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DEC 06 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By _____ Deputy

Charles P. Flynn, Esq.
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Anchorage, AK 99501
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

Re All Cases

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

EXXON VALDEZ OIL SPILL)
LITIGATION)
_____)
)
This Document Relates to)
All Cases)
_____) Case No. 3AN-89-2533 Civ.
 (CONSOLIDATED)

NOTICE OF TAKING DEPOSITION

To: Harold Berger, Esq.
Charles W. Ray, Esq.
as Co-chairs of Plaintiffs' Discovery Committee and as
Designated Recipients of Discovery Matters for all Plain-
tiffs

BURR, PEASE
& KURTZ
A PROFESSIONAL CORPORATION
810 N STREET
ANCHORAGE, AK 99501
(907) 276-6100

1077
Certified to be a true and correct
copy of original filed in my office.

Dated: 12/6/90
By: Phyllis Rhodes, Clerk


Deputy

PLEASE TAKE NOTICE that the Defendants in the above matter, pursuant to Rules 26, 30 and 45 of the Alaska Rules of Civil Procedure, and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure and the Discovery Plan, will take the oral deposition of the United States Coast Guard Records Custodian before a Notary Public or some other person qualified to take oaths in the offices of Gibson, Dunn and Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. on Monday, the 21st day of January, 1991, at the hour of 9:00 o'clock a.m. The deposition is expected to last one day.


Deponent is requested to bring with him or her to this deposition the records indicated on the subpoena duces tecum which we have agreed to exchange on November 30, 1990.

DATED: November 21, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants

By 
Charles P. Flynn
Co-member of Defendants' Coordinating Committee

BOGLE & GATES

By 
Douglas J. Serdahely
Defendants' Liaison Counsel and
Co-member of Defendants' Coordinating Committee

BURR, PEASE
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United States District Court

DISTRICT OF _____

ALASKA

In re the EXXON VALDEZ

v.

DEPOSITION SUBPOENA

CASE NUMBER: A89-095 CIV
(Consolidated)

Re: All Cases

TYPE OF CASE <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> CRIMINAL	SUBPOENA FOR <input type="checkbox"/> PERSON <input checked="" type="checkbox"/> DOCUMENT(S) or OBJECT(S)
---	--

TO:

Commandant (L-CL)
 U.S. Coast Guard
 2100 Second Street S.W.
 Washington, D.C. 20593-0001

YOU ARE HEREBY COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE Gibson, Dunn & Crutcher 1050 Connecticut Avenue, N.W. Washington, D.C.	DATE AND TIME January 21, 1991 9:00 a.m.
---	--

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

All documents responsive to the subject matter contained in Schedule "A" attached to this subpoena.

Please see additional information on reverse

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and setting forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

U.S. MAGISTRATE OR CLERK OF COURT _____ (BY) DEPUTY CLERK	DATE _____
---	-------------------

This subpoena is issued upon application of the:

Plaintiff
 Defendant
 U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:
 Douglas J. Serdahely, Esq.
 BOGLE & GATES
 1031 West Fourth Avenue, #600
 Anchorage, AK 99501 (907) 276-4557
ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

UNITED STATES COAST GUARD

SCHEDULE A

I.

INSTRUCTIONS

1. This Subpoena Duces Tecum ("Subpoena") requires the production of all responsive Documents in the custody, possession, or control of the Agency (as defined below) regardless of whether such Documents concern the Agency, and regardless of whether such Documents were generated by or on behalf of the Agency, or by another Person.

2. For each Document withheld from production on a claim of privilege or work product protection, specify the privilege or work product protection(s) that You claim, and provide the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; and (e) the basis for Your privilege claim. If the claimed privilege or work product protection applies only to a particular phrase, sentence, paragraph, or section of a responsive Document, produce the entire Document with the allegedly protected portion redacted and a legend indicating that the withheld portion is a subject of a specified privilege or protection.

3. If any Document that was, or might have been, responsive to this subpoena was destroyed, erased, surrendered, or otherwise removed from Your custody, possession, or control at any time after March 23, 1989, please provide, to the maximum extent possible, the following information: (a) the nature of the Document (e.g., letter, memorandum, contract, etc.) and a description of its subject matter; (b) the author or sender of the Document; (c) the recipient(s) of the Document; (d) the date the Document was authored, sent and received; (e) the circumstances surrounding the removal of the Document from Your custody, possession, or control; and (f) the Identity of the person(s) having knowledge of such removal from Your custody, possession, or control.

4. Each request herein seeks production of responsive Documents in the file and in the order in which each Document was kept in the ordinary course of business.

5. The words "and" and "or" shall be individually interpreted as meaning "and/or" in every instance and shall not be interpreted disjunctively to exclude any Document that would be within the scope of any request if the word "and" were read separately or, alternatively, if the word "or" were read separately. Additionally, the singular shall mean the plural and the plural shall mean the singular throughout these requests.

6. Unless otherwise indicated, the Subpoena calls for Documents prepared during the period from January 1, 1975 to the present.

II.

DEFINITIONS

1. "ADEC" means the Alaska Department of Environmental Conservation and any predecessor entities.

2. "Agency" means any department, division, office or branch within the United States Coast Guard, together with all Agency employees, contractors, consultants, and other third parties retained, hired by or working with the Agency, and all predecessor entities of the Agency.

3. "Alaska," "State of Alaska," and "State," except when used as a geographic term, mean the executive branch of the State of Alaska, present or former departments, agencies, corporations, offices, instrumentalities, boards, authorities, commissions, committees, and divisions; the Alaska State Legislature; the Legislative Affairs Agency or other legislative agencies; the Office of the Governor; Office of the Lieutenant Governor; Department of Administration; Department of Commerce & Economic Development; Department of Community & Regional Affairs; Department of Corrections; Department of Education; Department of Environmental Conservation; Department of Fish & Game; Department of Health & Social Services; Department of Law; Department of Labor; Department of Military and Veteran's Affairs; Department of Natural Resources; Department of Public Safety; Department of Revenue; Department of Transportation; the Oil Spill Commission; the

Pipeline Coordinator's Office; any official, employee, member, independent contractor, or agent of any of the foregoing entities; and any predecessor in interest of any of the foregoing.

4. "Alaskan Territorial Waters" or "State Territorial Waters" means any waters, Fresh or Marine, over which the State claims police power jurisdiction.

5. "Area Arguably Affected by the Spill" means the lands and waters of Prince William Sound, Cook Inlet, the Kodiak Archipelago, the Kenai Peninsula, the Alaska Peninsula, the Aleutian Chain, and the Gulf of Alaska and adjacent lands and waters.

6. "Baseline Condition" means the condition or conditions that would have existed within the Area Arguably Affected by the Spill had the Spill not occurred, but includes, without limitation, any conditions that You claim are "baseline conditions" for purposes of ascertaining change or injury to any Person, thing, organism or Natural Resource.

7. "Chemical Dispersant" means any chemical agent that is used to emulsify, disperse, or solubilize Oil into water, or promote the surface spreading of Oil to facilitate emulsification of Oil or its dispersion into water.

8. "Clean Up" means all actions, private and public, voluntary, regulatory or mandatory, that have been taken (or will be taken) to contain, control, recover, treat, disperse, burn, manage, remove, respond to, dissipate, clean, or remediate Oil or

other contaminants or pollutants resulting from the Spill or from any of the foregoing activities Relating to the Spill, and to restore or rehabilitate Natural Resources injured by the Spill.

9. "Commercial fishing" means the extraction of Fish from the water for profit.

10. "Commercial Fishermen" means all Persons engaged in Commercial fishing.

11. "Communication" means any transfer of information whether oral, written or electronic.

12. "Defendants" means the following parties named as defendants in the above-captioned litigation: Alyeska Pipeline Service Company, Amerada Hess Corporation, ARCO Pipe Line Company, Mobil Alaska Pipeline Company, SOHIO Alaska Pipeline Company, BP Pipelines (Alaska), Inc., Phillips Alaska Pipeline Corporation, UNOCAL Pipeline Company, Exxon Shipping Company, Exxon Corporation (including, without limitation, its division Exxon Company, U.S.A.) and Exxon Pipeline Company.

