Committee held extensive meetings, discussions, and communications with members of each claim category, including consultation with direct action plaintiffs, class representatives, other individual plaintiffs, ad hoc committees of plaintiffs, and plaintiffs' counsel who have an interest in each plan. Where there was not unanimity among claimants within a particular claim category on a distribution method, claimants nevertheless showed a marked desire to compromise and resolve distribution questions without prolonged strife.

Each distribution plan describes in detail the recoveries subject to the distribution plan, the supplemental claims program that plaintiffs' counsel will conduct to distribute recoveries pursuant to the distribution plans, an explanation of expected future recoveries, and the method by which final distributions will be made. For each claimant, copies of each distribution plan for which a claimant is known to have a claim has been sent with this notice. Thus, those with claims in multiple claim categories will receive a copy of the distribution plan applicable to each of their claims. Attached as Exhibit 1 is a complete list of all of the distribution plans; an address to which you can write to request copies of any of the plans that you did not receive in which you claim an interest; and a listing of all locations and publications in which the plans may be viewed.

III. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of the distribution plans, plaintiffs' counsel will conduct a supplemental claims program with three goals.² First, all claimants within a claim category will be required to identify themselves and submit a claim before the Court-approved cutoff date of six months following final approval of the distribution plans. Late claims will not be accepted thereafter. Claims forms will be sent to each known putative member of a claims category, and the claim form will include information already known about that claimant. Those claimants who filed an Alyeska claim will be asked to verify and supplement their claim information on a signed, verified claim form unless otherwise provided by counsel for the claimant.

¹Plaintiffs' counsel have made slight refinements to the matrix shares of oiled and unoled commercial fisheries published in Tables 5 and 6 of the Allocation Plan. The refinements correct round-off error and inadvertent underallocations to the Prince William Sound miscellaneous shellfish and trawl shrimp claim categories. (See, Exhibits 2 and 3 attached hereto.)

²The claims program will be administered by the Exxon QSF Administrator. It is anticipated that the cost of the claims program can be paid from interest earned on the settlement funds. However, subject to court approval, a portion of the settlement funds may be used to fund the claims program.

Second, after the cutoff date for claims has passed, plaintiffs' counsel will determine for each valid claimant a percentage share of signatories' recoveries from each claim category. All claims will be administered by a Court-appointed administrator, subject to oversight by the Court, to ensure that all claimants' claims within a particular claim category are treated in like manner. Notice will be provided to each claimant of the initial determination of that claimant's final percent share, which will include an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Final percent shares will thereafter be submitted to the Court for approval.

Third, distributions will thereafter be made based on recoveries received up to that date. Distributions will begin in a claim category once its distribution plan is approved, even if distribution plans have not been approved for other claim categories. Final distributions will be made upon resolution of the defendants' appeal of the final judgment, at which time an accounting will be made of all prior recoveries received by claimants within that particular claim category.

IV. PLAINTIFFS' REQUEST FOR CONFIRMATION OF AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Plaintiffs' counsel have filed a Motion For Award of Attorneys' Fees and Expenses. In prior rulings, the Court approved a regime for compensating plaintiffs' counsel in the event plaintiffs prevailed at trial. All pleadings relating to these prior rulings, along with a summary of the services provided, time invested, and expenses incurred are on file and may be inspected at the Clerk's office. Now, plaintiffs' counsel seek an Order confirming this approach, and specifically providing:

- (1) that, pursuant to prior Court Order, three percent (3%) of any recovery after February 14, 1991 by any plaintiff, individually or as a member of a certified class, whether by judgment, settlement or otherwise, be contributed to a special fund created by the Court called the Consolidated Case Fund;
- (2) that, as permitted by prior Court Order and as provided in the Court-approved Allocation Plan, twenty percent (20%) of the amount recovered by each plaintiff, after setting aside three percent (3%) for the Consolidated Case Fund, be paid as attorneys fees:
 - (a) to attorneys for individual plaintiffs for which there were no certified compensatory damage classes or who opted out of certified compensatory damages classes, signed the Court-approved Allocation Plan,³ and were not dismissed for failure to comply with discovery;
 - (b) to attorneys for members of the certified compensatory classes,⁴ those direct action plaintiffs dismissed for failure to comply with discovery, and all other plaintiffs. Fees awarded to such class action attorneys⁵ shall be paid to a second special fund established and supervised by the Court: the Class Action Attorneys Fees Fund; and
- (3) that plaintiffs' counsel be reimbursed for their reasonable expenses incurred in providing this Notice to class members and other reasonable expenses of administering the claims program, said expenses to be paid from the settlements already received in this case; that plaintiffs' counsel be reimbursed their reasonable expenses of litigation upon later motion and hearing but without further notice, said expenses to be paid only from punitive damages recovered from defendants herein; and that calculation of any percentage attorneys fees be computed net of expenses reimbursed to plaintiffs' counsel.

Plaintiffs' counsel believe that this proposal benefits all class members and non-class clients. The percentage of plaintiffs' recovery requested as fees (totalling 22.4%, or 3% plus 20% of the remaining 97%) is no more than the amount already approved by the Court for most class members. For members of the Alaska Native, property owner, and cannery worker classes, it is significantly less than the percentage previously approved (30% of recovery, after setting aside 3% for the Consolidated Case Fund). For plaintiffs for which there were no certified compensatory damage classes or who opted out of certified classes, this proposal limits the amount of attorneys fees due under those plaintiffs' contingent fee agreements. If such a fee agreement calls for a fee of 33.3%, Court approval of this proposal would limit the fee to a total of 22.4%, which includes the required contribution to the Consolidated Case Fund. In those instances where fee agreements provided for a lesser rate than 20%, Court approval of this proposal would result in a fee of 22.4%. Reimbursement of expenses before calculating a percentage fee benefits the client by decreasing the amount of attorneys' fees due.

³Some plaintiffs that are not members of compensatory damages certified classes decided not to sign the now-approved Allocation Plan. The Motion for Award of Attorneys Fees and Expenses being considered at this time does not pertain to compensation of counsel for such "non-signatory" plaintiffs.

⁴This includes those plaintiffs for which there were no certified compensatory damage classes, but who were represented by attorneys who also represent plaintiffs who are members of certified compensatory damage classes.

⁵Attorneys may recover fees and expenses only as direct action attorneys pursuant to (2)(a), or as class action attorneys pursuant to (2)(b), but not as both.

The attorneys' fees and expenses requested are not only less than amounts already approved by this Court and less than the amounts called for in most retainer agreements, but plaintiffs' counsel believe that this request is also a fair measure of compensation for the time and resources devoted to this case. Dozens of law firms and hundreds of lawyers have, at different times and in different degrees, contributed to plaintiffs' success in this litigation. Plaintiffs' counsel have been working on this case since 1989, but have received only token compensation for their services; nor will they receive any meaningful compensation until this case is finally resolved by appeal or settlement, which might well be years down the road. Plaintiffs' counsel accepted a significant risk in pursuing this action. A defense verdict would have meant that plaintiffs' counsel received nothing for the many years of work devoted to this action. This risk still exists: an unfavorable ruling on appeal could deprive plaintiffs of any meaningful recovery, in which case plaintiffs' counsel will receive little or no compensation. In cases of this nature, where plaintiffs' counsel assume the risk of a contingent case, fight a hard-fought case and achieve a favorable result for their clients, it is customary to award attorneys fees on a percentage basis. Here, plaintiffs' counsel achieved the largest punitive damages verdict in American history. In view of the risk assumed, the vigor of the litigation and the result achieved, plaintiffs' counsel believe that a fee award not to exceed 22.4% of the recovery is fair and appropriate.

The Court retains jurisdiction to oversee the Consolidated Case Fund, the Class Action Attorneys Fees Fund, and the fees paid to counsel for clients that opted out of certified classes. At some point in the future, the Court will approve allocation of said funds among plaintiffs' counsel based on evidence substantiating the essential fairness of the proposed allocation. This Notice gives you an opportunity to support or object to the request of plaintiffs' counsel that they be awarded reimbursement of their reasonable expenses and no more than 22.4% of plaintiffs' recovery as compensation for their services in this case.

V. OBJECTIONS TO THE DISTRIBUTION PLANS AND/OR PLAINTIFFS' REQUEST FOR CONFIRMATION OF AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Because there is a separate distribution plan for each claim category, only those plaintiffs who claim a financial interest in a particular claim category may object to the distribution plan for that claim category. Such a plaintiff may object to a particular distribution plan by filing a written objection and may appear at the hearing on final approval for the distribution plans in person or by duly authorized attorneys and show cause why final approval of a particular distribution plan should not be given.

Any plaintiff or member of the Mandatory Punitive Damage Class may object to the plaintiffs' request for confirmation of an award of attorneys' fees and expenses by filing a written objection and may appear at the hearing on final approval in person or by duly authorized attorneys and show cause why final approval should not be given to plaintiffs' request for confirmation of an award of attorneys' fees and expenses.

Objectors are not required to appear at the hearing. However, no person shall be heard in opposition to final approval of the distribution plans, or plaintiffs' request for confirmation of an award of attorneys' fees and expenses, and no paper or brief submitted by such person shall be received or considered unless on or before June 27, 1997 you (1) file with the Court a written objection and/or a notice of intent to appear, a statement of the position to be asserted and its basis, and copies of any supporting papers or briefs; and (2) send the same by certified first class mail, postage prepaid, to:

David W. Oesting
Plaintiffs' Lead Counsel
Davis Wright Tremaine
550 West 7th Avenue, Suite 1450
Anchorage, AK 99501

and

Patrick Lynch
Counsel for Exxon
O'Melveny & Myers
400 South Hope Street, 15th Floor
Los Angeles, CA 90071

Except as provided above, no person or entity shall be entitled to contest final approval of the distribution plans, or the plaintiffs' request for confirmation of an award of attorneys' fees and expenses, and persons or entities who fail to object as provided above shall be deemed to have waived and shall be forever foreclosed from raising any objections to the distribution plans or the award of attorneys' fees and expenses.

VI. HEARING ON PROPOSED DISTRIBUTION PLANS AND PLAINTIFFS' REQUEST FOR CONFIRMATION OF AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Pursuant to the Order of the Court, a hearing before the Honorable H. Russel Holland, United States District Judge, will be held at 8:30 a.m., August 13, 1997, in the United States District Court for the District of Alaska, Courtroom 2, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513, for the purpose of determining whether to give final approval to the distribution plans and the plaintiffs' request for confirmation of an award of attorneys' fees and expenses. You are entitled to appear and be heard at the hearing. The time and date of the hearing may be continued from time to time without further notice.

**IF YOU DO NOT WISH TO OBJECT TO APPROVAL OF THE DISTRIBUTION
PLANS OR TO THE PLAINTIFFS' REQUEST FOR CONFIRMATION OF AN AWARD
OF ATTORNEYS' FEES AND EXPENSES IT IS NOT NECESSARY TO APPEAR
AT THE HEARING OR TAKE ANY OTHER ACTION**

VII. ADDITIONAL INFORMATION

Any questions that you have concerning the matters contained in this Notice may be directed by writing to the following address:

*Exxon Valdez Oil Spill Litigation
P.O. Box 21945
Seattle, WA 98111-9808*

You may, of course, seek the advise and counsel of your own lawyer if you desire. The distribution plans may also be examined and copied during regular office hours at the Office of the Clerk of the Court, Room 261, United States District Court for the District of Alaska, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513-7564.

DO NOT TELEPHONE OR WRITE THE COURT OR THE CLERK'S OFFICE

Exhibit 1

Please check the box for each Distribution Plan that you are requesting:

✓	Plan	Fishery/Gear Code
	Prince William Sound Salmon Seiners	S01E
	Prince William Sound Salmon Drifters	S03E
	Prince William Sound Salmon Set Netters	S04E
	Prince William Sound Roe Herring Seiners	G01E
	Prince William Sound Roe Herring	G34E
	Prince William Sound Roe Pounders	L21E
	Prince William Sound Food & Bait Herring Seiners	H01E
	Prince William Sound Wild Kelp	L12E
	Prince William Sound Dungeness Crab	D09E, D91E
	Prince William Sound King Crab	K09E, K91E
	Prince William Sound Tanner Crab	T09E, T91E
	Prince William Sound Pot Shrimp	P09E, P91E
	Prince William Sound Trawl Shrimp	P07B, P17B
	Prince William Sound Misc. Finfish Fishermen	M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B
	Prince William Sound Misc. Shellfish	R12B, R18B, R23B, Z18B, Z26B, Z37B, Z61B, Z91B, Z99B, Aquafarm Permits
	Prince William Sound Sablefish Fishermen	C06B, C07B, C09B, C17B, C26B, C37B, C61B, C91B
	Prince William Sound 1989 Fund	S03E, S01E, S04E, G34E, G01E, L12E, H01E, L21E, D09E, D91E, K09E, K91E, T09E, T91E, P09E, P07B, P17B, M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B, R12B, R18B, R23B, Z18B, Z26B, Z37B, Z61B, Z91B, Z99B, C06B, C09B, C17B, C26B, C37B, C61B, C91B, Aquafarm Permits
	Prince William Sound and Cook Inlet Halibut Fishermen	B05B, B06B, B26B, B61B
	Chignik Salmon Seiners	S01L
	Lower Cook Inlet Salmon Seiners	S01H
	Upper Cook Inlet Salmon Drift Net	S03H
	Cook Inlet Salmon Set Netters	S04H
	Cook Inlet Tanner Crab Claimants	T09H, T99H
	Cook Inlet Misc. Finfish Claimants	M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B
	Cook Inlet Pot Shrimp Claimants	P09B
	Lower Cook Inlet Roe Herring Seine	G01H
	Cook Inlet Dungeness Crab Claimants	D09B, D12B
	Kodiak Herring Seiners	G01K
	Kodiak Misc. Shellfish Fishers	O01B, O05B, O09B, Q11B, U11B, U12B, and Kelp
	Kodiak Misc. Finfish Fisher	M06B, M09B, M61B, M91B
	Kodiak Herring Set Gill Net Fishers & Combined Herring Gear Fishers	G34K, G31K
	Kodiak Salmon Seiners	S01K

	Kodiak Salmon Beach Seiners	S02K
	Kodiak Salmon Set Netters	S04K
	Kodiak Scallop Fishers	W12B, W17B, W22B, W99B
	Kodiak Herring Food & Bait Fishers	H01K, H02K, H07K, H37K
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	Area Business	
	Aquaculture	
	Recreational Use	

Please complete and return this form to: **Lynn L. Sarko, Exxon QSF Administrator, Exxon Valdez Oil Spill Litigation, P.O. Box 21945, Seattle, WA 98111-9808.** You may also review any of these plans at Plaintiffs' Liason Counsel, Sonosky, Chambers, Sachse, Miller & Munon, 900 West Fifth Avenue, Suite 700, Anchorage, AK, 99501 OR Office of the Clerk of the Court, Room 261, United States District Court for the District of Alaska, Federal Building, 222 West 7th Avenue, Anchorage, AK, 99513-7564.

In order for plaintiffs' counsel to send you copies of selected plans, and copies of claims forms for such plans, please provide the following information:

Name _____

Mailing Address _____

Telephone # _____

Social Security Number _____

The legal notice will appear in the following publications: Anchorage Daily Times, Cordova Times, Peninsula Clarion, Valdez Vanguard, Kodiak Mirror, Tundra Times, Fairbanks Daily News, Juneau Empire, Ketchikan Daily News, Homer Tribune, Copper River County Journal, Seward Phoenix Log, Seattle Times, and Portland Oregonian.

Copies of the distribution plans will be made available in the following locations:

Aleutians East Borough P.O. Box 349 Sand Point, AK 99661 (907) 383-2699	City of Coffman Cove P.O. Box 18135 Coffman Cove, AK 99918- (907) 329-2233	City of Ekwok P.O. Box 49 Ekwok, AK 99580- (907) 464-3311	City of Haines P.O. Box 1049 Haines, AK 99827- (907) 766-2231
Bristol Bay Borough P.O. Box 189 Naknek, AK 99633 (907) 246-4224	City of Cold Bay P.O. Box 10 Cold Bay, AK 99571- (907) 532-2401	City of Elim P.O. Box 39009 Elim, AK 99739- (907) 890-3441	City of Holy Cross P.O. Box 203 Holy Cross, AK 99602- (907) 476-7139
City & Borough of Juneau 155 South Seward St. Juneau, AK 99801- (907) 586-5240	City of Cordova P.O. Box 1210 Cordova, AK 99574- (907) 424-6200	City of Emmonak P.O. Box 9 Emmonak, AK 99581- (907) 949-1227	City of Homer 491 East Pioneer Ave. Homer, AK 99603- (907) 235-8121
City & Borough of Sitka 100 Lincoln Street Sitka, AK 99835- (907) 747-3294	City of Craig P.O. Box 725 Craig, AK 99921- (907) 826-3275	City of Fairbanks 800 Cushman Street Fairbanks, AK 99701- (907) 459-6772	City of Hoonah P.O. Box 360 Hoonah, AK 99829- (907) 945-3663
City & Borough of Yakutat P.O. Box 160 Yakutat, AK 99689- (907) 784-3323	City of Deering P.O. Box 36049 Deering, AK 99736- (907) 363-2136	City of False Pass P.O. Box 50 False Pass, AK 99583- (907) 548-2319	City of Hooper Bay P.O. Box 29 Hooper Bay, AK 99604- (907) 758-4311
City of Buckland P.O. Box 49 Buckland, AK 99727- (907) 494-2121	City of Delta Junction P.O. Box 229 Delta Junction, AK 99737- (907) 895-4656	City of Fort Yukon P.O. Box 269 Fort Yukon, AK 99740- (907) 662-2479	City of Houston P.O. Box 940027 Houston, AK 99694- (907) 892-6869
City of Chefornak P.O. Box 29 Cherfornak, AK 99561- (907) 867-8528	City of Dillingham P.O. Box 889 Dillingham, AK 99576- (907) 842-5211	City of Galena P.O. Box 149 Galena, AK 99741- (907) 656-1301	City of Hughes P.O. Box 45010 Hughes, AK 99745- (907) 889-2206
City of Chevak P.O. Box 136 Chevak, AK 99563- (907) 858-7128	City of Diomedede P.O. Box 7039 Little Diomedede, AK 99762- (907) 686-3071	City of Gambell P.O. Box 189 Gambell, AK 99742- (907) 985-5112	City of Huslia P.O. Box 10 Huslia, AK 99746- (907) 829-2266
City of Chignik P.O. Box 110 Chignik, AK 99564- (907) 749-2280	City of Eagle P.O. Box 1901 Eagle, AK 99738- (907) 547-2282	City of Golovin P.O. Box 62059 Golovin, AK 99762- (907) 779-3211	City of Hydaburg P.O. Box 49 Hydaburg, AK 99922- (907) 285-3761
City of Chuathbaluk P.O. Box CHU Chuathbaluk, AK 99557- (907) 467-4115	City of Eek P.O. Box 09 Eek, AK 99578- (907) 536-5129	City of Goodnews Bay P.O. Box 70 Goodnews Bay, AK 99589- (907) 967-8614	City of Kachemak P.O. Box 958 Homer, AK 99603- (907) 235-8897
City of Clark's Point P.O. Box 07 Clark's Point, AK 99569- (907) 236-1221	City of Egegik P.O. Box 189 Egegik, AK 99579- (907) 233-2400	City of Grayling P.O. Box 89 Grayling, AK 99590- (907) 453-5148	City of Kake P.O. Box 500 Kake, AK 99830- (907) 785-3804

City of Kaktovik P.O. Box 27 Kaktovik, AK 99747- (907) 640-6313	City of Kotzebue P.O. Box 46 Kotzebue, AK 99752- (907) 442-3401	City of Napakiak General Delivery Napakiak, AK 99634- (907) 589-2611	City of Nulato P.O. Box 65009 Nulato, AK 99765- (907) 898-2205
City of Kaltag P.O. Box 9 Kaltag, AK 99748- (907) 534-2301	City of Koyuk P.O. Box 29 Koyuk, AK 99753- (907) 963-3441	City of Napaskiak P.O. Box 6109 Napaskiak, AK 99559- (907) 737-7626	City of Nunapitchuk P.O. Box 190 Nunapitchuk, AK 99641- (907) 527-5327
City of Kasaan P.O. Box KXA - Kasaan Ketchikan, AK 99950- (907) 542-2212	City of Koyukuk P.O. Box 49 Koyukuk, AK 99754- (907) 927-2215	City of Nenana P.O. Box 70 Nenana, AK 99760- (907) 832-5441	City of Old Harbor P.O. Box 109 Old Harbor, AK 99643- (907) 286-2203
City of Kenai 210 Fidalgo Ave., Ste. 200 Kenai, AK 99611- (907) 283-7539	City of Kupreanof P.O. Box 50 Petersburg, AK 99833- (907) 772-2400	City of New Stuyahok P.O. Box 10 New Stuyahok, AK 99636- (907) 693-3171	City of Ouzinkie P.O. Box 109 Ouzinkie, AK 99644- (907) 680-2209
City of Ketchikan 334 Front Street Ketchikan, AK 99901- (907) 225-3111	City of Kwethluk General Delivery Kwethluk, AK 99621- (907) 757-6022	City of Newhalen P.O. Box 165 Newhalen via Iliamna, AK 99606- (907) 571-1226	City of Palmer 231 W. Evergreen Ave. Palmer, AK 99645- (907) 745-3271
City of Kiana P.O. Box 150 Kiana, AK 99749- (907) 475-2136	City of Larsen Bay P.O. Box 8 Larsen Bay, AK 99624- (907) 847-2211	City of Nightmute P.O. Box 90010 Nightmute, AK 99690- (907) 647-6426	City of Pelican P.O. Box 737 Pelican, AK 99832- (907) 735-2202
City of King Cove P.O. Box 37 King Cove, AK 99612- (907) 497-2340	City of Lower Kalskag P.O. Box 81 Lower Kalskag, AK 99626- (907) 471-2228	City of Nikolai P.O. Box 9145 Nikolai, AK 99691- (907) 293-2113	City of Petersburg P.O. Box 329 Petersburg, AK 99833- (907) 772-4519
City of Kivalina P.O. Box 50079 Kivalina, AK 99750- (907) 645-2137	City of Manokotak P.O. Box 170 Manokotak, AK 99628- (907) 289-1027	City of Nome P.O. Box 281 Nome, AK 99762- (907) 443-6663	City of Pilot Point P.O. Box 430 Pilot Point, AK 99649- (907) 797-2200
City of Klawock P.O. Box 113 Klawock, AK 99925- (907) 755-2261	City of Marshall P.O. Box 9 Marshall, AK 99585- (907) 679-6215	City of Nondalton P.O. Box 089 Nondalton, AK 99640- (907) 294-2235	City of Pilot Station P.O. Box 5040 Pilot Station, AK 99650- (907) 549-3211
City of Kobuk P.O. Box 20 Kobuk, AK 99751- (907) 948-2217	City of McGrath P.O. Box 30 McGrath, AK 99627- (907) 524-3825	City of Noorvik P.O. Box 146 Noorvik, AK 99763- (907) 636-2100	City of Platinum General Delivery Platinum, AK 99651- (907) 979-8114
City of Kodiak P.O. Box 1397 Kodiak, AK 99615- (907) 486-8636	City of Mekoryuk P.O. Box 29 Mekoryuk, AK 99630- (907) 827-8314	City of North Pole P.O. Box 55109 North Pole, AK 99705- (907) 488-2281	City of Point Hope P.O. Box 169 Point Hope, AK 99766- (907) 368-2537
City of Kotlik P.O. Box 20268 Kotlik, AK 99620- (907) 899-4313	City of Mountain Village P.O. Box 32085 Mtn. Village, AK 99632- (907) 591-2929	City of Nuiqsut P.O. Box 148 Nuiqsut, AK 99789- (907) 480-6727	City of Port Alexander P.O. Box 8068 Port Alexander, AK 99836- (907) 568-2211

City of Port Heiden
P.O. Box 49050
Port Heiden, AK 99549-
(907) 837-2209

City of Port Lions
P.O. Box 110
Port Lions, AK 99550-
(907) 454-2332

City of Quinhagak
P.O. Box 90
Quinhagak, AK 99655-
(907) 556-8513

City of Ruby
P.O. Box 90
Ruby, AK 99768-
(907) 468-4401

City of Russian Mission
P.O. Box 49
Russian Mission, AK 99657-
(907) 584-5111

City of Saint George
P.O. Box 929
St. George Island, AK 99591-
(907) 859-2263

City of Saint Mary's
P.O. Box 163
St. Mary's, AK 99658-
(907) 438-2515

City of Saint Michael
P.O. Box 59070
St. Michael, AK 99659-
(907) 923-3222

City of Saint Paul
P.O. Box 901
St. Paul Island, AK 99660-
(907) 546-2331

City of Sand Point
P.O. Box 249
Sand Point, AK 99661-
(907) 383-2696

City of Savoonga
P.O. Box 40
Savoonga, AK 99769-
(907) 984-6614

City of Saxman
Route 2, Box 1 Saxman,
Ketchikan, AK 99901-
(907) 225-4166

City of Scammon Bay
P.O. Box 90
Scammon Bay, AK 99662-
(907) 558-5529

City of Selawik
P.O. Box 99
Selawik, AK 99770-
(907) 484-2132

City of Seldovia
Drawer B
Seldovia, AK 99663-
(907) 234-7634

City of Seward
P.O. Box 167
Seward, AK 99664-
(907) 224-3331

City of Shageluk
P.O. Box 107
Shageluk, AK 99665-
(907) 473-8221

City of Shaktoolik
P.O. Box 10
Shaktoolik, AK 99771-
(907) 955-3441

City of Sheldon Point
P.O. Box 26
Sheldon Point, AK 99666-
(907) 498-4226

City of Shishmaref
General Delivery/City Hall
Shishmaref, AK 99772-
(907) 649-3781

City of Shungnak
P.O. Box 59
Shungnak, AK 99773-
(907) 437-2161

City of Skagway
P.O. Box 415
Skagway, AK 99840-
(907) 983-2297

City of Soldotna
177 North Birch Street
Soldotna, AK 99669-
(907) 262-9107

City of Stebbins
P.O. Box 22
Stebbins, AK 99671-
(907) 934-3451

City of Tanana
P.O. Box 77249
Tanana, AK 99777-
(907) 366-7159

City of Teller
P.O. Box 548
Teller, AK 99778-
(907) 642-3401

City of Tenakee Springs
P.O. Box 52
Tenakee Springs, AK 99841-
(907) 736-2207

City of Thorne Bay
P.O. Box 19110
Thorne Bay, AK 99919-
(907) 828-3380

City of Togiak
P.O. Box 99
Togiak, AK 99967-8
(907) 493-5820

City of Toksook Bay
P.O. Box 37008
Toksook Bay, AK 99637-
(907) 427-7613

City of Unalakleet
P.O. Box 28
Unalakleet, AK 99684-
(907) 624-3531

City of Unalaska
P.O. Box 610
Unalaska, AK 99685-
(907) 581-1251

City of Upper Kalskag
P.O. Box 80
Upper Kalskag, AK 99607-
(907) 471-2220

City of Valdez
P.O. Box 307
Valdez, AK 99686-
(907) 835-4313

City of Wainwright
P.O. Box 9
Wainwright, AK 99782-
(907) 763-2815

City of Wales
P.O. Box 489
Wales, AK 99783-
(907) 664-3501

City of Wasilla
290 East Herning Ave.
Wasilla, AK 99654-
(907) 373-9090

City of White Mountain
P.O. Box 130
White Mountain, AK 99784-
(907) 638-3411

City of Whittier
P.O. Box 608
Whittier, AK 99693-
(907) 472-2337

City of Wrangell
P.O. Box 531
Wrangell, AK 99929-
(907) 874-2381

Denali Borough
P.O. Box 480
Healy, AK 99743-
(907) 683-1330

Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, AK 99707-
(907) 459-1000

Haines Borough
P.O. Box 1209
Haines, AK 99827-
(907) 766-2711

Kenai Peninsula Borough
144 North Binkley
Soldotna, AK 99669-
(907) 262-8608

Ketchikan Gateway Borough
344 Front Street
Ketchikan, AK 99901-
(907) 228-6625

Lake & Peninsula Borough
P.O. Box 495
King Salmon, AK 99613-
(907) 246-3421

Meltakatla Indian Community
P.O. Box 8
Metlakatla, AK 99926-
(907) 886-4441

North Slope Borough
P.O. Box 69
Barrow, AK 99723-
(907) 852-0360

Kodiak Island Borough
710 Mill Bay Rd.
Kodiak, AK 99615-
(907) 486-9310

Matanuska-Susitna Borough
350 East Dahlia Ave.
Palmer, AK 99645-
(907) 745-4801

Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-
(907) 343-4433

Northwest Arctic Borough
P.O. Box 1110
Kotzebue, AK 99752-
(907) 442-2500

EXHIBIT 2

Table 5 (revised)

MATRIX SHARES OF OILED FISHERY CLAIM CATEGORIES

CHIGNIK

Salmon Seine	4.9581%
Area Total	4.9581%

COOK INLET

Dungeness Crab	0.0840%
Miscellaneous Finfish	0.0040%
Pot Shrimp	0.0150%
Roe Herring (Lower Cook Inlet only)	0.2939%
Salmon Drift	15.1923%
Salmon Seine	2.3188%
Salmon Set	6.2469%
Tanner Crab	0.1359%
Area Total	24.2908%

KODIAK

Dungeness Crab	0.0340%
Food Bait Herring	0.0330%
Miscellaneous Finfish	0.0290%
Miscellaneous Shellfish	0.0170%
Roe Herring Drift	0.1701%
Roe Herring Seine	0.5704%
Salmon Beach Seine	0.2402%
Salmon Seine	14.5104%
Salmon Set Net	4.4732%
Scallops	0.0150%
Area Total	20.0923%

PRINCE WILLIAM SOUND

Dungeness Crab	0.0220%
Food Bait Herring	0.1021%
King Crab	0.0600%
1989 Fund	3.3321%
Miscellaneous Finfish	0.0180%
Miscellaneous Shellfish	0.0112%
Pot Shrimp	0.1901%
Roe Herring Drift	0.2702%
Roe Herring Seine	4.1426%
Roe on Kelp Pounds	2.2014%
Sablefish	0.0150%
Salmon Drift	6.3540%
Salmon Seine	11.7574%
Salmon Set	0.4503%
Tanner Crab	0.3002%
Trawl Shrimp	0.0121%
Wild Roe on Kelp	0.1501%
Area Total	29.3888%

GRAND TOTAL

78.7300%

EXHIBIT 3

Table 6 (revised)

MATRIX SHARES OF UNOILED FISHERY CLAIM CATEGORIES

Bristol Bay Roe Herring	0.03606%
Bristol Bay Salmon	1.32210%
Cape Romanzoff Roe Herring	0.00140%
Chignik Herring Seine	0.00005%
Cook Inlet (Upper) Roe Herring	0.00020%
Halibut	0.00060%
Kotzebue Salmon	0.00461%
Kuskokwim Roe Herring	0.00270%
Kuskokwim Salmon	0.02254%
Lower Yukon Salmon	0.01432%
Norton Sound Roe Herring	0.01392%
Norton Sound Salmon	0.00150%
Peninsular Aleutians Roe Herring	0.00250%
Peninsular Aleutians Salmon	0.36958%
Southeast Roe Herring	0.01603%
Southeast Salmon	0.49979%
Upper Yukon Salmon	0.00210%
GRAND TOTAL	2.31000%

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

**THIS DOCUMENT RELATES TO
ALL CASES**

SUMMARY LEGAL NOTICE

TO: ALL PERSONS AND ENTITIES WHO HAVE ASSERTED CLAIMS AGAINST EXXON CORPORATION AND/OR EXXON SHIPPING COMPANY ARISING OUT OF OR RELATED TO THE EXXON VALDEZ OIL SPILL OF MARCH 24, 1989, AND OTHERS REQUIRING NOTICE

**NOTICE OF COURT HEARING ON PLAINTIFFS' REQUEST FOR
APPROVAL OF PROPOSED DISTRIBUTION PLANS OF RECOVERIES
BY PLAINTIFFS IN THE EXXON VALDEZ OIL SPILL LITIGATION AND
OF COURT HEARING ON PLAINTIFFS' REQUEST FOR CONFIRMATION
OF AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

This notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure, and by Order of the United States District Court for the District of Alaska.

This notice is to inform you that the Court has given preliminary approval to distribution plans for claim categories specified in the Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs in Litigation Arising From The "Exxon Valdez" Oil Spill, which was filed with the Court on January 12, 1996 and approved as modified by the Court on June 11, 1996 ("Allocation Plan"). Each distribution plan proposes a method for distributing allocations to each claim category approved in the Allocation Plan. The full court notice describes which distribution plans have been preliminarily approved by the Court; informs you how to present objections, statements of support or other comments for consideration at the Court hearing on final approval of the distribution plans; and informs you how to present objections, statements of support or other comments for consideration at the Court hearing on final approval of the plaintiffs' attorneys request for confirmation of an award of attorneys' fees and expenses. The Court will consider final approval of the distribution plans and plaintiffs' request for confirmation of an award of attorneys' fees and expenses, at a hearing to be held on August 13, 1997.

On September 24, 1996, this Court entered final judgment, which was later amended on January 18, 1997 and reentered on January 30, 1997. The amended final judgment awarded compensatory damages after offsets for Phase II-A in the amount of nineteen million five hundred ninety thousand two hundred fifty-seven dollars (\$19,590,257.00), prejudgment interest on the Phase II compensatory damage award in the amount of thirty-seven million nine hundred seventy-one thousand forty-three and 91/100 dollars (\$37,971,043.91), punitive damages pursuant to Phase III of the trial against defendant Joseph Hazelwood in the sum of five thousand dollars (\$5,000.00) and against Exxon in the sum of five billion dollars (\$5,000,000,000.00). The amended final judgment awarded interest pursuant to 28 U.S.C. §-1961 and costs in favor of the plaintiffs against Exxon in the amount of six hundred ninety thousand three hundred fifty-four and 66/100 dollars (\$690,354.66).

Because there is a separate distribution plan for each claim category, only those plaintiffs who claim a financial interest in a particular claim category may object to the distribution plan for that claim category. Such a plaintiff may object to a particular distribution plan by filing a written objection and may appear at the hearing on final approval for the distribution plans in person or by duly authorized attorneys and show cause why final approval of a particular distribution plan should not be given. Any plaintiff or member of the Mandatory Punitive Damage Class may object to the plaintiffs' request for confirmation of an award of attorneys' fees and expenses by filing a written objection and may appear at the hearing on final approval in person or by duly authorized attorneys and show cause why final approval should not be given to plaintiffs' request for confirmation of an award of attorneys' fees and expenses. The effect of the plaintiffs' request for an award of attorneys fees and expenses, if approved by the court, would be to award total attorneys fees of 22.4% of amounts recovered, whether or not fee agreements with counsel were for a lower or higher amount. All pleadings relating to the issue of an award of attorneys fees and expenses, along with a summary of the services provided, time invested, and expenses incurred are on file and may be inspected at the Clerk's office.

Objectors are not required to appear at the hearing. However, no person shall be heard in opposition to final approval of the distribution plans, or plaintiffs' request for confirmation of an award of attorneys' fees and expenses, and no paper or brief submitted by such person shall be received or considered unless on or before June 27, 1997 you (1) file with the Court written objection and/or a notice of intent to appear, a statement of the position to be asserted and its basis, and copies of any supporting papers or briefs; and (2) send the same by certified first class mail, postage prepaid to:

*David W. Oesting
Plaintiffs' Lead Counsel
Davis Wright Tremaine
550 West 7th Avenue, Suite 1450
Anchorage, AK 99501*

and

*Patrick Lynch
Counsel for Exxon
O'Melveny & Myers
400 South Hope Street, 15th Floor
Los Angeles, CA 90071*

Except as provided above, no person or entity shall be entitled to contest final approval of the distribution plans, or the plaintiffs' request for confirmation of an award of attorneys' fees and expenses, and persons or entities who fail to object as provided above shall be deemed to have waived and shall be forever foreclosed from raising any objections to the distribution plans or the award of attorneys' fees and expenses.

Pursuant to the Order of the Court, a hearing before the Honorable H. Russel Holland, United States District Judge, will be held at 8:30 a.m., August 13, 1997, in the United States District Court for the District of Alaska, Courtroom 2, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513, for the purpose of determining whether to give final approval to the distribution plans and the plaintiffs' request for confirmation of an award of attorneys' fees and expenses. You are entitled to appear and be heard at the hearing. The time and date of the hearing may be continued from time to time without further notice.

You may request a copy of the full court notice by promptly writing to the following address and identifying your name, mailing address, telephone number, and Social Security number:

*Lynn L. Sarko
Exxon QSF Administrator
Exxon Valdez Oil Spill Litigation
P.O. Box 21945
Seattle, WA 98111-9808*

The distribution plans may also be examined and copied during regular office hours at the Office of the Clerk of the Court, Room 261, United States District Court for the District of Alaska, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513-7564.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND SALMON SEINE (S01E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Salmon Seine (S01E) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S01E permits and "derivative share claimants";³ devaluation of S01E permits by permit owners; and devaluation of seine vessels used in the fishery by owners of the vessels. Permit owners, permit holders and derivative share claimants will be collectively referred to as "PWS salmon seiners." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to PWS salmon seiners.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters. Also eligible are holders of S77E permits (*e.g.,* Cordova High School) and their derivative shareholders who establish that they suffered financial loss as a result of the spill. Plaintiffs' counsel will evaluate claims by S77E permit holders and derivative shareholders on a case-by-case basis.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Salmon Seine Claim Category, only putative PWS salmon seine claimants have any financial interest in how PWS salmon seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS salmon seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS salmon seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, PWS salmon seiners share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000⁹ plus interest¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The PWS salmon seine matrix share is projected to be 11.7374% of signatories' share of the Alyeska Settlement, and 11.7574% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute PWS salmon seiners' allocation of \$2,907,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$5,554,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS salmon seiners to be allocated roughly \$6,768,000 from the Phase IIA judgment and prejudgment interest, and \$560,611,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS salmon seiners also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS salmon seiners will be allocated the difference between their projected 11.7574% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS salmon seiners. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The projected PWS salmon seine matrix share of 11.7574% is slightly higher than the 11.75% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS salmon seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This and other allocations to the PWS Salmon Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also in the Final Distribution, because PWS salmon seiners' actual allocation of \$5,554,000 from the Alyeska Settlement was less than their projected 11.7374% matrix share (roughly \$10,248,000), the difference (roughly \$4,694,000) would be allocated to PWS salmon seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS salmon seiners' total allocation from all recoveries would be roughly \$610,851,000 (less attorneys' fees and expenses), which includes \$2,907,000 from Native/Municipality/Kodiak Island Borough recoveries, \$10,248,000 from the Alyeska Settlement, \$6,768,000 from the uncollected Phase IIA judgment and prejudgment interest, \$560,611,000 from the uncollected punitive damages judgment, and \$23,550,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS salmon seiners to evaluate this distribution plan under the assumption that PWS salmon seiners ultimately will be allocated \$610,851,000 plus interest.¹⁷

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS salmon seiners,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order. First, all PWS salmon seiners will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed PWS salmon seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Salmon Seine Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute PWS salmon seiners' \$2,907,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*e.g.*, money reserved for absent class members, for which no claim was made) remaining from PWS salmon seiners' \$5,554,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions

¹⁷Some PWS salmon seiners -- *i.e.*, S01E permit holders and crew who qualify for the 1989 seasonal lost income fund, *see infra* -- are also eligible to share in the 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. *See* Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁸Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS salmon seine allocations into nine separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S01E permits; a "vessel devaluation" fund based on loss in market value of PWS salmon seine boats; and seven separate "seasonal" funds for the 1989, 1990, 1991, 1992, 1993, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²³ These nine funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS salmon seine matrix shares.²⁴ Permit and vessel devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁵

The attached Table 1 lists projected percent shares of PWS salmon seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$610,851,000. Projected fund percent shares are: 17.7% for the permit devaluation fund; 9% for the vessel devaluation fund; and 73.3% for the seven seasonal funds, including 12.3% for 1989, 20.2% for 1990, 19.9% for 1991, 6.1% for 1992, 7.0% for 1993, 3.1% for 1994 and 4.7% for 1995. Actual percent shares of PWS salmon seine funds are likely to vary slightly from projected percent shares.²⁶

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S01E permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S01E permit on the date of the oil spill; or (2) acquired ownership of an S01E permit before April 1,

²²Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS salmon seiners' combined \$8,461,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS salmon seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS salmon seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²³In addition, PWS salmon seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS salmon seine allocations, proportional to the ratio of loss to total PWS salmon seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS salmon seine allocations.

²⁴See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Since the fall of 1995, workups of PWS salmon seine damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers at the Cordova Fishermen's Claims Office, and law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS salmon seine damages were presented and discussed in ongoing meetings with fishers held in Anchorage and Cordova in the State of Alaska, and Seattle, Marysville, Bellingham and Mt. Vernon in the State of Washington.

²⁵See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁶For example, the projected fund percent share of 17.7% for the permit devaluation fund is based on an assumption that a total of 270 shares will be paid out -- i.e., the number of marketable S01E permits in 1989. This is a reasonable assumption, and a cautious one in that it assures adequate reserves for the fund. However, under criteria proposed in this distribution plan, fewer than 270 full shares are likely to be paid out because some post-spill sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all PWS salmon seine funds, resulting in a modification of projected fund percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

1994.²⁷ See *infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁸ A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S01E permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and March 31, 1994. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1994:2 (*i.e.*, the second calendar quarter of 1994) would be allotted a full share,²⁹ equal to the amount of the permit devaluation fund divided by 270, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.³⁰ Qualifying permit owners who sold or purchased permits after the oil spill, but before 1994:2, would be allotted only a portion of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from PWS salmon seiners, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³¹

1. Permit Owners At The Time Of The Spill Who Subsequently Sold Their Permits

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") grew from \$10,900 in 1989:2 to \$103,500 in 1990:2. It then narrowed to \$79,700 in 1991:2. For the next two years, the projected-actual gap widened steadily to a maximum of \$207,700 in 1994:2. After 1994:2, the projected-actual gap remained above \$200,000.

A permit owner at the time of the oil spill, who held his or her permit until at least 1994:2 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before 1994:2 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$207,700. These fractions, expressed as percentages, are listed on Table 2.³²

2. Post-Spill Permit Buyers

Plaintiffs' counsel do not think it fair or appropriate for someone who purchased an S01E permit in 1994:2 or after to share in the permit devaluation fund, because during this time the projected-actual gap never widened, and, therefore, the spill did not cause the purchaser any loss in market value. Qualifying buyers who purchased before 1994:2, and held through 1994:2, would be allotted only a fraction of a full share proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.³³

²⁷ Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁸ A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁹ The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

³⁰ This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

³¹ In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³² For example, someone who purchased an S01E permit before the spill, and sold in 1993:2, would be allotted 68% of a full share because 68% of the maximum \$207,700 projected-actual gap occurred by 1993:2.

³³ For example, someone who purchased an S01E permit in 1992:2 would be allotted 37% of a full share because 63% of the maximum \$207,700 projected-actual gap had taken place by that time, and only 37% occurred afterwards. Someone who purchased after the spill and sold it before 1994:2 would be allotted a portion of a full share, based on the difference between the projected-actual gap at the time of purchase and sale. Such a "post-spill purchaser/seller" would receive no share if the projected-actual gap at the time of sale was less than the projected-actual gap at the time of purchase. If the projected-actual gap at the time of sale exceeded the projected-actual gap at the time of purchase, the post-spill purchaser/seller would be allotted a fraction of a full share, equal to the ratio of the difference between the projected-actual gap at the time of sale and purchase, to the maximum projected-actual gap of \$207,700.

B. VESSEL DEVALUATION FUND

The vessel devaluation fund is intended to compensate owners of seine vessels used in the PWS salmon seine fishery for loss in market value of their vessels caused by the oil spill.³⁴ Plaintiffs' counsel propose that distribution of the vessel devaluation fund be based on principles similar to those used for distribution of the permit devaluation fund, because both funds compensate for lost value of an asset used in the PWS salmon seine fishery.

1. Vessel Subfunds

The vessel devaluation fund would be divided into four "vessel subfunds," one for each season 1989, 1991, 1992 and 1993. For each vessel subfund, there is a corresponding "vessel subfund period." The period March 24, 1989 through May 31, 1990 will be referred to as the "1989 vessel subfund period." For the 1991, 1992 and 1993 vessel subfunds, the corresponding subfund period would run from June 1 of the year in question through May 31 of the subsequent year.

The projected percent share of each vessel subfund, listed on Table 3, is based on the loss in market value of S01E permits which occurred during the subfund period.³⁵ The projected percent share of the 1989 vessel subfund is 4.5%, or 49.8% of the total 9% projected percent share of the vessel devaluation fund. During the 1989 vessel subfund period, the projected-actual permit value gap widened by \$103,500, which represents 49.8% of the maximum projected-actual permit value gap of \$207,700. There is no 1990 vessel subfund because the projected-actual permit value gap narrowed during June 1, 1990 through May 31, 1991. Projected percent shares are 1.2% for the 1991 vessel subfund, 0.4% for the 1992 vessel subfund, and 2.9% for the 1993 vessel subfund. There are no 1994 or 1995 vessel subfunds because there was no further permit devaluation after 1994:2. See Table 2.

2. Full Shares

A full share of a season's vessel subfund would equal the amount of the subfund divided by the number of qualifying vessels for the season.³⁶ From each vessel subfund, full shares would be allotted to vessel owners who held an S01E permit during the season, and owned a seine vessel for the entire subfund period. Full shares also would be allotted to vessel owners who did not hold an S01E permit during the season, but did own a seine vessel for the entire subfund period and qualify as a vessel owner for the corresponding PWS salmon seine seasonal lost income fund. See *supra*. Vessel owners who satisfy these criteria would be allotted full shares even if they traded or exchanged their seine vessel during the subfund period.³⁷

By this method, a vessel owner who qualifies for full shares of all four vessel subfunds would, in effect, be allotted one full share of the vessel devaluation fund. This would include vessel owners who held an S01E permit and owned a seine vessel from the date of the spill through 1994:2. It also would include vessel owners who never held an S01E permit, as long as they qualify as vessel owners for all seasonal lost income funds from 1989 through 1993.

3. Vessel Owners At The Time Of The Spill Who Later Sold Their Vessels

A vessel owner who owned a seine vessel at the time of the spill, but subsequently sold the vessel and did not replace it, would be allotted a share of each vessel subfund for which he or she qualifies before the sale. Such a vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period, and a prorated share if he or she sold the vessel during the subfund period. Prorated shares would be proportional to the number of days during the subfund period that the vessel owner owned the vessel. By this method, post-spill vessel sellers would receive prorated shares of the vessel devaluation fund, proportional to the loss in market value of S01E permits that occurred before the sale.³⁸

³⁴Plaintiffs' counsel propose to determine distributions without regard to actual values and physical characteristics of vessels. Accounting for individual variations would be prohibitively expensive and time-consuming. Every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

³⁵See *supra*. Loss in permit market value is used as a proxy for loss in vessel market value, because doing so greatly simplifies administration and vessel market value appears highly correlated to permit market value.

³⁶For purposes of illustration in this distribution plan, it is assumed that the number of qualifying vessels each season is 270 -- i.e., the estimated number of qualifying permits. This is a reasonable estimate based on available data, but will be revised if necessary based on additional data accumulated in the Supplemental Claims Program. If the number of qualifying vessels in any season proves to be lower than 270, any surplus in the corresponding vessel subfund would be reallocated among all PWS salmon seine funds. If the number of qualifying vessels exceeds 270 in any season, shares of the corresponding vessel subfund would be reduced proportionally.

³⁷Conceivably, a permit/vessel owner could have put his or her vessel to use in a salmon seine fishery other than PWS, for which there is a vessel devaluation fund (e.g., Chignik, Kodiak or Lower Cook Inlet). Any such vessel owner would share in only one vessel devaluation fund per season. See *infra*.

³⁸For example, a vessel owner who owned a vessel on the date of the spill and sold it on December 1, 1992, would qualify for the 1989, 1991 and 1992 vessel subfunds. The vessel owner would be allotted full shares of the 1989 and 1991 vessel subfunds, and a 50% share of the 1992 vessel

(continued...)

4. Post-Spill Vessel Purchasers

A vessel owner who purchased a seine vessel after the spill would be allotted a share of each vessel subfund for which he or she qualifies after the purchase. The vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period, and a prorated share if he or she purchased the vessel during the subfund period. Prorated shares would be proportional to the number of days of the subfund period for which the vessel was owned. Thus, post-spill vessel purchasers, like post-spill vessel sellers, would be allotted prorated shares of the vessel devaluation fund proportional to the loss in market value of S01E permits after the purchase.³⁹

C. SEASONAL LOST INCOME FUNDS

Before the spill, the PWS salmon seine fishery was thriving. Today, it is marginally profitable at best. PWS salmon seiners' pre-spill lifestyles have deteriorated enormously. From 1985 through 1988, an average of 260 permits were fished per season. This number fell to 144 in 1993 due to run failures caused by the spill. As heavy economic losses mounted after the spill, many PWS salmon seiners were forced to fish elsewhere or were driven from the fishery altogether. Even in 1995, six years after the spill, only 188 permits were fished. Permit values plummeted from \$240,000 in March 1989 to \$34,900 in July 1994.

Open meetings concerning different distribution methods have been held with PWS salmon seiners in Cordova (October 1995, May 1996, October 1996), Anchorage (June 1996, October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (May 1996, October 1996). In addition, plaintiffs' counsel have consulted with many PWS salmon seiners, and fishers have circulated and considered informal proposals among themselves.

At these meetings, and in discussions with scores of individual fishers, plaintiffs' counsel have found that PWS salmon seiners agree that virtually all suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is no unanimity among PWS salmon seiners on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to PWS salmon seiners' widely-held desire for compromise, plaintiffs' counsel propose to distribute seasonal funds in a blended manner with both *per capita* and production-based components. Each seasonal fund would be divided 50% to a "production subfund" divided only among those who actually fished in the season, and 50% to a "*per capita* subfund" divided without regard to actual production. Plaintiffs' counsel have concluded that the 50%/50% division is a fair and workable compromise of the many competing interests. The attached Table 4 lists projected amounts of seasonal funds based on a total fishery recovery of \$610,851,000.

1. Production Subfunds

With two exceptions, each production subfund would be distributed among PWS salmon seine claimants who actually "participated" during the season.⁴⁰ For permit holders,⁴¹ production shares would be proportional to actual harvest values in the season,⁴² less payments to derivative shareholders. For derivative share claimants, production shares would be proportional to their actual earnings in the fishery during the season. The two exceptions are as follows.

(...continued)

³⁸ subfund (because the vessel was owned for half of the 1992 vessel subfund period).

³⁹ Consider, for example, a vessel owner who purchased a seine vessel on December 1, 1992, kept it through December 1995, and used it in the PWS salmon seine fishery in the 1993, 1994 and 1995 seasons. The vessel owner would not qualify for the 1992 vessel subfund, because the purchase took place after the fishing season, but would qualify for a full share of the 1993 vessel subfund (there are no 1994 or 1995 vessel subfunds). If, instead, the vessel owner purchased the vessel on July 1, 1992 and used it in the 1992 season, then he or she also would qualify for a prorated share of the 1992 vessel subfund.

⁴⁰ Permit holders "participated" if they recorded harvest. Hired skippers, crew and spotters "participated" if they were actually employed to work in the fishery during the season. Owners of seine vessels "participated" if they leased or otherwise contracted a seine vessel used in the fishery. Other shareholders such as non-fishing permit owners or "silent" partners in fishing operations "participated" if the permit holder with whom they had an agreement participated.

⁴¹ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

⁴² As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds Of Fish" times the "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds Of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value Of Catch entries calculated by CFEC.

a) 1989 fisher-representatives

In 1989, some PWS salmon seiners represented the fishery in negotiations with Exxon representatives concerning the design and implementation of the Exxon Claims program and other spill-related issues. As a result, these "fisher-representatives" curtailed their fishing, and their production suffered. Plaintiffs' counsel believe that it would not be fair to base production shares of fisher-representatives,⁴³ or their shareholders,⁴⁴ on actual 1989 harvest, and propose instead to use projected 1989 harvest based upon historical performance.⁴⁵

b) 1991

The 1991 season was disrupted by stock damages (e.g., late pink runs) and extraordinary market losses (e.g., Chugach bankruptcy and loss of cash buyers). The 1991 production subfund would be distributed only among those who participated but, to account for the disruptions, permit holders' production shares would be based on the larger of their 1990 and 1991 market shares rather than 1991 alone. Proportional shares of derivative share claimants would be based on 1991 contractual arrangements. Table 4 lists projected percent shares and amounts of production subfunds.⁴⁶

2. Per Capita Subfunds

a) 1989

The 1989 *per capita* subfund would be divided among: holders of "fishable" permits;⁴⁷ derivative share claimants who participated during the 1989 season; and "displaced" derivative share claimants unable to participate during the 1989 season, who establish that they would have participated but for the oil spill.⁴⁸

Distributions would be calculated in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1989 *per capita* subfund by the total number of fishable permits "held" during the season.⁴⁹ Participating permit holders would be allotted "net" *per capita* shares, equal to the gross *per capita* share reduced proportionally based upon their actual contractual arrangements with shareholders. Non-participating permit holders would be allotted net *per capita* shares, equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders.⁵⁰ Participating derivative share claimants would be allotted

⁴³To qualify as a fisher-representative, a claimant must establish that he or she was excused by Exxon Claims from its "mitigation requirement" due to the claimant's work as a fisher-representative.

⁴⁴To qualify as a shareholder of a fisher-representative, a claimant must provide documentary evidence that he or she either: (1) had a contract with the fisher-representative (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) qualified as a shareholder of the fisher-representative in Exxon Claims Program.

⁴⁵Fisher-representatives' projected market shares would equal the average of their two best market shares during the 1985 through 1988 seasons. If a fisher-representative lacks two or more years of history from 1985 through 1988, plaintiffs' counsel would determine a fair market share based on pre- and post-spill production.

⁴⁶Excess amounts in the permit devaluation fund would be reallocated among all PWS salmon seine funds, in proportion to projected percent shares. Fifty percent of any excess in a *per capita* subfund would be reallocated to the production subfund for the season. *See supra*. Plaintiffs' counsel do not expect any excess in the vessel devaluation fund.

⁴⁷"Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. *See infra*.

⁴⁸To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a crew claim for the fishery by the Exxon Claims Program or TAPL Fund; or (3) held a 1989 crew license and participated in the fishery in two of three seasons 1987, 1988 and/or 1990. A spotter must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; (2) was paid a spotter claim for the fishery by the Exxon Claims Program or TAPL Fund; or (3) spotted in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1989.

⁴⁹Due to temporary transfers, the number of permits "held" in a season is likely to be smaller than the number of permit holders. In cases where a permit was held by more than one individual during a season, the multiple holders of the permit would be allotted collectively a single *per capita* share, to be divided among them on the basis of transfer agreements.

⁵⁰Projected payments to shareholders would be based on a permit holder's specific history or, for a new entrant, on fleet-wide data.

proportional shares of the gross *per capita* share based upon actual earnings. Non-participating derivative share claimants would be allotted proportional shares of the gross *per capita* share based upon projected earnings calculated on a case-by-case basis using historical information.⁵¹

b) 1990 And 1991

Each of the 1990 and 1991 *per capita* subfunds would be divided among holders of fishable permits, *see supra*, and participating derivative share claimants.⁵² Distributions would be calculated in the same manner as for the 1989 *per capita* subfund. That is, a gross *per capita* share would be calculated as the amount of the *per capita* subfund divided by the total number of fishable permits for the season. Permit holders who participated would be allotted a net *per capita* share equal to the gross *per capita* share reduced proportionally based upon actual contractual arrangements with shareholders. Permit holders who did not participate would be allotted a net *per capita* share, equal to the gross *per capita* share reduced proportionately by projected payments to shareholders.⁵³ Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based upon their actual earnings.

c) 1992 And 1993

Plaintiffs' counsel propose to distribute the 1992 and 1993 *per capita* subfunds in the same manner as the 1990 and 1991 *per capita* subfunds, with the exception that non-participating derivative share claimants who qualify as "displaced" also would share. Although there were no closures in 1992 and 1993, the spill resulted in disastrous pink salmon run failures, as the federal jury found. The number of S01E permits recording catch plummeted from 253 in 1991 to 207 in 1992 and 144 in 1993. As a result, many crew, spotters and other shareholders were denied employment or income as a result of the oil spill. Plaintiffs' counsel believe it fair to allow displaced derivative share claimants to share in the 1992 and 1993 *per capita* subfunds.

The 1992 and 1993 *per capita* subfunds each would be divided among holders of fishable permits, participating derivative share claimants, and displaced derivative share claimants.⁵⁴ Displaced derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on projected earnings calculated on a case-by-case basis using historical information.

d) 1994 and 1995

The 1994 and 1995 *per capita* subfunds would be distributed in an analogous manner as the 1990 and 1991 *per capita* subfunds. *See supra*. Non-participating derivative share claimants would not share, because there were no massive run failures as in 1992 and 1993.

3. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (*e.g.*, for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share

⁵¹Projected percent shares of *per capita* subfunds are based on assumptions that holders of 270 permits will qualify, and that valid claims from all claimants (including those who participated and those who did not) will aggregate to 270 gross *per capita* shares. In fact, fewer than 270 permits actually recorded landings each year. Based on Alyeska claims data, plaintiffs' counsel do not expect valid claims to aggregate to 270 gross *per capita* shares in any year, but do expect any shortfall to be slight. If there is a shortfall, it would be divided 50%/50% between the *per capita* and production subfunds for the season.

⁵²Unlike the 1989 *per capita* subfund, non-participating derivative share claimants would not share in the 1990 and 1991 *per capita* subfunds, because there is little evidence that the spill denied them opportunities to work in the fishery. There were no closures caused by the spill in those years. Of 270 permits, landings were recorded by 265 in 1990 and 253 in 1991.

⁵³Actual percent shares of the 1990, 1991 and 1992 *per capita* subfunds are likely to be slightly higher than projected percent shares, because non-participating derivative share claimants do not share in them. Any excess in a *per capita* subfund would be reallocated to the production subfund for the season.

⁵⁴To qualify as "displaced" in 1992, a crew must provide documentary evidence that he or she: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) participated in the fishery in 1991 plus one of two seasons 1989 and/or 1990. A spotter must provide documentary evidence that he or she: (1) had a written contract with a permit holder; or (2) spotted in the fishery in 1991 plus one of two seasons 1989 and/or 1990. A vessel owner must provide documentary evidence that he or she: (1) had a written contract with a permit holder; or (2) leased his or her vessel for use in the fishery in 1991 plus one of two seasons 1989 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1992.

To qualify as "displaced" in 1993, a derivative share claimant must either: (1) qualify for the 1992 *per capita* subfund; or (2) provide documentary evidence that he or she had a contract with a permit holder for the 1993 season. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1993.

proportional to the length of time during the season that the permit holder held the permit.⁵⁵ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

D. MULTIPLE SALMON SEINE PERMIT HOLDERS AND THEIR DERIVATIVE SHAREHOLDERS

Some holders of PWS salmon seine (S01E) permits also held one or more other limited-entry salmon seine permits -- *i.e.*, Chignik (S01L), Cook Inlet (S01H), Kodiak (S01K), Peninsular Aleutians (S01M) or Southeast Alaska (S01A). By law, a multiple salmon seine permit holder may fish only one salmon seine permit each season. Some special requirements therefore are needed to prevent unfair double recoveries.

1. Permit Devaluation Funds

Because permits are separate assets, it is fair for multiple salmon seine permit owners to recover for each of their salmon seine permits. Owners of multiple salmon seine permits may recover from permit devaluation funds in each fishery for which they qualify. For example, a claimant who owned both PWS and Kodiak salmon seine permits may recover from both the PWS and Kodiak salmon seine permit devaluation funds.

2. Seasonal Lost Income Funds

Because multiple salmon seine permit holders may utilize only one permit in a season, it would not be fair for them to recover from more than one salmon seine seasonal lost income fund each season. In 1989, the oil spill forced fishermen to make difficult decisions under abnormal circumstances. For this reason, a multiple salmon seine permit holder may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she actually chose to fish. Likewise, a derivative share claimant may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she participated. However, a claimant may recover from only one salmon seine seasonal lost income fund.

In a season after 1989, if a multiple salmon seine permit holder participated in an "oiled" salmon seine fishery, then the permit holder and his or her derivative shareholders must claim against the lost income fund for the fishery in which they participated, and may not recover from any other salmon seine lost income fund. If a multiple salmon seine permit holder participated in an "unoiled" salmon seine fishery (*i.e.*, Peninsular Aleutians (S01M) or Southeast Alaska (S01A)), the permit holder and his or her derivative shareholders may elect to recover from any "oiled" salmon seine lost income fund for which they qualify, rather than the seasonal lost income fund for the "unoiled" fishery in which they participated.⁵⁶

Consider, for example, a permit holder who owned both PWS (S01E) and Southeast Alaska (S01A) salmon seine permits from the date of the spill through 1995, and fished Southeast in 1989, PWS in 1990 and 1991, and Southeast in 1992 through 1995. In 1989, the permit holder and his or her derivative shareholders may choose either the PWS or Southeast seasonal lost income fund, but not both. However, because they did not participate in the PWS salmon seine fishery in 1989, they are eligible only for the 1989 *per capita* subfund. *See supra*. In 1990 and 1991, the permit holder and his or her derivative shareholders must recover from PWS salmon seine lost income funds. In 1992 through 1995, the permit holder may recover from PWS salmon seine *per capita* subfunds, as may his or her derivative shareholders in any season in which they qualify as displaced.⁵⁷

3. Vessel Devaluation Funds

A vessel owner is entitled to only one vessel devaluation recovery for his or her vessel. A multiple salmon seine permit holder who also owns a seine vessel may recover from only one vessel devaluation subfund per season, and his or her total recovery for the vessel may not exceed one full vessel devaluation share. Plaintiffs' counsel have done their best to draft salmon seine distribution plans which protect against double recoveries for salmon seine vessel owners, but this is a complicated claims area and it is impossible to anticipate all scenarios in advance. Plaintiffs' counsel will ensure that owners of vessels used in two or more salmon seine fisheries receive fair, but not excessive, compensation for vessel devaluation.

⁵⁵For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data.

⁵⁶In the Chignik, Peninsular Aleutians and Southeast Alaska salmon seine fisheries, there are seasonal lost income funds only for 1989, 1990 and 1991. In the Cook Inlet, Kodiak and PWS salmon seine fisheries, there are seasonal lost income funds for every season 1989 through 1995.

⁵⁷These claimants are not eligible for production subfunds because they did not participate.

E. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS salmon seiner a Final Percent Share, which is the claimant's percent share of PWS salmon seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including PWS salmon seiners, would be adjusted to reflect the extent to which they have already been compensated.⁵⁸ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
PROJECTED FUND PERCENT SHARES OF
PWS SALMON SEINE (S01E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	17.7%	\$108,118,000
Vessel Devaluation	9.0%	\$55,207,000
Seasonal Funds		
1989	12.3%	\$75,251,000
1990	20.2%	\$123,521,000
1991	19.9%	\$121,406,000
1992	6.1%	\$37,109,000
1993	7.0%	\$42,912,000
1994	3.1%	\$18,812,000
1995	4.7%	\$28,515,000
Subtotal	73.3%	\$447,526,000
Total	100%	\$610,851,000

INCLUDES ATTORNEYS' FEES

⁵⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 2
PWS SALMON SEINE (S01E) PERMIT DEVALUATION FUND

Date	Projected Market Value	Actual Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Quarter	% Share Of Owner Who Purchased In Quarter, Held To 1995:2
1989:2	\$239,400	\$228,500	\$10,900	5%	95%
1989:3	\$262,200	\$228,100	\$34,100	16%	84%
1989:4	\$285,000	\$227,800	\$57,200	28%	72%
1990:1	\$307,700	\$227,400	\$80,300	39%	61%
1990:2	\$330,500	\$227,000	\$103,500	50%	50%
1990:3	\$324,200	\$226,600	\$97,600	47%	53%
1990:4	\$317,900	\$226,300	\$91,600	44%	56%
1991:1	\$311,500	\$225,900	\$85,600	41%	59%
1991:2	\$305,200	\$225,500	\$79,700	38%	62%
1991:3	\$288,600	\$195,900	\$92,700	45%	55%
1991:4	\$272,000	\$166,300	\$105,700	51%	49%
1992:1	\$255,400	\$136,600	\$118,800	57%	43%
1992:2	\$238,800	\$107,000	\$131,800	63%	37%
1992:3	\$239,100	\$105,000	\$134,100	65%	35%
1992:4	\$239,500	\$103,000	\$136,500	66%	34%
1993:1	\$239,800	\$101,000	\$138,800	67%	33%
1993:2	\$240,100	\$99,000	\$141,100	68%	32%
1993:3	\$240,700	\$83,000	\$157,700	76%	24%
1993:4	\$241,400	\$67,000	\$174,400	84%	16%
1994:1	\$242,000	\$50,900	\$191,100	92%	8%
1994:2	\$242,600	\$34,900	\$207,700	100%	0%
1994:3	\$244,200	\$37,800	\$206,400	100%	0%
1994:4	\$245,800	\$40,800	\$205,000	100%	0%
1995:1	\$247,300	\$43,700	\$203,600	100%	0%
1995:2	\$248,900	\$46,600	\$202,300	100%	0%

Table 3
PROJECTED PWS SALMON SEINE (S01E)
VESSEL DEVALUATION SUBFUNDS

Subfund	Subfund Period	Widening Of Projected-Actual Permit Value Gap In Subfund Period	Percentage of Max. Projected-Actual Permit Value Gap In Subfund Period	Projected Subfund % Share	Projected Amount
1989	4/89-5/90	\$103,500	49.8%	4.5%	\$27,510,000
1991	6/91-5/92	\$28,300	13.6%	1.2%	\$7,522,000
1992	6/92-5/93	\$9,300	4.5%	0.4%	\$2,472,000
1993	6/93-5/94	\$66,600	32.1%	2.9%	\$17,702,000
Total		\$207,700	100%	9.0%	\$55,207,000

(1) Based on 270 qualifying vessels.

INCLUDES ATTORNEYS' FEES

Table 4
PROJECTED PWS SALMON SEINE
(S01E) SEASONAL LOST INCOME FUNDS

FUND	Projected % Share	Projected Amount	Per Capita Subfund 50%	Performance Subfund 50%
1989	12.3%	\$75,251,000	\$37,625,500 6.16%	\$37,625,500 6.16%
1990	20.2%	\$123,521,000	\$61,760,500 10.1%	\$61,760,500 10.1%
1991	19.9%	\$121,406,000	\$60,703,000 9.94%	\$60,703,000 9.94%
1992	6.1%	\$37,109,000	\$18,554,500 3.04%	\$18,554,500 3.04%
1993	7.0%	\$42,912,000	\$21,456,000 3.5%	\$21,456,000 3.5%
1994	3.1%	\$18,812,000	\$9,406,000 1.54%	\$9,406,000 1.54%
1995	4.7%	\$28,515,000	\$14,257,500 2.33%	\$14,257,500 2.33%
Total	73%	\$447,526,000	\$223,763,000 36.63%	\$223,763,000 36.63%

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND SALMON DRIFTERS (S03E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Salmon Drift (*i.e.*, S03E) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S03E permits and "derivative share claimants";³ devaluation of S03E permits by permit owners; and devaluation of vessels used in the fishery by vessel owners. Permit owners, permit holders and derivative share claimants will be collectively referred to as "PWS salmon drifters." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS salmon drifters.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS salmon drifters share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew and vessel owners.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Salmon Drift Claim Category, no plaintiffs except putative PWS salmon drift claimants have any financial interest in how PWS salmon drift allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS salmon drifters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS salmon drift allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals, and prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which are not yet collected.¹¹ The PWS salmon drift matrix share is projected to be 6.3431% of signatories' share of the Alyeska Settlement, and 6.3540% of signatories' other common recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute PWS salmon drifters' projected 6.3540% share (roughly \$1,571,000 less attorneys' fees approved by the Court¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and any unclaimed money remaining from their \$3,200,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS salmon drifters to be allocated roughly \$3,657,000 of from the Phase IIA judgment and prejudgment interest, and \$302,969,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS salmon drifters also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS salmon drifters will be allocated the difference between their 6.3540% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS salmon drifters. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS salmon drifters' actual allocation of \$3,200,000 from the Alyeska Settlement was less than their 6.3431% matrix share (roughly \$5,538,000), the difference (projected at \$2,338,000) will be allocated to PWS salmon drifters, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS salmon drifters' total allocation will be roughly \$330,119,000 (less attorneys' fees and expenses), which includes \$1,571,000 from Native/Municipality/Kodiak Island Borough recoveries, \$5,538,000 from the Alyeska Settlement, \$3,657,000 from the uncollected Phase IIA judgment and prejudgment interest, \$302,969,000 from the uncollected punitive damages judgment, and \$12,727,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

⁷Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The projected PWS salmon drift matrix share of 6.3540% is slightly higher than the 6.35% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS salmon drifters' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This and other allocations to the PWS Salmon Drift Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS salmon drifters to evaluate this distribution plan under the assumption that PWS salmon drifters ultimately will be allocated \$330,119,000 plus interest.¹⁷

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS salmon drifters,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all PWS salmon drifters will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed a PWS salmon drift claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Salmon Drift Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute PWS salmon drifters' \$1,571,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*i.e.*, money reserved for absent class members for which no claim was made) remaining from PWS salmon drifters' \$3,200,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁷Some PWS salmon drifters -- *i.e.*, permit holders and crew who qualify for the 1989 seasonal lost income fund, *see infra* -- are also eligible to share in plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. *See* Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁸Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories have not yet received judicial approval.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would submit to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²²Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS salmon drifters' combined \$4,771,000 allocations from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS salmon drift allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS salmon drift allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares are also based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages because damages in later years had not yet been quantified.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS salmon drift allocations into nine separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S03E permits; a "vessel devaluation" fund based on loss in market value of PWS salmon drift vessels; and seven separate "seasonal" funds for the 1989-95 fishing seasons, based on diminished price and/or lost harvest.²³ These nine funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS salmon drift matrix shares.²⁴ Permit and vessel devaluation damages have been discounted by 33 1/3% to reflect appropriate litigation risk.²⁵

The attached Table 1 lists projected percent shares of PWS salmon drift funds ("projected fund percent shares"), and projected allocations from a total fishery recovery of \$330,119,000. Projected fund percent shares are: 31% for the permit devaluation fund; 8.3% for the vessel devaluation fund; and 60.8% for the seven seasonal funds, including 13.5% for 1989, 15.5% for 1990, 22.3% for 1991, 0.7% for 1992, 3.2% for 1993, 2.7% for 1994 and 2.9% for 1995. Actual percent shares of PWS salmon drift funds are likely to vary slightly from the projected fund percent shares.²⁶

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S03E permits. Claims against the permit devaluation fund may be made by those who owned an S03E permit on the date of the oil spill, or purchased an S03E permit before April 1, 1995.²⁷ See *infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁸ A permit owner who satisfies one of these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S03E permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and June 30, 1995. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1995:2 (*i.e.*, the second calendar quarter of 1995) would be allotted a full share,²⁹ equal to the amount of the permit devaluation fund divided by 541, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the oil spill.³⁰ Qualifying permit owners who sold or purchased permits after the spill, but before 1995:2, would be allotted a fractional share based on

²³In addition, PWS salmon drifters whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims would be allotted *pro rata* shares of PWS salmon drift allocations, proportional to the ratio of loss to total PWS salmon drift matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS salmon drift allocations.

²⁴See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, other individual plaintiffs, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Since the fall of 1995, workups of PWS salmon drift damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrbach, LLP in Seattle. PWS salmon drift damages were presented and discussed in ongoing meetings with fishers held in Cordova, and in Seattle, Bellingham and Mt. Vernon in the State of Washington.

²⁵See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁶For example, the projected fund percent share of 31% for the permit devaluation fund is based on an assumption that a total of 541 shares will be paid out -- *i.e.*, the number of marketable S03E permits in existence in 1989. This is a reasonable assumption, and a cautious one in that it assures an adequate reserve for the fund. However, under criteria proposed in this distribution plan, fewer than 541 full shares are likely to be paid out because some post-spill permit sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all PWS salmon drift funds, resulting in a modification of projected fund percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁷Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁸A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁹The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

³⁰This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from PWS salmon drifters, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³¹

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") grew steadily to \$64,100 in 1993:2. It then narrowed somewhat, to \$55,100 by 1994:2. The projected-actual gap then widened once again, and reached a maximum of \$87,600 in 1995:2.

A permit owner at the time of the oil spill, who held his or her permit until at least 1995:2 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before 1995:2 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$87,600. These fractions, expressed as percentages, are listed on Table 2.³²

2. Post-Spill Permit Buyers

Plaintiffs' counsel do not think it fair or appropriate for anyone who purchased an S03E permit in 1995:2 or after to share in the permit devaluation fund, because during this time the projected-actual gap never widened, and, therefore, the oil spill did not cause the purchaser any loss in market value. Qualifying buyers who purchased before 1995:2, and held through 1995:2, would be allotted only a fraction of a full share, proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.³³

B. VESSEL DEVALUATION FUND

The vessel devaluation fund is intended to compensate owners of drift vessels used in the PWS salmon drift fishery for loss in market value of their vessels caused by the oil spill.³⁴ Plaintiffs' counsel propose that distribution of the vessel devaluation fund be based on principles similar to those used for distribution of the permit devaluation fund, because both funds compensate for lost value of an asset used in the PWS salmon drift fishery.

1. Vessel Subfunds

The vessel devaluation fund would be divided into five "vessel subfunds," one for each season 1989 through 1992, and 1994. For each vessel subfund, there is a corresponding "vessel subfund period." The period March 24, 1989 through April 30, 1990 will be referred to as the "1989 vessel subfund period." For each of the 1990, 1991, 1992 and 1994 vessel subfunds, the corresponding subfund period would run from May 1 of the year in question through April 30 of the subsequent year.

The projected percent share of each vessel subfund, listed on Table 3, is based on the loss in market value of S03E permits caused by the spill during the subfund period.³⁵ The projected percent share of the 1989 vessel subfund is 0.8%, which is 9.6% of the total 8.3% projected percent share of the vessel devaluation fund. During the 1989 vessel subfund period, the projected-actual permit value gap widened by \$8,400, which represents 9.6% of the maximum projected-actual permit value gap of \$87,600. Similarly, projected percent shares of the 1990, 1991 and 1992 vessel subfunds are 2.0%, 1.5% and 1.8%, respectively. There is no 1993 vessel subfund because the projected-actual permit value gap narrowed during May 1993 through April 1994. Based on analogous principles, the projected percent share of the 1994 vessel subfund is 2.2%. There is no 1995 vessel subfund because there was no further permit devaluation after 1995:2. See Table 2.

³¹In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³²For example, someone who purchased an S03E permit before the spill and sold in 1993:1 would be allocated 68% of a full share, because only 68% of the maximum \$87,600 projected-actual gap occurred by 1993:1.

³³For example, someone who purchased an S03E permit in 1993:1 would be allotted 32% of a full share because 32% of the maximum \$87,600 projected-actual gap took place after that date. Someone who purchased an S03E permit after the oil spill and sold it before 1995:2 would be allotted a portion of a full share, based on the difference between the projected-actual gaps at the time of purchase and sale. Such a "post-spill purchaser/seller" would receive no share if the projected-actual gap at the time of sale was less than it was at the time of purchase. If the projected-actual gap at the time of sale was greater than the projected-actual gap at the time of purchase, the post-spill purchaser/seller would receive a fraction of a full share, equal to the ratio of the difference between the projected-actual gap at the time of sale and purchase, to the maximum projected-actual gap of \$87,600.

³⁴Plaintiffs' counsel propose to determine distributions without regard to actual values and physical characteristics of vessels. Accounting for individual variations would be prohibitively expensive and time-consuming. Every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

³⁵See *supra*. Loss in permit market value is used as a proxy for loss in vessel market value, because doing so greatly simplifies administration, and vessel market value appears highly correlated to permit market value.

2. Full Shares

A full share of a season's vessel subfund would equal the amount of the subfund divided by the number of qualifying vessels for the season.³⁶ From each vessel subfund, full shares would be allotted to vessel owners who held an S03E permit during the season, and owned a drift vessel for the entire subfund period. Full shares also would be allotted to vessel owners who did not hold an S03E permit during the season, but did own a drift vessel for the entire subfund period and qualify as a vessel owner for the corresponding PWS salmon drift seasonal lost income fund. *See infra*. Vessel owners who satisfy these criteria would be allotted full shares even if they traded or exchanged their drift vessel during the subfund period.

By this method, a vessel owner who qualifies for full shares of all six vessel subfunds would, in effect, be allotted one full share of the vessel devaluation fund. This would include all vessel owners who held an S03E permit and owned a drift vessel from the date of the spill through 1995:2. It also would include vessel owners who never held an S03E permit, as long as they qualify as vessel owners for all seasonal lost income funds from 1989 through 1994.

3. Vessel Owners At The Time Of The Spill Who Later Sold Their Vessel And Did Not Replace It

A vessel owner who owned a drift vessel at the time of the spill, but subsequently sold the vessel and did not replace it, would be allotted a share of each vessel subfund for which he or she qualifies before the sale. Such a vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period; and a prorated share if he or she sold the vessel during the subfund period. Prorated shares would be proportional to the number of days during the subfund period that the claimant owned the vessel. By this method, post-spill vessel sellers would receive prorated shares of the vessel devaluation fund, proportional to the loss in market value of S03E permits that occurred before the sale.³⁷

4. Post-Spill Vessel Purchasers

A vessel owner who purchased a drift vessel after the spill would be allotted a share of each vessel subfund for which he or she qualifies after the purchase. The vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period; and a prorated share if the vessel was purchased during the subfund period. Shares would be proportional to the number of days of the subfund period during which the vessel was owned. Thus, post-spill vessel purchasers, like post-spill vessel sellers, would be allotted prorated shares of the vessel devaluation fund proportional to the loss in market value of S03E permits after the purchase.³⁸

C. SEASONAL LOST INCOME FUNDS

Since the spill, the economic vitality of the PWS salmon drift fishery has deteriorated, as evidenced by the decline in S03E permit values. *See* Table 2. Plaintiffs' counsel held open meetings concerning different distribution methods with PWS salmon drifters in Cordova (October 1995, May 1996, October 1996), Anchorage (October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (May and October, 1996). Also, fishers have circulated and considered informal proposals among themselves.

At these meetings, and in discussions with scores of individual fishers, plaintiffs' counsel have found that PWS salmon drifters agree that virtually all suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for each fisherman's specific harm. Fishers do not unanimously agree on a particular distribution method, but there is a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to a widely-held desire for compromise by PWS salmon drifters, plaintiffs' counsel propose to distribute seasonal funds in a blended manner with both *per capita* and production-based components. Each seasonal fund would be divided 50% to a "production subfund" divided among those who actually fished in proportion to their production, and 50% to a "*per capita* subfund" divided without regard to production. Plaintiffs' counsel have concluded that the 50%/50% division is a fair and workable compromise of the many competing interests. The attached Table 1 lists projected amounts of seasonal subfunds based on a total fishery recovery of \$330,119,000.

³⁶For purposes of illustration in this distribution plan, it is assumed that the number of qualifying vessels each season is 541 -- i.e., the estimated number of qualifying permits. This is a reasonable estimate based on available data, but will be revised if necessary based on additional data accumulated in the Supplemental Claims Program. If the number of qualifying vessels in any season proves to be lower than 541, any surplus in the corresponding vessel subfund would be reallocated among all PWS salmon drift funds. If the number of qualifying vessels exceeds 541 in any season, shares of the corresponding vessel subfund would be reduced proportionally.

³⁷For example, a vessel owner who owned a drift vessel on the date of the spill, sold it on November 1, 1992, and qualifies for the 1989 through 1992 vessel subfunds, would be allotted full shares of the 1989, 1990 and 1991 vessel subfunds, and a 50% share of the 1992 vessel subfund (because the vessel was owned for half of the 1992 subfund period).

³⁸Consider, for example, a vessel owner who purchased a drift vessel on November 1, 1992, kept it through December 1995, and used it in the PWS salmon drift fishery in the 1993, 1994 and 1995 seasons. The vessel owner would not qualify for the 1992 vessel subfund, because the purchase took place after the fishing season, but would qualify for full shares of the 1993 and 1994 vessel subfunds (there is no 1995 vessel subfund). If, instead, the vessel owner purchased the vessel on June 1, 1992 and used it in the 1992 season, then he or she also would qualify for a prorated share of the 1992 vessel subfund.

1. Production Subfunds

With two exceptions, each production subfund would be distributed among PWS salmon drifters who actually "participated" during the season.³⁹ For permit holders,⁴⁰ production shares would be proportional to actual harvest values in the season,⁴¹ less payments to shareholders. For derivative share claimants, production shares would be proportional to actual earnings. The two exceptions are as follows.

a) 1989 fisher-representatives

In 1989, some PWS salmon drifters represented the fishery in negotiations with Exxon representatives concerning the design and implementation of the Exxon Claims program and other spill-related issues. As a result, these "fisher-representatives" curtailed their fishing and their production suffered. Plaintiffs' counsel believe that it would not be fair to base shares of fisher-representatives⁴² or their shareholders⁴³ on actual 1989 harvest, and propose instead to use projected harvest based upon historical performance.⁴⁴

b) 1991

The only exception to the use of actual production is 1991, when fishing was impaired as the result of stock damages and extraordinary market losses (e.g., Chugach bankruptcy and loss of cash buyers). The 1991 production subfund would be distributed only among participants, but shares would be based on the larger of 1990 and 1991 harvest values rather than 1991 alone. Proportional shares of derivative share claimants would be based on 1991 contractual arrangements. Table 4 lists projected percent shares and amounts of the production subfunds.⁴⁵

2. Per Capita Subfunds

a) 1989

The 1989 *per capita* subfund would be divided among: holders of "fishable" permits;⁴⁶ derivative share claimants who participated during the 1989 season; and "displaced" derivative share claimants who were unable to participate during the 1989 season, but establish that they would have participated but for the oil spill.⁴⁷ Distributions would be calculated in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1989 *per capita* subfund by the total number of fishable permits "held"

³⁹Permit holders "participated" if they actually recorded harvest. Crew "participated" if they were actually employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted a drift vessel used in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners "participated" if the permit holder with whom they had an agreement participated.

⁴⁰A permit holder is a person who possessed the right to use the permit. This right might have been acquired by ownership, or by transfer from the owner.

⁴¹As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon the data field titled "Round Pounds Of Fish" times the data field titled "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct their Round Pounds Of Fish data entries, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel would not allow claimants to revise Value Of Catch entries calculated by CFEC.

⁴²To qualify as a fisher-representative, a claimant must establish that he or she was excused by Exxon Claims from its "mitigation requirement" due to the claimant's work as a fisher-representative.

⁴³To qualify as a shareholder of a fisher-representative, a claimant must provide documentary evidence that he or she either: (1) had a contract with the fisher-representative (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) qualified as a shareholder of the fisher-representative in Exxon Claims Program.

⁴⁴Fisher-representatives' projected market shares would equal the average of their two best market shares during the 1985 through 1988 seasons. If a fisher-representative lacks two or more years of history from 1985 through 1988, plaintiffs' counsel would determine a fair market share based on pre- and post-spill production.

⁴⁵Excess amounts in the permit devaluation fund would be reallocated among all PWS salmon drift funds, in proportion to projected percent shares. Fifty percent of any excess in a *per capita* subfund would be reallocated to the production subfund for the season. See *supra*. Plaintiffs' counsel do not expect any excess in the vessel devaluation fund.

⁴⁶"Fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. See *infra*.

⁴⁷To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1989.

during the season.⁴⁸ Participating permit holders would be allocated "net" *per capita* shares, equal to the gross *per capita* share reduced proportionally based upon their actual contractual arrangements with shareholders. Non-participating permit holders would be allotted net *per capita* shares equal to the gross *per capita* share reduced proportionately based upon projected payments to shareholders.⁴⁹ Participating derivative share claimants would be allotted proportional shares of the 1989 gross *per capita* share based on actual earnings. Non-participating derivative share claimants would be allotted proportional shares of the 1989 gross *per capita* share based upon projected earnings calculated on a case-by-case basis using historical information.⁵⁰

b) 1990 through 1995

Each of the 1990 through 1995 *per capita* subfunds would be divided among holders of fishable permits, and derivative share claimants who actually participated during the season.⁵¹ Distributions would be calculated in a fashion similar to the 1989 *per capita* subfund. That is, a gross *per capita* share would be calculated as the amount of the *per capita* subfund divided by the total number of fishable permits for the season. Participating permit holders would be allotted net *per capita* shares equal to the gross *per capita* share reduced proportionally based upon their actual contractual arrangements with shareholders. Non-participating permit holders would be allotted net *per capita* shares equal to the gross *per capita* share reduced proportionately by projected payments to shareholders.⁵² Derivative share claimants would be allotted proportional shares of a gross *per capita* share based upon their actual earnings.

3. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁵³ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

D. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS salmon drift claimant a Final Percent Share, which is the claimant's percent share of PWS salmon drift allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each subfund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

⁴⁸Due to temporary transfers, the number of permits "held" in a season is likely to be less than the number of permit holders. When a permit was held by more than one individual during a season, the multiple holders of the permit would be allotted collectively a single *per capita* share, to be divided among them on the basis of transfer agreements.

⁴⁹Projected payments to shareholders would be based on a permit holder's specific history or, for a new entrant, on fleet-wide averages.

⁵⁰Projected percent shares of *per capita* subfunds are based on assumptions that holders of 541 permits will qualify, and that valid claims from all claimants (including those who participated and those who did not) will aggregate to 541 gross *per capita* shares. In fact, fewer than 541 permits actually recorded landings each year. Based on Alyeska claims data, plaintiffs' counsel do not expect valid claims to aggregate to 541 gross *per capita* shares in any year, but do expect any shortfall to be slight. If there is a shortfall, it would be divided 50%/50% between the *per capita* and production subfunds for season.

⁵¹Non-participating crew and vessel owners do not share in post-1989 *per capita* subfunds, because there were no closures as a result of the spill, and there was not a substantial reduction in effort.

⁵²Because non-participating derivative share claimants do not share in post-1989 *per capita* subfunds, projected percent shares of these subfunds are likely to be too high, because they are based on the assumption that valid claims will aggregate to 541 gross *per capita* shares. Any excess in a *per capita* subfund would be reallocated 50%/50% between the *per capita* and production subfunds for the season in the same manner as for 1989.

⁵³For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS salmon drifters, would be adjusted to reflect the extent to which they have already been compensated.⁵⁴ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
PROJECTED FUND PERCENT SHARES OF
PWS SALMON DRIFT (S03E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	31.0%	\$102,204,000
Vessel Devaluation	8.3%	\$27,243,000
Seasonal Funds		
1989	13.5%	\$44,409,000
1990	15.5%	\$51,331,000
1991	22.3%	\$73,772,000
1992	0.7%	\$2,466,000
1993	3.2%	\$10,417,000
1994	2.7%	\$8,816,000
1995	2.9%	\$9,460,000
Subtotal	60.8%	\$200,671,000
Total	100%	\$330,119,000

INCLUDES ATTORNEYS' FEES

⁵⁴This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 2
PWS SALMON DRIFT (S03E) PERMIT DEVALUATION FUND

Date	Projected S03E Market Value	Actual S03E Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Quarter	% Share Of Owner Who Purchased In Quarter, Held To 1995:2
1989:2	\$70,300	\$70,300	\$0	0%	100%
1989:3	\$86,800	\$84,700	\$2,100	2%	98%
1989:4	\$103,300	\$99,100	\$4,200	5%	95%
1990:1	\$119,700	\$113,400	\$6,300	7%	93%
1990:2	\$136,200	\$127,800	\$8,400	10%	90%
1990:3	\$144,800	\$131,100	\$13,700	16%	84%
1990:4	\$153,300	\$134,400	\$18,900	22%	78%
1991:1	\$161,900	\$137,700	\$24,200	28%	72%
1991:2	\$170,400	\$141,000	\$29,400	34%	66%
1991:3	\$163,000	\$129,800	\$33,200	38%	62%
1991:4	\$155,700	\$118,600	\$37,100	42%	58%
1992:1	\$148,300	\$107,300	\$41,000	47%	53%
1992:2	\$140,900	\$96,100	\$44,800	51%	49%
1992:3	\$147,500	\$97,800	\$49,700	57%	43%
1992:4	\$154,000	\$99,600	\$54,400	62%	38%
1993:1	\$160,600	\$101,300	\$59,300	68%	32%
1993:2	\$167,100	\$103,000	\$64,100	73%	27%
1993:3	\$157,400	\$95,600	\$61,800	71%	29%
1993:4	\$147,800	\$88,200	\$59,600	68%	32%
1994:1	\$138,100	\$80,700	\$57,400	66%	34%
1994:2	\$128,400	\$73,300	\$55,100	63%	37%
1994:3	\$134,200	\$70,900	\$63,300	72%	28%
1994:4	\$139,900	\$68,600	\$71,300	81%	19%
1995:1	\$145,700	\$66,200	\$79,500	91%	9%
1995:2	\$151,400	\$63,800	\$87,600	100%	0%

Table 3
PROJECTED PWS SALMON DRIFT (S03E) VESSEL DEVALUATION SUBFUNDS

Subfund	Subfund Period	Widening Of Projected-Actual Permit Value Gap In Subfund Period	Percentage of Max. Projected-Actual Permit Value Gap In Subfund Period	Projected Subfund % Share	Projected Amount
1989	4/89-5/90	\$8,400	9.6%	0.8%	\$2,612,000
1990	6/90-5/91	\$21,000	24.0%	2.0%	\$6,531,000
1991	6/91-5/92	\$15,400	17.6%	1.5%	\$4,789,000
1992	6/92-5/93	\$19,300	22.0%	1.8%	\$6,002,000
1994	6/94-5/95	\$23,500	26.8%	2.2%	\$7,308,000
Total		\$87,600	100%	8.3%	\$27,243,000

(1) Based on 541 qualifying vessels.
INCLUDES ATTORNEYS' FEES

Table 4
PROJECTED PWS SALMON DRIFT
(S03E) SEASONAL LOST INCOME FUNDS

FUND	Projected % Share	Projected Amount	Per Capita Subfund 50%	Performance Subfund 50%
1989	13.45%	\$44,409,000	\$22,205,000 6.73%	\$22,205,000 6.73%
1990	15.5%	\$51,331,000	\$25,666,000 7.8%	\$25,666,000 7.8%
1991	22.3%	\$73,772,000	\$36,886,000 11.2%	\$36,886,000 11.2%
1992	0.75%	\$2,466,000	\$1,233,000 0.37%	\$1,233,000 0.37%
1993	3.2%	\$10,417,000	\$5,209,000 1.6%	\$5,209,000 1.6%
1994	2.7%	\$8,816,000	\$4,408,000 1.3%	\$4,408,000 1.3%
1995	2.9%	\$9,460,000	\$4,730,000 1.4%	\$4,730,000 1.4%
Total	61%	\$200,671,000	\$100,336,000	\$100,336,000

INCLUDES ATTORNEYS' FEES

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND SALMON SET NET (S04E) CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Salmon Set Net (S04E) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by S04E permit holders and "derivative share claimants"³; and devaluation of S04E permits by permit owners. Permit holders, permit owners and derivative share claimants will be collectively referred to as "PWS salmon setnetters." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS salmon setnetters.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as crew and site owners.

⁴Plaintiffs' counsel are plaintiffs' court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and also counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Salmon Set Net Claim Category, only putative PWS salmon setnetters have any financial interest in how PWS salmon set allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS salmon setnetters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS salmon set allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, PWS salmon setnetters share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected. The PWS salmon set matrix share is projected to be 0.4495% of signatories' share of the Alyeska Settlement, and 0.4503% of signatories' other recoveries.¹¹

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS salmon setnetters' projected 0.4503% matrix share (roughly \$111,000 less attorneys' fees approved by the Court¹²) of Native/Municipality/Kodiak Island Borough recoveries,¹³ and unclaimed money, if any, remaining from their actual \$190,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS salmon setnetters to be allocated roughly \$259,000 from the Phase IIA judgment and prejudgment interest, and \$21,471,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁴ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS salmon setnetters also will share.¹⁵

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS salmon setnetters will be allocated the difference between their projected 0.4503% matrix share of signatories' aggregate Exxon Claims and TAPL Fund payments recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS salmon setnetters. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS salmon setnetters' actual allocation of \$109,000 from the Alyeska Settlement was less than their 0.4495% matrix share (roughly \$392,000), the difference (projected at \$183,000) will be allocated to PWS salmon setnetters through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁷Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹The projected PWS salmon set netters' matrix share of 0.4503% is slightly higher than the 0.45% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS salmon setnetters' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹³This amount and other allocations to the PWS Salmon Set Net Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS salmon setnetters' total allocation from all recoveries would be roughly \$23,395,000 (less attorneys' fees and expenses), which includes \$111,000 from Native/Municipality/Kodiak Island Borough recoveries, \$392,000 from the Alyeska Settlement, \$259,000 from the uncollected Phase IIA judgment and prejudgment interest, \$21,471,000 from the uncollected punitive damages judgment, and \$902,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all of their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS salmon setnetters to evaluate this distribution plan under the assumption that PWS salmon setnetters ultimately will be allocated \$23,395,000 plus interest.¹⁶

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS salmon setnetters,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS salmon setnetters will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those claimants who filed PWS salmon set net claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Salmon Set Net Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute PWS salmon setnetters' \$111,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members for which no claim was made) remaining from PWS salmon setnetters' \$190,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions

¹⁶Some PWS salmon setnetters -- i.e., permit holders and crew who qualify for the 1989 seasonal lost income fund, see *infra* -- are also eligible to share in the 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories have not been approved.