13. "Discuss" or "Discussion" means any communication concerning or Relating to the subject matter specified as the subject of or under such "Discussion."

14. "Document" has the same meaning as "writings or recordings" and "photographs" as specified in Rules 1001(1) and 1001(2) of the Alaska Rules of Evidence, including, without limitation, any data in digital notation of any kind useable by a computer or electronic word processor.

15. "File" means, any procedure, convention or mechanism used to aggregate, group or store Documents or sets of Documents, whether by topic, by date or otherwise.

16. "Fish" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal.

17. "Fisheries" means the taking of Fish of a particular type or species, by particular means or at a particular place or time; the business of catching and selling Fish; or the place where Fish are caught.

18. "Fresh Water" means any non-Marine water environment.

19. "Human Services" means any value that a Natural Resource has for human beings, the loss or reduction of which or the restoration of which is alleged to be recoverable or is alleged to provide a measure of recovery in this action.

20. "Identity" means the name of any Person or entity, the employment and title of any Person and the last known business address and telephone number of the Person or entity.

21. "Intrusive Clean Up Technique" means any technique such as removal of sediment for rock washing, which involves gross movement or surface or subsurface sediment.

22. "Marine" means a saltwater environment.

23. "Natural Resources" means land, Fish, wildlife, vegetation and other biota, air, water, groundwater, drinking water supplies and other such resources belonging to managed by, held in

trust by, appertaining to, or otherwise controlled by the United States, the State of Alaska, or any Indian Tribe.

24. "NRDA" means any systematic process of collecting, compiling, and analyzing information, statistics, or data to determine damages for injuries to Natural Resources, conducted by the State or federal government or any other Person in connection with the Spill.

25. "Oil" means petroleum, including crude oil, or any fraction thereof, and any other hydrocarbon, together with any and all chemicals or additives contained therein.

26. "Oil spill" means an Oil spill in a Marine environment, unless otherwise provided.

27. "Organism of Any Species" means any or all organisms of a species (animal or plant), other than humans, including microorganisms, wherever or whenever located, if such organism at any time originates in, migrates from, passes through, or returns to any part of the Area Arguably Affected by the Spill.

28. "Person" refers to and includes any natural Person, individual, firm, association, partnership, joint venture, corporation, company, estate, trust, receiver, syndicate, proprietorship, municipal or other governmental corporation or agency, including groups and combinations of the same acting as a unit.

29. "Prespill Condition" means the condition or conditions that existed within the Area Arguably Affected by the Spill before the Spill.

30. "Relate to," "Relates to," "Related to" and "Relating to" means Discussing, recording, analyzing, describing, summarizing, referring to, containing or commenting on the subject matter referred to in each Request.

31. "Seafood" means any fin fish, mollusk, shell fish, crustacean or other aquatic animal, vegetation (including kelp) or any other aquatic or Marine flora or fauna, or the products thereof, used or sold for human consumption, ornament or other use.

32. "Spill" means the Oil Spill described on p. 1 of Proposed Probable Cause, Findings & Recommendations of the State of Alaska in National Transportation Safety Board Docket No. DCA 89 MM 040, attached as Attachment "A".

33. "Sport fishing" means the taking or possession of or attempting to take or possess for enjoyment or personal use, not for sale, barter or subsistence, of any Fresh Water, Marine, or anadromous Fish, shellfish, vegetation (including kelp), or any other aquatic or Marine flora or fauna. "Sport fishing" includes the taking of any such Fish, shellfish or other flora or fauna even where such Fish, shellfish or other flora or fauna is released or replanted after such taking.

34. "Statement" means any Document that records declarations or admissions of a Person, whether or not given by the Person or signed by the Person.

35. "Subsistence Use" means the non-commercial, non-sport, non-recreational customary and traditional uses of Fresh Water, terrestrial, or Marine resources by Persons in the State for

direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, or the making and selling of handicraft articles out of edible or non-edible by-products of Fish and wildlife resources taken for personal or family consumption or for customary trade, barter or sharing, the proceeds of which are used for personal or family consumption.

36. "Subsistence fishing" means the taking or possession of Fresh Water or Marine Fish, shellfish, or vegetation (including kelp), or any other aquatic or Marine flora or fauna, or the products thereof, by gillnet, seine, fishwheel, longline, hook & line, gill or dip net, or any other means defined by the Alaska Board of Fisheries, for Subsistence Use.

37. "VTS" means the vessel traffic system operated by the United States Coast Guard in Prince William Sound.

III.

DOCUMENTS REQUESTED

1. All Documents from January 1, 1969 up to and including March 24, 1989 Relating to the actual or potential environmental impacts on any marine environment of a Trans Alaska Pipeline to Valdez, or any alternative to such a pipeline, including, without limitation:

- a. All Documents Relating to the advantages, disadvantages, risks and contingencies of transporting Alaska North Slope crude oil by vessel;
- b. All Documents Relating to any environmental impact statements or negative declarations, including without limitation all drafts, comments, evaluations, criticism or endorsement thereof.

2. All Documents Relating to industry standards or practices, or to the State's, the Agency's or federal government's policies, regulations or laws (including, without limitation, the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of such standards, practices, policies, regulations, or laws) concerning:

- a. tank vessel design (from January 1, 1969), crew-size, manning, operation or maintenance;
- b. tank vessel escort and pilotage requirements and practices in Prince William Sound;
- c. the conduct of tank vessel crews (including the use of alcohol) in Prince William Sound.

3. All Documents Relating to control of vessel traffic in Prince William Sound, including, without limitation:

- a. All Documents Relating to ship-to-shore or shore-to-ship communication systems in Prince William Sound.
- b. All Documents Relating to vessel inspections, pilotage rules and regulations, supervision of tank vessel manning and crews, or measures taken or recommended in the event of ice, icebergs or other hazards.
- c. All Documents Relating to the operation of the Vessel Traffic System.
- d. All Documents Relating to the location, design, construction, maintenance, operation, improvement, or renovation of any and all lights, buoys, radar systems, or other navigational aids (NAVAIDS) in Prince William Sound or the Port of Valdez, including, but not limited to:

4. All Documents Relating to the safety of vessel operations and to the adequacy of charts, buoys, or other aids to navigation.

5. All Documents Relating to any changes in the shoreline or the bottom of Prince William Sound.

6. All Oil spill contingency plans in effect on or before March 24, 1989 applying to the State or the territorial waters of the State.

7. All Documents Relating to the preparation, review, evaluation, analysis, critique, rejection, approval or implementation of, or the interrelationships among, any of the following Oil spill contingency plans (including, without limitations, all memoranda of understanding or interpretative memoranda of the Agency or any other Person Relating to the responsibilities for oil spill response and clean-up under such plans):

a. the National Contingency Plan;

b. the Regional Contingency Plan applicable to Alaska or State Territorial Waters;

- c. the State of Alaska Oil and Hazardous Substances Pollution Contingency Plan;
- d. the Captain of the Port (Prince William Sound) Pollution Action Plan;
- e. the Alyeska Oil Spill Contingency Plan;
- f. the Alaska Emergency Plan;
- g. the Exxon Shipping Company Headquarters Casualty Response Plan;
- h. any Oil spill contingency plan submitted to the State by any of the Defendants (whether or not still in effect).

8. All Documents Relating to the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of State or Agency policies or regulations in effect on or before March 24, 1989 concerning compliance with State or federal law requiring Persons owning or operating tank vessels or tank vessel loading facilities to maintain or carry out an approved Oil spill contingency plan with regard to the Marine transport of Oil.

9. All Documents Relating to the Regional Response Team for Alaska, including, but not limited to, all Documents Relating to the pre-approval process by the Regional Response Team for the use of dispersants in the State, State territorial waters, or the waters of the United States.