¹⁸Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served upon the Administrator.

¹⁹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS salmon set net allocations into eight separate funds, each of which corresponds to a type of damage caused the fishery by the spill: a "permit devaluation" fund based on loss in market value of S04E permits; and seven separate "seasonal" funds for the 1989, 1990, 1991, 1992, 1993, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²² These funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS salmon set net matrix shares.²³ Permit devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of this type of damage as compared to price and harvest losses.²⁴

The attached Table 1 lists projected percent shares of PWS salmon set net funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$23,395,000. Projected fund percent shares are: 17.6% for the permit devaluation fund; and 82.4% for the seven seasonal funds, including 12.2% for 1989, 18.7% for 1990, 37.3% for 1991 and 3.5% apiece for 1992, 1993, 1994 and 1995.²⁵ Actual percent shares of PWS salmon set net funds are likely to vary slightly from projected fund percent shares.²⁶

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S04E permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S04E permit on the date of the oil spill; or (2) purchased an S04E permit before April 1, 1995.²⁷ *See infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁸ A permit owner who satisfies one of these requirements will be referred to as a "qualifying permit owner."

²¹Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS salmon setnetters' combined \$301,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS salmon set net allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS salmon set net allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²²In addition, PWS salmon setnetters whose gear or equipment was damaged as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such for any losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims would be allotted *pro rata* shares of PWS salmon set net allocations, proportional to the ratio of loss to total PWS salmon set net matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS salmon set net allocations.

²³*See* Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, Alyeska Settlement claims data, and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS salmon set net damages have been distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrbach, LLP in Seattle. PWS salmon set net damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Cordova, Seattle, Bellingham and Mt. Vernon.

²⁴*See* Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed them on *Robins Dry Dock* grounds, except for losses actually realized through sale.

²⁵Fishers desire to equalize the 1992, 1993, 1994 and 1995 seasonal funds, rather than apportion them using Allocation Committee damage estimates.

²⁶For example, the projected fund percent share of 17.6% for the permit devaluation fund is based on an assumption that a total of 31 shares will be paid out -- i.e., the number of non-interim use, fishable S04E permits in existence in 1989. This is a reasonable assumption, and a cautious one in that it assures an adequate reserve for the permit devaluation fund. However, under criteria proposed in this distribution plan, fewer than 31 full shares are likely to be paid out because some post-spill permit sellers and purchasers will not qualify for any share. *See infra*. Any surplus thus created would will be reallocated among all PWS salmon set net funds in proportion to projected percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁷Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁸A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S04E permits fell short of what they would have been in the absence of the oil spill during the time of ownership between March 24, 1989 and June 30, 1995. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1995:2 (*i.e.*, the second calendar quarter of 1995) would be allotted a full share,²⁹ equal to the amount of the permit devaluation fund divided by 31, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable S04E permits) at the time of the spill.³⁰

Only a handful of permits were sold after the spill. Post-spill sellers and purchasers would be allotted only portions of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from PWS salmon setnetters, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³¹

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") grew from \$3,000 to \$14,000 in 1990:3, narrowed briefly to \$0 in 1991:2, and then widened steadily to a maximum of \$34,000 in 1995:2.

A permit owner at the time of the spill who sold in or after 1995:2, when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before 1995:2 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$34,000. These fractions, expressed as percentages, are listed on Table 2.³²

2. Post-Spill Permit Buyers

Plaintiffs' counsel do not think it fair or appropriate for anyone who purchased an S04E permit in 1995:2 or after to share in the permit devaluation fund, because during this time the projected-actual gap never widened, and, therefore, the spill did not cause the purchaser any loss in market value. *See* Table 2. Qualifying buyers who purchased before 1995:2, and held through 1995:2, would be allotted fractions of a full share, proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.³³

B. SEASONAL LOST INCOME FUNDS

The spill completely closed the PWS salmon set fishery in 1989. Some oiled sites remained closed in 1990. The spill depressed prices in 1989, 1990 and 1991, and caused enduring damage to salmon stocks. Also, many fishers believe that concerns about the persistence of oil led ADF&G in 1992 through 1995 to restrict fishing on "outside" sites (*i.e.*, sites located outside Main Bay) located in the Eshamy management subdistrict. This has created a difficult issue between fishers with "outside" sites and fishers with sites "inside" Main Bay.

Plaintiffs' counsel held open meetings with fishers to discuss distribution approaches in Anchorage (June 1996, October 1996), Cordova (June 1996, October 1996) and Homer (October 1996). Plaintiffs' counsel have consulted with many individual fishers. Also, fishers have debated distribution issues extensively among themselves, and conducted at least two informal polls. PWS salmon setnetters agree that virtually all suffered loss as a result of the spill, but there is not unanimity among them on a particular distribution method. Although individual views are strongly held, the fishery has relatively few participants and is unusually close-knit. There appears to be a common desire to compromise and resolve distribution questions without prolonged strife.

²⁹The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

³⁰This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

³¹In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³²For example, a permit owner who purchased before the oil spill and sold in 1993:1 would be allocated 67% of a full share, because 67% of the maximum \$34,000 projected-actual gap occurred by that time.

³³For example, someone who purchased in 1993:1 would be allotted 33% of a full share, because 33% of the maximum \$34,000 projected-actual gap took place after that time. Someone who purchased an S04E permit after the oil spill and sold it before 1995:4 would be allotted a portion of a full share, based on the difference between the projected-actual gap at the time of the purchase, and the projected-actual gap at the time of sale. Such a "post-spill purchaser/seller" would receive no share if the projected-actual gap at the time of sale was less than at the time of purchase. If the projected-actual gap at the time of sale was greater than at the time of purchase, the post-spill purchaser/seller would receive a fraction of a full share, equal to the ratio of (1) the difference between the projected-actual gap at the time of sale and purchase, to (2) \$34,000, the maximum projected-actual gap.

Plaintiffs' counsel propose a compromise. Each of the 1989, 1990 and 1991 seasonal funds would be split 30% to a "production" subfund distributed among those who actually fished (or would have fished in 1989 had the fishery been open) based on production,³⁴ and 70% to a "*per capita* subfund" divided on a *per capita* basis without regard to production. Plaintiffs' counsel propose to distribute the 1992-95 seasonal funds entirely on a *per capita* basis, because ADF&G restricted fishing on "outside" Eshamy sites, resulting in greater runs for "inside" Main Bay sites (due to less interception). Plaintiffs' counsel considered the alternative of using projected "but for" production in 1992 through 1995, but rejected this approach as unreliable and administratively impractical.

The net effect of the compromise solution is that 75.2% of the total lost income-based allocation would be distributed on *per capita* basis, and 24.8% would be distributed on a production basis. Plaintiffs' counsel believe that this overall split reflects a consensus position for the fishers. The attached Table 3 lists projected amounts of seasonal subfunds based on a total fishery recovery of \$23,395,000.

1. 1989 Seasonal Fund

The 1989 seasonal fund would be divided among all holders of "fishable" permits,³⁵ and derivative share claimants "displaced" in 1989 as a result of the oil spill.³⁶ Allocations to the 1989 seasonal fund would be divided 70% to a *per capita* subfund and 30% to a production subfund. Distributions would be calculated in the following manner.

For each permit holder, a "gross" share would be computed, equal to the amount of the *per capita* subfund divided by the number of fishable permits "held" in 1989,³⁷ plus a projected market share of the production subfund.³⁸ Each permit holder who made contractual arrangements for the season (e.g., lined up crew), would be allotted a "net" share equal to the gross share reduced proportionally based on the contractual arrangements. A permit holder who did not make contractual arrangements would be allotted a net share equal to the gross share reduced proportionately by projected payments to shareholders, calculated on a case-by-case basis using historical information (or fishery-wide averages for new entrants).

A derivative share claimant who made contractual arrangements with a permit holder would be allotted a proportional share of the permit holder's gross share based upon the contractual arrangements. A derivative share claimant who did not make contractual arrangements, but nevertheless qualifies, would be allotted a proportional share of both the *per capita* and production subfund, based upon his or her projected earnings calculated on a case-by-case basis using historical information.

³⁴ Production will be measured by value of harvest. As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon the data field titled "Round Pounds Of Fish" times the data field titled "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct their Round Pounds Of Fish data entries, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel would not allow claimants to revise Value Of Catch entries calculated by CFEC.

³⁵ A permit holder is a person who possessed the right to use the permit, whether through ownership or transfer from the owner. "Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable.

³⁶ To qualify as "displaced," crew must provide documentary evidence that they either: (1) had a contract with a permit holder (as evidenced by a writing, or a permit holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) were paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, displaced derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to work.

³⁷ Plaintiffs' counsel estimate that there were 31 fishable permits held in 1989. The number of permits "held" may be smaller than the number of permit holders, because of temporary transfers during the season. In cases where a permit was held by more than one individual during a season, holders would divide a single *per capita* share. See *infra*.

³⁸ Projected market shares would be derived in the following manner. For each permit holder who fished in two or more seasons during 1985 through 1988, a "two-best" market share would be calculated, equal to the average of his or her two best market shares during these seasons. As a general rule, plaintiffs' counsel would use CFEC data as presumptive measures of harvest weight and price, but claimants would be given an opportunity to review, supplement and rebut CFEC data. For new entrants in 1989, the two-best market share would equal the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988 (the median is the mid-point of such two-best market shares, ranked in order). For new entrants in 1988, the two-best market share would equal the higher of their actual 1988 market share, and the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988). Each permit holder's projected market share would equal his or her two-best market share divided by the sum of all two-best market shares.

2. 1990 Seasonal Fund

Allocations to the 1990 seasonal fund would be divided 30% to a production subfund and 70% to a *per capita* subfund. The production subfund would be distributed among claimants who actually "participated,"³⁹ and claimants displaced from sites closed due to the persistence of oil.⁴⁰ For each permit holder, a gross share would be calculated, proportional to his or her actual 1990 market share or, if the permit holder was displaced, to his or her projected market share based on the two-best method. *See supra*. Permit holders' net shares would equal their gross shares reduced proportionally based upon contractual arrangements with shareholders, if any, or by projected payments to shareholders if no contractual arrangements were made. Derivative share claimants would be allotted proportional shares of their permit holder's gross share, based upon contractual arrangements.⁴¹

The 1990 *per capita* subfund would be divided among holders of fishable permits, participating derivative share claimants, and displaced derivative share claimants. Distributions would be calculated in a manner akin to the 1989 *per capita* subfund. A gross *per capita* share would be calculated as the amount of the 1990 *per capita* subfund divided by the total number of fishable permits held in 1990. Participating permit holders' net shares would equal the gross *per capita* share reduced proportionally based upon contractual arrangements with shareholders. Displaced permit holders' net shares would equal the gross *per capita* share reduced proportionately by projected payments to shareholders.⁴² Participating derivative share claimants would be allotted a proportional share of the gross *per capita* share based upon their earnings. Displaced derivative share claimants would be allotted a proportional share of the gross *per capita* share based upon their projected earnings.

3. 1991 Seasonal Fund

Allocations to the 1991 seasonal fund would be divided 30% to a production subfund and 70% to a *per capita* subfund. The production subfund would be distributed among claimants who actually participated. For each permit holder, plaintiffs' counsel would calculate a gross share, proportional to actual harvest value. Each permit holder's gross share would be divided proportionally among the permit holder and his or her derivative share claimants based on contractual arrangements.

The 1991 *per capita* subfund would be divided among holders of fishable permits, and participating derivative share claimants. A gross *per capita* share would be calculated as the amount of the 1991 *per capita* subfund divided by the total number of fishable permits held. A participating permit holder's net share would equal the gross *per capita* share reduced proportionally based upon contractual arrangements with shareholders. A non-participating permit holder's net share would equal the gross *per capita* share reduced proportionately by projected payments to shareholders. A derivative share claimant would be allotted a portion of the gross *per capita* share proportional to actual earnings.

4. 1992, 1993, 1994, 1995 Seasonal Funds

Each of the 1992, 1993, 1994 and 1995 seasonal funds would be distributed on a *per capita* basis, among holders of fishable permits and participating derivative share claimants. A gross *per capita* share would be calculated as the amount of the seasonal subfund divided by the number of fishable permits held. Participating permit holders' net shares would equal the gross *per capita* share reduced proportionally based upon contractual arrangements with shareholders. Non-participating permit holders' net shares would equal the gross *per capita* share reduced proportionately by projected payments to shareholders. Derivative share claimants would be allotted a portion of the gross *per capita* share proportional to actual earnings.

5. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴³ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

³⁹Permit holders "participated" if they actually recorded harvest. Crew "participated" if they were actually employed to work in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners "participated" if the permit holder with whom they had an agreement participated.

⁴⁰To qualify as "displaced," permit holders must provide documentary evidence that their sites were closed during the season by ADF&G. Crew must provide documentary evidence that they either: (1) had a contract with a displaced permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) crewed for a displaced permit holder in two of three seasons 1987, 1988 and/or 1991. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating on a closed site, and that they were ready, willing and able to participate.

⁴¹For displaced derivative share claimants, account will be taken of circumstances surrounding the site closure, if appropriate.

⁴²For non-participating permit holders, projected payments would be determined on a case-by-case basis from historical data.

⁴³For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For 1989, when the fishery was closed, the start date is June 5, 1989 and the end date is August 26, 1989.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS salmon set net claimant a Final Percent Share, which is the claimant's percent share of PWS salmon set net allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS salmon setnetters, would be adjusted to reflect the extent to which they have already been compensated.⁴⁴ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁴This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
PROJECTED FUND SHARES OF PWS
SALMON SET NET (S04E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	17.6%	\$4,111,000
Seasonal Funds		
1989	12.2%	\$2,850,000
1990	18.7%	\$4,377,000
1991	37.3%	\$8,737,000
1992	3.5%	\$830,000
1993	3.5%	\$830,000
1994	3.5%	\$830,000
1995	3.5%	\$830,000
Subtotal	82.4%	\$19,284,000
Total	100%	\$23,395,000

INCLUDES ATTORNEYS' FEES

Table 2
PWS SALMON SET NET (S04E) PERMIT DEVALUATION FUND

Date	Projected S04E Market Value	Actual S04E Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Period	% Share Of Owner Who Purchased In Period, Held To 1995:2
1989:2	\$88,000	\$85,000	\$3,000	9%	91%
1989:3	\$100,800	\$97,500	\$3,300	10%	90%
1989:4	\$113,500	\$110,000	\$3,500	10%	90%
1990:1	\$126,300	\$122,500	\$3,800	11%	89%
1990:2	\$139,000	\$135,000	\$4,000	12%	88%
1990:3	\$149,000	\$135,000	\$14,000	41%	59%
1990:4	\$149,000	\$140,000	\$9,000	26%	74%
1991:1	\$149,000	\$140,000	\$9,000	26%	74%
1991:2	\$125,000	\$125,000	\$0	0%	100%
1991:3	\$119,000	\$100,000	\$19,000	56%	44%
1991:4	\$119,000	\$100,000	\$19,000	56%	44%
1992:1	\$119,000	\$100,000	\$19,000	56%	44%
1992:2	\$119,000	\$100,000	\$19,000	56%	44%
1992:3	\$116,500	\$96,300	\$20,200	59%	41%
1992:4	\$114,000	\$92,500	\$21,500	63%	37%
1993:1	\$111,500	\$88,800	\$22,700	67%	33%
1993:2	\$109,000	\$85,000	\$24,000	71%	29%
1993:3	\$106,500	\$81,300	\$25,200	74%	26%
1993:4	\$104,000	\$77,500	\$26,500	78%	22%
1994:1	\$101,500	\$73,800	\$27,700	81%	19%
1994:2	\$99,000	\$70,000	\$29,000	85%	15%
1994:3	\$96,500	\$66,300	\$30,200	89%	11%
1994:4	\$94,000	\$62,500	\$31,500	93%	7%
1995:1	\$91,500	\$58,800	\$32,700	96%	4%
1995:2	\$89,000	\$55,000	\$34,000	100%	0%

Table 3
PROJECTED PWS SALMON SET NET
(S04E) SEASONAL LOST INCOME FUNDS

FUND	Projected % Share	Projected Amount	Per Capita Subfund	Performance Subfund
1989	12.2%	\$2,850,000	\$1,995,000 70%	\$855,000 30%
1990	18.7%	\$4,377,000	\$3,064,000 70%	\$1,313,000 30%
1991	37.3%	\$8,737,000	\$6,116,000 70%	\$2,621,000 30%
1992	3.5%	\$830,000	\$830,000 100%	
1993	3.5%	\$830,000	\$830,000 100%	
1994	3.5%	\$830,000	\$830,000 100%	
1995	3.5%	\$830,000	\$830,000 100%	
Total	82%	\$19,284,000	\$14,495,006 75.2%	\$4,789,001 24.8%

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND ROE HERRING SEINE (G01E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Roe Herring Seine (G01E) Claim Category, which includes claims: by permit owners for devaluation of G01E permits; and by permit holders and "derivative share claimants"³ for lost income in the 1989-91 and 1993-95 seasons. Permit owners, permit holders and derivative share claimants will be referred to collectively as "PWS roe herring seiners." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object has been given to PWS roe herring seiners.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, PWS roe herring seiners share in signatories' common recoveries, which presently include: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew, spotters and vessel owners.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Roe Herring Seine Claim Category, only putative PWS roe herring seine claimants have any financial interest in how PWS roe herring seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS roe herring seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS roe herring seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair given the circumstances of many dismissals and prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon not yet collected. The PWS roe herring seine matrix share is projected to be 4.1355% of signatories' share of the Alyeska Settlement, and 4.1426% of signatories' other common recoveries.¹¹

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS roe herring seiners' projected 4.1426% matrix share (\$1,024,000 less attorneys' fees approved by the Court¹²) of Native/Municipality/Kodiak Island Borough recoveries,¹³ and unclaimed money (if any) remaining from their \$1,247,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS roe herring seiners to be allocated roughly \$2,385,000 from the Phase IIA judgment and prejudgment interest, and \$197,526,000 from signatories' share of the punitive damages judgment, as (and if) these recoveries are collected,¹⁴ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS roe herring seiners also will share.¹⁵

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries have been collected, PWS roe herring seiners will be allocated the difference between their 4.1426% matrix share of signatories' aggregate Exxon Claims and TAPL Fund payments, and actual payments from the Exxon Claims Program and TAPL Fund to PWS roe herring seiners. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because the PWS roe herring seine allocation of \$1,247,000 from the Alyeska Settlement was less than its projected 4.1355% matrix share (roughly \$3,611,000), the difference (projected at \$2,364,000) will be allocated to PWS roe herring seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS roe herring seiners' total allocation from all recoveries would be roughly \$215,227,000 (less attorneys' fees and expenses), which includes \$1,024,000 from Native/Municipality/Kodiak Island Borough recoveries, \$3,611,000 from the Alyeska Settlement, \$2,385,000 from the uncollected Phase IIA judgment and prejudgment interest, \$197,526,000 from the uncollected punitive damages judgment, and \$8,298,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

⁷ Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ The projected PWS roe herring seine matrix share of 4.1426% is slightly higher than the 4.14% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS roe herring seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹² Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹³ This amount and other allocations to the PWS Roe Herring Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Exxon has appealed the judgments against it, thereby delaying the date when plaintiffs ultimately collect all their recoveries and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS roe herring seiners to evaluate this distribution plan under the assumption that PWS roe herring seiners ultimately will be allocated \$215,227,000 plus interest.¹⁶

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS roe herring seiners,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. *See* Exxon QSF Order. First, all PWS roe herring seiners will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed a PWS roe herring seine claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claims form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Roe Herring Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute PWS roe herring seiners' combined \$1,024,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*e.g.*, money reserved for absent class members for which no claim was made) remaining from their \$1,247,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS roe herring seine allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of G01E permits; and six separate "seasonal" funds for the 1989-91 and 1993-5 fishing seasons, based on total closures in 1989, 1993, 1994 and 1995, and

¹⁶Some PWS roe herring seiners -- *i.e.*, G01E permit holders and crew who qualify for the 1989 seasonal lost income fund, *see infra* -- are also eligible for the 1989 Fund, which is a separate claim category allocated 3.33% of signatories' recoveries. *See* Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹Distributions would be determined as follows. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS roe herring seiners' combined \$2,271,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS roe herring seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS roe herring seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1993-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

diminished prices in 1989-91.²² Allocations to these seven funds would be proportional to their matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS roe herring seine matrix shares.²³ Permit devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁴

The attached Table 1 lists projected percent shares of PWS roe herring seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$215,227,000. Projected fund percent shares are 15.0% for permit devaluation, and 85.0% for the six seasonal funds, including 12.1% for 1989, 5.9% for 1990, 8.5% for 1991, 13.7% for 1993, 16.8% for 1994 and 27.8% for 1995. Actual percent shares of PWS roe herring seine funds are likely to vary slightly from the projected fund percent shares.²⁵

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of G01E permits. Claims against the permit devaluation fund may be made by those who: owned a G01E permit on the date of the oil spill; or acquired ownership of a G01E permit before January 1, 1993.²⁶ Holders of non-marketable permits or permits owned by others would not qualify for the permit devaluation fund.²⁷ A permit owner who satisfies these criteria will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of G01E permits fell short of what they would have been in the absence of the spill during the time of ownership between March 24, 1989 and December 31, 1994. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1995:1 (i.e., the first calendar quarter of 1995) would be allotted a full share,²⁸ equal to the amount of the permit devaluation fund divided by 105, which is plaintiffs' counsel's best estimate of the number of "qualifying permits" (i.e., marketable permits) at the time of the spill.²⁹ Qualifying permit owners who sold or purchased permits after the oil spill would be allotted only a portion of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from PWS roe herring seiners, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³⁰

²²In addition, PWS roe herring seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (e.g., by Exxon, VECO, insurance carriers or the Alyeska Claims Program). These personal property claims would be allotted *pro rata* shares of PWS roe herring seine allocations, proportional to the ratio of loss to total PWS roe herring seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS roe herring seine allocations.

²³See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, Alyeska Settlement claims data, and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, other individual plaintiffs, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS roe herring seine damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS roe herring seine damages were presented and discussed in ongoing meetings with fishers held in Cordova, Seattle, Bellingham and Mt. Vernon.

²⁴See Allocation Plan 15 n.24. Permit devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁵For example, the projected fund percent share of 14.8% for the permit devaluation fund is based on an assumption that a total of 105 shares will be allotted -- i.e., the number of marketable, non-interim use G01E permits in existence in 1989. This is a reasonable assumption, and a cautious one in that it assures an adequate reserve for the permit devaluation fund. However, under criteria proposed in this distribution plan, fewer than 105 full shares are likely to be paid out because some post-spill permit sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all PWS roe herring seine funds, resulting in a modification of projected percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁶Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof. For a discussion of the January 1, 1993 cut-off date and a limited "immediate-family" exception, see *infra*.

²⁷A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁸The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁹This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

³⁰In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

The oil spill does not appear to have diminished the market price of G01E permits until the end of 1992, when offers reported by permit brokers virtually vanished. For over twelve months no new offers were reported in the trade journal *Pacific Fishery*. In 1993 and 1994, herring failed to return to PWS in commercial quantities, and a large proportion of herring that did return were diseased and did not spawn. A single offer was finally reported in February 1994, but it was for only \$80,000, \$115,000 less than the last offer posted in December 1992, and \$190,000 below the market value of G01E permits in early 1991. When market activity renewed in the last quarter of October 1994, market values were at \$55,000. During the first half of 1995, market values increased slightly to \$65,000, but as shown on Table 2 attached, the gap between projected and actual market values ("projected-actual gap") widened from \$118,000 in 1994:4 to \$131,000 in 1995:2.

A permit owner at the time of the oil spill who held his or her permit until at least 1995:2 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold after 1992:4, but before 1995:2 would be allotted only a portion of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum 1995:2 projected-actual gap of \$131,000. See Table 2. Permit owners who sold before 1993:1 would be allotted nothing, because the spill did not affect market values until 1993:1.

2. Post-Spill Permit Buyers

Those who purchased G01E permits before 1993:1, and held their permits through 1995:2, would qualify for full shares of the permit devaluation fund. However, plaintiffs' counsel do not think it fair or reasonable for anyone who purchased a G01E permit after 1992:4 to share in the permit devaluation fund, because the permit market collapsed beginning in January 1993.³¹

B. SEASONAL LOST INCOME FUNDS

Before the spill, the PWS roe herring seine fishery was one of the most lucrative in Alaska. The impacts of the spill have been devastating. The spill completely closed the fishery in 1989, 1993, 1994 and 1995, and depressed prices during 1989-91. The 1996 season also was canceled, and enduring damages to roe herring stocks are likely to plague the fishery for years to come. Permit prices plummeted from \$245,000 at the time of the spill to \$65,000 by 1995:2.

Plaintiffs' counsel held open meetings concerning different distribution methods with PWS roe herring seiners in Cordova (October 1995, May 1996, October 1996), Anchorage (June 1996, October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (May 1996, October 1996). Also, plaintiffs' counsel consulted with many PWS roe herring seiners, and fishers circulated and considered informal proposals among themselves.

Plaintiffs' counsel have found that PWS roe herring seiners recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is not unanimity among PWS roe herring seiners on a particular distribution method, there is a marked desire to compromise and resolve distribution questions without prolonged strife and litigation.

Most fishers agree that the 1990 and 1991 seasonal funds should be distributed in proportion to actual production, because fishers' damages in those seasons were caused by diminished prices and therefore are highly correlated with production. However, fishers are divided over how to distribute seasonal funds for 1989, 1993, 1994 and 1995, when the fishery was closed. Some fishers prefer to distribute these seasonal funds on a *per capita* basis, one share per vessel, while others prefer to base distribution on projected market shares derived from historical production. Plaintiffs' counsel propose, as a compromise, a blended approach with both *per capita* and production components. Each of the 1989, 1993, 1994 and 1995 seasonal funds would be divided 50% to a production subfund distributed in proportion to projected market shares based on historical production, and 50% to a *per capita* subfund divided one share per vessel. Table 1 lists projected amounts of seasonal funds, based on a projected total fishery recovery of \$215,310,000.

1. 1989 Seasonal Fund

The 1989 seasonal fund would be divided among holders of "fishable" permits,³² and derivative share claimants "displaced" in 1989 as a result of the oil spill.³³ Allocations would be divided 50% to a *per capita* subfund and 50% to a production subfund.

³¹The only exception would be permit owners who acquired a permit as a result of a transfer recorded as a non-money, immediate-family or gift transaction by CFEC. Such a permit owner would be allotted the residual portion of a full share which is not allotted to the transferor.

³²A permit holder is a person who possessed the right to use the permit, whether through ownership or transfer from the owner. "Fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Historically, nearly all of the 105 G01E permits are fished when the fishery was open - 104 in 1986, 95 in 1987, 105 in 1988, 96 in 1990, 104 in 1991 and 105 in 1992.

³³To qualify as "displaced," crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) were paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. Spotters must provide documentary evidence that they either: (1) had a written contract with a permit holder; (2) were paid a spotter claim for the PWS roe herring seine fishery by the Exxon Claims Program; or (3) spotted in the fishery in two of three seasons 1987, 1988 and/or 1990. Vessel owners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) leased their vessel for use in the fishery in two of three seasons 1987,

(continued...)

Distributions would be calculated in the following manner.

For each qualifying permit holder, a "gross" share would be computed as the amount of the *per capita* subfund divided by the number of fishable permits "held" in 1989 (projected to be 105),³⁴ plus a projected market share of the production subfund.³⁵ Permit holders who made contractual arrangements for the season would be allotted "net" shares equal to the gross share reduced proportionally based on the contractual arrangements. Permit holders who did not make contractual arrangements would be allotted a net share equal to the gross share reduced proportionately by projected payments to shareholders, calculated on a case-by-case basis using historical information (or fleet-wide averages in the case of new entrants).

Derivative share claimants who made contractual arrangements would be allotted proportional shares of their permit holder's gross share based on the contractual arrangements. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of both *per capita* and production subfunds based on projected earnings calculated on a case-by-case basis using historical data.

2. 1990 And 1991 Seasonal Funds

The 1990 and 1991 seasonal funds each would be distributed among claimants who "participated" during in the season.³⁶ Permit holder shares would be proportional to actual market shares adjusted for combine and cooperative arrangements, if any, less payments to shareholders. Allotments to derivative share claimants would be proportional to actual earnings for the season.

3. 1993 Seasonal Fund

The PWS roe herring seine fishery was closed in 1993. The 1993 seasonal fund would be divided among holders of fishable permits, and derivative share claimants "displaced" as a result of the oil spill.³⁷ Allocations to the 1993 seasonal fund would be divided 50% to a *per capita* subfund and 50% to a production subfund. Distributions would be calculated in a manner analogous to distributions from the 1989 seasonal fund, in the following manner.

For each permit holder, a gross share would be computed as the amount of the *per capita* subfund divided by the number of fishable permits held in 1993 (projected to be 105), plus a projected market share of the production subfund.³⁸ Permit holders who made contractual arrangements would be allotted net shares equal to their gross share reduced proportionally based on the contractual arrangements. Permit holders who did not make contractual arrangements would be allotted net shares equal to their gross share reduced proportionately by projected payments to shareholders. Derivative share claimants who made contractual arrangements would be allotted proportional shares of their permit holder's gross share based upon the arrangements. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of both *per capita* and production subfunds based on projected earnings.

(...continued)

³³1988 and/or 1990. Also, derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate.

³⁴The number of permits "held" may be smaller than the number of permit holders, due to temporary transfers. If a permit was held by more than one person during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share.

³⁵Projected market shares would be derived in the following manner. For each permit holder who fished in two or more seasons during 1985 through 1988, a "two-best" market share would be calculated as the average of his or her two best market shares during these seasons. Plaintiffs' counsel will calculate actual market shares from harvest weight recorded in the CFEC data field titled "Round Pounds Of Fish," and will give claimants an opportunity to verify and correct CFEC data. For new entrants in 1989, the two-best market share would equal the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988 (the median is the mid-point of such two-best market shares, ranked in order). For new entrants in 1988, the two-best market share would equal the higher of their actual 1988 market share, and the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988. Each permit holder's projected market share would equal his or her two-best market share divided by the sum of all two-best market shares.

³⁶Permit holders "participated" if they actually geared up and fished. Crew "participated" if they were employed to work during the season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners "participated" if the permit holder with whom they had an agreement participated.

³⁷To qualify as "displaced" in 1993, crew must provide documentary evidence that they: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) crewed in the fishery in 1992, and in either 1990 or 1991. Spotters must provide documentary evidence that they: (1) had a written contract with a permit holder; or (2) spotted in the fishery in 1992, and in either 1990 or 1991. Vessel owners must provide documentary evidence that they: (1) had a written contract with a permit holder; or (2) leased their vessel for use in the fishery in 1992, and in either 1990 or 1991. In addition, derivative share claimant must submit verified statements establishing that they were ready, willing and able to participate in 1993. Plaintiffs' counsel do not expect many derivative share claimants lacking actual contractual arrangements to qualify as displaced. ADF&G's preseason forecasts were for strong runs, so that most fishers made arrangements to fish, and the closure was not announced until well after most fishers had completed preparations and were on stand-by awaiting an opener.

³⁸Projected market shares would be calculated using the "two-best" method, *see supra*, applied to production during 1990-92. For new entrants in 1993, the two-best market share would equal the median two-best market share of permit holders who fished in two or more seasons during 1990-92. For new entrants in 1992, the two-best market share would equal the higher of their actual 1992 market share, and the median two-best market share of permit holders who fished in two or more seasons 1990-92. Each permit holder's projected 1993 market share would equal his or her two-best market share divided by the sum of all two-best market shares.

4. 1994 Seasonal Fund

The PWS roe herring seine fishery was closed in 1994 (as were all PWS roe herring fisheries). The 1994 seasonal fund would be divided among holders of fishable permits, and displaced derivative share claimants.³⁹ Allocations to the 1994 seasonal fund would be divided 50% to a *per capita* subfund and 50% to a production subfund.

Distributions would be calculated in a manner analogous to the 1993 seasonal fund. A gross share would be computed for each qualifying permit holder, equal to the amount of the *per capita* subfund divided by the number of permits held in 1994 (projected to be 105), plus a projected market share of the production subfund.⁴⁰ Permit holders who made contractual arrangements would be allotted net shares equal to their gross share reduced proportionally based on the contractual arrangements. Permit holders who did not make contractual arrangements would be allotted net shares equal to their gross share reduced proportionately by projected payments to shareholders. Derivative share claimants who made contractual arrangements would be allotted proportional shares of their permit holder's gross share based upon the arrangements. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of both *per capita* and production subfunds based on projected earnings.

5. 1995 Seasonal Fund

The PWS roe herring seine fishery was closed in 1995. Plaintiffs' counsel would limit the 1995 seasonal fund to: permit holders who qualify for the 1994 seasonal fund;⁴¹ and derivative share claimants who qualify for the 1994 seasonal fund and were displaced in 1995.⁴² The 1995 seasonal fund would be distributed in a manner akin to the 1994 seasonal fund.⁴³

6. Cooperatives And Combines

For each season, gross shares of cooperatives and combines would be calculated on a case-by-case basis. They would include a share of the *per capita* subfund based on the number of member permit holders, and a share of the production subfund based on historical production of member permit holders. The cooperative/combine's gross share would be divided proportionally among member permit holders and derivative share claimants based on contractual arrangements for the season.

The 1995 season requires special consideration because it was canceled so far in advance. For members of cooperatives and combines in 1994 who did not agree to continue the arrangements in 1995, there would be a presumption that the arrangements would not have continued; and each claimant's share of the 1995 seasonal fund would be based on his or her individual 1990-1993 best catch. Cooperative/combine arrangements for 1994 would be used for the 1995 seasonal fund only if all members agreed.

7. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴⁴ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise),

³⁹To qualify as "displaced" in 1994, crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) qualify for the 1993 seasonal lost income fund, and crewed in either 1991 or 1992. Spotters must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) qualify as a spotter for the 1993 seasonal fund, and spotted in either 1991 or 1992. Vessel owners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) qualify as a vessel owner for the 1993 seasonal fund, and leased a vessel in either 1991 or 1992. In addition, derivative share claimants must submit verified statements establishing that they were ready, willing and able to participate in 1994. Although greater uncertainty surrounded the 1994 season than the 1993 season, the closure was not announced until April 25, 1994, well after most fishers had completed preparations to fish. Thus, plaintiffs' counsel do not anticipate that many claimants lacking contractual arrangements will qualify as displaced.

⁴⁰Projected market shares would be calculated using the "two-best" method, in the same manner as for the 1993 seasonal fund, *see supra*, except that new entrants in 1994 would be assigned the median two-best market share of permit holders who fished in two or more seasons during 1990 through 1992.

⁴¹Purchasers of permits after April 1994 would not share in the 1995 seasonal fund.

⁴²Derivative share claimants must submit verified statements establishing that they were ready, willing and able to participate in 1995.

⁴³Few PWS roe herring seiners even made contractual arrangements for the 1995 season, because ADF&G announced the closure in January 1995, three months in advance. For the relatively few claimants who made contractual arrangements for the 1995 season, shares would be based on the contractual arrangements. For claimants who did not make contractual arrangements, shares would be based on projected earnings determined on a case-by-case basis.

⁴⁴For open seasons 1990 and 1991, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For closed seasons, the respective start and end dates would be April 14 and April 17 for 1989, April 6 and April 11 for 1993, and April 13 and April 17 for 1994. There were no *intra*-season transfers in 1995.

plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS roe herring seiner a Final Percent Share, which is the claimant's percent share of PWS roe herring seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotment from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. Should additional interim distributions become possible, distributions to claimants of all types, including PWS roe herring seiners, would be adjusted to reflect the extent to which they have already been compensated.⁴⁵ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁵This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
 PROJECTED FUND SHARES OF PWS
 ROE HERRING SEINE (G01E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	15.0%	\$32,375,000
Seasonal Funds		
1989	12.1%	\$26,097,000
1990	5.9%	\$12,799,000
1991	8.5%	\$18,382,000
1993	13.7%	\$29,577,000
1994	16.8%	\$36,073,000
1995	27.8%	\$59,924,000
Subtotal	85.0%	\$182,852,000
Total	100%	\$215,227,000

INCLUDES ATTORNEYS' FEES

Table 2
 PWS ROE HERRING SEINE (G01E) PERMIT DEVALUATION FUND

	Projected G01E Market Value	Actual G01E Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Period	% Share Of Owner Who Purchased In Period, Held To 1995:2
1989:2-1992:4	n/a	n/a	\$0	0%	100%
1993:1-1993:4	\$168,000	(no market)	n/a	67%	0%
1994:1-1994:3	\$168,000	\$80,000	\$88,000	67%	0%
1994:4	\$173,000	\$55,000	\$118,000	90%	0%
1995:1	\$186,000	\$55,000	\$131,000	100%	0%
1995:2	\$196,000	\$65,000	\$131,000	100%	0%

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND ROE HERRING DRIFT (G34E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing the allocation to the Prince William Sound (PWS) Roe Herring Drift (G34E) Claim Category, which includes claims: by permit owners for devaluation of G34E permits; and by permit holders and "derivative share claimants"³ for lost income in the 1989-91 and 1993-95 seasons. Permit owners, permit holders, and derivative share claimants will be referred to collectively as "PWS roe herring drifters." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS roe herring drifters.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS roe herring drift claimants share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew and vessel owners.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Roe Herring Drift Claim Category, only putative PWS roe herring drift claimants have any interest in how PWS roe herring drift allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS roe herring drifters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS roe herring drift allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and the prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 in recoveries collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected. The PWS roe herring drift matrix share is projected to be 0.2697% of signatories' share of the Alyeska Settlement, and 0.2702% of signatories' other recoveries.¹¹

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS roe herring drifters' projected 0.2703% matrix share (\$67,000 less attorneys' fees which the Court approves¹²) of Native/Municipality/Kodiak Island Borough recoveries,¹³ and unclaimed money, if any, remaining from their \$60,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS roe herring drifters to be allocated roughly \$156,000 from the Phase IIA judgment and prejudgment interest and \$12,888,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁴ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. This does not include post-judgment interest in which PWS roe herring drifters also will share.¹⁵

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS roe herring drifters will be allocated the difference between their 0.2702% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS roe herring drifters. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS roe herring drifters' actual allocation of \$60,000 from the Alyeska Settlement was less than their 0.2697% matrix share (roughly \$236,000), the difference (projected at \$176,000) will be allocated to PWS roe herring drifters through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, PWS roe herring drifters' total allocation from all recoveries will be roughly \$14,043,000 (less attorneys' fees and expenses), which includes \$67,000 from Native/Municipality/Kodiak Island Borough recoveries, \$236,000 from the Alyeska Settlement, \$156,000 from the Phase IIA judgment and prejudgment interest, \$12,888,000 from the punitive damages judgment, and \$541,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

⁷ Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ The projected PWS roe herring drift matrix share of 0.2702% is slightly higher than the 0.27% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS roe herring drifters' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹² Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹³ This and other allocations to the PWS Roe Herring Drift Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Exxon has appealed the judgments against it, thereby delaying the date when plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS roe herring drifters to evaluate this distribution plan under the assumption that PWS roe herring drifters ultimately will be allocated \$14,043,000 plus interest.¹⁶

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS roe herring drifters,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS roe herring drifters will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for claimants who filed a PWS roe herring drift claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless provided by counsel for claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Roe Herring Drift Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute PWS roe herring drifters' \$67,000 gross share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from the \$60,000 PWS roe herring drift allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations or of objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification of existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁶Some PWS roe herring drifters -- i.e., permit holders and crew who qualify for the 1989 seasonal lost income fund, see *infra* -- also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁸Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS roe herring drifters' combined \$127,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS roe herring drift allocation from the Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS roe herring drift allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989-91 claims, whereas Final Percent Shares will also be based on 1993-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS roe herring drift allocations into seven separate funds, each of which corresponds to a type of damage caused the fishery by the spill: a "permit devaluation" fund based on loss in value of G34E permits; and six separate "seasonal" funds for the 1989, 1990, 1991, 1993, 1994 and 1995 fishing seasons based on diminished price and/or lost harvest.²² These funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS roe herring drift matrix shares.²³ Permit devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁴

The attached Table 1 lists projected percent shares of PWS roe herring drift funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$14,043,000. Projected fund percent shares are 14.2% for the permit devaluation fund, and 85.8% for the six seasonal funds, including 20.0% for 1989, 5.6% for 1990, 8.2% for 1991, 3.0% for 1993, 19.2% for 1994 and 29.8% for 1995. Actual percent shares of PWS roe herring drift funds are likely to vary slightly from the projected fund percent shares.²⁵

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of G34E permits. Claims against the permit devaluation fund may be made by those who: owned a G34E permit on the date of the oil spill; or acquired ownership of a G34E permit before March 1, 1993.²⁶ Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁷ A permit owner who satisfies one of these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of G34E permits fell short of what they would have been without the spill during the time of ownership between March 24, 1989 and June 30, 1995. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1995:1 (*i.e.*, the first calendar quarter of 1995) would be allotted a full share²⁸ equal to the amount of the permit devaluation fund divided by 24, which is plaintiffs' counsel's best estimate of the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁹ Qualifying permit owners who sold or purchased permits after the oil spill would be allotted only a portion of a full share, based on the

²²In addition, PWS roe herring drifters whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses are not already reimbursed (*e.g.*, by Exxon, VECO, insurance carriers or the Alyeska Claims Program). Such claims would be allotted *pro rata* shares of PWS roe herring drift allocations, proportional to the ratio of loss to total PWS roe herring drift matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS roe herring drift allocations.

²³See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, other individual plaintiffs, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS roe herring drift damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrbach LLP in Seattle. PWS roe herring drift damages were discussed in ongoing meetings with fishers held in Cordova, Seattle and Mt. Vernon, Washington.

²⁴See Allocation Plan 15 n.24. Permit devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁵For example, the projected fund percent share of 13.2% for the permit devaluation fund is based on an assumption that a total of 24 shares will be paid out -- *i.e.*, the number of fishable G34E permits in 1989. This is a reasonable assumption, and a cautious one in that it assures an adequate reserve for the permit devaluation fund. However, under criteria proposed in this distribution plan, fewer than 24 full shares are likely to be paid out because some post-spill permit sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all PWS roe herring drift funds, resulting in a modification of projected fund percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁶Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof. For a discussion of the rationale for the March 1, 1993 cut-off date, and a limited "immediate-family" exception, see *infra*. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁷A permit holder, if different from the permit owner, would not share in the permit devaluation fund but would share in seasonal funds for the time that he or she held the permit.

²⁸The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁹This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from PWS roe herring drifters, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³⁰

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

The spill does not appear to have diminished the market price of G34E permits until 1993:2, when offers reported by permit brokers vanished. Not until December 1994, nearly two years later, did new offers appear in the trade journal *Pacific Fishery*. In 1993, although PWS roe herring drifters fished, not enough herring returned to sustain a commercial roe herring seine season, and much of the drifters' catch was diseased or did not spawn. All PWS roe herring fisheries were closed in 1994 and 1995. Offers finally appeared in early 1995, and quickly stabilized at \$50,000, \$35,000-\$45,000 below their levels in early 1993. As shown on Table 2 attached, the gap between projected and actual market values ("projected-actual gap") widened from \$21,000 in 1994:4 to \$31,000 in 1995:2.

A permit owner at the time of the oil spill who held his or her permit until at least 1995:1 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the oil spill, who sold after 1993:1 but before 1995:1, would be allotted a fraction of a full share equal to the ratio of the projected- actual gap at the time of sale to the 1995:1 projected-actual gap of \$31,000. See Table 2. Permit owners who sold before 1993:2 would be allotted nothing, because the spill had no apparent impact on market values until 1993:2.

2. Post-Spill Permit Buyers

Those who purchased G34E permits before 1993:2, and held through 1995:1, would qualify for full shares of the permit devaluation fund. However, plaintiffs' counsel do not think it fair or reasonable for someone who purchased a G34E permit after 1993:1 to share in the permit devaluation fund, because the permit market collapsed in April 1993.³¹

B. SEASONAL LOST INCOME FUNDS

PWS roe herring drifters agree that virtually all participants in the fishery were damaged by the spill. The spill closed the fishery in 1989, 1994 and 1995, depressed prices in 1989, 1990 and 1991, and reduced the quality and value of the 1993 harvest. The 1996 season was canceled, prospects for 1997 are poor, and enduring damages to roe herring stocks are likely to impair the fishery for years to come. Permit prices fell from \$92,700 at the time of the spill to \$35,000 by the end of 1995.

Plaintiffs' counsel held open meetings concerning different distribution methods for PWS roe herring drifters in Cordova (October 1995, May 1996, October 1996), Anchorage (June 1996, October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (May 1996, October 1996). In addition, plaintiffs' counsel consulted with many PWS roe herring drifters.

PWS roe herring drifters recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is not unanimity among PWS roe herring drifters on a particular distribution method, there is a marked desire to compromise and resolve distribution questions without prolonged strife. Most fishers agree that the 1990 and 1991 seasonal funds should be distributed in proportion to actual production, because damages in those seasons were caused by diminished prices and therefore are proportional to production. However, fishers do not unanimously agree on how to divide seasonal funds for 1989, 1994 and 1995 when the fishery was closed. Some fishers prefer to distribute these seasonal funds on a *per capita* basis, one share per vessel, while others prefer to base distribution on projected market shares derived from historical production. Plaintiffs' counsel propose, as a compromise, a blended approach with both *per capita* and production components. The 1989, 1994 and 1995 seasonal funds each would be divided 50% to a production subfund distributed in proportion to projected market shares based on historical production, and 50% to a *per capita* subfund divided one share per vessel. Plaintiffs' counsel propose the same approach for 1993, when the fishery was open but greatly disrupted. The attached Table 1 lists projected amounts of seasonal funds, based on a projected total fishery recovery of \$14,641,000.

³⁰In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³¹The only exceptions would permit owners who acquired a permit as a result of a transfer recorded as a non-money, immediate-family or gift transaction by CFEC. Such a permit owner would be allotted the residual portion of a full share which is not allotted to the transferor of the permit.

1. 1989 Seasonal Fund

The 1989 seasonal fund would be divided among holders of "fishable" permits,³² and derivative share claimants "displaced" in 1989 as a result of the oil spill.³³ Allocations to the 1989 seasonal fund would be divided 50% to a *per capita* subfund and 50% to a production subfund. Distributions would be calculated in the following manner.

For each permit holder, a "gross" share would be computed equal to the amount of the *per capita* subfund divided by the number of permits "held" in 1989 (projected to be 24),³⁴ plus a projected market share of the production subfund.³⁵ Permit holders who made contractual arrangements for the season (e.g., lined up crew), would be allotted "net" shares equal to their gross share reduced proportionally based on the contractual arrangements. Permit holders who did not make contractual arrangements would be allotted net shares equal to their gross shares reduced proportionately by projected payments to shareholders, calculated on a case-by-case basis using historical data (or fleet-wide averages for new entrants).

Derivative share claimants who made contractual arrangements with a permit holder would be allotted net shares of their permit holder's gross share based on the contractual arrangements. Derivative share claimants who did not make contractual arrangements would be allotted a proportional share of both the *per capita* and production subfunds, based on their projected earnings calculated on a case-by-case basis using historical information.

2. 1990 And 1991 Seasonal Funds

The 1990 and 1991 seasonal funds each would be distributed among claimants who "participated" during the season.³⁶ Permit holder shares would be proportional to actual harvest weights adjusted for combine and cooperative arrangements, if any, less payments to shareholders. Shares of derivative share claimants would be proportional to actual earnings.

3. 1993 Seasonal Fund

Allocations to the 1993 seasonal fund would be divided 50% to a production subfund and 50% to a *per capita* subfund. Distributions would be determined in the following way.

Because the PWS roe herring drift fishery was open in 1993, the 1993 production subfund would be distributed among participating permit holders and derivative share claimants. For each qualifying permit holder, a gross share would be computed proportional to his or her actual 1993 market share. Permit holders' gross shares would be divided proportionally among permit holder and derivative shareholders based upon contractual arrangements.

The 1993 *per capita* subfund would be distributed among holders of fishable permits, participating derivative share claimants, and displaced derivative share claimants.³⁷ A gross *per capita* share would equal the amount of the *per capita* subfund divided by the

³²A permit holder is a person who possessed the right to use the permit, whether through ownership or transfer from the owner. Historically, virtually every G34E permit is fished when the fishery has been open. As a general rule, "fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable.

³³To qualify as "displaced," crew must provide documentary evidence that they: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) were paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. Vessel owners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) leased their vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate in 1989.

³⁴The number of permits "held" may be smaller than the number of permit holders, because of temporary transfers during the season. If a permit was held by more than one person during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share. *See infra*.

³⁵Projected market shares would be derived in the following manner. For each permit holder who fished in two or more seasons during 1985 through 1988, a "two-best" market share would be calculated, equal to the average of his or her two best market shares during these seasons. Plaintiffs' counsel will calculate actual market shares from harvest weight recorded in the CFEC data field titled "Round Pounds Of Fish," and will give claimants an opportunity to verify and correct CFEC data. For new entrants in 1989, the two-best market share would equal the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988 (the median is the mid-point of such two-best market shares, ranked in order). For new entrants in 1988, the two-best market share would equal the higher of their actual 1988 market share, and the median two-best market share of permit holders who fished in two or more seasons during 1984 through 1988). Each permit holder's projected market share would equal his or her two-best market share divided by the sum of all two-best market shares.

³⁶Permit holders "participated" if they actually geared up and fished. Crew "participated" if they were employed to work during the season. Drift vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners "participated" if the permit holder with whom they had an agreement participated.

³⁷To qualify as displaced in 1993, crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) crewed in the fishery in 1992, and in either 1990 or 1991. Vessel owners must provide documentary evidence that they: (1) had a written contract with a permit holder; or (2) leased their vessel for use in the fishery in 1992, and in either 1990 or 1991. In addition, derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they

(continued...)

number of fishable permits held (projected to be 24). Permit holders would be allotted a share equal to the gross *per capita* share reduced proportionally based on actual contractual arrangements, if they participated, or projected payments to shareholders, if they did not participate. Participating derivative share claimants would be allotted shares of a gross *per capita* share proportional to their actual earnings. Displaced share claimants would be allotted proportional shares of a gross *per capita* share based on projected earnings calculated on a case-by-case basis.

4. 1994 Seasonal Fund

The 1994 PWS roe herring drift fishery was closed (as were all 1994 PWS roe herring fisheries). The 1994 seasonal fund would be divided among holders of fishable permits, and displaced derivative share claimants.³⁸ Allocations to the 1994 seasonal fund would be divided 50% to a *per capita* subfund and 50% to a production subfund.

Distributions would be calculated in a manner analogous to distributions from the 1989 seasonal fund. For each qualifying permit holder, a gross share would be computed equal to the amount of the *per capita* subfund divided by the number of fishable permits held in 1994 (projected to be 24), plus a projected market share of the production subfund.³⁹ Permit holders who made contractual arrangements would be allotted net shares equal to their gross share reduced proportionally based on the arrangements. Permit holders who did not make contractual arrangements would be allotted net shares equal to their gross share reduced proportionately by projected payments to shareholders. Derivative share claimants who made contractual arrangements would be allotted net shares of their permit holder's gross share based on the contractual arrangements. Qualifying derivative share claimants who did not make contractual arrangements would be allotted proportional shares based on projected earnings.

5. 1995 Seasonal Fund

Plaintiffs' counsel propose to limit eligibility for the 1995 seasonal fund to: permit holders who qualify for the 1994 seasonal fund;⁴⁰ and derivative share claimants who qualify for the 1994 seasonal fund and were displaced in 1995.⁴¹ The 1995 seasonal fund would be distributed in a manner akin to the 1994 seasonal fund.⁴²

6. Cooperatives And Combines

Gross shares of cooperatives and combines would be calculated on a case-by-case basis. The cooperative/combine's gross share of a *per capita* subfund would be based on the number of member permit holders, and its gross share of the production subfund would be based on the historical production of member permit holders. The cooperative/combine's gross share would be divided proportionately among member permit holders and derivative share claimants based on contractual arrangements for the season.

The 1995 season requires special consideration because it was closed far in advance. For members of cooperatives and combines in 1994 who did not agree to continue the arrangements in 1995, there would be a presumption that the arrangements would not have continued, and each member's share of the 1995 seasonal fund would be based on his or her individual 1990-1993 best catch. The 1994 cooperative/combine arrangements for 1994 would be used for the 1995 seasonal fund only if all members agreed.

7. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a

(...continued)

³⁷were ready, willing and able to participate. Plaintiffs' counsel do not expect many nonparticipating derivative share claimants to qualify as displaced, because the fishery was open in 1993 and a substantial amount of fishing took place.

³⁸To qualify as displaced in 1994, crew must provide documentary evidence that they either: (1) had a contract with a permit holder (as evidenced by a writing or permit holder affidavit); or (2) qualify for the 1993 PWS roe herring drift seasonal fund, and crewed in either 1991 or 1992. Vessel owners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) qualify as a vessel owner for the 1993 seasonal fund, and leased a vessel in either 1991 or 1992. In addition, derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate. Because the closure was not announced until April 25, 1994, well after most fishers had completed preparations to fish, plaintiffs' counsel do not expect many claimants to qualify as displaced.

³⁹Projected shares would be calculated using the "two-best" method, *see supra*, applied to production in 1990 through 1993. For new entrants in 1994, the two-best market share would equal the median two-best market share of permit holders who fished in two or more seasons during 1990 through 1993. For new entrants in 1993, the two-best market share would equal the higher of their actual 1993 market share, and the median two-best market share of permit holders who fished in two or more seasons 1990 through 1993. Each permit holder's projected 1994 market share would equal his or her two-best market share divided by the sum of all two-best market shares.

⁴⁰No one purchasing a permit after April 1994 would share in the 1995 seasonal fund.

⁴¹Derivative share claimants must submit verified statements establishing that they were ready, willing and able to work in 1995.

⁴²Few PWS roe herring drifters even made contractual arrangements for the 1995 season, because ADF&G announced the closure in January 1995, three months in advance. For the relatively few claimants who made contractual arrangements for the 1995 season, shares would be based on the contractual arrangements. For claimants who did not make contractual arrangements, shares would be based on projected earnings determined on a case-by-case basis.

portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴³ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

8. Final Percent Shares

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS roe herring drift claimant a Final Percent Share, which is the claimant's percent share of PWS roe herring drift allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Final distributions will be adjusted by the difference between the claimants' allotments from these recoveries based on Final Percent Shares, and what claimants actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS roe herring drifters, would be adjusted to reflect the extent to which they have already been compensated.⁴⁴ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴³For open seasons 1990, 1991 and 1993, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For the closed seasons 1989 and 1994, the start and end dates would be April 13 and April 17, respectively. There were no *intra*-season transfers in 1995.

⁴⁴This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
PROJECTED FUND SHARES OF PWS
ROE HERRING DRIFT (G34E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	14.2%	\$1,991,000
Seasonal Funds		
1989	20.0%	\$2,810,000
1990	5.6%	\$785,000
1991	8.2%	\$1,154,000
1993	3.0%	\$416,000
1994	19.2%	\$2,697,000
1995	29.8%	\$4,190,000
Subtotal	85.8%	\$12,052,000
Total	100%	\$14,043,000

INCLUDES ATTORNEYS' FEES

Table 2
PWS ROE HERRING DRIFT (G34E)
PERMIT DEVALUATION FUND

	Projected G34E Market Value	Actual G34E Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Period	% Share Of Owner Who Purchased In Period, Held To 1995:2
1989:2-1993:1	n/a	n/a	\$0	0%	100%
1993:2-1993:4	\$81,000	(no market)	n/a	68%	0%
1994:1-1994:3	\$81,000	(no market)	n/a	68%	0%
1994:4	\$81,000	\$60,000	\$21,000	68%	0%
1995:1-1995:2	\$81,000	\$50,000	\$31,000	100%	0%

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND ROE POUND (L21E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Herring Roe Pound (L21E) Claim Category, which includes claims for devaluation of L21E permits by permit owners, and lost income in the 1989 and 1993-95 seasons by holders of L21E permits and "derivative share claimants."³ Permit owners, permit holders and derivative share claimants will be collectively referred to as "PWS roe pounders." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS roe pounders.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, PWS roe pounders share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; *and pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as crew, seiners, transport pilots, and laborers who build pounds and string kelp.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the PWS Roe Pound Claim Category, only putative PWS roe pounders have any financial interest in how PWS roe pound allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS roe pounders whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS roe pound allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of

(continued...)

Alyeska Settlement, most of which has been distributed;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected. The PWS roe pound matrix share is projected to be 2.1976% of signatories' share of the Alyeska Settlement, and 2.2014% of signatories' other common recoveries.¹¹

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS roe pounders' projected 2.2014% matrix share (\$544,000 less attorneys' fees which the Court approves¹²) of Native/Municipality/Kodiak Island Borough recoveries,¹³ and unclaimed money (if any) remaining from their actual \$113,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS roe pounders to be allocated roughly \$1,267,000 from the Phase IIA judgment and prejudgment interest, and \$104,966,000 from signatories' share of the punitive damages judgment, as (and if) these recoveries are collected,¹⁴ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS roe pounders also will share.¹⁵

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS roe pounders will be allocated the difference between their projected 2.2014% matrix share of signatories' aggregate Exxon Claims and TAPL Fund payments, and actual payments from the Exxon Claims Program and TAPL Fund to PWS roe pounders. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS roe pounders' actual allocation of \$113,000 from the Alyeska Settlement was less than their 2.1976% matrix share (roughly \$1,920,000), in the Final Distribution the difference (projected at \$1,807,000) will be allocated to PWS roe pounders through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS roe pounders' total allocation from all recoveries would be roughly \$114,373,000 (less attorneys' fees and expenses), which includes \$544,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,920,000 from the Alyeska Settlement, \$1,267,000 from the uncollected Phase

(...continued)

⁶signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹The projected PWS roe pound matrix share of 2.2014% is slightly higher than the 2.2% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS roe pounders' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹³This and other allocations to the PWS Roe Pound Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

IIA judgment and prejudgment interest, \$104,966,000 from the uncollected punitive damages judgment, and \$4,409,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include postjudgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS roe pounders to evaluate this distribution plan under the assumption that PWS roe pounders ultimately will be allocated \$114,373,000 plus interest.¹⁶

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS roe pounders,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. See Exxon QSF Order.

First, all PWS roe pounders will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for claimants who filed a PWS roe pound claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless provided by counsel for claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Roe Pound Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute PWS roe pounders' \$544,000 gross share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from the \$113,000 PWS roe pound allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification of existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁶Some PWS roe pounders -- i.e., L21E permit holders and crew who qualify for the 1989 lost income fund, *see infra* -- are also eligible for the 1989 Fund, which is a separate claim category allocated 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS roe pounders' combined \$657,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS roe pound allocation from the Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS roe pound allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989 claims, whereas Final Percent Shares will also be based on 1993-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS roe pound allocations into five separate funds, each of which corresponds to a type of damage caused by the spill: a "permit devaluation" fund based on the decline in value of L21E permits; and separate "seasonal funds" for the 1989, 1993, 1994 and 1995 seasons.²² The fishery was closed in 1989, 1994 and 1995. Although open in 1993, quality was poor and markets were disrupted. These funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for PWS roe pound matrix shares.²³ Permit devaluation damages have been discounted by 33 1/3% to reflect appropriate litigation risk.²⁴

The attached Table 1 lists projected percent shares of the PWS roe pound funds ("projected fund percent shares") and allocations from a total fishery recovery of \$114,373,000. Projected fund percent shares are 9% for the permit devaluation fund, and 91% for the four seasonal funds, including 16.6% for 1989, 14.3% for 1993, 23.6% for 1994 and 36.5% for 1995. Actual percent shares of PWS roe pound funds are likely to vary slightly from projected fund percent shares.²⁵

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of L21E permits. Claims against the fund may be made by those who: (1) owned an L21E permit on the date of the oil spill; or (2) acquired ownership of an L21E permit before April 1, 1993.²⁶ Holders of non-marketable permits or permits owned by others would not qualify for the permit devaluation fund.²⁷ A permit owner who satisfies one of these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner who owned a permit from the date of the spill continuously through 1995:1 (*i.e.*, the first calendar quarter of 1995) would be allotted a full share equal to the amount of the permit devaluation fund divided by 125, which is plaintiffs' counsel's best estimate of the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁸ Shares of post-spill purchasers and sellers would be computed in the manner described *infra*. The proposed approach enjoys broad support from PWS roe pounders, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.²⁹

²²In addition, PWS roe pounders whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (*e.g.*, by Exxon, VECO, insurance carriers, or the Alyeska Claims Program). These claims will be allotted *pro rata* shares of PWS roe pound allocations, proportional to the ratio of loss to total PWS roe pound matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of PWS roe pound allocations.

²³See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS roe pound damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrbach, LLP in Seattle. PWS roe pound damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Cordova, Seattle and Mt. Vernon, Washington.

²⁴See Allocation Plan 15 n.24. Permit devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except for claims for losses actually realized through sale.

²⁵For example, the projected fund percent share of 9% for the permit devaluation fund is based on an assumption that a total of 125 shares will be paid out -- *i.e.*, the number of marketable, non-interim use L21E permits in existence in 1989. This is a reasonable assumption, and a cautious one in that it assures an adequate reserve for the permit devaluation fund. However, under criteria proposed in this distribution plan, fewer than 125 full shares are likely to be paid out because some post-spill permit sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all PWS roe pound funds, resulting in a modification of projected fund percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program, once complete claims data is available.

²⁶Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof. For a discussion of the April 1, 1993 cut-off date and a limited "immediate-family" exception, see *infra*.

²⁷A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁸This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program. The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁹In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

There is no appropriate benchmark fishery in Alaska against which to measure loss in value of L21E permits caused by oil spill. The fishery became limited-entry just two years before the spill. Product was sold in highly specialized Japanese markets. As a result, plaintiffs' experts were unable to develop post-spill permit value data for the PWS roe pound fishery.

However, it is reasonable to conclude that, as with the limited-entry PWS roe herring drift (G34E) and seine (G01E) fisheries, devaluation of L21E permits did not result from the spill until 1993:1. The 1990, 1991 and 1992 PWS roe pound seasons do not appear to have been adversely affected by the spill in a substantial way. In 1993, however, markets for PWS roe herring drift and seine permits collapsed, the PWS roe herring seine fishery was closed for lack of commercially harvestable stock, and much of the herring harvested by roe pounders and drifters who did manage to fish was diseased or did not spawn. In 1994 and 1995, all PWS roe herring fisheries were closed.

Thus, it is fair to say that the spill caused loss in market value of PWS roe pound permits during the 1993 season (which began in March 1993) as herring stock damages became apparent. It also is reasonable to conclude that losses grew through 1995, as with PWS roe herring drift and seine permits. Plaintiffs' counsel are unable to measure precisely market value loss on a quarterly basis, and instead propose to allot 70% shares to those who sold in 1993, 90% shares to those who sold in 1994, and full shares to those who sold in 1995. These percentages are consistent with those used for PWS roe herring drift and seine permits.

2. Post-Spill Permit Buyers

Those who purchased L21E permits before 1993:1, and held through 1995:1, would be allotted full shares of the permit devaluation fund. However, plaintiffs' counsel do not think it fair or reasonable for someone who purchased an L21E permit in 1993:1 or after to share in the permit devaluation fund.³⁰

B. SEASONAL LOST INCOME FUNDS

PWS roe pounders agree that virtually all participants in the fishery were damaged by the spill. The spill closed the fishery in 1989, 1994 and 1995, and reduced the quality and value of the 1993 harvest. The 1996 season was canceled, and enduring damages to herring stocks are likely to impair the fishery for years to come. Permit prices fell from \$45,000 at the time of the spill to \$22,000 by the end of 1995.

Plaintiffs' counsel held open meetings concerning different distribution methods for PWS roe pounders in Cordova (October 1995, May 1996, October 1996), Anchorage (June 1996, October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (July 1996, October 1996). Plaintiffs' counsel also consulted with many PWS roe pounders. There is consensus among PWS roe pounders that the fairest way to distribute the seasonal lost income funds is on a *per capita* basis, one share per permit. Plaintiffs' counsel agree that *per capita* distribution is fair and reasonable for the PWS roe pound fishery.

1. 1989 Seasonal Fund

The 1989 seasonal fund would be divided among holders of fishable permits,³¹ and derivative share claimants "displaced" in 1989 as a result of the oil spill.³² Plaintiffs' counsel propose to distribute the 1989 seasonal fund in the following manner.

A "gross" *per capita* share would be computed, equal to the amount of the 1989 seasonal fund divided by the number of fishable permits "held" in 1989 (projected to be 125).³³ Permit holders who made contractual arrangements for the season (e.g., employment contracts with crew, or cooperative agreements with other permit holders) would be allotted proportional shares of the gross *per capita* share based on the contractual arrangements. Permit holders who did not make contractual arrangements would be allotted proportional shares of a gross *per capita* share based on projected payments to shareholders, calculated on a case-by-case basis using historical information or, for new entrants, fishery-wide averages.

³⁰The only exceptions would be claimants who acquired permits through transfers recorded as a non-money, immediate-family or gift transaction by CFEC. Such claimants would be allotted the residual portion of a full share which is not allotted to the transferor.

³¹A permit holder is a person who possessed the right to use the permit. This right might have been acquired by ownership, or by transfer from the owner. Historically, nearly every permit holder fished in seasons when the fishery was open. As a general rule, "fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable.

³²To qualify as "displaced," crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) were paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. Seiners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) were paid a claim for the PWS roe pound fishery by the Exxon Claims Program or TAPL Fund; or (3) employed their vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate in 1989.

³³The number of permits "held" may be smaller than the number of permit holders, due to temporary transfers during the season. If a permit was held by more than one person during a season, the multiple holders would be allocated collectively a single *per capita* share. See *infra*.

Derivative share claimants who made contractual arrangements for the season would be allotted proportional shares of a gross *per capita* share based on the contractual arrangements. Derivative share claimants who did not make contractual arrangements would be allotted proportional share based on their projected earnings calculated on a case-by-case basis.

2. 1993 Seasonal Fund

The fishery was open in 1993. The 1993 seasonal fund would be distributed in the following manner among: holders of fishable permits; derivative share claimants who "participated";³⁴ and displaced derivative share claimants.³⁵

A gross *per capita* share would equal the amount of the 1993 seasonal fund divided by the number of fishable permits held in 1993 (projected to be 125). Permit holders and derivative share claimants who made contractual arrangements for the 1993 season would be allotted proportional shares of a gross *per capita* share based on the arrangements. Permit holders who did not make contractual arrangements would be allotted proportional shares of a gross *per capita* share based on projected payments to shareholders. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of a gross *per capita* share based on projected earnings.

3. 1994 Seasonal Fund

The fishery was closed in 1994 (as were all PWS roe herring fisheries). The 1994 seasonal fund would be divided among holders of fishable permits, and displaced derivative share claimants.³⁶ Distributions would be calculated in the same manner as for the 1993 seasonal fund, based on a gross *per capita* share equal to the amount of the 1994 seasonal fund divided by the number of fishable permits held in 1994 (projected to be 125).

4. 1995 Seasonal Fund

Plaintiffs' counsel propose to limit eligibility for the 1995 seasonal fund to: permit holders who qualify for the 1994 seasonal fund and held a fishable permit for the 1995 season;³⁷ and derivative share claimants who qualify for the 1994 seasonal fund and were displaced in 1995.³⁸ The 1995 seasonal fund would be distributed in a manner akin to the 1994 seasonal fund, based on a gross *per capita* share equal to the amount of the 1995 seasonal fund divided by the number of fishable permits held in 1995 (projected to be 125).³⁹

5. Cooperatives And Combines

Gross shares of cooperatives and combines would be calculated on a case-by-case basis. The cooperative/combine's gross share of a seasonal fund would be based on the number of member permit holders, and would be divided proportionally among member permit holders and derivative share claimants based on contractual arrangements for the season.

The 1995 season requires special consideration because the season was closed far in advance. For members of cooperatives and combines in 1994 who did not agree to continue the arrangements in 1995, there would be a presumption that the arrangements would not have continued, and each member's share of the 1995 seasonal fund would be based on his or her individual 1990-1993 best catch. The 1994 cooperative/combine arrangements for 1994 would be used for the 1995 seasonal fund only if all members agreed.

³⁴Crew "participated" if they were employed to work during the season. A seiner "participated" if he or she leased or otherwise contracted the vessel for use in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners in fishing operations "participated" if the permit holder with whom they had an agreement actually fished.

³⁵To qualify as displaced in 1993, crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) participated in the fishery in 1992, and in either 1990 or 1991. Seiners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) employed their vessel in the fishery in 1992, and in either 1990 or 1991. In addition, derivative share claimants must submit verified statement detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate. Plaintiffs' counsel do not expect many derivative share claimants to qualify as displaced in 1993, because the fishery was open and a substantial amount of fishing took place.

³⁶To qualify as displaced in 1994, crew must provide documentary evidence that they either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit); or (2) qualify for the 1993 seasonal fund, and participated in the fishery in either 1991 or 1992. Seiners must provide documentary evidence that they either: (1) had a written contract with a permit holder; or (2) qualify as a seiner for the 1993 seasonal fund, and employed their vessel in the fishery in either 1991 or 1992. In addition, derivative share claimants must submit verified statements establishing that they were ready, willing and able to participate. Because the closure was not announced until April 25, 1994, well after most fishers had completed preparations to fish, plaintiffs' counsel do not expect many claimants to qualify as displaced.

³⁷Purchasers of permits after 1994:1 are not eligible for the 1995 seasonal fund.

³⁸To qualify as displaced, derivative share claimants must submit verified statements establishing that they were ready, willing and able to participate in 1995.

³⁹Few PWS roe pounders even made contractual arrangements for the 1995 season, because ADF&G announced the closure in January 1995, three months in advance. For the few claimants who did, shares would be based on the contractual arrangements. For those who did not, shares would be based on projected earnings determined on a case-by-case basis.

6. *Intra-Season Permit Transfers*

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund, comprised of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴⁰ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS roe pound claimant a Final Percent Share, which is the claimant's percent share of all PWS roe pound allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution in which offsets are made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Final distributions will be adjusted by the difference between the claimants' allotments from these recoveries based on Final Percent Share, and what the claimants actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS roe pounders, would be adjusted to reflect the extent to which they have already been compensated.⁴¹ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁰For the open season 1993, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For the closed seasons 1989 and 1994, the start and end dates would be April 11 and April 26, and April 10 and April 15, respectively. There were no *intra*-season transfers in 1995.

⁴¹This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
PROJECTED FUND SHARES OF PWS
ROE POUND (L21E) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	9%	\$10,271,000
Seasonal Funds		
1989	16.6%	\$18,992,000
1993	14.3%	\$16,391,000
1994	23.6%	\$26,954,000
1995	36.5%	\$41,765,000
Subtotal	91%	\$104,102,000
Total	100%	\$114,373,000

INCLUDES ATTORNEYS' FEES

Table 2
PWS ROE POUND (L21E) PERMIT DEVALUATION FUND

Date	% Share Of Owner At Time Of Spill Who Sold In Quarter	% Share Of Owner Who Purchased In Quarter, Held To 1995:2
1989:2-1993:1	0%	100%
1993:2-1993:4	70%	0%
1994	90%	0%
1995	100%	0%

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE WILLIAM SOUND
FOOD & BAIT HERRING SEINE (H01E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Food & Bait Herring Seine (H01E) Claim Category, which includes claims for lost income in the 1989, 1993, 1994 and 1995 seasons by "license holder"³ and "derivative share"⁴ claimants ("PWS bait herring seiners"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS bait herring seiners.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, PWS bait herring seiners share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who held H01E licenses, and others who did not but nevertheless qualify as "displaced." *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew, spotters and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Food & Bait Herring Seine Claim Category, only putative PWS bait herring seiners have any financial interest in how allocations to the fishery are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS bait herring seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS bait herring seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered

(continued...)

\$87,311,000 from the Alyeska Settlement;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in a Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which have not yet been collected. The PWS bait herring seine matrix share is projected to be 0.1019% of signatories' share of the Alyeska Settlement, and 0.1021% of signatories' other common recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute PWS bait herring seiners' projected 0.1021% matrix share (\$25,000 less attorneys' fees which the Court approves¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money (if any) remaining from their \$13,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS bait herring seiners to be allocated roughly \$59,000 from the Phase IIA judgment and prejudgment interest, and \$4,868,000 from signatories' share of the punitive damages judgment, as (and if) these recoveries are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS bait herring seiners also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries have been collected, PWS bait herring seiners will be allocated the difference between their projected 0.1021% matrix share of signatories' aggregate Exxon Claims and TAPL Fund payments, and actual payments from the Exxon Claims Program and TAPL Fund to PWS bait herring seiners. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS bait herring seiners' actual allocation of \$13,000 from the Alyeska Settlement was less than their projected 0.1019% matrix share (roughly \$89,000), the difference of \$76,000 will be allocated to PWS bait herring seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS bait herring seiners'

(...continued)

⁷their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²The projected PWS bait herring seine matrix share of 0.1021% is slightly higher than the 0.102% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS bait herring seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This and other allocations to the PWS Food & Bait Herring Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

allocation from all recoveries would be roughly \$5,305,000 (less attorneys' fees and expenses), which includes \$25,000 from Native/Municipality/Kodiak Island Borough recoveries, \$89,000 from the Alyeska Settlement, \$59,000 from the uncollected Phase IIA judgment and prejudgment interest, \$4,868,000 from the uncollected punitive damages judgment, and \$205,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS bait herring seiners to evaluate this distribution plan under the assumption that PWS bait herring seiners ultimately will be allocated \$5,305,000 plus interest.¹⁷

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS bait herring seiners,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. See Exxon QSF Order.

First, all PWS bait herring seiners will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed a PWS bait herring seine claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claims form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Food & Bait Herring Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute PWS bait herring seiners' \$25,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from their \$13,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every

¹⁷ Some PWS bait herring seiners -- i.e., those who qualify as license holders or crew for the 1989 lost income fund, see *infra* -- also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁸ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²² Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS bait herring seiners' combined \$38,000 allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS bait herring seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS bait herring seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989 claims, whereas Final

(continued...)

claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to divide PWS bait herring seine allocations into four separate "seasonal funds" for 1989, 1993, 1994 and 1995. Money would be allocated in proportion to corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS bait herring seine matrix shares.²³ As shown on the attached Table 1, a total fishery recovery of \$5,305,000 would be divided 21.5% to the 1989 seasonal fund, 15.4% to the 1993 seasonal fund, 28.9% to the 1994 seasonal fund, and 34.2% to the 1995 seasonal fund.

There are few participants in the fishery. Plaintiffs' counsel held meetings to discuss distribution approaches in Cordova, and also consulted directly with most PWS bait herring seiners. Although the fishery was open in 1989, only three license holders recorded landings (down from 6-8 licenses per season during 1986 through 1988) and the spill diminished markets of those who did fish. The fishery also was open in 1993, 1994 and 1995, but only a handful of license holders participated, due to reduced stocks and diminished markets.

There is a consensus among PWS bait herring seiners that seasonal funds should be divided on a *per capita* basis without regard to production. Plaintiffs' counsel have concluded that *per capita* distribution is fair and reasonable, because it ensures that fishers are compensated for the substantial capital investment required to fish competitively and profitably, and it is difficult to project individual performances in a given season reliably or fairly.

A. DISTRIBUTION OF SEASONAL FUNDS

Eligibility for each seasonal fund would be limited to: license holders and derivative share claimants who "participated" in the season,²⁴ and others "displaced" from participating by the oil spill.²⁵ Each seasonal fund would be distributed in the following manner.

A "gross" *per capita* share would be computed by dividing the amount of the seasonal fund by the total number of qualifying license holder claimants for the season. For license holder claimants who made contractual arrangements for the season, the gross *per capita* share would be divided proportionally among license holder and derivative share claimants based upon the contractual arrangements. For license holder claimants who did not make contractual arrangements, the gross *per capita* share would be reduced proportionally based upon projected payments to shareholders using historical data or fleet-wide averages. Displaced derivative share claimants would be allotted a portion of a gross *per capita* share proportional to projected earnings based upon contractual arrangements, historical data or fleet-wide averages.

B. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS bait herring seiner a Final Percent Share, which is his or her percent share of all PWS bait herring seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each seasonal fund's percent share times the claimant's percent share of the seasonal fund, calculated in the manner described *supra*.

(...continued)

²²Percent Shares will also be based on 1993-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²³See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS bait herring seine damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS bait herring damages were presented and discussed in meetings with fishers in Anchorage and Cordova.

²⁴License holders "participated" if they purchased a license, geared up and fished. Crew "participated" if they worked during the season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the fishery during the season.

²⁵A claimant who did not purchase a license for a season may still qualify as a "displaced" license holder claimant, by providing documentary evidence that he or she recorded landings in the PWS bait herring seine fishery in two of four preceding seasons. To qualify as "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder for the season (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) participated (as a license holder or crew) in the fishery in two of four preceding seasons. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a qualifying license holder, or (2) leased his or her vessel for use in the fishery in two of four preceding seasons. In addition, a displaced claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution in which offsets are made for distributions from prior recoveries, including Exxon Claims, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough. See Allocation Plan 38-39. Each claimant's final distribution will be adjusted by the difference between the claimant's allotment from these recoveries based on his or her Final Percent Share, and what the claimant actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS bait herring seiners, would be adjusted to reflect the extent to which they have already been compensated.²⁶ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
DIVISION OF PWS BAIT
HERRING SEINE (H01E) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	21.5%	\$1,142,000
1993	15.4%	\$815,000
1994	28.9%	\$1,535,000
1995	34.2%	\$1,813,000
Total	100%	\$5,305,000

INCLUDES ATTORNEYS' FEES

²⁶This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND WILD KELP HARVEST (L12E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Wild Roe On Kelp (L12E) Claim Category, which includes claims for lost income in the 1989-91 and 1993-95 seasons by "license holder"³ and "derivative share"⁴ claimants" (referred to collectively as "PWS wild harvesters"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS wild harvesters.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who held L12E licenses, and others who did not but nevertheless qualify as "displaced." *See infra*.

⁴"Derivative share" claimants include other non-licensed participants in the fishery. There are very few derivative shareholders. Most participants hold licenses.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories. Plaintiffs' counsel propose that PWS wild harvesters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS wild harvest allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Wild Roe On Kelp Claim Category, only putative PWS wild harvesters have any interest in how allocations to the fishery are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS wild harvesters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS wild harvest allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS wild harvesters share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected. The PWS wild harvest matrix share is projected to be 0.1498% of signatories' share of the Alyeska Settlement, and 0.1501% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program plaintiffs' counsel will distribute PWS wild harvesters' projected 0.1501% matrix share (\$37,000 less attorneys' fees which the Court approves¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and any unclaimed money remaining from their \$74,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS wild harvesters to be allocated roughly \$86,000 from the Phase IIA judgment and prejudgment interest, and \$7,162,000 from signatories' share of the punitive damages judgment, as they are collected,¹⁵ less attorneys' fees, and litigation and claims administration expenses, which the Court approves. These figures do not include post-judgment interest, in which PWS wild harvesters also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS wild harvesters will be allocated the difference between their projected 0.1501% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries (roughly \$301,000), and actual payments from the Exxon Claims Program and TAPL Fund to PWS wild harvesters. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²The projected PWS wild harvest matrix share of 0.1501% is slightly higher than the 0.15% projected in the Allocation Plan due to correction of round-off, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. PWS wild harvesters' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This amount and other allocations to the PWS Wild Roe On Kelp Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval, after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also in the Final Distribution, because PWS wild harvesters' allocation of \$74,000 from the Alyeska Settlement was less than their 0.1498% matrix share (roughly \$131,000), the difference (projected at \$57,000) will be allocated to PWS wild harvesters through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, PWS wild harvesters' total allocation from all recoveries will be roughly \$7,804,000 (less attorneys' fees and expenses), which includes \$37,000 from Native/Municipality/Kodiak Island Borough recoveries, \$131,000 from the Alyeska Settlement, \$86,000 from the uncollected Phase IIA judgment and prejudgment interest, \$7,162,000 from the uncollected punitive damages judgment, and \$301,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include postjudgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS wild harvesters to evaluate this distribution plan under the assumption that PWS wild harvesters ultimately will be allocated \$7,804,000 plus interest.¹⁷

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS wild harvesters,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. *See* Exxon QSF Order.

First, all PWS wild harvesters will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those claimants who filed a PWS wild harvest claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless provided by counsel for claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Wild Roe On Kelp Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute PWS wild harvesters' \$37,000 share of the Native/Municipality/Kodiak Island Borough Recoveries, plus any "unclaimed" money (*e.g.*, money reserved for absent class members, for which no claim was made) remaining from the \$74,000 PWS wild harvest allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in

¹⁷Some PWS wild harvesters -- *i.e.*, those who qualify as license holders or crew for the 1989 seasonal lost income fund, *see infra* -- also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. *See* Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁸Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification of existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide PWS wild harvest allocations into six separate "seasonal funds" for 1989, 1990, 1991, 1993, 1994 and 1995. The fishery was closed in 1989, 1994 and 1995, fishing was dislocated and markets were disrupted in 1993, and price was diminished in 1989, 1990 and 1991. Money would be allocated among seasonal funds in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee, and form the basis for PWS wild harvest matrix shares.²³ As shown on Table 1 attached, a total fishery recovery of \$7,804,000 would be allocated 15.3% to the 1989 seasonal fund, 17.7% to 1990, 16.1% to 1991, 4.6% to 1993, 17.7% to 1994 and 28.6% to 1995.

Plaintiffs' counsel held open meetings concerning different distribution methods for PWS wild harvesters in Cordova (October 1995, May 1996, October 1996), Anchorage (June 1996, October 1996), Kenai (October 1996), Mt. Vernon, Washington (October 1995, October 1996), Marysville, Washington (May 1996), and Portland, Oregon (May 1996, October 1996). In addition, plaintiffs' counsel consulted individually with many PWS wild harvesters.

Plaintiffs' counsel have found that PWS wild harvesters recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisher has been harmed by the oil spill. Most fishers prefer that seasonal funds be distributed in proportion to production. Plaintiffs' counsel have concluded that this would be a fair and reasonable distribution method for the fishery. Accordingly, in 1990, 1991 and 1993, when the fishery was open, distribution would be proportional to actual market shares. In 1989, 1994 and 1995, when the fishery was closed, distribution would be proportional to projected market shares based on historical production.

A. 1989 SEASONAL FUND

The fishery was closed in 1989. The 1989 seasonal fund would be divided among holders of L12E licenses, and others "displaced" from participating by the oil spill.²⁴ Individual shares would be based on a "best catch" method. Plaintiffs' counsel would calculate for each qualifying license holder claimant: a "best catch" equal to his or her best season (measured by harvest weight²⁵) during the 1984 through 1988 seasons;²⁶ and a "gross share" of the 1989 seasonal fund proportional to the best catch. For license holders who made contractual arrangements for the season, gross shares would be divided proportionally among license holder and shareholders based upon the contractual arrangements. For license holders who did not make contractual arrangements, gross shares would be reduced

²²Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times PWS wild harvesters' combined \$111,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS wild harvest allocation from the Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS wild harvest allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²³See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees like the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS wild harvest damages were distributed to plaintiffs' counsel, and made available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrback LLP in Seattle.

²⁴PWS wild harvesters typically purchase licenses, but it appears that each season some non-licensees are hired as crew. The oil spill occurred just as the 1989 season was about to open, and most fishers had purchased licenses. Claimants who did not may still qualify as "displaced" license holders, by providing documentary evidence that they either: (1) held an L12E license and recorded a landing in two of three seasons 1987, 1988 and 1990; or (2) were paid a PWS wild harvest claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a license holder claimant (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS wild harvester crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a license holder claimant; or (2) leased a vessel used in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate in 1989.

²⁵Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" as the presumptive measure of harvest weight. Claimants will be given an opportunity to verify and correct the CFEC data.

²⁶New entrants in 1989 would be assigned the median best catch of license holders with landings during 1984 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 155 license holders, then the median best catch would be the 78th-largest best catch.

proportionally by projected payments to shareholders (based on historical data or fleet-wide averages). Derivative share claimants who did not make contractual arrangements would be allotted proportional shares calculated on a case-by-case basis from historical data or fleet-wide averages.

B. 1990, 1991 AND 1993 SEASONAL FUNDS

The fishery was open in 1990, 1991 and 1993, but prices were diminished during in 1990 and 1991, and fishing and markets were disrupted in 1993. Each of these seasonal funds would be distributed among PWS wild harvesters who "participated" in the season.²⁷ Plaintiffs' counsel would calculate for each license holder a gross share of the seasonal fund proportional to the license holder's harvest, and divide the gross share proportionally among the license holder and his or her shareholders based upon contractual arrangements for the season.

C. 1994 SEASONAL FUND

The PWS wild harvest fishery was closed in 1994 (as were all PWS roe herring fisheries). The 1994 seasonal fund would be divided among license holders, and those displaced as a result of the oil spill.²⁸

Distributions would be calculated using the "best catch" method, *see supra*, based on production in the 1990 through 1993 seasons. For each license holder claimant, plaintiffs' counsel would calculate a gross share of the 1994 seasonal fund, proportional to the license holder claimant's best catch from 1990 through 1993.²⁹ Gross shares of license holders who made contractual arrangements would be divided proportionally among license holder and shareholders based upon the contractual arrangements. Gross shares of license holders who did not make contractual arrangements would be reduced proportionally based upon projected payments to shareholders. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the seasonal fund based on projected earnings.

D. 1995 SEASONAL FUND

The 1995 season was canceled in January 1995, months before it was scheduled to open in March. As a result, few PWS wild harvesters purchased licenses, made contractual arrangements, or prepared to fish. Plaintiffs' counsel would limit eligibility for the 1995 seasonal fund to fishers who qualify for the 1994 seasonal fund and were displaced in 1995.³⁰ The 1995 seasonal fund would be distributed based upon percentages for the 1994 seasonal fund.

E. COOPERATIVES AND COMBINES

Gross shares of cooperatives and combines would be calculated on a case-by-case basis. The cooperative/combine's gross share of a seasonal fund would be based on market shares of its member license holders (actual for 1990, 1991 and 1993, and projected for 1989, 1994 and 1995), and would be divided proportionately among member permit holders and derivative share claimants based on contractual arrangements for the season.

The 1995 season requires special consideration because the season was closed far in advance. For members of cooperatives and combines in 1994 who did not agree to continue the arrangements in 1995, there would be a presumption that the arrangements would not have continued, and each member's share of the 1995 seasonal fund would be based on his or her individual 1990-93 best catch. The 1994 cooperative/combine arrangements for 1994 would be used for the 1995 seasonal fund only if all members agreed.

F. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS wild harvester a Final Percent Share, which is the claimant's percent share of all PWS wild harvest allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

²⁷License holders "participated" if they geared up and fished. Crew "participated" if they were employed to work during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season.

²⁸To qualify as a displaced license holder claimant, a claimant must qualify as a license holder for the 1993 seasonal fund, and also provide documentary evidence that he or she held an L12E license and recorded a landing in either 1991 or 1992. To qualify as displaced crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a license holder claimant (evidenced by a writing or license holder affidavit); or (2) qualifies for the 1993 seasonal fund, and participated in the fishery in either 1991 or 1992. To qualify as a displaced vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract with a license holder claimant; or (2) qualifies as a vessel owner for the 1993 seasonal fund, and leased his or her vessel for use in the fishery in either 1991 or 1992. In addition, a displaced claimant must submit a verified statement establishing that he or she was ready, willing and able to participate in 1994. Because the closure was not announced until April 25, 1994, after most fishers had purchased licenses and completed preparations to fish, plaintiffs' counsel do not expect many claimants to qualify as displaced.

²⁹New entrants in 1994 would be assigned the median best catch of license holders with one or more years of landings from 1990 through 1993.

³⁰Claimants must submit verified statements establishing that they were ready, willing and able to participate in the fishery in 1995.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including PWS wild harvesters, would be adjusted to reflect the extent to which they have already been compensated.³¹ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
ALLOCATION OF PWS WILD
HARVEST (L12E) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	15.3%	\$1,198,000
1990	17.7%	\$1,381,000
1991	16.1%	\$1,254,000
1993	4.6%	\$356,000
1994	17.7%	\$1,382,000
1995	28.6%	\$2,233,000
Total	100%	\$7,804,000

INCLUDES ATTORNEYS' FEES

³¹This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND DUNGENESS CRAB (D09E, D91E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations for the Prince William Sound (PWS) Dungeness Crab Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by "license holder"³ and "derivative share"⁴ claimants (referred to collectively as "PWS Dungeness crab claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS Dungeness crab claimants.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS Dungeness crab claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; *and pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³License holder claimants include those who purchased D09E or D91E licenses, and others who did not but nevertheless qualify as "displaced" license holders. *See infra*.

⁴Derivative share claimants include other participants in the fishery such as non-licensed crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Dungeness Crab Claim Category, only PWS Dungeness crab claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS Dungeness crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in allocations to the PWS Dungeness Crab Claim Category, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from uncollected judgments against Exxon.¹² The PWS Dungeness crab matrix share is projected to be 0.0220% of signatories' recoveries.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS Dungeness crab claimants' projected 0.0220% matrix share (roughly \$5,200 less attorneys' fees which the Court approves¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and unclaimed money, if any, remaining from their \$7,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS Dungeness crab claimants to be allocated roughly \$12,700 from the Phase IIA judgment and prejudgment interest, and \$1,049,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS Dungeness crab claimants also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS Dungeness crab claimants will be allocated the difference between their matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS Dungeness crab claimants. Plaintiffs' counsel believe that the Exxon Claims Program and TAPL Fund might have paid some PWS Dungeness crab claims, but lack data as to which specific claims were paid, or how much was paid.

Also in the Final Distribution, because PWS Dungeness crab claimants' actual allocation of \$7,000 from the Alyeska Settlement was less than their projected 0.0220% matrix share (roughly \$19,000), the difference (\$26,000) will be allocated to PWS Dungeness crab claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the PWS Dungeness crab allocation from all recoveries will be roughly \$1,143,000 (less attorneys' fees and expenses), which includes \$5,400 from Native/Municipality/Kodiak Island Borough recoveries, \$19,000 from the Alyeska Settlement, \$12,700 from the uncollected Phase IIA judgment and prejudgment interest, \$1,049,000 from the uncollected punitive damages judgment, and \$44,300 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for

⁸ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹² Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³ The PWS Dungeness crab matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ This and other allocations to PWS Dungeness crab claimants will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

the Court and PWS Dungeness crab claimants to evaluate this distribution plan under the assumption that PWS Dungeness crab claimants ultimately will be allocated \$1,143,000 plus interest.¹⁸

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS Dungeness crab claimants,¹⁹ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. See Exxon QSF Order.

First, all PWS Dungeness crab claimants will be required to identify themselves and submit a claim before a specified cut-off date.²⁰ Plaintiffs' counsel will automatically register a claim for those who filed PWS Dungeness crab claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Dungeness Crab Claim Category (Final Percent Share).²¹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²²

Third, plaintiffs' counsel will distribute PWS Dungeness crab claimants' \$5,400 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from their \$7,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²³ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

From 1984 through 1988, between nine and seventeen PWS Dungeness crab license holders harvested an average total of \$965,000 per season. At noon on April 30, 1989, ADF&G closed the PWS Northern District Dungeness crab fishery, due to the spill, and the district did not open again until January 1, 1990. The fishery declined to a negligible harvest in 1992, and was closed completely in 1993, 1994 and 1995.

¹⁸Some PWS Dungeness crab claimants -- i.e., those who qualify as license holders or crew for the 1989 seasonal lost income fund, see *infra* -- also are eligible for the 1989 Fund, which is a separate claim category allocated 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁹Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

²⁰Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²¹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²²If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²³Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the PWS Dungeness crab \$12,400 allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS Dungeness crab allocation from Native/Municipality/Kodiak Island Borough recoveries, and any unclaimed PWS Dungeness crab allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

Plaintiffs' counsel propose to divide PWS Dungeness crab allocations into seven separate seasonal funds, one for each season 1989 through 1995.²⁴ Money would be divided among these funds in proportion to matrix damages, which were quantified by plaintiffs' Allocation Committee, and form the basis for PWS Dungeness crab matrix shares.²⁵ A fishery recovery of \$1,143,000 would be divided: \$100,000 (8.8%) for 1989; \$78,000 (6.8%) for 1990; \$176,000 (15.4%) for 1991; and \$197,000 (17.3%) apiece for 1992 through 1995. See Table 1.