10. All Documents Relating to the use of scenarios in Oil spill response contingency planning.

11. All Documents Relating to the risk or likelihood of Oil spills, or the likely or possible size or magnitude of such Oil spills, in the State or on State Territorial Waters.

12. All Documents Relating to the Oil spill containment and clean up responsibilities and the readiness of the State, the Agency, the United States (including, without limitation, the U.S. Coast Guard and the U.S. Environmental Protection Agency), Alyeska, Exxon Shipping Co., Exxon Pipeline Co., Exxon Corporation, or any other Person during the period from January 1, 1969 up to and including March 24, 1989, whether under statute, regulation, contingency plan, contract, or otherwise, for any Oil Spill in the State or on State territorial waters including, without limitation:

a. All Documents Relating to any obligation of any of the Defendants to respond to Oil spills in Prince William Sound;

- b. All Documents Relating to the readiness of any other Person to respond to any Oil spill under its Oil spill contingency plan;
- c. All Documents Relating to whether, in responding to an Oil spill, Alyeska acted, or would act, in its individual capacity or as agent for another party.
- d. All Documents Relating to any planned, considered, expected or actual transfer or non-transfer of operational control over any response to an Oil spill from Alyeska to the spiller or transporter of the Oil, the Coast Guard or any other party.
- e. All Documents Relating to any Oil spill response exercises or drills that occurred up to and including March 24, 1989.

13. All Documents from January 1, 1989 to the present which identify personnel of, and positions in, the Agency whose responsibilities include oil spill response duties.

14. All Documents Relating to any means, methods, techniques or procedures, to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation:

- a. Chemical Dispersants;
- b. In situ burning;
- c. Booming;
- d. Skimming;
- e. Chemical beach cleaning agents;
- f. Water washing;
- g. Bioremediation, including chemical stimulation of biological agents;
- h. Intrusive Clean Up Technique;
- i. Weathering;

j. Non-intervention; and

k. Natural restoration.

15. All Documents Relating to any request or application to the State, the Agency or the federal government for authorization or approval of the use of any means or method to contain, control, recover or clean up spilled Oil on bodies of water (whether Fresh or Marine), and the State's or federal government's response to such request or application, including, without limitation, any testing or pilot studies done of any of the techniques listed in Request No. 14.

16. All Documents Relating to the actual or predicted effect on the environment (other than the removal, clean up, or dispersal of Oil) of any means, methods, techniques or procedures to prevent, contain, measure, manage, recover, and clean up Oil on bodies of water (whether Fresh or Marine) including, without limitation, any of the techniques listed in Request No. 14.

17. All Documents Relating to the preparation, drafting or negotiation of any guidelines, policies, regulations or procedures in effect up to and including March 24, 1989 for the use of chemical dispersants in connection with the clean up of Oil spills.

18. All Documents Relating to the capability, efficiency, or effectiveness of any equipment or machinery that could be used in cleaning up, recovering, removing, containing, dispersing, or otherwise disposing of an Oil spill.

19. All Documents Relating to the speed or rate at which, or time period within which, any actual or hypothetical Oil spill, or any portion thereof, was or could be cleaned up, recovered, removed or otherwise disposed of by any spill response means or technology, including, without limitation, any of the techniques listed in Request No. 14.

20. All Documents Relating to any actual, calculated, estimated or assumed recovery rate of any skimmer or other mechanical recovery equipment.

21. All Documents Relating to the State's, the Agency's or the federal government's policies or positions regarding considerations relevant to oil spill response decision-making, including but not limited to:

- a. Personnel safety;
- b. Vessel safety;
- c. Lightering;

- d. Environmental impacts and trade-offs;
- e. Federal control of spill response;
- f. State participation in spill response;
- g. Participation in spill response activities by third parties; and
- h. Spill response by, and legal responsibility of the spiller.

22. All Documents Relating to the Oil spill resulting from the grounding of the T.V. Glacier Bay in Cook Inlet on or about July 2, 1987, the cleanup or restoration of natural resources after that spill, or the damages alleged to have resulted from it.

23. All Documents prepared from January 1, 1969 to the present Relating to any Oil spill in the Port of Valdez or in Prince William Sound (whether actual, predicted or hypothetical) or any Person's response to, or plan, capabilities or state of preparedness for, responding to such a spill.

24. All Documents Relating to any Person's response to, or the clean up or environmental impacts of, any Oil spill in excess of 25,000 barrels other than the Spill.

25. All Documents Relating to the training or instruction of employees, members or contractors of any Person concerning the clean-up of any Oil spill in excess of 25,000 barrels, including, without limitation, all manuals, memoranda, and other Communications and Documents Relating to these manuals and memoranda.

26. For every Oil Spill in excess of 25,000 barrels, produce all final reports issued by the federal on-scene coordinators assigned to those spills, together with all "POLREPS" generated by the Agency, or any other federal agency, relating to those spills.

27. All Documents Relating to the wreck of the LEE WANG SIN which occurred near Prince of Wales Island, Alaska on or about December 25, 1989, including but not limited to the Federal On-Scene Coordinator's report and all "POLREPS" generated regarding this incident.

28. All Documents Related to the actual or predicted fate or effects of any Oil spill in excess of 25,000 barrels on any Person or Natural Resource.

29. All Documents Relating to the State's, the Agency's or the federal government's experience with any Oil spill in excess of 25,000 barrels, including, without limitation, any regulatory, administrative or other governmental action taken or discussed by the State, the Agency or the federal government in response to such Oil spill.

30. All Documents Relating to the experience of the Agency with any Oil spill in excess of 25,000 barrels, including, without limitation, any studies of the effects of such spills on any Organism of Any Species.

31. All Documents Relating to any advice, assistance, technical support, personnel or consultation provided by the Agency to any other Person Relating to any Oil Spill in excess of 25,000 barrels.

32. All Documents Relating to the cost of acquiring, operating and maintaining marine Oil spill response equipment by Alyeska or its contractors for use in Prince William Sound prior to March 24, 1989.

33. All Documents Relating to any change in, or events, circumstances or conditions causing a change in, Alyeska's Oil spill response capabilities or state of readiness taking place up to and including March 24, 1989.

34. All Documents Relating to the response to the Spill including, without limitation, the following subject matters:

- a. Clean-up, restoration and containment measures and activities or any other action taken by the Agency or its agents, contractors or consultants in any way Related to the EXXON VALDEZ oil spill.
- b. The efforts of any Person besides the Agency in connection with the Spill or Clean Up, including, without limitation, any Defendant, the Coast Guard, and the Regional Response Team;
- c. The transfer of Clean Up and containment efforts from Alyeska to Exxon Shipping or other Exxon entities;

- d. The organizational relationships among any State or federal agencies, offices or task forces involved in the Clean Up, including, without limitation, the chain of command and the process by which responsibility for various aspects of the Clean Up was assigned;

- e. The quantity of Oil originating from the EXXON VALDEZ that exists at the present, or that did exist, in any part of the Area Arguably Affected by the Spill from March 24, 1989 to the present, including, without limitation, any calculation of the quantity of Oil recovered or dissipated during the Clean Up, and any calculation of the quantity of Oil originating from the EXXON VALDEZ that remains in the environment in the Area Arguably Affected by the Spill;

- f. The quantity of Oil or chemicals introduced into the environment as part of the Clean Up;

- g. Field surveillance or studies done by any Person in connection with the Clean Up;

- h. Tests or other efforts to identify the source of any Oil or other chemical found during 1989 or thereafter within the Area Arguably Affected By The Spill;
- i. The collection or preservation of any remains of flora or fauna allegedly killed as a result of the Spill or the Clean Up;
- j. Tests, research or studies to determine the effectiveness of the Clean Up or the amount of Oil claimed to be from the Spill that remained in the environment; and
- k. The effects of any Oil claimed to be from the Spill on any Organism of Any Species.

35. All Documents Relating to efforts of any Person to control or manage the Spill, including, without limitation, use or application of any of the techniques listed in Request No. 14.

36. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant Relating to the Spill or Clean Up.