Plaintiffs' counsel held open meetings concerning different distribution methods for PWS Dungeness crab fishers in Cordova in October 1995 and May 1996, and also consulted individually with PWS Dungeness crab fishers. Fishers recognize that no distribution system can fully account for the specific way in which each fisherman has been harmed by the oil spill. Given wide disparities in financial and personal commitments to the fishery, fishers prefer that seasonal funds be distributed based on projected production. Plaintiffs' counsel have concluded that this is a fair and reasonable distribution method for the fishery.

A. 1989 SEASONAL FUND

In 1989, the fishery was partially closed. The 1989 seasonal fund would be divided among: license holders and derivative share claimants who "participated",²⁶ and "displaced" claimants unable to participate as a result of the spill.²⁷ Distributions would be calculated using a historical "best catch" method in the following manner.

Plaintiffs' counsel would calculate for each qualifying license holder claimant: a "best catch" equal to his or her best season (measured by harvest weight²⁸) during the 1986 through 1988 seasons;²⁹ and a "gross share" of the 1989 seasonal fund proportional to the best catch. If a license holder claimant made contractual arrangements for the 1989 season (*e.g.*, employment contracts), his or her gross share would be divided proportionally with derivative share claimants based upon the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1989 seasonal fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. 1990, 1991, 1992 SEASONAL FUNDS

Each of the 1990, 1991 and 1992 seasonal funds would be divided among license holders and derivative share claimants who participated in the season. For each license holder, plaintiffs' counsel would calculate a gross share of the seasonal fund, proportional to the license holder's harvest. Each license holder's gross share would be divided proportionally among license holder and shareholders, based on contractual arrangements for the season.

²⁴In addition, PWS Dungeness crab claimants whose gear or equipment was damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS Dungeness crab allocations, proportional to the ratio of loss to total PWS Dungeness crab matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS Dungeness crab allocations.

²⁵See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS Dungeness crab damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishers at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS Dungeness crab damages were presented and discussed in meetings with fishers held in Cordova.

²⁶License holders "participated" if they purchased a license, geared up and fished. Crew "participated" if they were actually employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the fishery during the season.

²⁷A fisher who did not purchase a license in 1989 may still qualify as a "displaced" license holder, by providing documentary evidence that he or she held a D09E or D91E license and recorded a landing in two of three seasons 1987, 1988 and 1990. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS Dungeness crab crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as license holder or crew) in the fishery in two of three seasons 1987, 1988 or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract with a license holder for the 1989 season; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements describing how the spill prevented them from participating in 1989, and establishing that they were ready, willing and able to participate.

²⁸Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" as the presumptive measure of harvest weight. Claimants will be given an opportunity to verify and correct the CFEC data.

²⁹New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 21 license holders, the median best catch would be the eleventh largest.

C. 1993 SEASONAL FUND

The PWS Dungeness crab fishery was closed in 1993. The 1993 seasonal fund would be divided among those who held licenses, and those displaced as a result of the spill.³⁰ Distributions would be based on projected production, calculated using the "best catch" method, *see supra*, applied to 1986 through 1992 production.

Plaintiffs' counsel would calculate for each license holder claimant: a best catch equal to his or her best season (measured by harvest weight) during the 1986 through 1992 seasons;³¹ and a gross share of the 1993 seasonal fund, proportional to the best catch. If a license holder claimant made contractual arrangements, his or her gross share would be divided proportionally with shareholders based upon the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1993 seasonal fund based upon their projected earnings, calculated on a case-by-case basis using historical data.

D. 1994 AND 1995 SEASONAL FUNDS

The fishery was closed in 1994 and 1995. Each of these seasonal funds would be divided among those who actually held licenses, and those displaced from participating as a result of the oil spill.³² Distributions would be based on projected production, calculated by the same "best catch" method used for the 1993 seasonal fund.

E. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS Dungeness crab claimant a Final Percent Share, which is the claimant's percent share of all PWS Dungeness crab allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected there will be a Final Distribution, in which offsets will be made for payments from previous recoveries including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measures of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS Dungeness crab claimants, would be adjusted to reflect the extent to which they already have been compensated.³³ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

³⁰To qualify as a displaced license holder claimant, a claimant must provide documentary evidence that he or she held a D09E or D91E license and recorded a landing in 1992, or in both 1990 and 1991. To qualify as displaced crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a license holder claimant for the 1993 season (evidenced by a writing or license holder affidavit); or (2) participated in the fishery in 1992, or in both 1990 and 1991. To qualify as a displaced vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1993 season with a license holder; or (2) leased his or her vessel for use in the fishery in 1992, or in both 1990 and 1991. In addition, a displaced claimant must submit a verified statement establishing that he or she was ready, willing and able to participate in 1993.

³¹New entrants in 1993 would be assigned the median best catch of license holders with landings during 1986 through 1992.

³²To qualify as a displaced license holder claimant in 1994 and 1995, a claimant must qualify as a license holder claimant for the 1993 seasonal fund. To qualify as displaced crew, a claimant must either: (1) qualify as a crew claimant for the 1993 seasonal fund; or (2) provide documentary evidence that he or she had a contract with a license holder claimant for the season (evidenced by a writing or license holder affidavit). To qualify as a displaced vessel owner, a claimant must either: (1) qualify as a vessel owner claimant for the 1993 seasonal fund; or (2) provide documentary evidence that he or she had a written contract for the season with a license holder claimant. In addition, a displaced claimant must submit a verified statement establishing that he or she was ready, willing and able to participate in the season.

³³This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
DIVISION OF PWS DUNGENESS
CRAB (D09E, D91E) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	8.8%	\$100,000
1990	6.8%	\$78,000
1991	15.4%	\$176,000
1992	17.3%	\$197,000
1993	17.3%	\$197,000
1994	17.3%	\$197,000
1995	17.3%	\$197,000
Total	100%	\$1,143,000

INCLUDES ATTORNEYS' FEES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND KING CRAB (K09E, K91E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories.³ This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) King Crab Claim Category, which includes claims for lost income in 1989 through 1995 by "license holder"⁴ and "derivative share"⁵ claimants ("PWS king crab claimants"). Plaintiffs' counsel⁶ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS king crab claimants.⁷

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries.

⁴"License holder" claimants include those who purchased K09E or K91E licenses, and others who did not but nevertheless qualify as "displaced." *See infra*.

⁵"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁶"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁷Because the Allocation Plan fixed the percentage allocation to the PWS King Crab Claim Category, only PWS king crab claimants have any financial interest in the distribution of allocations to the claim category, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS king crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS king crab allocations, but that their claims be discounted by an additional 50%. When plaintiffs reached their joint prosecution agreement in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS king crab claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁸ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁹ \$24,722,000 collected from Exxon,¹⁰ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which are not yet collected.¹³ The PWS king crab matrix share is projected to be 0.0599% of signatories' share of the Alyeska Settlement, and 0.0601% of signatories' other common recoveries.¹⁴

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program plaintiffs' counsel will distribute PWS king crab claimants' 0.0601% matrix share (\$15,000 less attorneys' fees which the Court approves¹⁵) of Native/Municipality/Kodiak Island Borough recoveries,¹⁶ and unclaimed money, if any, remaining from their actual \$26,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS king crab claimants to be allocated roughly \$35,000 from the Phase IIA judgment and prejudgment interest, and \$2,866,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁷ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS king crab claimants also will share.¹⁸

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS king crab claimants will be allocated the difference between their projected 0.0601% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS king crab claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS king crab claimants' actual allocation of \$26,000 from the Alyeska Settlement was less than their projected 0.0599% matrix share (roughly \$52,000), the difference (projected at \$26,000) will be allocated to PWS king crab claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁸Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁹Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

¹⁰This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹¹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹²Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁴The projected PWS king crab matrix share of 0.0601% is slightly higher than the 0.06% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. The PWS king crab matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹⁵Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁶This and other allocations to the PWS King Crab Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁷A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁸It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the PWS king crab total allocation will be roughly \$3,122,000 (less attorneys' fees and expenses), which includes \$15,000 from Native/Municipality/Kodiak Island Borough recoveries, \$52,000 from the Alyeska Settlement, \$35,000 from the uncollected Phase IIA judgment and prejudgment interest, \$2,866,000 from the uncollected punitive damages judgment, and \$120,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS king crab claimants to evaluate this distribution plan under the assumption that the PWS King Crab Claim Category ultimately will be allocated \$3,122,000 plus interest.¹⁹

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS king crab claimants,²⁰ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS king crab claimants will be required to identify themselves and submit a claim before a specified cut-off date.²¹ Plaintiffs' counsel will automatically register a claim for those who filed PWS king crab claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS King Crab Claim Category (Final Percent Share).²² All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²³

Third, plaintiffs' counsel will distribute PWS king crab claimants' \$15,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from PWS king crab claimants' \$26,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions

¹⁹Some PWS king crab claimants -- i.e., those who qualify as license holders or crew for the 1989 lost income fund, see *infra* -- also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

²⁰Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²¹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²²In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²³If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²⁴ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

From 1986 through 1988, the PWS king crab fishery consisted of three "highliner" fishermen, and one or two others. They collectively harvested an average of roughly \$208,000 per season. In 1989, ADF&G closed the entire PWS Management Area to commercial king crab harvesting, due to the presence of oil, the likelihood of adulteration of crab, and oiling of gear and vessels. The spill effectively destroyed the fishery -- after 1989, the fishery's largest total harvest was only \$12,800.

Plaintiffs' counsel propose to divide PWS king crab allocations into seven separate "seasonal funds," one for each season 1989 through 1995.²⁵ Money would be allocated among seasonal funds in proportion to matrix damages, which were quantified by plaintiffs' Allocation Committee, and form the basis for PWS king crab matrix shares.²⁶ As shown on the attached Table 1, a total fishery recovery of \$3,122,000 would be divided 20.5% for 1989, 13.1% for 1990, 13.5% for 1991, 13.7% apiece for 1992 and 1993, and 12.8% apiece for 1994 and 1995.

Plaintiffs' counsel held open meetings concerning different distribution methods for PWS king crab fishermen in Cordova in October 1995 and May 1996, and also consulted individually with PWS king crab fishermen. Fishermen recognize that no distribution system can fully account for the specific way in which each fisherman has been harmed by the oil spill. Given wide disparities in financial and personal commitments to the fishery, fishermen prefer distribution based on production. Plaintiffs' counsel have concluded that this is a fair and reasonable distribution method for the fishery.

A. 1989 SEASONAL FUND

The 1989 seasonal fund would be divided among license holders, and others "displaced" from participating by the oil spill.²⁷ Distributions would be based upon projected production calculated using a historical "best catch" method in the following manner.

²⁴Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the PWS king crab combined \$41,000 allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS king crab allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS king crab allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²⁵In addition, PWS king crab claimants whose gear or equipment was damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS king crab allocations, proportional to the ratio of loss to total PWS king crab matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS king crab allocations.

²⁶See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS king crab damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishermen at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS king crab damages were presented and discussed in meetings with fishermen held in Anchorage and Cordova.

²⁷A fisherman who did not purchase a license for the 1989 season may still qualify as a "displaced" license holder, by providing documentary evidence that he or she held a K09E or K91E license and recorded a landing either in 1988, or in both 1986 and 1987. To qualify as "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS king crab crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the fishery in 1988, or in both 1986 and 1987. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased his or her vessel for use in the fishery in 1988, or in both 1986 and 1987. In addition, displaced claimants must submit verified statements describing how the spill prevented them from participating, establishing that they were ready, willing and able to participate.

Plaintiffs' counsel would calculate for each license holder claimant: a "best catch" equal to his or her best season (measured by harvest weight²⁸) during the 1986 through 1988 seasons;²⁹ and a "gross share" of the 1989 seasonal fund proportional to the best catch. If a license holder claimant made contractual arrangements for the 1989 season (e.g., employment contracts), his or her gross share would be divided proportionally among license holder and derivative share claimants based upon the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders, calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1989 seasonal fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. 1990 THROUGH 1995 SEASONAL FUNDS

Each of the 1990 through 1995 seasonal funds would be distributed among: license holders and derivative share claimants who "participated" in the season;³⁰ license holder claimants who qualify for the 1989 seasonal fund; and displaced derivative share claimants.³¹ Each seasonal fund would be distributed in a manner akin to the 1989 seasonal fund, using the "best catch" method applied to harvests from 1986 through and including the season.³²

C. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel will calculate for each PWS king crab claimant a Final Percent Share, which is the claimant's percent share of all PWS king crab allocations. The Final Percent Share will be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Each claimant's final distribution will be adjusted by the difference between the claimant's allotment from these recoveries based on his or her Final Percent Share, and what the claimant actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS king crab claimants, would be adjusted to reflect the extent to which they have already been compensated.³³ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁸ Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" as the presumptive measure of harvest weight. Claimants will be given an opportunity to verify and correct the CFEC data.

²⁹ New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 5 license holders, the median best catch would be the third-largest best catch.

³⁰ License holders "participated" if they fished in the season. Crew "participated" if they were employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the fishery during the season.

³¹ To qualify as displaced in a post-1989 season, crew must either: (1) qualify for the 1989 seasonal fund; or (2) provide documentary evidence that they had a contract with a license holder for the season (evidenced by a writing or license holder affidavit). Vessel owners must either: (1) qualify for the 1989 seasonal fund; or (2) provide documentary evidence that they had a written contract with a license holder for the season. Also, displaced derivative share claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate.

³² See *supra*. New entrants would be assigned the median best catch of all license holders with landings in one or more previous seasons.

³³ This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
DIVISION OF PWS KING CRAB
(K09E, K91E) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	20.5%	\$640,000
1990	13.1%	\$409,000
1991	13.5%	\$420,000
1992	13.7%	\$426,000
1993	13.7%	\$426,000
1994	12.8%	\$400,000
1995	12.8%	\$400,000
Total	100%	\$3,122,000

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND TANNER CRAB (T09E, T91) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Tanner Crab Claim Category, which includes claims for lost income for the 1989 through 1995 seasons by "license holder"³ and "derivative share"⁴ claimants (referred to collectively as "PWS tanner crab claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object has been given to PWS tanner crab claimants.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS tanner crab claimants share in signatories' common recoveries, which presently include roughly: \$200,298,000 paid by the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased T09E or T91E licenses, and others who did not but nevertheless qualify as "displaced." *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Tanner Crab Claim Category, only PWS tanner crab claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS tanner crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS Tanner crab allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and the prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as
(continued...)

A. THE LOST INCOME FUND

Because the fishery was closed in 1989 and never reopened, PWS tanner crab allocations would be placed into a single "lost income fund" to be shared in by 1989 license holders and others "displaced" from participating as a result of the oil spill.²⁵ Distributions would be calculated using a historical "best catch" method in the following manner.

Plaintiffs' counsel would calculate for each license holder: a "best catch" equal to his or her best season (measured by harvest weight²⁶) during the 1986 through 1988 seasons;²⁷ and a "gross share" of the 1989 seasonal fund, proportional to the best catch. If a license holder claimant made contractual arrangements for the 1989 season (e.g., employment contracts), his or her gross share would be divided proportionally among license holder and derivative share claimants based upon the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders, calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares based on projected earnings, calculated on a case-by-case basis using historical data.

B. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS tanner crab claimant a Final Percent Share, which is the claimant's percent share of all PWS tanner crab allocations.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Each claimant's final distribution will be adjusted by the difference between the claimant's allotment from these recoveries based on his or her Final Percent Share, and what the claimant actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS tanner crab claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁸ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁵A claimant who did not purchase a license for the 1989 season may still qualify as a "displaced" license holder, by providing documentary evidence that he or she either: (1) held a T09E or T91E license and recorded a landing in 1988, or in both 1986 and 1987; or (2) took substantial steps (such as purchasing and registering gear) to fish in 1989. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS tanner crab crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the fishery in 1988, or in both 1986 and 1987. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract with a license holder claimant; or (2) leased a vessel used in the fishery in 1988, or in both 1986 and 1987. In addition, displaced claimants must submit verified statements establishing that they were ready, willing and able to participate in 1989.

²⁶Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" as the presumptive measure of harvest weight. Claimants will be given an opportunity to verify and correct the CFEC data.

²⁷New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 33 license holders, the median best catch would be the 17th-largest best catch.

²⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND POT SHRIMP (P09E, P91E) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Pot Shrimp Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by "license holder"³ and "derivative share"⁴ claimants ("PWS pot shrimp claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to PWS pot shrimp claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased P09E or P91E licenses, and others who qualify as "displaced" by the oil spill. *See infra.*

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Pot Shrimp Claim Category, only putative PWS pot shrimp claimants have any financial interest in how PWS pot shrimp allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS pot shrimp claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS pot shrimp allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²³ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

From 1986 through 1988, roughly 75 to 90 PWS pot shrimp license holders recorded landings, and the average total harvest value was \$668,000 per season. On April 3, 1989, ADF&G closed the fishery while in progress, due to the presence of oil and the likelihood for oiling of gear and catch. There were only limited openings in the fall of 1989, and some areas of the fishery remained closed through the spring of 1990. The fishery then declined steeply. The number of harvesting license holders plummeted to 35 in 1989, 26 in 1990, and only 15 in 1991 and 1992. The fishery was closed in 1993, 1994 and 1995.

Plaintiffs' counsel propose to divide PWS pot shrimp allocations into seven separate "seasonal funds," one for each season 1989 through 1995.²⁴ Money would be allocated among seasonal funds in proportion to matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for PWS pot shrimp matrix shares.²⁵ As shown on the attached Table 1, a total fishery recovery of \$9,877,000 would be divided 17.7% for 1989, 10.7% for 1990, 18.7% for 1991, 12.1% for 1992, and 13.6% apiece for 1993, 1994 and 1995.

Plaintiffs' counsel held open meetings concerning distribution for PWS pot shrimp fishermen in Anchorage (June 1996), Cordova (October 1995, May 1996, October 1996) and Whittier (June 1996), and also consulted individually with PWS pot shrimp fishermen. Fishermen recognize that no distribution system can fully account for the specific way in which each fisherman has been harmed by the oil spill. Given wide disparities in financial and personal commitments to the fishery, fishermen prefer that seasonal funds be distributed based on individual production. Plaintiffs' counsel have concluded that this would be a fair and reasonable distribution method for the fishery.

A. 1989 SEASONAL FUND

In 1989, the fishery was partially closed. The 1989 seasonal fund would be divided among claimants (license holder and derivative share) who "participated,"²⁶ and "displaced" claimants unable to participate as a result of the spill.²⁷ Distributions would be based on projected production, calculated using a historical "best catch" method in the following manner.

²³Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$59,000 PWS pot shrimp allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS pot shrimp allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS pot shrimp allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²⁴In addition, PWS pot shrimp claimants whose gear or equipment was damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). Such claims would be allotted *pro rata* shares of PWS pot shrimp allocations, proportional to the ratio of loss to total PWS pot shrimp matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS pot shrimp allocations.

²⁵See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS pot shrimp damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishermen at the Cordova Fishermen's Claims Office, and the law offices of Ashburn & Mason in Anchorage and Keller Rohrbach, LLP in Seattle. PWS pot shrimp damages were presented and discussed in meetings with fishermen held in Anchorage, Cordova and Whittier.

²⁶License holders "participated" if they purchased a license, geared up and fished. Crew "participated" if they were employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the fishery during the season.

²⁷A fisher who did not purchase a license in 1989 may qualify as a "displaced" license holder by providing documentary evidence that he or she either: (1) held a P09E or P91E license and recorded a landing in 1988, or in both 1986 and 1987; or (2) took substantial steps to participate commercially in the fishery (e.g., purchased and/or registered a substantial number of pots, or registered a vessel). To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS pot shrimp crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated in the fishery in 1988, or in both 1986 and 1987. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased his or her vessel for use in the fishery in 1988, or in both 1986 and 1987. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate.

Plaintiffs' counsel would calculate for each qualifying license holder claimant: a "best catch" equal to his or her best season (measured by harvest weight²⁸) during the 1986 through 1988 seasons;²⁹ and a "gross share" of the 1989 seasonal fund proportional to the best catch. For license holder claimants who made contractual arrangements for the 1989 season (e.g., employment contracts), gross shares would be divided proportionally among license holder and derivative share claimants based on the contractual arrangements. For license holder claimants who did not make contractual arrangements, gross shares would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1989 seasonal fund based on projected earnings calculated on a case-by-case basis using historical data.

B. 1990, 1991, 1992 SEASONAL FUNDS

The fishery was open in 1990, 1991 and 1992. Each of these seasonal funds would be divided among claimants who participated in the season, and displaced claimants.³⁰ Distributions would be calculated using the "best catch" method, *see supra*, applied to harvests from 1986 through and including the season.³¹

C. 1993 SEASONAL FUND

The PWS pot shrimp fishery was closed in 1993. The 1993 seasonal fund would be divided among license holders (if any), and those displaced from participating as a result of the oil spill.³² Distributions would be calculated using the "best catch" method, *see supra*, applied to harvests from 1986 through 1992.

D. 1994 AND 1995 SEASONAL FUNDS

The fishery was closed in 1994 and 1995. Each of these seasonal funds would be divided among license holders (if any) and displaced claimants.³³ Distributions would be based on projected production calculated using the same "best catch" method used for the 1993 seasonal fund.

E. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS pot shrimp claimant a Final Percent Share, which is the claimant's percent share of all PWS pot shrimp allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each seasonal fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Share, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS pot shrimp claimants, would be

²⁸ Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" as the presumptive measure of harvest weight. Claimants will be given an opportunity to verify and correct the CFEC data.

²⁹ New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 21 license holders, the median best catch would be the 11th-largest best catch.

³⁰ To qualify as displaced in a season, a claimant must: (1) qualify for a seasonal fund for a preceding season (e.g., to qualify as a displaced license holder claimant for the 1991 seasonal fund, a claimant must qualify as a displaced license holder claimant for either the 1989 or 1990 seasonal fund); and (2) submit a verified statement which details how the oil spill prevented him or her from participating, and establishes that he or she was ready, willing and able to participate.

³¹ For example, for a license holder who recorded landings in 1986 through 1992, the 1990 best catch would be based on 1986 through 1990 landings, the 1991 best catch on 1986 through 1991 landings, and the 1992 best catch on 1986 through 1992 landings. New entrants would be assigned median best catches of license holder claimants with fishing histories.

³² To qualify as displaced, a claimant must: (1) qualify for the 1989, 1990, 1991 and/or 1992 seasonal fund; and (2) submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in the season.

³³ To qualify as displaced in 1994 and 1995, a claimant must: (1) qualify for the 1993 seasonal fund; and (2) submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate.

adjusted to reflect the extent to which they have already been compensated.³⁴ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
DIVISION OF PWS POT SHRIMP
(P09E, P91E) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	17.7%	\$1,751,000
1990	10.7%	\$1,055,000
1991	18.7%	\$1,845,000
1992	12.1%	\$1,191,000
1993	13.6%	\$1,345,000
1994	13.6%	\$1,345,000
1995	13.6%	\$1,345,000
Total	100%	\$9,877,000

INCLUDES ATTORNEYS' FEES

³⁴This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND TRAWL SHRIMP (P07B, P17B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Trawl Shrimp Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by "license holder"³ and "derivative share"⁴ claimants ("PWS shrimp trawlers"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS shrimp trawlers.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS shrimp trawlers share in signatories' common recoveries, which presently include: roughly \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who held P07B or P17B licenses and harvested within the PWS Management Area, and others who qualify as "displaced" from the PWS Management Area. *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Trawl Shrimp Claim Category, only putative PWS shrimp trawl claimants have any interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS shrimp trawlers whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS trawl shrimp allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the (continued...)

Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected.¹² The projected PWS trawl shrimp matrix share of these recoveries is 0.0121%.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute to PWS shrimp trawlers their projected 0.0121% share (\$3,000 less attorneys' fees approved by the Court¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and unclaimed money, if any, remaining from their \$100 Alyeska Settlement allocation.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS shrimp trawlers to be allocated roughly \$7,000 from the Phase IIA judgment and prejudgment interest, and \$577,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS shrimp trawlers also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS shrimp trawlers will be allocated the difference between their 0.0121% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS shrimp trawlers (if any). Plaintiffs' counsel believe that the Exxon Claims Program and TAPL Fund might have paid some PWS trawl shrimp claims, but lack data as to which specific claims were paid, or how much was paid.

Also in the Final Distribution, because PWS shrimp trawlers' actual allocation of \$100 from the Alyeska Settlement was less than their 0.0121% matrix share (roughly \$10,600), the difference (projected at \$10,500) will be allocated to PWS shrimp trawlers through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the PWS trawl shrimp allocation from all recoveries will be \$629,000 (less attorneys' fees and expenses), which includes \$3,000 from Native/Municipality/Kodiak Island Borough recoveries, \$10,600 from the Alyeska Settlement, \$7,000 from the uncollected Phase IIA judgment and prejudgment interest, \$577,000 from the

(...continued)

⁷TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³The projected PWS trawl shrimp matrix share of 0.0121% is higher than the 0.009% projected in the Allocation Plan due to a slight reallocation from other PWS fishing claim categories to account for additional PWS trawl shrimp damages quantified after the Allocation Plan was filed. *See* Notice.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵This and other allocations to PWS trawl shrimpers will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

uncollected punitive damages judgment, and \$24,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS shrimp trawlers to evaluate this distribution plan under the assumption that PWS shrimp trawlers ultimately will be allocated \$629,000 plus interest.¹⁸

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS shrimp trawlers,¹⁹ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS shrimp trawlers will be required to identify themselves and submit a claim before a specified cut-off date.²⁰ Plaintiffs' counsel will automatically register a claim for those who filed PWS trawl shrimp claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Trawl Shrimp Claim Category (Final Percent Share).²¹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²²

Third, plaintiffs' counsel will distribute PWS shrimp trawlers' \$3,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from PWS shrimp trawlers' \$100 Alyeska Settlement allocation. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²³ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁸PWS shrimp trawlers who qualify as license holders or crew for the 1989 seasonal lost income fund, see *infra*, also are eligible for the PWS 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁹Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²⁰Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²¹In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²²If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²³Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$3,100 PWS trawl shrimp allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the PWS trawl shrimp allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed PWS trawl shrimp allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel estimate that, from 1986 through 1988, approximately fifteen P07B and P17B license holders harvested shrimp within the PWS Management Area. ADF&G closed the PWS Management Area from April 9, 1989 through March 1, 1990 due to the presence of oil in areas where fishing was scheduled to take place.

Plaintiffs' counsel propose to divide PWS trawl shrimp allocations into seven separate "seasonal funds," one for each season 1989 through 1995.²⁴ Money would be allocated among seasonal funds in proportion to matrix damages, which were quantified by plaintiffs' Allocation Committee.²⁵ As shown on the attached Table 1, the lion's share of the loss was suffered in 1989, when the fishery was closed. A total fishery recovery of \$629,000 would be divided \$573,000 (91%) for 1989; and \$9,000 (1.5%) per season for 1990 through 1995.

A. 1989 SEASONAL FUND

The 1989 seasonal fund would be divided among license holder and derivative share claimants "displaced" from fishing in the PWS Management Area in 1989 by the spill.²⁶ Distributions would be calculated using a historical "best catch" method in the following manner.

Plaintiffs' counsel would calculate for each qualifying license holder claimant: a "best catch" equal to his or her best season (measured by weight of shrimp harvested within the PWS Management Area²⁷) during the 1986 through 1988 seasons,²⁸ and a "gross share" of the 1989 seasonal fund proportional to the best catch. For license holder claimants who made contractual arrangements for the 1989 season (e.g., employment contracts), gross shares would be divided proportionally among license holder and derivative share claimants based upon the contractual arrangements. For license holder claimants who did not make contractual arrangements, gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1989 seasonal fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. 1990 THROUGH 1995 SEASONAL FUNDS

Each of the 1990 through 1995 seasonal funds would be distributed among license holder and derivative share claimants who "participated" in the PWS Management Area in the season.²⁹ For each qualifying license holder, plaintiffs' counsel will calculate a "gross

²⁴In addition, PWS shrimp trawlers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS trawl shrimp allocations, proportional to the ratio of loss to total PWS trawl shrimp matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS trawl shrimp allocations.

²⁵See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel. Workups of PWS trawl shrimp damages were distributed to plaintiffs' counsel, and since the fall of 1995 were available for inspection by fishermen at the Cordova Fishermen's Claims Office, and law offices of Ashburn & Mason in Anchorage and Keller Rohrback, LLP in Seattle. PWS trawl shrimp damages were presented and discussed in meetings with fishermen held in Anchorage, Cordova and Whittier.

²⁶To qualify as a "displaced" license holder, a claimant must provide documentary evidence that he or she either: (1) held a P07B or P17B license and harvested shrimp in the PWS Management Area in two of three seasons 1987, 1988 and/or 1990; or (2) was paid a PWS trawl shrimp license holder claim by the Exxon Claims Program or TAPL Fund. To qualify as "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the PWS Management Area in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS trawl shrimp crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated in the fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, displaced claimants must submit verified statements which detail how the spill prevented them from participating, and establish that they were ready, willing and able to participate.

²⁷As the presumptive measure of harvest weight in the PWS Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "E". Claimants will be given an opportunity to verify and correct the CFEC data.

²⁸New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 15 license holders, the median best catch would be the eighth-largest best catch.

²⁹License holders "participated" if they recorded harvest. Crew "participated" if they were actually employed to work in the fishery during the season. Other shareholders such as non-fishing license owners or "silent" partners "participated" if the license holder with whom they had an agreement participated.

share" of the seasonal fund proportional to the license holder's actual harvest in the PWS Management Area. Each license holder's gross share would be divided proportionally among license holder and derivative share claimants based upon contractual arrangements for the season.

C. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS trawl shrimp claimant a Final Percent Share, which is the claimant's percent share of all PWS trawl shrimp allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS shrimp trawlers, would be adjusted to reflect the extent to which they have already been compensated.³⁰ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
DIVISION OF PWS TRAWL
SHRIMP (P07B, P17B) ALLOCATION

Seasonal Fund	Fund Percent Share	Projected Amount
1989	91%	\$573,300
1990	1.5%	\$9,300
1991	1.5%	\$9,300
1992	1.5%	\$9,300
1993	1.5%	\$9,300
1994	1.5%	\$9,300
1995	1.5%	\$9,300
Total	100%	\$629,000

INCLUDES ATTORNEYS' FEES

³⁰This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE WILLIAM
SOUND MISCELLANEOUS FINFISH (M01B, M02B, M04B, M05B, M06B,
M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Miscellaneous Finfish Claim Category, which includes claims for lost income in the 1989 season by "license holder"³ and "derivative share"⁴ claimants ("PWS finfish claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS finfish claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, or M99B licenses and harvested in the PWS Management Area, and others who qualify as "displaced." *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Miscellaneous Finfish Claim Category, only putative PWS finfish claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS finfish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS miscellaneous finfish allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and the prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS finfish claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program;¹⁰ and a projected \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which are not yet collected.¹³ The projected PWS miscellaneous finfish matrix share of signatories' recoveries is 0.0180%.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS finfish claimants' 0.0180% matrix share (roughly \$4,500 less attorneys' fees which the Court approves¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and their share of the \$2,600 allocated from the Alyeska Settlement to all miscellaneous finfish claimants, including those from Cook Inlet and Kodiak as well as PWS.¹⁶

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS finfish claimants to be allocated roughly \$10,000 from the Phase IIA judgment and prejudgment interest, and \$858,000 from signatories' share of the punitive damages judgment, as (and if) they are collected, less any deductions for attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS finfish claimants also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS finfish claimants will be allocated the difference between their 0.0180% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS finfish claimants. The TAPL Fund reported that some PWS finfish claims were paid by the Exxon Claims Program and TAPL Fund, but plaintiffs' counsel lack data as to which specific claims were paid or how much was paid to them.

⁷ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹¹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹² Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. Conversely, a settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ This amount will be deposited into an interest-bearing account designated for the PWS Miscellaneous Finfish Claim Category, as will allocations to the claim category from future recoveries. Such funds will be held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶ Miscellaneous finfish claimants in Cook Inlet, Kodiak and PWS were collectively allocated \$2,600 from the Alyeska Settlement, based on plaintiffs' counsels' best damage estimates available at the time. However, given the relatively small allocation, and the difficulty of valuing miscellaneous finfish claimants' damages, no distributions were made. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 19-20 (Oct. 1, 1993). In the Supplemental Claims Program, the miscellaneous finfish allocation from the Alyeska Settlement will be allocated among Cook Inlet, Kodiak and PWS claimants in proportion to each area's relative damages, determined from claims data in the Supplemental Claims Program. Separate distribution plans are being filed for Cook Inlet and Kodiak miscellaneous finfish claimants.

¹⁷ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also in the Final Distribution, because PWS finfish claimants' actual allocation from the Alyeska Settlement (which cannot exceed \$2,600, the amount allocated to Cook Inlet, Kodiak and PWS finfish claimants) is less than their 0.0180% matrix share (roughly \$15,700), the difference will be allocated to PWS finfish claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the PWS miscellaneous finfish allocation from all recoveries will be roughly \$935,000 (less attorneys' fees and expenses), which includes \$4,500 from Native/Municipality/Kodiak Island Borough recoveries, \$16,000 from the Alyeska Settlement; \$10,000 from the uncollected Phase IIA judgment and prejudgment interest, \$858,000 from the uncollected punitive damages judgment, and \$36,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS finfish claimants to evaluate this distribution plan under the assumption that PWS finfish claimants ultimately will be allocated \$935,000 plus interest.¹⁸

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS finfish claimants, plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order*.

First, all PWS finfish claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed PWS miscellaneous finfish claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Miscellaneous Finfish Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute PWS finfish claimants' \$4,500 share of Native/Municipality/Kodiak Island Borough recoveries, plus their share of the \$2,600 Alyeska Settlement allocation to Cook Inlet, Kodiak and PWS finfish fishermen. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁸Some PWS finfish claimants -- *i.e.*, those who qualify as license holders or crew, *see infra* -- also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. *See* Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

III. DETERMINATION OF FINAL PERCENT SHARES

In the PWS Management Area, the oil spill did not result in closures in 1989, but rather in restrictions on fishing and temporary exclusions from fishing in some areas. Spill response operations also disrupted the fishery by displacing fishermen from traditional fishing grounds and creating shortages in the crew market. The PWS miscellaneous finfish "lost income fund" is intended to compensate only those miscellaneous finfish fishermen who participated, or would have participated but for the oil spill, in the PWS Management Area in 1989. Eligible to share would be: license holders and derivative share claimants who "participated" in 1989;²² and "displaced" claimants unable to participate as a result of the spill.²³

Distributions would be calculated using a historical "best catch" method in the following manner.²⁴ Plaintiffs' counsel would calculate for each qualifying license holder claimant: a "best catch" equal to his or her best season (measured by weight of harvest within the PWS Management Area²⁵) during the 1986 through 1988 seasons;²⁶ and a "gross share" of the lost income fund, proportional to the best catch. If a license holder claimant made contractual arrangements for the 1989 season (e.g., employment contracts), his or her gross share would be divided proportionally between license holder and derivative share claimants based upon the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the lost income fund based on projected earnings calculated on a case-by-case basis using historical data.

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS finfish claimant a Final Percent Share, which is the claimant's percent share of all PWS miscellaneous finfish allocations calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Each claimant's final distribution will be adjusted by the difference between the claimant's allotment from these recoveries based on his or her Final Percent Share, and what the claimant actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS miscellaneous finfish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already

²²License holders "participated" if they purchased a miscellaneous finfish license and harvested in the PWS Management Area. Crew "participated" if they were employed on a vessel which harvested in the PWS Management Area. Vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest in the PWS Management Area.

²³A fisher who did not purchase a license in 1989 may still qualify as a "displaced" license holder, by providing documentary evidence that he or she either: (1) held a miscellaneous finfish license and harvested in the PWS Management Area in two of three seasons 1987, 1988 and/or 1990; or (2) was paid a PWS miscellaneous finfish claim by the Exxon Claims Program or TAPL Fund. To qualify as "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS miscellaneous finfish crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the PWS Management Area in 1989, and establishing that they were ready, willing and able to participate in the PWS Management Area.

²⁴In addition, PWS finfish claimants whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS miscellaneous finfish allocations, proportional to the ratio of loss to total PWS miscellaneous finfish matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS miscellaneous finfish allocations.

²⁵As the presumptive measure of harvest weight in the PWS Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "E". Claimants will be given an opportunity to verify and correct the CFEC data.

²⁶New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 15 license holders, the median best catch would be the eighth-largest best catch.

²⁷This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the

(continued...)

paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

(...continued)

²⁷ claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE PRINCE
WILLIAM SOUND MISCELLANEOUS SHELLFISH CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Prince William Sound (PWS) Miscellaneous Shellfish Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by "license holder"³ and "derivative share"⁴ claimants who fished commercially for clams, mussels or oysters in the PWS Management Area at the time of the oil spill ("PWS shellfish claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS shellfish claimants.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As stated in the Court-approved Allocation Plan, PWS shellfish claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

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³"License holder" claimants include those who held clam (R12B, R18B, R23B), mussel (Z18B, Z26B, Z37B, Z61B, Z91B, Z99B), oyster or aquatic farm operation permits for the PWS Management Area at the time of the spill. *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the PWS Miscellaneous Shellfish Claim Category, only putative PWS shellfish claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS shellfish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS miscellaneous shellfish recoveries, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatory plaintiffs recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries (continued...)

of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected.¹² The projected PWS shellfish matrix share of these recoveries is 0.0112%.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS shellfish claimants' 0.0112% matrix share (\$3,000 less attorneys' fees approved by the Court¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and \$9,500 allocation from the Alyeska Settlement.¹⁶

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS shellfish claimants to be allocated roughly \$6,400 from the Phase IIA judgment and prejudgment interest, and \$534,000 from the punitive damages judgment, as (and if) they are collected,¹⁷ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS shellfish claimants also will share.¹⁸

C. THE FINAL DISTRIBUTION

Plaintiffs' counsel believe that PWS shellfish claimants received nothing from the Exxon Claims Program and TAPL Fund. Thus, as provided in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS shellfish claimants will be allocated their projected 0.0112% matrix share (roughly \$22,000) of signatory plaintiffs' aggregate Exxon Claims and TAPL Fund recoveries. Also in the Final Distribution, because the actual PWS shellfish allocation from the Alyeska Settlement (\$9,500) is less than the 0.0112% matrix share (roughly \$9,800), the difference (roughly \$300) will be allocated to PWS shellfish claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

(...continued)

⁷from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³The projected PWS shellfish matrix share of 0.0112% is higher than the 0.003% projected in the Allocation Plan due to a slight reallocation within PWS fishing claim categories to account for additional shellfish damages quantified after the Allocation Plan was filed. *See* Notice.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵This amount and other allocations to the PWS Miscellaneous Shellfish Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶PWS shellfish claimants were allocated money from the Alyeska Settlement based on plaintiffs' counsels' best damage estimates available at the time. However, given the relatively small allocation and the difficulty of valuing individual damages, no distributions were made. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 19-20 (Oct. 1, 1993).

¹⁷A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁸It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the PWS shellfish allocation from all recoveries will be \$582,000 (less attorneys' fees and expenses), which includes \$3,000 from Native/Municipality/Kodiak Island Borough recoveries, \$9,800 from the Alyeska Settlement, \$6,400 from the uncollected Phase IIA judgment and prejudgment interest, \$534,000 from the uncollected punitive damages judgment, and \$22,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS shellfish claimants to evaluate this distribution plan under the assumption that PWS shellfish claimants ultimately will be allocated \$582,000 plus interest.¹⁹

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS shellfish claimants,²⁰ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS shellfish claimants will be required to identify themselves and submit a claim before a specified cut-off date.²¹ Plaintiffs' counsel will automatically register a claim for those who filed PWS shellfish claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Miscellaneous Shellfish Claim Category (Final Percent Share).²² All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²³

Third, plaintiffs' counsel will distribute PWS shellfish claimants' \$2,800 share of Native/Municipality/Kodiak Island Borough recoveries, and \$9,500 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁹PWS shellfish claimants who qualify as license holders and crew, see *infra*, also are eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

²⁰Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²¹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²²In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²³If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

III. DETERMINATION OF FINAL PERCENT SHARES

Eligible to share in PWS shellfish allocations would be: license holders and derivative share claimants who "participated" in 1989,²⁴ and "displaced" claimants unable to participate as a result of the spill.²⁵ Plaintiffs' counsel propose *pro rata* distribution of PWS shellfish allocations, proportional to lost profits or earnings in the 1989 through 1995 seasons.²⁶

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate PWS shellfish claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial clam, oyster or mussel operations in the PWS Management Area during the 1985 through 1995 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December, 31, 1995. Derivative share claimants likewise must submit detailed claims which: describes their participation in PWS shellfish fisheries during the 1985 through 1995 seasons; sets forth their earnings each season; explains in detail how the spill led to lost earnings in 1989 through 1995; and estimates the amount of earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and permits. Key assumptions and projections must be thoroughly substantiated.

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS shellfish claimant a Final Percent Share, which is the claimant's percent share of all PWS shellfish allocations.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions of all types of claimants, including PWS shellfish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁴License holders "participated" if they held a clam, mussel or oyster permit for the PWS Management Area at the time of the spill, and harvested under the permit in 1989. Crew "participated" if they were employed by a participating license holder.

²⁵A fisher who held a clam, mussel, oyster or aquatic farm operation permit at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) harvested in the PWS Management Area in two of three seasons 1987, 1988 and/or 1990; (2) took substantial steps in 1989 to plant, produce or harvest commercially clams, mussels or oysters in the PWS Management Area; or (3) was paid a PWS miscellaneous shellfish claim by the Exxon Claims Program or TAPL Fund. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS miscellaneous shellfish crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in 1989, and establishing that they were ready, willing and able to participate.

²⁶In addition, fishers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO; insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS shellfish allocations, proportional to the ratio of loss to total PWS shellfish matrix damages, up to the amount of loss.

²⁷This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
PRINCE WILLIAM SOUND SABLEFISH (C06B, C07B,
C09B, C17B, C26B, C37B, C61B, C91B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Sablefish Claim Category, which includes claims for lost income in the 1989 season by "license holder"³ and "derivative share"⁴ claimants ("PWS sablefish claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to PWS sablefish claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased C06B, C07B, C09B, C17B, C26B, C37B, C61B, C91B licenses and harvested in the PWS Management Area, and others who qualify as "displaced." *See infra*. As set forth in the Allocation Plan (p.20), the Sablefish Claim Category is limited to claims for lost income in 1989 by sablefish fishers who harvested, or would have harvested, in the waters of the PWS Management Area.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the Sablefish Claim Category, only putative PWS sablefish claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that PWS sablefish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in PWS sablefish allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, PWS sablefish claimants share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected.¹² The PWS sablefish matrix share of signatories' recoveries is 0.0150%.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute PWS sablefish claimants' 0.0150% matrix share (\$3,700 less attorneys' fees which the Court approves¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and \$3,000 allocation from the Alyeska Settlement.¹⁵

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect PWS sablefish claimants to be allocated roughly \$9,000 from the Phase IIA judgment and prejudgment interest, and \$715,000 from the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which PWS sablefish claimants also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, PWS sablefish claimants will be allocated the difference between their 0.0150% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to PWS sablefish claimants. The TAPL Fund reported that some PWS sablefish claims were paid by the Exxon Claims Program and TAPL Fund, but plaintiffs' counsel lack data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because PWS sablefish claimants' actual \$3,000 allocation from the Alyeska Settlement is less than their projected 0.0150% matrix share (\$13,000), the difference (projected at \$10,000) will be allocated to PWS sablefish claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This and other allocations to the PWS Sablefish Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵PWS sablefish claimants were allocated money from the Alyeska Settlement based upon the best damage estimates available at the time. However, due to the relatively small amount and the extreme difficulty of valuing individual sablefish claimants' damages, no distributions were made. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support, 19-20 (Oct. 1, 1993).

¹⁶A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, PWS sablefish claimants' total allocation from all recoveries will be roughly \$779,000 (less attorneys' fees and expenses), which includes \$3,700 from Native/Municipality/Kodiak Island Borough recoveries, \$13,000 from the Alyeska Settlement, \$9,000 from the uncollected Phase IIA judgment and prejudgment interest, \$152,000 from the uncollected punitive damages judgment, and \$30,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS sablefish claimants to evaluate this distribution plan under the assumption that the PWS sablefish claimants ultimately will be allocated \$779,000 plus interest.¹⁸

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for PWS sablefish claimants,¹⁹ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all PWS sablefish claimants will be required to identify themselves and submit a claim before a specified cut-off date.²⁰ Plaintiffs' counsel will automatically register a claim for those who filed PWS sablefish claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS Sablefish Claim Category (Final Percent Share).²¹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²²

Third, plaintiffs' counsel will distribute PWS sablefish claimants' \$3,700 share of Native/Municipality/Kodiak Island Borough recoveries, and \$3,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

In 1989, the oil spill did not result in closures in the PWS Management Area, but rather in restrictions on fishing, and temporary exclusions from fishing in some areas. Spill response operations also disrupted the fishery, by displacing fishermen from traditional fishing waters. The PWS sablefish "lost income fund" is intended to compensate only those sablefish claimants who fished, or would have fished

¹⁸Some PWS sablefish claimants -- i.e., those who qualify as license holders and crew, see *infra* -- are also eligible for plaintiffs' 1989 Fund, which is a separate claim category allocated roughly 3.33% of signatories' recoveries. See Allocation Plan 19 n.26. Plaintiffs' counsel are filing a separate distribution plan for the 1989 Fund.

¹⁹Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²⁰Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²¹In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²²If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

but for the oil spill, in the PWS Management Area in 1989. Eligible would be: license holders and derivative share claimants who "participated" in 1989,²³ and "displaced" claimants unable to participate as a result of the spill.²⁴

Distributions would be calculated using a historical "best catch" method in the following manner. Plaintiffs' counsel would calculate for each license holder claimant: a "best catch" equal to his or her best season (measured by weight of harvest within the PWS Management Area²⁵) during the 1986 through 1988 seasons;²⁶ and a "gross share" of the lost income fund proportional to the best catch. If a license holder claimant made contractual arrangements for the 1989 season (*e.g.*, employment contracts), his or her gross share would be divided proportionally among license holder and derivative share claimant in proportion to the contractual arrangements. If a license holder claimant did not make contractual arrangements, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the lost income fund, based on their projected earnings calculated on a case-by-case basis using historical data.

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS sablefish claimant a Final Percent Share, which is the claimant's percent share of all PWS sablefish allocations.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including PWS sablefish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²³ License holders "participated" if they purchased a sablefish license and harvested in the PWS Management Area. Crew "participated" if they worked on a vessel which harvested in the PWS Management Area. Vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest in the PWS Management Area.

²⁴ A fisherman who did not purchase a license in 1989 may still qualify as a "displaced" license holder, by providing documentary evidence that he or she either: (1) held a sablefish license and harvested in the PWS Management Area in two of three seasons 1987, 1988 and/or 1990; or (2) was paid a PWS sablefish claim by the Exxon Claims Program or TAPL Fund. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant in 1989 (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a PWS sablefish crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating, and establishing that they were ready, willing and able to participate.

²⁵ As the presumptive measure of harvest weight in the PWS Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "E". Claimants will be given an opportunity to verify and correct the CFEC data.

²⁶ New entrants in 1989 would be assigned the median best catch of license holders with landings in one or more seasons 1986 through 1988. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 15 license holders, the median best catch would be the eighth-largest best catch.

²⁷ This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE PRINCE WILLIAM SOUND 1989 FUND**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of plaintiffs' recoveries among groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This plan of distribution proposes a method for distribution of the Prince William Sound (PWS) 1989 Fund, established to compensate PWS commercial fishers who participated in the 1989 season, or who were prevented from doing so as a result of the spill, for damage to quality of life and emotional stress resulting from damage to PWS commercial fisheries caused by the spill. Plaintiffs' counsel³ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object is given to PWS 1989 Fund claimants.⁴

I. RECOVERIES SUBJECT TO THIS PLAN OF DISTRIBUTION

As described more fully in the Court-approved Allocation Plan, PWS 1989 Fund claimants share in signatories' common recoveries, which include roughly: \$200,298,000 already distributed by the Exxon Claims Program and TAPL Fund,⁵ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁶ \$24,722,000 collected from Exxon,⁷ to be

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiiled" fishery claim categories.

⁴Because the Allocation Plan fixed the percentage allocation to the PWS 1989 Fund, only putative PWS 1989 Fund claimants have any financial interest in how allocations to the PWS 1989 Fund are distributed, and, therefore, standing to object to this plan of distribution. Plaintiffs' counsel propose that PWS 1989 Fund claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in allocations to the PWS 1989 Fund, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁵Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁶Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁷This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000
(continued...)

distributed in the Supplemental Claims Program; and a projected \$4,825,716,000⁸ plus interest⁹ from judgments against Exxon not yet collected.¹⁰ The PWS 1989 Fund matrix share is projected to be 3.3264% of signatories' share of the Alyeska Settlement, and 3.3321% of signatories' other common recoveries.¹¹

A. NATIVE/MUNICIPALITY/KODIAK ISLAND BOROUGH RECOVERIES

The PWS 1989 Fund is allocated \$824,000 from Native/Municipality/Kodiak Island Borough recoveries, from which will be deducted attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹² Distributions will be made in the Supplemental Claims Program.¹³

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect the PWS 1989 Fund to be allocated roughly \$1,918,000 from the Phase IIA judgment and prejudgment interest, and \$158,880,000 from signatories' share of the punitive damages judgment, as (and if) they are collected.¹⁴ From these amounts would be deducted attorneys' fees, litigation expenses and claims administration expenses approved by the Court. These figures do not include post-judgment interest, in which PWS 1989 Fund claimants also will share.¹⁵

C. THE FINAL DISTRIBUTION

Nothing was allocated to the PWS 1989 Fund from the Alyeska Settlement. Neither the Exxon Claims Program nor the TAPL Fund paid claims for non-economic losses. Accordingly, as set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, the PWS 1989 Fund will be allocated its matrix share of the Alyeska Settlement and signatories' recoveries from the Exxon Claims Program and TAPL Fund. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, the total allocation to the PWS 1989 Fund from all recoveries will be roughly \$173,118,000 (less attorneys' fees and expenses), which includes \$824,000 from Native/Municipality/Kodiak Island Borough recoveries, \$2,904,000 from the Alyeska Settlement, \$1,918,000 from the uncollected Phase IIA judgment and prejudgment interest, \$158,880,000 from the uncollected punitive damages judgment, and \$6,674,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and PWS 1989 Fund claimants to evaluate this distribution plan under the assumption that the PWS 1989 Fund ultimately will be allocated \$173,118,000 plus interest.

(...continued)

⁷(\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough Recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁸This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

⁹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁰Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹¹The projected PWS 1989 Fund matrix share of 3.3321% is slightly higher than the 3.33% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. The PWS 1989 Fund matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹³This and other allocations to the 1989 PWS Fund will be deposited into an interest-bearing account designated for the PWS 1989 Fund, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the PWS 1989 Fund,¹⁶ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator subject to oversight by the Court. See Exxon QSF Order.

First, all PWS 1989 Fund claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁷ Late claims will not be accepted after the published cut-off date.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the PWS 1989 Fund (Final Percent Share).¹⁸ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.¹⁹

Third, plaintiffs' counsel will distribute PWS 1989 Fund claimants' \$824,000 share of Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

A. QUALIFICATION FOR THE 1989 FUND

To qualify for the PWS 1989 Fund, a claimant must qualify as a permit holder or crew claimant for the 1989 seasonal lost income fund of at least one of the following PWS commercial fishing claim categories: salmon drift (S03E); salmon seine (S01E); salmon set (S04E); roe herring drift (G34E); roe herring seine (G01E); roe herring pound (L21E); food & bait herring seine (H01E); wild herring roe harvest (L12E); dungeness crab (D09E, D91E); king crab (K09E, K91E); tanner crab (T09E, T91E); pot shrimp (P09E, P91E); trawl shrimp (P07B, P17B); sablefish (C06B, C07B, C09B, C17B, C26B, C37B, C61B, C91B); miscellaneous shellfish (R12B, R18B, R23B, Z18B, Z26B, Z37B, Z61B, Z91B, Z99B, aqua farm permits); or miscellaneous finfish (M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, or M99B).²⁰ These fisheries will be referred to as "predicate" fisheries.

B. DETERMINATION OF FINAL PERCENT SHARES

Allocations to the PWS 1989 Fund would be divided among three subfunds in the following proportions: 64.4% to "subfund A," 34.3% to "subfund B" and 1.3% to "subfund C." Each subfund would be divided equally among those who qualify. Plaintiffs' counsel expect the value of a share from subfund A to be roughly three times the value of a share from subfund B, and ten times the value of a share

¹⁶Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁷Claimants must submit signed, verified claim forms, unless otherwise provided by their counsel. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁸In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

¹⁹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²⁰Qualification criteria for 1989 lost income funds for these claim categories are set forth in the distribution plans filed separately with the Court.

from subfund C.²¹ Claimants who qualify for more than one subfund would be paid only from the highest-paying subfund for which they qualify.²²

1. Subfund A

A claimant can qualify for subfund A in two ways. One way is to qualify as a permit holder for the 1989 lost income fund of a limited-entry salmon fishery (drift (S03E), seine (S01E) or set (S04E)), a limited-entry roe herring fishery (drift (G34E), pound (L21E) or seine (G01E)), or the open-entry bait herring seine fishery (H01E). The second way requires a claimant to qualify as a license holder claimant for the 1989 lost income fund of a predicate open-entry fishery (other than bait herring seine),²³ and establish a substantial and sustained pre-spill participation in the fishery.²⁴ To establish the requisite degree of pre-spill participation, a claimant must submit documentary evidence of the following:²⁵

Crab -- recorded harvests of at least 2,000 pounds in two of three seasons 1986, 1987 and 1988.

Pot Shrimp -- either (i) registered 100 or more pots for the 1989 season and recorded harvests of at least 1,000 pounds in either 1987 or 1988; or (ii), if 100 or more pots were not registered for the 1989 season, recorded harvests of at least 1,000 pounds in 1987 and 1988.

Trawl Shrimp -- recorded harvests of at least 5,000 pounds in the PWS Management Area in two of three seasons 1986, 1987 and 1988.

Miscellaneous Finfish -- recorded harvests of at least 10,000 pounds in the PWS Management Area in two of three seasons 1986, 1987 and 1988.

Sablefish -- recorded harvests of at least 10,000 pounds in the PWS Management Area in two of three seasons 1986, 1987 and 1988.

Wild Herring Roe -- either: (i) purchased a 1989 license and recorded landings of at least 1,000 pounds in either 1987 or 1988; or (ii) if the claimant did not purchase a 1989 license, recorded landings of at least 1,000 pounds in 1987 and 1988.

²¹Based on claims data for 1989 from the Alyeska Claims Program, plaintiffs' counsel expect 950 to 1,000 claimants to qualify for subfund A, 1,500 to 1,600 claimants to qualify for subfund B, and fewer than 200 claimants to qualify for subfund C. Using the upper estimates of 1,000, 1,600 and 200 claimants, respectively, a subfund A claimant would be allotted 0.0644% of the PWS 1989 Fund (*i.e.*, 1/1000 of 64.4%), a subfund B claimant 0.021% (*i.e.*, 34.3% divided by 1,600), and a subfund C claimant 0.0065% (*i.e.*, 1.3% divided by 200). Distributions from subfund B would be roughly one-third those from subfund A, and distributions from subfund C would be one-tenth those from subfund A. By fixing percentage allocations to the three subfunds based on projected rather than actual claims, there is a potential for divergence from the 3:1 and 10:1 ratios. Plaintiffs' counsel expect any divergence to be slight. By fixing percentages in advance, administrative expense and burden is lessened, and payments will be expedited.

²²This distribution plan modifies in two relatively minor respects the distribution method outlined in the Allocation Plan (*see* 19 n.26), in order to reduce administrative burdens, expedite payment and more fairly apportion the PWS 1989 Fund. First, the Allocation Plan identified as predicate fisheries only the PWS salmon, roe herring, bait herring seine, crab and pot shrimp fisheries. Plaintiffs' counsel have concluded that it would be unfair to exclude license holders and crew who qualify for 1989 lost income funds in the PWS miscellaneous finfish, sablefish and trawl shrimp fisheries. Second, the Allocation Plan proposed to divide the PWS 1989 Fund into two subfunds, one for permit holders and one for crew, with a permit holder share equal to three times that of a crew share. Plaintiffs' counsel have concluded that using only two subfunds would lead to disproportionate shares in some cases, and that there should be a third subfund which pays a one-tenth share. These two changes have only a modest impact. The number of qualifying claimants is expected to increase by less than 5% as a result of adding the miscellaneous finfish, sablefish and trawl shrimp fisheries. Fund C, from which "one-tenth" shares are paid, is allocated only 1.3% of the 1989 Fund.

²³These fisheries are: wild herring roe harvest (L12E); Dungeness crab (D09E, D91E); king crab (K09E, K91E); tanner crab (T09E, T91E); pot shrimp (P09E, P91E); trawl shrimp (P07B, P17B); sablefish (C06B, C07B, C09B, C17B, C26B, C37B, C61B, C91B); and miscellaneous finfish (M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, or M99B).

²⁴To compete successfully in a limited-entry PWS roe herring and salmon fishery, or the open-entry PWS bait herring fishery, a permit holder must make substantial financial and personal commitments. Plaintiffs' counsel therefore believe it fair that, to qualify for the PWS 1989 Fund, a permit holder in these fisheries need only qualify for a 1989 lost income fund. The other predicate fisheries are open-entry, and do not require substantial outlays for permits. Nevertheless, many open-entry license holders made substantial financial and personal commitments, through expenditures on gear and equipment and sustained participation over time. Plaintiffs' counsel believe it fair to allot open-entry permit holders with "substantial and sustained" commitments the same share of the PWS 1989 Fund as limited-entry permit holders. However, not all open-entry license holders made substantial capital investments or participated on a full-time basis. The "substantial and sustained" criteria is intended to distinguish open-entry license holders who can fairly be said to have suffered loss in quality of life or emotional distress on a par with limited-entry permit holders, based on the strength of their commitment to the fishery. Open-entry license holders who do not satisfy the "substantial and sustained" criteria for subfund A can still qualify for smaller shares from subfund B or subfund C.

²⁵Damages of PWS miscellaneous shellfish claimants will be evaluated on a case-by-case basis in the Supplemental Claims Program, and it is impossible to state in advance bright line qualification criteria for PWS 1989 Fund subfunds. Plaintiffs' counsel will determine PWS miscellaneous shellfish claimants' eligibility for PWS 1989 Fund subfunds on a case-by-case basis, in a manner consistent with criteria for other predicate fisheries.

2. Subfund B

A claimant can qualify for subfund B in two ways. One way is to qualify as crew for the 1989 lost income fund of a limited-entry PWS salmon fishery (drift (S03E), seine (S01E) or set (S04E)), a limited-entry PWS roe herring fishery (drift (G34E), pound (L21E) or seine (G01E)), or the PWS bait herring seine fishery.

The second way requires a claimant to qualify as a license holder claimant for the 1989 lost income fund of a predicate open-entry fishery (other than PWS bait herring seine), *see supra*, and establish the following degree of pre-spill participation:²⁶

Crab -- recorded harvests of at least 1,000 pounds in two of three seasons 1986, 1987 and 1988.

Pot Shrimp -- either (i) registered 50 or more pots for 1989, and recorded harvests of at least 500 pounds in either 1987 or 1988; or (ii), if the claimant did not register 50 or more pots for 1989, recorded harvests of at least 500 pounds in 1987 and 1988.

Trawl Shrimp -- recorded harvests of at least 2,500 pounds in two of three seasons 1986, 1987 and 1988.

Miscellaneous Finfish -- recorded harvests of at least 5,000 pounds in two of three seasons 1986, 1987 and 1988.

Sablefish -- recorded harvests of at least 5,000 pounds in two of three seasons 1986, 1987 and 1988.

Wild Herring Roe -- either: (i) purchased a 1989 license, and recorded landings of at least 500 pounds in either 1987 or 1988; or (ii) if the claimant did not purchase a 1989 license, recorded landings of at least 500 pounds in 1987 and 1988.

3. Subfund C

Eligible for subfund C would be claimants who qualify for the PWS 1989 Fund, but do not qualify for subfunds A or B -- *i.e.*, those who qualify as license holders or crew for a 1989 seasonal lost income fund for the PWS crab, shrimp, wild herring roe, miscellaneous finfish or sablefish fisheries, but do not meet the "substantial and sustained" criteria for subfunds A or B.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS 1989 Fund claimant a Final Percent Share, which is the claimant's percent share of PWS 1989 Fund allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the actual percent share of the subfund for which the claimant qualifies, times the claimant's percent share of the subfund.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a "Final Distribution," in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, the TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough Recoveries. *See* Plan Of Allocation 38-39. Because the 1989 Fund was allocated nothing from the Exxon Claims Program, TAPL Fund or Alyeska Settlement, in the Final Distribution it will be credited with 3.33% of them, and final distributions of 1989 Fund claimants will be increased accordingly.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including PWS 1989 Fund claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁶For crew in limited-entry salmon and roe herring fisheries, or the bait herring fishery, participation typically amounts to full-time employment or produces a substantial portion of annual income from commercial fishing. Open-entry permit holders who satisfy the subfund B "substantial and sustained" criteria can fairly be said to have suffered loss in quality of life and emotional distress on a par with limited-entry crew. Eligibility of PWS miscellaneous shellfish claimants will be determined on a case-by-case basis. *See supra*.

²⁷This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. The Interim Recovery would be distributed in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
HALIBUT (B05B, B06B, B26B, B61B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Halibut Claim Category, which includes claims for lost income in the 1989 season by "license holder"³ and "derivative share"⁴ claimants ("halibut claimants"). Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object has been given to halibut claimants.⁶

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, halibut claimants share in signatories' common recoveries, which presently include roughly: \$200,298,000 distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon⁹ to be distributed in the Supplemental Claims Program; and a

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased a B05B, B06B, B26B or B61B license and harvested in the Cook Inlet and/or PWS Management Area, and others who qualify as "displaced" from the Cook Inlet or PWS Management Areas in 1989. *See infra*.

⁴"Derivative share" claimants include other participants in the fishery such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the Halibut Claim Category, only putative halibut claimants have any financial interest in how allocations to the claim category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that halibut claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in halibut allocations, but that their claims be discounted by an additional 50%. When plaintiffs reached a joint prosecution agreement in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar figures are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected.¹² The projected halibut matrix share of these recoveries is 0.0006%.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute halibut claimants' 0.0006% matrix share (roughly \$140 less attorneys' fees approved by the Court¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and \$42,000 allocation from the Alyeska Settlement.¹⁶ From these amounts will be deducted attorneys' fees, and litigation and claims administration expenses, approved by the Court.¹⁷

B. FUTURE RECOVERIES

Halibut claimants have been allocated \$42,150 from recoveries collected to date -- i.e., \$42,000 from the Alyeska Settlement and \$150 from Native/Municipality/Kodiak Island Borough recoveries. This amount exceeds the halibut claim category's projected 0.0006% matrix share of all signatories' recoveries (i.e., \$31,200).¹⁸ Accordingly, after halibut claimants' \$42,150 from collected recoveries are distributed in the Supplemental Claims Program, plaintiffs' counsel do not expect to make any additional distributions to halibut claimants.¹⁹

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for halibut claimants,²⁰ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all halibut claimants will be required to identify themselves and submit a claim before a specified cut-off date.²¹ Plaintiffs' counsel will automatically register a claim for those who filed halibut claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Halibut Claim Category (Final Percent Share).²² All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³The halibut matrix share is based on the fishery's losses relative to other claim categories, discounted by 97% for litigation risk like those of unopened fishery claim categories. See Allocation Plan n.27.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. See Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵This and other allocations to the Halibut Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶Halibut claimants were allocated money from the Alyeska Settlement based on plaintiffs' counsels' best damage estimates available at the time. However, due to the extreme difficulty of identifying qualifying halibut claimants and valuing individual damages, no distributions were made. See Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support, 19-20 (Oct. 1, 1993) ("Alyeska Distribution Plan").

¹⁷From the \$42,000 Alyeska Settlement allocation, class claimants pay attorneys' fees of 15%, see Alyeska Distribution Plan 15, and direct action claimants pay attorneys' fees based on their retainer agreements.

¹⁸This amount, which does not include post-judgment interest, consists of \$150 from Native/Municipality/Kodiak Island Borough recoveries, \$500 from the Alyeska Settlement, \$350 from the uncollected Phase IIA judgment and prejudgment interest, \$28,600 from the uncollected punitive damages judgment, and \$1,200 from Exxon Claims and TAPL Fund recoveries. A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁹It is conceivable, but unlikely, that signatories' recoveries from Exxon could grow so large -- e.g., by successful appeals by plaintiffs or accrual of post-judgment interest -- that halibut claimants' matrix share of all signatories' recoveries would exceed the \$42,150 already allocated to them. If this occurs, additional distributions will be made to halibut claimants.

²⁰Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²¹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²²In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²³

Third, plaintiffs' counsel will distribute halibut claimants' combined \$42,150 share of the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.²⁴ No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The oil spill appears to have had little direct effect on commercial halibut fishing after 1989, or in 1989 outside of the Cook Inlet and PWS Management Areas. Within the Cook Inlet and PWS Management Areas, the oil spill did not result in closures, but rather in restrictions on fishing and temporary exclusions. For example, in PWS, ADF&G announced in mid-May of 1989 it would permit halibut openers subject to the State's "zero-tolerance" policy but that lead time would be shortened to only 6-12 hours. Also, spill response operations prevented some Cook Inlet and PWS halibut fishermen from fishing in customary waters.

The lost income fund is intended to compensate only claimants who fished, or would have fished but for the oil spill, in the Cook Inlet or PWS Management Areas in 1989. Eligible to share would be: license holders and derivative share claimants who "participated" in 1989;²⁵ and "displaced" claimants unable to participate as a result of the spill.²⁶ Every halibut claimant must submit a verified statement which details how the spill diminished their harvest from PWS or Cook Inlet. Every displaced claimant must also submit a verified statement which details how the oil spill prevented them from participating, and establishes that the claimant was ready, willing and able to participate.

Plaintiffs' counsel propose to divide the halibut lost income fund based on projected production, in the following manner.²⁷ Commercial halibut fishermen operating in Alaskan waters were required to register their vessels with the IPHC, which classified vessels into eight classes according to overall length.²⁸ The attached Table 1 reports 1988 harvest performance by vessel class in IPHC regulatory area 3B,²⁹ which includes the Cook Inlet and PWS Management Areas. For each qualifying license holder claimant, plaintiffs' counsel would calculate a "gross" share proportional to the ratio of the average 1988 harvest weight (reported on Table 1) for the license holder's vessel class ("base weight"), to the sum of base weights of all qualifying license holder claimants.³⁰ For license holders who actually fished in 1989, the gross share would be divided among license holder and derivative share claimants in proportion to contractual arrangements. For license holder claimants who did not fish in 1989, but nevertheless qualify, gross shares would be reduced proportionately by projected payments to derivative shareholders, calculated on a case-by-case basis from historical data or, if necessary, fleet-wide averages. Displaced derivative share claimants would be allotted a proportional share of the lost income fund based on their projected earnings, calculated on a case-by-case basis.³¹

²³If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²⁴As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries if halibut claimants are allocated a share. See *supra*.

²⁵License holders "participated" if they purchased a halibut license, registered a vessel with the International Pacific Halibut Commission (IPHC), and harvested in the Cook Inlet or PWS Management Areas. Crew "participated" if they were employed by a participating license holder. Vessel owners "participated" if they leased or otherwise contracted a vessel which was registered with IPHC, and used to harvest halibut in the Cook Inlet or PWS Management Areas.

²⁶A fisher who did not purchase a license in 1989 may still qualify as a "displaced" license holder, by providing documentary evidence that he or she either: (1) held a halibut license, registered a vessel with IPHC, and harvested in the Cook Inlet or PWS Management Areas in two of three seasons 1987, 1988 and/or 1990; or (2) was paid a Cook Inlet or PWS halibut claim by the Exxon Claims Program or TAPL Fund. To qualify as "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant (evidenced by a writing or license holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a Cook Inlet or PWS halibut crew claim by the Exxon Claims Program or TAPL Fund; or (3) participated (as a license holder or crew) in the Cook Inlet or PWS halibut fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a license holder claimant; or (2) leased a vessel registered with IPHC, and used in the Cook Inlet or PWS halibut fishery, in two of three seasons 1987, 1988 or 1990.

²⁷Also, halibut claimants whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of PWS halibut allocations proportional to the ratio of loss to total PWS halibut matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of PWS halibut allocations.

²⁸See Notice of Final Rule, National Oceanic and Atmospheric Association, 54 Fed. Reg. 19,895, 19,898-99 (May 9, 1989). The vessel classes were: Class A (1' to 25'); Class B (26' to 30'); Class C (31' to 35'); Class D (36' to 40'); Class E (41' to 45'); Class F (46' to 50'); Class G (51' to 55'); and Class H (56' or more). IPHC fishing quotas were based on vessel classes.

²⁹See 1988 Annual Report of the International Pacific Halibut Commission: Celebrating The Pacific Halibut Fishery Centennial, 1888-1988, p. 19.

³⁰If the license holder claimant registered a vessel with IPHC in 1989, his or her gross share would be based on the vessel's length. If the license holder claimant did not register a vessel, his or her gross share would be based on the length of vessel which the claimant used in other seasons (e.g., 1987, 1988, 1990), or, if necessary, on the median vessel length of all license holder claimants who registered vessels.

³¹Plaintiffs' counsel lack sufficient data at this time to reliably project the number of qualifying license holders, or their total harvest from the Cook Inlet and Prince William Sound Management Areas. This data will become available once claims are made and evaluated in the Supplemental Claims Program.

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each PWS halibut claimant a Final Percent Share, which is the claimant's percent share of all PWS halibut allocations calculated in the manner described *supra*.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

TABLE 1
1988 HALIBUT EFFORT AND HARVEST PACIFIC REGULATORY AREA 3B

Overall Vessel Length	IPHC Class	Vessels	Harvest (pounds)	Harvest Per Vessel (pounds)
<26'	A	12	20,000	1,700
26' - 30'	B	5	13,000	2,600
31' - 35'	C	29	127,000	4,400
36' - 40'	D	42	313,000	7,500
41' - 45'	E	39	479,000	12,300
46' - 50'	F	41	560,000	13,700
51' - 55'	G	15	385,000	25,700
>55'	H	96	5,132,000	53,500

SOURCE: 1988 Annual Report of the International Pacific Halibut Commission.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
CHIGNIK SALMON SEINE (S01L) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Chignik Salmon Seine (S01L) Claim Category, which includes claims for: lost income in the 1989 through 1991 seasons by holders of S01L permits and "derivative share claimants";³ devaluation of S01L permits by permit owners; and devaluation of seine vessels used in the fishery by vessel owners. Permit owners, permit holders, and derivative share claimants will be collectively referred to as "Chignik salmon seiners." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object is given to Chignik salmon seiners.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Chignik salmon seiners share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the Chignik Salmon Seine Claim Category, no plaintiff except putative Chignik salmon seine claimants has any interest in how Chignik salmon seine allocations are distributed. Therefore, only putative Chignik salmon seine claimants have standing to object to this distribution plan. Plaintiffs' counsel propose that Chignik salmon seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Chignik salmon seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Chignik salmon seine matrix share is projected to be 4.9496% of signatories' share of the Alyeska Settlement, and 4.9581% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute Chignik salmon seiners' projected 4.9581% share (roughly \$1,226,000 less attorneys' fees approved by the Court¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$3,790,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Chignik salmon seiners to be allocated roughly \$2,854,000 from the Phase IIA judgment and prejudgment interest, and \$236,410,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Chignik salmon seiners also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Chignik salmon seiners will be allocated the difference between their projected 4.9581% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Chignik salmon seiners. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Chignik salmon seiners' actual allocation of \$3,790,000 from the Alyeska Settlement was less than their 4.9496% matrix share (roughly \$4,322,000), the difference of \$532,000 will be allocated to Chignik salmon seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,843,716,000 in additional recoveries, Chignik salmon seiners' total allocation from all recoveries will be roughly \$257,596,000 (less attorneys' fees and expenses), which includes \$1,226,000 from Native/Municipality/Kodiak Island Borough recoveries, \$4,322,000 from the Alyeska Settlement, \$2,854,000 from the uncollected Phase IIA judgment and prejudgment interest, \$236,410,000 from the uncollected punitive damages judgment, and \$9,236,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough Recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The Chignik salmon seine matrix share of 4.9581% is slightly lower than the 4.96% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. Chignik salmon seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴Allocations to the Chignik Salmon Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Chignik salmon seiners to evaluate this distribution plan under the assumption that Chignik salmon seiners ultimately will be allocated \$257,596,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Chignik salmon seiners,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all Chignik salmon seiners will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Chignik salmon seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Chignik Salmon Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Chignik salmon seiners' \$1,226,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*e.g.*, money reserved for absent class members, for which no claim was made) remaining from Chignik salmon seiners' \$3,790,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide Chignik salmon seine allocations into five separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S01L permits; a "vessel devaluation" fund based on loss in market value of Chignik salmon seine vessels; and three separate "seasonal" funds for the 1989, 1990

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times Chignik salmon seiners' combined \$5,016,000 from the Alyeska and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Chignik salmon seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Chignik salmon seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary due to refinements of Chignik damage estimates made since the Alyeska Settlement distribution plan was filed.

and 1991 fishing seasons, based on diminished price and/or lost harvest.²² These five funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for Chignik salmon seine matrix shares.²³ Permit and vessel devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁴

The attached Table 1 lists projected percent shares of Chignik salmon seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$257,596,000. Projected fund percent shares are: 5.8% for the permit devaluation fund; 4.2% for the vessel devaluation fund; and 90% for the three seasonal funds, including -- 21.5% for 1989, 29% for 1990 and 39.5% for 1991. Actual percent shares of Chignik salmon seine funds are likely to vary slightly from projected percent shares.²⁵

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S01L permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S01L permit on the date of the oil spill; or (2) acquired ownership of an S01L permit before July 1, 1990.²⁶ See *infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁷ A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S01L permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and June 30, 1990. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

Each qualifying permit owner who owned a permit continuously from the date of the oil spill through 1990:3 (*i.e.*, the third calendar quarter of 1990) would be allotted a full share,²⁸ equal to the amount of the permit devaluation fund divided by 105, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁹ Qualifying permit owners who sold or purchased permits after the oil spill would be allotted only a portion of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from Chignik salmon seiners. It is fair and reasonable to base shares on market values rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³⁰

²²In addition, Chignik salmon seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of Chignik salmon seine allocations, proportional to the ratio of loss to total Chignik salmon seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Chignik salmon seine allocations.

²³See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data from the Alyeska Settlement, and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, the Chignik Exxon Committee formed by the Chignik Seiners Association, and plaintiffs' counsel.

²⁴See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁵For example, the projected fund percent share of 5.8% for the permit devaluation fund is based on an assumption that a total of 105 shares will be paid out -- *i.e.*, the number of marketable S01L permits in 1989. This is a reasonable assumption, and a cautious one in that it assures adequate reserves for the fund. However, under criteria proposed in this distribution plan, fewer than 105 full shares are likely to be paid out because some post-spill sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all Chignik salmon seine funds, resulting in a modification of projected fund percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁶Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁷A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁸The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁹This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

³⁰In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") grew from \$17,900 in 1989:2 to a maximum of \$156,900 in 1990:2. After 1990:2, the projected-actual gap steadily narrowed to \$26,700 by 1991:4.

A permit owner at the time of the oil spill, who held his or her permit until at least 1990:2 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before 1990:2 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$156,900. These fractions, expressed as percentages, are listed on Table 2.³¹

2. Post-Spill Permit Buyers

Plaintiffs' counsel do not think it fair or appropriate for someone who purchased an S01L permit in 1990:2 or after to share in the permit devaluation fund, because during this time the projected-actual gap never widened, and therefore the oil spill did not cause the purchaser any loss in market value. Qualifying buyers who purchased before 1990:2, and held through 1990:2, would be allotted only a fraction of a full share proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.³²

B. VESSEL DEVALUATION FUND

The vessel devaluation fund is intended to compensate owners of seine vessels used in the Chignik salmon seine fishery for loss in market value of their vessels caused by the oil spill.³³ Plaintiffs' counsel propose that distribution of the vessel devaluation fund be based on principles similar to those used for distribution of the permit devaluation fund, because both funds compensate for lost value of an asset used in the Chignik salmon seine fishery.

A full share of the vessel devaluation fund would equal the amount of the fund divided by number of "qualifying vessels" in the Chignik salmon seine fishery.³⁴ Full shares would be allotted to vessel owners who held an S01L permit for the 1989 season and owned a seine vessel from the date of the spill through May 31, 1990. Full shares also would be allotted to vessel owners who did not hold an S01L permit for the 1989 season, but owned a seine vessel from the date of the spill through May 31, 1990 and qualify as a vessel owner for the 1989 seasonal lost income fund. *See infra.*

Partial shares would be allotted to vessel owners who owned a seine vessel at the time of the spill, but subsequently sold the vessel and did not replace it. Partial shares also would be allotted to vessel owners who did not own a vessel at the time of the spill, but purchased one before 1990:2 and qualify as either a permit holder or vessel owner for the 1990 seasonal lost income fund.³⁵ Qualifying post-spill vessel sellers and purchasers would be allotted partial shares based on the date of sale, calculated using percentages on Table 2.

C. SEASONAL LOST INCOME FUNDS

The Chignik salmon seine fishery suffered greatly as a result of the spill. There were crippling closures during 1989, and greatly depressed salmon prices in 1989, 1990 and 1991. During the past two years, Chignik salmon seiners have debated extensively over how allocations to the fishery should be distributed. Fishers met and consulted with plaintiffs' counsel, and studied the distributional issues in

³¹For example, someone who purchased an S01L permit before the oil spill and sold in 1989:4 would be allocated 56% of a full share, because only 56% of the maximum \$159,900 projected-actual gap had occurred by that time.

³²For example, someone who purchased an S01L permit in 1989:4 would be allotted 44% of a full share, because 56% of the maximum \$156,900 projected-actual gap had taken place by that time, and 44% occurred afterwards. Someone who purchased an S01L permit after the spill and sold it before 1990:2 would be allotted a portion of a full share, based on the difference between the projected-actual gaps at the time of purchase and sale. Such a "post-spill purchaser/seller" would be allotted no share if the projected-actual gap at the time of sale was less than the projected-actual gap at the time of purchase. If the projected-actual gap at the time of sale exceeded the projected-actual gap at the time of purchase, the post-spill purchaser/seller would be allotted a fraction of a full share, equal to the ratio of the difference between the projected-actual gap at the time of sale and purchase to the maximum projected-actual gap of \$156,900.

³³Plaintiffs' counsel propose to determine distributions without regard to actual values and physical characteristics of vessels. Accounting for individual variations would be prohibitively expensive and time-consuming. Every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

³⁴For purposes of illustration in this distribution plan, it is assumed that the number of qualifying vessels is 105 -- *i.e.*, the estimated number of qualifying permits. This is a reasonable estimate based on available data, but will be revised if necessary based on additional data accumulated in the Supplemental Claims Program. If the number of qualifying vessels proves to be less than 105, any surplus in the vessel devaluation fund would be reallocated among all Chignik salmon seine funds. If the number of qualifying vessels fell short of 105, shares of the vessel devaluation fund would be reduced proportionally.

³⁵Qualification for the 1990 seasonal lost income fund is required because the vessel devaluation fund is intended to compensate only those owners of vessels used in the Chignik salmon seine fishery.

groups among themselves.³⁶ Chignik salmon seiners agree that all were harmed by the spill, and want to compromise and resolve distribution questions without prolonged strife.

Chignik salmon seiners have forged a consensus for a distribution plan that allows each fisher the benefit of his or her production track record in pre-spill seasons, and in 1990 when fishing was not impaired by the spill, although prices were depressed. Most fishers believe that their actual production in 1989 and 1991 is not a fair indicator of how they would have fared without the spill, due to closures and disruptions in 1989, and severely depressed prices in 1991 which caused the fleet to fish cooperatively for a significant part of the season. After extensive consultation and consideration of alternative distribution proposals, plaintiffs' counsel propose to base the distribution of seasonal lost income funds based upon pre-spill and 1990 production in the following manner.

1. 1989 Seasonal Fund

The 1989 seasonal fund would be divided among: holders of "fishable" permits;³⁷ derivative share claimants who "participated" during the 1989 season;³⁸ and "displaced" derivative share claimants who were unable to participate during the 1989 season as a result of the spill.³⁹ Distributions would be determined in the following manner.

For each qualifying permit holder, plaintiffs' counsel would calculate a "projected harvest," equal to the larger of the permit holder's: "two-best pre-spill harvest," which is the average of his or her best two harvests (measured by dollar value⁴⁰) during the 1984 through 1988 seasons;⁴¹ and actual 1990 harvest. Each permit holder would be assigned a "gross share" of the 1989 seasonal fund, in proportion to his or her projected harvest. Gross shares of permit holders who made contractual arrangements for 1989 would be divided proportionally among permit holder and derivative share claimants based upon the contractual arrangements. Gross shares of permit holders who did not make contractual arrangements would be reduced proportionally based upon projected payments to shareholders (using historical data or fleet-wide averages). Displaced derivative share claimants who did not make contractual arrangements would be allotted proportional shares of the 1989 seasonal fund, calculated on a case-by-case basis from historical data or fleet-wide averages.

2. 1990 Seasonal Fund

The 1990 seasonal fund would be divided among holders of fishable permits, and participating derivative share claimants. Non-participating derivative share claimants would not be eligible because, unlike 1989, there is little evidence that the spill significantly reduced fishing effort in 1990.

Distributions would be determined in a manner similar to distributions from the 1989 seasonal fund. Plaintiffs' counsel would calculate for each permit holder a gross share of the 1990 seasonal fund proportional to the permit holder's projected harvest.⁴² See *supra*. Gross shares of permit holders who made contractual arrangements share would be divided proportionally among the permit holder and his

³⁶ Plaintiffs' counsel met in person with Chignik salmon seiners in June 1995 in Chignik, November 1995 in Anchorage, throughout the spring and summer of 1996 in the Puget Sound area, and in December 1996 in Anchorage, and telephonically at various times during the 1996 fishing season.

³⁷ "Fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. See *infra*.

³⁸ Crew and spotters "participated" if they were actually employed to work in the fishery during the season. The owner of a seine vessel "participated" if he or she leased or otherwise contracted a seine vessel used in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners "participated" if the permit holder with whom they had an agreement actually fished.

³⁹ To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) held a 1989 crew license and crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. A spotter must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; (2) was paid a spotter claim for the Chignik salmon seine fishery by the Exxon Claims Program or TAPL Fund; or (3) spotted in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate.

⁴⁰ As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds Of Fish" times the "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds Of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value Of Catch entries calculated by CFEC.

⁴¹ New entrants in 1989 would be assigned a "median" two-best pre-spill harvest, which equals the midpoint of two-best pre-spill harvests of permit holders with landings in two or more seasons 1984 through 1988, ranked in order. For example, of 105 permit holders, the median two-best pre-spill harvest would be the 53rd-largest such harvest. New entrants in 1988 would be assigned a two-best pre-spill harvest equal to the larger of their actual 1988 harvest, and the median two-best pre-spill harvest.

⁴² For a permit holder who lacks two or more seasons of pre-spill history, projected harvest would equal actual 1990 harvest if the permit holder participated in 1990, or the fleet-wide median harvest in 1990 if the permit holder did not participate.

or her derivative share claimants based upon the contractual arrangements. Gross shares of permit holders who did not make contractual arrangements would be reduced proportionally by projected payments to shareholders, estimated from historical data and fleet-wide averages.

3. 1991 Seasonal Fund

Like the 1990 seasonal fund, the 1991 seasonal fund would be divided among holders of fishable permits and participating derivative share claimants. Permit holders' gross shares of the 1991 seasonal fund would be proportional to projected harvests.⁴³ *See supra*. Gross shares of permit holders who made contractual arrangements would be divided proportionally among the permit holder and his or her derivative share claimants based upon the contractual arrangements. Gross shares of permit holders who did not make contractual arrangements would be reduced proportionally by projected payments to shareholders.

4. Intra-season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "time-adjusted" gross share of the seasonal lost income fund. The time-adjusted gross share would equal the permit holder's gross share, *see supra*, reduced proportionally by the number of days during the season that he or she held the permit.⁴⁴ For a permit holder who participated, the time-adjusted gross share would be divided into time-adjusted "net shares" for the permit holder and his or her derivative share claimants, in proportion to contractual arrangements. For a permit holder who did not participate, the time-adjusted net share would be derived by reducing the time-adjusted gross share in proportion to projected payments to shareholders.

Derivative share claimants would be allotted their time-adjusted net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their time-adjusted net shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

D. MULTIPLE SALMON SEINE PERMIT HOLDERS AND THEIR DERIVATIVE SHAREHOLDERS

Some holders of Chignik salmon seine (S01L) permits also held one or more other limited-entry salmon seine permits -- i.e., Cook Inlet (S01H), Kodiak (S01K), PWS (S01E), Peninsular Aleutians (S01M) or Southeast Alaska (S01A). By law, a multiple salmon seine permit holder may fish only one salmon seine permit each season. Some special requirements therefore are needed to prevent unfair double recoveries.

1. Permit Devaluation Funds

Because permits are separate assets, it is fair for multiple salmon seine permit owners to recover for each of their salmon seine permits. Owners of multiple salmon seine permits may recover from permit devaluation funds in each fishery for which they qualify. For example, a claimant who owned both Chignik and Kodiak salmon seine permits may recover from both the Chignik and Kodiak salmon seine permit devaluation funds.

2. Seasonal Lost Income Funds

Because multiple salmon seine permit holders may utilize only one permit in a season, it would not be fair for them to recover from more than one salmon seine seasonal lost income fund each season. In 1989, the oil spill forced fishermen to make difficult decisions under abnormal circumstances. For this reason, a multiple salmon seine permit holder may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she actually chose to fish. Likewise, a derivative share claimant may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she participated. However, a claimant may recover from only one salmon seine seasonal lost income fund.

In a season after 1989, if a multiple salmon seine permit holder participated in an "oiled" salmon seine fishery, then the permit holder and his or her derivative shareholders must claim against the lost income fund for the salmon seine fishery in which they participated, and may not recover from any other salmon seine lost income fund. If a multiple salmon seine permit holder participated in an "unoiled" salmon seine fishery (i.e., Peninsular Aleutians (S01M) or Southeast Alaska (S01A)), the permit holder and his or her derivative shareholders may elect to recover from any "oiled" salmon seine lost income fund for which they qualify, rather than the seasonal lost income fund for the "unoiled" fishery in which they participated.⁴⁵

⁴³ Projected harvests, rather than actual production, are used because there was fleet-wide cooperative fishing from June 23, 1991 through July 4, 1991, due to depressed prices. For new entrants in 1991, gross shares will be based on their market share during the non-cooperative portion of the 1991 season.

⁴⁴ For this purpose, the start date of the season would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For 1989, the year in which fishing was disrupted as a result of the spill, the start date of the season was June 12, 1989 and the end date was September 27, 1989.

⁴⁵ In the Chignik, Peninsular Aleutians and Southeast Alaska salmon seine fisheries, there are seasonal lost income funds only for 1989, 1990 and 1991. In the Cook Inlet, Kodiak and PWS salmon seine fisheries, there are seasonal lost income funds for every season 1989 through 1995.

3. Vessel Devaluation Funds

A vessel owner is entitled to only one vessel devaluation recovery for his or her vessel. A multiple salmon seine permit holder who also owns a seine vessel may recover from only one vessel devaluation subfund per season, and his or her total recovery for the vessel may not exceed one full vessel devaluation share. Plaintiffs' counsel have done their best to draft salmon seine distribution plans which protect against double recoveries for salmon seine vessel owners, *see, e.g., supra*, but this is a complicated claims area and it is impossible to anticipate all scenarios in advance. Plaintiffs' counsel will ensure that owners of vessels used in two or more salmon seine fisheries receive fair, but not excessive, compensation for vessel devaluation.

E. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Chignik salmon seiner a Final Percent Share, which is his or her percent share of Chignik salmon seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including Chignik salmon seiners, would be adjusted to reflect the extent to which they already have been compensated.⁴⁶ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁶This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
PROJECTED FUND PERCENT SHARES OF CHIGNIK
SALMON SEINE (S01L) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	5.8%	\$14,866,000
Vessel Devaluation	4.2%	\$10,772,000
Seasonal Funds		
1989	21.5%	\$55,360,000
1990	29.0%	\$74,722,000
1991	39.5%	\$101,876,000
Subtotal	90.0%	\$231,958,000
Total	100%	\$257,596,000

INCLUDES ATTORNEYS' FEES

Table 2
CHIGNIK SALMON SEINE (S01L) PERMIT DEVALUATION FUND

Date	Projected Market Value	Actual Market Value	Projected- Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Quarter	% Share Of Owner Who Purchased In Quarter, Held To 1990:2
1989:2	\$392,900	\$375,000	\$17,900	11%	89%
1989:3	\$436,700	\$384,100	\$52,600	34%	66%
1989:4	\$480,600	\$393,200	\$87,400	56%	44%
1990:1	\$524,400	\$402,200	\$122,200	78%	22%
1990:2	\$568,200	\$411,300	\$156,900	100%	0%

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
COOK INLET SALMON SEINER (S01H) CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The Exxon Valdez Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Lower Cook Inlet (LCI) Salmon Seine (S01H) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S01H permits and "derivative share claimants";³ devaluation of S01H permits by permit owners; and devaluation of seine vessels used in the fishery by owners of the vessels. Permit owners, permit holders, and derivative share claimants will be collectively referred to as "LCI salmon seiners." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to LCI salmon seiners.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the LCI Salmon Seine Claim Category, only putative LCI salmon seine claimants have any financial interest in how LCI salmon seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that LCI salmon seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in LCI salmon seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, LCI salmon seiners share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which are not yet collected.¹¹ The LCI salmon seine matrix share is projected to be 2.3148% of signatories' share of the Alyeska Settlement, and 2.3188% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute LCI salmon seiners' projected 2.3188% matrix share (roughly \$573,000 less attorneys' fees approved by the Court¹³) of Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from LCI salmon seiners' \$563,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect LCI salmon seiners to be allocated roughly \$1,335,000 from the Phase IIA judgment and prejudgment interest, and \$110,564,000 from signatories' share of the punitive damages judgment, as (and if) they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which LCI salmon seiners also will share.¹⁵

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, LCI salmon seiners will be allocated the difference between their projected 2.3188% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to LCI salmon seine claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because LCI salmon seiners' actual allocation of \$563,000 from signatories' portion of the Alyeska Settlement was less than their 2.3148% matrix share (roughly \$2,021,000), the difference (projected at \$1,458,000) will be allocated to LCI salmon seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁶Plaintiffs' counsel estimate that signatory plaintiffs recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough Recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The projected LCI salmon seine matrix share of 2.3188% is slightly lower than the 2.32% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. LCI salmon seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This and other allocations to the LCI Salmon Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatory plaintiffs succeed in collecting the projected \$4,825,716,000 in additional recoveries, LCI salmon seiners' total allocation from all recoveries will be roughly \$121,323,000 (less attorneys' fees and expenses), which includes \$573,000 from Native/Municipality/Kodiak Island Borough recoveries, \$2,021,000 from the Alyeska Settlement, \$1,335,000 from the uncollected Phase IIA judgment and prejudgment interest, \$110,564,000 from the uncollected punitive damages judgment, and \$4,645,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and LCI salmon seiners to evaluate this distribution plan under the assumption that LCI salmon seiners ultimately will be allocated \$121,323,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for LCI salmon seiners,¹⁶ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all LCI salmon seine claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁷ Plaintiffs' counsel will automatically register a claim for those who filed LCI salmon seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the LCI Salmon Seine Claim Category (Final Percent Share).¹⁸ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.¹⁹

Third, plaintiffs' counsel will distribute LCI salmon seiners' combined \$573,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*i.e.*, money reserved for absent class members for which no claim was made) remaining from LCI salmon seiners' \$563,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²⁰ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁶ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁷ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁸ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

¹⁹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²⁰ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$1,136,000 in LCI salmon seine allocations from the Alyeska and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the LCI salmon seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed LCI salmon seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide allocations to the LCI Salmon Seine Claim Category into nine separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S01H permits; a "vessel devaluation" fund based on loss in market value of LCI salmon seine vessels; and seven separate "seasonal" funds for the 1989 through 1995 fishing seasons, based on diminished price and/or lost harvest.²¹ These nine funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for LCI salmon seine matrix shares.²² Permit and vessel devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²³

The attached Table 1 lists projected percent shares of LCI salmon seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$121,323,000. Projected fund percent shares are: 17% for the permit devaluation fund; 7% for the vessel devaluation fund; and 76% for the seven seasonal funds, 8.9% for 1989, 20.9% for 1990, 18.7% for 1991, 6.9% for 1992, 1.7% for 1993, and 9.5% apiece for 1994 and 1995. Actual percent shares of the LCI salmon seine funds are likely to vary slightly from projected percent shares.²⁴

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S01H permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S01H permit on the date of the oil spill; or (2) purchased an S01H permit before April 1995.²⁵ See *infra*. Holders of non-marketable permits, such as interim use permits, would not qualify for the permit devaluation fund.²⁶ Permit owners who satisfy these requirements will be referred to as "qualifying permit owners."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S01H permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and April 30, 1995. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through April 1995 would be allotted a full share,²⁷ equal to the amount of the permit devaluation fund divided by 81, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁸ Qualifying permit owners who sold or purchased

²¹In addition, fishermen whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of LCI salmon seine allocations, proportional to the ratio of loss to total LCI salmon seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of LCI salmon seine allocations.

²²See Allocation Plan 5-6. To determine these matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, and plaintiffs' counsel. LCI salmon seine damages were presented and discussed in ongoing meetings with fishermen held in Anchorage, Homer and Kenai.

²³See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁴For example, the projected permit devaluation fund percent share of 17% is based on an assumption that a total of 81 shares will be paid out -- *i.e.*, the number of marketable S01H permits in 1989. This is a reasonable assumption, and a cautious one in that it assures adequate reserves the fund. However, under criteria proposed in this distribution plan fewer than 81 full shares are likely to be paid out, because some post-spill sellers and purchasers will not qualify for any share. See *infra*. Any surplus thus created would be reallocated proportionally among all LCI salmon seine funds, resulting in a modification of projected percent shares. Actual fund percent shares will be determined in the Supplemental Claims Program once complete claims data is available.

²⁵Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁶Holders of interim use permits would qualify for the seasonal fund (or funds) for the time when they held their permits. See *infra*. Similarly, a permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit.

²⁷The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁸This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

permits after the oil spill, but before 1995:2 (*i.e.*, the second calendar quarter of 1995) would be allotted only a portion of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from seiners, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.²⁹

1. Permit Owners At The Time Of The Spill Who Subsequently Sold

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") widened steadily, growing from \$7,000 in 1989 to \$111,000 by 1995:2.

A permit owner at the time of the oil spill, who held his or her permit until at least 1995:2 when the projected-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before 1995:2 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$111,000. These fractions, expressed as percentages, are listed on Table 2.³⁰

2. Post-Spill Permit Buyers

Qualifying permit buyers who purchased before 1995:2 would be allotted only a fraction of a full share, proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.³¹

B. VESSEL DEVALUATION FUND

The vessel devaluation fund is intended to compensate owners of seine vessels used in the LCI salmon seine fishery for loss in market value of their vessels caused by the oil spill.³² Plaintiffs' counsel propose that distribution of the vessel devaluation fund be based on principles similar to those used for distribution of the permit devaluation fund, because both funds compensate for the loss in value of an asset used in the LCI salmon seine fishery.

1. Vessel Subfunds

The vessel devaluation fund would be divided into five "vessel subfunds," one for each season 1989, 1990, 1991, 1992 and 1994 ("vessel subfunds"). For each vessel subfund, there is a corresponding "vessel subfund period." The period March 24, 1989 through May 31, 1990 will be referred to as the "1989 vessel subfund period." For the 1990, 1991, 1992 and 1994 vessel subfunds, the corresponding subfund period would run from June 1 of the year in question through May 31 of the subsequent year.

The projected percent share of each vessel subfund, listed on Table 3, is based on the loss in market value of S01H permits which occurred during the subfund period.³³ The projected percent share of the 1989 vessel subfund is 0.6%, or 9% of the total 7% projected percent share of the vessel devaluation fund. During the 1989 vessel subfund period, the projected-actual permit value gap widened by \$10,000, which represents 9% of the maximum projected-actual permit value gap of \$111,000. Similarly, the projected percent shares of the 1990, 1991 and 1992 vessel subfunds are 2.8%, 2.6% and 0.6%, respectively. There is no 1993 vessel subfund because the projected-actual permit value gap did not widen during June 1, 1993 through May 31, 1994. The projected percent share of the 1994 vessel subfund is 0.3%.

²⁹In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³⁰For example, a permit owner who purchased before the oil spill and sold in 1993:2 would be allocated 95% of a full share, because 95% of the maximum \$111,000 projected-actual gap occurred by that time.

³¹For example, someone who purchased in 1993:2 would be allotted 5% of a full share, because only 5% of the maximum \$111,000 projected-actual gap occurred after the purchase. See Table 2.

³²Plaintiffs' counsel propose to determine distributions without regard to actual values and physical characteristics of vessels. Accounting for individual variations would be prohibitively expensive and time-consuming. Every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

³³See *supra*. Permit market values are used as a proxy for vessel market values, because doing so greatly simplifies administration, and average vessel market values are highly correlated to permit market values. The 1994 and 1995 seasons are combined into a single vessel subfund (1994-95), because from 1994:2 through 1995:4 the projected-actual permit value gap narrowed each quarter.

2. Full Shares

A full share of a vessel subfund would equal the amount of the subfund divided by the number of qualifying vessels for the season.³⁴ From each vessel subfund, full shares would be allotted to vessel owners who held an S01H permit during the season, and owned a seine vessel for the entire subfund period. Full shares also would be allotted to claimants who did not hold an S01H permit during the season, but did own a seine vessel for the entire subfund period and qualify as a vessel owner for the corresponding LCI salmon seine seasonal lost income fund.³⁵ Vessel owners who satisfy these criteria would be allotted full shares even if they traded or exchanged their seine vessel during the subfund period.³⁶

By this method, a vessel owner who qualifies for full shares of all five vessel subfunds would, in effect, be allotted one full share of the vessel devaluation fund. This would include vessel owners held an S01H permit and owned a seine vessel from the date of the spill through 1995:2. It also would include vessel owners who never held an S01H permit, as long as they qualify as vessel owners for all seasonal lost income funds from 1989 through 1994.

3. Vessel Owners At The Time Of The Spill Who Later Sold Their Vessel And Did Not Replace It

A vessel owner who owned a seine vessel at the time of the spill, but subsequently sold the vessel and did not replace it, would be allotted a share of each vessel subfund for which he or she qualifies before the sale. Such a vessel owner would be allotted a full share if he or she owned the vessel the entire subfund period, and a prorated share if he or she sold the vessel during the subfund period. Prorated shares would be proportional to the number of days of the subfund period that the vessel owner owned the vessel. By this method, post-spill vessel sellers would be allotted prorated shares of the vessel devaluation fund, proportional to the loss in market value of S01H permits that occurred before the sale.³⁷

4. Post-Spill Vessel Purchasers

A vessel owner who purchased a seine vessel after the spill would be allotted a share of each vessel subfund for which he or she qualifies after the purchase. The vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period, and a prorated share if he or she purchased the vessel during the subfund period. Prorated shares would be proportional to the number of days of the subfund period for which the vessel was owned. Thus, post-spill vessel purchasers, like post-spill vessel sellers, would be allotted prorated shares of the vessel devaluation fund proportional to the loss in market value of S01H permits during the time of ownership.³⁸

C. SEASONAL LOST INCOME FUNDS

Due to the oil spill, the LCI salmon seine fishery is no longer economically viable for the vast majority of participants. In 1987 and 1988, over 65 permits were fished per season. Due to run failures caused by the spill, this number fell to 51 in 1993, and plummeted to 32 in 1994. In 1995, only 49 permits recorded landings. Another measure of the large and sustained economic losses suffered by LCI salmon seiners is the more than four-fold decline in permit values, from \$132,000 at the time of the spill, to \$30,000 in the 1995 season. As heavy economic losses mounted after the spill, many LCI salmon seiners were forced to fish elsewhere, or were driven from the fishery altogether.

Plaintiffs' counsel held open meetings concerning different distribution methods with LCI salmon seiners in Homer (May 1996, October 1996), Anchorage (June 1996, October 1996) and Kenai (October 1996). Plaintiffs' counsel consulted with many LCI salmon seiners. Fishers debated distribution issues extensively among themselves. Petitions and written proposals were circulated. In addition, plaintiffs' counsel sponsored a mediation between representatives of two groups of LCI salmon seiners who differed as to how seasonal lost income funds should be distributed.

³⁴For purposes of illustration in this distribution plan, it is assumed that the number of qualifying vessels each season is 81 -- i.e., the estimated number of qualifying permits. This is a reasonable estimate based on available data, but will be revised if necessary based on additional data accumulated in the Supplemental Claims Program. If the number of qualifying vessels in any season proves to be lower than 81, any surplus in the corresponding vessel subfund would be reallocated among all LCI salmon seine funds. If the number of qualifying vessels exceeds 81 in any season, shares of the corresponding vessel subfund would be reduced proportionally.

³⁵A vessel owner who did not hold a permit would qualify for a seasonal lost income fund if his or her vessel recorded harvest in the season, or -- in 1989, 1992 and 1993 only -- did not record harvest but the vessel owner nevertheless qualifies as "displaced" by the spill. See *infra*.

³⁶Conceivably, a permit/vessel owner could have put his or her vessel to use in one or more seasons in a salmon seine fishery other than LCI, for which there is a vessel devaluation fund (e.g., Chignik, Kodiak or Prince William Sound). In such cases, if any, the vessel owner would share in only one vessel fund for the season (or seasons) in question.

³⁷For example, a claimant who owned a vessel on the date of the spill and sold it on December 1, 1992, would qualify for the 1989, 1990, 1991 and 1992 vessel subfunds. The claimant would be allotted full shares of the 1989, 1990 and 1991 vessel subfunds, and a 50% share of the 1992 vessel subfund (because the vessel was owned for half of the 1992 vessel subfund period).

³⁸Consider, for example, a claimant who purchased a vessel on December 1, 1992, kept it through June 1995, and used it to fish in the LCI salmon seine fishery in the 1993 and 1994 seasons. The claimant would not qualify for the 1992 vessel subfund, because the purchase took place after the season, but would qualify for a full share of the 1994 vessel subfund. If, however, the claimant purchased the vessel on July 1, 1992 and used it to fish in the 1992 season, then he or she also would qualify for a prorated share of the 1992 vessel subfund.

LCI salmon seiners agree that virtually all suffered loss as a result of the spill, and recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is not unanimity among LCI salmon seiners on a particular distribution method, there is a marked desire to compromise and resolve distribution questions without prolonged strife.

LCI salmon seiners expressed a universal desire to distribute the seasonal funds in a blended manner, with both *per capita* and production-based components, but do not unanimously agree upon the balance between the two components. After extensive deliberation and consultation with many fishers, plaintiffs' counsel propose the following compromise. Each seasonal fund would be divided 50% to a "production subfund" distributed among those who fished in the season in proportion to production, and 50% to a "*per capita* subfund" divided without regard to actual production. Plaintiffs' counsel believe this to be a fair and reasonable compromise between two views which have coalesced in the fishery. The attached Table 4 lists projected amounts of seasonal production and *per capita* subfunds, based on a total projected fishery recovery of \$121,323,000.

1. Production Subfunds

Production subfunds would be distributed among LCI salmon seiners who actually "participated" during the season.³⁹ For permit holders,⁴⁰ production shares would be proportional to actual harvest values in the season,⁴¹ less payments to derivative shareholders. For derivative share claimants, production shares would be proportional to actual earnings in the fishery during the season. Table 4 lists projected percent shares and amounts of production subfunds.⁴²

2. Per Capita Subfunds

a) 1989

The 1989 *per capita* subfund would be divided among: holders of "fishable" permits;⁴³ derivative share claimants who participated during the 1989 season; and "displaced" derivative share claimants unable to participate in the fishery during the 1989 season, who establish that they would have participated but for the oil spill.⁴⁴

³⁹Permit holders "participated" if they recorded harvest. Hired skippers, crew and spotters "participated" if they were actually employed to work in the fishery during the season. Owners of seine vessels "participated" if they leased or otherwise contracted a seine vessel used in the fishery. Other shareholders such as non-fishing permit owners or "silent" partners in fishing operations "participated" if the permit holder with whom they had an agreement participated. In 1989, at least one LCI salmon seiner represented the fishery in negotiations with Exxon representatives concerning the design and implementation of the Exxon Claims program and other spill related issues. As a result, such "fisher-representatives" curtailed their fishing and their production suffered. Plaintiffs' counsel believe that it would not be fair to base production shares of fisher-representatives or their shareholders on actual 1989 harvest, and propose instead to use projected 1989 harvest based on historical performance. To qualify as a fisher-representative, a claimant must establish that he or she was excused by Exxon Claims from its "mitigation requirement" due to the claimant's work as a fisher-representative. To qualify as a shareholder of a fisher-representative, a claimant must provide documentary evidence that he or she either: (1) had a contract with the fisher-representative (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) qualified as a shareholder of the fisher-representative in the Exxon Claims Program. Fisher-representatives' projected market shares would equal the average of their two best market shares during the 1985 through 1988 seasons. If a fisher-representative lacks two or more years of history from 1985 through 1988, plaintiffs' counsel would determine a fair market share based on pre- and post-spill production.

⁴⁰A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

⁴¹As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds Of Fish" times the "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds Of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value Of Catch entries calculated by CFEC. The only exception to the use of actual production is in 1989, when some fishers obtained contracts from Exxon or VECO to harvest salmon. For such fishers, plaintiffs' counsel would ignore actual 1989 production, and instead assign them a projected production equal to the average of their two highest market shares in the 1984 through 1988 seasons.

⁴²Actual percent shares of all subfunds will be determined in the Supplemental Claims Program. Plaintiffs' counsel expect actual percent shares of production subfunds to exceed projected percent shares, because actual percent shares of the permit devaluation fund and *per capita* seasonal subfunds are expected to be less than projected. Excess amounts in the permit and vessel devaluation funds would be reallocated among all LCI salmon seine funds, in proportion to projected percent shares.

⁴³"Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. See *infra*.

⁴⁴To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (as evidenced by a writing, or a permit holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) was paid a crew claim by the Exxon Claims Program or TAPL Fund; or (3) held a 1989 crew license and crewed in the fishery in two of three seasons 1987, 1988 and/or 1990. A spotter must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; (2) was paid a spotter claim for the LCI salmon seine fishery by the Exxon Claims Program or TAPL Fund; or (3) spotted in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a permit

(continued...)

Distributions would be calculated in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1989 *per capita* subfund by the total number of permits "held" during the season.⁴⁵ Participating permit holders would be allotted "net" *per capita* shares equal to the gross *per capita* share reduced proportionally based upon actual contractual arrangements with shareholders. Non-participating permit holders would be allotted net *per capita* shares equal to the gross *per capita* share reduced proportionately by projected payments to derivative shareholders.⁴⁶ Participating derivative share claimants would be allotted proportional shares of the gross *per capita* share based on actual earnings. Non-participating derivative share claimants would be allotted proportional shares of the gross *per capita* share based upon projected earnings calculated on a case-by-case basis using historical information.⁴⁷

b) 1990 Through 1995

The 1990 through 1995 *per capita* subfunds each would be divided among holders of fishable permits, and participating derivative share claimants.⁴⁸ Distributions would be calculated in the same manner as for the 1989 *per capita* subfund. That is, a gross *per capita* share would be calculated as the amount of the *per capita* subfund divided by the total number of fishable permits held during the season. Permit holders who participated would be allotted a net *per capita* share equal to the gross *per capita* share reduced proportionally based upon actual contractual arrangements with shareholders. Permit holders who did not participate would be allotted a "net" *per capita* share, equal to the gross *per capita* share reduced proportionately by projected payments to shareholders. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on actual earnings.

3. Intra-Season Permit Transfers

In cases where a permit was transferred during a season (e.g., for medical reasons), plaintiffs' counsel would calculate for each permit holder a "base gross share" of the seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season; plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴⁹ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.

Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

D. MULTIPLE SALMON SEINE PERMIT HOLDERS AND THEIR DERIVATIVE SHAREHOLDERS

Some holders of LCI salmon seine (S01H) permits also held one or more other limited-entry salmon seine permits -- i.e., Chignik (S01L), Kodiak (S01K), PWS (S01E), Peninsular Aleutians (S01M) or Southeast Alaska (S01A). By law, a multiple salmon seine permit holder may fish only one salmon seine permit each season. Some special requirements therefore are needed to prevent unfair double recoveries.

(...continued)

⁴⁴holder; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from working (or leasing a vessel), and establishing that he or she was ready, willing and able to work (or lease a vessel) in the 1989 LCI salmon seine fishery.

⁴⁵In any given season, the number of permits "held" is likely to be smaller than the number of permit holders, because of temporary transfers. In cases where a permit was held by more than one individual during a season, the multiple holders of the permit would be allotted collectively a single *per capita* share, to be divided among them on the basis of transfer agreements.

⁴⁶Projected payments to crew, spotter and vessel owner would be based on the permit holder's specific history or, for a new entrant, on fleet-wide data.

⁴⁷Projected percent shares of *per capita* subfunds are based on assumptions that holders of 81 permits will qualify, and that valid claims from all claimants (including those who participated and those who did not) will aggregate to 81 gross *per capita* shares. In fact, fewer than 81 permits actually recorded landings each year. Based on Alyeska claims data, plaintiffs' counsel do not expect valid claims to aggregate to 81 gross *per capita* shares in any year, but do expect any shortfall to be slight. If there is a shortfall, it would be divided proportionally between the *per capita* and production subfunds for the season.

⁴⁸Non-participating derivative share claimants would not share in post-1989 *per capita* subfunds because there is little evidence that the spill denied them opportunities to work. Because non-participating derivative share claimants do not share in post-1989 *per capita* subfunds, these subfunds' projected percent shares are likely to be too high, because they are based on the assumption that valid claims will aggregate to 81 gross *per capita* shares and in fact fewer gross *per capita* shares are likely to be paid due to non-participating derivative share claimants. Fifty percent of any excess in a *per capita* subfund would be reallocated to the production subfund for the season.

⁴⁹For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data.

1. Permit Devaluation Funds

Because permits are separate assets, it is fair for multiple salmon seine permit owners to recover for each of their salmon seine permits. Owners of multiple salmon seine permits may recover from permit devaluation funds in each fishery for which they qualify. For example, a claimant who owned both LCI and Kodiak salmon seine permits may recover from both the LCI and Kodiak salmon seine permit devaluation funds.

2. Seasonal Lost Income Funds

Because multiple salmon seine permit holders may utilize only one permit in a season, it would not be fair for them to recover from more than one salmon seine seasonal lost income fund each season. In 1989, the oil spill forced fishermen to make difficult decisions under abnormal circumstances. For this reason, a multiple salmon seine permit holder may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she actually chose to fish. Likewise, a derivative share claimant may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she participated. However, a claimant may recover from only one salmon seine seasonal lost income fund.

In a season after 1989, if a multiple salmon seine permit holder participated in an "oiled" salmon seine fishery, then the permit holder and his or her derivative shareholders must claim against the lost income fund for the fishery in which they participated, and may not recover from any other salmon seine lost income fund. If a multiple salmon seine permit holder participated in an "unoiled" salmon seine fishery (*i.e.*, Peninsular Aleutians (S01M) or Southeast Alaska (S01A)), the permit holder and his or her derivative shareholders may elect to recover from any "oiled" salmon seine lost income fund for which they qualify, rather than the seasonal lost income fund for the "unoiled" fishery in which they participated.⁵⁰

Consider, for example, a permit holder who owned both LCI (S01H) and Southeast Alaska (S01A) salmon seine permits from the date of the spill through 1995, and fished Southeast in 1989, LCI in 1990 and 1991, and Southeast in 1992 through 1995. In 1989, the permit holder and his or her derivative shareholders may choose either the LCI or Southeast seasonal lost income fund, but not both. However, because they did not participate in the LCI salmon seine fishery in 1989, they are eligible only for the 1989 *per capita* subfund. *See supra*. In 1990 and 1991, the permit holder and his or her derivative shareholders must recover from LCI salmon seine lost income funds. In 1992 through 1995, the permit holder may recover from LCI salmon seine *per capita* subfunds, as may his or her derivative shareholders in any season in which they qualify as displaced.⁵¹

3. Vessel Devaluation Funds

A vessel owner is entitled to only one vessel devaluation recovery for his or her vessel. A multiple salmon seine permit holder who also owns a seine vessel may recover from only one vessel devaluation subfund per season, and his or her total recovery for the vessel may not exceed one full vessel devaluation share. Plaintiffs' counsel have done their best to draft salmon seine distribution plans which protect against double recoveries for salmon seine vessel owners, but this is a complicated claims area and it is impossible to anticipate all scenarios in advance. Plaintiffs' counsel will ensure that owners of vessels used in two or more salmon seine fisheries receive fair, but not excessive, compensation for vessel devaluation.

E. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each LCI salmon seiner a Final Percent Share, which is the claimant's percent share of LCI salmon seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from previous recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including LCI salmon seiners, would be adjusted to reflect the extent to which they have already been compensated.⁵² Nothing would be allotted to claimants already paid more than their

⁵⁰In the Chignik, Peninsular Aleutians and Southeast Alaska salmon seine fisheries, there are seasonal lost income funds only for 1989, 1990 and 1991. In the Cook Inlet, Kodiak and PWS salmon seine fisheries, there are seasonal lost income funds for every season 1989 through 1995.

⁵¹These claimants are not eligible for production subfunds because they did not participate.

⁵²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the

Final Percent Share of their claim category's matrix share signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
PROJECTED FUND SHARES OF LCI
SALMON SEINE (S01H) ALLOCATION

FUND	Projected Fund Percent Share	Projected Amount
Permit Devaluation	17.0%	\$20,595,000
Vessel Devaluation	7.0%	\$8,475,000
Seasonal Funds		
1989	8.9%	\$10,781,000
1990	20.9%	\$25,367,000
1991	18.7%	\$22,697,000
1992	6.9%	\$8,373,000
1993	1.7%	\$2,006,000
1994	9.5%	\$11,524,000
1995	9.5%	\$11,505,000
Subtotal	76.0%	\$92,253,000
Total	100.0%	\$121,323,000

INCLUDES ATTORNEYS' FEES

(...continued)

⁵² claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 2
LCI SALMON SEINE (S01H) PERMIT DEVALUATION FUND

Date	Projected Market Value	Actual Market Value	Projected-Actual Gap	% Share Of Owner At Time Of Spill Who Sold In Quarter	% Share Of Owner Who Purchased In Quarter, Held To 1995:2
1989:2	\$132,000	\$125,000	\$7,000	6%	94%
1989:3	\$132,000	\$125,000	\$7,000	6%	94%
1989:4	\$132,000	\$125,000	\$7,000	6%	94%
1990:1	\$132,000	\$125,000	\$7,000	6%	94%
1990:2	\$195,000	\$185,000	\$10,000	9%	91%
1990:3	\$195,000	\$185,000	\$10,000	9%	91%
1990:4	\$175,000	\$140,000	\$35,000	32%	68%
1991:1	\$175,000	\$135,000	\$40,000	36%	64%
1991:2	\$175,000	\$120,000	\$55,000	50%	50%
1991:3	\$160,000	\$102,500	\$57,500	52%	48%
1991:4	\$146,000	\$85,000	\$61,000	55%	45%
1992:1	\$146,000	\$50,000	\$96,000	86%	14%
1992:2	\$146,000	\$50,000	\$96,000	86%	14%
1992:3	\$146,000	\$50,000	\$96,000	86%	14%
1992:4	\$146,000	\$50,000	\$96,000	86%	14%
1993:1	\$166,000	\$60,000	\$106,000	95%	5%
1993:2	\$166,000	\$60,000	\$106,000	95%	5%
1993:3	\$166,000	\$60,000	\$106,000	95%	5%
1993:4	\$166,000	\$60,000	\$106,000	95%	5%
1994:1	\$162,000	\$56,000	\$106,000	95%	5%
1994:2	\$158,000	\$52,000	\$106,000	95%	5%
1994:3	\$154,000	\$48,000	\$106,000	95%	5%
1994:4	\$150,000	\$44,000	\$106,000	95%	5%
1995:1	\$148,000	\$40,000	\$108,000	97%	3%
1995:2	\$146,000	\$35,000	\$111,000	100%	0%

Table 3
PROJECTED LCI SALMON SEINE (S01H)
VESSEL DEVALUATION SUBFUNDS

Subfund	Subfund Period	Widening Of Projected-Actual Permit Value Gap In Subfund Period	Percentage of Max. Projected-Actual Permit Value Gap In Subfund Period	Projected Subfund % Share	Projected Amount
1989	4/89-5/90	\$10,000	9.0%	0.6%	\$764,000
1990	6/90-5/91	\$45,000	40.5%	2.8%	\$3,436,000
1991	6/91-5/92	\$41,000	36.9%	2.6%	\$3,130,000
1992	6/92-5/93	\$10,000	9.0%	0.6%	\$764,000
1994	6/94-5/95	\$5,000	4.5%	0.3%	\$382,000
Total		\$111,000	100%	7.0%	\$8,475,000

INCLUDES ATTORNEYS' FEES

Table 4
PROJECTED LCI SALMON SEINE
(S01H) SEASONAL LOST INCOME FUNDS

Seasonal Fund	Projected % Share	Projected Amount	Per Capita Subfund 50%	Production Subfund 50%
1989	8.9%	\$10,781,000	\$5,390,500	\$5,390,500
1990	20.9%	\$25,367,000	\$12,683,500	\$12,683,500
1991	18.7%	\$22,697,000	\$11,348,500	\$11,348,500
1992	6.9%	\$8,373,000	\$4,186,500	\$4,186,500
1993	1.7%	\$2,006,000	\$1,003,000	\$1,003,000
1994	9.5%	\$11,524,000	\$5,762,000	\$5,762,000
1995	9.5%	\$11,505,000	\$5,752,500	\$5,752,500
Total	76%	\$92,253,000	\$46,126,500	\$46,126,500

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF UPPER COOK INLET SALMON DRIFT NET
CLAIMANTS (S03H) IN LITIGATION FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs ("signatories")² organized into claim categories. This distribution plan proposes a method for distributing allocations to the Upper Cook Inlet (UCI) Salmon Drift Net (S03H) Claim Category, which includes claims for: lost income in the 1989 through 1991 and 1994 through 1995 seasons by holders of S03H permits and their "derivative share claimants,"³ devaluation of S03H permits by permit owners; and devaluation of drift net vessels used in the fishery by owners of the vessels. Permit owners, permit holders, vessel owners, and derivative share claimants will be collectively referred to as "UCI salmon drift claimants."⁴ Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to UCI salmon drift claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as crew, vessel owners, spotter pilots and vessel skippers.

⁴In certain limited circumstances, plaintiffs' counsel may recognize claims where a fisher sold his/her S03H permit in reliance on the purchase of an operation in Prince William Sound, Kodiak, Cook Inlet or Chignik ("the oiled fisheries") and can show documentary proof indicating that the sale was based on plans to purchase an operation in one of the oiled fisheries and that the purchase was not consummated due to problems caused by the spill. Such claims will be reviewed on a case by case basis. In no event will multiple claims for fisheries which are conducted during the same time period be recognized.

⁵"Plaintiffs counsel" are plaintiffs Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs are filing a separate distribution plan with the Court for each claim category, including an omnibus plan for "un-oiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the UCI Salmon Drift Net Category, only putative UCI salmon drift claimants have any financial interest in how UCI salmon drift allocations are distributed, and therefore, have standing to object to this distribution plan. Plaintiffs' counsel propose that UCI salmon drift net claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in UCI salmon drift net allocations, but their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many of the dismissals, and the prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, UCI salmon drift claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which have not yet been collected.¹²

The UCI salmon drift net matrix share is projected to be 15.1664% of the Alyeska Settlement and 15.1923% of signatories' other recoveries¹³

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel would distribute UCI salmon drift claimants' projected 15.1923% matrix share (\$3,756,000 less attorneys' fees approved by the Court¹⁴) from the Native/Municipality/Kodiak Borough recoveries;¹⁵ and any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from their actual \$8,071,000 allocation from the Alyeska Settlement.

B. Projected Future Recoveries

Plaintiffs' counsel expect UCI salmon drift claimants to be allocated roughly \$2,976,000 from the Phase IIA judgment; \$5,769,000 in prejudgment interest; and \$724,392,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which UCI salmon drift net claimants also will share.¹⁷

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, UCI salmon drift claimants will be allocated the difference between their 15.1923% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims Program and TAPL Fund to UCI salmon drift claimants. At this time plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁸Alyeska settled for \$98 million of which \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory recoveries.

¹³The projected UCI salmon matrix share of 15.1923% is slightly lower than the 15.2% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n. 31. UCI salmon drift claimants' matrix share of the Alyeska Settlement is lower than its share of signatories' other recoveries because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorney's fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵This amount and other allocations to the UCI Salmon Drift Net Claim Category will be deposited into a interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such proposed settlement would be subject to judicial approval, after plaintiffs are given notice and opportunity to object.

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also in the Final Distribution, because UCI salmon drift claimants' actual allocation of \$8,071,000 from the Alyeska Settlement was less than their projected 15.1664% matrix share (roughly \$13,242,000), the difference (roughly \$5,171,000) will be allocated to the UCI salmon drift claimants, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, UCI salmon drift claimants' total allocation from all recoveries will be roughly \$780,565,000 (less attorneys' fees and expenses), which includes: \$3,756,000 from the Native/Municipality/Kodiak Island Borough Recoveries; \$13,242,000 from the Alyeska Settlement; \$8,745,000 from the uncollected Phase IIA judgment and prejudgment interest; \$724,392,000 from the uncollected punitive damages judgment; and \$30,430,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and UCI salmon drift claimants to evaluate this distribution plan under the assumption that the UCI Salmon Drift Net Category ultimately will be allocated \$780,565,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon final judicial approval of a distribution plan for UCI salmon drift claimants,¹⁸ plaintiffs' counsel would conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all UCI salmon drift claimants would be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel would automatically register a claim for those who filed a UCI salmon drift claim in the Alyeska Claims Program, but would still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel would determine for each valid claim a percentage share of allocations to the UCI Salmon Drift Net Claim Category ("Final Percent Share").²⁰ All claims would be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares would be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiff's counsel would make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares would be submitted to the Court for approval.²¹

Third, plaintiffs' counsel would distribute the UCI salmon drift claimants' \$3,756,000 share of the Native/Municipality/Kodiak Island Borough Recoveries, plus any unclaimed money remaining from the UCI salmon drift claimants' \$8,071,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than making every claimant await the resolution of reconsideration of or objections

¹⁸Plaintiffs' counsel would begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²²Distribution would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$16,990,000 in UCI salmon drift allocations from the Alyeska and Native/Municipality/Kodiak Island Borough Recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the UCI salmon drift allocation from the Native/Municipality/Kodiak Island Borough Recoveries, and any remaining unclaimed UCI salmon drift money from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary (continued...)

to the determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also would be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions would be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide UCI salmon drift net allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the *Exxon Valdez* oil spill: a "permit devaluation" fund based on the loss in market value of S03H permits; a "vessel devaluation" fund based on the loss in market value of UCI salmon drift boats; and five separate "seasonal" funds for the 1989, 1990, 1991, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²³ These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the matrix share of the UCI Salmon Drift Category in the Allocation Plan.²⁴ Permit and vessel devaluation damages were discounted by 33 1/3% in the Allocation Plan to reflect the appropriate litigation risk of these types of damages as compared to price and harvest losses.²⁵

Table 1 shows what percent of a total UCI Salmon Drift Net Claim Category recovery would be allocated to each of the funds. As shown in Table 1, 22% of the allocation to the UCI salmon drift net claimants would go to the permit devaluation fund; 4% would go to the vessel devaluation fund; and the remaining 74% would go to the five seasonal funds, and be broken out -- 33% to the 1989 seasonal fund; 10% to the 1990 seasonal fund; 7% to the 1991 seasonal fund; 12% to the 1994 seasonal fund; and 12% to the 1995 seasonal fund. Table 1 shows the amount that would be allocated to each of these funds based on a total fishery recovery of \$780,565,000.

A. Permit Devaluation Fund

The permit devaluation fund is based on loss of market value of S03H permits due to the effects of the *Exxon Valdez* oil spill.

1. Qualification for the permit devaluation fund

In order to claim against the permit devaluation fund, a permit owner²⁶ must have:

- 1.) owned an S03H permit in the period from March 24, 1989 to December 31, 1992²⁷; or
- 2.) owned a permit after December 31, 1992, and specifically received litigation rights in connection with the *Exxon Valdez* oil spill as the result of a written permit sales contract where the seller was an otherwise qualifying permit owner.²⁸

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²²because previous distributions from the Alyeska Settlement were based solely on permit devaluation and 1989, 1990 and 1991 seasonal losses, whereas Final Percent Shares would be based on vessel devaluation and 1994 and 1995 seasonal losses as well. The Plan of Distribution for the Alyeska Settlement included only 1989-91 seasonal losses, because seasonal losses in later years had not been quantified.

²³In addition in all fisheries, fishers whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.) These personal property claims would be allotted *pro rata* shares of the fishery's allocations, proportional to the ratio of loss to total fishery matrix damages (roughly \$257.1 million for UCI salmon drift), up to the amount of loss. Since UCI salmon drift net fishing was canceled due to the oil spill in 1989, plaintiff's counsel do not expect any claims to qualify for such treatment in this fishery, but in any event such payments would comprise a negligible portion of UCI salmon drift allocations.

²⁴See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of UCI salmon drift damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. UCI salmon drift damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Kenai and Homer, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon.

²⁵See Allocation Plan 15 n. 24. Diminished permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁶A permit holder - someone with the legal entitlement to fish a permit in a given season - if different from the permit owner, would not share in the permit devaluation fund, but would share in seasonal funds for the time he or she held the permit. Derivative share claimants would not share in the permit devaluation fund. Plaintiffs' counsel would recognize written assignments of permit devaluation shares.

²⁷Plaintiffs' counsel would use CFEC permit transfer data as the presumptive date of transfer, but allow claimants to rebut this data by submitting documentary proof.

²⁸In some cases, permit buyers and sellers agreed to assign litigation rights and this was taken into consideration in arriving at the permit sale price. Plaintiffs' counsel would abide by such agreements which are reflected in written contracts, (e.g., contracts which contain language such as "It is hereby agreed that all right, title and interest in all claims for damages arising out of the Exxon oil spill incurred by the seller prior to and including the closing date of the sale of the permit, shall remain with the seller" or "Both parties agree that the sale and transfer shall not convey to the buyer any right, title or interest of the seller in any claim arising as a result of the Exxon Valdez oil spill on or about March 24, 1989 which claims arose prior to the sale and transfer") to the extent not disputed by the parties. To the extent the intent of such contracts are disputed by the parties, plaintiffs counsel would hold

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A permit owner who satisfies one of these requirements would be referred to as a "qualifying permit owner." Because the permit devaluation fund is based on loss in value of permits due to the spill, only qualifying permit owners may claim against it.

2. Distribution of the permit devaluation fund

A qualifying permit owner's share of the permit devaluation fund would be proportioned to the amount by which actual market values of S03H permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and December 31, 1992. Actual and predicted market values of Cook Inlet Salmon drift net permits, based on expert studies prepared for plaintiffs' counsel, are listed in Table 2.

The "predicted" values shown in Table 2 are the values that plaintiffs' experts opined that permits would have reached absent the effects of the oil spill on the limited entry permit market. According to plaintiffs' experts, S03H permits would have reached a high of \$234,373 in the fourth quarter of 1992, if not for the spill. The "actual" values shown in Table 2 are plaintiffs' experts' estimates of the actual average selling prices of S03H permits, which reached a low of \$83,250 in that same quarter. The difference between the predicted value and the actual value is represented by the column in Table 2 headed "Predicted-Actual Gap." The maximum predicted-actual gap (i.e., the greatest difference between the predicted market value and the actual market value in a given period) occurred in the fourth quarter of 1992, when it reached \$151,123.

Each qualifying permit owner who owned a permit continuously from the date of the oil spill through at least the fourth quarter of 1992, would be allotted a "full share" (approximately 1/585th, based on an S03H permit count of 585 permits which is a reasonable approximation) of the S03H permit devaluation fund. Qualifying permit owners who sold after the spill, but before December 31, 1992, would be allotted only a portion of a full share, based on the extent to which predicted and actual²⁹ permit values diverged during the period of ownership.

This general approach enjoys broad support from UCI salmon drift claimants, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited entry commercial fishing permits are fungible assets granting identical rights to their owners.

a) Post-spill permit sellers

A permit owner at the time of the oil spill, who held his or her permit until at least the fourth quarter of 1992 when the predicted-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the oil spill who sold before the fourth quarter of 1992 would be allotted a fraction of a full share, equal to the ratio of (1) the predicted-actual gap at the time of the sale to (2) the maximum predicted-actual gap of \$151,123. The fractions of a full share which would be allotted to each party in the sales transaction, expressed as percentages, are listed in Table 2 under the headings "Seller's Share" and "Buyer's Share."³⁰

b) Post-spill permit buyers

Permit buyers who purchased prior to December 31, 1992 would receive the appropriate percentage of a full share as described above and as shown in Table 2. Those who purchased a permit after December 31, 1992, and did not receive it as a result of a written contract transferring litigation rights, would not be allotted any share of the permit devaluation fund.

It would not be fair or reasonable to allow someone who acquired an S03H permit after December 31, 1992, absent a written contract transferring litigation rights, to share in the permit devaluation fund because during this time the predicted-actual gap never widened, and therefore the oil spill did not cause loss in market value.

B. Vessel Devaluation Fund

The vessel devaluation fund is intended to compensate vessel owners for the decline in market value of vessels used in the UCI salmon drift fishery as a result of the oil spill. Thus, plaintiffs' counsel propose to base distribution of this fund on market values rather than individual vessel values. Accounting for variations in individual vessel values would be unreasonably, if not prohibitively, expensive and time-consuming, as every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

1. Qualification for the vessel devaluation fund

Owners of UCI salmon drift vessels used in that fishery sometime in the period from March 24, 1989 to December 31, 1992 and purchased prior to December 31, 1992, would be eligible to share in the vessel devaluation fund. Derivative share claimants would not

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²⁸back any affected distributions until the parties' disagreement is resolved.

²⁹Rather than gathering individual sales data which would be administratively burdensome and possibly unreliable, plaintiffs' counsel would use estimated actual prices from Table 2 to determine estimated actual sales prices. Estimated actual prices would be interpolated between quarter ending dates shown in Table 2.

³⁰These fractions are based on the buyer in the sales transaction holding the permit until at least December 31, 1992. For example, a permit owner who purchased before the spill and sold in the first quarter of 1990 would be allotted 8.61% of a full share, because only 8.61% of the maximum \$151,123 loss (\$210,597 - \$197,591 = \$13,006/\$151,123) had occurred by that time. If there are multiple sales transactions the fractions would be adjusted accordingly.

share in the vessel devaluation fund.³¹ Plaintiffs' counsel propose to apply distributional principles based on permit devaluation to the vessel devaluation fund because both funds compensate for loss in value of an asset used in the UCI salmon drift net fishery.

The vessel devaluation fund would be divided into sub-funds, with the amount of each sub-fund proportional to the amount by which vessels are estimated to have declined in value in the period from March 24, 1989 through December 31, 1992, using loss in permit values as a measure.

Plaintiffs' counsel expect that there are three types of qualifying claimants for the vessel devaluation fund:

- 1.) those who held an S03H permit and owned and fished their own drift vessel sometime in the period from March 24, 1989 to December 31, 1992 or in 1989 held an S03H permit and owned a drift vessel that was available to fish ("permit/vessel owners");
- 2.) those who held an S03H permit, owned and fished their own drift vessel and owned another drift vessel which was leased out to another S03H permit holder who fished it sometime in the period from March 24, 1989 to December 31, 1992 or who qualify as an "unattached vessel owner"³² for the 1989 season with respect to this second vessel ("multiple vessel owners"); and
- 3.) those who did not own an S03H permit, but did own a drift vessel which was leased out to an S03H permit holder who fished it sometime in the period from March 24, 1989 to December 31, 1992 or who qualify as an unattached vessel owner for the 1989 season with respect to this vessel ("vessel only owners").

2. Distribution of the vessel devaluation fund

The vessel devaluation subfunds would relate to the following time periods: The period from March 24, 1989 through June 30, 1989 would be funded with approximately 7.5508% of the vessel devaluation fund (VSF1); the period from July 1, 1989 through June 30, 1990 would be funded with approximately 1.3697% of the vessel devaluation fund (VSF2); the period run from July 1, 1990 through June 30, 1991 would be funded with approximately 26.9231% of the vessel devaluation fund (VSF3); the period from July 1, 1991 through June 30, 1992 would be funded with approximately 38.9954% (VSF4); and the period from July 1, 1992 through December 31, 1992 would be funded with approximately 25.1610% of the vessel devaluation fund (VSF5).

a) distribution to permit/vessel owners

Permit/vessel owners who qualify for the UCI salmon drift 1989 seasonal fund (*see infra*) would be entitled to a share of the VSF1. Permit/vessel owners who recorded a landing on their vessel in the 1990, 1991, 1992 or 1993 UCI salmon drift fishing season would be entitled to a share of the vessel subfund associated with the season of the landing. (e.g., a landing in 1990 would qualify a vessel owner for the VSF2; landings in 1990, 1991, 1992 and 1993 would qualify a vessel owner for the VSF2, the VSF3, the VSF4 and the VSF5). Plaintiffs' counsel anticipate that a permit/vessel owner who qualified for all of the vessel subfunds would receive a full share of the vessel devaluation fund, equal to the amount of the fund divided by approximately 585 (*i.e.*, the estimated number of vessels which could be used in the fishery.)³³

b) distribution to multiple vessel owners

Multiple vessel owners could potentially qualify for more than one share of a vessel subfund. Multiple vessel owners who qualify for the UCI salmon drift 1989 seasonal fund would be entitled to a share of the VSF1 for their own permit and vessel, and could potentially qualify for a share of the VSF1 for the other vessel if they had an agreement to lease the other vessel to another permit holder,³⁴ or qualify as an unattached vessel owner for the other vessel. Multiple vessel owners whose vessels recorded landings in the UCI salmon drift fishery in 1990, 1991, 1992 and 1993 are entitled to a share of the associated vessel subfund for each vessel for each season a landing is recorded on each vessel.

c) distribution to vessel only owners

Vessel only owners may qualify for a share of the VSF1 if they had an agreement to lease to an S03H permit holder, or qualify as an unattached vessel owner. Vessel only owners whose vessels recorded landings in the UCI salmon drift fishery in 1990, 1991, 1992 and 1993 are entitled to a share of the associated vessel subfund for each vessel for each season a landing is recorded on each vessel.

³¹Nor would permit owners or permit holders who did not own their own vessel.

³²"Unattached vessel owners" are those who did not have an agreement to lease to a permit holder in the UCI salmon drift fishery in 1989, but can show proof of having leased a vessel in the UCI salmon drift fishery in two of the three seasons 1987, 1988 and 1990, had their vessel available for lease for the 1989 UCI salmon drift season, and had an ADF&G registration for the vessel for the UCI commercial fishery for 1989. Unattached vessel owners may also claim against the 1989 seasonal fund.

³³This is an estimate of the number of fishable S03H permits in any given season and is a reasonable estimate based on available data, but would be revised if necessary based on additional data accumulated in the Supplemental Claims Program. There may be slightly more qualified claimants against the vessel devaluation fund than there are fishable permits, due to the uncertainty caused by the cancellation of drift net fishing in 1989 due to the oil spill and because mid-season breakdowns and leases can result in more than one vessel being fished by a single permit holder. Plaintiffs' counsel do not expect this to be a significantly high number.

³⁴Plaintiffs' counsel would require proof of an agreement to lease either through a written lease agreement, an affidavit from the potential lessor, or equivalent proof.

3. Treatment of sold and purchased vessels

Qualifying vessel owners who sold vessel(s) after the oil spill, but prior to December 31, 1992, but did not replace with another vessel which was used in the UCI salmon drift fishery, would receive a reduced share of the vessel subfund for the time period in which the sale occurred based on a straight line calculation of the number of days into the time period the vessel was sold. Qualifying vessel owners who had not previously owned a vessel and who purchased a vessel which was then used in the UCI salmon drift fishery would receive a reduced share of the vessel subfund for the time period in which the purchase occurred based on a straight line calculation of the number of days in the time period the vessel was owned.

C. SEASONAL LOST INCOME FUNDS

Before the *Exxon Valdez* oil spill, the UCI salmon fishery was thriving. Today, it is marginally profitable at best, and UCI salmon drift claimants' pre-spill lifestyles have deteriorated. More UCI salmon drift claimants have been forced to fish elsewhere, otherwise supplement their income or to abandon the fishery all together. The value of S03H permits (probably the single most significant asset of these small businessmen) fell from \$200,000, to \$81,000 by mid-1993.

Open meetings concerning distribution methods have been held in Anchorage, Kenai and Homer, Alaska, Seattle and Mt. Vernon, Washington and Portland, Oregon. In addition, plaintiffs' counsel have consulted with many UCI salmon drift net claimants. In meetings with UCI salmon drift claimants, methods for distributing the seasonal funds which are production based received widespread support and such methods would be fair and reasonable. Thus, the majority of the 74% of the UCI salmon drift damages which are represented by the seasonal funds would each be distributed based on production criteria, using market shares as the measure of production.

1. The 1989 Seasonal Fund

The *Exxon Valdez* oil spill shut down UCI salmon drift fishing in 1989, resulting in lost income as a result of no harvest for UCI salmon drift claimants in 1989. In addition, the price of salmon was negatively impacted as a result of the spill, so measuring the value of the lost harvest based on market prices in 1989 does not fully compensate for the injury suffered.

a) qualification for the 1989 seasonal fund

The 1989 seasonal fund would be divided amongst all 1989 S03H permit holders³⁵ and derivative share claimants who would have been entitled to a portion of the 1989 harvest (e.g., crew who had an agreement to fish for a permit holder in 1989 or otherwise meet the qualification criteria for "unattached crew;"³⁶ spotters who had agreements with a permit holder or permit holders, or otherwise meet the qualification criteria for "unattached spotters;"³⁷ owners of vessels who had agreements to lease to a S03H permit holder in 1989 or otherwise meet the qualification criteria for unattached vessel owners, and vessel skippers who had an agreement to fish for a permit holder in 1989 or otherwise meet the qualification criteria for "unattached skipper."³⁸)

b) distribution of the 1989 seasonal fund

Since UCI salmon drift fishers did not fish in 1989 due to a complete closure of the fishery caused by the *Exxon Valdez* oil spill, it is necessary to devise a distribution formula for the 1989 seasonal fund which estimates what share of the harvest each permit holder might have taken if not for the spill. Plaintiffs' counsel propose to distribute the 1989 seasonal fund based on the "Hall of Fame" method. In the Hall of Fame method plaintiffs' counsel would use CFEC data³⁹ for 1984-1988 and 1990-1991 to calculate each permit holder's market share in each of these seasons⁴⁰ and choose the best single season market share. If a qualified permit holder does not have catch in any of

³⁵A permit holder is a person who possessed the right to fish the permit in a given season. This right might have been acquired by ownership, or by temporary transfer from the owner. In cases where a permit is temporarily transferred to a permit holder by the permit owner for a given season and there is an agreement that a percentage share is to be paid to the permit owner, the permit owner would be considered a derivative share claimant and receive a portion of the fund according to the agreement.

³⁶"Unattached crew" are those who did not have an agreement to crew for a permit holder in the UCI salmon drift fishery in 1989, but can show proof of having crewed in the UCI salmon drift net fishery in two of the three seasons 1987, 1988 and 1990, were available to fish the UCI salmon drift season, were not employed on the oil spill during the month of July 1989, and had purchased a 1989 commercial fishery crew license. Unattached crew claims would be considered only for 1989 when the fishery was closed.

³⁷"Unattached spotters" are those who did not have an agreement with a permit holder in the UCI salmon drift fishery in 1989, but can show a contract with a processor or other similar proof that they would have spotted in 1989 if not for the oil spill, were available to spot for the 1989 UCI salmon drift season and were not employed on the oil spill during the month of July 1989. Unattached spotter claims would be considered only for 1989 when the fishery was closed.

³⁸"Unattached skippers" are those who did not have an agreement with a permit holder in the UCI salmon drift fishery in 1989, but can show proof of having "skipped" a boat in two of the three seasons 1987-1988 and 1990 (including having fished their own permit and/or boat), were available to fish in the UCI salmon drift season, were not employed on the oil spill during the month of July 1989, and had purchased a 1989 commercial fishery crew license or can provide proof that he/she was actively attempting to purchase an S03H permit and/or drift boat.

³⁹Plaintiffs' counsel would presume CFEC data is correct, but allow claimants to submit documentary proof to correct inaccuracies.

⁴⁰Plaintiffs' counsel will rely on landings recorded in the CFEC data field entitled "Estimated Gross Earnings" to determine market share. CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds of Fish" times the "Value of Catch," and summing the results. Plaintiffs counsel will give claimants an opportunity to verify and correct Round Pounds of Fish, and will recalculate Estimated Gross Earnings by
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those seasons, the permit holder would be given a market share based on averaging the median S03H permit holder's market shares from both 1988 and 1990. These Hall of Fame market shares would then be "normalized"⁴¹ and the normalized market share would constitute the permit holder's share of the 1989 seasonal fund, from which the amounts owed to derivative share claimants would be deducted⁴² based on the contractual arrangements they have with their permit holders.

2. THE 1990 SEASONAL FUND

The price of salmon was negatively impacted as a result of the spill in 1990 resulting in lost income to UCI salmon drift claimants.

a) qualification for the 1990 seasonal fund

The 1990 seasonal fund would be divided amongst all 1990 permit holders who actually fished in 1990, former permit owners who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, and derivative share claimants' with an entitlement to a portion of the 1990 harvest. Permit owners who purchased their permits from former permit owners who retained litigation rights, having not obtained rights themselves, would not share in the 1990 seasonal fund, however their derivative share claimants would share in the fund, with their shares determined as if the permit holder for whom they fished qualified to recover from the fund. Since the S03H fishery was not closed and there was no substantial drop off in permit holder participation, unattached crew, unattached spotters and unattached vessel owners would not share in the 1990 seasonal fund.

b) distribution of the 1990 seasonal fund

The 1990 seasonal fund would be divided based on the market share production of each permit holder in 1990. Once a permit holder's share has been determined, the distribution to derivative share claimants would be based on the contractual arrangements they have with their permit holders. A former permit holder who did not fish in 1990, but retained litigation rights concerning claims for the *Exxon Valdez* oil spill, would be given a median UCI drift fisher's market share for 1990, and an average total derivative share claimants' share for 1990 would be deducted and retained in the 1990 seasonal fund for distribution to all qualifying claimants based on Final Percent Shares.

3. THE 1991 SEASONAL FUND

The price of salmon was negatively impacted as a result of the spill in 1991 resulting in lost income to UCI salmon drift claimants.

a) qualification for the 1991 seasonal fund

The 1991 seasonal fund would be divided amongst all 1991 permit holders who actually fished in 1991, former permit owners who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, and derivative share claimants' with an entitlement to a portion of the 1991 harvest. Permit owners who purchased their permits from former permit owners who retained litigation rights, having not obtained rights themselves, would not share in the 1991 seasonal fund, however their derivative share claimants would share in the fund, with their shares determined as if the permit holder for whom they fished qualified to recover from the fund. Since the S03H fishery was not closed and there was no substantial drop off in permit holder participation, unattached crew, unattached spotters and unattached vessel owners would not share in the 1991 seasonal fund.

b) distribution of the 1991 seasonal fund

The 1991 seasonal fund would be divided based on the market share production of each permit holder in 1991. Once a permit holder's share has been determined, the distribution to derivative share claimants would be based on the contractual arrangements they have with their permit holders. A former permit holder who did not fish in 1991, but retained litigation rights concerning claims for the

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⁴⁰ multiplying revised Round Pounds of Fish entries times Value of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value of Catch entries calculated by CFEC.

The market share for each UCI salmon drift claimant would be calculated in the following manner:

- 1.) The "Estimated Gross Harvest Value" for the S03H fishery for a given season would be calculated by totaling the Round Pounds of Fish" of each subspecies of salmon caught by all S03H permit holders in a given season and multiplying these total Round Pounds by the Value of Catch recorded by CFEC for each subspecies of salmon in the S03H fishery for the given season; then
- 2.) The "Estimated Gross Income" for an S03H permit holder for a given season would be calculated by totaling the Round Pounds of each subspecies of salmon caught by the permit holder in a given season and multiplying those total Round Pounds by the Value of Catch recorded by CFEC for each subspecies of salmon in the S03H fishery for a given season; then
- 3.) Divide the Estimated Gross Income by the Estimated Gross Harvest Value.

⁴¹ Since the sum total of all of the individual Hall of Fame market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

⁴² Unattached crew, spotter, vessel owner and skipper's shares would be calculated based on proof of prior or subsequent percentages received by the qualificant applied to a median permit holder's share and would be taken off of the top of the 1989 seasonal fund. Plaintiffs' counsel expect very few to qualify.

Exxon Valdez oil spill, would be given a median UCI drift fisher's market share for 1991, and an average total derivative share claimants' share for 1991 would be deducted and retained in the 1991 seasonal fund for distribution to all qualifying claimants based on Final Percent Shares.

4. THE 1994 AND 1995 SEASONAL FUNDS

In late 1991, Alaska state officials began to publicly acknowledge that the oil spill might lead to long-term damage to UCI salmon stocks. By February 1992, scientific studies were released which predicted that overescapement into the Kenai River system would result in long-term damage to the salmon stocks from that system, reducing the 1994 and 1995 harvests below what they would have been absent the spill. As shown in Table 2, the market value of S03H permits (a measure of fishers' confidence in the future viability of the fishery) remained fairly steady between the second quarter of 1989 and the first quarter of 1991, but then fell to approximately half their earlier value.

By the end of 1992 news of the predictions for poor seasons in 1994 and 1995 had circulated throughout the fishery, and those purchasing a permit after December 31, 1992 can be said to have bought with knowledge of the risk in this fishery. Thus, absent special circumstances (e.g., substantial participation or inheritance of a permit) detailed below which "tied" a fisher to the S03H fishery, permit holders who acquired their permits after December 31, 1992 would not participate in the 1994 and 1995 seasonal funds.

In order to balance the competing interests of UCI salmon drift claimants and address the uncertainties associated with continued participation in a damaged fishery, plaintiffs' counsel propose to divide the 1994 and 1995 seasonal fund into two subfunds each, with fifty percent (50%) of each of these funds allocated to a "production subfund" and fifty percent (50%) of each of these funds allocated to a "*per capita* subfund."

a) qualification for the 1994 production subfund

Those who may claim against the 1994 production subfund are:

- 1.) All 1994 permit holders who:
 - a.) fished as a permit holder or crew⁴³ in the fishery prior to December 31, 1992; or
 - b.) received a permit as a result of an inheritance⁴⁴, or
 - c.) received a permit as a result of a transfer recorded as a non-money, an "immediate family," or a "gift" transaction by CFEC⁴⁵; or
 - d.) received the rights to future litigation damages as a result of specific language in a written contract for sale of the permit;and their derivative share claimants; and
- 2.) All former permit owners who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit.⁴⁶
- 3.) All derivative share claimants who participated in the fishery as a derivative share claimant, permit holder or permit owner at some time in the period from March 24, 1989 to December 31, 1992 and participated in the fishery in 1994, regardless of whether the permit holder for whom he/she fished recovers (hereafter "long time derivative share participant.")

b) distribution of the 1994 production subfund

The 1994 production subfund would be distributed using a "Hall of Fame" calculation as follows:

- 1.) A permit holder with catch recorded by CFEC in 1992, 1993 and 1994 would have those market shares compared and the highest market share would be chosen, then the market shares for all qualifying permit holders would be normalized, and this normalized market share would determine the permit holder's gross share of the 1994 production subfund from which derivative share claimants' shares would be deducted;
- 2.) If a permit holder does not have catch recorded in one of the seasons, 1992, 1993 or 1994, the two remaining seasons would be compared and the highest market share would be chosen, and the calculation would proceed as described above;
- 3.) If a permit holder who does not have catch recorded for either 1992 or 1993, the actual market share for 1994 would be chosen, and the calculation would proceed as described above.

⁴³Including vessel skippers and vessel owners who received a portion of the income from a permit or permits fished prior to December 31, 1992.

⁴⁴Plaintiffs' counsel would require proof through submission of appropriate estate documents.

⁴⁵Plaintiffs' counsel would presume CFEC data is accurate for this purpose, but allow claimants to rebut the presumption with other documentation.

⁴⁶A 1994 permit holder who otherwise qualifies under 1 (a)-(c) above may not claim against the 1994 production fund if the permit owner he or she received the permit from retained litigation rights for claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit.

The shares of qualifying derivative share claimants for the production subfund would be based on the contractual arrangements they have with their permit holders. In the case of a long time derivative share participant whose permit holder does not qualify, the calculation will be accomplished in the same manner using the permit holders' market share, and the long time derivative share participant will be paid based on the financial arrangements he/she has with his/her permit holder.

If a former permit holder retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, he or she would be given a median UCI drift fisher's market share for 1994 and an average total derivative share claimants' share would be deducted and retained in the 1994 seasonal fund for distribution to all qualifying claimants. The permit holder to whom the permit was sold, having not obtained rights would not share in the production subfund, however long time derivative share participants who worked for him/her would recover based on what the permit holders' share would have been had he/she qualified and their contractual agreement.

c) qualification for the 1994 *per capita* subfund

Those who may claim against the 1994 *per capita* subfund are those who held a permit in the period from March 24, 1989 through December 31, 1992, and derivative share claimants who participated in the fishery prior to December 31, 1992 and actually participated in the fishery in 1994.

Derivative share claimants who participated in the fishery in 1994, but did not participate in the fishery in the period from March 24, 1989 through December 31, 1992, and derivative share claimants from previous or subsequent seasons who did not participate in the fishery in 1994 would not share in the 1994 *per capita* subfund.

d) distribution of the 1994 *per capita* subfund

The 1994 *per capita* fund would be distributed in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1994 *per capita* subfund by the total number of permits "held" during the season.⁴⁷ Permit holders who participated in the 1994 season would be allocated a "net" *per capita* share, equal to a gross *per capita* share reduced proportionally based upon actual contractual arrangements with derivative shareholders. Permit holders who did not participate in the 1994 season would be allocated a "net" *per capita* share equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders, determined on a case-by-case basis using historical information.

Qualifying derivative share claimants would be allocated proportional shares of a gross *per capita* share, based on the contractual arrangements they had with their permit holder.

e) qualification for the 1995 production subfund

The qualification criteria for the 1995 production subfund would be the same as those for the 1994 production subfund, but would apply to 1995 permit holders and derivative share claimants.

f) distribution of the 1995 production subfund

The 1995 production subfund would be distributed in a manner identical to the method for the 1994 production subfund, with the exception that the catch for 1992, 1993 and 1995 would be compared to determine the modified "Hall of Fame" market share.

g) qualification for the 1995 *per capita* subfund

Those who may claim against the 1995 *per capita* subfund are those who held a permit in the period from March 24, 1989 through December 31, 1992 and derivative share claimants who participated in the fishery prior to December 31, 1992 and actually participated in the fishery in 1995.

Derivative share claimants who participated in the fishery in 1995 but did not participate in the fishery in the period from March 24, 1989 through December 31, 1992, and derivative share claimants from previous or subsequent seasons who did not participate in the fishery in 1995 would not share in the 1995 *per capita* subfund.

h) distribution of the 1995 *per capita* subfund

The 1995 *per capita* fund would be distributed in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1995 *per capita* subfund by the total number of permits "held" during the season.⁴⁸ Permit holders who participated in the 1995 season would be allocated a "net" *per capita* share, equal to a gross *per capita* share reduced proportionally based upon actual contractual arrangements with derivative shareholders. Permit holders who did not participate in the 1995 season would be allocated a "net" *per capita* share equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders, determined on a case-by-case basis using historical information.

⁴⁷The "1994 season" is defined as the period from June 27, 1994 to September 9, 1994. The number of permits "held" in a season may be smaller than the number of permit holders, because of in season permit sales and temporary transfers. In cases where a permit was held by more than one individual during the period between March 24, 1989 and December 31, 1992, the multiple holders of the permit would be allotted collectively a single *per capita* share, to be divided among them on the basis of a straight line calculation of the number of days in the season the permit was held by each. Should more *per capita* shares be created than qualified permit holders, the excess shares will be redistributed to all qualifying claimants on a *per capita* basis. Should fewer permits have been "held" in the 1994 season than in the period between March 24, 1989 and December 31, 1992, plaintiffs' counsel will adjust the number of *per capita* shares so that each qualified permit holder is allocated one *per capita* share or pro rated portion of a share as appropriate.

⁴⁸The "1995 season" is defined as the period from June 26, 1995 to September 1, 1995. Intra-season transfers and sales and excess or too few shares, if any, would be handled the same as described above with regard to the 1994 *per capita* subfund.

Qualifying derivative share claimants would be allocated proportional shares of a gross *per capita* share, based on the contractual arrangements they had with their permit holder.

D. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each UCI salmon drift net claimant a Final Percent Share, which is the claimants' percent share of UCI salmon drift net allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each funds' actual percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for previous distributions from the Exxon Claims Program, the TAPL Fund, the Alyeska Settlement and the Native/Municipality/Kodiak Island Borough Recoveries. See Allocation Plan 38-39. Generally speaking, each claimant's final distribution would be adjusted by the difference between the claimant's allocation from these recoveries based on his or her Final Percent Share, and what the claimant has previously received. The object will be to apply Final Percent Shares, which are plaintiffs' best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI salmon drift net claimants, would be adjusted to reflect the extent to which they have already been compensated.⁴⁹ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

TABLE 1
SUBDIVISION OF UCI SALMON DRIFT (S03H) ALLOCATION

FUND	% OF ALLOCATION	PROJECTED AMOUNT
Permit Devaluation	22%	\$171,724,000
Vessel Devaluation	4%	\$31,223,000
1989 Seasonal Fund	33%	\$257,586,000
1990 Seasonal Fund	10%	\$78,056,000
1991 Seasonal Fund	7%	\$54,639,000
1994 Seasonal Fund	12%	\$93,668,000
1995 Seasonal Fund	12%	\$93,668,000
INCLUDES ATTORNEYS' FEES		

⁴⁹This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

TABLE 2
ACTUAL AND PREDICTED VALUE OF COOK INLET SALMON DRIFT NET PERMITS BY QUARTER AND
PERCENTAGES OF A FULL SHARE OF PERMIT DEVALUATION TO SELLER AND BUYER BY QUARTER
(SINGLE SALES ONLY)

Year. Qtr	Predicted Value	Actual Value	Predicted-Actual Gap	Seller's Share	Buyer's Share
1989.2	\$184,764	\$173,353	(\$11,411)	7.55%	92.45%
1989.3	\$188,573	\$176,927	(\$11,646)	7.71%	92.29%
1989.4	\$192,381	\$180,500	(\$11,881)	7.86%	92.14%
1990.1	\$210,597	\$197,591	(\$13,006)	8.61%	91.39%
1990.2	\$218,281	\$204,800	(\$13,481)	8.61%	91.39%
1990.3	\$227,555	\$201,348	(\$26,207)	17.34%	82.66%
1990.4	\$233,505	\$197,896	(\$35,609)	23.56%	76.44%
1991.1	\$230,037	\$194,444	(\$35,593)	23.55%	76.45%
1991.2	\$230,756	\$176,588	(\$54,168)	35.84%	64.16%
1991.3	\$203,485	\$147,756	(\$55,729)	36.88%	63.12%
1991.4	\$176,215	\$118,923	(\$55,292)	36.59%	63.41%
1992.1	\$183,651	\$90,091	(\$93,560)	61.91%	38.09%
1992.2	\$202,306	\$89,207	(\$113,099)	74.84%	25.16%
1992.3	\$218,340	\$86,229	(\$132,111)	87.42%	12.58%
1992.4	\$234,373	\$83,250	(\$151,123)	100%	0%

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF COOK INLET SALMON SET NET
CLAIMANTS (S04H) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs,² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cook Inlet (CI) Salmon Set Net (S04H) Claim Category, which includes claims for: lost income in the 1989 through 1991 and 1994 through 1995 seasons by holders of S04H permits and "derivative share claimants"³ and devaluation of S04H permits by permit owners. Permit owners, permit holders, and derivative share claimants will be collectively referred to as "CI salmon set net claimants."⁴ Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to CI salmon set net claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" in this fishery include crew, site owners and others who have a contractual right to some portion of a permit holder's lost income claim. Because the S04H fishery did not suffer complete closure in any season due to the oil spill and there was no extraordinary drop-off in participation by permit holders making it difficult for crew members to find work, only crew members who actually participated in the fishery and others who had specific contractual arrangements with a permit holder in a given season may qualify as derivative share claimants in this fishery. Crew who fished at a site and were paid a daily flat rate, rather than on a percentage basis, would not qualify as derivative share claimants.

⁴In certain limited circumstances, plaintiffs' counsel may recognize claims where a fisher sold his/her S04H permit in reliance on the purchase of an operation in Prince William Sound, Kodiak, Cook Inlet or Chignik ("the oiled fisheries") and can show documentary proof indicating that the sale was based on plans to purchase an operation in one of the oiled fisheries and that the purchase was not consummated due to problems caused by the spill. Such claims will be reviewed on a case by case basis. In no event will multiple claims for fisheries which are conducted during the same time period be recognized.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the CI Salmon Set Net Category, only putative CI salmon set net claimants have any financial interest in how CI salmon set net allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that CI salmon set net claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in the CI salmon set net allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, CI salmon set net claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which have not yet been collected.¹² The CI salmon set net matrix share is projected to be 6.2362% of the Alyeska Settlement, and 6.2469% of signatories' other recoveries.¹³

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute CI salmon set net claimants' projected 6.2469% Matrix Share (\$1,544,000 less attorneys' fees approved by the Court¹⁴) from Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and any "unclaimed" money (e.g., money reserved for absent class members for which no claim was made) remaining from their actual \$3,798,000 allocation from the Alyeska Settlement.

B. Projected Future Recoveries

Plaintiffs' counsel expect CI salmon set net claimants to be allocated roughly \$1,224,000 from the Phase IIA judgment; \$2,372,000 in prejudgment interest; and \$297,862,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which CI salmon set net claimants also will share.¹⁷

C. The Final Distribution

To the best of plaintiffs' counsels' knowledge, the Exxon Claims Program and TAPL Fund did not pay CI salmon set net claimants. To account for this, as set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, CI salmon set net claimants will be allocated the difference between their 6.2469% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims Program and TAPL Fund to CI salmon set net claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁷ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁸ Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁹ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹² Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³ The projected CI salmon set net matrix share of 6.2469% is slightly lower than the 6.25% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n. 31. CI salmon set net claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ This amount and other allocations to the CI Salmon Set Net Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also, in the Final Distribution, because CI salmon set net claimant's actual allocation of \$3,798,000 from the Alyeska Settlement was less than their projected 6.2362% matrix share (roughly \$5,445,000), the difference (roughly \$1,647,000) will be allocated to the CI salmon set net claimants, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, CI salmon set net claimants' total allocation from all recoveries will be roughly \$321,000,000 (less attorneys' fees and expenses), which includes: \$1,544,000 from the Native/Municipality/Kodiak Island Borough Recoveries; \$5,445,000 from the Alyeska Settlement; \$3,596,000 from the uncollected Phase IIA judgment and prejudgment interest; \$297,862,000 from the uncollected punitive damages judgment; and \$12,512,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CI salmon set net claimants to evaluate this distribution plan under the assumption that the CI salmon set net claimants ultimately will be allocated \$321,000,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of this distribution plan for CI salmon set net claimants,¹⁸ plaintiffs' counsel would conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order*.

First, all CI salmon set net claimants would be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel would automatically register a claim for those who filed a CI salmon set net claim in the Alyeska Claims Program, but would still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel would determine for each valid claim a percentage share of allocations to the CI Salmon Set Net Claim Category ("Final Percent Share").²⁰ All claims would be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares would be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel would make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares would be submitted to the Court for approval.²¹

Third, plaintiffs' counsel would distribute CI salmon set net claimants' \$1,544,000 share of the Native/Municipality/Kodiak Island Borough Recoveries, plus any unclaimed money remaining from CI salmon set net claimants' \$3,798,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await the resolution of reconsideration of or objections to

¹⁸ Plaintiffs' counsel would begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁹ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants will be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²² Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$6,989,000 in CI salmon set net allocations from the Alyeska and Native/Municipality/Kodiak Island Borough Recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the CI salmon set net allocation from the Native/Municipality/Kodiak Island Borough Recoveries, and any remaining unclaimed CI salmon set net allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary

(continued...)

determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also would be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions would be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide CI salmon set net allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the *Exxon Valdez* oil spill: a "permit devaluation" fund based on the loss in value of S04H permits and six separate "seasonal" funds for the 1989 (two separate funds), 1990, 1991, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²³ These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for the matrix share of the CI Salmon Set Net Category in the Allocation Plan.²⁴ Permit devaluation damages were discounted by 33 1/3% in the Allocation Plan to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁵

Table 1 shows what percent of a total CI Salmon Set Net Claim Category recovery would be allocated to each of the funds. As shown in Table 1, 17% of the allocation to CI salmon set net claimants would go to the permit devaluation fund; and the remaining 83% would go to the six seasonal funds, and be broken out -- 35.95% to the 1989 price seasonal fund; 0.05% to the 1989 harvest seasonal fund; 13% to the 1990 seasonal fund; 16% to the 1991 seasonal fund; 9% to the 1994 seasonal fund; and 9% to the 1995 seasonal fund. Table 1 shows the amount that would be allocated to each of these funds based on a total fishery recovery to the CI Salmon Set Net Claim Category of \$321,000,000.

A. Permit Devaluation Fund

The permit devaluation fund is based on the loss of market value of S04H permits due to the effects of the *Exxon Valdez* oil spill on the fishery.

1. Qualification for the permit devaluation fund

In order to claim against the permit devaluation fund, a permit owner²⁶ must have:

- 1.) owned an S04H permit in the period from March 24, 1989 to December 31, 1992²⁷; or
- 2.) owned a permit after December 31, 1992, and specifically received litigation rights in connection with the *Exxon Valdez* oil spill as the result of a written permit sales contract where the seller was an otherwise qualifying permit owner.²⁸

(...continued)

²² because previous distributions from the Alyeska Settlement were based solely on permit devaluation, 1989, 1990 and 1991 claims, whereas Final Percent Shares will be based on 1994 and 1995 claims as well. The distribution plan for the Alyeska Settlement included only 1989-1991 damages, because damages in later seasons had not yet been quantified.

²³ In addition, fishers whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.) These personal property claims would be allotted *pro rata* shares of CI salmon set net allocations, proportional to the ratio of loss to total CI salmon set net matrix damages (roughly \$105.4 million), up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of CI salmon set net allocations.

²⁴ See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of CI salmon set net damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. CI salmon set net damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Homer, Kenai and Soldotna, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon.

²⁵ See Allocation Plan 15 n. 24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁶ A permit holder -- someone with the legal entitlement to fish a permit in a given season -- if different from the permit owner, would not share in the permit devaluation fund, but would share in seasonal funds for the time he or she held the permit. Holders of interim use permits, if any, would share in the permit devaluation fund only if they ultimately are awarded permanent ownership. Derivative share claimants would not share in the permit devaluation fund. Plaintiffs' counsel would recognize written assignments of permit devaluation shares.

²⁷ Plaintiffs' counsel would use CFEC permit transfer data as the presumptive date of transfer, but allow claimants to rebut this data by submitting documentary proof.

²⁸ In some cases, permit buyers and sellers agreed to assign litigation rights and this was taken into consideration in arriving at the permit sale price. Plaintiffs' counsel would abide by such agreements which are reflected in written contracts, (e.g., contracts which contain language such as "It is hereby agreed that all right, title and interest in all claims for damages arising out of the Exxon oil spill incurred by the seller prior to and including the closing date of the sale of the permit, shall remain with the seller" or "Both parties agree that the sale and transfer shall not convey to the buyer any right, title or interest of the seller in any claim arising as a result of the Exxon Valdez oil spill on or about March 24, 1989 which claims arose prior to the sale and transfer") to the extent not disputed by the parties. To the extent the intent of such contracts are disputed by the parties, plaintiffs counsel would hold (continued...)

A permit owner who satisfies one of these requirements would be referred to as a "qualifying permit owner." Because the permit devaluation fund is based on loss in value of permits due to the spill, only qualifying permit owners may claim against it.

2. Distribution of the permit devaluation fund

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S04H permits fell short of what they would have without an oil spill during the time of ownership between March 24, 1989 through December 31, 1992. Actual and predicted market values of Cook Inlet salmon set net permits, based on expert studies prepared for plaintiffs' counsel, are listed in Table 2.

The "predicted" values shown in Table 2 are the values that plaintiffs' experts opined that permits would have reached absent the effects of the oil spill on the limited entry permit market. According to plaintiffs' experts, S04H permits would have reached a high of \$103,565 in the second quarter of 1990, if not for the spill. The "actual" values shown in Table 2 are plaintiffs' experts' estimates of the actual average selling price of S04H permits, which reached a low of \$40,196 in the second quarter of 1992. The difference between the predicted value and the actual value is represented by the column in Table 2 headed "Predicted-Actual Gap." The maximum predicted-actual gap (i.e., the greatest difference between the predicted market value and the actual market value in a given period) occurred in the second quarter of 1992, when it reached \$37,206.

Each qualifying permit owner who owned a permit continuously from the date of the oil spill through at least the second quarter of 1992, would be allotted a "full share" (approximately 1/745th, based on an S04H permit count of 745 permits which is a reasonable approximation) of the S04H permit devaluation fund. Qualifying permit owners who sold after the spill, but before December 31, 1992, would be allotted only a portion of a full share, based on the extent to which predicted and actual²⁹ permit values diverged during the period of ownership.

This general approach enjoys broad support from CI salmon set net claimants, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited entry commercial fishing permits are fungible assets granting identical rights to their owners.

a) post-spill permit sellers

A permit owner at the time of the oil spill, who held his or her permit until at least the second quarter of 1992 when the predicted-actual gap reached its maximum, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the oil spill who sold before the second quarter of 1992 would be allotted only a fraction of a full share, equal to the ratio of (1) the predicted-actual gap at the time of the sale to (2) the maximum predicted-actual gap of \$37,206. The fraction of a full share which would be allotted to each party in the sales transaction expressed as percentages, are listed in Table 2 under the headings "Seller's Share" and "Buyer's Share."³⁰

b) post-spill permit buyers

Permit buyers who purchased prior to December 31, 1992 would receive the appropriate percentage of a full share as described above and as shown in Table 2.³¹ Those who purchased a permit after December 31, 1992 and did not receive it as a result of a written contract transferring litigation rights, would not be allotted any share of the permit devaluation fund.

It would not be fair or reasonable to allow someone who acquired an S04H permit after December 31, 1992, absent a written contract transferring litigation rights, to share in the permit devaluation fund because during this time the predicted-actual gap never widened, and therefore the oil spill did not cause loss in market value.

B. Seasonal Lost Income Funds

Before the *Exxon Valdez* oil spill, the CI salmon set net fishery was thriving. Today, it is marginally profitable at best, and CI salmon set net claimants' pre-spill lifestyles have deteriorated. More CI salmon set net claimants have been forced to fish elsewhere, otherwise supplement their income or to abandon the fishery all together. The value of S04H permits (probably the single most significant asset of these small businesses) fell from \$100,000 in mid-1990 to \$35,000 by mid-1993.

Open meetings concerning distribution methods have been held with CI salmon set net claimants in Anchorage, Kenai, and Homer, Alaska, Seattle and Mt. Vernon, Washington, and Portland, Oregon. In addition plaintiffs' counsel have consulted with many CI salmon set net claimants. In meetings with CI salmon set net claimants, methods for distributing the seasonal funds which are largely

(...continued)

²⁸ back any affected distributions until the parties' disagreement is resolved.

²⁹ Rather than gathering individual sales data which would be administratively burdensome and possibly unreliable, plaintiffs' counsel will use estimated actual prices from Table 2 to determine estimated actual sales prices. Estimated actual prices will be interpolated between quarter ending dates shown in Table 2.

³⁰ These fractions are based on the buyer in the sales transaction holding the permit until at least December 31, 1992. For example, a permit owner who purchased before the spill and sold in the first quarter of 1990 would be allotted 7.7% of a full share, because only 7.7% of the maximum \$37,206 loss (\$98,832 - \$95,955 = \$2,877/\$37,206) had occurred by that time. If there are multiple sales transactions the fractions would be adjusted accordingly.

³¹ However, because the predicted-actual gap reached the maximum of \$37,206 in the second quarter of 1992, a buyer in the second, third or fourth quarters of 1992 would not receive a share of the permit devaluation fund.

production based received widespread support and such methods would be fair and reasonable. Thus, the majority of the 83% of the CI salmon set net damages which are represented by the seasonal funds would each be distributed based on production criteria, using market share as the measure of production.

1. Set net sites

CI salmon set netters generally operate their businesses on the basis of a collection of permit holders who fish together at a site³² in a cooperative arrangement, sharing crew, equipment and expenses, pooling their catch and paying out shares based on pre-determined percentage agreements amongst themselves and their crew. While one site might operate on the basis of one S04H permit, others may have ten or fifteen permits fishing together. At any given time, the total harvest for a site may be recorded on the permit of one, several, or each of the various permit holders fishing at the site.

In order to properly reflect the reality of these set net operations, it is necessary to distribute the seasonal lost income funds on the basis of these sites and the financial arrangements between permit holders and crew at the sites in a given season. In order to do this plaintiffs' counsel would collect information on which permits fished together at which sites in which seasons, assign each site a unique identifying number for each relevant season and then determine what the market share of each site was (or would have been) in a given season.³³

Distributions would be made from each of the seasonal funds first to the site based on which permits fished at the site in a given season. Then distributions would be made to individual CI salmon set net claimants based on the pre-determined arrangements for that site for a given season.³⁴

2. The 1989 harvest seasonal fund

The *Exxon Valdez* oil spill shut down set net fishing in statistical areas 244-21 and 244-22 ("the closed area") of Cook Inlet on July 7, 1989, resulting in lost income to fishers in the affected areas.

a) qualification for the 1989 harvest seasonal fund

The 1989 harvest seasonal fund would be divided amongst all permit holders³⁵ who actually fished in 1989, but were unable to fish the regularly scheduled July 7, 1989 period because their sites were in the closed area, and their derivative share claimants for 1989.³⁶

b) distribution of the 1989 harvest seasonal fund

Damages would be awarded to those who qualify, based on an estimate of what share of the harvest each of those sites might have taken that day if not for the *Exxon Valdez* oil spill based on estimating each site's market share.³⁷

³²The term "site" may refer to a specific geographical location, however for the purposes of this distribution plan, will more generally refer to a collection of S04H permits fishing in a cooperative arrangement with pre-determined financial arrangements between the permit holders and derivative share claimants.

³³Plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings" to determine market shares. CFEC derives Estimated Gross Earnings by multiplying for each subspecies of salmon "Round Pounds of Fish" times the "Value of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds of Fish entries times Value of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value of Catch entries calculated by CFEC.

The market share for each site will be calculated in the following manner:

- 1.) The "Estimated Gross Harvest Value" for the S04H fishery as a whole for a given season will be calculated by totaling CFEC's "Estimated Gross Earnings" for each S04H permit holder; then
- 2.) The "Site Estimate Gross Income" will be calculated by totaling the "Round Pounds of Fish" of each subspecies of salmon recorded by CFEC as having been caught by all permit holders fishing at a given site in a given season and multiplying those total Round Pounds by the "Value of Catch" recorded by CFEC for each subspecies of salmon in the S04H fishery for the given season; then
- 3.) Dividing the Site Estimated Gross Income by the Estimated Gross Harvest Value.

³⁴For example, if a site's market share was 1% of the 1990 harvest, a 10% crew member would be allotted 10% of 1% (or .1%) of the 1990 seasonal fund.

³⁵A permit holder is a person who possessed the right to fish the permit in a given season. This right might have been acquired by ownership, or by temporary transfer from the owner. In cases where a permit is temporarily transferred to a permit holder by the permit owner for a given season and there is an agreement that a percentage share is to be paid to the permit owner, the permit owner will be considered a derivative share claimant and receive a portion of the fund according to the terms of the agreement.

³⁶Fishers will have to show their site was in the closed area.

³⁷

- 1.) The "Closed Area Estimated Gross Harvest Value" for all sites in the closed area would be calculated by totaling the Round Pounds of each subspecies of salmon recorded by CFEC as having been caught by sites in the closed area in 1989 and multiplying those total Round Pounds by the Value of Catch recorded by CFEC for each subspecies of salmon in the S04H fishery for 1989; then
- 2.) A "Site Estimated Gross Income" would be calculated by totaling the Round Pounds of each subspecies of salmon recorded by CFEC as having been caught by an individual site in the closed area in 1989 and multiplying those total Round Pounds by the Value of Catch recorded by CFEC for each subspecies of salmon in the S04H fishery for 1989; then

(continued...)

Once a site's share has been determined, the distribution to each CI salmon set net claimant would be determined based on the financial arrangements between the permit holders and derivative shareholders at the site for 1989.

3. The 1989 price seasonal fund

The price of salmon was negatively impacted in 1989 as a result of the *Exxon Valdez* oil spill, resulting in lost income to CI salmon set net claimants.

a) qualification for the 1989 price seasonal fund

The 1989 price seasonal fund would be divided amongst all 1989 permit holders who actually fished in 1989 and derivative share claimants with an entitlement to a portion of the 1989 harvest at a site.

b) distribution of the 1989 price seasonal fund

The 1989 price seasonal fund would be divided based on the market share production of each site in 1989. *See infra n. 33.* Once a site's share has been determined, the distribution to each CI salmon set net claimant would be determined based on the financial arrangements between the permit holders and the derivative share claimants at the site in 1989.

4. The 1990 seasonal fund

The price of salmon was negatively impacted in 1990 as a result of the *Exxon Valdez* oil spill, resulting in lost income to CI salmon set net claimants.

a) qualification for the 1990 seasonal fund

The 1990 seasonal fund would be divided amongst all 1990 permit holders who actually fished in 1990, former permit holders who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, and derivative share claimants' with an entitlement to a portion of the 1990 harvest at a site. Permit owners in 1990 who purchased their permits from former permit owners who retained litigation rights, having not retained rights themselves, would not share in the 1990 seasonal fund, however their derivative share claimants would share in the fund, with their shares determined as if the permit holder for whom he/she fished qualified to recover from the fund.

b) distribution of the 1990 seasonal fund

The 1990 seasonal fund would be divided based on the market share production of each site in 1990. Once a site's share has been determined, the distribution to each CI salmon set net claimant would be determined based on the financial arrangements between the permit holders and the derivative share claimants at the site in 1990.

In calculating the distribution to former permit holders who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, but who did not actually fish in 1990, plaintiffs' counsel would do the following:

- 1.) Determine which site the permit fished at in 1988 and what that site's 1988 market share was; then
- 2.) Divide the site's 1988 market share by the number of permits fishing at the site in 1988 to determine the "sold permit's individual market share" (*i.e.*, the productivity of each individual permit at the site); then
- 3.) Apply the sold permit's individual market share to the 1990 seasonal fund, after normalizing, to determine the gross share to be allotted to the former permit holder; then
- 4.) Deduct an average total derivative share claimants' share for 1990, to be retained in the 1990 seasonal fund for distribution to all qualifying claimants based on Final Percent Shares.

5. The 1991 seasonal fund

The price of salmon was negatively impacted in 1991 as a result of the *Exxon Valdez* oil spill, resulting in lost income to CI salmon set net claimants.

a) qualification for the 1991 seasonal fund

The 1991 seasonal fund would be divided amongst all 1991 permit holders who actually fished in 1991, former permit holders who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, and derivative share claimants' with an entitlement to a portion of the 1991 harvest at a site. Permit owners in 1991 who purchased their permits from former permit owners who retained litigation rights, having not retained rights themselves, would not share in the 1991 seasonal fund, however their derivative share claimants would share in the fund, with their shares determined as if the permit holder for whom he/she fished qualified to recover from the fund.

b) distribution of the 1991 seasonal fund

The 1991 seasonal fund would be divided based on the market share production of each site in 1991. Once a site's share has

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- 3.) A market share for an individual site will be calculated by dividing the Site's Estimated Gross Harvest Value by the Closed Area Estimated Gross Harvest Value; finally
- 4.) Once a market share for each site in the closed area has been determined, the 1989 harvest seasonal fund will be divided up amongst all sites in the closed area based on these market shares.

been determined, the distribution to each CI salmon set net claimant would be determined based on the financial arrangements between the permit holders and the derivative share claimants at the site in 1991.

The distribution to former permit holders who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit, but who did not actually fish in 1991, would be determined in the same manner as distribution of the 1990 seasonal fund to former permit holders. *See supra*.

6. The 1994 and 1995 seasonal funds

In late 1991, Alaska state officials began to acknowledge publicly that the oil spill might lead to long-term damage to UCI salmon stocks. By February 1992, scientific studies were released which predicted that overescapement into the Kenai River system would result in long-term damage to the salmon stocks from that system, reducing the 1994 and 1995 harvests below what they would have been absent the spill. As shown in Table 2, the market value of S04H permits (a measure of fishers' confidence in the future viability of the fishery) remained fairly steady between the second quarter of 1989 and the first half of 1991, but then fell to approximately half of their earlier value.

By the end of 1992 news of the predictions for poor seasons in 1994 and 1995 had circulated throughout the fishery, and those purchasing a permit after December 31, 1992 can be said to have bought with knowledge of the risk in this fishery. Thus, absent special circumstances (e.g. substantial prior participation, or inheritance of a permit) detailed below which "tied" a fisher to the S04H fishery, permit holders who acquired their permits after December 31, 1992 would not participate in the 1994 and 1995 seasonal funds.

In order to balance the competing interests of CI salmon set net claimants and address the uncertainties associated with continued participation in a damaged fishery, plaintiffs' counsel propose to divide the 1994 and 1995 seasonal funds into two subfunds each, with fifty percent (50%) of each of these seasonal funds allocated to a "production subfund" and fifty percent (50%) of each of these seasonal funds allocated to a "per capita subfund."

a) qualification for the 1994 production subfund

Those who may claim against the 1994 production subfund are:

- 1.) All 1994 permit holders who:
 - a.) fished as a permit holder or crew in the fishery prior to December 31, 1992; or
 - b.) held a shore fishery lease for or owned sites³⁸ which were fished prior to December 31, 1992 and received a share of the site's income; or
 - c.) received a permit as a result of inheritance,³⁹ or
 - d.) received a permit as a result of a transfer recorded as a non-money, an "immediate family," or a "gift" transaction by CFEC;⁴⁰ or
 - e.) received the rights to future litigation damages as a result of specific language in a written contract for sale of the permit;

and their derivative share claimants;

- 2.) All former permit holders who retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit.⁴¹
- 3.) All derivative share claimants who participated in the fishery as a derivative share claimant, permit holder or permit owner at some time in the period from March 24, 1989 to December 31, 1992 and participated in the fishery in 1994, regardless of whether the permit holder for whom he/she worked recovers (hereafter "long time derivative share participant").

b) distribution of the 1994 production subfund

The CI set net damages for 1994 are based on injury to the Kenai River salmon stocks. In meetings with CI salmon set net claimants a concern was raised that using actual 1994 site market shares to distribute the production subfund for 1994 would result in significantly lower market share figures for CI salmon set net claimants who fish nearer to the Kenai River than they would otherwise have maintained absent damage from the spill. However, because the number of permits at a given site may be different from season to season, it is difficult to simply use prior "undamaged" seasons to determine site market shares. In an attempt to balance both of these concerns it is deemed more fair and reasonable to divide the 1994 production subfund based on a modified "Hall of Fame" method.

³⁸Plaintiffs' counsel would require proof through submission of a copy of the shore fishery lease or the substantial equivalent (e.g., affidavits from adjoining site owners/lessors) or documents evidencing ownership of the site.

³⁹Plaintiffs' counsel would require proof through submission of appropriate estate documents.

⁴⁰Plaintiffs' counsel will presume CFEC data is accurate for this purpose, but allow claimants to rebut the presumption with other documentation.

⁴¹A 1994 permit holder who otherwise qualifies under 1 (a)-(d) above may not claim against the 1994 production fund if the permit owner he or she received the permit from retained litigation rights for claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit.

In the modified Hall of Fame calculation plaintiffs' counsel would first determine for 1994 whether the number of permits fishing the site was the same as in 1992 and/or 1993. If number of permits was the same at the site all three seasons, the site's market shares for 1992, 1993 and 1994 would be compared and the highest would be chosen. If the number of permits was the same in 1994 as in either 1992 or 1993, but not both seasons, the site's market share for the season in which the number of permits is the same would be compared to the 1994 market share, and the highest would be chosen. If the number of permits was not the same in either 1992 or 1993 as in 1994, the actual market share for that site for 1994 would be chosen.

If a former permit holder retained litigation rights concerning claims for the *Exxon Valdez* oil spill as a result of a written contract for sale of the permit plaintiffs' counsel would determine the "sold permit's individual market share" as described in connection with the 1990 and 1991 seasonal funds.

These market shares for each site would then be "normalized,"⁴² and would constitute the site's share of the 1994 production subfund. Then the distributions to each individual CI salmon set net claimant would be calculated based on the financial arrangements between the permit holders and derivative shareholders at the site for 1994. In the case of a long time derivative share participant whose permit holder does not qualify, the calculation will be accomplished in the same manner, and the long time derivative share participant paid based on the financial arrangements he/she has with his/her permit holder.

If a former permit holder retained litigation rights concerning claims for the *Exxon Valdez* oil spill, an average total derivative share claimants' share for 1994 would be deducted from his/her share and retained in the 1994 seasonal fund for distribution to all qualifying claimants. The permit holder to whom the permit was sold, having not obtained rights would not share in the production subfund, however long time derivative share participants who worked for him/her would recover based on what the permit holder's share would have been had he/she qualified and their actual contractual agreement.

c) qualification for the 1994 per capita subfund

Those who may claim against the 1994 *per capita* subfund are those who held S04H permits in the period from March 24, 1989 through December 31, 1992, and derivative share claimants who participated in the fishery prior to December 31, 1992 and actually participated in the fishery in 1994.

Derivative share claimants who participated in the fishery in 1994, but did not participate in the fishery in the period from March 24, 1989 through December 31, 1992, and derivative share claimants from previous or subsequent seasons who did not participate in the fishery in 1994, would not share in the 1994 *per capita* subfund.

d) distribution of the 1994 per capita subfund

The 1994 *per capita* fund would be distributed in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1994 *per capita* subfund by the total number of permits "held" during the 1994 season.⁴³ Permit holders who participated in the 1994 season would each be allocated a "gross" *per capita* share, and the gross *per capita* shares for each permit holder fishing at a site would be aggregated and then distributed to the permit holders and qualifying derivative share claimants at the site based on the contractual arrangements between them. Permit holders who did not participate in the 1994 season would be allocated a "net" *per capita* share equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders, determined on a case-by-case basis using historical information.

e) qualification for the 1995 production subfund

The qualification criteria for the 1995 production subfund would be the same as those for the 1994 production subfund, but would apply to 1995 permit holders and derivative share claimants.

f) distribution of the 1995 production subfund

The rationale for damages for the 1995 seasonal fund are the same as for the 1994 seasonal fund, and the same concerns about market shares apply. Thus, the 1995 production subfund would also be divided based on a modified "Hall of Fame" method identical to the method for the 1994 production subfund, with the exception that the number of permits fishing at the site in 1995 would be compared to 1992 and 1993.

The treatment of former permit holder's and normalization of market shares would be identical to the treatment in connection with the 1994 production subfund.

⁴²Since the sum total of all of the individual modified Hall of Fame market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

⁴³The "1994 season" is defined as the period from June 1, 1994 to September 30, 1994. The number of permits "held" in a season may be smaller than the number of permit holders, because of in season permit sales and temporary transfers. In cases where a permit was held by more than one individual during the period between March 24, 1989 and December 31, 1992, the multiple holders of the permit would be allotted collectively a single *per capita* share, to be divided among them on the basis of a straight line calculation of the number of days in the season the permit was held by each. Should more *per capita* shares be created than qualified permit holders, the excess shares will be redistributed to all qualifying claimants on a *per capita* basis. Should fewer permits have been "held" in the 1994 season than in the period between March 24, 1989 and December 31, 1992, plaintiffs' counsel will adjust the number of *per capita* shares so that each qualified permit holder is allocated one *per capita* share or pro rated portion of a share as appropriate.

g) qualification for the 1995 *per capita* subfund

Those who may claim against the 1995 *per capita* subfund are those who held S04H permits in the period from March 24, 1989 through December 31, 1992 and derivative share claimants who participated in the fishery prior to December 31, 1992 and actually participated in the fishery in 1995.