37. All Documents Relating to means, methods or agents for the Clean Up or other remediation of the Spill or restoration of any area or resource allegedly affected by the Spill.

38. All Documents Relating to contracts, receipts or other evidence of payment or charge of any expense alleged to have been incurred by the Agency or any other Person as a result of the Spill or the Clean Up.

39. All Documents Relating to the EXXON VALDEZ oil spill received by your Agency from any Person.

40. All incident reports and reports of interviews Related to the EXXON VALDEZ oil spill or Clean-up, and all Documents Related to such reports.

41. All Documents Relating to any activities by any of the following organizations which are related to the Exxon Valdez oil spill:

- a. The National Response Team;
- b. The Alaska Regional Response Team;
- c. The Multi-Agency Committee (MAC) or the Inter-Agency Department.

42. All Documents which in any way Relate to the impact upon the environment of the EXXON VALDEZ oil spill and the associated Clean-up and response.

43. All Documents from January 1, 1985 to the present Relating to the Baseline or Pre-spill Condition of any Organism of Any Species, or of any other Natural Resources, or Human Services within the Area Arguably Affected by the Spill, including, without limitation, the level of Oil in any waters within the Area Arguably Affected by the Spill.

44. All Documents from January 1, 1985 to the present Relating to the habitat, life patterns or populations of any Organism of Any Species in or around the Area Arguably Affected by the Spill.

45. All Documents from January 1, 1985 to the present Relating to the causes or possible causes of any variations in the population of any Organism of Any Species, or in the level of any Natural Resource or Human Service in or around the Area Arguably Affected by the Spill, including, without limitation, such causes as low temperatures, storms, predators, disease, reproductive failure, drift netting, otter expansion, increased development or tourism, the Spill or the Clean Up.

46. All Documents from January 1, 1985 to the present Relating to events or circumstances other than the Spill or Clean Up that are, have been, may have been or may be detrimental to any Organism of Any Species, or to the level of any other Natural Resource or any Human Service in the Area Arguably Affected by the Spill, including, without limitation, such events or circumstances as climatic variations, other Marine and non-Marine oil spills, pollution attributable to the development of Valdez or other areas, ocean drift net operations, predators, diseases, changes in breeding patterns or nesting patterns, the development or operation of Fish hatcheries, human use or development or the like.

47. All Documents Relating to any research protocols, sampling, testing or analytical methodologies, and quality control/quality assurance methodologies and other means and methodologies used in any study, survey or research concerning any Natural Resource or Human Services within the Area Arguably Affected by the Spill at any time after March 24, 1989, or the results of such study, survey or research.

48. All Documents RElated to any Organism of any Species which was killed, injured, sacrificed or otherwise harmed or damaged as part of any research, studies or investigation Related to the Spill or the Cleanup.

49. All Documents from January 1, 1985 to the present Relating to samples or specimens of any Natural Resource taken from the Area Arguably Affected by the Spill, together with all Documents and Communications that Relate to such samples or specimens or the information derived therefrom.

50. All Documents Relating to the post-Spill viability of any Organism of any Species within the Area Arguably Affected by the Spill including, without limitation, incubation success, egg to fry survival, or other information relating to successful or unsuccessful regeneration of individual members of any Organism of Any Species.

51. All Documents Relating to the projected or forecasted duration of any effect of the Spill or the Clean Up, including, without limitation, any prediction of the time during which the presence of Oil or other substance originating from the EXXON VALDEZ will have an effect, favorable or unfavorable, on Natural Resources in the Area Arguably Affected by the Spill.

52. All Documents from January 1, 1985 to the present Relating to the chemistry of waters in the Area Arguably Affected by the Spill, including, without limitation, the presence or absence of Oil, toxins, contaminants, or hazardous substances, the salinity, oxygenation, turbidity or temperature of such waters, or any colloids in suspension in such waters.

53. All Documents from January 1, 1985 to the present Relating to the sources--natural or man-made--of any Oil in the waters, subsurface sediments, air or uplands of the Area Arguably Affected by the Spill.

54. All Documents from January 1, 1985 to the present Relating to the source of any Oil or other chemical found prior to 1989, and separately after January 1, 1989, within the Area Arguably Affected by the Spill, including, without limitation, any tests of sheens, Oil, tar, mousse, or tar balls to "fingerprint" the character of the source Oil.

55. All Documents Relating to the chemistry of, or pollutants or contaminants contained on or in, water (Fresh and Marine), sediment, land, or shoreline surface within the Area Arguably Affected by the Spill at any time after March 24, 1989.

56. All Documents Relating to the involvement of any Person in the assessment of alleged Natural Resource damages resulting from the Spill or Clean Up, including, without limitation, all Documents and Communications furnished to the Persons purporting to act as trustees for Natural Resources under federal or State law, all Documents related to the agreement between Exxon Shipping, the State and federal trustees dated

April 13, 1989 regarding participation in the NRDA process and all other understandings or agreements between Exxon Shipping and the Natural Resource Trustees, written or oral.

57. All Documents Relating to the issuance of permits to scientists or investigators for research concerning changes in the state or condition of Natural Resources within or about the Area Arguably Affected by the Spill subsequent to the Spill, including, without limitation, Documents Relating to the terms and conditions imposed or to be imposed in such permits, and reports submitted to the State or federal government in compliance with such permits.

58. All Documents Relating to permits, licenses, or other authorizations, of any type, issued since January 1, 1980, to any person or entity for any project, development or activity, in Alaska, State territorial waters, or in federal waters adjacent to Alaska, that involves the consumption, destruction, impairment, pollution of, or injury to, any Natural Resource other than a Natural Resource that is actually traded in a commercial market.

59. All Documents Related to the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the EXXON VALDEZ Oil Spill and the 1989 State/Federal Natural Resource Damage Assessment Plan for the EXXON VALDEZ oil spill.

60. All Documents Relating to any study, survey or research concerning any Natural Resource within the Area Arguably Affected by the Spill at any time after the Spill.

61. All Documents Relating to actual or potential methods for establishing contingent valuation of any alleged damage to any Natural Resource or Human Service including, without limitation, alleged damage within the Area Arguably Affected by the Spill.

62. All Documents Relating to any contingent valuation surveys conducted by any person or entity since January 1, 1980.

63. All Documents Relating to the validity, accuracy or reliability of contingent valuation as a method of determining the value of any Natural Resource or any non-market good.

64. All Documents Relating to the validity, accuracy, or reliability of any contingent valuation survey.

65. All Documents Relating to any valuation of, or effort to place a value on, any Natural Resource, whether or not involving the contingent valuation method, except valuations based solely on the commercial value of Natural Resources that are actually traded in a commercial market.

66. All Documents from January 1, 1985 to the present Relating to the price at which any resource or mineral good or commodity (including, without limitation, timber, forest products, minerals, animal pelts and products, or other organic or mineral goods or commodities) produced in any part of the Area Arguably Affected by the Spill was or could have been sold and all Documents Relating to markets for such resource, mineral good or commodity.

67. Any Documents from January 1, 1985 to the present relating to the price or valuation of any real property located in the Area Arguably Affected by the Spill.

68. All Documents Relating to any public opinion poll, focus group, random intercept survey or other survey, poll, device or procedure used by the State, the Agency, the federal government or the State or federal Resource Trustees for ascertaining the views of any segment of the population of the United States concerning the Spill, Defendants, the Clean Up, the market for Seafood, Alaska tourism historic, archaeological, intrinsic, Subsistence, research uses or Natural Resources within the Area Arguably Affected by the Spill or any other matter Related to the Spill.

69. All Documents from January 1, 1985 to the present Relating to the number of Persons who took any Organism of Any Species for sport--whether by hunting, trapping, fishing or

otherwise--in the Area Arguably Affected by the Spill, and the number of Organisms of Any Species taken under any license or permit covering the taking for sport within the Area Arguably Affected by the Spill.

70. All Documents from January 1, 1985 to the present Relating to use of any Natural Resource in the Area Arguably Affected by the Spill, including, without limitation, actual or planned use of Seafood, timber, minerals, forest products, pelts, bodies of water, tracts of land or any mineral, flora or fauna found in the Area Arguably Affected by the Spill.