Derivative share claimants who participated in the fishery in 1995, but did not participate in the fishery in the period from March 24, 1989 through December 31, 1992, and derivative share claimants from previous or subsequent seasons who did not participate in the fishery in 1995, would not share in the 1995 *per capita* subfund.

h) distribution of the 1995 *per capita* subfund

The 1995 *per capita* fund would be distributed in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1995 *per capita* subfund by the total number of permits "held" during the 1995 season.⁴⁴ Permit holders who participated in the 1995 season would each be allocated a "gross" *per capita* share, and the gross *per capita* shares for each permit holder fishing at a site would be aggregated and then distributed to the permit holders and qualifying derivative share claimants at the site based on the contractual arrangements between them. Permit holders who did not participate in the 1995 season would be allocated a "net" *per capita* share equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders, determined on a case-by-case basis using historical information.

C. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each CI salmon set net claimant a Final Percent Share, which is the claimant's percent share of CI salmon set net allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the fund or subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough Recoveries. See Allocation Plan 38-39. Claimant's final distributions would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI salmon set net claimants, would be adjusted to reflect the extent to which they have already been compensated.⁴⁵ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁴The "1995 season" is defined as the period from June 2, 1995 to September 15, 1995. Intra-season transfers and sales and excess or too few shares, if any, would be handled the same as described above with regard to the 1994 *per capita* subfund.

⁴⁵This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

TABLE 1
SUBDIVISION OF CI SALMON SET NET (\$04H) ALLOCATION

FUND	% OF ALLOCATION	PROJECTED AMOUNT
Permit Devaluation	17%	\$54,563,000
1989 Harvest	0.05%	\$160,000
1989 Price	35.95%	\$115,385,000
1990	13%	\$41,725,000
1991	16%	\$51,353,000
1994	9%	\$28,886,000
1995	9%	\$28,886,000
INCLUDES ATTORNEYS' FEES		

TABLE 2
ACTUAL AND PREDICTED VALUE OF COOK INLET SALMON SET NET
PERMITS BY QUARTER AND PERCENTAGES OF A FULL SHARE OF PERMIT
DEVALUATION TO SELLER AND BUYER BY QUARTER
(SINGLE SALES ONLY)

Year. Qtr	Predicted Value	Actual Value	Predicted-Actual Gap	Seller's Share	Buyer's Share
1989.2	\$61,259	\$59,476	(\$1,783)	4.8%	95.2%
1989.3	\$62,829	\$61,000	(\$1,829)	4.9%	95.1%
1989.4	\$83,686	\$81,250	(\$2,436)	6.5%	93.5%
1990.1	\$98,832	\$95,955	(\$2,877)	7.7%	92.3%
1990.2	\$103,565	\$100,550	(\$3,015)	8.1%	91.9%
1990.3	\$101,862	\$97,500	(\$4,362)	11.7%	88.3%
1990.4	\$100,160	\$89,250	(\$10,910)	29.3%	70.7%
1991.1	\$98,452	\$81,000	(\$17,452)	46.9%	53.1%
1991.2	\$93,015	\$74,500	(\$18,515)	49.8%	50.2%
1991.3	\$83,928	\$64,750	(\$19,178)	51.5%	48.5%
1991.4	\$74,841	\$55,000	(\$19,841)	53.3%	46.7%
1992.1	\$75,742	\$47,598	(\$28,144)	75.6%	24.4%
1992.2	\$77,402	\$40,196	(\$37,206)	100%	0%
1992.3	\$77,280	\$45,980	(\$31,300)	100%	0%
1992.4	\$77,159	\$51,763	(\$25,396)	100%	0%

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF COOK INLET TANNER CRAB CLAIMANTS
(T09H, T91H, T99H) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories"), organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cook Inlet (CI) Tanner Crab (T09H, T91H, T99H)³ Claim Category, which includes claims for lost income in 1989 through 1991 by "license holder"⁴ and "derivative share" claimants.⁵ License holders and derivative share claimants will be collectively referred to as "CI tanner crab claimants." Plaintiffs' counsel⁶ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to CI tanner crab claimants.⁷

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³The Allocation Plan indicated that licenses denoted as T09H and T99H were covered by this claim category. It has come to plaintiffs' counsel's attention that the reference should have been to T91H licenses instead of T99H licenses. All claims submitted by license holders with licenses containing the prefix "T" and the suffix "H" will be considered and evaluated under the terms of this plan so as to appropriately compensate all those harmed by the spill.

⁴"License holder" claimants include those who actually purchased a T09H, T91H or T99H license, geared up and fished the CI tanner crab fishery in 1989, and others who qualify as "displaced" license holders. *See infra*.

⁵"Derivative share claimants" in this fishery include other participants in the CI tanner crab fishery, such as crew and vessel owners.

⁶"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁷Because the Allocation Plan fixed the percentage allocation to the CI Tanner Crab Category, only putative CI tanner crab claimants have any financial interest in how CI tanner crab allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that CI tanner crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in the CI tanner crab allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, CI tanner crab claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁸ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁹ \$24,722,000 collected from Exxon,¹⁰ to be distributed in the Supplemental Claims Program; and \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which have not yet been collected.¹³ The CI tanner crab matrix share is projected to be 0.1357% of the Alyeska Settlement, and 0.1359% of signatories' other recoveries.¹⁴

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute CI tanner crab claimants' projected 0.1359% matrix share (\$34,000 less attorneys' fees approved by the Court¹⁵) from Native/Municipality/Kodiak Island Borough recoveries.¹⁶

B. Projected Future Recoveries

Plaintiffs' counsel expect CI tanner crab claimants to be allocated roughly \$27,000 from the Phase IIA judgment; \$52,000 in prejudgment interest; and \$6,480,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁷ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post judgment interest in which CI tanner crab claimants also will share.¹⁸

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, CI tanner crab claimants will be allocated the difference between their 0.1359% matrix share of signatories' aggregate Exxon Claims Program and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims and TAPL Fund to CI tanner crab claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also, in the Final Distribution, because CI tanner crab claimants did not receive an allocation from the Alyeska Settlement, whereas plaintiffs' counsel expect their matrix share of the Alyeska Settlement to be 0.1357%, or roughly \$118,000, CI tanner crab claimants will receive an allocation of the Alyeska settlement through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁸ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁹ Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

¹⁰ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹¹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹² Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁴ The projected CI tanner crab set net matrix share of 0.1359% is slightly lower than the 0.136% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. CI tanner crab claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹⁵ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁶ This amount and other allocations to the CI Tanner Crab Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁷ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁸ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, CI tanner crab claimants' total allocation from all recoveries would be roughly \$6,982,000 (less attorneys' fees and expenses), which includes: \$34,000 from the Native/Municipality/Kodiak Island Borough Recoveries; \$118,000 from the Alyeska Settlement; \$78,000 from the uncollected Phase IIA judgment and prejudgment interest; \$6,480,000 from the uncollected punitive damages judgment; and \$272,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CI tanner crab claimants to evaluate this distribution plan under the assumption that the CI tanner crab claimants ultimately will be allocated \$6,982,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of this distribution plan for CI tanner crab claimants,¹⁹ plaintiffs' counsel would conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions would be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all CI tanner crab claimants would be required to identify themselves and submit a claim before a specified cut-off date.²⁰ Plaintiffs' counsel would automatically register a claim for those who filed a CI tanner crab claim in the Alyeska Claims Program, but would still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the CI Tanner Crab Claim Category (Final Percent Share).²¹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²²

Third, plaintiffs' counsel would distribute CI tanner crab claimants' \$34,000 share of the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await the resolution of reconsideration of or objections to the determination of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁹ Plaintiffs' counsel would begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²⁰ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²¹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²² If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants will be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

III. DETERMINATION OF FINAL PERCENT SHARES

The *Exxon Valdez* oil spill negatively impacted the CI tanner crab harvest in 1989, resulting in lost income for CI tanner crab claimants.²³ The plaintiffs' Allocation Committee quantified the damages for this fishery for 1989 and this quantification formed the basis for the matrix share of the CI Tanner Crab Claim Category in the Plan of Allocation.²⁴

A. The Lost Income Fund

In meetings with CI tanner crab claimants, a method of distributing the fund based on historical production received widespread support and such a method would be fair and reasonable. Thus, CI tanner crab damages will be distributed to qualified claimants based on the historical production of each CI tanner crab claimant *vis a vis* other CI tanner crab claimants, using market share as the measure of production.

1. Qualification for the Lost Income Fund

The CI tanner crab lost income fund is intended to compensate only those tanner crab fishers who fished, or would have fished but for the oil spill, in the CI Management Area in 1989. Those eligible to claim against the fund would be license holders and derivative share claimants who "participated" in the fishery in 1989,²⁵ and "displaced" claimants unable to participate as a result of the spill.²⁶

2. Distribution of the Lost Income Fund

Plaintiffs' counsel will look to CFEC data for the years 1986 through 1988²⁷ and determine each qualified license holder's best two market share percentages²⁸ and average them. If a qualified fisherman does not have two year's of catch from 1986-1988 plaintiffs' counsel would develop for that fisher a median market share based on the market shares of all CI tanner crab license holders fishing similar licenses in the CI tanner crab fishery in those years. These market shares would then be "normalized"²⁹ and would constitute the license holder's share of each of the seasonal funds (including attorneys' fees and litigation expenses), from which derivative claimants' shares will be deducted.

Derivative share claimant's shares will be determined based on the contractual arrangements they have with their license holders where they exist and can be verified by the license holder and derivative share claimant. If a displaced license holder claimant did not make contractual arrangements with derivative share claimants, his or her gross share would be reduced proportionally by projected payments to

²³In addition, fishers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.) These personal property claims will be allotted pro rata shares of CI tanner crab allocations, proportional to the ratio of loss to total CI tanner crab matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of CI tanner crab allocations.

²⁴See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of CI tanner crab damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. CI tanner crab damages were presented for discussion at ongoing meetings with fishers held in Anchorage, Homer, Kenai and Soldotna, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon.

²⁵License holders "participated" if they purchased a T09H, T91H or T99H license, geared up and fished for tanner crab in the Cook Inlet Management Area in 1989. Crew "participated" if they were employed in the CI tanner crab fishery in 1989. Vessel owners "participated" if they leased or otherwise contracted a vessel in the CI tanner crab fishery in 1989.

²⁶A fisher who did not purchase a T09H, T91H or T99H license in 1989 may still qualify as a "displaced" license holder by providing documentary evidence that he or she either: (1) held a T09H, T91H or T99H license and recorded tanner crab landings in the Cook Inlet Management Area in any two seasons from 1986 through 1992; or (2) was paid a CI tanner crab claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying T09H, T91H or T99H license holder claimant to fish in the Cook Inlet Management Area in 1989 (evidenced by a writing, or license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a CI tanner crab crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the CI tanner crab fishery in two of the years from 1986 through 1992. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract to lease a vessel for the CI tanner crab 1989 season with a qualifying T09H, T91H or T99H license holder claimant; or (2) leased his or her vessel for use in the CI tanner crab fishery in two of the years from 1986 through 1992. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from fishing in the CI tanner crab fishery in 1989, establishing that they were ready, willing and able to participate in the fishery.

²⁷The years for qualification and determination of market share are different because entire areas within Cook Inlet were closed to tanner crab fishing in later years which would have the effect of skewing market shares in those years.

²⁸Plaintiffs' counsel will use harvest weight to determine market shares for each license holder claimant. As the presumptive measure of harvest weight in the CI Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field entitled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "H" or otherwise identifies the harvest as associated with statistical areas in the CI Management Area. Claimants will be given an opportunity to verify and correct CFEC data.

²⁹Since the sum total of all of the individual average market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

shareholders calculated on a case-by-case basis using historical data. Displaced derivative share claimants who did not make contractual arrangements with a license holder would be allotted a proportional share of the lost income fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each CI tanner crab claimant a Final Percent Share, which is the claimant's percent share of all CI tanner crab allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for previous distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimant's final distribution would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI tanner crab claimants, would be adjusted to reflect the extent to which they have already been compensated.³⁰ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

³⁰This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF COOK INLET MISCELLANEOUS FINFISH CLAIMANTS (M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cook Inlet (CI) Miscellaneous Finfish Claim Category (M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, M99B), which includes claims for lost income in the 1989 season by "license holders"³ and "derivative share"⁴ claimants. License holders and derivative share claimants will be collectively referred to as "CI miscellaneous finfish claimants". Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to CI miscellaneous finfish claimants.⁶

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"License holder" claimants include those who purchased M01B, M02B, M04B, M05B, M06B, M07B, M09B, M17B, M26B, M37B, M61B, M91B, or M99B licenses, geared up and fished the Cook Inlet Management Area for miscellaneous finfish in 1989, and others who qualify as "displaced" license holders. *See infra*.

⁴"Derivative share" claimants include other participants in the fishery, such as crew and vessel owners.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁶Because the Allocation Plan fixed the percentage allocation to the CI Miscellaneous Finfish Category, only putative CI miscellaneous finfish claimants have any financial interest in how CI miscellaneous finfish allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that CI miscellaneous finfish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in the CI miscellaneous finfish allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, CI miscellaneous finfish claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which have not yet been collected.¹² The CI miscellaneous finfish matrix share of signatories' recoveries is projected to be 0.0040%.

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute CI miscellaneous finfish claimants' projected 0.0040% matrix share (\$1,000 less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and their share of the \$2,600 allocated from the Alyeska Settlement to all miscellaneous finfish claims, including those from Prince William Sound and Kodiak, as well as Cook Inlet.¹⁵

B. Projected Future Recoveries

Plaintiffs' counsel expect CI miscellaneous finfish claimants to be allocated roughly \$800 from the Phase IIA judgment, \$1,500 in prejudgment interest, and \$191,000 from signatories' share of the punitive damages judgment, as (and if) they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post judgment interest, in which CI miscellaneous finfish claimants also will share.¹⁶

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, CI miscellaneous finfish claimants will be allocated the difference between their 0.0040% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims Program and TAPL Fund to CI miscellaneous finfish claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also, in the Final Distribution, because the CI miscellaneous finfish claimants' actual allocation from the Alyeska Settlement (which cannot exceed \$2,600, the amount allocated to Cook Inlet, Kodiak and Prince William Sound miscellaneous finfish fishers), is less

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁸Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹²Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This amount and other allocations to the CI Miscellaneous Finfish Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵Miscellaneous finfish claimants in Cook Inlet, Kodiak and Prince William Sound were collectively allocated \$2,600 from the Alyeska Settlement, based on plaintiffs' counsels' best damage estimates available at the time. However, given the relatively small allocation, and the difficulty of valuing miscellaneous finfish claimants' damages, no distributions were made. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 19-20 (Oct. 1, 1993). In the Supplemental Claims Program, the miscellaneous finfish allocation from the Alyeska Settlement will be allocated among Cook Inlet, Kodiak and Prince William Sound claimants in proportion to their relative damages, determined from claims data in the Supplemental Claims Program. Separate plans are being filed for Prince William Sound and Kodiak miscellaneous finfish claimants.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

than their 0.0040% matrix share (roughly \$3,500), the difference will be allocated to CI miscellaneous finfish claimants, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, CI miscellaneous finfish claimants' allocation from all recoveries would be roughly \$205,500 (less attorneys' fees and expenses), which includes: \$1,000 from the Native/Municipality/Kodiak Island Borough Recoveries; \$3,500 from the Alyeska Settlement; \$2,300 from the uncollected Phase IIA judgment and prejudgment interest; \$191,000 from the uncollected punitive damages judgment; and \$8,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CI miscellaneous finfish claimants to evaluate this distribution plan under the assumption that the CI miscellaneous finfish claimants ultimately will be allocated \$205,500 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of this distribution plan for CI miscellaneous finfish claimants,¹⁷ plaintiffs' counsel would conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions would be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order*.

First, all CI miscellaneous finfish claimants would be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel would automatically register a claim for those who filed a CI miscellaneous finfish claims in the Alyeska Claims Program, but would still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the CI Miscellaneous Finfish Claims Category ("Final Percent Share").¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel would distribute CI miscellaneous finfish claimants' combined \$1,000 share of the Native/Municipality/Kodiak Island Borough recoveries, plus their share of the \$2,600 allocated from the Alyeska Settlement to Cook Inlet, Kodiak and Prince William Sound miscellaneous finfish fishers. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await the resolution of reconsideration of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The *Exxon Valdez* oil spill caused a closure of the state waters fishing for CI miscellaneous finfish, and resulted in displacement and disruption of fishing and the labor market, negatively impacting the CI miscellaneous finfish harvest in 1989, and resulting in lost

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants will be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

income for CI miscellaneous finfish claimants. The plaintiffs' Allocation Committee quantified the damages for this fishery for 1989 and this quantification formed the basis for the matrix share of the CI Miscellaneous Finfish Claim Category in the Plan of Allocation.²¹

A. The Lost Income Fund

In meetings with CI miscellaneous finfish claimants, a method of distributing the fund based on historical production received widespread support and such a method would be fair and reasonable. Thus, CI miscellaneous finfish damages would be distributed to qualified claimants based on the historical production of each CI miscellaneous finfish claimant *vis a vis* other CI miscellaneous finfish claimants, using market share based on harvest weight as the measure of production.²²

1. Qualification for the Lost Income Fund

The CI miscellaneous finfish lost income fund is intended to compensate only those miscellaneous finfish fishers who fished, or would have fished but for the oil spill, in the CI Management Area in 1989.²³ Those eligible to claim against the fund would be license holders and derivative share claimants who "participated" in the fishery in 1989,²⁴ and "displaced" claimants unable to participate as a result of the spill.²⁵

2. Distribution of the Lost Income Fund

A projected market share would be calculated for each qualified license holder by determining his or her two best actual market share percentages from 1986 through 1991,²⁶ averaging them, and then "normalizing" them.²⁷ This projected market share would constitute the license holder's gross share of the fund (including attorneys' fees and litigation expenses), from which derivative claimants' shares will be deducted.

Derivative share claimant's shares will be determined based on the contractual arrangements they have with their license holders where they exist and can be verified by the license holder and derivative share claimant. If a displaced license holder claimant did not make contractual arrangements with derivative share claimants, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Displaced derivative share claimants who did not make

²¹See Allocation Plan 5-6. To determine these damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of CI miscellaneous finfish damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. CI miscellaneous finfish damages were presented for discussion at ongoing meetings with fishers held in Anchorage, Homer, Kenai and Soldotna, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon. In addition, fishers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted pro rate shares of CI miscellaneous finfish allocations, proportional to the ratio of loss to total CI miscellaneous finfish matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of CI miscellaneous finfish allocations.

²²As the presumptive measure of harvest weight in the CI Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field entitled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "H" or otherwise identifies the harvest as associated with statistical areas associated with the CI Management Area. Claimants will be given an opportunity to verify and correct CFEC data.

²³Plaintiffs' counsel would use CFEC data as presumptive proof of catch in the appropriate areas, but allow claimants to rebut this data by submitting documentary proof.

²⁴License holders "participated" if they purchased a miscellaneous finfish license, geared up and fished for miscellaneous finfish in the statistical areas associated with Cook Inlet in 1989. Crew "participated" if they were employed on a vessel which harvested miscellaneous finfish in the areas associated with Cook Inlet in 1989. Vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest miscellaneous finfish in the areas associated with Cook Inlet in 1989.

²⁵A fisher who did not purchase a miscellaneous finfish license in 1989 may still qualify as a "displaced" license holder by providing documentary evidence that he or she either: (1) had miscellaneous finfish catch in the statistical areas associated with Lower Cook Inlet in any two years from 1986 through 1991; or (2) was paid a CI miscellaneous finfish claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying miscellaneous finfish license holder claimant who did not fish in 1989 (evidenced by a writing, or license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a CI miscellaneous finfish crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the CI miscellaneous finfish fishery in two of the years from 1986 through 1991. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying miscellaneous finfish license holder claimant who did not fish in 1989; or (2) leased his or her vessel for use in the CI miscellaneous finfish fishery in two of the years from 1986 through 1991. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from fishing for miscellaneous finfish in the CI Inlet Management Area in 1989, establishing that they were ready, willing and able to participate in the fishery.

²⁶New entrants in 1989 and qualified license holders who do not have catch in two of the years between 1986 and 1991, would be assigned the median best catch of licensed holders in landings in two of the seasons 1986 through 1991. The median best catch equals the midpoint of such best catches, ranked in order. For example, of 15 license holders, the median best catch would be the eighth largest best catch.

²⁷Since the sum total of all of the individual averaged market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

contractual arrangements would be allotted a proportional share of the lost income fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each CI miscellaneous finfish claimant a Final Percent Share, which is claimant's percent share of all CI miscellaneous finfish allocations calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough Recoveries. *See* Allocation Plan 38-39. Claimant's final distributions would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI miscellaneous finfish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁸ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF COOK INLET POT SHRIMP CLAIMANTS
(P09B) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cook Inlet (CI) Pot Shrimp (P09B)³ Claim Category, which includes claims for: lost income in the 1989 through 1994 seasons by P09B "license holder"⁴ and "derivative share claimants."⁵ License holders and derivative share claimants will be collectively referred to as "CI pot shrimp claimants." Plaintiffs' counsel⁶ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to CI pot shrimp claimants.⁷

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³Pot Shrimp licenses which are fished in Cook Inlet are issued on a statewide basis with the suffix "B," but only such licenses used to fish for pot shrimp in the Cook Inlet Management Area are covered by this distribution plan.

⁴"License holder" claimants include those who actually purchased a P09B license, geared up and fished the CI pot shrimp fishery in 1989, 1990, 1991, 1992, 1993 and/or 1994, and others who qualify as "displaced" license holders. *See infra*.

⁵"Derivative share" claimants include other participants in the CI pot shrimp fishery, such as crew and vessel owners.

⁶"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁷Because the Allocation Plan fixed the percentage allocation to the CI Pot Shrimp Category, only putative CI pot shrimp claimants have any financial interest in how CI pot shrimp allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that CI pot shrimp claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in the CI pot shrimp allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, CI pot shrimp claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁸ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁹ \$24,722,000 collected from Exxon,¹⁰ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which have not yet been collected.¹³ The CI pot shrimp matrix share of signatories' recoveries is 0.0150%

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute CI pot shrimp claimants' projected 0.0150% matrix share (\$3,700 less attorneys' fees approved by the Court¹⁴) from Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and the \$2,600 allocated from the Alyeska Settlement to CI pot shrimp claimants not yet paid out.

B. Projected Future Recoveries

Plaintiffs' counsel expect CI pot shrimp claimants to be allocated roughly \$2,900 from the Phase IIA judgment; \$5,700 in prejudgment interest; and \$715,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post judgment interest, in which CI pot shrimp claimants also will share.¹⁷

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries are collected, CI pot shrimp claimants will be allocated the difference between their 0.0150% matrix share of signatories' aggregate Exxon Claims Program and TAPL Fund recoveries and actual payments, if any, from the Exxon Claims and TAPL Fund to CI pot shrimp claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also, in the Final Distribution, because the CI pot shrimp claimants' actual \$2,600 allocation from the Alyeska Settlement is less than their 0.0150% matrix share (roughly \$13,000), the difference of \$10,400 will be allocated to CI pot shrimp claimants, through a combination of offsets from allocations to other claim categories and distributions to individual claimants.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, the CI pot shrimp claimants' allocation from all recoveries would be roughly \$771,000 (less attorneys' fees and expenses), which includes: \$3,700 from the Native/Municipality/Kodiak Island Borough recoveries; \$13,000 from the Alyeska Settlement; \$8,600 from the uncollected Phase IIA judgment and prejudgment interest; \$715,000 from the uncollected punitive damages judgment; and \$30,045 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

⁸Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁹Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

¹⁰This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹¹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹²Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵This amount and other allocations to the CI Pot Shrimp Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and an opportunity to object.

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CI pot shrimp claimants to evaluate this distribution plan under the assumption that the CI pot shrimp claimants ultimately will be allocated \$771,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of this distribution plan for CI pot shrimp claimants,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all CI pot shrimp claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed a CI pot shrimp claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the CI Pot Shrimp Claim Category ("Final Percent Share").²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel would distribute CI pot shrimp claimants' \$3,700 share of the Native/Municipality/Kodiak Island Borough recoveries, plus the \$2,600 allocated from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await the resolution of reconsideration of or objections to the determination of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The Lower Cook Inlet commercial season for pot shrimp was closed due to the presence of oil from April 30, 1989 until July 7, 1989. Effort and harvest levels have fallen dramatically since the spill with levels relatively high from 1984 through 1988, but falling significantly from 1989 through 1994. The *Exxon Valdez* oil spill negatively impacted the pot shrimp harvests in 1989 through 1994, resulting in lost income for CI pot shrimp claimants in each of these years. The plaintiffs' Allocation Committee quantified the damages for each of these years and this quantification formed the basis for the Matrix Share of the CI Pot Shrimp Category in the Plan of Allocation.²²

¹⁸ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants will be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²² *See* Plan of Allocation 5-6. To determine these damages, the Allocation Committee considered expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of CI pot shrimp damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. CI pot shrimp damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Kenai and Homer, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon. In addition, fishers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs of repairs and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted pro rata shares of CI pot shrimp allocations, proportional to the ratio of loss to total CI pot shrimp matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of the CI pot shrimp allocations.

A. The Lost Income Seasonal Funds

Table 1 shows what percent of a total CI Pot Shrimp Claim Category recovery would be allocated to each of these funds. As shown in Table 1, 12% of the allocation to CI pot shrimp claimants would go to the 1989 seasonal fund; 16% would go to the 1990 seasonal fund; 16% would go to the 1991 seasonal fund; 20% would go to the 1992 seasonal fund; 18% would go to the 1993 seasonal fund; and 18% would go to the 1994 seasonal fund. Table 1 shows the amount that would be allocated to each of these funds based on a total fishery recovery to the CI Pot Shrimp Claim Category of \$771,000.

1. Qualification for the Seasonal Funds

After consultation with CI pot shrimpers and others knowledgeable about the fishery and studying CFEC data on fishing effort and harvest from 1984 through 1994, plaintiffs' counsel has determined that since fishing effort diminished significantly after the spill because of poor harvests due to spill damage, it is fair and reasonable to allow all CI pot shrimpers who meet the qualification criteria to claim against all six of the funds rather than just against funds in years they fished in this fishery.

The seasonal fund would be divided among: license holders and derivative share claimants who "participated"²³ and "displaced" claimants unable to participate as a result of the spill.²⁴

2. Distribution of the Seasonal Funds

Distribution of each of the funds would be made in the following manner:

Plaintiffs' counsel will look at CFEC data for the years 1986 through 1988²⁵ and determine each qualified license holder's best two market share percentages²⁶ and average them. If a qualified fisherman does not have two year's of catch from 1986-1988 plaintiffs' counsel would develop for that fisher a median market share based on the market shares of all CI pot shrimp license holders in those years. These market shares would then be "normalized"²⁷ and would constitute the license holder's share of each of the seasonal funds (including attorneys' fees and litigation expenses), from which derivative claimants' shares will be deducted.

Derivative share claimant's shares will be determined based on the contractual arrangements they have with their license holders where they exist and can be verified by the license holder and derivative share claimant. If a displaced license holder claimant did not make contractual arrangements with derivative share claimants, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Displaced derivative share claimants who did not make contractual arrangements with a license holder would be allotted a proportional share of the lost income fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each CI pot shrimp claimant a Final Percent Share, which is the claimant's percent share of all CI pot shrimp allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

²³License holders "participated" in a given season if they purchased a P09B license, geared up and fished for pot shrimp in the CI Management Area that season. Crew "participated" if they were actually employed to work in CI pot shrimp fishery during a given season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the CI pot shrimp fishery during a given season.

²⁴A fisher who did not purchase a P09B license in a given season (*i.e.*, 1989, 1990, 1991, 1992, 1993 or 1994) may still qualify as a "displaced" license holder, by providing documentary evidence that he or she held a P09B license and recorded pot shrimp landings in the Cook Inlet Management Area in any two of the seasons from 1986 through 1991; or (2) was paid a CI pot shrimp claim by the Exxon Claims Program. To qualify as a "displaced" crew a claimant must provide documentary evidence that he or she either: (1) (for any claim 1989, 1990, 1991, 1992, 1993 and/or 1994) had an agreement with a qualifying CI pot shrimp license holder claimant in the season for which he or she is making a claim (evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) (for a 1989 claim) was paid a CI pot shrimp crew claim by the Exxon Claims Program; or (3) (for any claim 1989, 1990, 1991, 1992, 1993 and/or 1994) participated (as a license holder or crew) in the CI pot shrimp fishery in two of the seasons from 1986 through 1992. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) (for any claim 1989, 1990, 1991, 1992, 1993 and/or 1994) had a written contract for the given season with a license holder claimant; or (2) was paid a CI pot shrimp claim by the Exxon Claims Program; or (3) (for any claim 1989, 1990, 1991, 1992, 1993 and/or 1994) leased his or her vessel for use in the CI pot shrimp fishery in two of the seasons from 1986 through 1992. In addition, displaced claimants must submit verified statements describing how the spill prevented them from participating in the fishery, and establishing that they were ready, willing and able to participate.

²⁵The years for qualification and determination of market share are different because fishing fell off so greatly in later years and this would have the effect of skewing market shares in those years.

²⁶Plaintiffs' counsel will use harvest weight to determine market shares for each fisher. As the presumptive measure of harvest weight in the CI Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field entitled "Round Pounds Of Fish" for which the corresponding entry in the data field titled "Area" is "H" or otherwise identifies the harvest as associated with statistical areas in the CI Management Area. Claimants will be given an opportunity to verify and correct CFEC data.

²⁷Since the sum total of all of the individual average market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough Recoveries. See Allocation Plan 38-39. Claimant's final distributions would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI pot shrimp claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁸ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

TABLE 1
SUBDIVISION OF CI POT SHRIMP ALLOCATION

FUND	% OF ALLOCATION	PROJECTED AMOUNT
1989	12%	\$92,500
1990	16%	\$123,000
1991	16%	\$123,000
1992	20%	\$154,000
1993	18%	\$139,000
1994	18%	\$139,000
<i>INCLUDES ATTORNEYS' FEES</i>		

²⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF LOWER COOK INLET ROE HERRING
SEINE CLAIMANTS (G01H) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Lower Cook Inlet (LCI) Roe Herring Seine (G01H) Claim Category, which includes claims for lost income in the 1989 through 1991 seasons by holders of G01H permits and "derivative share claimants."³ Permit holders and derivative share claimants will be collectively referred to as "LCI roe herring seine claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to LCI roe herring seine claimants.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include crew, vessel lessors and others who have a contractual right to some portion of a permit holder's lost income claim.

⁴"Plaintiffs' Counsel" are plaintiffs Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the LCI Roe Herring Seine Claim Category, only putative LCI roe herring seine claimants have any financial interest in how LCI roe herring seine allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that LCI roe herring seine claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in LCI roe herring allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair given the circumstances of many of the dismissals and the prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, LCI roe herring seine claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The LCI roe herring seine matrix share is projected to be 0.2934% of signatories' share of the Alyeska Settlement, and 0.2939% of signatories' other recoveries.¹²

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute LCI roe herring seine claimants' projected 0.2939% matrix share (\$73,000) less attorneys' fees approved by the Court¹³ Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and any "unclaimed" money (*e.g.*, money reserved for absent class members for which no claim was made) remaining from their actual \$218,000 allocation from the Alyeska Settlement.

B. Projected Future Recoveries

Plaintiffs' counsel expect LCI roe herring seine claimants to be allocated roughly \$58,000 from the Phase IIA judgment; \$112,000 in prejudgment interest; and \$14,014,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post judgment interest, in which LCI roe herring seine claimants also will share.¹⁶

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries have been collected, LCI roe herring seine claimants will be allocated the difference between their 0.2939% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims Program and TAPL Fund to LCI roe herring seine claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁷Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The projected LCI roe herring seine matrix share of 0.2939% is slightly higher than the 0.29% projected in the Allocation Plan due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n. 31. LCI roe herring seine claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴This amount and other allocations to the LCI Roe Herring Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also, in the Final Distribution, because LCI roe herring seine claimant's actual allocation of \$218,000 from the Alyeska Settlement was less than their projected 6.2934% matrix share (roughly \$256,000), the difference (projected at \$38,000) will be allocated to the LCI roe herring seine claimants, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, LCI roe herring seiners' total allocation from all recoveries would be roughly \$15,043,000 (less attorneys' fees and expenses), which includes: \$73,000 from the Native/Municipality/Kodiak Island Borough recoveries; \$256,000 from the Alyeska Settlement; \$169,000 from the uncollected Phase IIA judgment and prejudgment interest; \$14,014,000 from the uncollected punitive damages judgment; and \$589,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and LCI roe herring seine claimants to evaluate this distribution plan under the assumption that the LCI roe herring seine claimants ultimately will be allocated \$15,100,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of this distribution plan for LCI roe herring seine claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order*.

First, all LCI roe herring seine claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed a LCI roe herring seine claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the LCI Roe Herring Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel would distribute LCI roe herring seine claimants' combined \$73,000 share of the Native/Municipality/Kodiak Island Borough recoveries, plus any unclaimed money remaining from their \$218,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await the resolution of reconsideration of or objections to the determination of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide the LCI roe herring seine allocations into three separate funds, each of which corresponds to a type of damage caused to the fishery by the *EXXON VALDEZ* oil spill.²² These three "seasonal" funds for the 1989, 1990, 1991 fishing seasons are based on the impact of the oil spill on the market for roe herring which resulted in lower prices to LCI roe herring seiners in each of these years than they would have gotten absent the spill.²³ These three funds would be allocated money in proportion to their corresponding damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Matrix Share of the LCI Roe Herring Seine Claim Category in the Allocation Plan.²⁴

Table 1 shows what percent of a total LCI Roe Herring Seine Claim Category recovery would be allocated to each of the funds. As shown in Table 1, 57% of the allocation to LCI roe herring seine claimants would go to the 1989 seasonal fund; 23% to the 1990 seasonal fund; and 20% to the 1991 seasonal fund. Table 1 shows the amount that would be allocated to each of these funds based on a total fishery recovery to the LCI Roe Herring Seine Claim Category of \$15,100,000.

A. The Seasonal Lost Income Funds

The *EXXON VALDEZ* oil spill negatively impacted the price of roe herring in 1989, 1990 and 1991, resulting in lost income for LCI roe herring seine claimants in each of these seasons. In addition, the Outer and Eastern District experimental fishery was closed to fishing due to the oil spill and a small harvest loss resulted in 1989.

1. Qualification for the Seasonal Funds

The 1989, 1990 and 1991 seasonal funds will be divided amongst all 1989, 1990 and 1991 G01H permit holders²⁵ and derivative share claimants with an entitlement to a portion of the given season's G01H harvest (*e.g.*, crew who fished the given G01H season; spotters who had agreements with a G01H permit holder or permit holders in a given season; and vessel owners who had agreements to lease to a G01H permit holder in a given season.)²⁶

2. Distribution of the Seasonal Funds

In meetings with LCI roe herring seine claimants, methods for distributing the seasonal funds which are production based received widespread support and such methods would be fair and reasonable. Thus, LCI roe herring seine damages which are represented

²¹Distributions would be determined as follows. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times the combined \$329,000 in LCI roe herring seine allocations from the Alyeska and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, if any, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel will distribute the LCI roe herring seine allocation from the Native/Municipality/Kodiak Island Borough Recoveries, and any remaining unclaimed LCI roe herring seine allocation from the Alyeska Settlement, in proportion to net claim values.

²²In addition, LCI roe herring seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.) These personal property claims would be allotted *pro rata* shares of LCI roe herring seine allocations, proportional to the ratio of loss to total LCI roe herring seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of LCI roe herring seine allocations.

²³After consultation with G01H claimants and others familiar with the LCI roe herring seine fishery, plaintiffs' counsel have determined it is most fair and reasonable to add the small 1989 harvest damages attributable to a complete closure of a small experimental roe herring fishery in LCI to the 1989 price damages and distribute on the basis of one seasonal fund for 1989.

²⁴See Plan of Allocation 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of LCI roe herring seine damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. LCI roe herring seine damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Kenai and Homer, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon.

²⁵A permit holder is a person who possessed the right to use the permit in a given season. This right might have been acquired by ownership, or by temporary transfer from the owner. In cases where a permit is temporarily transferred to a permit holder by the permit owner for a given season and there is an agreement that a percentage share is to be paid to the permit owner, the permit owner will be considered "crew" and receive a portion of the fund according to the agreement.

²⁶Since the LCI roe herring seine fishery was not closed as a result of the oil spill, only crew, spotter or vessel owner claimants with such agreements will qualify to share in LCI roe herring seine funds.

by the seasonal funds will each be distributed based on the actual production of each LCI roe herring seine claimant *vis a vis* other LCI roe herring seine claimants in a given season, using market share as the measure of production.²⁷

Once a market share for each permit holder for each season is determined, he or she will receive a "gross share" of each seasonal fund, equal to the permit holder's market share in a given season multiplied by the amount of the seasonal fund, from which derivative share claimants' shares will be deducted, based on the contractual arrangements between the permit holders and derivative share claimants.

B. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each LCI roe herring seine claimant a Final Percent Share, which is the claimant's percent share of LCI roe herring seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent share times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimant's final distributions would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including LCI roe herring seine claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁸ Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1

SUBDIVISION OF LCI ROE HERRING SEINE (G01H) ALLOCATION

FUND	% OF ALLOCATION	PROJECTED AMOUNT
1989	57%	\$8,607,000
1990	23%	\$3,473,000
1991	20%	\$3,020,000

INCLUDES ATTORNEYS' FEES

²⁷Each individual LCI roe herring seine permit holder's market share for a given season would be calculated from harvest weight data recorded in the CFEC data field titled "Round Pounds Of Fish," and claimants will be given an opportunity to verify and correct such CFEC data. Because the market shares will be based on actual production, intra season transfers will not affect this calculation. In the case of cooperative fishing arrangements, the individual market shares for all of the coop members would be combined and then each member's "coop market share" would be determined based on the contractual arrangements of the coop members.

²⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF RECOVERIES OBTAINED ON BEHALF OF COOK INLET DUNGENESS CRAB
CLAIMANTS (D09B, D12B, D91B, D99B) IN LITIGATION ARISING FROM THE EXXON VALDEZ OIL SPILL**

Plaintiffs' Plan of Allocation of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories"), organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cook Inlet (CI) Dungeness Crab (D09B, D12B, D91B, D99B)³ Claim Category, which includes claims for lost income in the 1989 through 1991 by "license holder"⁴ and "derivative share claimants."⁵ License holders and derivative share claimants will be collectively referred to as "CI dungeness crab claimants." Plaintiffs' counsel⁶ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to CI dungeness crab claimants.⁷

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native Corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n. 31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees and Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³Dungeness crab licenses which are fished in Cook Inlet are issued on a statewide basis with the suffix "B." The Allocation Plan indicated that licenses denoted D09B or D12B were covered by the claim category. It has come to plaintiffs' counsel's attention that D91B and D99B licenses may also be fished in Cook Inlet. Should claims be submitted by D91B or D99B license holders they will be considered and evaluated under the terms of this distribution plan if the claimant's records show that he/she fished in the Cook Inlet Management Area in relevant years.

⁴"License holder" claimants include those who actually purchased a D09B, D12B, D91B or D99B license, geared up and fished the CI dungeness crab fishery in 1989, 1990 and/or 1991, and others who qualify as "displaced" license holders. *See infra*.

⁵"Derivative share claimants" in this fishery include other participants in the CI dungeness crab fishery, such as crew and vessel owners.

⁶"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁷Because the Allocation Plan fixed the percentage allocation to the CI Dungeness Crab Category, only putative CI dungeness crab claimants have any financial interest in how CI dungeness crab allocations are distributed, and therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that CI dungeness crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in the CI dungeness crab allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, CI dungeness crab claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁸ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁹ \$24,722,000 collected from Exxon,¹⁰ to be distributed in the Supplemental Claims Program; and \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which have not yet been collected.¹³ The CI dungeness crab matrix share is projected to be 0.0839% of the Alyeska Settlement, and 0.0840% of signatories' other recoveries.¹⁴

A. The Supplemental Claims Program

In the Supplemental Claims Program, plaintiffs' counsel will distribute CI dungeness crab claimants' projected 0.0840% matrix share (\$21,000 less attorneys' fees approved by the Court¹⁵) of Native/Municipality/Kodiak Island Borough recoveries.¹⁶

B. Projected Future Recoveries

Plaintiffs' counsel expect CI dungeness crab claimants to be allocated roughly \$16,000 from the Phase IIA judgment; \$32,000 in prejudgment interest; and \$4,005,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁷ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post judgment interest in which CI dungeness crab claimants also will share.¹⁸

C. The Final Distribution

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, CI dungeness crab claimants will be allocated the difference between their 0.0840% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments, if any, from the Exxon Claims Program and TAPL Fund to CI dungeness crab claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also, in the Final Distribution, because CI dungeness crab claimant's did not receive an allocation from the Alyeska Settlement, whereas plaintiffs' counsel expect their matrix share of the Alyeska Settlement to be 0.0839%, or roughly \$73,000, CI dungeness crab claimants will receive an allocation of the Alyeska settlement through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁸Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000 as appropriate.

⁹Alyeska settled for \$98 million, of which \$10,689,000 was paid to non-signatory Native corporations.

¹⁰This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/ Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹¹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹²Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁴CI dungeness crab claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹⁵Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel will also seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁶This amount and other allocations to the CI Dungeness Crab Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁷A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁸It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. Summary

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, CI dungeness crab claimants' total allocation from all recoveries would be roughly \$4,316,000 (less attorneys' fees and expenses), which includes: \$21,000 from the Native/Municipality/Kodiak Island Borough Recoveries; \$73,000 from the Alyeska Settlement; \$48,000 from the uncollected Phase IIA judgment and prejudgment interest; \$4,005,000 from the uncollected punitive damages judgment; and \$168,000 from the Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating the risk that the full amounts might not be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CI dungeness crab claimants to evaluate this distribution plan under the assumption that the CI dungeness crab claimants ultimately will be allocated \$4,316,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for CI dungeness crab claimants,¹⁹ plaintiffs' counsel would conduct a Supplemental Claims Program with three parts. The Supplemental Claims Program and future distributions would be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all CI dungeness crab claimants would be required to identify themselves and submit a claim before a specified cut-off date.²⁰ Plaintiffs' counsel will automatically register a claim for those who filed a CI dungeness crab claim in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the CI Dungeness Crab Claim Category (Final Percent Share).²¹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under the guidelines set forth in this distribution plan, and subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant with notice of the initial determination and an explanation of the methodology and the data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. Then, after reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²²

Third, plaintiffs' counsel would distribute CI dungeness crab claimants' \$21,000 share of the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await the resolution of reconsideration of or objections to the determination of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

From 1984 through 1988, between 85 and 113 dungeness crab license holders harvested an average total of \$968,000 per season in Cook Inlet waters. In 1989 only 45 fishers participated, and that figure dropped to only one participant by 1991. Harvest became negligible in recent years.

¹⁹Plaintiffs' counsel would begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²⁰Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission ("CFEC") and Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security Number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²¹In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²²If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), or to payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arises, claimants will be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

Plaintiffs' counsel propose to divide the CI dungeness crab allocations into three separate seasonal funds, one for each season 1989 through 1991.²³ Recoveries would be divided among these funds in proportion to matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the matrix share of the CI Dungeness Crab Claim Category in the Allocation Plan.²⁴

Table 1 shows what percent of a total CI Dungeness Crab Category recovery would be allocated to each of the funds. As shown in Table 1, 35% of the allocation to CI dungeness crab claimants would go to the 1989 seasonal fund; 32% would go to the 1990 seasonal fund; and 33% would go to the 1991 seasonal fund. Table 1 shows the amount that would be allocated to each of these funds based on a total fishery recovery to the CI Dungeness Crab Claim Category of \$4,316,000.

A. The Lost Income Seasonal Funds

In meetings with CI dungeness crab claimants, a method of distributing the fund based on historical production received widespread support and such a method would be fair and reasonable. Thus, CI dungeness crab damages will be distributed to qualified claimants based on the historical production of each CI dungeness crab claimant *vis a vis* other CI dungeness crab claimants, using market share as the measure of production.

1. Qualification for the Seasonal Funds

The seasonal funds would be divided among license holders and derivative share claimants who "participated" in the 1989, 1990 and/or 1991 CI dungeness crab fisheries²⁵ and "displaced" claimants unable to participate as a result of the spill.²⁷

2. Distribution of the Seasonal Funds

Distribution of each of the funds would be made in the following manner:

Plaintiffs' counsel will look to CFEC data for the years 1986 through 1988²⁸ and determine each qualified license holder's best two market share percentages²⁹ and average them. If a qualified fisherman does not have two year's of catch from 1986-1988 plaintiffs'

²³In addition, fishers whose gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.) These personal property claims will be allotted pro rata shares of CI dungeness crab allocations, proportional to the ratio of loss to total CI dungeness crab matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise only a small portion of CI dungeness crab allocations.

²⁴See Plan of Allocation 5-6. To determine matrix damages, the Allocation Committee considered expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, other individual plaintiffs, *ad hoc* plaintiffs' committees, and plaintiffs' counsel. Since the fall of 1995, workups of CI dungeness crab damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. CI dungeness crab damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Kenai and Homer, Alaska, Seattle and Mount Vernon, Washington and Portland, Oregon.

²⁵License holders "participated" in a given season if they purchased a D09B, D12B, D91B or D99B license, geared up and fished for dungeness crab in the Cook Inlet Management Area that season. Crew "participated" if they were actually employed to work in the CI dungeness crab fishery during a given season. Vessel owners "participated" if they leased or otherwise contracted a vessel used in the CI dungeness crab fishery during a given season.

²⁶Plaintiffs' counsel would use CFEC data as presumptive proof of catch in the CI Management Area, but allow claimants to rebut this data by submitting documentary proof.

²⁷A fisher who did not purchase a D09B, D12B, D91B or D99B license in a given season (*i.e.*, 1989, 1990 or 1991) may still qualify as a "displaced" license holder by providing documentary evidence that he or she held a D09B, D12B, D91B or D99B license and recorded dungeness crab landings in the Cook Inlet Management Area in any two of the seasons from 1986 through 1992; or (2) was paid a CI dungeness crab claim by the Exxon Claim Program. To qualify as a "displaced" crew a claimant must provide documentary evidence that he or she either: (1) (for any claim 1989, 1990 and/or 1991) had an agreement with a qualifying D09B, D12B, D91B or D99B license holder claimant to fish in the Cook Inlet Management Area in the season for which he or she is making a claim (evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) (for a 1989 claim) was paid a CI dungeness crab crew claim by the Exxon Claims Program; or (3) (for any claim 1989, 1990 and/or 1991) participated (as a license holder or crew) in the CI dungeness crab fishery in two of the seasons from 1986 through 1992. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) (for any claim 1989, 1990 and/or 1991) had a written contract to lease a vessel for the given season with a D09B, D12B, D91B or D99B license holder claimant to fish in the CI dungeness crab fishery in the season for which he or she is making a claim; (2) (for a 1989 claim) was paid a CI dungeness crab vessel owner claim by the Exxon Claims Program; or (3) (for any claim 1989, 1990 and/or 1991) leased his or her vessel for use in the CI dungeness crab fishery in two of the seasons from 1986 through 1992. In addition, displaced claimants must submit verified statements describing how the spill prevented them from participating in the fishery, and establishing that they were ready, willing and able to participate.

²⁸The years for qualification and determination of market share are different because entire areas within Cook Inlet were closed to dungeness crab fishing in later years which would have the effect of skewing market shares in those years.

²⁹Plaintiffs' counsel will use harvest weight to determine market shares for each license holder claimant. As the presumptive measure of harvest weight in the CI Management Area, plaintiffs' counsel will rely on landings recorded in the CFEC data field entitled "Round Pounds Of Fish" for which

(continued...)

counsel would develop for that fisher a median market share based on the market shares of all CI dungeness crab license holders fishing similar licenses in the CI dungeness crab fishery in those years.³⁰ These market shares would then be "normalized"³¹ and would constitute the license holder's share of each of the seasonal funds (including attorneys' fees and litigation expenses), from which derivative claimants' shares will be deducted.

Derivative share claimant's shares will be determined based on the contractual arrangements they have with their license holders where they exist and can be verified by the license holder and derivative share claimant. If a displaced license holder claimant did not make contractual arrangements with derivative share claimants, his or her gross share would be reduced proportionally by projected payments to shareholders calculated on a case-by-case basis using historical data. Displaced derivative share claimants who did not make contractual arrangements with a license holder would be allotted a proportional share of the lost income fund based on projected earnings, calculated on a case-by-case basis using historical data.

B. The Final Percent Share

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each CI dungeness crab claimant a Final Percent Share, which is the claimant's percent share of all CI dungeness crab allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's percent times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damages recoveries are collected, there would be a "Final Distribution," in which offsets would be made for previous distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and the Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimant's final distribution would be adjusted by the difference between their allocations from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including CI dungeness crab claimants, would be adjusted to reflect the extent to which they have already been compensated.³² Nothing would be distributed to claimants paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

(...continued)

²⁹the corresponding entry in the data field titled "Area" is "H" or otherwise identifies the harvest as associated with statistical areas in the CI Management Area. Claimants will be given an opportunity to verify and correct CFEC data.

³⁰If CFEC data shows that there was no harvest in the 1986 through 1988 time period for a particular type of license (*i.e.*, D09B, D12B, D91B or D99B), plaintiffs' counsel will calculate a median market share for CI dungeness crab fishers fishing those licenses in the CI Management Area in the prior year closest to 1986 where harvest is recorded, and all license holders of that type of license will be given that median share.

³¹Since the sum total of all of the individual average market shares will be greater than 100%, it will be necessary to convert them to a percentage of 100%.

³²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
DIVISION OF CI DUNGENESS CRAB ALLOCATION

FUND	% OF ALLOCATION	AMOUNT
1989	35%	\$1,511,000
1990	32%	\$1,381,000
1990	33%	\$1,424,000
<i>INCLUDES ATTORNEYS' FEES</i>		

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK HERRING SEINE (G01K) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Herring Seine (G01K) Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by holders of G01K permits and "derivative share claimants."³ Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak Herring Seine claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Herring Seine claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Herring Seine claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund,⁶

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Herring Seine Claim Category, only putative Kodiak Herring Seine claimants have any financial interest in how Kodiak Herring Seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Herring Seine claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Herring Seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

\$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak Herring Seine matrix share is projected to be 0.5694% of signatories' share of the Alyeska Settlement, and 0.5704% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Herring Seine claimants' allocation of \$141,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$138,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Herring Seine claimants to be allocated roughly \$328,000 from the Phase IIA judgment and prejudgment interest, and \$27,198,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Herring Seine claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Herring Seine claimants will be allocated the difference between their projected 0.5704% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak Herring Seine claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak Herring Seine claimants' actual allocation of \$138,000 from the Alyeska Settlement was less than their projected 0.5694% matrix share (roughly \$497,000), the difference (roughly \$359,000) would be allocated to Kodiak Herring Seine claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak Herring Seine matrix share of 0.5704% is slightly higher than the 0.57% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. The Kodiak Herring Seine matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Herring Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Herring Seine claimants' total allocation from all recoveries will be roughly \$29,307,000 (less attorneys' fees and expenses), which includes \$141,000 from Native/Municipality/Kodiak Island Borough recoveries, \$497,000 from the Alyeska Settlement, \$328,000 from the uncollected Phase IIA judgment and prejudgment interest, \$27,198,000 from the uncollected punitive damages judgment, and \$1,143,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak Herring Seine claimants to evaluate this distribution plan under the assumption that Kodiak Herring Seine claimants ultimately will be allocated \$29,307,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Herring Seine claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak Herring Seine claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Herring Seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Herring Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak Herring Seine claimants' \$141,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from Kodiak Herring Seine claimants' \$138,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times Kodiak Herring Seine claimants' combined \$279,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Kodiak Herring Seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Kodiak Herring Seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide Kodiak Herring Seine allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the EXXON VALDEZ oil spill. There will be seven separate "annual" funds for each of the 1989, 1990, 1991, 1992, 1993, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²² These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak Herring Seine matrix shares.²³

The attached Table 1 lists projected percent shares of the seven Kodiak Herring Seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$29,307,000. Projected fund percent shares are: 20.9% for 1989, 8.4% for 1990, 8.8% for 1991, 3.1% for 1992, 9.8% for 1993, 23% for 1994, and 26% for 1995. Actual percent shares of the Kodiak Herring Seine funds are likely to vary slightly from projected percent shares.

At the various meetings listed in n. 23, *supra*, and in discussions with many individual G01K permit owners and their crew, plaintiffs' counsel have found that Kodiak Herring Seine claimants generally agree that virtually all permit owners and permit holders suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each claimant has been harmed. Although there is not unanimity among Kodiak Herring Seine claimants on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to a widely-held desire for compromise by Kodiak Herring Seine claimants, plaintiffs' counsel propose to distribute the 1990-95 annual funds in a blended manner, with two *per capita* and one production-based components. Each annual fund would be divided: 10% to a fund exclusively for those claimants who were permit owners in that year on a *per capita* basis whether or not they fished; 45% to a production subfund divided only among those who actually fished²⁴ in the season; and 45% to a *per capita* subfund divided among those permit holders and derivative shareholders who also actually fished in that season as well. For 1989, there would be also be three funds, one with 10% divided exclusively among those claimants who were permit owners in that year on a *per capita* basis, a second subfund with 45% of the 1989 annual fund distributed on a *per capita* basis to those who actually participated in 1989, and because the oil spill disrupted the fishery, the third subfund with 45% would be distributed on a constructed performance basis. The 10/45/45 division represents a compromise between those fishers who advocate distribution based solely on production, and those who advocate 100% *per capita*, and recognizes as well the concern of permit owners that their ownership interest in G01K permits was compromised by the oil spill. The attached Table 1 lists projected amounts of the annual funds, based on a total fishery recovery of \$29,307,000.

A. THE 1990-1995 PRODUCTION SUBFUNDS

The 1990-95 production-based annual funds would be distributed among those Kodiak Herring Seine claimants who actually recorded landings in the fishery during the season.²⁵ For permit holders,²⁶ production-based shares would be proportional to actual harvest values in the season,²⁷ less payments to derivative shareholders such as crew, spotters and permit and vessel owners. For derivative share claimants, production-based shares would be proportional to actual earnings in the fishery during the season.

²² In addition, Kodiak Herring Seine fishers whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Herring Seine allocations, proportional to the ratio of loss to total Kodiak Herring Seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Herring Seine allocations.

²³ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Herring Seine damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Herring Seine damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ For participation in any annual fund, a permit holder would have to demonstrate that he or she actually caught fish, or if there were no record of a recovery, actually fished as part of a combine in the particular year, or actually participated in the fishery but made no landings.

²⁵ Those who fished as members of combines, but recorded no deliveries would receive a share of these production subfunds when the total combine proceeds were later allocated based on their contractual agreements. See, *infra*, III, E.

²⁶ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

²⁷ Plaintiffs' counsel would use CFEC data as presumptive measures of harvest weight and price, but would allow fishers to review, supplement and rebut CFEC data.

B. 1990-1995 PER CAPITA SUBFUNDS

The 1990 - 1995 *per capita* subfunds would be divided among permit holders who actually fished,²⁸ and derivative claimants who "participated" in the fishery during the season.²⁹ A "gross" *per capita* share would be computed by dividing the amount of the *per capita* annual subfund by the total number of permits "fished" during the season.³⁰ Permit holders who fished would be allocated a "net" *per capita* share equal to a gross *per capita* share reduced proportionately based upon actual contractual arrangements the permit holder had with shareholders for that season. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on actual earnings.

C. THE 1989 PERMIT HOLDER ANNUAL SUBFUNDS

At the time the 1989 herring season began in Kodiak, it was unclear whether the spill would significantly impact the fishery. Herring seine fishers began the season hoping that there would be little impact on their normal fishing patterns. As the season wore on, the spill impacted the fishery through closures of entire fishing areas which were expected to be opened, early closures of certain areas which had been open, and reduced price. Because the season began without significant impact due to the oil spill, G01K permit holders support the division of the 1989 Production and Permit Holder Annual Subfunds to those who actually fished in that year.

Shares of the annual subfunds would be distributed 45% on a *per capita* basis and 45% on a production basis. For the *per capita* subfund, gross shares would be calculated by dividing the subfund by the total number of permits which actually fished.³¹ Permit holders who participated in the 1989 fishery would be allotted shares equal to the gross *per capita* share reduced proportionately based upon contractual arrangements with shareholders. If a permit was transferred during the season, the *per capita* share would be divided as were 1990-95 *per capita* shares. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on actual earnings.

For the 1989 performance subfund, gross performance shares would be constructed on the basis of a fisher's projected market share.³² A permit holder's gross share would be reduced proportionally based upon contractual arrangements with shareholders, and derivative shareholders would again be allotted proportional shares of the performance shares based on actual earnings.

D. 1989 - 1995 PERMIT OWNER PER CAPITA SUBFUNDS

Persons who were permit owners³³ between the first day of herring landings for the G01K gear type and the last day of such landings in the same subfund year (the "subfund period"), irrespective of participation in the fishery, would qualify for a permit owner *per capita* subfund share. A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

1. Full Shares

A full share of a subfund would equal the amount of the subfund divided by the estimated number of qualifying permit owners for the designated year.³⁴ From each subfund, full shares would be allotted to claimants who owned a G01K permit for the entire subfund

²⁸ For participation in a *per capita* portion of any annual fund, a permit holder would have to demonstrate that he or she actually caught fish, or if there were no record of a recovery, actually fished as part of a combine in the particular year, or actually participated in the fishery but made no landings.

²⁹ Crew and spotters "participated" if they were actually employed to work in the fishery during the season. The owner of a seine vessel "participated" if he or she leased or otherwise contracted a vessel used in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent partners" in fishing operations "participated" if the permit holder with whom they had an agreement actually fished.

³⁰ In any given season, the number of permits "held" may be smaller than the number of permit holders, because of temporary transfers. In cases where a permit was held by more than one individual during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share, to be divided among them on the basis of transfer agreements, or, if there were no such agreement, based on the ratios of the number of days the permit was held between the first date on which landings were recorded in the fishery and the last date on which landings were recorded based on CFEC data.

³¹ For participation in either portion of the 1989 annual fund, a permit holder would have to demonstrate that he or she actually caught fish, or if there were no record of a recovery, actually fished as part of a combine in the particular year, or actually participated in the fishery but made no landings.

³² Projected market shares would be derived in the following manner. For each permit holder who had landings in two or more seasons during 1984 through 1988, a "two-best" market share would be calculated, equal to the average of his or her two best market shares during these seasons. For a permit holder who had landings in only one season prior to 1989, that season and the best of his or her seasons between 1990 and 1995 would be averaged, or if there were just landings in one year prior to 1989 and none thereafter, that share would be used as the 1989 share. For a permit holder with no history to 1989, the average of his or her two best market shares during the seasons 1990-1995 would be used, or if there were only one year, the share from that year. Each permit holder's final 1989 projected market share would equal his or her share calculated as set out above divided by the sum of all the market shares for permit holders calculated in the same manner.

³³ A permit holder, if different from the permit owner, would not share in the all permit owner *per capita* fund, but would share in the annual fund (or funds) for the time he or she held the permit.

³⁴ In 1989, there were 72 permanent (some of which were transferable, and some of which were not transferable) and interim G01K permits issued, and in successive years the number was as follows: 1990 - 72; 1991 - 70; 1992 - 82; 1993 - 82; 1994 - 85; and 1995 - 82.

period. By this method, a permit owner who qualifies for full shares of all seven subfunds would, in effect, be allotted one full share of the permit owner *per capita* fund. This would include claimants who owned an G01K permit from the date of the spill through June 30, 1995.

2. Permit Owners at the Time of the Spill Who Later Sold Their Permit

A permit owner at the time of the spill, who subsequently sold the permit would be allotted a share of each annual subfund for which he or she qualifies: a full share if the permit was owned for the entire subfund period, and a prorated share if it was sold during the subfund period. Prorated shares would be proportional to the number of days of the subfund period for which the permit was owned.

3. Post-Spill Permit Purchasers

A claimant who purchased a permit after the spill would be allotted a share of each annual subfund for which he or she qualifies after the purchase: a full share of a annual subfund if he or she owned the permit for the entire subfund period; and a prorated share if the permit was purchased during the subfund period. Prorated shares would also be proportional to the number of days of the subfund period for which the permit was owned.

E. CALCULATING SHARES FOR COOPERATIVES AND COMBINES

There are occasions in the G01K fishery when there is a joint effort by more than one permit holder. Proceeds of catches are shared based upon contractual arrangements among the participants. For such cooperatives and combines, gross shares of annual funds would be calculated on a case-by-case basis. The cooperative/combine's gross share of the *per capita* subfunds would be based on the number of member permit holders, and its gross share of the production subfunds would be based on the actual production of member permit holders. The cooperative/combine's gross share would be divided proportionately among member permit holders and derivative share claimants based on their contractual arrangements for the particular season.

F. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Herring Seine claimant a Final Percent Share, which is the claimant's percent share of Kodiak Herring Seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including Kodiak Herring Seine claimants, would be adjusted to reflect the extent to which they have already been compensated.³⁵ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

³⁵ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Kodiak Herring Seine Distribution (Table 1)

Fund	Projected Share	Projected Amount
1989 annual	0.209	\$ 6,125,163
1990 annual	0.084	\$ 2,461,788
1991 annual	0.088	\$ 2,579,016
1992 annual	0.031	\$ 908,517
1993 annual	0.098	\$ 2,872,086
1994 annual	0.23	\$ 6,740,610
1995 annual	0.26	\$ 7,619,820
Total	1	\$ 29,307,000

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE KODIAK MISCELLANEOUS SHELLFISH FISHERS
(O01B, O05B, O06B, O09B, Q11B, U11B, U12B and KELP) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),² establishes the allocation of recoveries among major groups of "signatory" plaintiffs³ ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Miscellaneous Shellfish (O01B, O05B, O06B, O09B, Q11B, U11B, U12B and Kelp) Claim Categories, which include claims for: lost income in the 1989 through 1995 seasons, by holders of licenses and "derivative share claimants."⁴ License owners and derivative share claimants will be collectively referred to as "Kodiak Miscellaneous Shellfish claimants." Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Miscellaneous Shellfish claimants.⁶

¹ Though Kelp is not a shellfish, it is included in this plan of distribution because it involves gathering as do the other miscellaneous shellfish seafood resources included in this plan of distribution, and kelp harvesting is regulated by the ADF&G. There is no separate fishery code for kelp.

² Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

³ "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chugach Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chugach, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

⁴ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁵ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiiled" fishery claim categories.

⁶ Because the Allocation Plan fixed the percentage allocation to the Kodiak Miscellaneous Shellfish Claim Category, only putative Kodiak Miscellaneous Shellfish claimants have any financial interest in how Kodiak Miscellaneous Shellfish allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Miscellaneous Shellfish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Miscellaneous Shellfish allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Miscellaneous Shellfish claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which have not yet been collected.¹² The Kodiak Miscellaneous Shellfish claimants' matrix share is projected to be 0.017% of signatories' recoveries.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Miscellaneous Shellfish claimants' allocation of \$4,200 (less attorneys' fees approved by the Court¹⁴) from Native/Municipality/Kodiak Island Borough recoveries.¹⁵

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Miscellaneous Shellfish claimants to be allocated roughly \$9,800 from the Phase IIA judgment and prejudgment interest, and \$811,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Miscellaneous Shellfish claimants also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Miscellaneous Shellfish claimants will be allocated the difference between their projected 0.017% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak Miscellaneous Shellfish claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

⁷ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁸ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹¹ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹² Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹³ The projected Kodiak Miscellaneous Shellfish matrix share of 0.017% could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ This and other allocations to the Kodiak Miscellaneous Shellfish Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Also, in the Final Distribution, because Kodiak Miscellaneous Shellfish claimants did not get an allocation from the original Alyeska Settlement, they will receive roughly 0.017% of signatories' share, or \$14,800, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Miscellaneous Shellfish claimants' total allocation from all recoveries will be roughly \$873,500 (less attorneys' fees and expenses), which includes \$4,200 from Native/Municipality/Kodiak Island Borough recoveries, \$14,800 from the Alyeska Settlement, \$9,800 from the uncollected Phase IIA judgment and prejudgment interest, \$810,600 from the uncollected punitive damages judgment, and \$34,100 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak Miscellaneous Shellfish claimants to evaluate this distribution plan under the assumption that Kodiak Miscellaneous Shellfish claimants ultimately will be allocated \$873,500 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Miscellaneous Shellfish claimants,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak Miscellaneous Shellfish claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Miscellaneous Shellfish claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Miscellaneous Shellfish Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute Kodiak Miscellaneous Shellfish claimants' \$4,200 share of Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁸ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²² Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a Final Percent Share according to this distribution plan and a "gross claim value" equal to the Final Percent Share times Kodiak Miscellaneous Shellfish claimants' \$4,200 allocation from the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would distribute the Kodiak Miscellaneous Shellfish allocation from the Native/Municipality/Kodiak Island Borough recoveries in proportion to these gross claim values.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The EXXON VALDEZ oil spill disrupted miscellaneous shellfish fishing in the Kodiak Management Area in 1989 by curtailing the octopi season, causing a decrease in urchin harvest, and closing the kelp harvest. In the years following the oil spill, harvests of octopi, urchins and cucumbers have been far below pre-season forecasts.

Plaintiffs' counsel propose to subdivide Kodiak Miscellaneous Shellfish allocations into seven separate funds, each of which corresponds to the damage caused to the fishery in the years 1989-1995 by the EXXON VALDEZ oil spill based on diminished or lost harvest.²³ These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak Miscellaneous Shellfish matrix shares.²⁴

The attached Table 1 lists projected percent shares of the seven Kodiak Miscellaneous Shellfish funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$873,500. Projected fund percent shares are: 12.54% for 1989, 8.31% for 1990, 15.83% for 1991, 15.83% for 1992, 15.83% for 1993, 15.83% for 1994 and 15.83% for 1995. Actual percent shares of the Kodiak Miscellaneous Shellfish funds are likely to vary slightly from projected percent shares.

A. THE 1989 ANNUAL FUND

Eligible to share in allocations to Kodiak Miscellaneous Shellfish claimants would be: license holders and derivative share claimants who "participated" in 1989²⁵ and "displaced" claimants unable to participate as a result of the spill.²⁶ Plaintiffs' counsel propose *pro rata* distribution of Kodiak Miscellaneous Shellfish allocations, proportional to lost profits or earnings in the 1989 season.

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate 1989 Kodiak Miscellaneous Shellfish claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial miscellaneous shellfish operations in the Kodiak Management Area during the 1985 through 1989 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December 31, 1989. Derivative share claimants likewise must submit detailed claims which: describes their participation in Kodiak Miscellaneous Shellfish fisheries during the 1985 through 1989 seasons; sets forth their earnings each season; explains in

²³ In addition, Kodiak Miscellaneous Shellfish claimants whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs or repair and/or market value of lost equipment to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Miscellaneous Shellfish allocations, proportional to the ratio of loss to total Kodiak Miscellaneous Shellfish matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Miscellaneous Shellfish allocations.

²⁴ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Miscellaneous Shellfish damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Miscellaneous Shellfish damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁵ License holders "participated" if they recorded harvest in the Kodiak Management Area in 1989. Crew "participated" if they were employed to work by a qualifying license holder in the 1989 season. Other shareholders such as vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest miscellaneous shellfish in the Kodiak Management Area in 1989.

²⁶ A fisher who held a Miscellaneous Shellfish license at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) took substantial steps to harvest Miscellaneous Shellfish in the Kodiak Management Area in 1989, but was prevented from doing so by the spill; or (2) was paid a Miscellaneous Shellfish claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the Kodiak Management Area 1989 (as evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a Miscellaneous Shellfish crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the Miscellaneous Shellfish fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying license holder claimant; or (2) leased his or her vessel for use in the Kodiak Miscellaneous Shellfish fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the Kodiak Management Area in 1989, and establishing that they were ready, willing and able to participate.

detail how the spill led to lost earnings in 1989; and estimates the amount of earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and permits. Key assumptions and projections must be thoroughly substantiated.

B. THE 1990 - 1995 ANNUAL FUNDS

The fishery was open between 1990 and 1995, but suffered fishing disruptions and market losses. Each of the 1990 - 1995 seasonal funds would be distributed among participants who actually "participated" in the season.²⁷ Plaintiffs' counsel would calculate a gross share of the seasonal fund, proportional to the value of the participating license holder's actual harvest. The license holder's gross share would be divided proportionally with shareholders, based on contractual arrangements for the season.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Miscellaneous Shellfish claimants a Final Percent Share, which is the claimant's percent share of Kodiak Miscellaneous Shellfish allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak Miscellaneous Shellfish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁸ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁷ License holders "participated" if they actually purchased a license, geared up and fished. Crew "participated" if they were employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season.

²⁸ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Kodiak Miscellaneous Shellfish Distribution
(Table 1)

Lost Income	Matrix Share	
	Percent (%)	Amount (\$)
1989 (12.54%)	.0036366%	\$109,537
1990 (8.31%)	.0024099%	\$72,588
1991 (15.83%)	.0045907%	\$138,275
1992 (15.83%)	.0045907%	\$138,275
1993 (15.83%)	.0045907%	\$138,275
1994 (15.83%)	.0045907%	\$138,275
1995 (15.83%)	.0045907%	\$138,275
Total (100%)	0.029%	\$873,500

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE KODIAK MISCELLANEOUS FINFISH
(M06B, M09B, M61B, M91B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Miscellaneous Finfish (M06B, M09B, M61B, M91B) Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by holders of M06B, M09B, M61B, M91B licenses and "derivative share claimants."³ License holders and derivative share claimants will be collectively referred to as "Kodiak Miscellaneous Finfish claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Miscellaneous Finfish claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Miscellaneous Finfish claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁵Because the Allocation Plan fixed the percentage allocation to the Kodiak Miscellaneous Finfish Claim Category, only putative Kodiak Miscellaneous Finfish claimants have any financial interest in how Kodiak Miscellaneous Finfish allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Miscellaneous Finfish claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Miscellaneous Finfish allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected,

(continued...)

against Exxon which have not yet been collected.¹¹ The Kodiak Miscellaneous Finfish matrix share is projected to be 0.029% of signatories' recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Miscellaneous Finfish claimants' allocation of \$7,200 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and their share of the \$2,600 allocated from the Alyeska Settlement to all miscellaneous finfish claimants, including those from Cook Inlet and Prince William Sound.¹⁵

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Miscellaneous Finfish claimants to be allocated roughly \$16,700 from the Phase IIA judgment and prejudgment interest, and \$1,383,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Miscellaneous Finfish claimants also will share.¹⁷

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Miscellaneous Finfish claimants will be allocated the difference between their projected 0.029% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak Miscellaneous Finfish claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also, in the Final Distribution, because Kodiak Miscellaneous Finfish claimants' actual allocation from the original Alyeska Settlement (which cannot exceed \$2,600, the amount allocated to Cook Inlet, Kodiak and Prince William Sound miscellaneous finfish claimants) is less than their matrix share of roughly \$25,300 (0.029%), the difference will be allocated to Kodiak Miscellaneous Finfish claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Miscellaneous Finfish claimants' total allocation from all recoveries will be roughly \$1,490,000 (less attorneys' fees and expenses), which includes \$7,200 from Native/Municipality/Kodiak Island Borough recoveries, \$25,300 from the Alyeska Settlement, \$16,700 from the uncollected Phase IIA judgment and prejudgment interest, \$1,383,000 from the uncollected punitive damages judgment, and \$58,100 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals,

(...continued)

⁸and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹²The projected Kodiak Miscellaneous Finfish matrix share of 0.029% could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Miscellaneous Finfish Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ Miscellaneous finfish claimants in Cook Inlet, Kodiak and Prince William Sound were collectively allocated \$2,600 from the Alyeska Settlement, based on plaintiffs' counsel's best damage estimates available at the time. However, given the relatively small allocation, and the difficulty of valuing miscellaneous finfish claimants' damages, no distributions were made. *See* Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 19-20 (Oct. 1, 1993). In the Supplemental Claims Program, the miscellaneous finfish allocation from the Alyeska Settlement will be allocated among Cook Inlet, Kodiak and Prince William Sound claimants in proportion to their relative damages, determined from claims data in the Supplemental Claims Program. Separate plans of distribution are being filed for Prince William Sound and Cook Inlet miscellaneous finfish claimants.

¹⁶A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

and believe it prudent for the Court and Kodiak Miscellaneous Finfish claimants to evaluate this distribution plan under the assumption that Kodiak Miscellaneous Finfish claimants ultimately will be allocated \$1,490,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Miscellaneous Finfish claimants,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all Kodiak Miscellaneous Finfish claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Miscellaneous Finfish claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Miscellaneous Finfish Claim Category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute Kodiak Miscellaneous Finfish claimants' \$7,200 share of Native/Municipality/Kodiak Island Borough recoveries, plus their share of the \$2,600 Alyeska settlement allocated to Cook Inlet, Kodiak and Prince William Sound miscellaneous finfish claimants. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²² rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The EXXON VALDEZ oil spill disrupted miscellaneous finfish fishing in the Kodiak Management Area in 1989 by closing the fishery early. Spill related closures in other fisheries led to an increase in the number of participants in the finfish fishery over that which would have occurred but for the spill. Due to the lack of experience in trawl fisheries by many of the new participants, there was a significant increase of halibut bycatch in the finfish fishery. As a result of the increased bycatch, authorities closed the pollock season prematurely, and approximately 24,000 tons of the original 1989 pollock quota was left uncaught.

The Kodiak Miscellaneous Finfish allocation corresponds to the damage caused to the fishery in 1989 by the EXXON VALDEZ oil spill based on projected diminished harvest.²³ This damage formed the basis of the Kodiak Miscellaneous Finfish matrix share.²⁴

¹⁸Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁹ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²² Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a Final Percent Share according to this distribution plan and a "gross claim value" equal to the Final Percent Share times the Kodiak Miscellaneous Finfish claimants' combined allocation from the Alyeska Settlement and the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would distribute the Kodiak Miscellaneous Finfish allocation from the Native/Municipality/Kodiak Island Borough recoveries and from the Alyeska Settlement in proportion to these gross claim values.

²³ In addition, Kodiak Miscellaneous Finfish claimants whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs or repair and/or market value of lost equipment to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Miscellaneous Finfish allocations, proportional to the ratio of loss to total Kodiak Miscellaneous Finfish matrix damages, up to the amount of loss.

(continued...)

Eligible to share in allocations to Kodiak Miscellaneous Finfish claimants would be: license holders and derivative share claimants who "participated" in 1989²⁵ and "displaced" claimants unable to participate as a result of the spill.²⁶ Plaintiffs' counsel propose *pro rata* distribution of Kodiak Miscellaneous Finfish allocations, proportional to lost profits or earnings in the 1989 season.

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate 1989 Kodiak Miscellaneous Finfish claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial finfish operations in the Kodiak Management Area during the 1985 through 1989 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December 31, 1989. Derivative share claimants likewise must submit detailed claims which: describes their participation in Kodiak Miscellaneous Finfish fisheries during the 1985 through 1989 seasons; sets forth their earnings each season; explains in detail how the spill led to lost earnings in 1989 through 1985-1989; and estimates the amount of earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and licenses. Key assumptions and projections must be thoroughly substantiated.

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Miscellaneous Finfish claimant a Final Percent Share, which is the claimant's percent share of Kodiak Miscellaneous Finfish allocations. The Final Percent Share would be a single number, expressed as a percentage, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak Miscellaneous Finfish claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

(...continued)

²³ Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Miscellaneous Finfish allocations.

²⁴ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Miscellaneous Finfish damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Miscellaneous Finfish damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁵ License holders "participated" if they recorded harvest. Crew "participated" if they were employed to work by a qualifying license holder in the 1989 season. Other shareholders such as vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest miscellaneous finfish in the Kodiak Management Area in 1989.

²⁶ A fisher who held a miscellaneous finfish license at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) took substantial steps to harvest miscellaneous finfish in the Kodiak Management Area in 1989, but was prevented from doing so by the spill; or (2) was paid a miscellaneous finfish claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the Kodiak Management Area 1989 (as evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a Kodiak miscellaneous finfish crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the Kodiak miscellaneous finfish fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying license holder claimant; or (2) leased his or her vessel for use in the Kodiak miscellaneous finfish fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the Kodiak Management Area in 1989, and establishing that they were ready, willing and able to participate.

²⁷ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE KODIAK HERRING SET GILL NET FISHERS AND
COMBINED HERRING GEAR FISHER (G34K and G31K) CLAIM CATEGORIES**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Herring Set Gill Net (G34K) and Kodiak Combined Herring Gear (G31K) Claim Categories,³ which includes claims for lost income in the 1989 through 1995 seasons by holders of G34K permits and "derivative share claimants." Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak Herring Set Gill Net claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Herring Set Gill Net claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Herring Set Gill Net claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unloaded" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³ Plaintiffs' counsel are aware from conversations with the Alaska Commercial Fisheries Entry Commission of the existence of only two G31K permits, which authorize use by the permit holder of either set gill net (G34K) or seine (G01K) gear. Both G31K permit holders used their permits during the 1989-1995 period to fish set gill net gear exclusively. As such, plaintiffs' counsel intend to treat the two G31K permit holders as the functional equivalent of G34K permit owners, and they will be deemed as part of the G34K Distribution Plan for all purposes. Hereafter, no separate reference will be made to G31K gear or permits, and all G34K permit owners as well as both G31K permit owners will be referred to as G34K permit owners. Should counsel become award of any other bona fide G31K permit owner claims, they will be treated on a case by case basis.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unloaded" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Herring Set Gill Net Claim Category, only putative Kodiak Herring Set Gill Net claimants have any financial interest in how Kodiak Herring Set Gill Net allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Herring Set Gill Net claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Herring Set Gill Net allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak Herring Set Gill Net matrix share is projected to be 0.1698% of signatories' share of the Alyeska Settlement, and 0.1701% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Herring Set Gill Net claimants' allocation of \$42,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$83,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Herring Set Gill Net claimants to be allocated roughly \$98,000 from the Phase IIA judgment and prejudgment interest, and \$8,111,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Herring Set Gill Net claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Herring Set Gill Net claimants will be allocated the difference between their projected 0.1701% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Herring Set Gill Net claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Herring Set Gill Net claimants' actual allocation of \$83,000 from the Alyeska Settlement was less than their projected 0.1698% matrix share (roughly \$148,000), the difference (roughly \$65,000) would be allocated to Kodiak Herring Set Gill Net claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. -*See infra*.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak Herring Set Gill Net matrix share of 0.1701% is slightly higher than the 0.17% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. Kodiak Herring Set Gill Net claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Herring Set Gill Net Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Herring Set Gill Net claimants' total allocation from all recoveries will be roughly \$8,740,000 (less attorneys' fees and expenses), which includes \$42,000 from Native/Municipality/Kodiak Island Borough recoveries, \$148,000 from the Alyeska Settlement, \$98,000 from the uncollected Phase IIA judgment and prejudgment interest, \$8,111,000 from the uncollected punitive damages judgment, and \$341,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak Herring Set Gill Net claimants to evaluate this distribution plan under the assumption that Kodiak Herring Set Gill Net claimants ultimately will be allocated \$8,740,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Herring Set Gill Net claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak Herring Set Gill Net claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Herring Set Gill Net claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Herring Set Gill Net Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak Herring Set Gill Net claimants' \$42,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from Kodiak Herring Set Gill Net claimants' \$83,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times Kodiak Herring Set Gill Net claimants' combined \$125,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Kodiak Herring Set Gill Net allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Kodiak Herring Set Gill Net allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide Kodiak Herring Set Gill Net allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the EXXON VALDEZ oil spill. There will be seven separate "annual" funds for each of the 1989, 1990, 1991, 1992, 1993, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²² These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak Herring Set Gill Net matrix shares.²³

The attached Table 1 lists projected percent shares of the seven Kodiak Herring Set Gill Net funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$8,740,000. Projected fund percent shares are: 31.9% for 1989, 12.8% for 1990, 13.4% for 1991, 3.3% for 1992, 5.9% for 1993, 14.7% for 1994, and 18% for 1995. Actual percent shares of the Kodiak Herring Set Gill Net funds are likely to vary slightly from projected percent shares.

At the various meetings listed in n. 23, *supra*, and in discussions with many individual G34K permit owners and their crew, plaintiffs' counsel have found that Kodiak Herring Set Gill Netters generally agree that virtually all permit owners and permit holders suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each claimant has been harmed. Although there is not unanimity among Kodiak Herring Set Gill Netters on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to a widely-held desire for compromise by Kodiak Herring Set Gill Netters, plaintiffs' counsel propose to distribute the 1990-95 annual funds in a blended manner, with two *per capita* and one production-based components. Each annual fund would be divided: 10% to a fund exclusively for those claimants who were permit owners in that year on a *per capita* basis whether or not they fished; 45% to a production subfund divided only among those who actually fished, *see infra*, in the season; and 45% to a *per capita* subfund divided among those permit holders and derivative shareholders who also actually fished in that season as well. For 1989, there would be also be three funds, one with 10% divided exclusively among those claimants who were permit owners in that year on a *per capita* basis, a second subfund with 45% of the 1989 annual fund distributed on a *per capita* basis to those who actually participated in 1989, and because the oil spill disrupted the fishery, the third subfund with 45% would be distributed on a constructed performance basis. The 10/45/45 division represents a compromise between those fishers who advocate distribution based solely on production, and those who advocate 100% *per capita*, and recognizes as well the concern of permit owners that their ownership interest in G34K permits was compromised by the oil spill. The attached Table 1 lists projected amounts of the annual funds, based on a total fishery recovery of \$8,740,000.

A. THE 1990-1995 PRODUCTION SUBFUNDS

The 1990-95 production-based annual funds would be distributed among those Kodiak Herring Set Gill Net claimants who actually recorded landings in the fishery during the season.²⁴ For permit holders,²⁵ production-based shares would be proportional to actual harvest values in the season,²⁶ less payments to derivative shareholders such as crew, spotters and permit and vessel owners. For derivative share claimants, production-based shares would be proportional to actual earnings in the fishery during the season.

²² In addition, Kodiak herring set gill net fishers whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Herring Set Gill Net allocations, proportional to the ratio of loss to total Kodiak Herring Set Gill Net matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Herring Set Gill Net allocations.

²³ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Herring Set Gill Net damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Herring Set Gill Net damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ Those who fished as members of combines, but recorded no deliveries would receive a share of these production subfunds when the total combine proceeds were later allocated based on their contractual agreements. *See, infra*, III(E).

²⁵ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

²⁶ Plaintiffs' counsel would use CFEC data as presumptive measures of harvest weight and price, but would allow fishers to review, supplement and rebut CFEC data.

B. 1990-1995 PER CAPITA SUBFUNDS

The 1990 - 1995 *per capita* subfunds would be divided among permit holders who actually fished,²⁷ and derivative claimants who "participated" in the fishery during the season.²⁸ A "gross" *per capita* share would be computed by dividing the amount of the *per capita* annual subfund by the total number of permits "fished" during the season.²⁹ Permit holders who fished would be allocated a "net" *per capita* share equal to a gross *per capita* share reduced proportionately based upon actual contractual arrangements the permit holder had with shareholders for that season. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on actual earnings.

C. THE 1989 PERMIT HOLDER ANNUAL SUBFUNDS

At the time the 1989 herring season began in Kodiak, it was unclear whether the spill would significantly impact the fishery. Herring Set Gill Net fishers began the season hoping that there would be little impact on their normal fishing patterns. As the season wore on, the spill impacted the fishery through closures of entire fishing areas which were expected to be opened, early closures of certain areas which had been open, and reduced price. Because the season began without significant impact due to the oil spill, G34K permit holders support the division of the 1989 Production and Permit Holder Annual Subfunds to those who actually recorded landings in that year.

Shares of the annual subfunds would be distributed 45% on a *per capita* basis and 45% on a production basis. For the *per capita* subfund, gross shares would be calculated by dividing the subfund by the total number of permits which recorded landings. Permit holders who participated in the 1989 fishery would be allotted shares equal to the gross *per capita* share reduced proportionately based upon contractual arrangements with shareholders. If a permit was transferred during the season, the *per capita* share would be divided as were 1990-95 *per capita* shares. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based on actual earnings.

For the 1989 performance subfund, projected performance shares would be constructed on the basis of a fisher's best performance percentage in any annual fishery between 1984 and 1995.³⁰ A permit holder's gross share would be reduced proportionally based upon contractual arrangements with shareholders, and derivative shareholders would again be allotted proportional shares of the performance shares based on actual earnings.

D. 1989 - 1995 PERMIT OWNER PER CAPITA SUBFUNDS

Persons who were permit owners³¹ between the first day of herring landings for the G34K gear type and the last day of such landings in the same subfund year (the "subfund period"), irrespective of participation in the fishery, would qualify for a permit owner *per capita* subfund share. A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

1. Full Shares

A full share of a subfund would equal the amount of the subfund divided by the estimated number of qualifying permit owners for the designated year.³² From each subfund, full shares would be allotted to claimants who owned a G34K permit for the entire subfund period. By this method, a permit owner who qualifies for full shares of all seven subfunds would, in effect, be allotted one full share of the permit owner *per capita* fund. This would include claimants who owned a G34K permit from the date of the spill through June 30, 1995.

²⁷ For participation in a *per capita* portion of any annual fund, a permit holder would have to demonstrate that he or she actually caught fish, or if there were no record of a recovery, actually fished as part of a combine in the particular year.

²⁸ Crew and spotters "participated" if they were actually employed to work in the fishery during the season. The owner of a set gill net vessel "participated" if he or she leased or otherwise contracted a vessel used in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent partners" in fishing operations "participated" if the permit holder with whom they had an agreement actually fished.

²⁹ In any given season, the number of permits "held" may be smaller than the number of permit holders, because of temporary transfers. In cases where a permit was held by more than one individual during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share, to be divided among them on the basis of transfer agreements, or, if there were no such agreement, based on the ratios of the number of days the permit was held between the first date on which landings were recorded in the fishery and the last date on which landings were recorded based on CFEC data.

³⁰ Each permit holder's final 1989 projected market share would equal his or her share calculated as set out above divided by the sum of all the market shares for permit holders calculated in the same manner.

³¹ A permit holder, if different from the permit owner, would not share in the all permit owner *per capita* fund, but would share in the annual fund (or funds) for the time he or she held the permit.

³² In 1989, there were 112 permanent (some of which were transferable, and some of which were not transferable) and interim G34K permits issued, and in successive years the number was as follows: 1990 - 99; 1991 - 102; 1992 - 108; 1993 - 105; 1994 - 110; and 1995 - 105.

2. Permit Owners at the Time of the Spill Who Later Sold Their Permit

A permit owner at the time of the spill, who subsequently sold the permit would be allotted a share of each annual subfund for which he or she qualifies: a full share if the permit was owned for the entire subfund period, and a prorated share if it was sold during the subfund period. Prorated shares would be proportional to the number of days of the subfund period for which the permit was owned.

3. Post-Spill Permit Purchasers

A claimant who purchased a permit after the spill would be allotted a share of each annual subfund for which he or she qualifies after the purchase: a full share of a annual subfund if he or she owned the permit for the entire subfund period; and a prorated share if the permit was purchased during the subfund period. Prorated shares would also be proportional to the number of days of the subfund period for which the permit was owned.

E. CALCULATING SHARES FOR COOPERATIVES AND COMBINES

There are occasions in the G34K fishery when there is a joint effort by more than one permit holder. Proceeds of catches are shared based upon contractual arrangements among the participants. For such cooperatives and combines, gross shares of annual funds would be calculated on a case-by-case basis. The cooperative/combine's gross share of the *per capita* subfunds would be based on the number of member permit holders, and its gross share of the production subfunds would be based on the actual production of member permit holders. The cooperative/combine's gross share would be divided proportionately among member permit holders and derivative share claimants based on their contractual arrangements for the particular season.

F. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Herring Set Gill Net claimant a Final Percent Share, which is the claimant's percent share of Herring Set Gill Net allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Herring Set Gill Net claimants, would be adjusted to reflect the extent to which they have already been compensated.³³ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

³³ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Kodiak Herring Set Gill Net Distribution

(Table 1)

Fund	Percent	Amount (\$)
1989 annual	0.319	\$ 2,788,060
1990 annual	0.128	\$ 1,118,720
1991 annual	0.134	\$ 1,171,160
1992 annual	0.033	\$ 288,420
1993 annual	0.059	\$ 515,660
1994 annual	0.147	\$ 1,284,780
1995 annual	0.18	\$ 1,573,200
Total	1	\$ 8,740,000

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK SALMON SEINE (S01K) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Salmon Seine (S01K) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S01K permits and "derivative share claimants";³ devaluation of S01K permits by permit owners; and devaluation of seine vessels used in the fishery by owners of the vessels. Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak salmon seiners." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak salmon seiners.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak salmon seiners share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Salmon Seine Claim Category, only putative Kodiak salmon seine claimants have any financial interest in how Kodiak salmon seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak salmon seiners whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak salmon seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak salmon seine matrix share is projected to be 14.4856% of signatories' share of the Alyeska Settlement, and 14.5104% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak salmon seiners' allocation of \$3,587,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$9,621,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak salmon seiners to be allocated roughly \$8,352,000 from the Phase IIA judgment and prejudgment interest, and \$691,878,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak salmon seiners also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak salmon seiners will be allocated the difference between their projected 14.5104% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak salmon seiners. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak salmon seiners' actual allocation of \$9,621,000 from the Alyeska Settlement was less than their projected 14.4856% matrix share (roughly \$12,648,000), the difference (roughly \$3,027,000) would be allocated to Kodiak salmon seiners through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak salmon seine matrix share of 14.5104% is slightly higher than the 14.5% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. Kodiak salmon seiners' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Salmon Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak salmon seiners' total allocation from all recoveries will be roughly \$745,529,000 (less attorneys' fees and expenses), which includes \$3,587,000 from Native/Municipality/Kodiak Island Borough recoveries, \$12,648,000 from the Alyeska Settlement, \$8,352,000 from the uncollected Phase IIA judgment and prejudgment interest, \$691,878,000 from the uncollected punitive damages judgment, and \$29,064,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak salmon seiners to evaluate this distribution plan under the assumption that Kodiak salmon seiners ultimately will be allocated \$745,529,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak salmon seiners,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak salmon seiners will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak salmon seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Salmon Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak salmon seiners' \$3,587,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from Kodiak salmon seiners' \$9,621,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide Kodiak salmon seine allocations into ten separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S01K permits; a "vessel devaluation" fund based on loss in market value of Kodiak salmon seine boats; seven separate "seasonal" funds for the 1989 through 1995 fishing seasons, based on diminished price and/or lost harvest;²² and a "longevity/fishery dependence" fund based on duration of participation in the fishery.

The attached Table 1 lists projected percent shares of Kodiak salmon seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$745,529,000. Projected fund percent shares are: 6.3% for the permit devaluation fund; 4% for the vessel devaluation fund; 50.09% for the seven seasonal funds, including 29.4% for 1989, 7.49% for 1990, 10.28% for 1991, 0.79% for 1992, 0.36% for 1993, 1.3% for 1994, 0.47% for 1995; and 39.61% to the "longevity/fishing dependence fund." Actual percent shares of Kodiak salmon seine funds are likely to vary slightly from projected percent shares.

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S01K permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S01K permit on the date of the oil spill; or (2) acquired ownership of an S01K permit before July 1, 1995.²³ See *infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁴ A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

A qualifying permit owner's share of the permit devaluation fund would be proportional to the amount by which actual market values of S01K permits fell short of what they would have been without an oil spill during the time of ownership between March 24, 1989 and June 30, 1995. Actual and projected market values, based on expert studies prepared for plaintiffs' counsel, are listed on Table 2 attached.

As is now explained, each qualifying permit owner who owned a permit continuously from the date of the oil spill through June 30, 1995 would be allotted a full share,²⁵ equal to the amount of the permit devaluation fund divided by 387, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁶ Qualifying permit owners who sold or purchased permits after the oil spill, but before June 30, 1995, would be allotted only a portion of a full share, based on the extent to which actual and projected market values diverged during the time of ownership. This approach enjoys broad support from Kodiak salmon

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times Kodiak salmon seiners' combined \$13,209,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Kodiak salmon seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Kodiak salmon seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

²² In addition, Kodiak salmon seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak salmon seine allocations, proportional to the ratio of loss to total Kodiak salmon seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak salmon seine allocations.