71. All Documents from January 1, 1985 to the present Relating to recreational activities in the Area Arguably Affected by the Spill, including, without limitation, the number of Persons visiting the Area in any season, the average expenditures by each visitor, the projected increases or decreases in recreational uses, the environmental impacts of recreational uses and the amounts expended for recreational uses.

72. All Documents from January 1, 1985 to the present Relating to businesses in the Area Arguably Affected by the Spill, including, without limitation, the nature of businesses operating in the Area, the income of such businesses, any forecast for the growth or decline of activities by such businesses, or contingencies affecting the growth or decline of such businesses.

73. All Documents from January 1, 1985 to the present Relating to any Subsistence Use or recreational, personal, or commercial uses of the Area Arguably Affected by the Spill at any time prior to the Spill.

74. All Documents from January 1, 1985 to the present Relating to the value of any Natural Resources in the Area Arguably Affected by the Spill.

75. All Documents Relating to the catch, collection or other taking or harvesting of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including commercial, sport or subsistence taking or harvesting.

76. All Documents Relating to historic, actual or forecasted quantities (at any stage of development), survival rates, survival assumptions, non-harvest depletions of population, harvest or catch, escapement, growth rate, spawner and recruit estimates or other such population data for any Organism of Any Species.

77. All Documents Relating to historic, actual or forecasted revenues, costs, or earnings from capture, harvest or other taking of any Organism of Any Species in any part of the Area Arguably Affected by the Spill, including, without limitation, such

data as it pertains to primary harvesters, processors, buyers, brokers, wholesalers, distributors, canners, exporters, or fish farmers.

78. All Documents from January 1, 1985 to the present Relating to any State, Agency or federal policies, regulations or laws in effect on or before March 24, 1989 (including, without limitation, the development, promulgation, review, evaluation, analysis, critique, rejection, approval, or implementation of such policies, regulations, or laws) concerning the postponement or closure of any Fishery--commercial, sport or subsistence--for any reason, including the presence of any Oil or pollutant.

79. All Documents Relating to any activities by any person since 1985 to influence or attempt to influence the State or federal policies, regulations, or laws concerning the postponement or closure of any Fishery--commercial, sport or subsistence--for any reason, including the presence of any Oil or pollutant.

80. All Documents Relating to the State's so-called "zero tolerance" policy as to the opening for 1989 or thereafter of Fisheries within the Area Arguably Affected by the Spill, including, without limitation:

- a. the reasons or grounds for implementation of such policy;
- b. measures, other than closure, that might be used to accomplish the purpose of such policy;
- c. the liability of any Defendant to reimburse any Person affected by implementation of such policy;
- d. Communications by any Persons concerning such policy;
- e. the criteria for application of such policy;
- f. objections by any Person, within or outside of the State government, to the adoption or application of such policy;
- g. application of such policy to any specific case or situation;
- h. modification of such policy, actual or suggested;
- i. the test fishing program; and

- j. the effect of the Exxon claims program on the use of such policy.

81. All Documents Relating to or containing any Communications concerning a decision to open, to postpone the opening of, to close, or not to open any Fishery in 1989 or thereafter in any part of the Area Arguably Affected by the Spill.

82. All Documents Relating to forecasts or projections of recreational activities in the Area Arguably Affected by the Spill at any time after March 24, 1989, including, without limitation, the number of Persons expected to visit such Area in any season, average expenditures, projected increases or decreases in recreational uses, environmental impacts of recreational uses and amounts expended for recreational uses, and revenues, costs and income from projected recreational activities.

83. All Documents Relating to the identification or quantification of any injuries or damages allegedly caused by the Spill or the Clean Up, including, without limitation, the following categories:

- a. injuries or damages to the public and private economies of the State or specific geographic areas within the State;

- b. injuries or damages to goodwill;
- c. injuries or damages to private businesses;
- d. injuries or damages, personal or economic, to individuals;
- e. injuries or damages to trade organizations;
- f. injuries or damages to commercial, scientific, educational, charitable, cultural or subsistence institutions or activities generating direct or indirect economic benefits to the State;
- g. injuries or damages to real property;
- h. injuries or damages to personal property;
- i. injuries or damages to Natural Resources;
- j. loss of governmental revenues sustained by the federal government, the State or any municipality, municipal subdivision or other governmental organization other than the State,

including, without limitation, alleged loss of Oil and gas production tax revenue, corporate income tax revenue, and Oil production royalties; and

- k. costs of restoration or replacement of Natural Resources.

84. All Documents Relating to the economic effects of the Clean Up upon:

- a. workers employed in the Clean Up effort;
- b. communities within the Area Arguably Affected by the Spill;
- c. communities outside the Area Arguably Affected by the Spill; and
- d. the economy of the State.

85. All Documents Relating to economic benefits resulting from the Clean Up, including, without limitation, numbers of Persons employed, businesses supported by Clean Up wages, cash recirculation factors, visits to the State generated by the Clean Up (including visits by contractors or others working on the Clean

Up, press and scientific visitors, tourists and governmental visitors), income to travel and hotel industries from Clean Up-Related visits and other such effects.

86. All Documents Relating to the movement of the EXXON VALDEZ at any time during its voyage from the Port of Valdez to San Diego, and all activities of any Person associated with that voyage, including, without limitation, its grounding, its rupture, or the loss of Oil therefrom, on or after March 23, 1989.

87. All Documents Relating to the licensing or performance at any time of the master, officers or crew who were aboard the EXXON VALDEZ on March 23-24, 1989.

88. All Documents Relating to the activities of Pilot Murphy in connection with the movement of the EXXON VALDEZ from Valdez on March 23, 1989.

89. All Documents Relating to the performance of the Alyeska Marine Terminal, Alyeska management, or Alyeska personnel in connection with the loading or departure of the EXXON VALDEZ on March 23, 1989.

90. All Documents Relating to any Communications on or after March 22, 1989 with any Person who was on the EXXON VALDEZ at any time during the period March 22, 1989 through June 23, 1989,

including, without limitation, any Communication with the master, officers or crew of the EXXON VALDEZ, or with any Agency, federal or state officers or agents aboard the EXXON VALDEZ.

91. All Documents from January 1, 1985 to the present Relating to the on-shore behavior of tank vessel crews, or individual members thereof, in Valdez, including, without limitation, consumption of alcohol or use of drugs by tank vessel crews, or any individual members thereof.

92. All Documents from January 1, 1985 to the present Relating to the on the job behavior or performance of military or civilian Persons responsible for operating the Vessel Traffic System in Prince William Sound.

93. All Documents Relating to Agency orders, rules, memoranda, policies, practices, correspondence, or other communications Relating to Drug or alcohol use by Valdez Vessel Traffic Center personnel, including but not limited to:

- a. Drug and/or alcohol use while on duty;
- b. Drug and/or alcohol use while off duty;
- c. Permissible drug and/or alcohol use while off duty;

- d. Testing for drug and/or alcohol use by Valdez Vessel Traffic Center personnel from January 1, 1984 to the present;
- e. Any and all investigations into drug and/or alcohol use among Valdez Vessel traffic Center personnel from January 1, 1984 to the present; and
- f. Any and all disciplinary actions taken by the Coast Guard with respect to Valdez Vessel Traffic Center personnel in response evidence of drug and/or alcohol use by Valdez Vessel Traffic Center personnel from January 1, 1984 to the present.

94. All Documents from January 1, 1985 to the present Relating to the weather or the conditions or patterns of tides, currents or floating ice in the Area Arguably Affected by the Spill..

95. All Documents Relating to mapping of the Area Arguably Affected by the Spill, including, without limitation, any maps purporting to show the location, quantity or condition of any Oil or other chemical resulting from the Spill or the Clean Up at any point in time.

96. All maps, charts, diagrams, photographs, aerial photographs, computer images, or any other depictions of the geography, topography or conditions of the Area Arguably Affected by the Spill, made or created from January 1, 1985 to the present, including, without limitation, trajectories or other depictions, whether projected or actual of the Spill, and Documents relating thereto.