²³ Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁴ A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit and the "longevity/fishing dependence" fund. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁵ The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁶ This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

seiners, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.²⁷

1. Permit Owners at the Time of the Spill Who Subsequently Sold Permits

As shown on Table 2, actual market values began diverging from projected market values immediately after the oil spill in March 1989. The gap between projected and actual market values ("projected-actual gap") grew from \$5,743 at the end of June, 1989 to \$66,100 at the end of June, 1995. A permit owner at the time of the oil spill, who held his or her permit until June 30, 1995, would be allotted a full share of the permit devaluation fund. A permit owner at the time of the spill who sold before June 30, 1995 would be allotted only a fraction of a full share, equal to the ratio of the projected-actual gap at the time of sale to the maximum projected-actual gap of \$66,100. These fractions, expressed as percentages, are listed on Table 2.²⁸

2. Post-Spill Permit Buyers

Qualifying buyers who purchased before June 30, 1995, and owned through June 30, 1995, would be allotted only a fraction of a full share proportional to the amount by which the projected-actual gap widened after the purchase. These fractions, expressed as percentages, are listed on Table 2.²⁹

B. VESSEL DEVALUATION FUND

The vessel devaluation fund is intended to compensate owners of seine vessels used in the Kodiak salmon seine fishery for loss in market value of their vessels caused by the oil spill.³⁰ Plaintiffs' counsel propose that distribution of the vessel devaluation fund be based on principles similar to those used for distribution of the permit devaluation fund, because both funds compensate for lost value of an asset used in the Kodiak salmon seine fishery.

1. Vessel Subfunds

The vessel devaluation fund would be divided into six "vessel subfunds," one for each season 1989 through 1994. For each vessel subfund, there is a corresponding "vessel subfund period." The period March 24, 1989 through June 30, 1990 will be referred to as the "1989 vessel subfund period." For the 1990 - 1994 vessel subfunds, the corresponding subfund period would run from July 1 of the year in question through June 30 of the subsequent year.

The projected percent share of each season's vessel subfund is based on the loss in market value of S01K permits which occurred during the subfund period.³¹ The projected percent share of the 1989 vessel subfund is 0.43%, or 10.9% of the total 4.0% projected percent share of the vessel devaluation fund. During the 1989 vessel subfund period, the projected-actual permit value gap widened by \$7,190, which represents 10.9% of the maximum projected-actual permit value gap of \$66,100. Using the same approach, rounded projected percent shares are 0.19% for the 1990 vessel subfund, 1.76% for the 1991 vessel subfund, 0.40% for the 1992 vessel subfund, 1.03% for the 1993 vessel subfund, and 0.19% for the 1994 vessel subfund.

2. Full Shares

A full share of a season's vessel subfund would equal the amount of the subfund divided by the number of qualifying vessels for the season.³² From each vessel subfund, full shares would be allotted to vessel owners who held an S01K permit during the season, and

²⁷ In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

²⁸ For example, someone who purchased an S01K permit before the spill, and sold on June 30, 1992, would be allotted 59.6% of a full share because 59.6% of the maximum \$66,100 projected-actual gap occurred by June 30, 1992.

²⁹ For example, someone who purchased an S01K permit on June 30, 1992 would be allotted 40.4% of a full share because 59.6% of the maximum \$66,100 projected-actual gap had taken place by that time, and only 40.4% occurred afterwards. Someone who purchased after the spill and sold it before June 30, 1995 would be allotted a portion of a full share, equal to the ratio of the difference between the projected-actual gaps at the time of sale and purchase, to the maximum projected-actual gap of \$66,100.

³⁰ Plaintiffs' counsel propose to determine distributions without regard to actual values and physical characteristics of vessels. Accounting for individual variations would be prohibitively expensive and time-consuming. Every vessel used in the fishery after the spill would have to be appraised, and every purchase and sale would have to be carefully scrutinized.

³¹ See *supra*. Loss in permit market value is used as a proxy for loss in vessel market value, because doing so greatly simplifies administration and vessel market value appears highly correlated to permit market value.

³² For purposes of illustration in this distribution plan, it is assumed that the number of qualifying vessels each season is 387 -- i.e., the estimated number of qualifying permits. This is a reasonable estimate based on available data, but will be revised if necessary based on additional data accumulated in the Supplemental Claims Program. If the number of qualifying vessels in any season proves to be lower than 387, any surplus in the corresponding

(continued...)

owned a seine vessel for the entire subfund period. Full shares also would be allotted to vessel owners who did not hold an S01K permit during the season, but did own a seine vessel for the entire subfund period and qualify as a vessel owner for the corresponding Kodiak salmon seine seasonal lost income fund. *See supra*. Vessel owners who satisfy these criteria would be allotted full shares even if they traded or exchanged their seine vessel during the subfund period.³³

By this method, a vessel owner who qualifies for full shares of all six vessel subfunds would, in effect, be allotted one full share of the vessel devaluation fund. This would include vessel owners who held an S01K permit and owned a seine vessel from the date of the spill through June 30, 1995. It also would include vessel owners who never held an S01K permit, as long as they qualify as vessel owners for all seasonal lost income funds from 1989 through 1994.

3. Vessel Owners at the Time of the Spill Who Later Sold Their Vessel and Did Not Replace It

A vessel owner who owned a seine vessel at the time of the spill, but subsequently sold the vessel and did not replace it, would be allotted a share of each vessel subfund for which he or she qualifies before the sale. Such a vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period, and a prorated share if he or she sold the vessel during the subfund period. Prorated shares would be proportional to the number of days during the subfund period that the vessel owner owned the vessel. By this method, post-spill vessel sellers would receive prorated shares of the vessel devaluation fund, proportional to the loss in market value of S01K permits that occurred before the sale.³⁴

4. Post-Spill Vessel Purchasers

A vessel owner who purchased a seine vessel after the spill would be allotted a share of each vessel subfund for which he or she qualifies after the purchase. The vessel owner would be allotted a full share if he or she owned the vessel for the entire subfund period, and a prorated share if he or she purchased the vessel during the subfund period. Prorated shares would be proportional to the number of days of the subfund period for which the vessel was owned. Thus, post-spill vessel purchasers, like post-spill vessel sellers, would be allotted prorated shares of the vessel devaluation fund proportional to the loss in market value of S01K permits after the purchase.³⁵

C. SEASONAL LOST INCOME FUNDS

Before the EXXON VALDEZ oil spill, the Kodiak salmon seine fishery was thriving. In 1989, except for a short opening in Karluk Lagoon in which four vessels participated briefly, the entire fishery was closed. Today, the fishery is marginally profitable at best, and seiners' pre-spill lifestyles have deteriorated enormously. Many salmon seiners have been forced to fish elsewhere, otherwise supplement their income or have abandoned the fishery altogether. The value of S01K permits (probably the single most significant asset of many of these small businesses) fell from an average of \$120,648 in 1989 to \$47,655 in 1995.

Open meetings concerning different distribution methods have been held with Kodiak salmon seiners in Anchorage, Soldotna, Mt. Vernon, Washington, Marysville, Washington, and Portland, Oregon, and in Old Harbor, Larsen Bay, Ouzinkie, Port Lions, and the City of Kodiak, on Kodiak Island. In addition, plaintiffs' counsel have consulted with many Kodiak salmon seiners and crew, fishers have circulated and considered informal proposals among themselves, and counsel worked for nearly two months with a group of approximately 20 geographically and economically diverse permit owners to focus issues related to the Plan of Distribution.

At these meetings, and in discussions with scores of individual fishers, plaintiffs' counsel have found that Kodiak salmon seiners agree that virtually all suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is no unanimity among Kodiak salmon seiners on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

³² (...continued)

vessel subfund would be reallocated among all Kodiak salmon seine funds. If the number of qualifying vessels exceeds 387 in any season, shares of the corresponding vessel subfund would be reduced proportionally.

³³ Conceivably, a permit/vessel owner could have put his or her vessel to use in a salmon seine fishery other than Kodiak, for which there is a vessel devaluation fund (e.g., Chignik, Prince William Sound, or Lower Cook Inlet). Any such vessel owner would share in only one vessel devaluation fund per season. *See infra*.

³⁴ For example, a vessel owner who owned a vessel on the date of the spill and sold it on December 31, 1992, would qualify for the 1989, 1990, 1991 and 1992 vessel subfunds. The vessel owner would be allotted full shares of the 1989, 1990 and 1991 vessel subfunds, and a 50% share of the 1992 vessel subfund (because the vessel was owned for half of the 1992 vessel subfund period).

³⁵ Consider, for example, a vessel owner who purchased a seine vessel on December 31, 1992, kept it through December 1995, and used it in the Kodiak salmon seine fishery in the 1993, 1994 and 1995 seasons. The vessel owner would not qualify for the 1992 vessel subfund, because the purchase took place after the fishing season, but would qualify for a full share of the 1993 and 1994 vessel subfunds. If, instead, the vessel owner purchased the vessel on July 15, 1992 and used it in the 1992 season, then he or she also would qualify for a prorated share of the 1992 vessel subfund.

Kodiak fishers were profoundly damaged not only by the direct closures in 1989 to their fishery, and the decrease in price for their product related to the spill, but also by secondary effects, many of which were more profound than the primary effects. The effect of the oil spill on the 1989 season was particularly problematic for S01K fishers because the ADF&G repeatedly announced consecutive closures for a few days at a time throughout the 1989 season. Many permit holders were forced to stay in Kodiak waiting for the fishery to open from approximately June 1, 1989 through the end of August. The situation was exacerbated when Exxon indicated that it would not pay any compensation except for commercial fishers who were actually able to fish or otherwise "mitigating" their damages.

To account for the profoundness and universality of the damage caused by the spill, and in response to Kodiak salmon seiners' widely-held desire for compromise, plaintiffs' counsel propose to distribute a 1989 seasonal fund constituting 29.4% of any recovery, and 1990-1991 seasonal funds constituting 17.77% of any recovery, primarily on a performance based model employing "Hall of Fame" concepts, 1992-1995 seasonal funds constituting 2.92% of any recovery, on a performance model based solely on market shares, and to create a separate fund, called the "longevity/fishery dependence" fund, containing 39.61% of the total recovery available to S01K fishers. Plaintiffs' counsel have concluded that the apportionment, after permit and vessel devaluation of approximately 10.3%, of approximately 50% of any proceeds based overwhelmingly on a "Hall of Fame" concept, and approximately 40% of any proceeds based on overall longevity/fishery dependence is a fair and workable compromise of the many competing interests. The attached Table 1 lists projected amounts of seasonal funds based on a total fishery recovery of \$745,529,000.

1. The 1989 Seasonal Lost Income Fund

a. Qualification for the Fund

The 1989 seasonal lost income fund will be divided among (1) all permit holders³⁶ who registered fishable³⁷ permits for the S01K fishery in 1989, and (2) who (a) had either recorded harvest on their permits in some year between 1984 and 1995, or (b) though they had never fished their permits personally, had at some time between 1984 and 1995 transferred their permits on an emergency basis pursuant to AS 16.43.180, to another who actually recorded landings on the permit. "Displaced" derivative share claimants unable to participate during the 1989 season, and who establish that they would have participated but for the oil spill would also qualify.³⁸

b. Distribution of the Fund

Because Kodiak salmon seine fishers did not fish in 1989 due to the oil spill's virtually complete closure of the fishery, it is necessary to devise a distribution formula for the 1989 fund which estimates what share of the harvest each permit holder might have taken but for the spill. For those permit holders who fished in other years between 1984 and 1995, plaintiffs' counsel propose to distribute the 1989 seasonal fund based on the "Hall of Fame" method. In this method, counsel would use CFEC data for 1984-1988 and 1990-1995 to calculate each permit holder's market share in each of those years and choose the best single year market share. These Hall of Fame shares would then be normalized³⁹ and the normalized market share will constitute the permit holder's share of the 1989 seasonal fund, from which the amounts owed to derivative share claimants will be deducted based on the contractual arrangements they have with their permit holders.⁴⁰

For those permit holders who, though they had never fished their permits personally, had at some time between 1984 and 1995 transferred their permits on an emergency basis pursuant to AS 16.43.180, to another who actually recorded landings on the permit, plaintiffs' counsel propose to allocate a share based on 15% of the median share for those who actually had used their permits. Kodiak

³⁶ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

³⁷ "Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. *See infra*.

³⁸ To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a crew claim for the fishery by the Exxon Claims Program or TAPL Fund; or (3) held a 1989 crew license and participated in the fishery in two of three seasons 1987, 1988 and/or 1990. A spotter must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; (2) was paid a spotter claim for the fishery by the Exxon Claims Program or TAPL Fund; or (3) spotted in the fishery in two of three seasons 1987, 1988 and/or 1990. A vessel owner must provide documentary evidence that he or she either: (1) had a written contract with a permit holder; or (2) leased his or her vessel for use in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1989.

³⁹ Since the sum of all of the Individual Hall of Fame market shares will be greater than 100%, it will be necessary to convert each of them by their sum to a total of 100% shares.

⁴⁰ Displaced crew, spotters vessel owners, and other derivative shareholders who were not aligned with a specific permit holder in 1989, will have their shares calculated on proof of prior or subsequent percentages received through contracts, or through median shares. Plaintiffs' counsel expect very few such "unattached" displaced crew to qualify.

seiners believe that the 15% figure is a fair amount based on prevailing market shares for permit owners legitimately able to transfer their permits on an emergency basis.

2. The 1990 and 1991 Seasonal Lost Income Funds

The 1990 and 1991 seasonal lost income funds will be divided among salmon seine claimants who actually "participated" during each respective season.⁴¹ The prevailing view among permit holders is that the disparities in actual market shares brought about because of the spill insult in 1989 continued to affect market shares in 1990 and 1991, and are best ameliorated by using a limited 1990-1995 "Hall of Fame" approach to construct market shares in those years. To account for disruptions, permit holders' shares for 1990 and 1991 funds would be based on the largest of their 1990-1995 market shares applied to each of 1990 and 1991, rather than the actual production share in the year in question. Derivative share claimants would be based on their actual contractual arrangements in each year.

3. The 1992 - 1995 Seasonal Lost Income Funds

The prevailing view of Kodiak seiners is that actual market shares can be used for distribution of 1992-1995 annual subfunds because though the impact on the fishery from the oil spill continued, fishery market shares had begun to return to more normal levels. For permit holders, production-based shares would be proportional to actual harvest values in the season, less payments to derivative shareholders such as crew, spotters and permit and vessel owners.⁴² For derivative share claimants, production-based shares would be proportional to actual earnings in the fishery during the season.

4. Intra-Season Permit Transfers

In 1989, 1990 and 1991 where a permit was the subject of an emergency transfer during a season (*e.g.*, for medical reasons), plaintiffs' counsel would multiply their normalized "Hall of Fame" share by the percentage of time during the season that the permit holder held the permit compared to the entire season.⁴³ Plaintiffs' counsel also would calculate such reduced shares for each permit holder and his or her derivative shareholders, by dividing the permit holder's proportionately reduced share based on contractual arrangements for the season.

Derivative shareholders would be allotted their proportionately reduced net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net proportionately reduced shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

By contrast, in 1992-95, because shares are exclusively a function of actual production, no adjustments need be made for *intra*-season transfers. Permit holders and their crew would receive shares based on actual production.

D. THE LONGEVITY/FISHERY DEPENDENCE FUND

The profound impacts to the Kodiak salmon seine fishery in 1989 have led seiners to ask plaintiffs' counsel to allocate a substantial portion of any recovery to a fund for which fishers qualify by virtue of being able to participate in any one or more of the 1989-1995 annual funds. Qualifying participants' shares would be a function of dependence on the fishery as evidenced by a long-term participation in the fishery.

Qualifying participants would have points assigned by virtue of actual participation during the years 1984-1988 and 1990-1995 as follows: 9.5 points for each of 1988 and 1990; 9.0 points for each of 1987 and 1991; 8.5 points for each of 1986 and 1992; 8.0 points for each of 1985 and 1993; 7.5 points for each of 1984 and 1994; and 7.0 points for 1995. Points would be accumulated for each permit holder, and the total of all permit holder points would be summed, provided that no permit holder could accumulate more than 62 points to calculate her or his share. Individual shares in the fund would be calculated so that the numerator of any permit holder's fraction would be his or her own point total (with a maximum of 62), and the denominator would be the total of all qualifying permit holders' points (again with each permit holder having a maximum of 62). This proposal has received broad support from seiners because it rewards long term participants to the fishery, because it recognizes that a particular permit holder may have missed a small number of seasons and still have

⁴¹ Permit holders "participated" if they recorded harvest. Hired skippers, crew and spotters "participated" if they were actually employed to work in the fishery during the season. Owners of seine vessels "participated" if they leased or otherwise contracted a seine vessel used in the fishery. Other shareholders such as non-fishing permit owners or "silent" partners in fishing operations "participated" if the permit holder with whom they had an agreement participated.

⁴² As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds Of Fish" times the "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds Of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value Of Catch entries calculated by CFEC.

⁴³ For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For 1989 it is presumed that the start date would have been June 9, 1989 and the end date would have been September 15, 1989, but for the spill, based on historical start and end dates recorded by the CFEC.

substantial economic dependence on the fishery, and because it attempts to compensate those who actually were ready to fish in 1989 and later years for some of the secondary effects of the spill.

E. MULTIPLE SALMON SEINE PERMIT HOLDERS AND THEIR DERIVATIVE SHAREHOLDERS

Some holders of Kodiak salmon seine (S01K) permits also held one or more other limited-entry salmon seine permits -- *i.e.*, Chignik (S01L), Cook Inlet (S01H), Prince William Sound (S01E), Peninsular Aleutians (S01M) or Southeast Alaska (S01A). By law, a multiple salmon seine permit holder may fish only one salmon seine permit each season. Some special requirements therefore are needed to prevent unfair double recoveries.

1. Permit Devaluation Funds

Because permits are separate assets, it is fair for multiple salmon seine permit owners to recover for each of their salmon seine permits. Owners of multiple salmon seine permits may recover from permit devaluation funds in each fishery for which they qualify. For example, a claimant who owned both PWS and Kodiak salmon seine permits may recover from both the PWS and Kodiak salmon seine permit devaluation funds.

2. Seasonal Lost Income Funds

Because multiple salmon seine permit holders may utilize only one permit in a season, it would not be fair for them to recover from more than one salmon seine seasonal lost income fund each season. In 1989, the oil spill forced fishermen to make difficult decisions under abnormal circumstances. For this reason, a multiple salmon seine permit holder may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she actually chose to fish. Likewise, a derivative share claimant may choose to recover from any 1989 salmon seine seasonal lost income fund for which he or she qualifies, regardless of where he or she participated. However, a claimant may recover from only one salmon seine seasonal lost income fund.

In a season after 1989, if a multiple salmon seine permit holder participated in an "oiled" salmon seine fishery, then the permit holder and his or her derivative shareholders must claim against the lost income fund for the fishery in which they participated, and may not recover from any other salmon seine lost income fund. If a multiple salmon seine permit holder participated in an "unoiled" salmon seine fishery (*i.e.*, Peninsular Aleutians (S01M) or Southeast Alaska (S01A)), the permit holder and his or her derivative shareholders may elect to recover from any "oiled" salmon seine lost income fund for which they qualify, rather than the seasonal lost income fund for the "unoiled" fishery in which they participated.⁴⁴

Consider, for example, a permit holder who owned both Kodiak (S01K) and Southeast Alaska (S01A) salmon seine permits from the date of the spill through 1995, and fished Southeast in 1989, Kodiak in 1990 and 1991, and Southeast in 1992 through 1995. In 1989, the permit holder and his or her derivative shareholders may choose either the Kodiak or Southeast seasonal lost income fund, but not both. In 1990 and 1991, the permit holder and his or her derivative shareholders must recover from Kodiak salmon seine lost income funds.

3. Vessel Devaluation Funds

A vessel owner is entitled to only one vessel devaluation recovery for his or her vessel. A multiple salmon seine permit holder who also owns a seine vessel may recover from only one vessel devaluation subfund per season, and his or her total recovery for the vessel may not exceed one full vessel devaluation share. Plaintiffs' counsel have done their best to draft salmon seine distribution plans which protect against double recoveries for salmon seine vessel owners, but this is a complicated claims area and it is impossible to anticipate all scenarios in advance. Plaintiffs' counsel will ensure that owners of vessels used in two or more salmon seine fisheries receive fair, but not excessive, compensation for vessel devaluation.

4. Longevity/Fishery Dependence Fund

A multiple permit holder is entitled to accumulate points in the Longevity/Fishery Dependence Fund only for those years in which he or she actually recorded landings in the S01K fishery.

F. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak salmon seiner a Final Percent Share, which is the claimant's percent share of Kodiak salmon seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

⁴⁴ In the Chignik, Peninsular Aleutians and Southeast Alaska salmon seine fisheries, there are seasonal lost income funds only for 1989, 1990 and 1991. In the Cook Inlet, Kodiak and PWS salmon seine fisheries, there are seasonal lost income funds for every season 1989 through 1995.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including Kodiak salmon seiners, would be adjusted to reflect the extent to which they have already been compensated.⁴⁵ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

TABLE 1
KODIAL SALMON SEINE PROJECTED FUND SHARES

FUND	PROJECTED FUND PERCENT SHARE	PROJECTED AMOUNT
PERMIT DEVALUATION	6.3	\$46,968,327.00
VESSEL DEVALUATION	4	\$29,821,160.00
SEASONAL FUNDS		
1989	29.4	\$219,185,526.00
1990	7.49	\$55,840,122.00
1991	10.28	\$76,640,381.00
1992	0.79	\$5,889,679.00
1993	0.36	\$2,683,905.00
1994	1.3	\$9,691,877.00
1995	0.47	\$3,503,986.00
LONGEVITY/ECONOMIC DEPENDENCE FUND	39.61	\$295,304,037.00
TOTAL	100	\$745,529,000.00

INCLUDES ATTORNEYS' FEES

TABLE 2
KODIAK SALMON PURSE SEINE

SEASON	ACTUAL VALUE	PROJECTED VALUE	LOSS	PERCENTAGE IN PERIOD
1989	\$120,648.00	\$126,391.00	\$5,743.00	0.08688351
1990	\$151,050.00	\$158,240.00	\$7,190.00	0.021891074
1991	\$129,181.00	\$139,503.00	\$10,322.00	0.047382753
1992	\$69,735.00	\$109,148.00	\$39,413.00	0.4401059
1993	\$63,779.00	\$109,752.00	\$45,973.00	0.09924357
1994	\$47,923.00	\$110,881.00	\$62,958.00	0.256959153
1995	\$47,665.00	\$113,765.00	\$66,100.00	0.047534039

⁴⁵ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK SALMON BEACH SEINE (S02K) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Salmon Beach Seine (S02K) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S01K permits and "derivative share claimants";³ and devaluation of S02K permits by permit owners. Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak salmon beach seine claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak salmon beach seine claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak salmon beach seine claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative" share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Salmon Beach Seine Claim Category, only putative Kodiak salmon beach seine claimants have any financial interest in how Kodiak salmon beach seine allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak salmon beach seine claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak salmon beach seine allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak salmon beach seine matrix share is projected to be 0.2398% of signatories' share of the Alyeska Settlement, and 0.2402% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak salmon beach seine claimants' allocation of roughly \$59,400 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$91,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak salmon beach seine claimants to be allocated roughly \$47,100 from the Phase IIA judgment and prejudgment interest, and \$11,453,100 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak salmon beach seine claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak salmon beach seine claimants will be allocated the difference between their projected 0.2402% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak salmon beach seine claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak salmon beach seine claimants' actual allocation of \$91,000 from the Alyeska Settlement was less than their projected 0.2402% matrix share (roughly \$209,400), the difference (roughly \$118,400) would be allocated to Kodiak salmon beach seine claimants through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak salmon beach seine claimants' total allocation from all recoveries will be roughly \$12,341,200 (less attorneys' fees and expenses), which includes \$59,300 from Native/Municipality/Kodiak Island Borough recoveries, \$209,400 from the Alyeska Settlement, \$138,300 from the uncollected Phase IIA

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak salmon beach seine matrix share of 0.2402% is slightly higher than the 0.24% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. Kodiak salmon beach seine claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Salmon Beach Seine Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

judgment and prejudgment interest, \$11,453,100 from the uncollected punitive damages judgment, and \$481,100 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak salmon beach seine claimants to evaluate this distribution plan under the assumption that Kodiak salmon beach seine claimants ultimately will be allocated \$12,341,200 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak salmon beach seine claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all Kodiak salmon beach seine claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak salmon beach seine claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Salmon Beach Seine Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak salmon beach seine claimants' \$59,300 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from Kodiak salmon beach seine claimants' \$91,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times Kodiak salmon beach seine claimants' combined \$150,300 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Kodiak salmon beach seine allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Kodiak salmon beach seine allocation from the Alyeska Settlement, in proportion to net claim values. These adjustments are fair and necessary because previous distributions from the Alyeska Settlement were based solely on 1989, 1990 and 1991 claims, whereas Final Percent Shares will also be based on 1992-95 claims. The distribution plan for the Alyeska Settlement included only 1989-91 damages, because damages in later years had not yet been quantified.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to subdivide Kodiak salmon beach seine allocations into seven separate funds, each of which corresponds to a type of damage caused to the fishery by the EXXON VALDEZ oil spill: a "permit devaluation" fund based on loss in market value of S02K permits and six separate "seasonal" funds for the 1989, 1990, 1991, 1992, 1994 and 1995 fishing seasons, based on diminished price and/or lost harvest.²² These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak salmon beach seine matrix shares.²³ Permit devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²⁴

The attached Table 1 lists projected percent shares of the seven Kodiak salmon beach seine funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$12,341,200. Projected fund percent shares are: 42.4% for the permit devaluation fund; and 57.6% for the six seasonal funds, including 36.1% for 1989, 11.3% for 1990, 7.4% for 1991, 2.1% for 1992, 0.6% for 1994, and 0.1% for 1995. Actual percent shares of the Kodiak salmon beach seine funds are likely to vary slightly from projected percent shares.

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S02K permits. Claims against the permit devaluation fund could be made by those who: (1) owned a marketable S02K permit²⁵ on the date of the oil spill; or (2) purchased or otherwise received a S02K permit before July 1, 1995.²⁶ A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

Because there is insufficient data from which to calculate the amount by which actual market values of S02K permits declined from what they would have been in the absence of the EXXON VALDEZ oil spill on an annual or more frequent basis, a qualifying permit owner's share of the permit devaluation fund would be proportional to the amount of time which she or he held the permit between March 24, 1989 and June 30, 1995.

Each qualifying permit owner who owned a permit continuously from the date of the oil spill through June 30, 1995 would be allotted a full share, equal to the amount of the permit devaluation fund divided by 33, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁷ Qualifying permit owners who sold or purchased permits after the oil spill would be allotted only a portion of a full share, based upon the percentage of the period between March 24, 1989 and June 30, 1995 that they actually owned the permit.²⁸ This approach enjoys broad support from beach seiners, and it is fair and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.

²² In addition, Kodiak salmon beach seiners whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed their out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak salmon beach seine allocations, proportional to the ratio of loss to total Kodiak salmon beach seine matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak salmon beach seine allocations.

²³ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak salmon beach seine damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak salmon beach seine damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁵ Holders of non-marketable permits, such as interim use permits or non-transferable permits, would not qualify for the all permit owner *per capita* fund. Holders of interim use permits would qualify for the annual fund (or funds) for the time when they held their permits. See *infra* _____. Similarly, a permit holder, if different from the permit owner, would not share in the all permit owner *per capita* fund, but would share in the seasonal fund (or funds) for the time he or she held the permit.

²⁶ Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting sufficient documentary proof.

²⁷ This is a reasonable estimate based on available data. Plaintiffs' counsel believe that effective in 1993, a 34th permanent permit was issued. If necessary, plaintiffs' data will be revised based on additional data accumulated in the Supplemental Claims Program.

²⁸ For example, a permit owner who purchased or otherwise owned a permit before the oil spill and sold on June 30, 1991, would be allocated 829/2290 or 36.2% of a full share, because that is the fraction of time which passed between March 24, 1989 and June 30, 1995 when the permit was transferred. In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

B. SEASONAL LOST INCOME FUNDS

Before the EXXON VALDEZ oil spill, the Kodiak salmon beach seine fishery was thriving. Today, it is marginally profitable at best, and seiners' pre-spill lifestyles have deteriorated enormously. Many salmon beach seine claimants have been forced to fish elsewhere, otherwise supplement their income or have abandoned the fishery altogether. The value of S02K permits (probably the single most significant asset of many of these small businesses) fell from an average of \$34,833 in 1989 to \$18,000 in 1995.

At the various meetings listed in n. 23, *supra*, and in discussions with many individual S02K permit owners and their crew, plaintiffs' counsel have found that Kodiak salmon beach seine claimants generally agree that virtually all suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each commercial fisher has been harmed. Although there is not unanimity among Kodiak salmon beach seine claimants on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to a widely-held desire for compromise by Kodiak salmon beach seine claimants, plaintiffs' counsel propose to distribute the seasonal funds in a blended manner, with both *per capita* and production-based components. Each seasonal fund would be divided 50% to a "production" subfund divided only among those who landed fish in that season, and 50% to a "*per capita*" subfund divided among those who landed fish in that season as well. The 50/50 division of annual funds is a compromise between those fishers who advocate distribution based solely on production, and those who advocate 100% *per capita*. The attached Table 1 lists projected amounts of the seasonal funds, based on a total fishery recovery of \$12,374,000.

1. The 1990 - 1995 Production Subfunds

The 1990-95 production-based seasonal funds would be distributed among those Kodiak salmon beach seine claimants who actually "participated" during the season.²⁹ For permit holders,³⁰ production shares would be proportional to actual harvest values in the season, less payments to derivative share claimants.³¹ For derivative share claimants, production shares would be proportional to actual earnings in the fishery during the season.

2. 1990 - 1995 *Per Capita* Subfunds

The 1990, 1991, 1992, 1994 and 1995 *per capita* subfunds would also be distributed among Kodiak beach seine claimants who actually "participated" in the fishery during the season. A "gross" *per capita* share would be computed by dividing the amount of the *per capita* seasonal subfund by the total number of permits "fished" during the season.³² Participating permit holders would be allocated a "net" *per capita* share equal to a gross *per capita* share reduced proportionately based upon their actual contractual arrangements the permit holder had with shareholders for that season. Derivative share claimants would be allotted a portion of a gross *per capita* share, proportional to actual earnings in the fishery during the season.

3. The 1989 Seasonal Fund

The 1989 seasonal fund would be divided among those holders of fishable permits³³ in 1989 who recorded a landing on any S02K permit during the 1986-1988 or 1990-1992 seasons,³⁴ and derivative share claimants "displaced" as a result of the spill.³⁵ As with the

²⁹ A permit holder "participated" if she or he recorded harvest. Crew and spotters "participated" if they were actually employed to work in the fishery during the season. Other shareholders such as non-fishing permit owners or "silent" partners in fishing operations "participated" if the permitholder with whom they had an agreement participated.

³⁰ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

³¹ Plaintiffs' counsel would use CFEC data as presumptive measures of harvest weight and price, but would allow fishers to review, supplement and rebut CFEC data.

³² In any given season, the number of permits "held" may be smaller than the number of permit holders, because of temporary transfers. In cases where a permit was held by more than one individual during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share, to be divided among them on the basis of transfer agreements, or if there were no such agreement, based on the ratios of the number of days the permit was held between the first date on which landings were recorded in the fishery and the last date on which landings were recorded based on CFEC data. For 1989 it is presumed that the start date would have been June 9, 1989 and the end date would have been September 15, 1989, but for the spill, based on historical start and end dates recorded by the CFEC.

³³ "Fishable" permits are those which can legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules or regulations, then his or her permit was not fishable.

³⁴ There is general support from S02K fishers for this qualifying criterion because many permit holders also have S04K or S01K permits for which a recovery will be made from a 1989 annual fund in those fisheries. Participation in one of the three years before the spill year, or one of the three years afterward is an indication of willingness to actually fish an S02K permit in 1989.

³⁵ To qualify as "displaced" a crew must provide documentary evidence that he or she: (1) had a contract with a permit holder (evidenced by a writing, or a permit holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid
(continued...)

1990-1995 seasonal funds, allocations would be divided 50% to a *per capita* subfund and 50% to a production subfund. Distributions would be calculated as follows:

A "gross" share would be computed, equal to the amount of the *per capita* subfund divided by the number of permits "held" in 1989 (projected to be 33),³⁶ plus a projected market share of the production subfund.³⁷ Each permit holder who made contractual arrangements for the season (e.g., employment contracts with crew, or cooperative agreements with permit holders), would be allotted a "net" share equal to the gross share reduced proportionally based on the contractual arrangements. Each permit holder who did not make contractual arrangements would be allotted a net share equal to the gross share reduced proportionately by projected payments to shareholders, calculated on a case-by-case basis using historical information (or fleet-wide averages in the case of new entrants).

Each derivative share claimant who made contractual arrangements for the season would be allotted a net share of his or her permit holder's gross share, based on the contractual arrangements. A derivative share claimant who did not make contractual arrangements, but who nevertheless qualifies, would be allotted a proportional share of both *per capita* and production subfunds, based on projected earnings calculated on a case-by-case basis using historical data.

4. Calculating Shares for Cooperatives and Combines

If any of the S02K permits are fished by holders jointly, proceeds of catches would be shared based upon contractual arrangements among the participants. For any such cooperatives and combines, gross shares of annual funds would be calculated on a case-by-case basis. The cooperative/combine's gross share of the *per capita* subfunds would be based on the number of member permit holders, and its gross share of the production subfunds would be based on the actual production of member permit holders. The cooperative/combine's gross share would be divided proportionately among member permit holders and derivative share claimants based on their contractual arrangements for the particular season.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak salmon beach seine claimant a Final Percent Share, which is the claimant's percent share of Kodiak salmon beach seine allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak salmon beach seine claimants, would be adjusted to reflect the extent to which they have already been compensated.³⁸ Nothing would be distributed to claimants already

³⁵ (...continued)

a crew claim by the Exxon Claims Program; or (3) held a 1989 crew license and participated in the Kodiak salmon beach seine fishery in two of three seasons, 1987, 1988 and/or 1990. In addition, derivative share claimants must submit verified statements detailing how the oil spill prevented him or her from participating (or leasing a vessel), and establishing that he or she was ready, willing and able to participate in 1989.

³⁶ The number of permits "held" may be smaller than the number of permit holders, because of temporary transfers during the season. If a permit was held by more than one person during a season, the multiple holders of the permit would be allocated collectively a single *per capita* share.

³⁷ Projected market shares would be derived in the following manner. For each permit holder who had landings in two of more seasons during 1984 through 1988, a "two-best" market share would be calculated, equal to the average of his or her two best market shares during these seasons. For a permit holder who had landings in only one season prior to 1989, that season and the best of his or her seasons between 1990 and 1995 would be averaged, or if there was just landings in one year prior to 1989 and none thereafter, that share would be used as the 1989 share. For a permit holder with no history to 1989, the average of his or her two best market shares during the seasons 1990-1995 would be used, or if there is only one year, the share from that year. Each permit holder's final 1989 projected market share would equal his or her share calculated as set out above divided by the sum of all the market shares for permit holders calculated in the same manner.

³⁸ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

KODIAK SALMON BEACH SEINE (S02K)
CLAIM CATEGORY
Table I

Fund	Matrix Share	
	Percent	Amount
Permit Devaluation	0.424	\$ 5,232,669
1989 annual	0.361	\$ 4,455,173
1990 annual	0.113	\$ 1,394,556
1991 annual	0.074	\$ 913,249
1992 annual	0.021	\$ 259,165
1994 annual	0.006	\$ 74,047
1995 annual	0.001	\$ 12,341
Total	1	\$ 12,341,200

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE KODIAK
SALMON SET NET (S04K) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Salmon Set Net (S04K) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons by holders of S04K permits and "derivative share claimants,"³ and devaluation of S04K permits by permit owners. Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak salmon set netters." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak salmon set netters.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak salmon set netters' share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as crew and site owners.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Salmon Set Net Claim Category, only putative Kodiak salmon set net claimants have any financial interest in how Kodiak salmon set net allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak salmon set netters whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak salmon set net allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak salmon set net matrix share is projected to be 4.4656% of signatories' share of the Alyeska Settlement, and 4.4732% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak salmon set netters' allocation of \$1,106,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries,¹⁴ and unclaimed money, if any, remaining from their actual \$2,389,000 allocation from the Alyeska Settlement. To remedy some of the prior inequities which occurred during the 1989 season, *see infra*, the allocation will be used exclusively to fund the production portion of the 1989 seasonal lost income fund.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak salmon set netters to be allocated roughly \$2,575,000 from the Phase IIA judgment and prejudgment interest, and \$213,289,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak salmon set netters also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak salmon set netters will be allocated the difference between their projected 4.4732% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak salmon set netters. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak salmon set netters' actual allocation of \$2,389,000 from the Alyeska Settlement was less than their projected 4.4656% matrix share (roughly \$3,899,000), the difference (roughly \$1,510,000) would be allocated to Kodiak salmon set netters through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak salmon set netters' total allocation from all recoveries will be roughly \$229,829,000 (less attorneys' fees and expenses), which includes \$1,106,000 from Native/Municipality/Kodiak Island Borough recoveries, \$3,899,000 from the Alyeska Settlement, \$2,575,000 from the uncollected Phase

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak salmon set net matrix share of 4.4732% is slightly higher than the 4.47% projected in the Allocation Plan, due to correction of round-off error, *see* Notice, and could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. Kodiak salmon set netters' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Salmon Set Net Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

IIA judgment and prejudgment interest, \$213,289,000 from the uncollected punitive damages judgment, and \$8,960,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak salmon set netters to evaluate this distribution plan under the assumption that Kodiak salmon set netters ultimately will be allocated \$229,829,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak salmon set netters,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak salmon set netters will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak salmon set net claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will calculate for each valid claim the formula for calculation of any future shares of allocations to the Kodiak Salmon Set Net Claim Category (Final Formula). All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Formulas will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of the Final Formula, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Formulas will be submitted to the Court for approval.¹⁹

Third, plaintiffs' counsel will distribute Kodiak salmon set netters' \$1,106,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*e.g.*, money reserved for absent class members, for which no claim was made) remaining from Kodiak salmon set netters' \$2,389,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of amounts due,²⁰ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Formulas.

As provided in the Allocation Plan (10-11), Final Formulas also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL FORMULAS

Plaintiffs' counsel propose to subdivide Kodiak salmon set net allocations into eight separate funds, each of which corresponds to a type of damage caused to the fishery by the spill: a "permit devaluation" fund based on loss in market value of S04K permits and seven

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Formula, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²⁰ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a "net claim value" defined as the claimant's "but for" share for the 1989 season, as set out *infra*, less any amounts already received from gross fishing revenues during the 1989 season for those who fished, Exxon (Crawford) Claims payments received for 1989 losses, payments from the Trans-Alaska Pipeline Liability Fund for 1989 losses, and payments from the Alyeska settlement for 1989 losses. Plaintiffs' counsel would distribute the Kodiak salmon set net allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed Kodiak salmon set net allocation from the Alyeska Settlement, in proportion to net claim values. If any fisher received more from all of these sources than his or her "but for" share, no return of amounts previously received would be required. These adjustments, and the compromise implicit in them are favored almost unanimously by Kodiak set netters to attempt to achieve immediate equity with any future payments of the disparities which occurred to the fishery in 1989. *See infra*.

separate "seasonal" funds for the 1989 through 1995 fishing seasons, based on diminished price and/or lost harvest.²¹ With an overall recovery of approximately \$5,000,000,000, these eight funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and form the basis for Kodiak salmon set net matrix shares.²² Permit devaluation damages have been discounted by 33 1/3% to reflect the litigation risk of these types of damages as compared to price and harvest losses.²³

The attached Table 1 lists projected percent shares of Kodiak salmon set net funds ("projected fund percent shares"), and allocations from a total S04K fishery recovery of \$229,829,000. Projected fund percent shares are: 7.5% for the permit devaluation fund and 92.5% for the seven seasonal funds, including 27.4% for 1989, 19.3% for 1990, 34.5% for 1991, 1.5% for 1992, 1.6% for 1993, 5.9% for 1994, and 2.2% for 1995. Actual percent shares of Kodiak salmon set net funds are likely to vary slightly from projected percent shares even with a full recovery, and may vary substantially if the total fishery award is significantly less than \$229,829,000 because of the choice to allocate all available recoveries first to the 1989 production share until it is paid in full.²⁴

A. PERMIT DEVALUATION FUND

The permit devaluation fund is based on loss of market value of S04K permits. Claims against the permit devaluation fund may be made by those who: (1) owned an S04K permit on the date of the oil spill; or (2) acquired ownership of an S04K permit before July 1, 1995.²⁵ See *infra*. Holders of non-marketable permits, or permits owned by others, would not qualify for the permit devaluation fund.²⁶ A permit owner who satisfies these requirements will be referred to as a "qualifying permit owner."

Because there is insufficient data from which to calculate the amount by which actual market values of S04K permits declined from what they would have been in the absence of the EXXON VALDEZ oil spill on an annual or more frequent basis, a qualifying permit owner's share of the permit devaluation fund would be proportional to the amount of time which she or he held the permit between March 24, 1989 and June 30, 1995.

Each qualifying permit owner who owned a permit continuously from the date of the oil spill through June 30, 1995, would be allotted a full share,²⁷ equal to the amount of the permit devaluation fund divided by 189, which plaintiffs' counsel estimate to be the number of "qualifying permits" (*i.e.*, marketable permits) at the time of the spill.²⁸ Qualifying permit owners who sold or purchased permits after the oil spill would be allotted only a portion of a full share, based upon the percentage of the period between March 24, 1989 and June 30, 1995 that they actually owned the permit.²⁹ This approach enjoys broad support from Kodiak salmon set netters, and it is fair

²¹ In addition, Kodiak salmon set netters whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak salmon set net allocations, proportional to the ratio of loss to total Kodiak salmon set net matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak salmon set net allocations.

²² See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, and plaintiffs' counsel. Kodiak salmon set net damages were presented and discussed in ongoing meetings with fishers held in Anchorage, Soldotna, Kodiak, Larsen Bay, Old Harbor, Port Lions, Ouzinkie and Cordova in the State of Alaska; Seattle, Marysville, Bellingham and Mt. Vernon in the State of Washington; and Portland, Oregon.

²³ See Allocation Plan 15 n.24. Permit and vessel devaluation damages are discounted because this Court dismissed claims for them on *Robins Dry Dock* grounds, except claims for losses actually realized through sale.

²⁴ The difference between "but for" shares for 1989 and prior payments reflecting 1989 losses is expected to be approximately \$6,000,000 for the entire fishery, which would require a total recovery from future sources for all plaintiffs over and above the Native/Municipality/Kodiak Island Borough recoveries of between \$110 million and \$120 million. Amounts in excess of that amount would be distributed proportionately among all remaining funds. See Table 1.

²⁵ Plaintiffs' counsel would use CFEC permit data as the presumptive date of sale, but allow claimants to rebut this presumption by submitting documentary proof.

²⁶ A permit holder, if different from the permit owner, would not share in the permit devaluation fund, but would share in the seasonal fund (or funds) for the time he or she held the permit. Holders of interim use permits, if any, share in the permit devaluation fund only if they ultimately were awarded permanent ownership.

²⁷ The number of qualifying permits will be less than or equal to the number of qualifying permit holders, because a permit can count only once no matter how many times it might have been resold.

²⁸ This is a reasonable estimate based on available data. If necessary, it will be revised based on additional data accumulated in the Supplemental Claims Program.

²⁹ For example, a permit owner who purchased or otherwise owned a permit before the oil spill and sold on June 30, 1991, would be allocated 829/2290 or 36.2% of a full share, because that is the fraction of time which passed between March 24, 1989 and June 30, 1995 when the permit was transferred.

and reasonable to base shares on market values, rather than individual transaction prices, because limited-entry commercial fishing permits are fungible assets granting identical rights to their owners.³⁰

B. SEASONAL LOST INCOME FUNDS

Before the EXXON VALDEZ oil spill, the Kodiak Salmon Setnet fishery was thriving. Today, it is marginally profitable at best, and setnetters' pre-spill lifestyles have deteriorated enormously. Many salmon setnetters have been forced to fish elsewhere, otherwise supplement their income or have abandoned the fishery altogether.

At the various meetings listed in n. 22, *supra*, and in discussions with scores of individual fishers, plaintiffs' counsel have found that Kodiak salmon set netters agree that virtually all suffered loss as a result of the spill, but recognize that it is impossible to design a distribution system which accounts for the specific way in which each fisherman has been harmed. Although there is no unanimity among Kodiak salmon set netters on a particular distribution method, plaintiffs' counsel have found a marked desire to compromise and resolve distribution questions without prolonged strife.

To account for the profoundness and universality of the damage caused by the spill, and in response to a widely-held desire for compromise by Kodiak salmon setnetters, plaintiffs' counsel propose to distribute the 1989 seasonal production fund from all prospective sources including the Native/Municipality/Kodiak Island Borough recoveries prior to any other funds, until damages resulting from 1989 have been completely satisfied. The balance of the funds will be distributed in a blended manner, with the remainder of the 1989 seasonal fund and the entirety of the 1992-1995 seasonal funds distributed *per capita*, and the 1990-1991 seasonal funds with a combination of performance and *per capita* elements. Plaintiffs' counsel have concluded that this proposed apportionment, is a fair and workable compromise of the many competing interests. The attached Table 1 lists projected amounts of seasonal funds based on a total fishery recovery of \$229,829,000.

1. The Production Component of the 1989 Seasonal Fund

There is an overwhelming consensus among Kodiak set netters that their fishery was profoundly damaged not only by direct closures in 1989 and the reduction in price for their product, but also through secondary effects, many of which were more profound than the primary effects. A small section of the south end of Kodiak Island was opened for fishing, allowing some set netters to fish; most never got a chance to fish. In other areas, ADF&G repeatedly announced consecutive closures for a few days at a time throughout the 1989 season. Many permit holders were forced to stay at their sites waiting for the fishery to open from approximately June 1, 1989 through the end of August. The situation was exacerbated when Exxon indicated that it would not pay any compensation except for commercial fishers who were actually standing by ready to fish in areas that were not open, or otherwise "mitigating" their damages.

Plaintiffs' counsel propose to distribute a portion of the 1989 seasonal fund on the basis of production to equalize some of the effects of the 1989 season before the distribution of any other funds. Plaintiffs' counsel anticipate that to fund the difference between "but for" shares for permit holders in 1989, and the amounts they have actually received from fishing in that year, and from the various claims programs (Exxon, TAPLF, and the Alyeska settlement) for 1989 will take about \$6,000,000 for the entire fishery.

Plaintiffs' counsel would first calculate a projected market share³¹ in 1989 for each holder of a "fishable" permit.³² From those "but for" shares, amounts previously distributed from claims programs including the Alyeska settlement, the Crawford program and the TAPLF payments for 1989 losses would be deducted as would fishing receipts from the 1989 season for those who fished. Payments would be made to permit holders who had not yet received their but for shares through previous payments, subject to payments to derivative share claimants based upon contractual arrangements. Participating derivative share claimants would be allotted proportional shares based upon actual earnings. Displaced derivative share claimants unable to participate during the 1989 season, but who establish

³⁰ In some cases, permit buyers and sellers agreed to assign litigation rights. As long as such agreements are reflected in written contracts and are not disputed by the parties, plaintiffs' counsel would abide by them, but only to the extent that the assigned rights are consistent with this distribution plan. In the event that parties submit conflicting claims or contest contractual terms regarding assignment of litigation rights, plaintiffs' counsel would hold back any affected distributions until the parties' disagreement is resolved.

³¹ Projected market shares would be derived in the following manner. For each permit holder who fished in two or more seasons during 1984 through 1988, a "two-best" market share would be calculated, equal to the average of his or her two best market shares during these seasons. For a permit holder who fished one season prior to 1989, that season and the best of his or her seasons between 1990 and 1995 would be averaged, or if there was just one year prior to 1989, that share would be used as the 1989 share. For a permit holder with no history to 1989, the average of his or her two best market shares during the seasons 1990-1995 would be used, or if there is only one year, the share from that year. For permit holders, if any, with no history after 1983 and before 1996, the median share of all permit holders whose share has been calculated from prior history would be assigned. Each permit holder's final 1989 projected market share would equal his or her share calculated as set out above divided by the sum of all the market shares for permit holders calculated in the same manner.

³² "Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable.

that they would have participated but for the oil spill would also receive shares.³³ Such non-participating derivative share claimants would be allotted proportional shares based upon projected earnings calculated on a case-by-case basis using historical information.

2. The per Capita Component of the 1989 Seasonal Fund

Once the production portion of the 1989 seasonal fund is completely paid, distributions of the remainder of the 1989 fund would be made on a per capita basis to permit holders and derivative share claimants.³⁴

The 1989 *per capita* subfund would be divided among: holders of "fishable" permits;³⁵ derivative share claimants who participated during the 1989 season; and "displaced" derivative share claimants unable to participate during the 1989 season, who establish that they would have participated but for the oil spill, using the same criteria for qualification as in the 1989 production fund.

Distributions would be calculated in the following manner. A "gross" *per capita* share would be computed by dividing the amount of the 1989 *per capita* subfund by the total number of fishable permits "held" during the season.³⁶ Participating permit holders would be allotted "net" *per capita* shares, equal to the gross *per capita* share reduced proportionally based upon their actual contractual arrangements with shareholders. Non-participating permit holders would be allotted net *per capita* shares, equal to the gross *per capita* share reduced proportionally by projected payments to derivative shareholders.³⁷ Derivative share claimants would receive shares as described for the 1989 production fund.

3. 1990 and 1991 Seasonal Funds

a. Qualification for Participation in The 1990-91 Seasonal Funds

Per capita and production-based components of any seasonal fund would be available only to those permit holders who actually fished in the S04K fishery in the particular season.³⁸ Only derivative share claimants who had actual agreements to share in recoveries and fished during the particular season would be entitled to recover. In an effort to compromise differences between production and *per capita* oriented advocates regarding how shares should be divided in these two years, the great majority of permit holders support a division of 17% of each of the 1990 and 1991 funds on a production basis, and the balance on a *per capita* basis.

b. Production Subfunds

Each production subfund would be distributed among Kodiak salmon set net claimants who actually "participated" during the season.³⁹ For permit holders,⁴⁰ production shares would be proportional to actual harvest values in the season,⁴¹ less payments to derivative

³³ To qualify as "displaced," a crew must provide documentary evidence that he or she either: (1) had a contract with a permit holder (evidenced by a writing or permit holder affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a crew claim for the fishery by the Exxon Claims Program or TAPL Fund; or (3) held a 1989 crew license and participated in the fishery in two of three seasons 1987, 1988 and/or 1990. In addition, a displaced derivative share claimant must submit a verified statement detailing how the oil spill prevented him or her from participating, and establishing that he or she was ready, willing and able to participate in 1989.

³⁴ Payment of the 1989 Production Fund first changes the relative proportions of distribution of the balance of any recovery among the 1989 *per capita* fund, the 1990-1995 funds and the permit devaluation fund, because the remaining shares must be normalized to total 100%. Relative shares of any remaining recovery after payment of the 1989 production fund are set out in Table 1.

³⁵ "Fishable" permits are those which could legally be fished. If, for example, a permit holder's right to fish was suspended for violation of ADF&G rules and regulations, then his or her permit was not fishable. Holders of multiple salmon seine permits which cannot by law be fished in the same season are subject to special conditions. *See infra*.

³⁶ Due to temporary transfers, the number of permits "held" in a season is likely to be smaller than the number of permit holders.

³⁷ Projected payments to shareholders would be based on a permit holder's specific history or, for a new entrant, on fleet-wide data.

³⁸ Generally holders who fished permits would be expected to have some fish deliveries on their permit in the particular season involved, but for those persons who actually fished in a particular season, but delivered all of their catch on a combined permit, they would share in applicable 1990-91 seasonal funds. All holders who recorded deliveries or fished in such combines in a particular season would be eligible to receive a share of *per capita* funds. All holders who recorded deliveries or fished in such combines in a particular seasons would receive a portion of production funds because they would share in overall combine production in accord with contractual arrangements. *See infra*.

³⁹ Permit holders "participated" if they recorded harvest.

⁴⁰ A permit holder is a person who possessed the right to use the permit. This right might be derived through ownership, or transfer from the owner.

⁴¹ As the presumptive measure of harvest value, plaintiffs' counsel will rely on landings recorded in the CFEC data field titled "Estimated Gross Earnings." CFEC derives Estimated Gross Earnings by multiplying for each species of salmon "Round Pounds Of Fish" times the "Value Of Catch," and summing the results. Plaintiffs' counsel will give claimants an opportunity to verify and correct Round Pounds Of Fish, and will recalculate Estimated Gross Earnings by multiplying revised Round Pounds Of Fish entries times Value Of Catch entries calculated by CFEC. Plaintiffs' counsel will not revise Value Of Catch entries calculated by CFEC.

shareholders, provided that no participating permit holder receives less than a specified share from this fund.⁴² For derivative share claimants, production shares would be proportional to their actual earnings in the fishery during the season.

c. *Per Capita Subfunds*

Each of the 1990 and 1991 *per capita* subfunds would be divided among permit holders who actually fished, and participating derivative share claimants.⁴³ A gross *per capita* share would be calculated as the amount of the *per capita* subfund divided by the total number of permits fished for the season. Permit holders would be allotted a net *per capita* share equal to the gross *per capita* share reduced proportionally based upon actual contractual arrangements with shareholders. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based upon their actual earnings.

4. 1992-1995 Seasonal Funds

Each of the 1992-1995 seasonal subfunds will be distributed exclusively on a *per capita* basis among permit holders who actually fished, and participating derivative share claimants. A gross *per capita* share would be calculated as the amount of the *per capita* subfund divided by the total number of permits fished for the season. Permit holders would be allotted a net *per capita* share equal to the gross *per capita* share reduced proportionally based upon actual contractual arrangements with shareholders. Derivative share claimants would be allotted proportional shares of a gross *per capita* share, based upon their actual earnings.

5. *Intra-Season Permit Transfers*

In cases where a permit was transferred during a season (e.g., for medical reasons), other than in 1989, plaintiffs' counsel would calculate for each permit holder a "base gross share" of any seasonal lost income fund. Each permit holder's base gross share would be comprised of: a portion of the production subfund proportional to the permit holder's production in the season for those years applicable (1990 and 1991); plus a portion of one gross *per capita* share proportional to the length of time during the season that the permit holder held the permit.⁴⁴ Plaintiffs' counsel also would calculate "base net shares" for each permit holder and his or her derivative shareholders, by dividing the permit holder's base gross share proportionally based on contractual arrangements for the season.⁴⁵

For 1989, because the production fund is paid before other funds, permit holders who transferred and received a permit on an emergency basis during the season would each receive a "but for" share proportional to the length of time during the season that the permit holder held the permit.⁴⁶ Per capita shares would be similarly divided. Derivative shareholders would be allotted their contractual shares of each fund.

6. Calculating Shares for Cooperatives and Combines

There are numerous occasions in the S04K fishery when there is a joint effort by more than one permit holder. Proceeds of catches are shared based upon contractual arrangements among the participants. For such cooperatives and combines, gross shares of annual funds would be calculated on a case-by-case basis. The cooperative/combine's gross share of the *per capita* subfunds would be based on the number of member permit holders, and its gross share of the production subfunds would be based on the actual production of member permit holders. The cooperative/combine's gross share would be divided proportionately among member permit holders and derivative share claimants based on their contractual arrangements for the particular season.

E The Final Formulas

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak salmon set netter a Final Formula, by which the claimant's share of Kodiak salmon set net allocations will be calculated. The Final Formula would permit the permit holder to calculate his or her share from any particular recovery available to signatory plaintiffs.

⁴² The floor share is set so that no permit holder receives a pre-determined amount below the median share for those participating in each fund. The "floor" share is \$50,000 less than the median for those who participated in both 1990 and 1991, \$32,500 less than the median for those who participated only in 1991, and \$17,500 less than the median for those who participated only in 1990. For multiple permit operations, such "floor shares" are established only after sites are combined. See *infra*.

⁴³ Unlike the 1989 *per capita* subfund, non-participating derivative share claimants would not share in the 1990 and 1991 *per capita* subfunds, because there is little evidence that the spill denied them opportunities to work in the fishery. There were no closures caused by the spill in those years.

⁴⁴ For each season, the start date would be the first day on which landings were recorded, and the end date would be the last date on which landings were recorded, based on CFEC data. For 1989 it is presumed that the start date would have been June 9, 1989 and the end date would have been September 15, 1989, but for the spill, based on historical start and end dates recorded by the CFEC.

⁴⁵ For 1989 it is presumed that the start date would have been June 9, 1989 and the end date would have been September 15, 1989, but for the spill, based on historical start and end dates recorded by the CFEC.

⁴⁶ Derivative shareholders would be allotted their base net shares, regardless of any agreement between the permit holders. If the permit holders agree upon the division of their net base shares between them (whether by terms of their transfer agreement or otherwise), plaintiffs' counsel would honor the agreement. If the permit holders do not agree, plaintiffs' counsel would hold back any disputed portions until the disagreement is resolved.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION NOT ALREADY SUBJECT TO SETOFF

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement for any losses other than for 1989. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Formulas, and what they actually received from those programs for non-1989 losses. The object will be to apply Final Formulas, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including Kodiak salmon set netters, would be adjusted to reflect the extent to which they have already been compensated.⁴⁷ Nothing would be distributed to claimants already paid more than the share to which they are entitled under their Final Formula of signatories' recoveries to date. Claimants been paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Formulas should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

⁴⁷ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
S04K Plan of Distribution

All Plaintiff Additional Recovery	S04K Additional recovery	1989 Production	1989 Per Capita	Permit Deval	1990 Production	1990 Per Capita	1991 Production	1991 Per Capita	1992-1995 Per Capita
\$18,000,000	\$603,506	\$603,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$75,000,000	\$3,349,200	\$3,349,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$134,380,000	\$6,000,000	\$6,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$500,000,000	\$22,326,000	\$6,000,000	\$4,183,335	\$1,258,414	\$548,151	\$2,692,158	\$978,565	\$4,511,536	\$1,879,231
\$1,000,000,000	\$44,656,000	\$6,000,000	\$9,858,559	\$2,979,253	\$1,290,898	\$5,373,614	\$2,312,594	\$11,391,887	\$4,449,017
\$2,000,000,000	\$89,312,000	\$6,000,000	\$21,243,006	\$6,420,930	\$2,736,654	\$13,736,510	\$4,984,354	\$24,551,928	\$9,588,589
\$3,000,000,000	\$133,968,000	\$6,000,000	\$32,629,450	\$8,562,808	\$4,280,372	\$21,099,407	\$7,656,014	\$37,711,984	\$14,726,162
\$4,000,000,000	\$178,924,000	\$6,000,000	\$44,015,900	\$13,304,288	\$5,774,080	\$26,462,303	\$10,327,674	\$50,572,043	\$19,557,734
\$5,000,000,000	\$223,250,000	\$6,000,000	\$55,402,347	\$16,745,964	\$7,287,718	\$35,625,199	\$12,999,334	\$64,032,101	\$25,007,306

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK SCALLOP FISHERS (W12B, W17B, W22B, W99B) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Scallop Fishers (W12B, W17B, W22B, W99B) Claim Category, which includes claims for lost income in the 1989 through 1993 seasons by holders of W12B, W17B, W22B, W99B licenses and "derivative share claimants."³ License holders and derivative share claimants will be collectively referred to as "Kodiak scallop claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak scallop claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak scallop claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund,⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Scallop Fishers Claim Category, only putative Kodiak scallop claimants have any financial interest in how Kodiak scallop allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak scallop claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak scallop allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak scallop claimants' matrix share is projected to be 0.015% of signatories' recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak scallop claimants' allocation of \$3,700 (less attorneys' fees approved by the Court¹³) from the Native/Municipality/Kodiak Island Borough recoveries.¹⁴

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak scallop claimants to be allocated roughly \$8,600 from the Phase IIA judgment and prejudgment interest, and \$715,200 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak scallop claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak scallop claimants will be allocated the difference between their projected 0.015% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak scallop claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak scallop claimants did not get an allocation from the original Alyeska Settlement, they will receive roughly 0.015% of signatories' share, or \$13,100, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak scallop claimants' total allocation from all recoveries will be roughly \$770,600 (less attorneys' fees and expenses), which includes \$3,700 from the Native/Municipality/Kodiak Island Borough recoveries, \$13,100 from the Alyeska Settlement, \$8,600 from the uncollected Phase IIA judgment and prejudgment interest, \$715,200 from the uncollected punitive damages judgment, and \$30,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak scallop claimants to evaluate this distribution plan under the assumption that Kodiak scallop claimants ultimately will be allocated \$770,800 plus interest.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak scallop claimant matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Scallop Fishers Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak scallop claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak scallop claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak scallop claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Scallop Fishers Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak scallop claimants' \$3,700 share of Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

In 1989, the EXXON VALDEZ oil spill disrupted the fishing pattern of the Kodiak Scallop fleet and forced the relocation of the fleet away from the Kodiak Management Area because of oiling that occurred in the West Shelikof/Katmai Bay/Hallo Bay management sections. In the years following the oil spill, the West Shelikof scallop beds have yielded less product both in terms of catch per unit and total catch.

Plaintiffs' counsel propose to subdivide Kodiak Scallop allocations into five separate funds, each of which corresponds to the damage caused to the fishery in the years 1989-1993 by the EXXON VALDEZ oil spill based on diminished or lost harvest.²² These five

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a Final Percent Share according to this distribution plan and a "gross claim value" equal to the Final Percent Share times Kodiak scallop claimants' \$3,700 allocation from the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would distribute the Kodiak scallop allocation from Native/Municipality/Kodiak Island Borough recoveries in proportion to these gross claim values.

²² In addition, Kodiak Scallop claimants whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs or repair and/or market value of lost equipment to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Scallop allocations, proportional to the ratio of loss to total Kodiak Scallop matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Scallop allocations.

funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak Scallop matrix shares.²³

The attached Table 1 lists projected percent shares of the five Kodiak scallop funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$770,600. Projected fund percent shares are: 65.39% for 1989, 9.88% for 1990, 1.93% for 1991, 10.5% for 1992, and 12.3% for 1993. Actual percent shares of the Kodiak scallop funds are likely to vary slightly from projected percent shares.

A. THE 1989 ANNUAL FUND

Eligible to share in allocations to Kodiak scallop claimants would be: license holders and derivative share claimants who "participated" in 1989²⁴ and "displaced" claimants unable to participate as a result of the spill.²⁵ Plaintiffs' counsel propose *pro rata* distribution of Kodiak scallop allocations, proportional to lost profits or earnings in the 1989 season.

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate 1989 Kodiak scallop claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial scallop operations in the Kodiak Management Area during the 1985 through 1989 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December 31, 1989. Derivative share claimants likewise must submit detailed claims which: describes their participation in Kodiak scallop fisheries during the 1985 through 1989 seasons; sets forth their earnings each season; explains in detail how the spill led to lost earnings in 1989; and estimates the amount of lost earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and permits. Key assumptions and projections must be thoroughly substantiated.

B. THE 1990 - 1993 ANNUAL FUNDS

The fishery was open between 1990 and 1993, but suffered fishing disruptions and market losses. Each of the 1990-93 seasonal funds would be distributed among participants who actually "participated" in the season.²⁶ Plaintiffs' counsel would calculate a gross share of the seasonal fund, proportional to the value of the participating license holder's actual harvest. The license holder's gross share would be divided proportionally with shareholders, based on contractual arrangements for the season.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak scallop claimant a Final Percent Share, which is the claimant's percent share of Kodiak scallop claimant allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments

²³ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Scallop damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Scallop damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ License holders "participated" if they recorded harvest in the Kodiak Management Area in 1989. Crew "participated" if they were employed to work by a qualifying license holder in the 1989 season. Other shareholders such as vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest scallops in the Kodiak Management Area in 1989.

²⁵ A fisher who held a scallop license at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) took substantial steps to harvest scallops in the Kodiak Management Area in 1989, but was prevented from doing so by the spill; or (2) was paid a scallop claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the Kodiak Management Area 1989 (as evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a scallop crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the scallop fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying license holder claimant; or (2) leased his or her vessel for use in the Kodiak scallop fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the Kodiak Management Area in 1989, and establishing that they were ready, willing and able to participate.

²⁶ License holders "participated" if they actually purchased a license, geared up and fished. Crew "participated" if they were employed in the fishery to work during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season.

from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak scallop claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
Kodiak Scallop Fishers Distribution

Lost Income	Matrix Share ²⁸	
	Percent (%)	Amount (\$)
1989 (65.39%)	.0098085%	\$503,895
1990 (9.88%)	.001482%	\$76,135
1991 (1.93%)	.0002895%	\$14,873
1992 (10.5%)	.001575%	\$80,913
1993 (12.3%)	.001845%	\$94,784
Total (100%)	.015%	\$770,600

INCLUDES ATTORNEYS' FEES

²⁷ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

²⁸ The number of scallop fishers per year averages about 12.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK HERRING FOOD & BAIT FISHERS
(H01K, H02K, H07K, H37K) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Herring Food & Bait Fishers (H01K, H02K, H07K, H37K) Claim Category, which includes claims for: lost income in the 1989 through 1995 seasons, by holders of H01K, H02K, H07K, H37K licenses and "derivative share claimants."³ Permit owners, permit holders and derivative share claimants will be collectively referred to as "Kodiak Herring Food & Bait claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Herring Food & Bait claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Herring Food & Bait claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew, vessel owners and spotters.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Herring Food & Bait Claim Category, only putative Kodiak Herring Food & Bait claimants have any financial interest in how Kodiak Herring Food & Bait allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Herring Food & Bait claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Herring Food & Bait allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak Herring Food & Bait matrix share is projected to be 0.0329% of signatories' share of the Alyeska Settlement, and 0.033% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Herring Food & Bait claimants' allocation of \$8,200 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries.¹⁴

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Herring Food & Bait claimants to be allocated roughly \$19,000 from the Phase IIA judgment and prejudgment interest, and \$1,573,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Herring Food & Bait claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Herring Food & Bait claimants will be allocated the difference between their projected 0.033% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak Herring Food & Bait claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak Herring Food & Bait claimants did not get an allocation from the original Alyeska Settlement, they will receive roughly 0.0329 of signatories' share, or \$28,700, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak Herring Food & Bait matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. Kodiak Herring Food & Bait claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Herring Food & Bait Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Herring Food & Bait claimants' total allocation from all recoveries will be roughly \$1,695,000 (less attorneys' fees and expenses), which includes \$8,200 from Native/Municipality/Kodiak Island Borough recoveries, \$28,700 from the Alyeska Settlement, \$19,000 from the uncollected Phase IIA judgment and prejudgment interest, \$1,573,000 from the uncollected punitive damages judgment, and \$66,100 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Kodiak Herring Food & Bait claimants to evaluate this distribution plan under the assumption that Kodiak Herring Food & Bait claimants ultimately will be allocated \$1,695,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Herring Food & Bait claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak Herring Food & Bait claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Herring Food & Bait claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Herring Food & Bait Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration, if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak Herring Food & Bait claimants' \$8,200 share of Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a Final Percent Share according to this distribution plan and a "gross claim value" equal to the Final Percent Share times Kodiak Herring Food & Bait claimants' \$8,200 from the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would distribute the Kodiak Herring Food & Bait allocation from Native/Municipality/Kodiak Island Borough recoveries in proportion to these gross claim values.

III. DETERMINATION OF FINAL PERCENT SHARES

The EXXON VALDEZ oil spill disrupted herring fishing in the Kodiak Management Area in 1989. In the years following the oil spill, the 1989 year class contribution to the Kodiak herring biomass was alarmingly low when compared to the other year classes, resulting in less product in years when the 1989 year class would be considered the predominate contributor to the Kodiak herring biomass.

Plaintiffs' counsel propose to subdivide Kodiak Herring Food & Bait allocations into seven separate funds, each of which corresponds to the damage caused to the fishery in the years 1989-1995 by the EXXON VALDEZ oil spill based on diminished or lost harvest.²² These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation Committee and formed the basis for the Kodiak Herring Food & Bait matrix shares.²³

The attached Table 1 lists projected percent shares of Kodiak Herring Food & Bait funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$1,695,000. Projected fund percent shares are: 20.9% for 1989, 8.4% for 1990, 8.8% for 1991, 3.1% for 1992, 9.8% for 1993, 23% for 1994 and 26% for 1995. See Table 1. Actual percent shares of the Kodiak Herring Food & Bait funds are likely to vary slightly from projected percent shares.

A. THE 1989 ANNUAL FUND

Eligible to share in allocations to Kodiak Herring Food & Bait claimants would be: license holders and derivative share claimants who "participated" in 1989²⁴ and "displaced" claimants unable to participate as a result of the spill.²⁵ Plaintiffs' counsel propose *pro rata* distribution of Kodiak Herring Food & Bait allocations, proportional to lost profits or earnings in the 1989 season.

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate 1989 Kodiak Herring Food & Bait claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial herring food and bait operations in the Kodiak Management Area during the 1985 through 1989 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December 31, 1989. Derivative share claimants likewise must submit detailed claims which: describes their participation in Kodiak Herring Food & Bait fisheries during the 1985 through 1989 seasons; sets forth their earnings each season; explains in detail how the spill led to lost earnings in 1989 through 1995; and estimates the amount of earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and licenses. Key assumptions and projections must be thoroughly substantiated.

²² In addition, Kodiak Herring Food & Bait claimants whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil would be reimbursed their out-of-pocket costs or repair and/or market value of lost equipment to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Herring Food & Bait allocations, proportional to the ratio of loss to total Kodiak Herring Food & Bait matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Herring Food & Bait allocations.

²³ See Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Herring Food & Bait damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Herring Food & Bait damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ License holders "participated" if they recorded harvest. Crew "participated" if they were employed to work by a qualifying license holder in the 1989 season. Other shareholders such as vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest herring for food and bait in the Kodiak Management Area in 1989.

²⁵ A fisher who held a Kodiak Herring Food & Bait license at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) took substantial steps to harvest herring for food and bait in the Kodiak Management Area in 1989, but was prevented from doing so by the spill; or (2) was paid a Kodiak Herring Food & Bait claim by the Exxon Claims Program. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the Kodiak Management Area 1989 (as evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a Kodiak Herring Food & Bait crew claim by the Exxon Claims Program; or (3) participated (as a license holder or crew) in the Kodiak Herring Food & Bait fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying license holder claimant; or (2) leased his or her vessel for use in the Kodiak Herring Food & Bait fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the Kodiak Management Area in 1989, and establishing that they were ready, willing and able to participate.

B. THE 1990 - 1995 ANNUAL FUNDS

The fishery was open between 1990 and 1995, but suffered fishing disruptions and market losses. Each of the 1990-95 seasonal funds would be distributed among participants who actually "participated"²⁶ in the season. Plaintiffs' counsel would calculate a gross share of the seasonal fund, proportional to the value of the participating license holder's actual harvest. The license holder's gross share would be divided proportionally with shareholders, based on contractual arrangements for the season.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Herring Food & Bait claimant a Final Percent Share, which is the claimant's percent share of Kodiak Herring Food & Bait allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak Herring Food & Bait claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁶ License holders "participated" if they purchased a license, geared up and fished. Crew "participated" if they were employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season.

²⁷ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
Kodiak Herring Food & Bait Distribution

Lost Income	Matrix Share	
	Percent (%)	Amount (\$)
1989 (20.9%)	.006897%	\$ 354,255
1990 (8.4%)	.002772%	\$ 142,380
1991 (8.8%)	.002904%	\$ 149,160
1992 (3.1%)	.001023%	\$ 52,545
1993 (9.8%)	.003234%	\$ 166,110
1994 (23%)	.00759%	\$ 389,850
1995 (26%)	.00858%	\$ 440,700
Total (100%)	0.033%	\$ 1,695,000

INCLUDES ATTORNEYS' FEES

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
KODIAK DUNGENESS CRABBERS (D09J, D10J, D91J) CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Kodiak Dungeness Crab Fishers (D09J, D10J, D91J) Claim Category, which includes claims for lost income in the 1989 through 1995 seasons by holders of D09J, D10J and D91J licenses and "derivative share claimants."³ License holders and derivative share claimants will be collectively referred to as "Kodiak Dungeness Crab claimants." Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Kodiak Dungeness Crab claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, Kodiak Dungeness Crab claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Derivative share claimants" include other participants in the fishery such as hired skippers, crew and vessel owners.

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Kodiak Dungeness Crab Claim Category, only putative Kodiak Dungeness Crab claimants have any financial interest in how Kodiak Dungeness Crab allocations are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that Kodiak Dungeness Crab claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in Kodiak Dungeness Crab allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The Kodiak Dungeness Crab matrix share is projected to be 0.0339% of signatories' share of the Alyeska Settlement, and 0.034% of signatories' other recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute Kodiak Dungeness Crab claimants' allocation of \$8,400 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries.¹⁴

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Kodiak Dungeness Crab claimants to be allocated roughly \$19,600 from the Phase IIA judgment and prejudgment interest, and \$1,621,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Kodiak Dungeness Crab claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Kodiak Dungeness Crab claimants will be allocated the difference between their projected 0.034% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to Kodiak Dungeness Crab claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because Kodiak Dungeness Crab claimants were not allocated any proceeds from the original Alyeska Settlement, they will receive roughly 0.0339% of signatories' share, or \$29,600, through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, Kodiak Dungeness Crab claimants' total allocation from all recoveries will be roughly \$1,747,000 (less attorneys' fees and expenses), which includes \$8,400 from Native/Municipality/Kodiak Island Borough recoveries, \$29,600 from the Alyeska Settlement, \$19,600 from the uncollected Phase IIA judgment and prejudgment interest, \$1,621,000 from the uncollected punitive damages judgment, and \$68,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals,

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Kodiak Dungeness Crab matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31. Kodiak Dungeness Crab claimants' matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Kodiak Dungeness Crab Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

and believe it prudent for the Court and Kodiak Dungeness Crab claimants to evaluate this distribution plan under the assumption that Kodiak Dungeness Crab claimants ultimately will be allocated \$1,747,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for Kodiak Dungeness Crab claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Kodiak Dungeness Crab claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed Kodiak Dungeness Crab claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Kodiak Dungeness Crab Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute Kodiak Dungeness Crab claimants' \$8,400 share of Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The EXXON VALDEZ oil spill disrupted Dungeness crab fishing in the Kodiak Management Area in 1989 by closing the North Mainland and South Mainland sections due to the presence of oil. In the years following the oil spill, Dungeness harvests in these two sections declined precipitously.

Plaintiffs' counsel propose to subdivide Kodiak Dungeness Crab allocations into seven separate funds, each of which corresponds to the damage caused to the fishery in the years 1989-1995 by the EXXON VALDEZ oil spill based on diminished or lost harvest.²² These seven funds would be allocated money in proportion to their corresponding matrix damages, which were quantified by plaintiffs' Allocation

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate a Final Percent Share according to this distribution plan and a "gross claim value" equal to the Final Percent Share times Kodiak Dungeness Crab claimants' \$8,400 from the Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel would distribute the Kodiak Dungeness Crab allocation from Native/Municipality/Kodiak Island Borough recoveries in proportion to these gross claim values.

²² In addition, Kodiak Dungeness Crab claimants whose fishing vessels, gear or equipment were damaged while being used for fishing as a result of physical contact with spilled oil, would be reimbursed out-of-pocket costs of repair and/or market value of lost equipment, to the extent such losses have not already been reimbursed (by Exxon, VECO, insurance carriers, the Alyeska Claims Program, etc.). These personal property claims will be allotted *pro rata* shares of Kodiak Dungeness Crab allocations, proportional to the ratio of loss to total Kodiak Dungeness Crab matrix damages, up to the amount of loss. Plaintiffs' counsel expect such payments to comprise a negligible portion of Kodiak Dungeness Crab allocations.

Committee and formed the basis for the Kodiak Dungeness Crab matrix shares.²³

The attached Table 1 lists projected percent shares of the seven Kodiak Dungeness Crab funds ("projected fund percent shares"), and allocations from a total fishery recovery of \$1,747,000. Projected fund percent shares are: 7.5% for 1989, 24.55% for 1990, 22.59% for 1991, 14.53% for 1992, 5.7% for 1993, 20.1% for 1994 and 5.03% for 1995. Actual percent shares of the Kodiak Dungeness Crab funds are likely to vary slightly from projected percent shares.

A. THE 1989 ANNUAL FUND

Eligible to share in allocations to Kodiak Dungeness Crab claimants would be: license holders and derivative share claimants who "participated" in 1989²⁴ and "displaced" claimants unable to participate as a result of the spill.²⁵ Plaintiffs' counsel propose *pro rata* distribution of Kodiak Dungeness Crab allocations, proportional to lost profits or earnings in the 1989 season.

Given the small number of expected claimants, and the wide variance in size and capitalization of fishing operations, plaintiffs' counsel propose to evaluate 1989 Kodiak Dungeness Crab claims on a case-by-case basis. License holder claimants must submit a detailed claim which: describes their commercial Dungeness Crab operations in the Kodiak Management Area during the 1985 through 1989 seasons; provides comprehensive financial data, including revenues, expenses, and profits for each season; explains in detail how the spill led to lost profits; and estimates lost profits from the date of the spill through December 31, 1989. Derivative share claimants likewise must submit detailed claims which: describes their participation in Kodiak Dungeness Crab fisheries during the 1985 through 1989 seasons; sets forth their earnings each season; explains in detail how the spill led to lost earnings in 1989; and estimates the amount of earnings. Claims must be thoroughly documented and include, for example, relevant tax returns, financial statements, contracts and licenses. Key assumptions and projections must be thoroughly substantiated.

B. THE 1990-95 ANNUAL FUNDS

The fishery was open between 1990 and 1995, but suffered fishing disruptions and market losses. Each of the 1990-95 seasonal funds would be distributed among participants who actually "participated"²⁶ in the season. Plaintiffs' counsel would calculate a gross share of the seasonal fund, proportional to the value of the participating license holder's actual harvest. The license holder's gross share would be divided proportionally with shareholders, based on contractual arrangements for the season.

C. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each Kodiak Dungeness Crab claimant a Final Percent Share, which is the claimant's percent share of Kodiak Dungeness Crab allocations. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of each fund's actual percent share times the claimant's percent share of the subfund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares,

²³ *See* Allocation Plan 5-6. To determine matrix damages, the Allocation Committee considered trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees and plaintiffs' counsel. Since the fall of 1995, workups of Kodiak Dungeness Crab damages have been distributed to plaintiffs' counsel, and made available for inspection by fishers. Kodiak Dungeness Crab damages were presented and discussed in ongoing meetings with fishers held in Kodiak, Larsen Bay, Ouzinkie, Port Lions, Old Harbor, Anchorage, and Soldotna, Alaska; Marysville, Seattle and Mt. Vernon, Washington; and Portland, Oregon.

²⁴ License holders "participated" if they recorded harvest. Crew "participated" if they were employed to work by a qualifying license holder in the 1989 season. Other shareholders such as vessel owners "participated" if they leased or otherwise contracted a vessel used to harvest Dungeness Crab in the Kodiak Management Area in 1989.

²⁵ A fisher who held a Dungeness Crab license at the time of the spill, but did not harvest in 1989, may still qualify as a "displaced" license holder claimant, if he or she either: (1) took substantial steps to harvest Dungeness Crab in the Kodiak Management Area in 1989, but was prevented from doing so by the spill; or (2) was paid a Dungeness Crab claim by the Exxon Claims Program or the TAPL Fund. To qualify as a "displaced" crew, a claimant must provide documentary evidence that he or she either: (1) had a contract with a qualifying license holder claimant to crew in the Kodiak Management Area 1989 (as evidenced by a writing, or a license holder affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); (2) was paid a Kodiak Dungeness Crab crew claim by the Exxon Claims Program or the TAPL Fund; or (3) participated (as a license holder or crew) in the Kodiak Dungeness Crab fishery in two of three seasons 1987, 1988 and/or 1990. To qualify as a "displaced" vessel owner, a claimant must provide documentary evidence that he or she either: (1) had a written contract for the 1989 season with a qualifying license holder claimant; or (2) leased his or her vessel for use in the Kodiak Dungeness Crab fishery in two of three seasons 1987, 1988 or 1990. In addition, displaced claimants must submit verified statements detailing how the oil spill prevented them from participating in the Kodiak Management Area in 1989, and establishing that they were ready, willing and able to participate.

²⁶ License holders "participated" if they actually purchased a license, geared up and fished. Crew "participated" if they were employed to work in the fishery during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season.

which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Kodiak Dungeness Crab claimants, would be adjusted to reflect the extent to which they have already been compensated.²⁷ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Kodiak Dungeness Crab Distribution (Table 1)

Fund	Matrix Share	
	Projected % Share	Projected Amount (\$)
1989	0.075	\$ 131,025
1990	0.2455	\$ 428,889
1991	0.2259	\$ 394,647
1992	0.1453	\$ 253,839
1993	0.057	\$ 99,579
1994	0.201	\$ 351,147
1995	0.0503	\$ 87,874
Total	1	\$1,747,000

INCLUDES ATTORNEYS' FEES

²⁷ Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

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**PLAN OF DISTRIBUTION FOR ALLOCATIONS
TO UNOILED FISHERY CLAIM CATEGORIES**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The Exxon Valdez Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to unoiled fishery claim categories, which are the following:

Bristol Bay roe herring (G01T, G34T, L12T)

Bristol Bay salmon (S03T, S04T, S77T)

Chignik roe herring (G01L)

Cook Inlet (Upper) roe herring (G34H)

Kotzebue salmon (S04X)

Kuskokwim roe herring (G34N, G34S, G34U, G34V, G34W)

Kuskokwim salmon (S04W, S77W)

Norton Sound roe herring (G02Z, G34Z, G77Z)

Norton Sound salmon (S04Z)

Peninsula Aleutians roe herring (G01M, G34M)

Peninsula Aleutians salmon (S01M, S03M, S04M)

Southeast Alaska roe herring (G01A, G34A, L21A)

Southeast Alaska salmon (S01A, S03A, S04D, S05B, S15B, S99A)

Yukon (Lower) roe herring (G34Y)

Yukon (Lower) salmon (S04Y, S77Y)

Yukon (Upper) salmon (S04P, S08P)

State of Alaska Commercial Fisheries Entry Commission (CFEC) identification codes for constituent fisheries are listed in parentheses.³ These claim categories include claims for lost income in the 1989, 1990 and 1991 seasons by permit holders, "derivative

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³For three unoiled fishery claim categories, CFEC codes are different than those listed in the Allocation Plan. The gear code L21M has been dropped from the Peninsula Aleutians Roe Herring Claim Category because there were no recorded harvests in the 1989, 1990 and 1991 seasons, and therefore no damages. *See infra*. For the same reason, the Kotzebue Roe Herring Claim Category (G01X, G02X, G34X, L12X) has been dropped. In the Allocation Plan, the gear code S04M was inadvertently omitted from the Peninsula Aleutians Salmon Claim Category.

share claimants"⁴ and hatcheries⁵ (collectively, "unoiled fishery claimants"). Plaintiffs' counsel⁶ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to unoiled fishery claimants.⁷

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, unoiled fishery claimants share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund,⁸ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁹ \$24,722,000 collected from Exxon¹⁰ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹¹ plus interest,¹² from judgments against Exxon which have not yet been collected.¹³

A. UNOILED FISHERY CLAIM CATEGORY MATRIX SHARES

The matrix shares for unoiled fishery claim categories originally listed in Table 6 of the Allocation Plan have been adjusted slightly to correct round-off error. Refined matrix shares are listed on the attached Table 1¹⁴

⁴"Derivative share claimants" include hired skippers, crew, vessel owners, spotters and others with a contractual right to some portion of a permit holder's lost income claim.

⁵Included in the Bristol Bay salmon, Kuskokwim salmon, Lower Yukon salmon and Norton Sound roe herring claim categories are claims for diminished value of hatchery cost recovery harvests. Cost recovery harvests are recorded under the following CFEC permit codes: "S77T" in Bristol Bay, "S77W" in Kuskokwim, "S77Y" in Lower Yukon (Cape Romanzoff) and "G77Z" in Norton Sound. Because the hatcheries lost the benefit of higher prices for cost recovery harvests, they would be permit holder claimants. Fishers who contracted with the hatcheries would have claims only if, under the terms of their contracts, lower prices received by the hatcheries for cost recovery harvests translated into lower compensation to the fishers. Plaintiffs' counsel believe that this typically was not the case, because most cost recovery contracts entailed a daily or flat fee for fishers rather than a percentage share of revenues. Fishers who do have claims would be derivative share claimants.

⁶"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including this omnibus distribution plan for unoiled fishery claim categories.

⁷Although this plan proposes distribution methods for all unoiled fishery claim categories, a plaintiff has standing to object only to the proposed distribution method for the particular unoiled fishery claim category for which he or she is a putative claimant. This is because the Allocation Plan (*see* Table 6) fixed the percentage allocation for each unoiled fishery claim category, and therefore only putative claimants have any financial interest in how allocations to the claim category are distributed. Plaintiffs' counsel propose that unoiled fishery claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in unoiled fishery allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects in the spring of 1994 for successful appeal as of spring 1994.

⁸Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. After filing the Allocation Plan in January 1996, plaintiffs' counsel refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁹Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

¹⁰This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough Recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹¹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹²Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹³Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals. Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁴Matrix shares of the Alyeska Settlement listed on Table 1 are lower than those of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits. The Halibut Claim Category, originally listed in Table 6 of the Allocation Plan, is not included in this distribution plan, and is the subject of a separate distribution plan.

B. PROJECTED ALLOCATIONS TO UNOILED FISHERY CLAIM CATEGORIES

In the Supplemental Claims Program, plaintiffs' counsel will distribute unoiled fishery claim categories' allocations from the Alyeska Settlement¹⁵ and Native/Municipality/Kodiak Island Borough recoveries,¹⁶ less attorneys' fees, litigation expenses and claims administration expenses approved by the Court.¹⁷ These allocations are listed on the attached Table 2.

In addition, if signatories collect the Phase IIA judgment, prejudgment interest and punitive damages judgment, plaintiffs' counsel expect unoiled fishery claim categories to be allocated additional amounts listed on Table 3 attached. The amounts on Table 3 do not include postjudgment interest, but do include attorneys' fees, litigation expenses and claims administration expenses.

C. THE FINAL DISTRIBUTION

In the Final Distribution, each unoiled fishery claim category will be allocated the difference between its matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- and its previous allocations from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual claimants. See *infra*. Because unoiled fishery claimants were paid nothing from the Exxon Claims Program or TAPL Fund, in the Final Distribution unoiled fishery claimants will be allocated from these recoveries the amounts listed on Table 4.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and unoiled fishery claimants to evaluate this distribution plan under the assumption that unoiled fishery claimants ultimately will be allocated the amounts listed on Table 4 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for unoiled fisher claimants,¹⁸ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all unoiled fishery claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁹ Plaintiffs' counsel will automatically register a claim for those who filed unoiled fishery claims in the Alyeska Claims Program, but will still require such claimants to supplement their Alyeska claims and submit signed, verified supplemental claim forms, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim, in each unoiled fishery claim category, a percentage share of allocations to the claim category (Final Percent Share).²⁰ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claim, plaintiffs' counsel

¹⁵Allocations from the Alyeska Settlement were made to unoiled fishery claim categories, but were not distributed because their relatively small size did not justify the administrative expense. See Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support, 19-20 (Oct. 1, 1993) ("Alyeska Distribution Plan").

¹⁶Each claim category's allocations will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁷From Alyeska Settlement allocations, class claimants pay Court-approved attorneys' fees of 15%, and direct action claimants pay attorneys' fees based on their retainer agreements. From Native/Municipality/Kodiak Island Borough and subsequent recoveries, plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries. See Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁸Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories have not yet received judicial approval.

¹⁹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²¹

Third, plaintiffs' counsel will distribute each unopened fishery claim category's allocation from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Table 2. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' Allocation Committee concluded that unopened fisheries suffered losses in the 1989, 1990 and 1991 seasons, measured by actual harvest weight times statewide price reductions in each season caused by the oil spill.²² See Allocation Plan 21-22. These damages form the basis for unopened fishery claim categories' matrix shares.

A. FISHERY FUNDS

Most unopened fishery claim categories consist of two or more constituent fisheries, as classified by CFEC permit codes. See Table 5. In such claim categories, allocations would be divided into separate funds for each constituent fishery ("fishery funds"), in proportion to the constituent fisheries' shares of claim category matrix damages.²³ *Id.* For unopened fishery claim categories with just one constituent fishery (e.g., Chignik roe herring), there is one fishery fund.

B. SEASONAL FUNDS

Each fishery fund would be further subdivided into three "seasonal funds" -- one for each season 1989, 1990 and 1991 -- in proportion to losses in the fishery each season. Seasonal fund percent shares and projected allocations are listed on Table 6 attached. Each seasonal fund would be divided into two subfunds, one for permit holders and one for derivative share claimants, using the following percentages:²⁴ 65% permit holder/35% derivative shareholder in seine fisheries, with the exception of Bristol Bay roe herring (G01T), which will be 55% permit holder/45% derivative shareholder;²⁵ 80% permit holder/20% derivative shareholder in set and beach seine fisheries;²⁶ 85% permit holder/15% derivative shareholder in drift fisheries, with the exception of Bristol Bay salmon (S03T) which will be 76% permit holder/24% derivative shareholder, and Peninsula Aleutians salmon drift (S03M) and Southeast salmon drift (S03A), both of which will be 80% permit holder/20% derivative shareholder;²⁷ and 90% permit holder/10% derivative shareholder in other types of fisheries, with the exception of Bristol Bay roe herring wild harvest (L12T), for which permit holders fish without crew.²⁸ Plaintiffs' counsel propose to distribute permit holder and derivative shareholder subfunds in the following manner.

²¹If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²²The Allocation Committee used price losses to which plaintiffs' experts testified at trial. For roe herring, these losses were \$.25/lb. per season in 1989, 1990 and 1991. For salmon, these losses were: \$.53/lb. in 1989, \$.48/lb. in 1990 and \$.31/lb. in 1991 for kings; \$1.08/lb. in 1989, \$1.58/lb. in 1990 and \$2.38/lb. in 1991 for reds; \$.24/lb. in 1989, \$.34/lb. in 1990 and \$.50/lb. in 1991 for silvers; and \$.36/lb. in 1989, \$1.03/lb. in 1990 and \$.35/lb. in 1991 for chums. For the Peninsular Aleutians (Balboa-Stepovak) salmon set net fishery (S04M), 1989 damages also include harvest losses. This is the only unopened fishery with matrix damages other than price loss. Harvest losses in that fishery will be allocated in the same fashion as price losses. See *infra*.

²³For example, the Bristol Bay roe herring claim category includes three fisheries, seine (G01T), drift (G34T) and wild harvest (L12T). Allocations would be divided in proportion to losses, which fall 74.4% to seiners, 20.3% to drifters, and 5.3% to wild harvesters. See Table 5.

²⁴These percentages reflect the estimated distribution of earnings between permit holders and derivative shareholders for each of the gear types, based on CFEC and Alyeska Claims Program data.

²⁵The seine fisheries are Chignik roe herring (G01L), Peninsula Aleutians roe herring (G01M), Peninsula Aleutians salmon (S01M) and Southeast salmon (S01A).

²⁶Set and beach seine fisheries are Bristol Bay salmon (S04T), Peninsula Aleutians salmon (S04M), Kotzebue salmon (S04X), Kuskokwim salmon (S04W, S77W), Norton Sound salmon (S04Z), and roe herring (G02Z), Southeast salmon (S04D), Lower Yukon salmon (S04Y, S77Y) and Upper Yukon salmon set (S04P).

²⁷Drift fisheries are Bristol Bay roe herring (G34T), Cook Inlet roe herring (G34H), Kuskokwim roe herring (G34N, G34S, G34U, G34V, G34W), Norton Sound roe herring (G34Z), Peninsula Aleutians roe herring (G34M), Southeast roe herring (G34A), Lower Yukon roe herring (G34Y).

²⁸Other types of fisheries are Southeast salmon hand and power troll (S05B, S15B) and Upper Yukon salmon fish wheel (S08P).