97. All Documents Relating to all applications for licenses and certificates and renewals of licenses and certificates for Joseph J. Hazelwood, Gregory T. Cousins, and Robert M. Kagan, together with all medical reports or medical information for these three individuals and any waivers granted by the Agency to or for these three individuals.

98. All Documents Relating to any licenses held by Captains William B. Hayler and Calvin J. Bourke, and Kirk Greiner, including but not limited to Documents Relating to the date of

issue of every Coast Guard license held by Captains Hayler, Bourke and Greiner, the date of expiration, and the date of upgrade of each license.

99. All Documents Relating to any actions taken against the licenses held by Captains Hayler, Bourke and Greiner by the National Transportation Safety Board, the Agency, any state boards, or any other governmental agency, including but not limited to Documents relating to any disposition of proceedings taken against Hayler and Bourke, and any letters or reprimand, admonition, or discipline addressed to Hayler and Bourke.

100. All Documents prepared from January 1, 1969 to the present Relating to the preparation, negotiation, drafting or approval of the federal Agreement and Grant of Right of Way ("Federal Right of Way"), dated January 23, 1974, the State Right-of-Way Lease ("State Right of Way"), dated May 3, 1974, or any Exhibit, stipulation, addendum or amendment Relating to these Documents.

101. All Documents prepared from January 1, 1969 to the present that record or Discuss any Communication, Statement or representation made up to and including March 24, 1989 by any Defendant, any party to the litigation (including the State), the

Agency, any federal agency, or any other Person referring to the Federal Right of Way, State Right of Way or any exhibit, stipulation, addendum or amendment Relating to these Documents.

102. All Documents Relating to any Statement (whether or not authorized) made by or on behalf of any Person, in a public setting concerning Alyeska's or Exxon's legal rights and obligations under State or federal Oil pollution statutes or regulations.

103. All Documents Relating to any activities by any person to influence or attempt to influence State or federal policies, procedures, statutes or regulations Relating to the discharge of Oil, the clean up of Oil, or restoration of the environment for the discharge of Oil, including, without limitation, harm to any Organism of Any Species.

104. All Documents from January 1, 1977 to the present Relating to any State or federal statutes or regulations in effect before or after March 24, 1989 pertaining to liability for or assessment of Natural Resources damages.

105. All Documents Relating to all press releases prepared or distributed by the Agency or any other Person Relating to the Spill.

106. All Documents Relating to, or containing any information given to, the Exxon Valdez oil spill investigation conducted by the National Transportation Safety Board, Docket No. DCA 89 MM 040.

107. All Documents Relating to, or containing any information given to, the Alaska Oil Spill Commission or the investigation it conducted.

108. All Documents, including drafts, Relating to the report jointly submitted to President Bush on or about April 30, 1990 by the U.S. Department of Transportation and the U.S. Environmental Protection Agency regarding the Spill or Clean Up.

109. All Documents Relating to the content of any Communication involving any officer, employee, or agent of any Defendant that took place during the period March 23, 1989 through March 30, 1989 Relating to the Spill or Clean Up.

110. All reports, and Documents Relating to such reports that the Agency or any other Persons have submitted to any governmental entity or other Person from March 24, 1989 to the present that Relate to the Spill.

111. The following Documents, as identified on pages 1 and 2 of the National Transportation Safety Board--Marine Accident Division's accident report of April 25, 1989, prepared by Richard T. Johnson, Marine Accident Investigator:

- a. Prince William Sound VTS User Manual (1988);
- b. United States Coast Guard Study Report--Vessel Traffic Systems Issue Study (March 1973);
- c. United States Coast Guard Study Report--Vessel Traffic Systems Analysis of Port Needs (August 1973);
- d. Field Change No. 2, Type 1 to AN/FPS-121 VTS Radar System;
- e. Marine Safety Manual--Volume VI, Ports and Waterways Activity (COMTINST M 16000.11);
- f. Transcript of Interview with LCDR Donald R. Opedal dated April 1, 1989;
- g. Transcript of Interview with CDR S. McCall dated April 1, 1989;

- h. Transcript of Interview with VTS Watchstander David C. Dorey dated April 1, 1989;
- i. Transcript of Interview with ET2 Donald Alderich dated April 3, 1989; and
- j. Memorandum dated August 31, 1987 from RDI Moore to all VTC Watchstanders.

112. All Documents Relating to the comparative merits of double- and single-bottomed oil tankers with respect to leakage of Oil in the event of a ruptured hull, including, without limitation, all reports prepared by the Agency Related to this topic and all Documents Related thereto.

113. All Documents relating to any information requests received or promulgated by the Agency concerning the Spill, including but not limited to Freedom of Information Act (FOIA) requests, requests for disclosure of public records under AS 09.25.110, and other formal or informal letter requests, together with:

- a. Any and all lists, indices, receipt or intake logs, or summaries of said requests.

b. Any and all documents that have been produced in response to said requests; and

c. Any and all lists, indices, or summaries of the documents that have been produced in response to said requests.

114. All Documents that state, set forth or Discuss any alcohol or drug policies that have been proposed, considered or implemented by the Agency.

115. All Documents Relating to reductions in manning requirements on Alaska Marine Highway System Ferries.

116. All Documents Relating to any State or Agency casualty reports on Alaska State Ferry groundings, collisions, or reports of incidents of misconduct or negligence of Alaska State Ferry personnel.

117. All Documents Relating to archaeological, historical, or cultural sites or artifacts in the Area Arguably Affected by the Spill, including, without limitation, all Documents that:

a. Discuss, list, describe, or locate such sites or artifacts;

- b. Discuss ownership or selection of such sites pursuant to 43 U.S.C. § 1613(h)(i);
- c. Discuss damage to such sites or artifacts by the Spill or any other event or Person.

118. All Documents Relating to any Communications regarding the Sperry Marine SRP 2000 Ship Control System including, without limitation, all Department of Transportation Form 2692 reports ("Report of Marine Accident, Injury or Death") referencing or otherwise relating to such system.

BOGLE & GATES

LAW OFFICES

1031 West 4th Avenue, Suite 800
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Portland
Tacoma
Washington, D.C.
Yakima

DOUGLAS J. SERDAHELY

22137/48519

December 6, 1990

VIA COURIER

Commandant (L-CL)
United States Coast Guard
2100 Second Street, S.W.
Washington, D.C. 20593-0001

Re: Exxon Valdez Oil Spill Litigation
Notice of Deposition and Document Subpoena

Dear Commandant:

We enclose a courtesy copy of a notice of deposition and document subpoena that the defendants in the EXXON VALDEZ litigation will be serving upon United States Coast Guard. As you will observe in the enclosures, the date set for production of documents and for the deposition of their custodian(s) is January 21, 1991.

We are currently in the process of making arrangements for formal service of local subpoenas upon you. We would appreciate it if you could advise us as to what would be the most convenient method of service. Please convey your preferences in this regard to Mr. Richard W. Parker at the following address:

Mr. Richard W. Parker
O'Melveny & Myers
555-13th Street, N.W.
Suite 500W
Washington, D.C. 20004
(202) 383-5300

We also enclose a courtesy copy of the Discovery Plan For All Proceedings entered in the consolidated litigation in Anchorage, Alaska arising from the EXXON VALDEZ oil spill. We hope to be able to resolve directly by discussion and negotiation and

Page Two
December 6, 1990

discovery issues raised by the subpoena, and invite you to contact the undersigned for such purposes. In the event we are unable to resolve any such matters, the Discovery Plan specifies the means by which the Court will do so by proceedings before a Discovery Master.

If you have any questions about these documents, please feel free to contact Mr. Parker.

Very truly yours,

BOGLE & GATES



Douglas J. Serdahely
Liaison Counsel for Defendants
and Co-Member of Defendants'
Coordinating Committee

DJS:joy

cc: Richard W. Parker
Charles P. Flynn, Co-Member of
Defendants' Coordinating Committee
Harold Berger
Charles W. Ray, Jr.