1. Permit Holder Subfunds

a) Eligibility

Each permit holder subfund would be distributed only among permit holders who "participated" in the fishery in the season. A permit holder participated if he or she actually harvested. For most permit holders, plaintiffs' counsel can verify participation from electronic databases obtained from CFEC. A permit holder who belonged to a cooperative or combine and recorded his or her harvest under the permit of another fisher must establish participation through sworn documentary evidence including fishing logs and cooperative/combine agreements.

b) Subfunds Distributed *Per Capita*

Permit holder subfunds would be divided on a *per capita* basis, one equal share per claimant, except for five salmon fisheries in which plaintiffs' counsel expect relatively large per-permit recoveries (*i.e.*, recoveries by permit holder and derivative shareholders) – Bristol Bay salmon drift (S03T), Peninsula Aleutians salmon (S01M, S03M, S04M) and Southeast salmon seine (S01A). *See infra*. Plaintiffs' counsel considered alternative distribution methodologies which would tailor recoveries more closely to losses, but rejected them as overwhelmingly expensive and time-consuming to administer²⁹ in relation to the relatively small expected recoveries. With the exception of the five large salmon fisheries, plaintiffs' counsel expect average gross per-permit recoveries to be less than \$10,000, even if signatories' succeed in collecting the full amounts of the compensatory and punitive damages judgments.

c) Subfunds For Which Distribution Is Based On Lost Revenue

For the Bristol Bay salmon drift (S03T), Peninsula Aleutians salmon seine (S01M), Peninsula Aleutians salmon drift (S03M), Peninsula Aleutians salmon set (S04M), and Southeast salmon seine (S01A) fisheries, plaintiffs' counsel propose to distribute 80% of permit holder subfunds among eligible permit holders in proportion to lost revenue, calculated as the sum of the permit holder's harvest weight³⁰ of each salmon species times the price loss for the species and 20% on a *per capita* basis to those permit holders who actually recorded landings in each year.³¹ *See supra*. Plaintiffs' counsel believe that per-permit gross recoveries (in excess of \$25,000) in these fisheries are large enough to justify the additional administrative expense and burden of production-based distribution, and that a distribution of recoveries 80% based on production and 20% *per capita* is a fair and reasonable compromise of competing claims for a higher or lower emphasis on production-based distribution. Significant constituencies of unoled fishers with whom class counsel have met believe this allocation to be fair and reasonable.

2. Derivative Shareholder Subfunds

a) Eligibility

Each derivative shareholder subfund would be distributed only among derivative share claimants who "participated" in the fishery in the season. Crew "participated" if they were employed to work during the season. Vessel owners "participated" if they leased or otherwise contracted the vessel for use in the fishery during the season. Other derivative shareholders such as permit owners, site owners or "silent partners" participated if the permit holder (or permit holders) with whom they had an agreement fished. These criteria are generic, and might not apply to every fishery.³²

²⁹ A comprehensive system of production-based distribution would overwhelm plaintiffs' resources. There are 24,000 to 25,000 potential unoled fishery claimants per season, *see* Table 7, and high rates of participation are expected. Plaintiffs' counsel expect nearly all eligible permit holders to file claims, because they can be identified in electronic databases obtained from ADF&G and CFEC. Although derivative shareholders are less easily identified, and there is no comparable electronic data source, experience with oiled fisheries in the Alyeska Claims Program strongly suggests a high rate of claims through efforts of permit holders, fishing organizations and counsel.

Production-based distribution requires -- for every claimant, and for each season 1989, 1990 and 1991 -- data on earnings, fishing performance, combine and cooperative agreements, and contracts between permit holders and derivative shareholders. Plaintiffs' counsel have obtained permit holders' CFEC production records in electronic form, but even with this data there remain daunting administrative tasks. Permit holders would have to be given an opportunity to review, correct and supplement CFEC harvest data -- a huge undertaking for 9,500 to 10,500 permit holders each season. Even more forbidding, plaintiffs' counsel would have to evaluate every claimant's contractual arrangements -- six to eight years after the fact -- and translate them into fair shares of recoveries. Plaintiffs' counsel would have to follow up with claimants, determine shares, code records, and construct accurate and quality-controlled electronic databases. Disputes and inconsistencies between claimants, and between claimants and plaintiffs' counsel, would have to be resolved. It took over three years and thousands of person-hours in the Alyeska Claims Program to accomplish these tasks for 11,000 total claims in "oiled" fishery claim categories in Chignik, Cook Inlet, Kodiak and Prince William Sound.

³⁰ Plaintiffs' counsel will use harvest weight recorded in the CFEC data field titled "Round Pounds Of Fish," and will give claimants an opportunity to verify and correct CFEC data.

³¹ Shares of permit holders who were members of cooperatives or combines, if any, would be calculated on a case-by-case basis. The cooperative/combine's gross share would be proportional to the lost revenue of its member permit holders, and would be divided proportionately among member permit holders based on contractual arrangements. If permits are transferred during a season, there may be more than one holder. Performance shares would be allocated on the basis of actual revenues by the holder. *Per capita* shares would be allocated based on the number of days that a particular permit holder held the permit during the time the fishery was open.

³² For example, plaintiffs' counsel are not aware of vessel owner or spotter claimants in set net fisheries, or of any cooperatives and combines in
(continued...)

There is no CFEC data in electronic form on which plaintiffs' counsel can rely to verify participation by derivative share claimants. Accordingly, derivative share claimants must submit documentary evidence establishing participation, including contracts with permit holders, state records such as crew licenses, tax records, and affidavits from permit holders. For each fishery actual presence for a minimum number of deliveries must be established to qualify for crew participation, so that those crew who fished less than approximately one-third of a season would receive no share from that fund.

b) Per Capita Distribution

All derivative shareholder subfunds would be divided on a *per capita* basis, one equal share per claimant. As with permit holder subfunds, plaintiffs' counsel considered alternative distribution methodologies which would tailor recoveries more closely to losses. However, such distribution methodologies are even more expensive and burdensome to administer for derivative shareholders than for permit holders (in large part because there is no electronic data on earnings),³³ and the average recovery per derivative shareholder is only a fraction of that of a permit holder.

C. FINAL PERCENT SHARES

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each unopened fishery claimant a Final Percent Share, which is the claimant's percent share of all allocations to the fishery. The Final Percent Share would be a single number, expressed as a percentage, equal to the sum of the percent share of each fund for which the claimant qualifies, times the claimant's percent share of the fund, calculated in the manner described *supra*.

IV. ADJUSTMENTS FOR PREVIOUS RECOVERIES

Once punitive damage recoveries are collected, there will be a Final Distribution, in which unopened fishery claimants will be allocated their Final Percent Shares of signatory plaintiffs' share of Exxon Claims and TAPL Fund payments, and offsets will be made for previous distributions from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough Recoveries. See Allocation Plan 38-39. The object will be to apply Final Percent Shares, which are plaintiffs' best measure of a fair and equitable distribution, to all of signatories' recoveries. However, the exact methodology for these adjustments depends upon data not yet available, and plaintiffs' counsel shall present the Court with a specific plan once all recoveries are collected.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including unopened fishery claimants, would be adjusted to reflect their previous compensation.³⁴ Nothing would be distributed to claimants already paid more their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries. Plaintiffs' counsel do not expect unopened fishery claimants to receive anything from future interim distributions, because allocations to unopened fishery claim categories from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries exceed their matrix shares of signatories' shares of the Exxon Claims Program, TAPL Fund, Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries and uncollected compensatory damages recoveries. See Tables 2 & 4.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

(...continued)

³² salmon fisheries.

³³ Plaintiffs' counsel would have to evaluate every claimant's contractual arrangements -- six to eight years after the fact -- and translate them into fair shares of recoveries. Many of the necessary records no longer exist.

³⁴ This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
UNOILED FISHERY MATRIX SHARES

Claim Category	Alyeska Settlement	Other Recoveries(1)
Bristol Bay Roe Herring	0.03600%	0.03606%
Bristol Bay Salmon	1.31984%	1.32210%
Chignik Roe Herring	0.00005%	0.00005%
Cook Inlet (Upper) Roe Herring	0.00020%	0.00020%
Kotzebue Salmon	0.00460%	0.00461%
Kuskokwim Roe Herring	0.00270%	0.00270%
Kuskokwim Salmon	0.02250%	0.02254%
Norton Sound Roe Herring	0.01390%	0.01392%
Norton Sound Salmon	0.00150%	0.00150%
Peninsula Aleutians Roe Herring	0.00250%	0.00250%
Peninsula Aleutians Salmon	0.36896%	0.36958%
Southeast Roe Herring	0.01600%	0.01603%
Southeast Salmon	0.49895%	0.49979%
Yukon (Lower) Roe Herring	0.00140%	0.00140%
Yukon (Lower) Salmon	0.01430%	0.01432%
Yukon (Upper) Salmon	0.00210%	0.00210%
GRAND TOTAL	2.30550%	2.30940%

- (1) From Table 6 of Allocation Plan. The 2.31% allocated to unooled fisheries in the Allocation Plan included a 0.0006% allocation to the Halibut Claim Category, for which there is a separate distribution plan.
- (2) Based on matrix shares published on Table 6 of Allocation Plan, with round-off error corrected.

Table 2
AMOUNTS AVAILABLE FOR DISTRIBUTION IN
PLAINTIFFS' SUPPLEMENTAL CLAIMS PROGRAM

Claim Category	Alyeska Settlement Allocation(1)	Allocation From Native/Muni/KIB Recoveries(2)	Total
Bristol Bay Roe Herring	\$74,900	\$8,900	\$83,800
Bristol Bay Salmon	\$2,849,800	\$326,800	\$3,176,600
Chignik Roe Herring	\$500	\$10	\$510
Cook Inlet (Upper) Roe Herring	\$500	\$50	\$550
Kotzebue Salmon	\$6,100	\$1,100	\$7,200
Kuskokwim Roe Herring	\$5,600	\$700	\$6,300
Kuskokwim Salmon	\$39,100	\$5,600	\$44,700
Norton Sound Roe Herring	\$28,800	\$3,400	\$32,200
Norton Sound Salmon	\$2,100	\$400	\$2,500
Peninsula Aleutians Roe Herring	\$5,200	\$600	\$5,800
Peninsula Aleutians Salmon	\$740,400	\$91,400	\$831,800
Southeast Roe Herring	\$33,000	\$4,000	\$37,000
Southeast Salmon	\$996,100	\$123,600	\$1,119,700
Yukon (Lower) Roe Herring	\$2,900	\$300	\$3,200
Yukon (Lower) Salmon	\$23,900	\$3,500	\$27,400
Yukon (Upper) Salmon	\$2,600	\$500	\$3,100

AMOUNTS INCLUDE ATTORNEYS' FEES

- (1) Per Alyeska Distribution Plan.
- (2) Matrix share (Table 1) times \$24,722,000.

Table 3
UNOILED FISHERY CLAIM CATEGORIES' PROJECTED
ALLOCATIONS FROM SIGNATORIES' UNCOLLECTED RECOVERIES

Claim Category	Phase IIA Judgment & Prejudgment Interest	Punitive	Total
	\$57,561,000	\$4,768,155,000	\$4,825,716,000
Bristol Bay Roe Herring	\$21,000	\$1,719,000	\$1,740,000
Bristol Bay Salmon	\$761,000	\$63,040,000	\$63,801,000
Chignik Roe Herring	\$0	\$2,000	\$2,000
Cook Inlet (Upper) Roe Herring	\$100	\$10,000	\$10,100
Kotzebue Salmon	\$3,000	\$220,000	\$223,000
Kuskokwim Roe Herring	\$2,000	\$129,000	\$131,000
Kuskokwim Salmon	\$13,000	\$1,075,000	\$1,088,000
Norton Sound Roe Herring	\$8,000	\$664,000	\$672,000
Norton Sound Salmon	\$1,000	\$72,000	\$73,000
Peninsula Aleutians Roe Herring	\$1,000	\$119,000	\$120,000
Peninsula Aleutians Salmon	\$213,000	\$17,622,000	\$17,835,000
Southeast Roe Herring	\$9,000	\$764,000	\$773,000
Southeast Salmon	\$288,000	\$23,831,000	\$24,119,000
Yukon (Lower) Roe Herring	\$1,000	\$67,000	\$68,000
Yukon (Lower) Salmon	\$8,000	\$683,000	\$691,000
Yukon (Upper) Salmon	\$1,000	\$100,000	\$101,000

AMOUNTS INCLUDE ATTORNEYS' FEES

Table 4
UNOILED FISHERY CLAIM CATEGORIES' PROJECTED TOTAL ALLOCATIONS

Claim Category	Exxon Claims & TAPL Fund	Alyeska Settlement	Native/ /Muni/KIB Recoveries	Future Compensatory	Punitive	Total
	\$186,271,000	\$87,311,000	\$24,722,000	\$57,561,000	\$4,768,155,000	\$5,124,020,000
Bristol Bay Roe Herring	\$67,000	\$31,000	\$9,000	\$21,000	\$1,719,000	\$1,847,000
Bristol Bay Salmon	\$2,463,000	\$1,152,000	\$327,000	\$761,000	\$63,040,000	\$67,743,000
Chignik Roe Herring	\$100	\$0	\$10	\$0	\$2,000	\$2,100
Cook Inlet (Upper) Roe Herring	\$400	\$200	\$50	\$100	\$10,000	\$10,800
Kotzebue Salmon	\$9,000	\$4,000	\$1,000	\$3,000	\$220,000	\$237,000
Kuskokwim Roe Herring	\$5,000	\$2,000	\$1,000	\$2,000	\$129,000	\$139,000
Kuskokwim Salmon	\$42,000	\$20,000	\$6,000	\$13,000	\$1,075,000	\$1,156,000
Norton Sound Roe Herring	\$26,000	\$12,000	\$3,000	\$8,000	\$664,000	\$713,000
Norton Sound Salmon	\$3,000	\$1,000	\$400	\$1,000	\$72,000	\$77,400
Peninsula Aleutians Roe Herring	\$5,000	\$2,000	\$1,000	\$1,000	\$119,000	\$128,000
Peninsula Aleutians Salmon	\$688,000	\$322,000	\$91,000	\$213,000	\$17,622,000	\$18,936,000
Southeast Roe Herring	\$30,000	\$14,000	\$4,000	\$9,000	\$764,000	\$821,000
Southeast Salmon	\$931,000	\$436,000	\$124,000	\$288,000	\$23,831,000	\$25,610,000
Yukon (Lower) Roe Herring	\$3,000	\$1,000	\$300	\$1,000	\$67,000	\$72,300
Yukon (Lower) Salmon	\$27,000	\$12,000	\$4,000	\$8,000	\$683,000	\$734,000
Yukon (Upper) Salmon	\$4,000	\$2,000	\$1,000	\$1,000	\$100,000	\$108,000

AMOUNTS INCLUDE ATTORNEYS' FEES

Table 5

PROJECTED ALLOCATIONS TO FISHERY FUNDS

Claim Category/ Fishery Fund	Share Of Claim Category Loss	Projected Allocation
Bristol Bay Roe Herring		
Seine (G01T)	74.4%	\$1,374,000
Drift (G34T)	20.3%	\$375,000
Wild Harvest (L12T)	5.3%	\$98,000
Total		\$1,847,000
Bristol Bay Salmon		
Drift (S03T)	86.3655%	\$58,507,000
Set (S04T)	13.6341%	\$9,236,000
Hatchery (S77T)	0.0004%	\$300
Total		\$67,743,000
Kuskokwim Roe Herring		
Nelson Island (G34N)	4.5%	\$6,000
Security Cove (G34S)	36.6%	\$51,000
Nunivak Island (G34U)	3.4%	\$5,000
Cape Avinof (G34V)	11.5%	\$16,000
Goodnews Bay (G34W)	44.0%	\$61,000
Total		\$139,000
Kuskokwim Salmon		
Set (S04W)	99.63%	\$1,152,000
Hatchery (S77W)	0.37%	\$4,000
Total		\$1,156,000
Norton Sound Roe Herring		
Beach Seine (G02Z)	6.4%	\$46,000
Drift (G34Z)	93.5%	\$667,000
Hatchery (G77Z)	0.2%	\$1,000
Total		\$714,000
Peninsula Aleutians Roe Herring		
Seine(G01M)	99.88%	\$128,000
Drift (G34M)	0.12%	\$200
Total		\$128,000

AMOUNTS INCLUDE ATTORNEYS' FEES

Discrepancies might occur due to round off.

Table 5 (continued)
PROJECTED ALLOCATIONS TO FISHERY FUNDS

Claim Category/ Fishery Fund	Share Of Claim Category Loss	Projected Allocation
Peninsula Aleutians Salmon		
Seine (S01M)	43.8%	\$8,294,000
Drift (S03M)	40.9%	\$7,745,000
Set (S04M)	15.5%	\$2,935,000
Total		\$18,974,000
Southeast Roe Herring		
Seine (G01A)	55.7%	\$458,000
Drift (G34A)	37.7%	\$309,000
Pound (L21A)	6.6%	\$54,000
Total		\$821,000
Southeast Salmon		
Seine (S01A)	74.9%	\$19,191,000
Drift (S03A)	17.6%	\$4,497,000
Set (S04D)	3.4%	\$882,000
Hand Troll (S05B)	0.5%	\$127,000
Power Troll (S15B)	3.1%	\$804,000
Other (S99A)	0.4%	\$109,000
Total		\$25,610,000
Yukon (Lower) Salmon		
Set (S04Y)	99.97%	\$734,000
Hatchery (S77Y)	0.03%	\$200
Total		\$734,000
Yukon (Upper) Salmon		
Set (S04P)	10.5%	\$11,000
Fish Wheel (S08P)	89.5%	\$97,000
Total		\$108,000

AMOUNTS INCLUDE ATTORNEYS' FEES

Discrepancies might occur due to round off.

Table 6
SEASONAL FUNDS

Claim Category/ Fishery Fund	Percent Share			Projected Allocation		
	1989	1990	1991	1989	1990	1991
Bristol Bay Roe Herring						
Seine (G01T)	23.3%	35.9%	40.8%	\$320,000	\$493,000	\$561,000
Drift (G34T)	27.4%	45.3%	27.3%	\$103,000	\$170,000	\$102,000
Wild Harvest (L12T)	37.6%	30.1%	32.3%	\$37,000	\$30,000	\$32,000
Bristol Bay Salmon						
Drift (S03T)	21.0%	37.0%	42.0%	\$12,286,000	\$21,648,000	\$24,573,000
Set (S04T)	22.2%	34.7%	43.1%	\$2,050,000	\$3,205,000	\$3,981,000
Hatchery (S77T)	100.0%	0.0%	0.0%	\$300	\$0	\$0
Chignik Roe Herring (G01L)	100%	0%	0%	\$2,000	\$0	\$0
Cook Inlet (Upper) Roe Herring	51.7%	40.4%	7.9%	\$6,000	\$4,000	\$1,000
Kotzebue Salmon (S04X)	39.0%	30.5%	30.5%	\$92,000	\$72,000	\$72,000
Kuskokwim Roe Herring						
Nelson Island (G34N)	100.0%	0.0%	0.0%	\$6,000	\$0	\$0
Security Cove (G34S)	44.5%	17.0%	38.5%	\$23,000	\$9,000	\$20,000
Nunivak Island (G34U)	84.0%	0.0%	16.0%	\$4,000	\$0	\$1,000
Cape Avinof (G34V)	32.6%	16.6%	50.8%	\$5,000	\$3,000	\$8,000
Goodnews Bay (G34W)	45.6%	41.6%	12.8%	\$28,000	\$25,000	\$8,000
Kuskokwim Salmon						
Set (S04W)	22.2%	45.2%	32.6%	\$256,000	\$520,000	\$376,000
Hatchery (S77W)	24.87%	54.34%	20.79%	\$1,000	\$2,000	\$1,000
Norton Sound Roe Herring						
Beach Seine (G02Z)	34.2%	0.0%	65.8%	\$16,000	\$0	\$30,000
Drift (G34Z)	29.6%	39.1%	31.3%	\$197,000	\$261,000	\$209,000
Hatchery (G77Z)	38.7%	29.7%	31.6%	\$400	\$300	\$300
Norton Sound Salmon (S04Z)	26.5%	39.2%	34.3%	\$21,000	\$30,000	\$27,000
Peninsula Aleutians Roe Herring						
Seine(G01M)	35.9%	21.7%	42.4%	\$46,000	\$28,000	\$54,000
Drift (G34M)	0%	0%	100%	\$0	\$0	\$200

AMOUNTS INCLUDE ATTORNEYS' FEES

Discrepancies in totals are due to round-off.

Table 6 (continued)

SEASONAL FUNDS

Claim Category/ Fishery Fund	Percent Share			Projected Allocation		
	1989	1990	1991	1989	1990	1991
Peninsula Aleutians Salmon						
Seine (S01M)	23.3%	30.6%	46.1%	\$1,933,000	\$2,538,000	\$3,824,000
Drift (S03M)	18.9%	34.4%	46.7%	\$1,464,000	\$2,664,000	\$3,617,000
Set (S04M)	20.8%	29.9%	49.4%	\$610,000	\$878,000	\$1,450,000
Southeast Roe Herring						
Seine (G01A)	35.4%	58.4%	6.2%	\$162,000	\$267,000	\$28,000
Drift (G34A)	60.8%	11.6%	27.6%	\$188,000	\$36,000	\$85,000
Pound (L21A)	0.0%	43.0%	57.0%	\$0	\$23,000	\$31,000
Southeast Salmon						
Seine (S01A)	26.1%	24.6%	49.3%	\$5,009,000	\$4,721,000	\$9,461,000
Drift (S03A)	27.1%	38.7%	34.2%	\$1,219,000	\$1,740,000	\$1,538,000
Set (S04D)	25.1%	39.4%	35.5%	\$221,000	\$348,000	\$313,000
Hand Troll (S05B)	38.4%	37.4%	24.2%	\$49,000	\$47,000	\$31,000
Power Troll (S15B)	41.4%	37.5%	21.1%	\$333,000	\$302,000	\$170,000
Other (S99A)	37.8%	49.8%	12.4%	\$41,000	\$54,000	\$14,000
Yukon (Lower) Roe Herring (G34Y)	58.0%	18.5%	23.5%	\$42,000	\$13,000	\$17,000
Yukon (Lower) Salmon						
Set (S04Y)	41.9%	38.2%	19.8%	\$308,000	\$280,000	\$145,000
Hatchery (S77Y)	100.0%	0.0%	0.0%	\$200	\$0	\$0
Yukon (Upper) Salmon						
Set (S04P)	45.2%	33.0%	21.8%	\$5,000	\$4,000	\$2,000
Fish Wheel (S08P)	28.8%	54.7%	16.5%	\$28,000	\$53,000	\$16,100

AMOUNTS INCLUDE ATTORNEYS' FEES

Projected seasonal allocations might not add to projected total allocation due to round-off error.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE TENDER CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Tender Claim Category, which includes claims for lost profits and earnings in the 1989 through 1995 seasons by tender operators and "derivative share claimants"³ (collectively, "tenders") who operated in: salmon fisheries in Chignik, Cook Inlet, Kodiak and Prince William Sound (PWS); and roe herring fisheries in Kodiak, Lower Cook Inlet and PWS.⁴ See Allocation Plan 17. Plaintiffs' counsel⁵ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to tenders.⁶

I. RECOVERIES SUBJECT TO THIS PLAN OF DISTRIBUTION

As described in the Court-approved Allocation Plan, tenders share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁷ \$87,311,000 from the Alyeska Settlement,

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); see also Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. See Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. See Order 317, p. 31; see also Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, see Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; see also Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. See Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. See, e.g., Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Derivative share claimants" include crew, hired skippers, vessel owners and others with a contractual right to some portion of a tender operator's lost profit claim.

⁴In an abundance of caution, the Allocation Plan (p. 17) also provided for claims by tenders in crab and shrimp fisheries in Lower Cook Inlet, Kodiak and PWS. After further investigation, plaintiffs' counsel are not aware of any tenders in these fisheries. No such claims were made against the Alyeska Settlement, and fishers in these fisheries appear to deliver their harvest themselves. Nevertheless, plaintiffs' counsel cannot rule out the possibility of valid tender claims from these fisheries, and will evaluate any such claims on a case-by-case basis using guidelines analogous to those for salmon and roe herring tender claims. See *infra*.

⁵"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement.

⁶Because the Allocation Plan fixed the percentage allocation to the Tender Claim Category, only putative tender claimants have any financial interest in how allocations to the Tender Claim Category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that tender claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in allocations to the tenders, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, see Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁷Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. See Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

most of which was distributed in the Alyeska Claims Program;⁸ \$24,722,000 collected from Exxon,⁹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹⁰ plus interest,¹¹ from judgments against Exxon which are not yet collected.¹² The tender matrix share is projected to be 0.9384% of signatories' share of the Alyeska Settlement, and 0.94% of signatories' other common recoveries.¹³

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute tenders' projected 0.9400% matrix share (roughly \$232,000 less attorneys' fees approved by the Court¹⁴) of Native/Municipality/Kodiak Island Borough recoveries,¹⁵ and undistributed money, if any, remaining from their \$664,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect tender claimants to be allocated roughly \$541,000 from the Phase IIA judgment and prejudgment interest, and \$44,821,000 from signatories' share of the punitive damages judgment, as (and if) they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which tenders also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, tenders will be allocated the difference between their 0.9400% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and their actual payments (if any) from the Exxon Claims Program and TAPL Fund. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because tenders' actual allocation of \$664,000 from the Alyeska Settlement was less than their 0.9384% matrix share (roughly \$819,000), the difference (projected to be \$155,000) will be allocated to tenders through a combination of off-sets from allocations to other claim categories and distributions to individual tenders. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, tenders' total allocation will be roughly \$48,837,000 (less attorneys' fees and expenses), which includes \$232,000 from Native/Municipality/Kodiak Island Borough recoveries, \$819,000 from the Alyeska Settlement, \$541,000 from the uncollected Phase IIA judgment and prejudgment interest, \$44,820,000 from the uncollected punitive damages judgment, and \$1,883,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and tenders to evaluate this distribution plan under the assumption that tenders ultimately will be allocated \$48,837,000 plus interest.

⁸ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁹ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹⁰ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,786,155,000 (95.723%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$213,850,000 (4.277%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹¹ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹² Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval, after plaintiffs are given notice and opportunity to object.

¹³ The projected tender matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. The tender matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ This and other allocations to the Tender Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for tenders, plaintiffs' counsel will conduct a Supplemental Claims Program with three goals.¹⁷ The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order.*

First, all tenders will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed tender claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Tender Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute tenders' combined \$232,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (e.g., money reserved for absent class members, for which no claim was made) remaining from tender claimants' \$664,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

After much deliberation and consultation with many tenders, plaintiffs' counsel have concluded that the fairest manner in which to distribute tender allocations is on a *pro rata* basis, in proportion to lost net profits or earnings. Because the circumstances of tenders are so diverse, economic losses must be measured in different ways -- e.g., lost profits for tender operators, lost earnings for hired skippers and crew, lost income for vessel lessors. Accordingly, despite the large administrative burden and expense, plaintiffs' counsel will evaluate each tender's economic losses on a case-by-case basis.

The analysis of tender claims will proceed in two stages. First, plaintiffs' counsel will determine the fishing seasons for which a tender's losses will be evaluated. Second, plaintiffs' counsel will determine the amount of recognized economic loss caused by the spill which the claimant suffered in fishing seasons for which he or she is eligible.

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once its distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined as follows. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times tender claimants' combined \$896,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the tenders' allocation from Native/Municipality/Kodiak Island Borough recoveries, and any remaining unclaimed tender allocation from the Alyeska Settlement, in proportion to net claim values.

A. FISHING SEASONS FOR WHICH TENDER LOSSES ARE RECOGNIZED

In valuing tender claims, plaintiffs' counsel will consider only economic losses incurred during seasons in oiled fisheries in which harvest was lost as a result of the oil spill. These fishing seasons, referred to as "recognized fishing seasons," have been determined by plaintiffs' Allocation Committee to be:²²

- Chignik salmon seine (S01L) -- 1989
- Lower Cook Inlet salmon seine (S01H) -- 1989, 1990, 1991, 1992, 1993, 1994, 1995
- Lower Cook Inlet sac roe herring seine (G01H) -- 1989
- Upper Cook Inlet salmon drift (S03H) and set (S04H) -- 1989, 1994, 1995²³
- Kodiak sac roe herring (G01K, G31K, G34K) -- 1989, 1990, 1991, 1992, 1993, 1994, 1995
- Kodiak salmon beach seine (S02K), purse seine (S01K) and set (S04K) -- 1989, 1990, 1991, 1992, 1993, 1994, 1995
- PWS salmon drift (S03E), seine (S01E) and set (S04E) -- 1989, 1990, 1991, 1992, 1993, 1994, 1995
- PWS sac roe herring drift (G34E), pound (L21E), seine (G01E) and wild harvest (L12E) -- 1989, 1993, 1994, 1995

B. THE "PARTICIPATION" RULE

As a general rule, a tender is not eligible to claim losses in a recognized fishing season unless he or she "participated" in the fishery in the season. To qualify as a "participant," a tender operator must provide documentary evidence that he or she either: (1) actually packed harvest; or (2) if he or she did not pack harvest, was ready, willing and able to do so, having made necessary preparations by readying vessel and equipment, contracting with crew and processors, lining up supplies, acquiring necessary permits and licenses, and being physically present with vessel and crew in the fishery. Hired skippers or crew must provide documentary evidence of employment by a participating tender operator, such as a written contract, an affidavit by the tender operator, or tax records. Tender vessel owners must provide documentary evidence that they leased or otherwise contracted a vessel to a participating tender operator. Other derivative shareholders such as general or "silent" partners must provide documentary evidence of a contract with a participating tender operator.

C. "DISPLACED" TENDERS

There is a narrow exception to the participation rule for tender operators and derivative shareholders with whom they had contractual agreements, who establish that they were "displaced" by the spill.

Participating tender operators include not only those who actually packed, but also those who had a vessel on site with arrangements made, yet did not succeed in packing. Non-participating tender operators therefore failed to have a vessel and crew ready to operate. Absent strong evidence that this was due to the spill, it would not be fair to compensate a non-participating tender for the fishing season. Thus, plaintiffs' counsel propose a heavy presumption against recognizing claims by non-participating tenders.

Non-participating tender operators and their shareholders would be eligible, if at all, only in fishing seasons in which the spill caused closures or massive harvest losses. As explained *infra*, plaintiffs' Allocation Committee has determined these fishing seasons to be: 1989 Chignik salmon seine; 1989, 1994 and 1995 Lower Cook Inlet salmon; 1989 Upper Cook Inlet salmon; 1989 Kodiak salmon; 1989, 1992 and 1993 PWS salmon; 1989, 1994 and 1995 PWS sac roe herring (all gear types); and 1993 PWS sac roe herring seine. In these fishing seasons only, non-participating tender operators and their shareholders may attempt to establish that they were "displaced" by meeting specific criteria set forth *infra*.²⁴

D. ELIGIBILITY CRITERIA FOR SPECIFIC FISHING SEASONS

1. Chignik Salmon Seine (S01L) -- 1989

The 1989 Chignik salmon fishery suffered closures and fishing restrictions as a result of the oil spill. Claims are recognized from both participating and displaced tender claimants.

To qualify as displaced, a non-participating tender operator must establish through documentary evidence that he or she: (1) had a contract with a processor for the season (evidenced by a writing or processor affidavit consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program),²⁵ (2) was paid a tender claim for the fishing season by the Exxon Claims Program or TAPL Fund; or (3) tendered in the fishery in two of three seasons 1987, 1988 and/or 1990. A non-participating hired skipper or crew must establish through documentary evidence that he or she either: (1) had a contract with a displaced tender operator (evidenced by a writing or tender operator affidavit which is consistent with previous submissions to Exxon Claims and plaintiffs' Alyeska Claims Program); or (2) was paid a tender crew claim for the season by the Exxon Claims Program or TAPL Fund. Other types of non-participating derivative

²²The Allocation Committee selected these fisheries based on trial proof, expert studies, TAPL Fund reports, data and reports from state agencies, claims data submitted in the Alyeska Settlement and other information. The Allocation Committee also consulted with direct action plaintiffs, class representatives, absent class members, *ad hoc* plaintiff committees including the Prince William Sound Fishermen-Plaintiffs' Committee, and plaintiffs' counsel.

²³Although there were no harvest losses in Upper Cook Inlet in 1990, there are a few exceptional *bona fide* tender claims, which plaintiffs' counsel would include.

²⁴Tender operators who establish that they ceased operations altogether, or were driven out of business, as a result of the spill may qualify as displaced, but only for recognized fishing seasons which immediately followed the cessation of operations. For example, a tender operator driven out of business by the spill in December 1989 could only qualify as displaced in a 1990 fishing season.

²⁵The processor affidavit must describe specific contract terms and arrangements. A general statement such as "John Doe would have tendered for us in 1994," by itself, does not establish displacement, and must be corroborated by actual historical participation.

share claimants, such as vessel owners, must establish through documentary evidence that they had a written contract for the season with a displaced tender operator. In addition, a non-participating tender must submit a detailed, verified statement which establishes that he or she would have participated had the spill not occurred.²⁶

2. Upper Cook Inlet Salmon Drift (S03H) And Set (S04H)

a) 1989

The Cook Inlet salmon drift fishery was closed in 1989. Although the Cook Inlet salmon set fishery was mostly open, some areas were closed due to oiling. Because of the closures, claims are recognized from participating tender claimants, and from non-participating tender claimants who establish that they were displaced.²⁷ *See supra*.

b) 1994 and 1995

To be eligible in these seasons, a tender must have participated. *See supra*. Claims are not recognized from non-participating tender claimants, because there were no closures in these seasons as a result of the spill and harvest losses were not large enough to significantly reduce fishing effort.

3. Lower Cook Inlet Salmon Seine (S01H)

a) 1989

Because of closures caused by the oil spill, claims are recognized from participating tenders, and non-participating tenders who establish that they were displaced. *See supra*.

b) 1990 through 1995

Only claims from participating tenders are recognized in these seasons. *See supra*.

4. Lower Cook Inlet Roe Herring Seine (G01H) -- 1989

Only claims from participating tenders are recognized. *See supra*.

5. Kodiak Roe Herring (G01K, G31K, G34K) -- 1989-95

Only claims from participating tenders are recognized. *See supra*.

6. Kodiak Salmon Beach Seine (S02K), Purse Seine (S01K) and Set (S04K)

a) 1989

Claims are recognized from participating tenders and, because there were closures caused by the oil spill, from non-participating tenders who establish that they were displaced. *See supra*.

b) 1990 through 1995

In these seasons, claims are recognized only from participating tenders. *See supra*.

7. PWS Salmon Drift (S03E), Seine (S01E) And Set (S04E)

a) 1989

The salmon set fishery was completely closed in 1989, and the seine and drift fisheries suffered closures and fishing restrictions in PWS "proper."²⁸ Claims are recognized from tenders who participated in PWS proper, and from those who did not participate in PWS proper but establish that they were displaced from PWS proper. *See supra*.

b) 1990

In the 1990 fishing season, claims are recognized only from tenders who participated in PWS proper. *See supra*.

c) 1991

The general rule is that only tenders who participated in PWS proper are eligible for the 1991 season, *see supra*, and non-participating tenders are not eligible.

However, there appear to be a few limited circumstances in which non-participating tenders might fairly be said to have been displaced from PWS proper in 1991 as a result of the oil spill.²⁹ To qualify as displaced in 1991, a non-participating tender operator must establish through documentary evidence that he or she had an "agreement"³⁰ with a processor to tender in PWS proper (evidenced by a writing or processor affidavit), *see supra*, and actually tendered in PWS proper in 1990. A non-participating derivative share claimant

²⁶Non-participating tenders, including tender operators and shareholders, may qualify as displaced in 1989 even if they participated in a different fishery or worked on a VECO charter. However, their net income from such other ventures would be deducted from their tender losses. *See infra*.

²⁷Although tendering is commonly done with vessels, in Upper Cook Inlet some tendering is done overland with trucks. Claims are recognized from overland tenders who transported fish from fishers to processors.

²⁸The PWS "Area E" Management Area is comprised of districts in PWS proper, and the Copper and Bering River "flats." Plaintiffs' counsel have found no evidence of harvest losses in the Copper and Bering River flats as a result of the spill or, consequently, of economic losses to tenders which operated in the flats.

²⁹To the best knowledge of plaintiffs' counsel, the only non-participating tenders who might qualify are those whose contracts with Chugach were terminated when Chugach ceased operations; and traditional "cash buyers" who could not operate profitably as a result of diminished salmon prices.

³⁰An "agreement" may consist of an actual contract, or a commitment by the processor to purchase salmon harvested in PWS proper.

must establish through documentary evidence that he or she had a contract with a displaced tender operator (evidenced by a writing or tender operator affidavit). In addition, displaced tender claimants must submit a detailed, verified statement which establishes that they would have participated in PWS proper had there not been an oil spill.

d) 1992 and 1993

There were massive pink run failures in PWS proper in 1992 and 1993 as a result of the spill, and red salmon run failures in 1993. In these seasons, claims would be recognized from tenders who participated in PWS proper, *see supra*, and from those who did not participate in PWS proper but establish that they were displaced from PWS proper.

To qualify as displaced in the 1992 season, a tender operator must establish through documentary evidence that he or she had an agreement with a processor to tender in PWS proper (evidenced by a writing or processor affidavit), *see supra*; and qualifies for the 1991 PWS salmon fishing season. To qualify as displaced in the 1993 season, a tender operator must establish through documentary evidence that he or she had an agreement with a processor to tender in PWS proper (evidenced by a writing or a processor affidavit), *see supra*; and qualifies for the 1992 season. A derivative share claimant must establish through documentary evidence that he or she had a contract with a displaced tender operator (evidenced by a writing or tender operator affidavit). In addition, displaced tenders must submit detailed, verified statements which establish that they would have participated in the fishery had there not been an oil spill.

e) 1994 and 1995

In each of these seasons, claims are recognized only from tenders who participated in PWS proper.

8. PWS Roe Herring Drift (G34E), Pound (L21E), Seine (G01E) And Wild Harvest (L12E)

a) 1989

All PWS roe herring fisheries were closed in 1989 as a result of the oil spill. Claims are recognized from tenders who participated,³¹ and from non-participating tenders who establish that they were displaced. *See supra*.

b) 1993 roe herring seine

As in 1989, the 1993 PWS roe herring seine season was closed. Claims are recognized from tenders who participated, and from non-participating tenders who establish that they were displaced. *See supra*.

To qualify as displaced, a tender operator must establish through documentary evidence that he or she had an agreement with a processor to tender PWS sac roe herring (evidenced by a writing or processor affidavit), *see supra*, and participated in the 1992 PWS sac roe seine fishing season. Derivative share claimants must provide documentary evidence that they had a contract with a displaced tender operator (evidenced by a writing or tender operator affidavit). In addition, displaced tenders must submit detailed, verified statements which establish that they would have participated if the fishery had been open.

9. 1993 roe herring drift, pound, wild harvest

The PWS sac roe herring drift, pound and wild harvest fisheries were open in 1993, and harvest losses caused by the spill were a relatively small proportion of actual catch. Thus, plaintiffs' counsel would limit eligibility to tenders who participated. *See supra*.

a) 1994 and 1995 – all gear types

All PWS roe herring fisheries were closed in 1994 and 1995. Tenders are eligible if they participated, or establish that they were displaced.

To qualify as displaced in 1994, a tender operator must provide documentary evidence that he or she had an agreement with a processor to tender PWS sac roe herring in 1994 (evidenced by a writing or processor affidavit), *see supra*, and qualifies for the 1993 PWS sac roe herring season. A derivative share claimant must provide documentary evidence that he or she had a contract with a displaced tender operator (evidenced by a writing or tender operator affidavit). In addition, displaced tenders must submit detailed, verified statements which establish that they would have participated in the fishery if it had been open.

Because the 1995 PWS sac roe herring season was canceled in January 1995, three months in advance of the season, it is unlikely that any tenders could qualify as participants. Plaintiffs' counsel would limit eligibility for the 1995 season to tenders who: (1) qualify for the 1994 season; and (2) submit a detailed, verified statement which establishes that they would have participated in the 1995 season if the fishery had been open.

E. ECONOMIC LOSSES

For each eligible tender, plaintiffs' counsel will determine economic loss caused by the oil spill. This will not be an easy task. Plaintiffs' counsel expect 150-170 *bona fide* tender operator claims each year, plus claims by their derivative shareholders. Tender operators often shifted their vessels between fisheries, or between tendering and other uses, depending upon market conditions or requirements of their processors. Some tenders were paid a flat daily or seasonal rate, some were paid based on poundage, some had contracts with both elements.

There is no single generic formula by which to value tender losses. Case-by-case analysis is required. Plaintiffs' counsel, through the central claims office, have explained their valuations to tenders who have identified themselves so far, consulted with tenders regarding the valuations, and followed up when more information is needed. Direct action tenders also are able to consult with their attorneys. Because of the diversity of tender claims, it is impossible to list here all the factors which might go into the valuation of individual claims. However, some broad guidelines can be stated.

³¹ Although no tender packed, because the season was closed, many completed preparations and were on site, ready, willing and able to tender. *See supra*.

1. Operator Loss

To obtain tender operator loss for a fishing season, plaintiffs' counsel will determine for the tender operator: the "but for" period, *i.e.*, a reasonable estimate of the time period during which the tender operator would have tendered in the fishery had there been no spill; and "but for" net profit, *i.e.*, the net profit which the tender operator would have earned tendering had there been no oil spill. The tender operator's loss will equal the difference between his or her "but for" net profit, and his or her net profit (or loss) actually earned during the "but for" period from tendering and other activities, including VECO charters in 1989 and 1990.³² A tender operator's total loss equals the sum of each of his or her losses (or gains) in all fisheries and seasons for which he or she qualifies.³³

A tender operator's "but for" net profit in a season must be based on particular facts and circumstances of each tender operator, and each fishing season. Tender operators typically contract with a specific processor. Most contracts between tenders and processors fall into one of three categories: (1) "daily," under which the tender is paid a flat *per diem* rate;³⁴ (2) "poundage," under which the tender is paid based on pounds packed; and (3) "mixed," under which a tender's compensation includes both *per diem* and poundage components.³⁵ "But for" profit projections would take into account the type of contract, the tender operator's historical performance, and estimates of fishery-wide harvest losses prepared by plaintiffs' Allocation Committee.

For example, as a general matter, tender operators' 1989 "but for" net income will be projected from 1985 through 1988 data, taking account of extenuating circumstances which make pre-spill data unrepresentative. For tender operators lacking pre-spill history in a fishery for which they qualify in 1989, "but for" net income will be projected based on other data, such as vessel size, previous history in other fisheries, fleet-wide averages, and post-spill performance.

2. Derivative Share Claimant Loss

Derivative share claimants have many different types of contracts with tender operators. Their "but for" net income will be derived from their tender operator's "but for" net profit, based on the contract with their tender operator.

3. Vessel Devaluation

Claims for vessel devaluation or losses realized through vessel sales are not recognized.

F. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each tender a Final Percent Share, which is the tender's percent share of allocations to the Tender Claim Category. The Final Percent Share will be a single number, expressed as a percentage, equal to the ratio of the tender's loss calculated according to this distribution plan, to the sum of losses of all tender claimants.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including tenders, would be adjusted to reflect the extent to which they have already been compensated.³⁶ Nothing would be distributed to claimants already paid more than their Final

³²Only net income earned during the "but for" period would be offset. For example, if a tender completed a VECO contract before a fishing season began, profits earned on the VECO charter would not be offset. Similarly, a tender who completed a VECO charter two weeks into his or her "but for" period, and thereafter tendered, would only have offset net profit earned from the VECO charter during the overlapping two weeks of the "but for" period, and net profit earned on the VECO contract before the "but for" period would not be offset.

³³Plaintiffs' counsel expect some tenders' net profit from 1989 VECO charters to exceed their total losses for all seasons for which they qualify during 1989 through 1995. Such tenders would be assigned a zero final percent share. They could keep money already distributed to them, but would be allotted nothing further.

³⁴The hallmark of daily contracts is that a tender's compensation is independent of pounds packed. Some daily contracts are in effect "seasonal," in that they guarantee payment for a certain number of days.

³⁵There are a wide variety of mixed contracts. For example, some permit the tender to choose between daily and poundage rates, while others combine *per diem* payments and performance bonuses.

³⁶This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE PERSONAL INJURY CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a distribution method for the Personal Injury Claim Category, which includes claims for medical and out-of-pocket expenses, lost income, and non-economic loss resulting from physical and mental injury proximately caused by the *EXXON VALDEZ* oil spill. Plaintiffs' counsel³ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to personal injury claimants.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, personal injury claimants share in common recoveries of "signatory" plaintiffs,⁵ which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁴Because the Court-approved Plan Of Allocation fixed the percentage allocation to the Personal Injury Claim Category, only putative personal injury claimants have any interest in how allocations to the Personal Injury Claim Category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that personal injury claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in personal injury allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁵"Signatory" plaintiffs ("signatories") are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. "Non-signatories" include: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. *Id.* The Court-approved Allocation Plan allocates 2.457% "off the top" from punitive damage recoveries to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek. Plaintiffs' counsel are separately asking the Court to allocate 2.18% "off the top" of punitive damage recoveries to Chenega, English Bay and Port Graham. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans

(continued...)

Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹

A. PERSONAL INJURY MATRIX SHARES

The Allocation Plan (p.24) divides allocations to the Personal Injury Claim Category into an "Identified Claims Fund" for seven personal injury claimants identified when the Allocation Plan was filed ("identified claimants"), and a "Class Claims Reserve" for other personal injury claimants who identify themselves in the Supplemental Claims Program ("class claimants"). For the Identified Claims Fund, the Allocation Plan sets an "identified claims matrix share" of 0.0577%. *Id.* The Allocation Plan also sets a "reserved class matrix share" of 0.0823% for the Class Claims Reserve, but provides that 0.0823% will in fact be allocated to the Class Claims Reserve only if class claimants' total losses equal or exceed the projected amount of \$2,020,000.¹² *See* Allocation Plan 24 n.31. *Id.*

B. PROJECTED ALLOCATIONS TO THE IDENTIFIED CLAIMS FUND

The Identified Claims Fund is allocated roughly \$14,000 from Native/Municipality/Kodiak Island Borough recoveries, and would be allocated roughly \$2,784,000 from uncollected future recoveries (including \$33,000 from the Phase IIA judgment and prejudgment interest, and \$2,751,000 from the punitive damages judgment) if they are collected. From these amounts will be deducted attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹³

In the Final Distribution to be conducted once all recoveries are collected, *see infra*, identified claimants will be allocated the identified claims matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous allotments to identified claimants. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra*. Because personal injury claimants were paid nothing from Exxon Claims, the TAPL Fund or the Alyeska Settlement, in the Final Distribution the Identified Claims Fund would be allocated \$50,000 from the Alyeska Settlement, and \$116,000 from Exxon Claims and TAPL Fund recoveries.

C. PROJECTED ALLOCATIONS TO THE CLASS CLAIMS RESERVE

Plaintiffs' counsel expect class claimants' damages to total \$2,020,000 or more, and, therefore, the actual class claims matrix share to equal the reserved class matrix share of 0.0823%. Using the class claims matrix share of 0.0823%, the Class Claims Reserve would be allocated roughly \$20,000 from Native/Municipality/Kodiak Island Borough recoveries, \$47,000 from the Phase IIA judgment and prejudgment interest, and \$3,924,000 from the punitive damages judgment. Also, in the Final Distribution, the Class Claims Reserve

(...continued)

⁵Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries.

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. A settlement with Exxon for lesser amounts might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹²If class claimants' losses total less than \$2,020,000, the "actual" class matrix share will be proportionally less than the reserved class matrix share, and the excess apportioned among all claim categories. The actual class matrix share cannot be determined until all class claims are filed and evaluated in the Supplemental Claims Program. Both the identified and class claims matrix shares of signatories' share of the Alyeska Settlement are expected to be slightly lower, because the Alyeska Settlement was shared in by some plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

would be allocated \$72,000 from the Alyeska Settlement, and \$165,000 from Exxon Claims and TAPL Fund recoveries. From these amounts will be deducted attorneys' fees, litigation expenses and claims administration expenses approved by the Court.

D. SUMMARY

Plaintiffs' counsel expect that if signatories collect the projected \$4,825,716,000 in additional recoveries, roughly \$2,998,000 will be allocated to the Identified Claims Fund, and \$4,276,000 to the Class Claims Reserve.¹⁴ These amounts do not include post-judgment interest, but do include attorneys' fees, litigation expenses and claims administration expenses.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and personal injury claimants to evaluate this distribution plan under the assumption that personal injury claimants ultimately will be allocated \$7,274,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for personal injury claimants,¹⁵ plaintiffs' counsel will conduct a Supplemental Claims Program with four goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all unidentified personal injury claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁶ Plaintiffs' counsel will automatically register a claim for those who filed personal injury claims in the miscellaneous "other" claim category of the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid class claimant a percentage share of allocations to Class Claims Reserve (Final Percent Share).¹⁷ All class claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. For each class claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.¹⁸

Third, plaintiffs' counsel will determine aggregate class damages and the actual class matrix share. If aggregate class personal injury damages equal or exceed the projected amount of \$2,020,000,¹⁹ the actual class actual matrix share will equal the class reserved matrix share. If aggregate class damages are less than \$2,020,000, the actual class matrix share will equal the reserved class matrix share times the ratio of aggregate class damages to \$2,020,000.

Fourth, plaintiffs' counsel will distribute personal injury claimants' allocations from Native/Municipality/Kodiak Island Borough recoveries. Identified claimants will be allotted their Final Percent Shares of the Identified Claims Fund. Class claimants' Final Percent Shares of the Class Claims Reserve cannot be determined precisely until all class claims are valued. However, plaintiffs' counsel will, if feasible, make partial distributions to class claimants based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations or of objections to determinations of Final Percent Shares.

¹⁴Allocations to the Personal Injury Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order"). Less will be allocated to the Class Claims Reserve if class claimants' damages are less than \$2,020,000.

¹⁵Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁶Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁷In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of all signatories' recoveries. The change in nomenclature is made for administrative reasons.

¹⁸If, after reconsideration, a class claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

¹⁹This projection, prepared by plaintiffs' Allocation Committee, is based on available data regarding identified claim losses. *See* Allocation Plan 5, 6, 24.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

To qualify for the Personal Injury Claim Category, a claimant must submit: (1) sworn documentary proof of physical or mental injury proximately caused by the oil spill; (2) a credible report of a medical doctor which substantiates the injury, and establishes symptoms and causation by the oil spill; and (3) verified proof of losses, which may include medical and out-of-pocket expenses, lost income and non-economic losses such as pain and anguish. No claim for mental injury will be included unless the claimant submits sworn documentary proof of involuntary physical touching by spilled oil, substantiated by a credible report of a medical doctor which also establishes physical manifestations and causation by the oil spill.

A. IDENTIFIED CLAIMS

The seven identified claimants all satisfy the qualification criteria, and they will share in the Identified Claims Fund according to Final Percent Shares which have been determined by the Allocation Committee and agreed upon by identified claimants.²⁰ Each identified claimant's Final Percent Share equals his or her respective share of all identified claimants' total damages.

B. CLASS CLAIMS

Class claimants, to be identified in the Supplemental Claims Program, will share in the Class Claims Reserve. Plaintiffs' counsel will evaluate each class claim on a case-by-case basis, to arrive at a fair valuation of loss. Valuations of class claims will be made in a manner consistent with valuations of identified claims. Each class claimant's Final Percent Share will equal the ratio of his or her damages to all class claimants' total damages.²¹

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distribution will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including personal injury claimants, would be adjusted to reflect the extent to which they have already been compensated.²² Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁰Identified claimants and their agreed-upon Final Percent Shares are: G. Williams (70.65%); M. Alexander (26.15%); M. Ess (1.2%); R. Hanson (0.71%); S. Mullins (0.51%); M. Poole (0.44%); and D. Johnson (0.35%).

²¹This methodology ensures that as long as class personal injury damages do not exceed the projected amount of \$2,020,000, identified and unidentified claimants will have the same ratio of recovery to damages. If class damages exceed \$2,020,000, class claimants will have a proportionally smaller ratio of recovery to damages.

²²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE PERSONAL PROPERTY CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a distribution method for the Personal Property Claim Category, which is a "catch-all" category of claims for costs of repair or replacement of personal property damaged by involuntary physical contact with spilled oil, which do not fall within other claim categories.³ Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to personal property claimants.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³*See* Allocation Plan 24-25. Examples of claims excluded from the Personal Property Claim Category are: losses from oiling of commercial fishing equipment such as vessels, skiffs, pots, nets, etc. (included in the appropriate commercial fishing claim category); expenses of protecting or cleaning up real property (included in the Real Property Claim Category); and expenses of protecting hatcheries (included in the Aquaculture Association Claim Category). Examples of included claims are losses from damage to houseboats, non-commercial hunting and fishing equipment, and recreational vessels, gear and equipment.

⁴"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵Because the Court-approved Plan Of Allocation fixed the percentage allocation to the Personal Property Claim Category, only putative personal property claimants have any financial interest in how allocations to the Personal Property Claim Category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that personal property claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in personal property allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, personal property claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹

A. PERSONAL PROPERTY MATRIX SHARE

The Allocation Plan (p.24) divides allocations to the Personal Property Claim Category into an "Identified Claims Fund" for eighteen personal property claimants identified when the Allocation Plan was filed ("identified claimants"), and a "Class Claims Reserve" for other personal property claimants who identify themselves in the Supplemental Claims Program ("class claimants"). For the Identified Claims Fund, the Allocation Plan sets an "identified claims matrix share" of 0.0058%. *Id.* The Allocation Plan also sets a "reserved class matrix share" of 0.0083% for the Class Claims Reserve, but provides that 0.0083% will in fact be allocated to the Class Claims Reserve only if class claimants' total losses equal or exceed the projected amount of \$203,000.¹² See Allocation Plan 24-25.

B. PROJECTED ALLOCATIONS TO THE IDENTIFIED CLAIMS FUND

The Identified Claims Fund is allocated roughly \$1,400 from Native/Municipality/Kodiak Island Borough recoveries, and will be allocated roughly \$281,000 from uncollected future recoveries (including \$3,000 from the Phase IIA judgment and prejudgment interest, and \$277,000 from the punitive damages judgment). These amounts do not include postjudgment interest, and do include attorneys fees', and litigation and claims administration expenses which the Court might approve.¹³

In the Final Distribution to be conducted once all recoveries are collected, identified claimants would be allocated the identified claims matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment - less previous allocations to identified claimants. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual claimants. See *infra*. Because personal property claimants were paid nothing from Exxon Claims, the TAPL Fund or the Alyeska Settlement, in the Final Distribution the Identified Claims Fund would be allocated roughly \$5,000 from the Alyeska Settlement and \$12,000 from Exxon Claims and TAPL Fund recoveries.

C. PROJECTED ALLOCATIONS TO THE CLASS CLAIMS RESERVE

Plaintiffs' counsel expect class claimants' damages to total \$203,000 or more, and, therefore, the actual class claims matrix share to equal the reserved class matrix share of 0.0083%. Using the class claims matrix share of 0.0083%, the Class Claims Reserve would allocated roughly \$2,000 from Native/Municipality/Kodiak Island Borough recoveries, \$4,800 from the Phase IIA judgment and

⁶Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. See Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁷Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough Recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. See Allocation Plan Table 7.

⁹This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. Alternatively, a settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such proposed settlement would be subject to judicial approval, after plaintiffs are given notice and opportunity to object.

¹²If class claimants' losses total less than \$203,000, the "actual" class matrix share will be proportionally less than the reserved class matrix share, and the excess will be apportioned among all claim categories.

¹³Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. See Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

prejudgment interest, and \$396,000 from the punitive damages judgment. In addition, in the Final Distribution, the Class Claims Reserve would be allocated roughly \$7,000 from the Alyeska Settlement, and \$17,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest, but do include attorneys' fees, litigation expenses and claims administration expenses.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the Identified Claims Fund will be allocated roughly \$301,000, and the Class Claims Reserve will be allocated be roughly \$431,000 (if class damages equal or exceed \$230,000).¹⁴ These amounts do not include post-judgment interest, but do include attorneys' fees, litigation expenses and claims administration expenses.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and personal property claimants to evaluate this distribution plan under the assumption that personal property claimants ultimately will be allocated \$732,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for personal injury claimants,¹⁵ plaintiffs' counsel will conduct a Supplemental Claims Program with four goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all unidentified personal property claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁶ Plaintiffs' counsel will automatically register a claim for those who filed personal property claims in the miscellaneous "other" claim category of the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each class claimant a percentage share of allocations to Class Claims Reserve (Final Percent Share).¹⁷ All class claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. For each class claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.¹⁸

Third, plaintiffs' counsel will determine aggregate class damages and the actual class matrix share. If aggregate class damages equal or exceed the projected amount of \$203,000,¹⁹ the actual class matrix share will equal the reserved class matrix share. If aggregate personal injury damages are less than \$203,000, the actual class matrix share will equal the reserved class matrix share times the ratio of aggregate class damages to \$203,000.

Fourth, plaintiffs' counsel will distribute personal property claimants' allocations from Native/Municipality/Kodiak Island Borough recoveries. Identified claimants will be allotted their Final Percent Shares of the Identified Claims Fund. Class claimants' Final Percent Shares of the Class Claims Reserve cannot be determined precisely until all class claims are valued. However, plaintiffs' counsel will, if feasible, make partial distributions to class claimants based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

¹⁴Allocations to the Personal Property Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁶Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁷In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of all signatories' recoveries. The change in nomenclature is made for administrative reasons.

¹⁸If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

¹⁹This projection, prepared by plaintiffs' Allocation Committee, is based on available data regarding identified claim losses. See Allocation Plan 24, 25.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

To qualify for the Personal Property Claim Category, a claimant must submit sworn documentary proof of: (1) ownership of property for which loss is claimed; (2) damage as a result of involuntary physical contact with oil; (3) the amount of loss; and (4) compensation already received, if any (e.g., payments from Exxon, VECO, or insurers).

A. IDENTIFIED CLAIMS

The 18 identified personal injury claimants all satisfy the qualification criteria, and will share in the Identified Claims Fund according to Final Percent Shares which have been determined by the Allocation Committee and agreed upon by identified claimants.²⁰ Each identified claimant's Final Percent Share equals his or her respective share of all identified claimants' total damages.

B. CLASS CLAIMS

Class claimants, to be identified in the Supplemental Claims Program, will share in the Class Claims Reserve. Plaintiffs' counsel will evaluate each class claim on a case-by-case basis, to arrive at a fair valuation of loss. Valuations of class claims will be made in a manner consistent with valuations of identified claims. Each class claimant's Final Percent Share will equal the ratio of his or her damages to all class claimants' total damages.²¹

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including personal property claimants, would be adjusted to reflect the extent to which they have already been compensated.²² Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²⁰Identified claimants and their agreed-upon Final Percent Shares are: J. Tisdale (22.35%); R. Henry (15.44%); A. & G. Roberts (12.72%); W. Conner (12.69%); R. & S. Williams (9.24%); J. Griffel (8.43%); R. Morgan (4.23%); R. Day (4.06%); K. Bozinoff (2.82%); R. Dundas (1.97%); B. Warren (1.41%); M. Lopez (1.21%); R. Williamson (1.18%); K. & J. Walker (0.61%); M. Dilling (0.56%); C. Perry (0.46%); V. Duncan (0.45%); T. Berg (0.17%).

²¹This methodology ensures that as long as class personal injury damages do not exceed the projected amount of \$230,000, identified and unidentified claimants will have the same ratio of recovery to damages. If class damages exceed \$230,000, class claimants will have a proportionally smaller ratio of recovery to damages.

²²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
REAL PROPERTY CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Real Property Claim Category, which includes claims for economic loss by members of the Property Owner Class certified by this Court.³ Plaintiffs' counsel⁴ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to Real Property Claim Category Claimants.⁵

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, real property claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁶ \$87,311,000 from

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² "Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³ The Order Certifying Commercial Fishing Class, Native Class and Landowner Class dated March 14, 1994 ("Class Certification Order") defines the landowner class as "all non-governmental persons and entities who on March 23, 1989 owned, occupied or held any other interest in real property in the area surrounding Prince William Sound and within Kodiak Island Borough, Kenai Peninsula Borough, Aleutians East Borough and Lake and Peninsula Borough."

⁴ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁵ Because the Allocation Plan fixed the percentage allocation to the Real Property Claim Category, no plaintiff except real property claimants has any interest in how real property allocations are distributed, and therefore only putative real property claimants have standing to object to this plan of distribution. Plaintiffs' counsel propose that real property claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in real property allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁶ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁷ \$24,722,000 collected from Exxon,⁸ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁹ plus interest,¹⁰ from judgments against Exxon which have not yet been collected.¹¹ The real property owner matrix share is projected to be 3.56% of signatories' recoveries.¹²

A. THE SUPPLEMENTAL CLAIMS PROGRAM

As explained *infra*, in the Supplemental Claims Program, plaintiffs' counsel will distribute real property claimants' allocation of roughly \$880,000 (less attorneys' fees approved by the Court¹³) from Native/Municipality/Kodiak Island Borough recoveries.¹⁴

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect real property claimants to be allocated roughly \$2,050,000 from the Phase IIA judgment and prejudgment interest, and \$170,387,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which real property claimants also will share.¹⁶

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, real property claimants will be allocated the difference between their projected 3.56% matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries, and actual payments from the Exxon Claims Program and TAPL Fund to real property claimants. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid, or how much was paid to them.

Also in the Final Distribution, because real property claimants' actual allocation of roughly \$6,620,000 from the Alyeska Settlement was more than their projected 3.56% matrix share (roughly \$3,108,000), the difference would be allocated to other claim categories through a combination of offsets and distributions to individual claimants. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, real property claimants' total allocation from all recoveries will be roughly \$183,556,000 (less attorneys' fees and expenses), which includes \$880,000 from Native/Municipality/Kodiak Island Borough recoveries, \$3,108,000 from the Alyeska Settlement, \$2,050,000 from the uncollected Phase IIA judgment and prejudgment interest, \$170,387,000 from the uncollected punitive damages judgment, and \$7,131,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals,

⁷ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁸ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁹ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹⁰ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹¹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹² The projected Real Property Claim Category matrix share of 3.56% could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31.

¹³ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries, from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁴ This and other allocations to the Real Property Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁶ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

and believe it prudent for the Court and real property claimants to evaluate this distribution plan under the assumption that real property claimants ultimately will be allocated \$183,556,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for real property claimants,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. See Exxon QSF Order.

First, all real property claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed real property claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Real Property Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute real property claimants' approximately \$880,000 share of Native/Municipality/Kodiak Island Borough recoveries in proportion to net claim values, as described in n. 21, *infra*. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares,²¹ rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

The process by which Final Percent Shares within the Real Property Claim Category will be determined is described below. Section A sets forth the criteria which a real property claimant must meet in order to make out a cognizable real property claim. Section B identifies the four types of economic loss which may be recovered in the Real Property Claim Category, and generally describes the documents and information which must be submitted in order to make out a cognizable claim; section C provides specific details and examples of how Final Percent Shares of real property claimants will be determined. Section D sets forth specific information and particularized requirements which have been established for several different types of property interests identified within the Real Property Claim Category.

A. GENERAL CRITERIA FOR ELIGIBLE PROPERTIES

To qualify for the Real Property Claim Category, a claim must be based upon a property which meets the criteria described in paragraphs III(A)(1) through (3), *infra*. Property which meets such criteria may be referred to herein as "Eligible Property."

¹⁷ Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸ Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹ Distributions would be determined in the following manner. For each claimant, plaintiffs' counsel would calculate: a Final Percent Share according to this distribution plan; a "gross claim value" equal to the Final Percent Share times real property claimants' combined \$7,500,000 from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus previous payments to the claimant from the Alyeska Settlement, or zero if the claimant's previous payments from the Alyeska Settlement exceed the gross claim value. Plaintiffs' counsel would distribute the Real Property Claim Category allocation from Native/Municipality/Kodiak Island Borough recoveries in proportion to net claim values.

1. Location And Type Of Property

Real property claims must be based upon property lying within "Oil-Affected Areas," defined as the areas encompassed by the shaded portions of the attached map issued by the State of Alaska Department of Natural Resources, Division of Management, Land Records Information Section, and attached to this plan. However, properties located: within Cordova, Seward, Valdez or Whittier; on the Alaska Peninsula west of Chignik Bay and north of Tuxedni Bay; north of Port Graham on the Kenai Peninsula; on the mainland south of Cordova; or within Homer, Kodiak and Seldovia are not eligible, except for those properties which had saltwater shoreline frontage and were actually oiled.

In many but not all cases, Eligible Properties within the Oil-Affected Area are identified by the property's survey number or other number associated with the following types of property interests: United States Survey; Alaska State Land Survey; United States Department of the Interior, Bureau of Land Management Native Allotment; United States Mineral Survey; Alaska Tidelands Survey; United States Interim Conveyance or Alaska Division of Lands pending application. In some cases, Eligible Properties are identified by lot and block numbers within a given subdivision or village townsite.

2. Ownership Interest

A real property claimant generally must demonstrate that he or she had a fee simple interest in the property claimed, with one limited exception: where a claimant held an active State of Alaska mining lease on March 24, 1989, and the property covered by the lease was directly oiled.²² Thus, in all cases except the limited provision for state mining leases, an ownership interest in the property is required. Land use licenses, special use permits and leasehold interests, including shore fishery leases, are not eligible for payment under the Real Property Claim Category.

3. Date Ownership Interest Was Obtained

A real property claimant generally must demonstrate that he or she owned the property (or in the case of a state mining lease, had an active lease on the property) as of March 24, 1989. This means that a real property claimant must provide a copy of a patent, deed or other real property conveyance document **dated on or before March 24, 1989** in order to make out a cognizable real property claim, with the following exceptions:

a. United States BIA/BLM Native Allotments

A real property claimant may make a claim based on a Native allotment for which a certificate was issued after March 24, 1989, so long as the claimant is able to demonstrate that application for such Native allotment was made prior to March 24, 1989.

Further, a real property claimant may make a claim based on a Native allotment for which a certificate has not yet been issued, either in an individual right or as an heir, providing the Native allotment application has not: (1) been relinquished by the applicant; or (2) been denied by the Bureau of Indian Affairs and such denial is not being appealed by the applicant. Thus, as long as an application for a Native allotment (for which a Native Allotment Certificate has not yet been issued) still has a "pending" status according to the records of the BIA, it may provide the basis for a real property claim.

b. Alaska Division of Lands Applications for State Land

A claimant who received patent to an Eligible Property from the State of Alaska after March 24, 1989, but who had a pending Alaska Division of Lands ("ADL") Application for State Land in place as of March 24, 1989, is eligible for payment under the Real Property Claim Category. Further, a real property claimant may make a claim based on an ADL Application for State Land which is still "pending" where the real property claimant expects to receive but has not yet received patent to such land from the State of Alaska, providing the ADL Application for State Land was in place before March 24, 1989. In cases where an ADL application is still "pending," if there are any such cases, the value of the property interest for purposes of determining oil spill damage will be 50% of the fee simple value of such property.

c. Applications for Land under Section 14(c) of ANCSA

A claimant may make a claim for property which was obtained after March 24, 1989 under the provisions of Section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. §§ 1601, et seq., as amended ("ANCSA"), so long as the claimant demonstrates that he or she submitted a Section 14(c) application for such land to the pertinent Native corporation before March 24, 1989. Further, in cases where actual conveyance of such land has not yet occurred, the claim will not fail providing the claimant demonstrates that he submitted his application for such land to the pertinent Native corporation before March 24, 1989 and providing such application has been or will be approved by the Native corporation.

d. Conveyances from the Larsen Bay Tribal Council to Former Shareholders of Nu-Nachk-Pit

A claimant may make a real property claim for land conveyed to him or her by the Larsen Bay Tribal Council ("LBTC") as described in this section. That the deed from LBTC to the claimant is dated after March 24, 1989 will not necessarily invalidate the claim.

²² The particular criteria which must be met in order for a real property claimant to make out a claim based on a State of Alaska mining lease are set forth, *infra*, at Part III(B)(4).

According to the merger agreement between Koniag, Inc. and certain village corporations which was executed in the early 1980's, the newly constituted Koniag, Inc. was required to convey parcels containing approximately 10 acres of land to shareholders of certain subsumed village corporations. Thereafter, shareholders of the subsumed village corporation Nu-Nachk-Pit selected their desired 10-acre parcels, and Koniag conveyed the land encompassed by the desired parcels to LBTC, apparently for the specific purpose of conveying the land to the individual village shareholders in accordance with the merger agreement. LBTC eventually conveyed the parcels to the shareholders, but not until after the oil spill occurred.

This exception is intended to apply only to those individuals who were, prior to the oil spill, entitled under the merger agreement to receive a 10-acre parcel from LBTC as a village shareholder. Only a grantee (or such grantee's legal heirs) who obtained his or her ownership interest in a 10-acre parcel through conveyance directly from LBTC may assert a real property claim for a 10-acre parcel under this exception.²³

e. Claimants Who had Real Estate Contracts in Place Prior to March 24, 1989 but Who Received Title After the Spill

There may be a situation where a claimant had executed an agreement to purchase land in an Oil-Affected Area before March 24, 1989, but received the deed to such land after March 24, 1989. Providing the real property on which a claim is based constitutes an Eligible Property in all other respects, and providing a copy of the purchase agreement (or other document(s) evidencing the purchase) is submitted, the claim will not fail because the deed is dated after March 24, 1989. It is not expected that there will many claims which meet this description.

f. Certain Native Corporation Property

A Native corporation may make a claim for land obtained from the United States under ANCSA, through interim conveyance or patent. That the interim conveyance or patent is dated after March 24, 1989 does not invalidate the real property claim, so long as the Native corporation is able to demonstrate that it had made a valid land selection of such land before March 24, 1989. Further, a Native corporation may make a claim for land which it has selected under ANCSA but which has not yet been conveyed to it through interim conveyance or patent, if it meets the following three requirements: (1) the land was part of a valid land selection made under ANCSA prior to March 24, 1989, (2) claimant has executed an irrevocable election to accept an interim conveyance of such land, and (3) claimant has transmitted formal notice of the irrevocable election to the Secretary of the Interior.²⁴

In addition, a village corporation within the geographic area covered by Cook Inlet Region Inc. ("CIRI") may also submit a real property claim for land conveyed to it from CIRI by deed dated either before or after March 24, 1989.

B. ECONOMIC LOSS DEFINED

"Economic Loss" includes four types of damage which may be claimed by real property claimants. These losses are described below. The Real Property Claim Category does not include claims for economic disruption from loss or disruption of use of property, as distinct from claims for property devaluation or "other" losses discussed below. Instead, "use" claims are included in the appropriate Claim Category.²⁵

1. Property Devaluation Loss

Real Property Matrix Damages include loss in property value caused by the oil spill. Property devaluation losses for most Eligible Properties have been determined by plaintiffs' real estate expert, Larry K. Shorett, in his expert report entitled "Real Property Damage Estimate, Exxon Valdez Oil Spill," dated February 20, 1993, and the supplements thereto. For a limited number of Eligible Properties which were not included in Mr. Shorett's report, the property devaluation losses will be determined by applying Mr. Shorett's

²³ While Karluk Native Corporation was a party to the merger agreement also, the described exception does not apply to its former members, because they have not received actual conveyance of any 10-acre parcels. Plaintiffs' counsel understand that there may be a dispute between the Tribal Council and certain members of the subsumed Karluk Native Corporation. Pursuant to the merger agreement, Koniag conveyed 1,860 acres to the Karluk I.R.A. Tribal Council on January 17, 1986. However, the Karluk I.R.A. Tribal Council apparently has not conveyed any of the 1,860 acres to members of the subsumed Karluk Native Corporation, but, rather, has submitted an Alyeska real property claim for the 1,860 acres in its own right. Approximately twenty Alyeska land claims for a "Karluk 10-acre parcel" were submitted, however, because the individuals had not received conveyance of any land, and because the Tribal Council submitted a claim as the record owner of the 1,860 acres, the claims were preliminarily denied pending the individuals' submission of proof of ownership. Although five of the 20 individual claimants objected to the preliminary denial, none has submitted any additional information demonstrating ownership of a 10-acre parcel. The Alyeska QSF Administrator has not received any information which describes the particular configurations of 10-acre parcels claimed by the individual claimants, or which suggests that the Karluk I.R.A. Tribal Council is no longer the owner of the 1,860 acre tract.

²⁴ See Oil Pollution Act of 1990 ("OPA"), 43 U.S.C. § 1642; see also Order 293, Exxon's Motion for Partial Summary Judgment on Claims for Damages to Certain Unconveyed ANCSA Lands dated July 26, 1995, at pp. 2-3.

²⁵ For example, if a claimant owned property and operated a lodge or rental housing unit on it, any claim for property devaluation and oil spill cleanup costs would be included in the Real Property Claim Category, and any claim for economic damages to the business would be included in the Business Claims Category. Similarly, if a property owner operated a commercial fishing set net operation on the property, any claim for property devaluation would be included in the Real Property Claim Category, and claims for commercial fishing losses would be included in the appropriate Commercial Fishing Claim Category.

valuation and damage analyses to such properties; and for some other Eligible Properties owned by direct action claimants, the property devaluation losses have been determined by other real estate experts.²⁶

In his class-wide report, Mr. Shorett estimated the economic harm caused by the oil spill to the land owned by certain Native corporations and to privately-owned land encompassing over 1,500 individual parcels and over 1,300 lots within more than 41 subdivisions. Simply stated, the approach was to estimate the market values of the properties in his report twice on March 24, 1989 -- both before and after the oil spill occurred. Among other things, Mr. Shorett considered the presence of oil and how long the oil was predicted to persist on the property when he calculated an Eligible Property's after-spill market value. The difference between the pre-spill and after-spill values represents the amount of property devaluation loss attributable to a particular piece of property.

Property devaluation losses will be discounted by 50% when a real property claimant's economic losses are totaled for purposes of determining Final Percent Shares.²⁷

2. Actual Costs Of Protection, Cleanup And Restoration

Real Property Matrix Damages also include the actual costs of protecting an Eligible Property from the spill, cleanup and restoration. To make a claim for this type of loss, a real property claimant must submit, in addition to documentary proof of ownership of the Eligible Property, sworn documentary proof of: (1) the nature of the actual costs being claimed; (2) the amount of the actual costs being claimed and how such amount was calculated; and (3) compensation already received for such costs, if any (e.g., payments from Exxon defendants, VECO, insurance policies). Plaintiffs' counsel will evaluate each real property claim based on costs of protection, cleanup or restoration on a case-by-case basis, to determine a fair and reasonable valuation of loss.

Based upon the Alyeska Qualified Settlement Fund claims experience, plaintiffs' counsel estimate that fewer than 1% of the claims within the Real Property Claim Category will constitute a claim for the actual costs of protecting an Eligible Property from the spill, cleanup and restoration.

3. "Other" Real Property Losses

It is possible that a landowner may have suffered a loss associated with an Eligible Property which is neither a loss in value nor costs of protection, cleanup or restoration, and which is not a "use" related loss. Such losses are referred to as "other" real property losses. One example of this type of economic loss would be a situation where, before the oil spill occurred, a landowner entered into a contract to sell his property to another party. If, after the oil spill occurred, the purchaser rescinded the contract because he or she feared that the oil spill would have a negative impact on the property, then the seller may have a claim for economic loss from the lost sale. This loss would be included in the "other" real property loss category. Another example is a situation where cleanup crews removed several tons of oiled gravel from a claimant's property. The claimant's "other" real property losses would include the actual replacement cost of the gravel and the actual costs reasonably associated with the replacement of the gravel.

It is possible that there may be additional types of economic loss which may be included in the "other" category besides what is reflected in the two examples given here. Plaintiffs' counsel will evaluate each claim for "other" real property loss on a case-by-case basis, to determine whether it is a cognizable claim, and if it is, to determine a fair and reasonable valuation of the loss.

Based upon the Alyeska Qualified Settlement Fund claims experience, plaintiffs' counsel estimate that fewer than 1% of the claims within the Real Property Claim Category will constitute a claim for "other" real property loss.

4. State Of Alaska Mining Lease Devaluation Losses

Real Property Matrix Damages also include certain claims for loss in market value of State of Alaska mining leases in the Oil Affected Areas, in certain limited instances. To make a claim for this type of loss, a real property claimant must submit the following items: (1) documentary proof of an active State of Alaska mining lease which was in effect on March 24, 1989; (2) sworn documentary proof of actual oiling which occurred on the property; (3) the report of an expert in the field which analyzes whether there was a loss in the market value of the claimed mining lease as a result of the oil spill and which sets forth the dollar amount of such devaluation loss including a detailed explanation of how the loss amount was calculated; and (4) documentary proof of any compensation already received for such loss, if any (e.g., payments from Exxon defendants, VECO, insurance policies).

²⁶ In light of the fact that some direct action claimants have used real estate experts whose approaches differ from that used by Mr. Shorett, and in order to assure fairness and uniformity among all claimants participating in the Real Property Claim Category, plaintiffs' counsel have reviewed the damage reports of the real estate experts who prepared reports for signatory direct action plaintiffs. In each case where damage amounts differed between Mr. Shorett's and the expert's approaches, plaintiffs' counsel confirmed that the expert's work conforms to USPAP requirements, that the analysis has a reasonable basis, that there is sufficient documentation of the claim, and evaluated proffered justifications for the differing expert's approach. As a result of this review, some adjustments have been made to the damage amounts claimed by some direct action plaintiffs. In the Supplemental Claims Program, real property claims based on non-Shorett expert analysis will be subject to this same review by plaintiffs' counsel, and may be adjusted accordingly.

²⁷ A discount of 50% will be applied to property devaluation losses to reflect the risk and uncertainty inherent in the pursuit of such claims, given the Court's ruling in Order 223, Motion For Partial Summary Judgment On Damage Claims For Un-oiled Real Property And Economic Losses Not Arising From Physical Impacts Of Oiling (June 8, 1994). There, the Court dismissed claims based on parcels of land not touched by oil, and claims for damages based on stigma and public fear, loss of marketability or diminution in property value. Because the ruling was based on lack of legal, rather than actual, causation, plaintiffs' counsel have determined that it is fair to include property devaluation losses discounted by 50%.

Plaintiffs' counsel will evaluate each claim for mining lease devaluation loss on a case-by-case basis to determine whether it is a cognizable claim and to determine whether there is a rational and reasonable basis for the amount of damage being claimed. Those mining lease devaluation losses which meet the criteria described will be discounted by 85% when a real property claimant's economic losses are totaled for purposes of determining Final Percent Shares.²⁸

Based upon the Alyeska Qualified Settlement Fund claims experience, plaintiffs' counsel estimate that fewer than 1% of the claimants within the Real Property Claim Category will submit claims for devaluation losses to State of Alaska mining leases.

C. CALCULATION OF FINAL PERCENT SHARES

For each Eligible Property owned by a claimant, plaintiffs' counsel will determine what amount of economic loss should be attributed to such property. A claimant's Final Percent Share will be determined by first adding up the various types of real property economic losses (with certain types of losses being discounted, as described *supra*) which have been attributed to a claimant's Eligible Property. If a claimant owns more than one Eligible Property, the economic losses attributable to all such properties will be added together. Further, if a claimant shares ownership of an Eligible Property with someone else, her share of the devaluation and "other" losses attributed to the property will be the same as her ownership share in the property; however, her share of any costs of protection, cleanup or restoration will reflect what her actual outlays were for such costs. The total amount of a claimant's economic losses from all Eligible Property(ies) will then be divided by the sum total of all real property economic losses suffered by all land claimants.

In order to demonstrate the calculation as it will be applied in a variety of circumstances, a number of examples follow:

1. One Property, One Owner, Devaluation Loss Only

In this example, the real property claimant ("Ann") is the sole owner of an Eligible Property as of March 24, 1989, and she is not making a claim for costs of protection, cleanup or restoration or any "other" losses. Oil spill devaluation loss was determined to be \$6,000 for the property. The \$6,000 devaluation loss would be discounted by 50% to \$3,000. This amount reflects the total economic loss for Ann's real property claim. To determine Ann's Final Percent Share, the figure \$3,000 will be divided by the combined total amount of all real property claimants' (discounted) property or mining lease devaluation losses, "other" losses and costs of protection, cleanup and restoration. Assuming, for the sole purpose of illustrating how the calculation will be performed, that the combined total amount of all real property claimants' losses is \$100 million, then Ann's Final Percent Share would be .003%. This represents what Ann's share will be of the monies distributed to claimants in the Real Property Claim Category after attorneys' fees and litigation expenses are deducted.

2. One Property, One Owner, Devaluation Loss And Cleanup Costs

Using the prior example, assume that Ann provides information which is determined by plaintiffs' counsel to represent \$1,000 in actual cleanup costs. The property devaluation losses of \$6,000 would be discounted by 50% to \$3,000, and her cleanup costs would remain at \$1,000. Thus, the total economic loss for Ann's real property claim would be \$4,000. Ann's Final Percent Share would be determined by dividing \$4,000 by the combined total amount of all real property claimants' (discounted) property or mining lease devaluation losses, "other" losses and costs of protection, cleanup and restoration. Assuming, again, that the combined total amount of all real property claimants' losses is \$100 million, then Ann's Final Percent Share would be .004%.

3. Two Properties, One Owner, Devaluation Loss And Cleanup Costs

Now assume Ann owned two Eligible Properties on March 24, 1989. Devaluation losses are determined to be \$6,000 and \$4,000 respectively, and cleanup costs amount to \$1,000. Ann's discounted property devaluation losses would be \$3,000 and \$2,000 for the two properties. Adding the cleanup costs to this amount, the total economic loss for Ann's real property claim would be \$6,000. To determine Ann's Final Percent Share, this \$6,000 amount would then be divided by the combined total amount of all real property claimants' (discounted) property or mining lease devaluation losses, "other" losses and costs of protection, cleanup and restoration. Assuming, again, that the combined total amount of all real property claimants' losses is \$100 million, then Ann's Final Percent Share would be .006%.

4. One Property, Two Owners, Devaluation Loss Only

Assume Ann and Bob own an Eligible Property together, and that the property devaluation loss attributable to the property is \$10,000. Ann would be attributed \$5,000 in property devaluation losses and Bob would be attributed \$5,000 in property devaluation losses. Each of Ann's and Bob's Final Percent Share would be determined by first discounting \$5,000 by 50%, and then dividing the resulting figure (\$2,500) by the combined total amount of all real property claimants' (discounted) property or mining lease devaluation losses, "other" losses and costs of protection, cleanup and restoration. Assuming, again, that the combined total amount of all real property claimants' losses is \$100 million, then Ann's Final Percent Share would be .0025% and Bob's Final Percent Share would be .0025%.

5. One Property, Two Owners, Devaluation Loss And Cleanup Costs

Using example number 4, above, now assume that Ann personally spent \$500 on materials to keep oil from coming up onto the beach, and \$500 to clean oil from the beach. Bob did not pay any of the costs of protection or cleanup. Bob's share of economic loss from

²⁸ A discount of 85% will be applied to mining lease devaluation losses to reflect the risk and uncertainty inherent in the pursuit of such claims, and given the Court's ruling in Order 252, Motion for Summary Judgment in all Cases Involving Alleged Mining Properties, dated September 8, 1994.

his real property claim would remain at \$2,500. Ann's share of economic loss from her real property claim would increase by the full amount of her actual costs, and would now total \$3,500. To determine each of Ann's and Bob's Final Percent Shares, each of their economic loss amounts would be divided by the combined total amount of all real property claimants' (discounted) property or mining lease devaluation losses, "other" losses and costs of protection, cleanup and restoration. Assuming, again, that the combined total amount of all real property claimants' losses is \$100 million, then Ann's Final Percent Share would be .0035% and Bob's Final Percent Share would be .0025%.

D. SPECIFIC INFORMATION REGARDING PARTICULAR TYPES OF PROPERTY

Based on the work completed by Mr. Shorett, and based on information obtained through the administration of the landowner portion of the Alyeska Qualified Settlement Fund, plaintiffs' counsel are able to set forth the following additional specific information and guidelines regarding certain groups of claims:

1. Eligible Property Owned by Spouses or Multiple Owners

Plaintiffs' counsel expect that a number of real property claimants will make a claim for land which is owned jointly by a husband and wife, or which is owned by two or more persons. For purposes of determining Final Percent Shares in cases where two or more persons share ownership of an Eligible Property, plaintiffs' counsel generally will allocate the property devaluation losses and "other" losses attributed to the property among the respective owners according to their apparent ownership shares as reflected on the deed, patent or probate documents. Any costs of protection, cleanup or restoration will be allocated according to what the owners' actual outlays were for such costs.

2. Subdivisions

Claimants who owned lots within the subdivisions listed below as of March 24, 1989 are eligible to participate in the Real Property Claim Category. The lot values and damage estimates calculated by Mr. Shorett in his Real Property Damage Estimate will generally be used.

Alaska Packers 1 and 2, near Chignik: 102 lots	Raspberry Island (Raspberry Strait): 3 lots
Anton Larsen (Kodiak Island): 49 lots	Sevenmile Beach (Kodiak Island): 2 lots
Ayakulik River (Kodiak Island): 7 lots	Sitkalidak Strait View (Old Harbor): 18 lots
Brookers Lagoon (Kodiak Island): 13 lots	Sourdough George (Chinitna Bay): 6 lots
Canoe Passage Retreat (Hawkins Island, PWS): 44 lots	Strawberry Point (Hinchinbrook Island): 43 lots
Chiniak Alaska (Kodiak Island): 12 lots	Sunbeck (Humpy Cove): 3 lots
Chrome Bay A and B (Kenai Peninsula): 15 lots	Sunny Cove (Spruce Island): 37 lots
Ellamar (Virgin Bay, PWS): 157 lots	USS 3470, Tract A (Cape Chiniak): 6 lots
Horseshoe Bay (LaTouche Passage): 131 lots	ASLS 76-247, Tracts A-E (Day Harbor): 7 lots
Kondur (Resurrection Bay): 2 lots	USS 3879, Tracts B & C (Uganik Bay): 11 lots
LaTouche Island Townsite (LaTouche Passage): 228 lots	USS 1420 (Uganik Bay): 4 lots
Onion Bay (Raspberry Island): 5 lots	USS 2730 (Dry Spruce Bay): 34 lots
Pasagshak River 1st, 2nd and Sub (Kodiak Island): 76 lots	USS 2762-2 (Orca Inlet): 2 lots
Perl Island (Chugach Passage): 35 lots	USS 3471 (Cape Chiniak): 27 lots
Petrof View (Nuka Passage): 90 lots	USS 3472 (Cape Chiniak): 11 lots
Pleasant Harbor (Spruce Island): 4 lots	USS 3473 (Cape Chiniak): 12 lots
Port Fidalgo: 193 lots	USS 3474 (Cape Chiniak): 13 lots
Port Oceanic (Knight Island): 20 lots	USS 3627 (Uyak Bay): 4 lots
Port Wakefield (Port Lions): 51 lots	Witbro (Chinitna Bay, Alaska Peninsula): 23 lots

3. Village Townsites

Claimants who owned lots within the townsites of Chignik, Chignik Lagoon, Akhiok, Larsen Bay, Karluk, Old Harbor, Ouzinkie, Port Lions, English Bay, Port Graham, Chenega Bay and Tatitlek as of March 24, 1989 are eligible to participate in the Real Property Claim Category.

The value of townsite lots will be determined by plaintiffs' counsel either by using the assessed land values of such lots or by using standardized lot values to be established by plaintiffs' counsel. Such standardized lot values will be used where assessed value information does not exist or is not readily available. Devaluation losses will be determined by using Mr. Shorett's damage methodology.

4. Native Allotments

Claimants who base their real property claim on a Native allotment should clearly identify the Native allotment application number, which typically begins with the prefix "AA" or "A." The claimant should submit a copy of his or her Native Allotment Certificate if it is available. The property value and damage estimates calculated by Mr. Shorett generally will be used.

a. Inherited Allotments

A claimant who bases a real property claim on a Native allotment which he or she inherited must clearly identify the Native allotment application number and state the name of the deceased Native allottee and the names of any other heirs who share ownership of the inherited Native allotment. If possible, the claimant should submit a copy of the Indian probate documents which describe the individual or individuals who inherited the property. This document is typically called an "Order Approving Will and Distribution to Heirs" or an "Order Determining Heirs." If such document is not submitted by the claimant, the Administrator will attempt to obtain it directly from the BIA on behalf of the claimant.

Where there is more than one person who inherited a Native allotment, the ownership share of each claimant heir will be determined in accordance with the ownership shares set forth in the records of the Bureau of Indian Affairs. Thus, for purposes of determining Final Percent Shares of such claimants, each claimant heir will be attributed the same share of land damage to the Native allotment as his or her ownership share in the allotment.

5. Section 14(c) Applications

A claimant who bases a real property claim on property for which he or she has asserted a primary residence, primary place of business or other claim under Section 14(c) of ANCSA must provide a copy of the claimant's Section 14(c) application, and, if the property has been conveyed to the claimant, a copy of the deed. Plaintiffs' counsel will evaluate each claim for land obtained under Section 14(c) of ANCSA on a case-by-case basis to determine whether the property is, in all other respects, an Eligible Property, and whether it has been or will be conveyed to the claimant by the particular Native corporation to which the application for conveyance of the property was made. If plaintiffs' counsel confirms that the property is an Eligible Property and it has been or will be conveyed to the claimant, the property value and oil spill damage estimates for such Section 14(c) property will be determined by using Mr. Shorett's valuation and damage methodologies.²⁹

6. Native Corporation Land

Native corporations which are known to own Eligible Property include, among possible others: Afognak Joint Venture, Akhiok-Kaguyak, Inc., Ayakulik, Inc., Far West, Inc., Leisnoi, Inc., Natives of Kodiak, Old Harbor Native Corporation, Uyak Natives, Inc., Karluk I.R.A. Tribal Council, Knikatu, Inc., Chickaloon Moose Creek Native Corporation, Tyonek Native Corporation, Uganik Natives, Inc., Afognak Native Corporation, Bristol Bay Native Corporation, Oceanside Native Corporation, Chignik Lagoon Native Corporation, and Bay View Native Corporation.³⁰

A Native corporation claimant may submit a real property claim for Eligible Property obtained by it through the following means: (1) An interim conveyance or patent from the United States dated either before or after the oil spill date, as long as the Native corporation had made a valid land selection under ANCSA by March 24, 1989³¹; (2) A valid OPA election to accept conveyance of certain lands; (3) A deed dated on or prior to March 24, 1989; or (4) For village corporations within the Cook Inlet region only, a deed from CIRI dated either before or after March 24, 1989.

Property values and oil spill damage estimates as determined by Larry Shorett, Hayden Green or Bill Mundy, as adjusted by plaintiffs' counsel in certain cases, will be used for purposes of determining Final Percent Shares of Native corporation claimants.

²⁹ Plaintiffs' counsel will further determine whether an adjustment should be made to the acreage figure being claimed by the Native corporation which conveyed or will convey the Section 14(c) property, if such Native corporation has made a real property claim. Such adjustments may be made in those cases where the size of the Section 14(c) property is larger than 63 acres, where deducting the Section 14(c) property from the Native corporation's acreage (assuming the Native corporation had not already deducted the property from its claimed acreage) would result in a deduction from the Native corporation's property devaluation losses in an amount greater than \$5,000.

³⁰ The non-signatory Native corporations Chugach, Eyak, Tatitlek, Chenega, Port Graham and English Bay, as well as Koniag, Inc., which opted out of the class litigation and did not file its own lawsuit against Exxon, are not included in this group of Native corporations owning Eligible Property. While such non-signatory and opt-out Native corporations may own Eligible Property, they will not participate in the Real Property Claim Category of any Exxon Qualified Settlement Fund distributions because of their non-signatory or opt-out status.

³¹ See Order 293, Exxon's Motion for Partial Summary Judgment on Claims for Damages to Certain Unconveyed ANCSA Lands, wherein Judge Holland ruled that, providing that the Native corporation had made a valid land selection under ANCSA by March 24, 1989, it may make a claim for oil spill damage to such land if it either: (1) received an interim conveyance or patent to the land either before or after the oil spill occurred, or (2) executed an irrevocable election to accept an interim conveyance of such land, and notice of such election was formally transmitted to the Secretary of the Interior.

E. THE FINAL PERCENT SHARE

Once all claims are evaluated in the Supplemental Claims Program, plaintiffs' counsel would calculate for each real property claimant a Final Percent Share, which is his or her percent share of real property allocations. The Final Percent Share would be a single number, expressed as a percentage, calculated in the manner described *supra*.