BOGLE & GATES

RECEIVED
FEB 12 1990
BOGLE & GATES

FILED
FEB 9 1990
UNITED STATES DISTRICT COURT,
DISTRICT OF ALASKA
By _____ Deputy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the EXXON VALDEZ)
_____)

No. A89-095 Civil
(Consolidated)

DISCOVERY ORDER NO. 2

Discovery Plan and Referral
to a Discovery Master

(1) The discovery plan, which is annexed hereto, is adopted for the use of parties in coordinating discovery in this case.

(2) David B. Ruskin, Esq., is appointed as a special discovery master in the above entitled matter.

(3) The special master shall be compensated at the rate of \$155.00 an hour for performing his responsibilities under this referral.

DATED at Anchorage, Alaska, this 9 day of February, 1990.


United States District Judge

produced under formal and informal requests for production, in interrogatory answers, and in responses to requests for admission. "Discovery information" does not include information known or obtained from sources other than discovery procedures.

3. "Documents". As used in this discovery plan, the term "documents" is defined to mean and include all forms of data compilation defined in Rule 1001(1), Federal Rules of Evidence, or Rule 1001(1), Alaska Rules of Evidence. Nothing in this discovery plan is intended to limit the discovery of items or matters not included within the definition of "document" if such discovery is otherwise allowed by the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure.

4. "Proceedings". As used within this discovery plan, the term "proceedings" is defined to mean any federal court proceeding consolidated in In re the EXXON VALDEZ, Case No. A89-095 Civil (Consolidated), or any state court proceeding consolidated in In re EXXON VALDEZ Oil Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated), or any individual case in either of these consolidated cases.

5. "Original". As used in this discovery plan, the term "original" has the meaning defined in Rule 1001(3) of the Federal Rules of Evidence or Rule 1001(3) of the Alaska Rules of Evidence.

B. Rules of Civil Procedure.

Except as otherwise provided herein or by further order of the court, the Federal Rules of Civil Procedure shall govern the federal court consolidated case and the Alaska Rules of Civil Procedure shall govern the state court consolidated case.

C. Substantive Issues of Law.

Nothing set forth in this discovery plan shall be deemed to affect any substantive right, claim, or defense of any party in these matters or constitute any ruling or order on any question of law.

D. Manual for Complex Litigation 2d.

The court, parties, and Discovery Master shall be guided by, but are not bound by, provisions relating to discovery in the Manual for Complex Litigation 2d. To the extent such provisions are inconsistent with the terms of this discovery plan, this discovery plan shall control.

E. Cooperation of Counsel; Non-Waiver of Privilege.

Counsel for the respective parties are directed to cooperate to the greatest extent possible to promote the expeditious and efficient handling of these proceedings. Among other things, such cooperation shall include, whenever feasible, the preparation and presentation of joint positions, claims, and defenses by the plaintiffs and defendants who are aligned on respective sides. To facilitate this cooperation, the exchange or disclosure of information or documents between or among co-counsel for plaintiffs, or between or among co-counsel for defendants, in the course of such joint preparation

shall not be construed as a waiver of any attorney-client, attorney work-product, or other privilege or any other exemption from any disclosure requirement that may apply to the information or documents so exchanged or disclosed.

F. Parties.

For purposes of this discovery plan, the words "plaintiffs" and "defendants" are used to denote all those parties denominated as such in their pleadings, as a side. If reference is intended to an individual party, that individual party shall be referred to as "party", "plaintiff party", or "defendant party". Thus, for example, the State of Alaska, while currently the subject of a counterclaim, is included herein solely as a plaintiff party. Similarly, while Exxon and other defendants have asserted counterclaims in the litigation, they are referred to in this discovery plan solely as defendant parties. Should a future realignment of the parties occur which substantially affects the intended operation of this discovery plan as agreed upon by the parties, the Discovery Master shall, upon application of a party and in accordance with the dispute resolution procedures set forth herein for resolution of discovery disputes, review this discovery plan to determine whether modifications should be made.

II. GENERAL RULES AND PRINCIPLES REGARDING DISCOVERY.

A. Coordination of Discovery With Law and Motion Proceedings.

The parties are specifically directed to consider the impact that law and motion matters may have upon discovery scheduling. As various orders in these proceedings have

indicated, designated counsel for both sides are to negotiate and attempt to develop a coordinated Law and Motion Scheduling Plan. In determining a schedule for legal motions, the parties shall also coordinate discovery scheduling to defer discovery that may be rendered unnecessary or to expedite discovery concerning issues that may lead to legal rulings narrowing or simplifying this litigation.

B. No Repetition of Discovery Procedures.

The parties are directed to avoid repetitive discovery. No repetitive discovery may be noticed or served absent either prior approval of the party to whom such discovery is directed or prior approval of the Discovery Master upon good cause shown.

Any party seeking discovery shall be responsible first to coordinate its request for discovery with other parties on the same side and all parties on each side have a duty to cooperate. After coordination, the side submitting a discovery request upon any party shall be responsible to attempt to schedule discovery in a manner which eliminates the need for repetitive file searches or other repetitive activities.

C. Supplemental Responses.

The duty of a party to supplement its responses to a request for discovery information shall be governed by Rule 26(e) of the Federal Rules of Civil Procedure or Rule 26(e) of the Alaska Rules of Civil Procedure.

D. Inadvertent Production of Privileged Materials.

1. Inadvertent Productions or Disclosures. A party responding to any request for discovery information shall be responsible to make a reasonable and diligent effort to assert any claims of attorney-client privilege, work-product protection or other recognized evidentiary or discovery privilege when responding to any request for discovery information. However, in the interest of expediting discovery in these proceedings and avoiding unnecessary costs, inadvertent disclosure of privileged information shall not constitute a waiver of any otherwise valid claim of privilege if such claim is asserted by the sooner of either 1) fifteen (15) days after the first notice that the privileged information will be used in depositions or will be submitted to the Discovery Master or the court for use in some proceeding, or 2) eighteen (18) months from the date of entry of the order adopting this discovery plan. Upon assertion of a claim of privilege regarding inadvertent production of a privileged document, any recipient of such document shall either 1) return to the party claiming the privilege all copies of such document, or 2) inform the party claiming the privilege that it disputes the applicability of the claim of privilege. The party claiming the privilege shall apply to the Discovery Master in accordance with the discovery dispute resolution provisions of this discovery plan if it continues to seek return of the privileged material. Prior to a determination of the validity of the claim of privilege by the Discovery

Master, the information for which the claim is asserted shall not be disseminated or published in any way.

2. Limits of Waiver. Failure to assert a privilege as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication allegedly so protected, even involving the same subject matter, unless the Discovery Master or this court should rule otherwise.

E. Availability of Discovery.

All discovery generated in these proceedings is deemed to have been taken in each separate consolidated case. In addition, discovery served or noticed in one consolidated proceeding shall be deemed to have been served or noticed in the other consolidated proceeding. All discovery generated in these proceedings shall be available for all permissible uses under both the Alaska and Federal Rules of Civil Procedure and the Alaska and Federal Rules of Evidence. However, by stipulation, the parties have reserved all existing rights under either the Alaska or Federal Rules of Civil Procedure and Evidence to pursue or to object to particular uses of discovery information.

III. DISCOVERY SCHEDULE.

A. Class Certification Discovery.

Discovery relating to certification of classes shall be separately scheduled.

B. Other Discovery.

Other discovery in these proceedings shall be scheduled as provided elsewhere in this discovery plan.

C. Time Period for Discovery.

1. Commencement Date. Discovery may begin upon entry of the order adopting this discovery plan, except as otherwise provided in this discovery plan.

2. Conclusion Date. General discovery will conclude within eighteen (18) months of the entry of the order adopting this discovery plan, unless otherwise directed by the Discovery Master. The Discovery Master is authorized to grant one extension, not to exceed six (6) months, for general discovery. The Discovery Master can grant extensions for specific discovery purposes, which may exceed six (6) months, so long as those extensions are granted no later than eighteen (18) months from the date of entry of the order adopting this discovery plan.