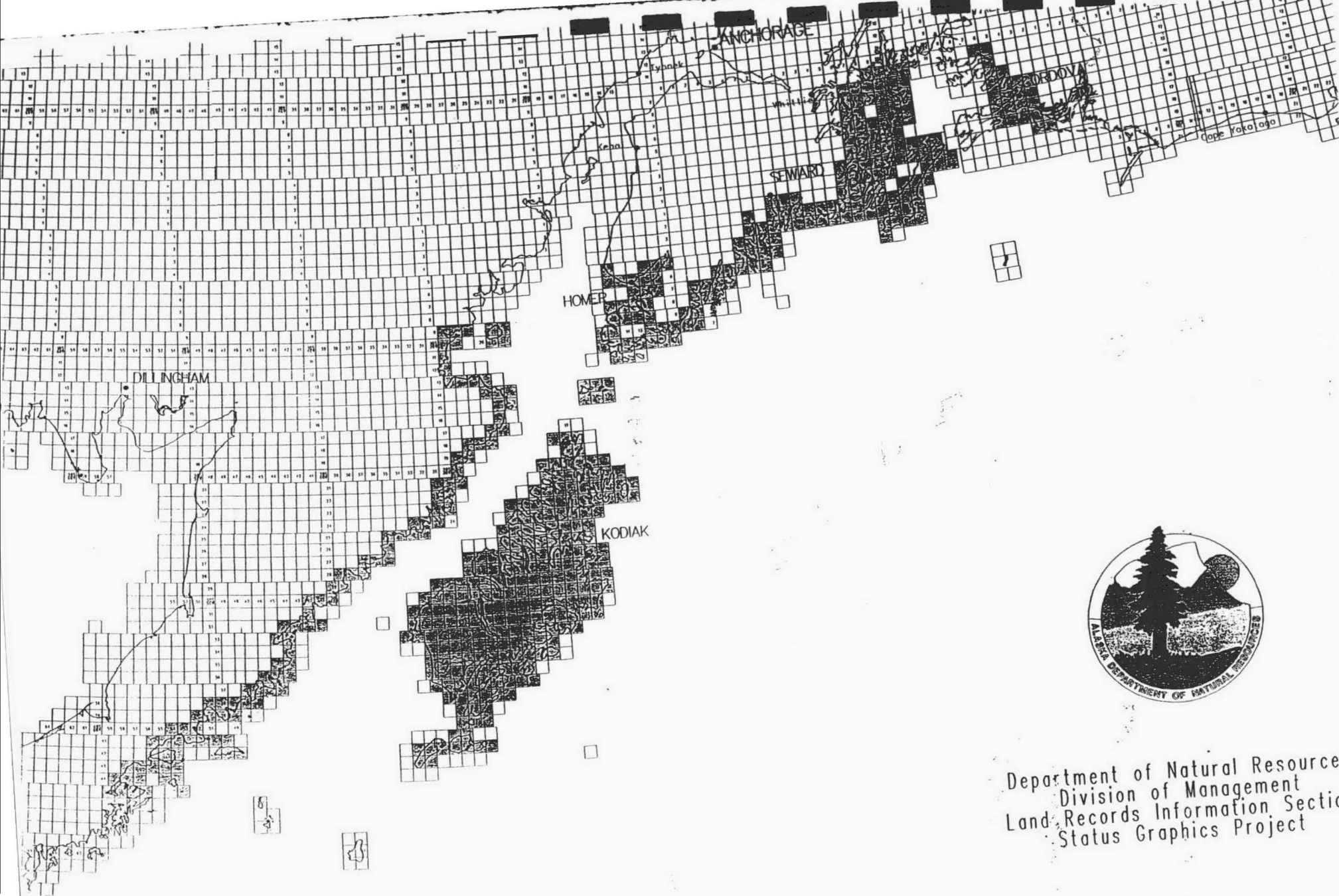
IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including real property claimants, would be adjusted to reflect the extent to which they have already been compensated.³² Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix shares of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

³² Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE NATIVE CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Native Claim Category. Plaintiffs' Court-appointed Lead Counsel, asks the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object is given to putative claimants.³

I. ELIGIBILITY CRITERIA

The Court-approved Allocation Plan (p. 23) defines the Native Claim Category as including claims for "damages to the subsistence way of life, and the commodity value of lost subsistence harvests," and limits claimants to three categories: Natives within the definition of the Stipulated Native Class ("Class Natives") certified by this Court;⁴ Natives who opted out of the Stipulated Native Class ("Native Opt-Outs"); and Native Villages which suffered damages to the subsistence way of life as a result of the spill.

A. CLASS NATIVES

The Stipulated Native Class is defined as "all Alaska Natives who have engaged or participated in a subsistence way of life in the area of the spill." See Class Certification Order. Lead Counsel propose to recognize claims by two types of Class Natives – Residents and Nonresidents – who meet the following criteria.⁵

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); see also Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. See Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. Separate distribution plan are being filed with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native Corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. See Order 317, p. 31; see also Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, see Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; see also Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. See Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. See, e.g., Order 317, 17-18 (dismissing objection of T. Lakosh).

³Because the Allocation Plan fixed the percentage allocation to the Native Claim Category, only putative Native claimants have any financial interest in how allocations to the Native Claim Category are distributed, and, therefore, standing to object to this distribution plan.

⁴See Order Certifying Commercial Fishing Class, Native Class, And Landowner Class (Mar. 14, 1994) ("Class Certification Order").

⁵Lead Counsel proposes that Class Natives whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") nevertheless share in allocations to the Native Claim Category, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, see Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Lead Counsel believes that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

1. Residents

To qualify as a Resident, a claimant must provide documentary evidence establishing that he or she is an Alaska Native⁶ who resided at the time of the spill⁷ in the "Oil-Affected Area."⁸

2. Nonresidents

To qualify as a Nonresident, a claimant must provide documentary evidence that he or she is an Alaska Native, *see supra*, who: (1) visited the Oil-Affected Area to subsist during each of the five years preceding the spill; and (2) either returned to the Oil-Affected Area to subsist in either 1989 or 1990, or else would have done so but for the spill. A Nonresident also must establish the Native community with which he or she is affiliated. Nonresidents must provide sworn proof of claim forms, and sworn corroboration from two unrelated Residents.

3. Participating Native Communities

Participating Native communities are: Akhiok, Chenega Bay, Chignik Bay, Chignik Lagoon, Chignik Lake, Chiniak, Cordova (Eyak), English Bay (Nanwalek), Ivanof Bay, Karluk, Larsen Bay, the Mount Marathon Native Association, Old Harbor, Ouzinkie, Perryville, Port Graham, Port Lions, Seward, the Shoonaq' Tribe of Kodiak, Tatitlek, Women's Bay and the Valdez Native Association. No other Native village may share in allocations to the "Class Natives" Claim Category.

B. NATIVE OPT-OUTS

This category of Native claimants is limited to those plaintiff members of the Native Opt Out Settlement Class (717 in number) who opted out of the Stipulated Native Class. See Judgment dated January 19, 1996, Exhibit A to Docket No. 6601. A separate subplan (the "Native Opt-Out" subplan) providing explicitly what percent share each claimants will receive will be filed with the Court on or before May 21, 1997, which will become part of this plan.

II. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, the Native Claim Category shares in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon claims program and TAPL Fund,⁹ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;¹⁰ \$24,722,000 collected from Exxon,¹¹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹² plus interest,¹³ from judgments against Exxon which are not yet collected.¹⁴ The Native Claim Category matrix share is projected to be 6.6287% of signatories' share of the Alyeska Settlement, and 6.6400% of signatories' other common recoveries.¹⁵

⁶To qualify as an Alaska Native, a claimant must have been alive on March 24, 1989, and either: (1) be a member of a recognized Alaska Native tribe or of the unrecognized Kodiak, Valdez or Seward Native tribal entities; (2) own voting shares in an ANCSA corporation; or (3) be a direct blood descendant of a person who satisfies either (1) or (2).

⁷To qualify as a resident at the time of the spill, a claimant must have been a permanent domiciliary and resident on March 24, 1989, notwithstanding a temporary absence due to military enlistment, education, job training, medical care, or other absence of a temporary nature.

⁸The oil-affected area means coastal areas where spilled oil migrated, and includes Chenega Bay, Chignik Bay, Chignik Lagoon, Eyak, Ivanof Bay, Nanwalek, Perryville, Port Graham, Seldovia, Seward, Tatitlek, Valdez, and all communities in the Kodiak Archipelago. The oil-affected area does not include the Aleutian Chain, Homer, Kasilof, Kenai, Knik, Moose Pass, Ninilchik, Soldotna or Tyonek.

⁹Signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

¹⁰Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

¹¹This amount includes \$23,506,000 collected from settlements with Exxon by Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹²This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

¹³Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁴Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁵The Native Claim Category matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. The matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute the Native Claim Category's 6.6400% matrix share (roughly \$1,642,000 less attorneys' fees approved by the Court¹⁶) of Native/Municipality/Kodiak Island Borough recoveries,¹⁷ and unclaimed money, if any, remaining from its \$11,526,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect the Native Claim Category to be allocated roughly \$3,822,000 from the Phase IIA judgment and prejudgment interest, and \$316,605,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁸ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which the Native Claim Category also will share.¹⁹

C. THE FINAL DISTRIBUTION

Plaintiffs' counsel believe that nothing was paid to Native or Participating Village claims from the Exxon Claims Program or TAPL Fund. Accordingly, as set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, the Native Claim Category will be allocated its projected 6.6400% matrix share (estimated at \$13,300,000) of signatories' aggregate Exxon Claims and TAPL Fund recoveries.

On the other hand, the \$11,526,000 allocation to the Native Claim Category from the Alyeska Settlement exceeded the projected matrix share (6.6287%) of \$5,788,000. Thus, in the Final Distribution the difference (projected at \$5,738,000) will be deducted from the allocation to the Native Claim Category, through a combination of reallocations to other claim categories and offsets from distributions to Natives and Villages. *See infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, the total allocation to the Native Claim Category from all recoveries will be roughly \$344,979,000 (less attorneys' fees and expenses), which includes \$1,642,000 from Native/Municipality/Kodiak Island Borough recoveries, \$5,788,000 from the Alyeska Settlement, \$3,822,000 from the uncollected Phase IIA judgment and prejudgment interest, \$316,605,000 from the uncollected punitive damages judgment, and \$13,300,000 from Exxon claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court to evaluate this distribution plan under the assumption that the Native Claim Category ultimately will be allocated \$344,979,000 plus interest.

III. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the Native Claim Category,²⁰ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all Class Natives will be required to identify themselves and submit a claim before a specified cut-off date.²¹ Plaintiffs' counsel will automatically register a claim for those who filed Native claims in the Alyeska Claims Program, but may still require any such claimant to supplement his or her Alyeska claim.

¹⁶Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁷Allocations to the Native Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁸A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁹It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

²⁰Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

²¹Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

Second, plaintiffs' counsel will determine for each valid Native Class claim, and for each Participating Village, a percentage share of allocations to the Native Claim Category (Final Percent Share).²² All class claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in a central claims office. For each class claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²³ Plaintiffs' counsel will assign Final Percent Shares to the Natives Opt-Out clients pursuant to the Native Opt-Out subplan.

Third, plaintiffs' counsel will distribute the \$1,642,000 Native Claim Category allocation from Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*i.e.*, money reserved for absent class members for which no claim was made) remaining from their \$11,526,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

IV. DETERMINATION OF FINAL PERCENT SHARES

As a result of protracted mediation by Lead Counsel and the Allocation Committee, Native Class Counsel and counsel for the Native Opt-Out Class have agreed to divide any Native Claim Category Allocations with 9.475% to go to the Native Opt-Out claimants and 90.525% to go to the Native Class claimants. Accordingly, Lead Counsel proposes that, beginning with the Supplemental Claims Program, allocations to the Native Claim Category be divided 90.525% to a "Class Fund" in which Class Natives and Participating Villages share, and 9.475% to an "Opt-Out Fund" in which Native Opt-Outs share following the Native Opt Out subplan. Lead Counsel proposes that distributions from the Class Fund be determined in the manner described *infra*. Lead counsel has no proposal at this time as to how the Opt-Out Fund should be distributed, but believes that counsel for the Native Opt-Outs can and will submit an agreed-upon distribution plan for the Opt-Out Fund to the Court by May 21, 1997 well before the date that will be set for a hearing on preliminary approval. Under this proposal, the \$1,642,000 allocated to the Native Claim Category from Native/Municipality/Kodiak Island Borough recoveries would be divided \$1,486,400 to the Class Fund and \$155,600 to the Opt-Out Fund.

A. DISTRIBUTION OF THE CLASS FUND

The Class Fund will be distributed among Class Residents, Class Nonresidents and Participating Villages in the following manner. Each Class Native will be assigned a "share weight" from Table 1 (attached). A Class Native's share weight will be determined by two factors: whether he or she qualifies as a Resident or Nonresident; and his or her community of residence (for Residents) or affiliation (for Nonresidents). For Residents, share weights are the product of extensive negotiation among representatives of the Native communities. For Nonresidents, share weights equal 50% of those of Residents of the same community. The Allocation Committee has concluded that share weights listed on Table 1 are fair measures of the relative harm caused by the spill.

Class Natives' "gross shares" of the Class Fund will be proportional to their share weights. As a result, for each community, all Class Residents will be allotted the same gross share of the Class Fund, and all Class Nonresidents will be allotted the same gross share (50% of a Resident's gross share). From each Class Native's gross share, 10% will be set aside for his or her Participating Village of residence or affiliation. Thus, 90% of the Class Fund will be distributed to Class Natives, and 10% to the Participating Villages.

B. FINAL PERCENT SHARES

For each Native and Participating Village, plaintiffs' counsel will determine a final percent share of each of the two funds – the Class Fund and the Opt-Out Fund. The precise number of Natives who will qualify for the Class Fund will not be known until after all claims are reviewed in the Supplemental Claims Program.

V. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from previous recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

²²In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²³If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all types of claimants, including Natives and Participating Villages, would be adjusted to reflect the extent to which they have already been compensated.²⁴ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This distribution method simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
SHARE WEIGHTS FOR THE CLASS FUND

Community	Resident	Non-Resident
Alaska Peninsula Communities	0.00927357	0.00463679
Chenega Bay	0.09381530	0.04690765
Eyak	0.02511185	0.01255593
Kodiak Communities	0.01974865	0.00987433
Nanwalek	0.02643050	0.01321525
Port Graham	0.02710390	0.01355195
Seward	0.02587690	0.01293845
Tatitlek	0.08512520	0.04256260
Valdez	0.02604166	0.01302083

²⁴This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE SUBSISTENCE CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a distribution method for the Subsistence Claim Category, which is a "catch-all" category for claims for the commodity value of lost subsistence harvest which do not qualify for inclusion in the Native Claim Category. Plaintiffs' counsel³ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and an opportunity to object is given to subsistence claimants.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described in the Court-approved Allocation Plan, subsistence claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁵ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁶ \$24,722,000 collected from Exxon,⁷ to be distributed

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴Because the Court-approved Plan Of Allocation fixed the percentage allocation to the Subsistence Claim Category, only putative subsistence claimants have any financial interest in how allocations to the Subsistence Claim Category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that subsistence claimants whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in subsistence allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, *see* Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁵Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁶Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁷This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, (continued...)

in the Supplemental Claims Program; and a projected \$4,825,716,000,⁸ plus interest,⁹ from judgments against Exxon which are not yet collected.¹⁰

A. SUBSISTENCE MATRIX SHARE

The Allocation Plan sets a "reserved matrix share" of 0.008% for the Subsistence Claim Category, but provides that 0.008% will in fact be allocated only if total subsistence losses equal or exceed the projected amount of \$191,000. *See* Allocation Plan 24 n.31, 27. If subsistence losses total less than \$191,000, the "actual matrix share" will be proportionally less than the reserved matrix share, and the excess apportioned among all claim categories. *Id.* The actual matrix share cannot be determined until all claims are filed and evaluated in the Supplemental Claims Program.

B. PROJECTED ALLOCATIONS

Plaintiffs' counsel believe it reasonable to assume that subsistence losses will total \$191,000 or more, and, therefore, that the Subsistence Claim Category will be allocated the reserved matrix share of 0.008%. Under this assumption, the Subsistence Claim Category would be allocated roughly \$2,000 from Native/Municipality/Kodiak Island Borough recoveries, \$4,600 from the Phase IIA judgment and prejudgment interest, and \$381,000 from the punitive damages judgment.¹¹ These amounts do not include post-judgment interest, but do include any attorneys' fees, and litigation and claims administration expenses, which the Court approves.¹²

C. THE FINAL DISTRIBUTION

In the Final Distribution to be conducted once all recoveries are collected, subsistence claimants will be allocated their actual matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment - less previous allocations to subsistence claimants. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual claimants. *See infra.* Nothing was allocated to subsistence claimants from the Alyeska Settlement, and plaintiffs' counsel are not aware of any payments for subsistence claims from the Exxon Claims Program or TAPL Fund. Thus, in the Final Distribution, subsistence claimants will be allocated their actual matrix share of signatories' recoveries from the Alyeska Settlement, Exxon Claims Program, and TAPL Fund.

D. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, and subsistence damages total \$191,000 or more, subsistence claimants would be allocated roughly \$416,000, which includes \$2,000 from Native/Municipality/Kodiak Island Borough recoveries, \$7,000 from the Alyeska Settlement, \$4,600 from the uncollected Phase IIA judgment and prejudgment interest, \$381,000 from the uncollected punitive damages judgment, and \$16,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest, and do include any attorneys' fees and expenses which the Court approves.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and subsistence claimants to evaluate this distribution plan under the assumption that subsistence claimants ultimately will be allocated \$416,000 plus interest.

(...continued)

⁷and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁸This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

⁹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁰Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. A settlement with Exxon for lesser amounts might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹¹All allocations to the Subsistence Claim Category will be deposited into an interest-bearing account designated for it, as will allocations from future recoveries. Such funds will be held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for subsistence claimants,¹³ plaintiffs' counsel will conduct a Supplemental Claims Program with four goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See Exxon QSF Order.*

First, all subsistence claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁴ Plaintiffs' counsel will automatically register a claim for those who filed subsistence claims in the miscellaneous "other" claim category of the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid class claim a percentage share of allocations to Class Claims Reserve (Final Percent Share).¹⁵ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. For each claim, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.¹⁶

Third, plaintiffs' counsel will determine subsistence claimants' aggregate damages and actual matrix share. If aggregate damages equal or exceed the projected amount of \$191,000,¹⁷ then the actual matrix share will equal the reserved matrix share (*i.e.*, 0.008%). If aggregate damages are less than \$191,000, then the actual matrix share will equal the reserved matrix share times the ratio of aggregate damages to \$191,000.

Fourth, plaintiffs' counsel will distribute subsistence claimants' \$2,000 allocation from Native/Municipality/Kodiak Island Borough recoveries. Plaintiffs' counsel will, if feasible, make partial distributions based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

To qualify for the Subsistence Claim Category, a claimant must submit: (1) documentary proof that he or she possessed a valid subsistence license or permit issued by the Alaska Department of Fish and Game (ADF&G), during all periods for which loss is claimed, and that he or she complied with all reporting requirements;¹⁸ (2) an affidavit describing how the spill prevented or impaired his or her subsistence harvest; and (3) verified proof of loss, corroborated by ADF&G subsistence harvest records.

Plaintiffs' Allocation Committee will evaluate each claim on a case-by-case basis, to determine a fair and reasonable valuation of loss. Each claimant's Final Percent Share will equal the ratio of his or her damages to all class claimants' total damages.

¹³Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories have not yet received judicial approval.

¹⁴Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim, including records from the Alaska Department of Fish & Game ("ADF&G"). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁵In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of all signatories' recoveries. The change in nomenclature is made for administrative reasons.

¹⁶If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

¹⁷This projection, prepared by plaintiffs' Allocation Committee, is based on available data on subsistence claims by direct action plaintiffs. *See* Allocation Plan 27.

¹⁸*See, e.g.*, 5 AAC 01.530(c) (requiring Kodiak fishermen to record fishing harvests on the back of permits and return the permits to ADF&G by February 1 of the year following the year the permit was used); 5 AAC 01.580 (requiring recordation of daily subsistence salmon catches in the Cook Inlet area).

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including subsistence claimants, would be adjusted to reflect the extent to which they have already been compensated.¹⁹ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

¹⁹This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE CANNERY WORKER CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Cannery Worker Claim Category, which includes claims for lost income in 1989 from lack of employment as a result of the *Exxon Valdez* oil spill, as a cannery worker or seafood processing employee in Chignik, Cook Inlet, Kodiak or Prince William Sound ("cannery workers"). See Allocation Plan 14. Plaintiffs' counsel³ ask the Court to approve this distribution plan as fair, adequate and reasonable, after notice and opportunity to object is given to cannery workers.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, cannery workers share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon claims program and TAPL Fund;⁵ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); see also Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. See Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. See Order 317, p. 31; see also Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, see Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; see also Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. See Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. See, e.g., Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁴Because the Allocation Plan fixed the percentage allocation to the Cannery Worker Claim Category, only putative cannery workers have any interest in how allocations to the Cannery Worker Claim Category are distributed, and, therefore, standing to object to this distribution plan. Plaintiffs' counsel propose that cannery workers whose claims were dismissed for failure to provide discovery ("Allen plaintiffs") share in cannery worker allocations, but that their claims be discounted by an additional 50%. When plaintiffs' joint prosecution agreement was reached in the spring of 1994, see Allocation Plan 3-4, Allen plaintiffs had viable rights of appeal, which were in fact pursued. Plaintiffs' counsel believe that a 50% discount rate is fair, given the circumstances of many dismissals and prospects for successful appeal.

⁵Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. See Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁶ \$24,722,000 collected from Exxon,⁷ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000⁸ plus interest⁹ from judgments against Exxon which are not yet collected.¹⁰ The cannery worker matrix share is projected to be 0.5291% of signatories' share of the Alyeska Settlement, and 0.5300% of signatories' other common recoveries.¹¹

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, plaintiffs' counsel will distribute cannery worker's 0.5300% matrix share (roughly \$131,000 less attorneys' fees approved by the Court¹²) of Native/Municipality/Kodiak Island Borough recoveries,¹³ and unclaimed money, if any, remaining from their \$1,053,000 allocation from the Alyeska Settlement.

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect cannery workers to be allocated roughly \$305,000 from the Phase IIA judgment and prejudgment interest, and \$25,271,000 from signatories' share of the punitive damages judgment, as (and if) they are collected,¹⁴ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which cannery workers also will share.¹⁵

C. THE FINAL DISTRIBUTION

Cannery workers' \$1,053,000 allocation from the Alyeska Settlement exceeded their projected matrix share of \$462,000 (0.5291%). Also, plaintiffs' counsel estimate that roughly 4,500 cannery workers were paid \$11,400,000 from the Exxon claims program and TAPL Fund,¹⁶ which exceeds all cannery workers' 0.5300% matrix share of \$1,066,000 from these recoveries. In the Final Distribution to be conducted once all of signatories' recoveries are collected, distributions to cannery workers will be adjusted to account for these "prepayments." See Allocation Plan 38-39. As a result, plaintiffs' counsel expect the allocation to the Cannery Worker Claim Category in the Final Distribution to be reduced. See *infra*.

D. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, cannery workers' total allocation from all recoveries will be roughly \$27,536,000 (less attorneys' fees and expenses), which includes \$131,000 from Native/Municipality/Kodiak Island Borough recoveries, \$462,000 from the Alyeska Settlement, \$305,000 from the uncollected Phase IIA judgment and prejudgment

⁶Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁷This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. See Allocation Plan Table 7.

⁸This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

⁹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁰Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹¹The cannery worker matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. See Allocation Plan 24 n.31. The matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. See Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id*.

¹³Allocations to the Cannery Worker Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order").

¹⁴A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹⁵It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹⁶Based on data provided by the Exxon defendants, plaintiffs' counsel estimate that \$11,177,000 was paid to cannery workers from the Exxon Claims Program. Plaintiffs' counsel estimate that roughly \$223,000 was paid to cannery workers by the TAPL Fund. At this time, plaintiffs' counsel lack complete data as to which specific claims were paid or how much was paid to them.

interest, \$25,271,000 from the uncollected punitive damages judgment, and \$1,062,000 from Exxon claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and cannery workers to evaluate this distribution plan under the assumption that cannery workers ultimately will be allocated \$27,536,000 plus interest.

II. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for cannery workers,¹⁷ plaintiffs' counsel will conduct a Supplemental Claims Program with three goals. The Supplemental Claims Program and future distributions will be administered by a Court-appointed Administrator, subject to oversight by the Court. *See* Exxon QSF Order.

First, all cannery worker claimants will be required to identify themselves and submit a claim before a specified cut-off date.¹⁸ Plaintiffs' counsel will automatically register a claim for those who filed cannery worker claims in the Alyeska Claims Program, but will still require any such claimant to supplement his or her Alyeska claim and submit a signed, verified supplemental claim form, unless otherwise provided by counsel for the claimant.

Second, plaintiffs' counsel will determine for each valid claim a percentage share of allocations to the Cannery Worker Claim Category (Final Percent Share).¹⁹ All claims will be reviewed and adjusted under the auspices of plaintiffs' Allocation Committee, under guidelines set forth in this distribution plan, subject to judicial oversight. Final Percent Shares will be determined in exactly the same manner for class and direct action claimants, in a central claims office. For each claimant, plaintiffs' counsel will make an initial determination of a Final Percent Share, provide the claimant notice of the initial determination and an explanation of the methodology and data underlying the initial determination, and give the claimant an opportunity to comment and seek reconsideration. After reconsideration if necessary, Final Percent Shares will be submitted to the Court for approval.²⁰

Third, plaintiffs' counsel will distribute to cannery workers their \$131,000 share of Native/Municipality/Kodiak Island Borough recoveries, plus any "unclaimed" money (*i.e.*, money reserved for absent class members for which no claim was made) remaining from their \$1,053,000 allocation from the Alyeska Settlement. Plaintiffs' counsel would, if feasible, make partial distributions in the Supplemental Claims Program based on preliminary estimates of Final Percent Shares, rather than make every claimant await resolution of reconsiderations of or objections to determinations of Final Percent Shares.

As provided in the Allocation Plan (10-11), Final Percent Shares also will be used to distribute additional recoveries as they are collected, unless there is a modification to existing Court orders. No distributions will be made unless and until approved by the Court.

III. DETERMINATION OF FINAL PERCENT SHARES

Plaintiffs' counsel propose to divide cannery worker allocations 59.1% to Chignik and Kodiak workers, 32.2% to Cook Inlet workers, and 8.7% to Prince William Sound (PWS) workers. These percentages are based on 1989 earnings lost as a result of the oil spill by cannery workers in each area.²¹ From the projected total cannery worker allocation of \$27,536,000, \$16,274,000 would go to Chignik/Kodiak workers, \$8,867,000 to Cook Inlet workers, and \$2,396,000 to PWS workers. These amounts include attorneys' fees and litigation expenses, but not postjudgment interest.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not yet approved.

¹⁸Late claims will not be accepted after the published cut-off date. When filing a claim, each claimant must expressly authorize the Administrator to access and rely upon data from the State of Alaska necessary to calculate the claim. To this end, claim forms will contain a release, which each claimant must sign, allowing the Administrator to obtain records from agencies of the State of Alaska including the Commercial Fisheries Entry Commission (CFEC) and Alaska Department of Fish & Game (ADF&G). Claimants also must expressly authorize the Administrator to obtain information containing the claimant's Social Security number and taxpayer identification number, and permit the use of this information for all purposes reasonably necessary to process the claimant's claim. All liens, levies or assignments asserted against a claimant must be served directly upon the Administrator.

¹⁹In this distribution plan, the term "Final Percent Share" is defined differently than in Allocation Plan, in which the term denoted a plaintiffs' percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰If, after reconsideration, a claimant still disagrees with the determination of his or her Final Percent Share, the claimant could object to the Court. All disputes relating to the interpretation or meaning of this distribution plan (and any modification of this distribution plan which the Court might approve), determinations of claims, or payments made under this distribution plan, will be subject to the exclusive jurisdiction of the United States District Court for the District of Alaska. In the event any such dispute arose, claimants would be submitting to personal jurisdiction in the United States District Court for the District of Alaska for all matters related to this distribution plan or payments made under this distribution plan.

²¹Identical percentages were used for cannery workers' allocation from the Alyeska Settlement. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 16-17 (Oct. 1, 1993) ("Alyeska Distribution Plan"). To derive these percentages, the Allocation Committee considered expert studies, TAPL Fund reports, claims data submitted in the Alyeska Settlement, employment data from the State of Alaska and other information. The lost earnings estimates formed the basis for the Cannery Worker Claim Category Matrix Share. *See* Allocation Plan 5-6.

Plaintiffs' counsel have concluded that the fairest manner to distribute each area's allocation is on a *per capita* basis, so that cannery workers in each area all receive the same amount. Cannery workers endorse this *per capita* approach. It was used in the Alyeska Claims Program. The administrative expense and burden of an alternative distribution method requiring evaluation of individual losses would be prohibitive, because plaintiffs' counsel estimate that there are potentially 8,000 cannery worker claims.

A. AREA FUNDS

Allocations to each of the three areas Chignik/Kodiak, Cook Inlet and PWS would be administered in separate "area funds." To qualify for an area fund, a claimant must establish that he or she either: (1) was employed by a cannery or seafood processor in the area in 1989 on or after the oil spill,²² or (2) was "displaced" from such employment as a result of the oil spill.²³ Claimants who qualify for two or more area funds will be paid only from the fund with the highest *per capita* share.

B. FINAL PERCENT SHARES

Each cannery worker's final percent share would equal the percent share of the highest-paying area fund for which he or she qualifies -- *i.e.*, 59.1% for Chignik/Kodiak, 32.2% for Cook Inlet and 8.7% for PWS fund -- divided by the number of cannery workers who qualify for the area fund. The precise number of cannery workers who qualify for each area fund will not be known until after all claims are reviewed in the Supplemental Claims Program.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Most of the 4,500 cannery workers paid by Exxon Claims ("Exxon payees") received what should prove to be a large portion of their final percent shares of total cannery worker allocations. Assuming a total cannery worker allocation of \$27,536,000 and 8,000 claimants, the average allotment per claimant would be \$3,470. As shown on the attached Table 1, plaintiffs' counsel estimate that the 4,500 Exxon payees received roughly \$2,510 apiece on average²⁴ -- more than 70% of the projected average allotment of \$3,470. In contrast, cannery workers who received nothing from Exxon Claims ("Exxon non-payees") were paid only \$98,000 by the TAPL Fund -- less than 1% of the amount received by Exxon payees.

To begin closing this gap, the Court-approved Alyeska Distribution Plan (pp. 16, 17) allotted Exxon non-payees larger shares than Exxon payees.²⁵ As shown on the attached Table 1, this achieved only slight progress towards parity. The 4,500 Exxon payees -- who comprise 56.3% of the potential 8,000 claimants -- have received 92.7% of recoveries to date from Exxon Claims, the TAPL Fund and the Alyeska Settlement.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

Plaintiffs' counsel would continue closing the gap between Exxon payees and non-payees in the Supplemental Claims Program, by distributing the \$131,000 (less attorneys' fees) cannery worker allocation from Native/Municipality/Kodiak Island Borough recoveries only to Exxon non-payees. Specifically, plaintiffs' counsel propose to divide the \$131,000 allocation \$77,400 (59.1%) to the Chignik/Kodiak area fund, \$42,200 (32.2%) to the Cook Inlet area fund and \$11,400 (8.7%) to the PWS area fund, and distribute each of these amounts equally among Exxon non-payees who qualify for the respective area funds.

B. THE FINAL DISTRIBUTION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from previous recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

C. FUTURE INTERIM DISTRIBUTIONS

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including cannery workers, would be adjusted to

²²To establish employment, a claimant must submit corroborating documents such as W-2 forms, income tax returns, or employer affidavits.

²³To qualify as displaced, a claimant must establish that he or she either: (a) had an offer of employment for 1989 which was revoked (evidenced by letters or affidavits from employers or union officials); or (b) was employed by a cannery in the area in two of three seasons 1987, 1988 and 1990 (evidenced by documents such as W-2 forms, income tax returns or employer affidavits). Displaced claimants also must submit verified statements detailing how the oil spill prevented them from working in the area in 1989, and establishing that they were ready, willing and able to work.

²⁴The 4,500 Exxon payees collectively received roughly \$11,177,000 from Exxon Claims and \$125,000 from the TAPL Fund, for a total of \$11,302,000.

²⁵Cook Inlet claimants were allotted \$155 if payment was received from Exxon Claims, and \$355 if not. Chignik/Kodiak claimants were allotted \$39 if payment was received, and \$239 if not. PWS claimants were allotted \$24 if payment was received, and \$224 if not.

reflect the extent to which they have already been compensated.²⁶ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date.²⁷ Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

Table 1
DISPARITY IN PREVIOUS COMPENSATION TO CANNERY WORKERS

Recovery	Gross Amount(1)	Workers Paid By Exxon(2) 4,500	Workers Not Paid By Exxon Claims 3,500
DISTRIBUTED			
Exxon Claims	\$11,177,000	\$11,177,000	\$0
TAPL Fund	\$223,000	\$125,000	\$98,000
Subtotal	\$11,400,000	\$11,302,000	\$98,000
ALYESKA SETTLEMENT (3)	\$1,053,000	\$243,000	\$810,000
RECOVERIES TO DATE	\$12,453,000	\$11,545,000 (92.7%)	\$908,000 (7.3%)
Native/Muni/KIB(4)	\$131,000		\$131,000
Total	\$13,637,000	\$11,788,001	\$1,849,000
TOTAL AFTER SUPPLEMENTAL CLAIMS PROGRAM	\$25,037,000	\$23,090,001 (92.2%)	\$1,947,000 (7.8%)

(1) Gross amounts include attorneys' fees.

(2) Based on data from Exxon and Alyeska claims programs, there are potentially 8,000 cannery worker claimants, of which 4,500 (56.3%) received Exxon Claims payments.

(3) Estimate based on terms of Alyeska Distribution Plan and projected Alyeska cannery worker claims. Evaluation of Alyeska cannery worker claims is not yet complete.

(4) Proposed.

²⁶This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

²⁷Plaintiffs' counsel estimate that only the punitive damages judgment is large enough to allow parity to be achieved between Exxon payees and Exxon non-payees. Thus, if there are additional interim distributions before the Final Distribution, only Exxon non-payees are likely to be paid. Not until the Final distribution, if at all, will signatories' recoveries become large enough for further distributions to be made to Exxon payees.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO THE
MUNICIPALITY CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *Exxon Valdez* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Municipality Claim Category, which includes claims by eleven municipalities that have filed direct action lawsuits in this litigation: Kodiak Island Borough ("KIB"), Cordova, Seward, Homer, Kodiak, Whittier, Chignik, Larsen Bay, Ouzinkie, Port Lions and Old Harbor. The eleven municipalities ("municipality claimants") have agreed upon the terms of the distribution plan described herein. Plaintiffs' counsel³ ask the Court to approve this distribution plan as fair, adequate and reasonable.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Court-approved Allocation Plan, municipality claimants share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁵ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁶ \$24,722,000 collected from Exxon,⁷ to be

¹ Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *See also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

² Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" recognized in the Allocation Plan were: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31 and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damage recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³ "Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴ Because the Allocation Plan fixed the percentage allocation to the Municipality Category, no plaintiff except Municipality claimants has any interest in how Municipality allocations are distributed. Plaintiffs' counsel will not ask the Court to notice Municipality claimants because all those eleven municipalities who would have standing to object have agreed to the plan.

⁵ Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

⁶ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁷ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was (continued...)

distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁸ plus interest,⁹ from judgments against Exxon which have not yet been collected.¹⁰ The municipality matrix share is projected to be 2.18% of signatories' recoveries.¹¹

A. PROJECTED ALLOCATIONS FROM NATIVE/MUNICIPALITY/KODIAK ISLAND BOROUGH AND UNCOLLECTED RECOVERIES

Plaintiffs' counsel expect the Municipality Claim Category to be allocated roughly \$539,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,254,000 from the uncollected Phase IIA judgment and prejudgment interest, and \$103,946,000 from the punitive damages judgment.¹² From those amounts, which do not include post-judgment interest,¹³ would be deducted attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹⁴

B. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, municipality claimants will be allocated their matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous recoveries by municipalities from individual settlements and signatories' common recoveries. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to the municipalities. *See infra*.

C. SUMMARY

If signatories succeed in collecting the projected \$4,825,716,000 in additional recoveries, municipality claimants' will be allocated roughly \$112,008,000 (less attorneys' fees and expenses), which includes \$539,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,903,000 from the Alyeska Settlement, \$1,254,000 from the uncollected Phase IIA judgment and prejudgment interest, \$103,946,000 from the uncollected punitive damages judgment, and \$4,366,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and municipality claimants to evaluate this distribution plan under the assumption that municipality claimants ultimately will be allocated \$112,008,000 plus interest.

II. FINAL PERCENT SHARES

Allocations to the Municipality Claim Category will be distributed among the eleven participating municipalities using "Final Percent Shares," which are the subject of an agreement among the municipalities after consideration of their respective economic damages.¹⁵ The municipalities agreed to divide 95% of any award they might receive on the basis of their best estimate of their respective

⁷ (...continued)

collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁸ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

⁹ Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁰ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹¹ The projected municipality claimant matrix share of 2.18 % could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claims categories. *See* Allocation Plan 24 n.31.

¹² These and other allocations to the Municipality Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund and Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order"). A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹³ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹⁴ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁵ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

actual economic damages, and 5 % on a per municipality basis irrespective of actual damages or population of the municipality. The final percent shares for the eleven municipalities are as follows:

Municipality	Final Percent Share
KIB	24.02
Cordova	21.054
Seward	14.61
Homer	11.783
Kodiak	10.604
Whittier	8.104
Chignik	2.671
Larsen Bay	2.00
Ouzinkie	1.849
Port Lions	1.845
Old Harbor	1.46
Total	100

III. DISTRIBUTIONS IN THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the Municipality Claim Category,¹⁶ plaintiffs' counsel will distribute the \$539,000 municipality allocation from Native/Municipality/Kodiak Island Borough recoveries pursuant to an agreement by which each municipality would receive the following amounts (less attorneys' fees).

Municipality	Supplemental Claims Share
KIB	-0-
Cordova	\$61,440
Seward	\$205,575
Homer	\$118,440
Kodiak	\$24,500
Whittier	\$115,105
Chignik	-0-
Larsen Bay	-0-
Ouzinkie	\$9,840
Port Lions	-0-
Old Harbor	\$4,100
Total	\$539,000

The municipalities agreed on these shares in an effort to conform the combination of Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries more closely to Final Percent Shares.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries.¹⁷ See Allocation Plan 38-39. Final distributions to the municipalities will be adjusted by the difference between their allotments from these recoveries based on their Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

¹⁶Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁷ The municipalities recognize that complete information is not yet available regarding prior payments to them from all sources. Nonetheless, to get closure on the issue of prior payments *inter se*, and as part of their overall agreement, the municipalities have collectively agreed to use the following amounts as the sum of payments received from Exxon, Alyeska settlements, TAPLF awards and all other sources excluding Native/Municipality/Kodiak Island Borough recoveries, as setoffs in any final distribution: Kodiak Island Borough, \$5,301,553; Cordova, \$1,573,120; Seward, \$544,551; Homer, \$836,423; Kodiak, \$1,460,907; Whittier, \$1,323,764; Chignik, \$488,495; Larsen Bay, \$472,618; Ouzinkie, \$512,819; Port Lions, \$415,707; Old Harbor, \$315,403.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types -- including municipalities -- would be adjusted to reflect the extent to which they have already been compensated.¹⁸ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

The foregoing plan is accepted by the municipalities designated. Signatures for each municipality may be made on separate copies of these pages, may be in facsimile form and shall be deemed for all purposes the equivalent of a signature on the original.

City of Homer

By: /s/ _____

Its _____

City of Cordova

By: /s/ _____

Its _____

City of Whittier

By: /s/ _____

Its _____

City of Seward

By: /s/ _____

Its _____

City of Kodiak

By: /s/ _____

Its _____

City of Chignik

By: /s/ _____

Its _____

City of Old Harbor

By: /s/ _____

Its _____

City of Port Lions

By: /s/ _____

Its _____

City of Ouzinkie

By: /s/ _____

Its _____

City of Larsen Bay

By: /s/ _____

Its _____

Kodiak Island Borough

By: /s/ _____

Its _____

¹⁸Specifically, adjustments would be made in the following manner. For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the amount available for the interim distribution (the "Interim Recovery")); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE NATIVE CORPORATION CLAIM CATEGORY
(SELDOVIA NATIVE ASSOCIATION, INC.)

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The Exxon Valdez Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. As provided in the Court-approved Allocation Plan (p.26), all allocations to the Native Corporation Claim Category will be distributed to Seldovia Native Association, Inc. ("Seldovia"). In this document, plaintiffs' counsel³ propose a methodology for determining allocations to Seldovia from future recoveries, and estimate expected allocations. Plaintiffs' counsel ask the Court to approve the proposed methodology as fair, adequate and reasonable.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As set forth in the Court-approved Allocation Plan, Seldovia shares in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁴ \$87,311,000 from the Alyeska Settlement,

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiied" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiied" fishery claim categories.

⁴Plaintiffs' counsel estimate that signatory plaintiffs recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

most of which was distributed in the Alyeska Claims Program;⁵ \$24,722,000 collected from Exxon,⁶ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁷ plus interest,⁸ from judgments against Exxon which have not yet been collected.⁹ Seldovia's projected matrix share of signatories' recoveries is 0.6489% of the Alyeska Settlement and 0.65% of signatories' other recoveries.¹⁰

A. THE SUPPLEMENTAL CLAIMS PROGRAM

Upon approval by the court of a distribution plan for Seldovia, plaintiffs' counsel will allocate to Seldovia roughly \$161,000 from Native/Municipality/Kodiak Island Borough recoveries, less attorneys' fees approved by the Court.¹¹

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect Seldovia fund to be allocated roughly \$374,000 from the Phase IIA judgment and prejudgment interest, and \$30,993,000 from signatories' share of the punitive damages judgment, as they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which Seldovia also will share.¹²

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all of signatories' recoveries are collected, Seldovia will be allocated its matrix share of signatories' aggregate Exxon Claims Program and TAPL Fund recoveries, less any payments from the Exxon Claims Program and TAPL Fund to Seldovia. Also in the Final Distribution, because Seldovia's allocation of \$1,176,000 from the Alyeska Settlement exceeded its matrix share (roughly \$567,000), the difference (projected at \$609,000) will be deducted from Seldovia's final distribution.

D. SUMMARY

If signatory plaintiffs succeed in collecting the projected \$4,825,716,000 in additional recoveries, Seldovia's allocation from all recoveries will be roughly \$33,770,000 (less attorneys' fees and expenses), which includes \$161,000 from Native/Municipality/Kodiak Island Borough recoveries, \$567,000 from the Alyeska Settlement, \$374,000 from the uncollected Phase IIA judgment and prejudgment interest, \$30,993,000 from the uncollected punitive damages judgment, and \$1,302,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatory plaintiffs ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court to expect that Seldovia ultimately will be allocated \$33,770,000 plus interest.

II. ADJUSTMENTS FOR PREVIOUS COMPENSATION

As described *supra*, once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Seldovia's final allocation will be adjusted by the

⁵ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁶ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁷ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

⁸ Post-judgment interest accrues at the rate of 5.9% *per annum*.

⁹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁰ Seldovia's projected matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹¹ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹² It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

difference between its matrix share of these recoveries and what it actually received. The object will be to apply matrix shares, which are the best measure of a fair and equitable allocation among claim categories, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to Seldovia and other claimants will be adjusted to reflect previous payments.¹³ Claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date would receive nothing. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries. Under this methodology, Plaintiffs' counsel do not expect Seldovia to be allotted any additional allocations until the Final Distribution, because the \$1,337,000 already allocated to it from the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries exceeds its total matrix share (roughly \$1,101,000) of recoveries from the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, and uncollected Phase IIA judgment and prejudgment interest.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

¹³This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category -- including Seldovia as the sole claimant in the Native Corporation Claim Category -- plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery) (Seldovia's gross claim value would equal the Native corporation matrix share times signatories' recoveries to date); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE AREA BUSINESS CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories.

This distribution plan proposes a distribution method for allocations to the Area Business Claim Category. Plaintiffs' counsel³ ask the Court to approve as fair, adequate and reasonable: eligibility criteria for area business claimants; a list of 162 area businesses which satisfy the eligibility criteria and therefore may participate as claimants in the Area Business Claim Category ("Participating Businesses"); a methodology for determining Participating Businesses' shares of allocations to the Area Business Claim Category; and Participating Businesses' "Final Percent Shares" of allocations to the Area Business Claim Category. Plaintiffs' counsel propose that any putative area business claimant not listed among Participating Businesses be required to file an objection to this distribution plan in accordance with the terms of the Notice, or else be forever barred from participating.

I. PARTICIPATING BUSINESSES
A. ELIGIBILITY CRITERIA

Consistent with the terms of the Court-approved Allocation Plan, a claimant is eligible for the Area Business Claim Category only if the claimant: (1) was engaged in the business of providing goods, equipment or services at the time of the spill;⁴ (2) filed a timely lawsuit on the claimant's own behalf as a direct action plaintiff or putative class representative;⁵ (3) is a signatory to plaintiffs' joint

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁴Plaintiffs' counsel propose that, to satisfy this condition, a business must either have: been operating at the time of the spill; been in the process of starting up operations at the time of the spill, and had its startup delayed by the spill; or taken substantial steps to begin operation at the time of the spill, but been prevented from ever coming into operation by the spill.

⁵*See* Allocation Plan 13. *See also* Order Certifying Commercial Fishing Class, Native Class and Landowner Class (Mar. 14, 1994) ("Class Certification Order"). The Class Certification Order, *inter alia*, decertified the area business class certified by the state court, and required putative class members to file lawsuits on their own behalf within 180 days of March 14, 1994. Area businesses that failed to comply with the filing deadlines set in the Class Certification Order do not share in recoveries governed by the Court-approved Allocation Plan. The Court made this clear in Order 317 (pp. 14-15), in which the Court dismissed objections to the Allocation Plan filed on behalf of two purported processors which failed to file lawsuits, and held "In its

(continued...)

prosecution agreement;⁶ and (4) did not settle and release its punitive damage claims against the Exxon defendants. Claimants satisfying these four criteria will be referred to as "putative area business claimants." In addition, an area business claim must: (5) not qualify for the Aquaculture Association, Commercial Fishing, Native Corporation, Processor or Tender Claim Categories; and (6) be for economic losses proximately caused by the *EXXON VALDEZ* oil spill.⁷

After extensive review and arms-length negotiation with area business plaintiffs and their counsel, plaintiffs' counsel have concluded that the 162 Participating Businesses listed on Tables 1 and 2 attached satisfy these criteria. Plaintiffs' counsel have concluded that no other claims can qualify for the Area Business Claim Category, and therefore propose to allow only Participating Businesses to share in allocations to the Area Business Claim Category.⁸

B. FISHING-RELATED AND NON-FISHING BUSINESSES

Plaintiffs' counsel would subdivide Participating Businesses into two categories: "fishing-related" and "non-fishing." *See infra*. Fishing-related Participating Businesses, listed on Table 1, were directly and substantially involved in the chain of harvesting, preparation and distribution to market of seafood -- e.g., suppliers of commercial fishing equipment, repairers of commercial fishing vessels and equipment, and seafood broker/buyers. All other Participating Businesses fall into the non-fishing category, and are listed on Table 2.

II. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Allocation Plan, Participating Businesses share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁹ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;¹⁰ \$24,722,000 collected from Exxon,¹¹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹² plus interest,¹³ from judgments against Exxon which are not yet collected. The projected area business matrix share is 0.2795% of the signatories' share of the Alyeska Settlement and 0.28% of signatories' other recoveries.¹⁴

A. NATIVE/MUNICIPALITY/KODIAK ISLAND BOROUGH AND UNCOLLECTED RECOVERIES

Plaintiffs' counsel expect the Area Business Claim Category to be allocated roughly \$69,000 from Native/Municipality/Kodiak Island Borough recoveries, \$161,000 from the uncollected Phase IIA judgment and prejudgment interest, and \$13,351,000 from the

(...continued)

⁵Order certifying the commercial fishing class, native class and landowner class, the court set September 7, 1994, as the last date upon which business entities could file suit for damages resulting from the oil spill."

⁶The Court-approved Allocation Plan governs: "(1) all punitive damage recoveries; and (2) all compensatory damage recoveries, except those by the United States of America, the State of Alaska, Daniel DeNardo, Donald Ferguson, Tom Lakosh, Rainbow King Lodge, the non-signatory Native corporations and the 'Seattle seven' seafood processors." *Id.* 27. The Allocation Plan allocated all of these recoveries to signatories except the 4.277% of punitive damage recoveries specifically allocated to the six non-signatory Native Corporations. *See* Order 317, p.49 n.71. Thus, only signatories are eligible to make claims against the Area Business Claim Category.

⁷The Allocation Plan (p.13) limited recognized area business damages to profits lost from 1989 through 1995 as a result of the spill, and realized losses of equity and assets by owners of businesses driven out of operation by the spill.

⁸Only putative area business claimants have standing to object to this distribution plan. By the terms of the Court-approved Allocation Plan (see p.12), any area business that failed to file a timely lawsuit in compliance with the Class Certification Order is not entitled to share in recoveries governed by the Allocation Plan or this distribution plan. Because the Allocation Plan fixed the percentage allocation to the Area Business Claim Category, only putative area business claimants have any financial interest how allocations to the Area Business Claim Category are distributed.

⁹Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program, including settlements which plaintiffs reached individually with the Exxon defendants, and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

¹⁰Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

¹¹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹²This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹³Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁴The area business matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

uncollected punitive damages judgment,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹⁶ These amounts do not include post-judgment interest, in which the Area Business Claim Category also will share.¹⁷

B. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries are collected, the Area Business Claim Category will be allocated its matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous payments to Participating Businesses from individual settlements and signatories' common recoveries. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual Participating Businesses. *See infra*.

C. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the Area Business Claim Category will be allocated roughly \$14,547,000 (less attorneys' fees and expenses),¹⁸ which includes \$69,000 from Native/Municipality/Kodiak Island Borough recoveries, \$244,000 from the Alyeska Settlement, \$161,000 from the uncollected Phase IIA judgment and prejudgment interest, \$13,351,000 from the uncollected punitive damages judgment, and \$561,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Participating Businesses to evaluate this distribution plan under the assumption that the Area Business Claim Category ultimately will be allocated \$14,547,000 plus interest.

III. FINAL PERCENT SHARES

Allocations to the Area Business Claim Category will be distributed among Participating Businesses using Final Percent Shares, which are Participating Businesses' percent shares of allocations to the Area Business Claim Category.¹⁹ Final Percent Shares, listed on Table 3 attached, were derived in the following manner.

Plaintiffs' Allocation Committee determined each Participating Business' "matrix damages," after review of damage reports and arm's-length negotiations with its counsel. "Matrix damages" include lost profits from 1989 through 1995 caused by the spill, and realized losses of equity and assets by owners of businesses driven out of operation by the spill.²⁰ *See* Allocation Plan 25. Losses of non-fishing Participating Businesses were discounted by 50% relative to those of fishing-related Participating Businesses, to reflect greater litigation risk.²¹ Each Participating Business' Final Percent Share equals its proportional share of all Participating Businesses' total matrix damages.²²

¹⁵ A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object. Conversely, plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁶ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁷ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹⁸ This amount and other allocations to the Area Business Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995).

¹⁹ In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²⁰ Some Participating Businesses partially settled compensatory damage claims for the 1989 season. Their 1989 losses are not included in matrix damages.

²¹ This Court dismissed on *Robins Dry Dock* grounds claims of all area businesses that did not suffer physical contact from oil. Order No. 189, Motion For Summary Judgment On Claims By Area Businesses And Municipalities On Robins Dry Dock Grounds (Mar. 23, 1994). Based on this ruling, to determine matrix shares in the Allocation Plan, area business damages were discounted by 85% relative to damages of plaintiffs which survived summary judgment (such as commercial fishermen in "oiled" areas). *See* Allocation Plan 5-6, 13. After consultation with counsel for area business claimants, the Allocation Committee concluded that a fair distribution between fishing-related and non-fishing businesses should reflect fishing-related businesses' better prospects for successful appeal of Order 189. Accordingly, for purposes of distribution among area businesses, damages of non-fishing businesses are discounted by 50% relative to damages of fishing-related businesses.

²² Area business claims of at least one area business, Port William Wilderness Lodge, survived the Exxon defendants' motion for summary judgment. Accordingly, the Allocation Committee concluded that it is fairer to discount for litigation risk losses of Port William Wilderness Lodge by 50% relative to non-area business claimants, rather than 85% like other area businesses whose area business claims did not survive summary judgment.

(continued...)

IV. DISTRIBUTIONS IN THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the Area Business Claim Category, plaintiffs' counsel will distribute Participating Businesses' \$69,000 allocation from Native/Municipality/Kodiak Island Borough recoveries using Final Percent Shares. Participating Businesses' shares of this amount (which include attorneys' fees) are listed on Table 3.

V. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including Participating Businesses, would be adjusted to reflect the extent to which they have already been compensated.²³ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

(...continued)

²²Plaintiffs' counsel are unaware of any other Participating Business whose lost profit claims survived summary judgment. If, however, there are such businesses, their matrix damages will be increased based upon a 50% rather than 85% discount rate.

²³This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
FISHING-RELATED AREA BUSINESSES

Amussen, G. & J., dba Alaska Bait Co.	Kopecky, J.
Baker, L., dba Kodiak Supreme	Kroll, H., dba New Wave Seafoods, Inc.
Beedle, K., dba Evans Pressure Wash	Lian, E., dba Area E Fisheries, Inc.
Blue Star Aquaculture	Ljubich & Plancich, dba Dockton Bait Co.
Bucinsky & Collins, dba Arctic Seafood Co.	Lobo, E. & D., dba Marine Matrix N.W., Inc.
Budd, G., dba Budd Enterprises	Maw R.
Can-Alaska Trading Co.	McCubbins, L., dba Scurvey Creek Fishery Man.
Carlson, E., dba Carlson Fisheries	McLenaghan, M., dba Comm. Pac. Sales & Ser., Inc.
Clarke, G., dba Cordova Networks	McSwain, M.
Cordova Air Service	Monnett & Rotterman, dba Enhydra Research
Damm, K., dba Marine Welding	Morris, B., dba Good Gear
DelValle, G.	Mukluk, Inc.
Dyer, L., dba Greatland Refrigeration	Neligh, G., dba Stratoplex Polymer Eng. Co.
Edelman, D., dba Oceanside Enter.	Northland Fresh
Fagg, F., dba Fagg's Marine Refrig.	Ocean Premium Mkting
Garcia, C. & D.	Pan-Ak. Int'l Ser., Inc.
Geoffroy, J., dba Iceberg Seafood Co.	Pemberton, B.
Gildnes, O., dba Viking Net Supply	Perrine & Rushton, dba R & P Marine
Hagmuller, W., dba Eyak Trucking	Plumb, R.
Home Harbor Seafoods	Posciri, M., dba B & M Trucking
Hood, J., dba Kodiak Service Co.	Redden Mar. Supply
Hutchens, F.	Reyes, R.
James, T. & C., dba C-Store	Samson Mar. Frght. Co.
Johnson, D.	Satathite, J.
Johnson, W., dba Global Fish	Swoboda, T.
Jovanovich Supply Co.	Tisdall, D.
Knauf, J., dba Northwest Bait Supply, Inc.	Tokyo Chokuhan
Kodiak Transfer Co.	Van Devere, L. Dyer
Kodiak Western Charters	Webber, W., dba Webber Mar. & Man.
Kodiak & Western Trawler Group	

Table 2
NON-FISHING AREA BUSINESSES

Adkins, F.	Clemens, P.
Alaska Safari Inc. - Valhalla Lodge	Conway, P., dba Alaska Eagle Lodge
Alaska Sojourns, Inc.	Coray, D., dba Silver Sal. Cr. Lodge
Andersen, M., dba Andersen Elec.	Cordova Electric Coop
Ashford, J. & F., dba Kodiak Tours	Criner, G., dba Stevenson Tr. & Const.
Ashford, J. & F., dba Kodiak Ferry Term.	Daus, R., dba C&R Charters
Ashford, J. & F. dba Barney's Liquors	Dittrick, R., dba Wilder. Birding Adven.
Ausman, D., dba Gold Coast Floating Lodge	Elias, T., dba Hunter Fisher Tax.
Bell, J.	Farmer, R., dba Deshka R. Lodge
Berg, R., dba Rod N Real Charters	Ferguson, D., dba Copper R. Exp.
Berg, T., dba Ak. Fishing Adventures	Flynn, E., dba Eve's Hair Design
Boyd, G., dba Ram River Out.	Foster, W., dba Perl Island Lodge
Brown, L., dba Airport Depot Diner	Gabbert, P., dba Gabbert's Fish Camp
Brown, L., dba Laura's Liquor Shoppe	Gale, M.
Bruns, D., dba Sunshine Daycare	Gayle, S. & P., dba Chitina Cache Store
Bundy, R., dba Island Plumbing & Heating	Godfrey Chiropractic
CJM/Unit Company J.V.	Goll, C., dba Rainbow R. Lodge

Grove, S., dba Klutina R. Campground
Gunnerson, E., dba Gunnerson Cons. Co.
Hammersmith, M. & P., dba Forest Hts Subd.
Hammersmith, M. & P., dba M. Eccles Apart.
Holmes, R. & S., dba Holmes King Sal. Charters
Holmquist, R., dba Be A Dreamer Charters
Hunt, D., dba D&L Taxi
Israel, M., dba Ak Sportfishing Lodge
J & P Enterprises
Jackson, D., dba Jackson Mobile Home Park
John, L., dba Great Ak Fish Camp
Johnson Bros. Guide & Out.
Karluk Lodge
Kinney, J.
Ko, C., dba New Korean Travel
Kodiak Electric Ass'n
KWT Wire, Inc.
Kritchen, L., dba Kritchen Fur Co.
Kuder, V. & J., dba The Barn
Latschaw, R., dba Peninsula R. Charters
Lee, A., dba Ak Waterfowl Adventures
Mack, V., dba Upik Fur Products
Mackintosh, M., dba Pioneer Car Wash
Mannarino, C., dba Killer Whale Cafe
Miller, T., dba Copper River Boat Rep.
Morgan, R., dba Kodiak Adventures
Nielson, J.
Noey, S., dba Anglers Wild. Adventures
Norman, M., dba Quest Charters & Tours
Oaksmith, S., dba Clover B. Fishing Lodge
Oldow, R.
Ozmina, R., dba Gail Sea Mar. Charters
Pettit, D., dba Copper Highway Heating
Piekarski, A., dba King Bear Lodge
Pingatore, L., dba Cordova Drug

Pipkin, J., dba J&P Gen. Store
Port William Wilderness Lodge
Powell Est. of R. (Jus' 4-D Halibut Ch.)
Quality Electrical Systems
Rankin, J. & P., dba Flinn's Too
Rankin, J., dba Flinn's Clothing & Sp. Goods
Raymond, L., dba Montague Island Lodge
Ridl, D., dba Inlet Charters
Ronnegard, E. & D., dba Windsinger Cafe
Sackman, K., dba Copper R. Adventures
Samson, G., dba Greg's Sport Fish Guide Ser.
Schultz, R. & O.
Schultz, R. & O., dba Mobile Grid Trailers
Smith, K., dba Drifters Landing
Solmonson, P. & L. dba PWS Kayak Center
Stanton, J., dba Bear Lake Air
Steen, K. & R., dba Steen's Home Furn. & Gifts
Terry, K., dba Ak Blue Ice Gl. Water
The Kodiak Fisherman
Tuhy, M., dba 2 E Fish & Ak Sp. Angling Photo.
Tungate & Cain Beach Gold Mining P'ship
Urata, G.
Walker, T.
Walker, K. & J.
Waltrip, L.
Ward, L., dba Klutina R. Gas & Liquor
Waterfield, H.
Waterfield Eng. Ass's, Inc.
Watkins, W.
Welch, J.
Wheeler Enter., Inc., dba Hoover's Moovers
Williamson, R. & S., dba Gateway Charter
Wilson, K. & J., dba Ak. Wild. Adventures
Zantek, D., dba Alaska Salmon Co.

Table 3
FINAL PERCENT SHARES AND SUPPLEMENTAL CLAIMS PROGRAM DISTRIBUTIONS

	Final Percent Share	Supplemental Claims Program Distribution
Adkins, F.	0.0248%	\$17
Alaska Safari Inc. - Valhalla Lodge	0.2806%	\$194
Alaska Sojourns, Inc.	0.1964%	\$136
Amussen, G. & J., dba Alaska Bait Co.	0.4599%	\$317
Andersen, M., dba Andersen Elec.	0.1386%	\$96
Ashford, J. & F., dba Kodiak Tours	0.1276%	\$88
Ashford, J. & F., dba Kodiak Ferry Term.	0.0933%	\$64
Ashford, J. & F., dba Barney's Liquors	0.1286%	\$89
Ausman, D., dba Gold Coast Floating Lodge	0.0370%	\$26
Baker, L., dba Kodiak Supreme	0.3943%	\$272
Beedle, K., dba Evans Pressure Wash	0.0355%	\$24
Bell, J.	0.0076%	\$5
Berg, R., dba Rod N Real Charters	0.2757%	\$190
Berg, T., dba Ak. Fishing Adventures	1.0636%	\$734
Blue Star Aquaculture	0.8588%	\$593
Boyd, G., dba Ram River Out.	0.0457%	\$32
Brown, L., dba Airport Depot Diner	0.1169%	\$81
Brown, L., dba Laura's Liquor Shoppe	0.0080%	\$6
Bruns, D., dba Sunshine Daycare	0.0504%	\$35
Bucinsky & Collins dba Arctic Seafood Co.	0.1070%	\$74
Budd, G., dba Budd Enterprises	0.3670%	\$253
Bundy, R., dba Island Plumbing & Heating	0.0276%	\$19
Can-Alaska Trading Co.	0.3209%	\$221
Carlson, E., dba Carlson Fisheries	0.9169%	\$633
CJM/Unit Company J.V.	0.8517%	\$588
Clarke, G., dba Cordova Networks	0.1268%	\$87
Clemens, P.	0.1611%	\$111

Conway, P., dba Alaska Eagle Lodge	0.1589%	\$110
Coray, D., dba Silver Sal. Cr. Lodge	0.0171%	\$12
Cordova Air Service	0.5121%	\$353
Cordova Electric Coop	4.2937%	\$2,963
Criner, G., dba Stevenson Tr. & Const.	0.1993%	\$138
Damm, K., dba Marine Welding	1.8465%	\$1,274
Daus, R., dba C&R Charters	0.0823%	\$57
DelValle, G.	0.0377%	\$26
Dittrick, R., dba Wilder. Birding Adven.	0.1540%	\$106
Dyer, L., dba Greatland Refrigeration	1.5281%	\$1,054
Edelman, L., dba Van Devere III	0.0481%	\$33
Elias, D., dba Oceanside Enter.	0.0489%	\$34
Fagg, T., dba Hunter Fisher Tax.	0.7776%	\$537
Farmer, R., dba Deshka R. Lodge	0.8372%	\$578
Ferguson, D., dba Copper R. Exp.	0.0233%	\$16
Flynn, E., dba Eve's Hair Design	0.0254%	\$18
Foster, W., dba Perl Island Lodge	0.4564%	\$315
Gabbert, P., dba Gabbert's Fish Camp	0.0392%	\$27
Gale, M.	0.0183%	\$13
Garcia, C. & D.	0.3056%	\$211
Gayle, S. & P., dba Chitina Cache Store	0.0113%	\$8
Geoffroy, J., dba Iceberg Seafood Co.	0.7396%	\$510
Gildnes, O., dba Viking Net Supply	0.3605%	\$249
Godfrey Chiropractic	0.0791%	\$55
Goll, C., dba Rainbow R. Lodge	0.0762%	\$53
Grove, S., dba Klutina R. Campground	0.0034%	\$2
Gunnerson, E., dba Gunnerson Cons. Co.	0.1078%	\$74
Hagmuller, W., dba Eyak Trucking	0.6056%	\$418
Hammersmith, M. & P., dba Forest Hts Subd.	0.0312%	\$22
Hammersmith, M. & P., dba M. Eccles Apart.	0.0459%	\$32
Holmes, R. & S., dba Holmes King Sal. Charters	0.0241%	\$17

Holmquist, R., dba Be A Dreamer Charters	0.3058%	\$211
Home Harbor Seafoods	0.1859%	\$128
Hood, J., dba Kodiak Service Co.	0.1870%	\$129
Hunt, D., dba D&L Taxi	0.0419%	\$29
Hutchens, F.	0.0725%	\$50
Israel, M., dba Ak Sportfishing Lodge	0.0588%	\$41
J & P Enterprises	3.6087%	\$2,490
Jackson, D., dba Jackson Mobile Home Park	0.1203%	\$83
James, T. & C., dba C-Store	0.1513%	\$104
John, L., dba Great Ak Fish Camp	1.0294%	\$710
Johnson, D.	0.0733%	\$51
Johnson, W., dba Global Fish	0.2045%	\$141
Johnson Bros. Guide & Out.	0.1016%	\$70
Jovanovich Supply Co.	0.2537%	\$175
Karluk Lodge	0.0382%	\$26
Kinney, J.	0.0757%	\$52
Knauf, J., dba Northwest Bait Supply, Inc.	0.3785%	\$261
Ko, C., dba New Korean Travel	0.1210%	\$83
Kodiak & Western Trawler Group	4.3364%	\$2,992
Kodiak Electric Ass'n	0.4532%	\$313
Kodiak Transfer Co.	0.8518%	\$588
Kodiak Western Charters	0.6988%	\$482
Kopecky, J.	0.0636%	\$44
Kritchen, L., dba Kritchen Fur Co.	0.0908%	\$63
Kroll, H., dba New Wave Seafoods, Inc.	0.2681%	\$185
Kuder, V. & J., dba The Barn	0.0444%	\$31
KWT Wire, Inc.	0.6058%	\$418
Latschaw, R., dba Peninsula R. Charters	0.0422%	\$29
Lee, A., dba Ak Waterfowl Adventures	0.0249%	\$17
Lian, E., dba Area E Fisheries, Inc.	3.7157%	\$2,564
Ljubich & Plancich dba Dockton Bait Co.	0.6331%	\$437

Lobo, E. & D., dba Marine Matrix N.W., Inc.	0.1944%	\$134
Mack	0.0645%	\$45
Mackintosh, M., dba Pioneer Car Wash	0.1289%	\$89
Mannarino, C., dba Killer Whale Cafe	0.3191%	\$220
Maw, R.	0.0037%	\$3
McCubbins, L., dba Scurvey Creek Fishery Man.	0.4279%	\$295
McLenaghan, M., dba Comm. Pac. Sales & Ser., Inc.	0.3637%	\$251
McSwain, M.	0.1259%	\$87
Miller, T., dba Copper River Boat Rep.	0.1208%	\$83
Monnett & Rotterman dba Enhydra Research	1.1669%	\$805
Morgan, R., dba Kodiak Adventures	0.0620%	\$43
Morris	0.0533%	\$37
Mukluk, Inc.	0.3042%	\$210
Neligh, G., dba Stratoplex Polymer Eng. Co.	0.1937%	\$134
Nielson	0.0081%	\$6
Noey	0.1113%	\$77
Norman, M., dba Quest Charters & Tours	0.6112%	\$422
Northland Fresh	4.1194%	\$2,842
Oaksmith	0.0370%	\$26
Ocean Premium Mkting	0.9883%	\$682
Oldow, R.	0.0251%	\$17
Ozmina, R., dba Gail Sea Mar. Charters	0.0118%	\$8
Pan-Ak. Int'l Ser., Inc.	3.7248%	\$2,570
Pemberton, B.	0.0214%	\$15
Perrine & Rushton dba R & P Marine	0.2061%	\$142
Pettit, D., dba Copper Highway Heating	0.0465%	\$32
Piekarski, A., dba King Bear Lodge	0.0706%	\$49
Pingatore, L., dba Cordova Drug	0.1053%	\$73
Pipkin, J., dba J&P Gen. Store	0.0474%	\$33
Plumb, R.	0.0611%	\$42
Port William Wilderness Lodge	1.4345%	\$990

Posciri, M., dba B & M trucking	0.1424%	\$98
Powell Est. of R. (Jus' 4-D Halibut Ch.)	0.2210%	\$152
Quality Electrical Systems	0.0452%	\$31
Rankin, J. & P., dba Flinn's Too	0.0387%	\$27
Rankin, J., dba Flinn's Clothing & Sp. Goods	0.4847%	\$334
Raymond, L., dba Montague Island Lodge	0.0391%	\$27
Redden Mar. Supply	10.1619%	\$7,012
Reyes, R	0.0633%	\$44
Ridl, D., dba Inlet Charters	0.0362%	\$25
Ronnegard, E. & D., dba Windsinger Cafe	0.0724%	\$50
Sackman, K., dba Copper R. Adventures	0.1713%	\$118
Samson, G., dba Greg's Sport Fish Guide Ser.	0.5122%	\$353
Samson Mar. Frght. Co.	2.3147%	\$1,597
Satathite, J.	0.0764%	\$53
Schultz, R. & O.	0.0037%	\$3
Schultz, R. & O., dba Mobile Grid Trailers	0.1091%	\$75
Smith, K., dba Drifters Landing	0.1910%	\$132
Solmonson, P. & L., dba PWS Kayak Center	0.0554%	\$38
Stanton, J., dba Bear Lake Air	0.0869%	\$60
Steen, K. & R., dba Steen's Home Furn. & Gifts	0.0749%	\$52
Swoboda, T.	0.0837%	\$58
Terry, K., dba Ak Blue Ice Gl. Water	0.0359%	\$25
The Kodiak Fisherman	0.1848%	\$128
Tisdall, D.,	0.0703%	\$49
Tokyo Chokuhan	24.2279%	\$16,717
Tuhy, M., dba 2 E Fish & Ak Sp. Angling Photo.	0.0643%	\$44
Tungate & Cain Beach Gold Mining P'ship	0.3576%	\$247
Urata, G.	0.0351%	\$24
Van Devere, T.	0.0076%	\$5
Walker, K. & J.	0.0061%	\$4
Walker, L.	0.1803%	\$124

Waltrip, L , dba Klutina R. Gas & Liquor	0.1221%	\$84
Ward, H.	0.0514%	\$35
Waterfield	1.1323%	\$781
Waterfield Eng. Ass's, Inc.,W.	1.5725%	\$1,085
Watkins, W., dba Webber Mar. & Man.	0.0019%	\$1
Webber, J.	1.4238%	\$982
Welch dba Hoover's Moovers	0.1031%	\$71
Wheeler Enter., Inc., R. & S. dba Gateway Charter	0.3960%	\$273
Williamson, K. & J. dba Ak. Wild. Adventures	0.0298%	\$21
Wilson, D., dba Alaska Salmon Co.	0.0713%	\$49
Zantek	0.2292%	\$158

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

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE AQUACULTURE ASSOCIATION CLAIM CATEGORY**

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Aquaculture Association Claim Category, which the Court-approved Allocation Plan (p. 12) limits to claims by Cook Inlet Aquaculture Association (CIAA), Kodiak Regional Aquaculture Association (KRAA) and Prince William Sound Aquaculture Corporation (PWSAC). CIAA, KRAA and PWSAC agree to the terms of this distribution plan. Plaintiffs' counsel³ ask the Court to approve it as fair, adequate and reasonable.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Allocation Plan, CIAA, KRAA and PWSAC share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁵ \$87,311,000 from the

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; *and pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.*, Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴No party except CIAA, KRAA and PWSAC has standing to object to this distribution plan. The Allocation Plan fixed the percentage allocation to the Aquaculture Association Claim Category, and limited claimants to CIAA, KRAA and PWSAC. Therefore, only CIAA, KRAA and PWSAC have any financial interest how allocations to the Aquaculture Association Claim Category are distributed.

⁵Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program, including settlements which Participating Processors reached individually with the Exxon defendants, and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

Alyeska Settlement, most of which was distributed in the Alyeska Claims Program,⁶ \$24,722,000 collected from Exxon,⁷ to be distributed in plaintiffs' Supplemental Claims Program; and a projected \$4,843,716,000,⁸ plus post-judgment interest,⁹ from judgments against Exxon which have not yet been collected.¹⁰ The aquaculture association matrix share is projected to be 1.9067% of the Alyeska Settlement and 1.91% of signatories' other recoveries.¹¹

A. PROJECTED ALLOCATIONS FROM NATIVE/MUNICIPALITY/KODIAK ISLAND BOROUGH AND UNCOLLECTED RECOVERIES

Plaintiffs' counsel expect the Aquaculture Association Claim Category to be allocated roughly \$472,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,099,000 from the uncollected Phase IIA judgment and prejudgment interest, and \$91,072,000 from the punitive damages judgment.¹² From these amounts, which do not include post-judgment interest,¹³ would be deducted attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹⁴

B. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries are collected, the Aquaculture Association Claim Category will be allocated its matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous recoveries by CIAA, KRAA and PWSAC from individual settlements and signatories' common recoveries. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to CIAA, KRAA and PWSAC. *See infra*.

C. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the Aquaculture Association Claim Category will be allocated roughly \$99,233,000 (less attorneys' fees and expenses), which includes \$472,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,665,000 from the Alyeska Settlement, \$1,099,000 from the uncollected Phase IIA judgment and prejudgment interest, \$91,071,000 from the uncollected punitive damages judgment, and \$3,826,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest.

⁶Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to the six non-signatory Native corporations.

⁷This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁸This amount consists of the \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the six non-signatory Native corporations.

⁹Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁰Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹¹The projected aquaculture association matrix share could increase as a result of shortfalls in claims in the personal injury, personal property and subsistence claim categories. *See* Allocation Plan 24 n.31. The matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- *e.g.*, municipalities which did not file direct action lawsuits.

¹²These and other allocations to the Aquaculture Association Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995) ("Exxon QSF Order"). A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object.

¹³It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹⁴Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and CIAA, KRAA and PWSAC to evaluate this distribution plan under the assumption that the Aquaculture Association Claim Category ultimately will be allocated \$99,987,000 plus interest.

II. FINAL PERCENT SHARES

Allocations to the Aquaculture Association Claim Category will be distributed among CIAA, KRAA and PWSAC using "Final Percent Shares," which are the aquaculture associations' percentage shares of allocations to their claim category.¹⁵ Final Percent Shares were derived in the following manner.

Plaintiffs' Allocation Committee, after review of damage reports submitted by the aquaculture associations and arm's-length negotiations with their counsel, determined each aquaculture association's "matrix damages." Aquaculture association matrix damages include out-of-pocket costs of protecting hatcheries from the spill, the value of lost cost recovery harvests during 1989 through 1995 caused by the spill, and lost enhancement taxes during 1989 through 1995 caused by the spill.¹⁶ See Allocation Plan 25. Each aquaculture association's Final Percent Share equals its proportional share of the three aquaculture associations' total matrix damages. The Allocation Committee and the three aquaculture associations have agreed to Final Percent Shares of 6.0488% for CIAA, 2.3319% for KRAA, and 91.6193% for PWSAC.

III. DISTRIBUTIONS IN THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the Aquaculture Association Claim Category,¹⁷ plaintiffs' counsel will distribute the \$472,000 aquaculture association allocation from Native/Municipality/Kodiak Island Borough recoveries using Final Percent Shares. This amount (less attorneys' fees) would be divided roughly \$29,000 to CIAA, \$11,000 to KRAA and \$432,000 to PWSAC. CIAA, KRAA and PWSAC have agreed to these amounts.

IV. ADJUSTMENTS FOR PREVIOUS COMPENSATION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. See Allocation Plan 38-39. Final distributions to CIAA, KRAA and PWSAC will be adjusted by the difference between their allotments from these recoveries based on their Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types -- including CIAA, KRAA and PWSAC -- would be adjusted to reflect the extent to which they have already been compensated.¹⁸ Nothing would be distributed to claimants already paid more than their Final Percent Shares of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

¹⁵In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

¹⁶Lost enhancement tax damages are discounted by 50% relative to out-of-pocket costs and lost harvest revenue, to account for litigation risk. See Allocation Plan 13 n.15.

¹⁷Plaintiffs' counsel will begin the distribution process for a claim category once the claim category's distribution plan receives judicial approval, even if distribution plans for other claim categories are not approved.

¹⁸This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE RECREATIONAL USE CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The Exxon Valdez Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. As provided in the Court-approved Allocation Plan (p.26), allocations to the Recreational Use Claim Category will not be distributed to individual plaintiffs, but will be contributed to a trust fund to be used for purposes of restoration and recreational enhancement ("recreational use trust fund"). Plaintiffs' counsel³ have not yet completed arrangements for a recreational use trust fund, and will submit a proposal to the Court once arrangements are complete. In this document, plaintiffs' counsel propose a methodology for determining allocations to the recreational use trust fund from future recoveries, and estimate expected allocations. Plaintiffs' counsel ask the Court to approve the proposed methodology as fair, adequate and reasonable.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As set forth in the Court-approved Allocation Plan, the recreational use trust fund shares in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁴ \$87,311,000 from

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "unoiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by Exxon and its surrogates the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. *Pro per* non-signatories share in signatories' recoveries on the same terms as similarly-situated signatories. *See, e.g.,* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "unoiled" fishery claim categories.

⁴Plaintiffs' counsel estimate that signatory plaintiffs recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁵ \$24,722,000 collected from Exxon,⁶ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁷ plus interest,⁸ from judgments against Exxon which have not yet been collected.⁹ The recreational use matrix share is 0.008% of signatories' recoveries.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program plaintiffs' counsel will allocate to the recreational use trust fund roughly \$1,900 from Native/Municipality/Kodiak Island Borough recoveries, less attorneys' fees approved by the Court.¹⁰

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect the recreational use trust fund to be allocated roughly \$4,600 from the Phase IIA judgment and prejudgment interest, and \$383,000 from signatories' share of the punitive damages judgment, as they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which the recreational use trust fund also will share.¹¹

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), because recreational use plaintiffs were paid nothing by Exxon Claims or the TAPL Fund, in the Final Distribution to be conducted once all of signatories' recoveries are collected, the recreational use trust fund will be allocated the recreational use matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries. Also in the Final Distribution, because the recreational use allocation of \$155,000 from the Alyeska Settlement exceeded its matrix share (roughly \$7,000), the difference (projected at \$148,000) will be deducted from the allocation to the recreational use trust fund.

D. SUMMARY

If signatory plaintiffs succeed in collecting the projected \$4,825,716,000 in additional recoveries, the recreational use trust fund's allocation from all recoveries will be roughly \$416,000 (less attorneys' fees and expenses), which includes \$2,000 from Native/Municipality/Kodiak Island Borough recoveries, \$7,000 from the Alyeska Settlement, \$4,600 from the uncollected Phase IIA judgment and prejudgment interest, \$381,000 from the uncollected punitive damages judgment, and \$16,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court to expect that the recreational use trust fund ultimately will be allocated \$416,000 plus interest.

II. ADJUSTMENTS FOR PREVIOUS COMPENSATION

As described *supra*, once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. The allocation to the recreational use trust fund will be adjusted by the difference between its matrix share of these recoveries, and what it actually received. The object will be to apply matrix shares, which are the best measure of a fair and equitable allocation among claim categories, to all of signatories' recoveries.

⁵ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁶ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁷ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

⁸ Post-judgment interest accrues at the rate of 5.9% *per annum*.

⁹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁰ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹¹ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including the recreational use trust fund, will be adjusted to reflect previous payments.¹² Claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date would receive nothing, and claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

With this methodology, plaintiffs' counsel do not expect the recreational use trust fund to receive any additional allocations until the Final Distribution. The \$157,000 already allocated to the recreational use trust fund from the Alyeska Settlement and Native/Municipality/ Kodiak Island Borough recoveries exceeds its total matrix share (roughly \$30,000) of recoveries from the Exxon Claims Program, TAPL Fund, Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, and the uncollected Phase IIA judgment and prejudgment interest.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

¹²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category -- including the recreational use trust fund as the sole "claimant" in the Recreational Use Claim Category -- plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery) (the gross claim value of the recreational use trust fund would equal the recreational use matrix share times signatories' recoveries to date); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

Case No. A89-095-CV (HRH)
(Consolidated)

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE PROCESSOR CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among groups of "signatory" plaintiffs² ("signatories") organized into claim categories. The Court-approved Allocation Plan (p.25) limits the Processor Claim Category to claims by signatories engaged in commercial seafood operations for economic losses caused by the spill. Recognized losses include lost profits from 1989 through 1995 caused by the spill and realized losses of equity and assets by processors driven out of operation by the spill. The Allocation Plan set the Processor Claim Category matrix share at 2.1% of signatories' recoveries.

In this Plan of Distribution, plaintiffs' counsel³ ask the Court to approve as fair, adequate and reasonable: (1) eligibility criteria for processor claimants; (2) a list of 33 processors which satisfy the eligibility criteria and therefore are entitled to participate as claimants in the Processor Claim Category ("Participating Processors"); and (3) a methodology for determining Participating Processors' "Final Percent Shares," within the Processor Claim Category.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Allocation Plan, Participating Processors share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁴ \$87,311,000 from the Alyeska

¹Order No. 317, Motion for Final Approval of the Plan of Allocation (June 11, 1996) ("Order 317"); *see also* Order No. 327, Exxon's Motion to Reconsider Order No. 317 (Sept. 11, 1996); Order No. 329, Fortier Group's Motion to Modify Order No. 317 (Sept. 11, 1996).

²"Signatory" plaintiffs are those who joined in the joint prosecution agreement, either individually or as class members. *See* Allocation Plan 3-4. Claim categories defined in the Allocation Plan include aquaculture association, area business, cannery worker, municipality, Alaska Native, Native corporation, personal injury, personal property, processor, real property, recreational use, subsistence, tender, and "oiled" and "un-oiled" fisheries. The only "non-signatories" which may share in recoveries governed by the Allocation Plan are: Native corporations Chenega Corporation, Chugach Alaska Corporation, English Bay Corporation, Eyak Corporation, Port Graham Corporation and Tatitlek Corporation; and *pro per* plaintiffs Daniel DeNardo, Donald Ferguson, Tom Lakosh and Rainbow King Lodge. This Court rejected attempts by non-signatories Exxon and the "Seattle Seven" seafood processors to share in the punitive damages verdict. *See* Order 317, p. 31; *see also* Order 327. The Court approved "off the top" allocations from punitive damages recoveries of 2.457% to non-signatory Native corporations Chugach Alaska, Eyak and Tatitlek, *see* Order No. 317, 49 n.31, and 1.82% to the "Fortier group" of Native Corporations Chenega, English Bay and Port Graham. *Id.* 49; *see also* Order 329. Plaintiffs' counsel are separately asking the Court to increase the Fortier group's allocation from punitive damages recoveries to 2.18%. *See* Notice Of Court Hearing On Plaintiffs' Request For Approval Of Proposed Distribution Plans Of Recoveries By Plaintiffs In The Exxon Valdez Oil Spill Litigation And Of Court Hearing On Plaintiffs' Request For Confirmation Of An Award Of Attorneys' Fees And Costs ("Notice"). If approved, signatories would be allocated 95.363% of punitive damages recoveries. Plaintiffs' counsel agreed to allow *pro per* non-signatories to share in signatories' recoveries on the same terms as similarly-situated signatories. *See* Order 317, 17-18 (dismissing objection of T. Lakosh).

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiff's Joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program, including settlements which Participating Processors reached individually with the Exxon defendants, and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

Settlement, most of which was distributed in the Alyeska Claims Program;⁵ \$24,722,000 collected from Exxon,⁶ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁷ plus post-judgment interest,⁸ from judgments against Exxon which are not yet collected.⁹

Plaintiffs' counsel expect the Processor Claim Category to be allocated roughly \$519,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,209,000 from the uncollected Phase IIA judgment and prejudgment interest, and \$100,131,000 from the punitive damages judgment. From these amounts,¹⁰ which do not include post-judgment interest,¹¹ would be deducted attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹²

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries are collected, the Processor Claim Category will be allocated its matrix share of signatories' recoveries -- including Exxon Claims and TAPL Fund payments,¹³ the Alyeska Settlement,¹⁴ Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous recoveries by Participating Processors from individual settlements and signatory plaintiffs' common recoveries. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual Participating Processors.

Plaintiffs' counsel estimate that if signatories collect the projected \$4,825,716,000 in additional recoveries, the Processor Claim Category will be allocated roughly \$109,108,000 (less attorneys' fees and expenses), which includes \$416,000 from Native/Municipality/Kodiak Island Borough recoveries, \$1,834,000 from the Alyeska Settlement, \$1,209,000 from the uncollected Phase IIA judgment and prejudgment interest, \$100,131,000 from the uncollected punitive damages judgment, and \$4,206,000 from Exxon Claims and TAPL Fund recoveries.¹⁵ These amounts do not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Participating Processors to evaluate this distribution plan under the assumption that Participating Processors ultimately will be allocated \$109,108,000 plus interest.

⁵Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁶This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁷This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to the non-signatory Native corporations.

⁸Post-judgment interest accrues at the rate of 5.9% *per annum*.

⁹Plaintiffs' cross appeals could lead to greater compensatory damage recoveries. Conversely, a settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval, after plaintiffs are given notice and opportunity to object.

¹⁰This and other allocations to the Processor Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995).

¹¹It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹²Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries (or lesser amounts from shares of direct action plaintiffs with more favorable retainer agreements) from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration.

¹³The processor matrix share of signatories' recoveries from Exxon Claims and the TAPL Fund is lower than its matrix share of subsequent recoveries, because some processors elected not to contribute their individual settlements with Exxon to the common pool, and therefore do not share in other plaintiffs' recoveries from Exxon Claims and the TAPL Fund.

¹⁴The processor matrix share of signatories' share of the Alyeska Settlement is expected to be lower than the processor matrix share of signatories' subsequent recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in subsequent recoveries -- e.g., municipalities which did not file direct action lawsuits.

¹⁵These estimates are based on a 2.1% matrix share, which is the maximum payable to the Processor Claim Category under the Plan of Allocation.

II. ELIGIBILITY CRITERIA AND PARTICIPATING PROCESSORS

To qualify as a Participating Processor, a claimant must: (1) have been engaged in commercial seafood processing operations and suffered economic losses proximately caused by the Exxon Valdez oil spill;¹⁶ (2) be a signatory to plaintiffs' joint prosecution agreement;¹⁷ (3) have filed a timely lawsuit on its own behalf as a direct action plaintiff or putative class representative on or before September 7, 1994;¹⁸ and (4) not have settled and released all its claims against the Exxon defendants.¹⁹

Plaintiffs' counsel have concluded that thirty-three seafood processors listed on Table 1 attached satisfy these eligibility criteria.

III. METHODOLOGY FOR DETERMINING FINAL PERCENT SHARES

Each Participating Processor's Final Percent Share²⁰ will equal its proportional share of all Participating Processors' total matrix damages, as determined by Plaintiffs' Allocation Committee after review of damage reports submitted by Participating Processors and arm's-length negotiations with Participating Processors and their counsel.

Plaintiffs' counsel cannot propose Final Percent Shares for the Court to approve until the identities of Participating Processors are determined. All 33 Participating Processors have negotiated and agreed with plaintiffs' Allocation Committee upon estimates of their damages to be used for distributional purposes. As described in the Allocation Plan, damages include lost profits from 1989 through 1995 caused by the spill, and realized losses of equity and assets by processors driven out of operation by the spill. To estimate damages, the Allocation Committee Reviewed damage reports submitted by Participating Processors, and negotiated at arm's-length with Participating Processors and their counsel. For Participating Processors which settled 1989 compensatory damages claims (Cook Inlet Processors, Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Nautilus Marine and Sea Hawk Seafoods), 1989 lost profits are excluded for distributional purposes.

Plaintiffs' counsel and the 33 Participating Processors have agreed that Participating Processors' Final Percent Shares should be proportional to agreed-upon damage estimates. There remains only one potential unresolved question. Two Participating Processors--Cook Inlet Processors and Nautilus Marine--settled not only their 1989 compensatory damages claims but also their punitive damages claims. Accordingly, Cook Inlet Processors and Nautilus Marine should not share in any allocations to the Processor Claim Category from punitive damages recoveries.²¹ Plaintiffs' counsel do not know at this time whether Cook Inlet Processors and Nautilus Marine will agree with this approach.

Once the proposed processor plan of distribution is approved, Plaintiffs' counsel will prepare a matrix showing the Final Percent Share allocated to each Participating Processor in the Processor Claim Category, applying the methodology described herein. Plaintiff's counsel will seek Court approval of this matrix and provide notice to all Participating Processors. Any distribution of proceeds will take place only with the Court's approval and supervision.

IV. DISTRIBUTION OF PROCEEDS

Participating Processors' shares of Processor Claim Category allocations from Native/Municipality/Kodiak Island Borough and subsequent recoveries will be calculated using Final Percent Shares, with adjustments for previous compensation.

¹⁶Plan of Allocation, p. 25.

¹⁷Under the law of the case, seafood processors have no entitlement to recover compensatory or punitive damages, except for the contract rights that arise under the Joint Prosecution Agreement and the Plan of Allocation among and between those signatories. In Order 174, the Court applied the rule of *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927) to reject all claims asserted by seafood processors. That ruling was reiterated in Order 184. Thus, seafood processors have no tort claim to compensatory or punitive damages absent reversal by an appellate court. A processor's only avenue to recover damages arising from the Exxon Valdez oil spill is by contract: specifically, by the Joint Prosecution Agreement and its ultimate result, the Plan of Allocation. If a processor refused to subscribe to the joint prosecution agreement, it has no contractual claim to the benefits of that risk-sharing arrangement.

¹⁸See Order Certifying Commercial Fishing Class, Native Class and Landowner Class (Mar. 14, 1994) ("Class Certification Order"). See also Order 317, pp. 14-15 (rejecting the claims of two purported processors, which failed to file independent suits, as untimely).

¹⁹See Order 317, pp. 25-26 (dismissing objections of "Seattle Seven" seafood processors).

²⁰In this distribution plan, the term "Final Percent Share" is defined differently than in the Allocation Plan, in which the term denoted a plaintiff's percent share of signatories' recoveries, rather than allocations to a particular claim category. The change in nomenclature is made for administrative reasons.

²¹As a result, the Processor Claim Category matrix share of punitive damages recoveries should be reduced somewhat from 2.1% to prevent a windfall to Participating Processors other than Cook Inlet Processors and Nautilus Marine. Plaintiffs' counsel will propose an appropriate reduction in the Processor Claim Category matrix share, and corresponding proportional increases in matrix shares of other Claim Categories.

A. SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program, Participating Processors' distributions from the Native/Municipality/Kodiak Island Borough recoveries will be adjusted for their previous distributions from the Alyeska Settlement. Plaintiffs' counsel believe that it would not be fair or appropriate to ignore Participating Processors' previous distributions from the Alyeska Settlement. To expedite payouts, distributions from the Alyeska Settlement were made on an interim basis, using partial workups of estimated 1989, 1990 and 1991 losses. *See* Plaintiffs' Plan For Distribution Of The Alyeska Settlement And Memorandum In Support 7-8 (Oct. 1, 1993). In contrast, Final Percent Shares are based on full workups of losses from 1989 through 1995, and are plaintiffs' best measure of a fair and equitable distribution. In many cases, distributions from the Alyeska Settlement deviated substantially from Final Percent Shares. Plaintiffs' counsel therefore would begin "catching up" in the Supplemental Claims Program, by calculating Participating Processors distributions in a manner which to the greatest extent possible applies Final Percent Shares to both the Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries.

To accomplish this, plaintiffs' counsel will calculate for each Participating Processor: a "gross claim value" equal to the Final Percent Share times Participating Processors' combined \$4,410,000 allocation from the Alyeska Settlement plus allocation from Native/Municipality/Kodiak Island Borough recoveries; and a "net claim value" equal to the gross claim value minus Alyeska Settlement distribution, or zero if the Alyeska Settlement distribution exceeds the gross claim value. Distributions in the Supplemental Claims Program would be proportional to net claim values.

B. THE FINAL DISTRIBUTION

Once punitive damage recoveries are collected, there will be a Final Distribution, in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. Claimants' final distributions will be adjusted by the difference between their allotments from these recoveries based on Final Percent Shares, and what they actually received. The object will be to apply Final Percent Shares, which are the best measure of a fair and equitable distribution, to all of signatories' recoveries.

C. FUTURE INTERIM DISTRIBUTIONS

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including Participating Processors, would be adjusted to reflect the extent to which they have already been compensated.²² Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

Preliminarily approved this 22nd day of April, 1997 by the Honorable H. Russel Holland, United States District Court Judge.

²²This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
PARTICIPATING PROCESSORS

All Alaskan Seafoods
Allied Processing
Bailey d/b/a The Smokehouse
Cook Inlet Processors
Copper River Fishermen's Cooperative
D&G Enterprises
Eagle Fisheries
Ellis M. d/b/a Trans-Ocean Enter.
Erickson S. d/b/a Hidden Bay Seafoods
Estate of E.H. Bendikson/ Mister B
Ginn, G.
Hames d/b/a Cold Water Harvesters
Keener Packing Co.
Kodiak Salmon Packers
Kopecky d/b/a Great Alaska Seafood Co.
Latta, D.
M.S.P. Corporation

McLean d/b/a Prime Ak Seafoods
Nautilus Marine
Northland Fisheries, Inc.
Odyssey Enterprises
Pan Pacific Seafoods
Queen Fisheries Inc. d/b/a E. Point Seafoods
Samer - I Seafoods
Schilling P. d/b/a Alaska Gourmet
Sea-Nik Foods/ Marutsubo-Suisan
Sea Captain's Choice, Inc.
Sea Hawk Seafoods
Seafood Sales
Seasonal Seafoods
Smith, S. d/b/a Virgin Bay Kelp Co.
Taylor, G. d/b/a Taylor Aquatic Enter.
Woodbine Alaska Fish Co.

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