IV. PROTECTIVE ORDERS REGARDING DISCOVERY MATERIALS.

A. General Protective Order.

The matter of a general protective order will be the subject of a separate order which will be issued before any party will be required to produce documents pursuant to this discovery plan.

B. Special Protective Order for Confidential Material.

In the absence of an agreement between parties, the issuance of protective orders on specific subjects shall be submitted to the Discovery Master and decided pursuant to

Rule 26(c), Federal Rules of Civil Procedure, or Rule 26(c), Alaska Rules of Civil Procedure.

IV. WRITTEN DISCOVERY.

A. Requests for Production of Documents.

1. Scheduling of Document Requests.

(a) First Set of Document Requests.

(i) Timing. Requests for production of documents shall not be filed until after the submission of answers to the Phase One Interrogatories.

(ii) Scope. The plaintiffs may serve on any defendant party, and the defendants may serve on any plaintiff party, a comprehensive set of document requests regarding matters related to the subject matter of this litigation. In its comprehensive request each side shall make a good faith effort to request all documents which it fairly and reasonably intends to seek during the course of the litigation. The purpose of this comprehensive set of document requests is to attempt to eliminate the need to search files more than one time.

(b) Subsequent Sets of Document Requests.

(i) Timing. The timing of subsequent sets of document requests shall be determined by the agreement of the designated counsel for each side. In the event agreement cannot be reached as to timing, each side shall be entitled to submit the matter to the discovery master for determination. Notwithstanding this provision, nothing herein shall be construed to preclude plaintiffs

or defendants from moving before the Discovery Master to allow the service of subsequent sets of requests before resolution of all outstanding issues regarding the first set of document requests or any other prior sets that have been served.

(ii) Scope. After the initial set of document requests referenced above, which must be comprehensive, any subsequent sets of document requests served on a party shall seek only specific information, the existence of which was not known to the requesting party when its comprehensive document request was made or that was not, in good faith, previously believed to be necessary. The parties shall endeavor to minimize the number of subsequent document requests.

2. Scheduling of Responses to Document Requests.

(a) Responses to Comprehensive Document Requests. Written responses to document requests shall be served within seventy-five (75) days of service of the requests. In addition, all requested documents shall be made available at that time for copying and inspection, subject to the responding party's objection thereto (including but not limited to a statement that such production cannot be completed at that time) or any agreement between counsel.

Within forty-five (45) days of service of any document request, the party from whom production is requested shall serve a Preliminary Response Plan. The Preliminary Response Plan shall, at a minimum, address the following

issues: (i) an estimate of the number of documents which will be produced; (ii) a timetable for production of the documents, including an indication of intention to produce the documents in installments or at one time; (iii) if production is to be in installments, a reasonable description of the volume and documents to be produced in each installment; (iv) a proposed place of production; (v) the manner of numbering of the documents to be produced; and (vi) any objections, including the basis for the objections, to the document requests.

Within fifteen (15) days of service of the Preliminary Response Plan, the designated counsel for the requesting side and counsel for the responding party shall meet and confer (either by telephone or in-person) regarding any issues raised by such Plan. At this conference, the parties shall attempt to prepare an agreed-upon schedule for production and to resolve by written stipulation any other issues raised by the Plan. Issues not resolved or reserved by stipulation may be submitted to the Discovery Master not earlier than seventy-five (75) days following service of the document requests.

(b) Responses to Subsequent Document Requests.

Responses to subsequent document requests shall be in compliance with Rule 34, Federal Rules of Civil Procedure, or Rule 34, Alaska Rules of Civil Procedure.

3. Service of Responses. Responses to the comprehensive document requests shall be served upon designated counsel for the requesting side within seventy-five (75) days

of service of the Requests for Production of Documents, and any stipulations obtained in accordance with the Preliminary Response Plan shall be incorporated therein.

4. Numbering of Documents. Any party producing documents shall number all produced documents as provided herein. Copies of any produced documents shall be marked by the producing party with an identifying number using a Bates stamp, computerized label, or similar marking system that: (i) identifies the party, person or entity producing the document, and (ii) provides a unique identification number of the document. An explanation of the numbering system for each party shall be provided by each liaison counsel prior to receipt by a party of any production from a producing party. Documents produced by non-parties shall be numbered with an alphabetic identifier of up to four letters and an accompanying number.

The identifying number assigned to the document shall be used to identify the document for all subsequent pretrial and discovery purposes, provided that once a document has been assigned a deposition exhibit number, it may be cited by such exhibit number.

5. Copying of Documents. Upon notification by the requesting party, the producing party shall have the obligation to copy, at the requesting party's expense, documents to be produced pursuant to a request. Unless otherwise agreed, copies of documents shall be made on 8 1/2 x 11 or 8 1/2 x 13 or 8 1/2 x 14 paper and the charge for copying shall not exceed

10 cents per copy. The requesting party may, at its option and expense, use optical scanning in addition to or instead of requesting copies at the time of production.

6. Illegible Documents. A party shall produce to the requesting party, according to the following procedures, the original or a legible copy of any produced copies that the requesting party deems to be illegible. The requesting party may serve a written notice on counsel for the producing party designating the document deemed illegible. The producing party shall then be required to produce the original or a legible copy of the document so designated not more than thirty (30) days following the date of service of the notice, unless the parties agree otherwise. The original document or a legible copy shall be produced at Anchorage, Alaska, unless otherwise agreed. The requesting party shall be responsible for making any arrangements for copying of the original at that time and promptly returning the original.

7. Stipulations as to Identification and Authentication. To the greatest extent possible, the parties shall stipulate to the foundational requirements for the introduction of documents during discovery and for trial exhibits and shall avoid unnecessary depositions or other discovery devices directed solely to foundational evidence. Where a dispute exists between the parties regarding the need for additional discovery regarding the identification or authentication of documents, the parties shall submit that

dispute to the Discovery Master prior to trial whenever reasonably possible.

8. Document Depositories. Each side shall be responsible for any document depository that side deems necessary or desirable.

B. Interrogatories.

1. Phases. Except as otherwise provided, interrogatories shall be conducted in four (4) phases: (1) witness/document identification; (2) general discovery; (3) contention discovery; and (4) expert discovery. Once discovery has commenced concerning the subject matter specified in any of the four (4) phases provided herein, subsequent interrogatories may make further inquiry about the subject matter of that phase or any preceding phase. Thus, for example, the commencement of a subsequent phase shall not further restrict inquiry otherwise permitted hereunder with regard to the subject matter of an earlier phase.

2. Scheduling of Interrogatories.

(a) First Phase Interrogatories.

(i) Timing. First Phase Interrogatories may be served upon approval of the discovery plan by the court.

(ii) Scope. The plaintiffs may serve upon any defendant party and defendants may serve upon any plaintiff party, interrogatories directed to the identification of witnesses and documents. The number of witness and document identification interrogatories is

subject only to objections of burden or undue expense.

(b) Subsequent Phase Interrogatories. The starting date, and number of interrogatories to each party, for each subsequent interrogatory phase shall be determined by agreement of the designated counsel for each side. In the event that agreement cannot be reached as to the date when a particular phase should commence or the appropriate number of interrogatories, either side shall be entitled to submit the matter to the Discovery Master for determination. Notwithstanding this provision, nothing herein shall be construed to preclude plaintiffs or defendants from moving before the Discovery Master to allow the service of subsequent sets of interrogatories or subsequent phase interrogatories before resolution of all outstanding issues regarding any other prior sets that have been served.

3. Response to Interrogatories. Written responses to interrogatories shall be served within sixty (60) days of service of the interrogatories, subject to the responding party's objection thereto (including but not limited to a statement that such response cannot be completed at that time) or any agreement between counsel. Within thirty (30) days of service of any set of interrogatories, the party from whom discovery is requested shall serve a Preliminary Response Plan. The Preliminary Response Plan shall, at a minimum, address the following issues: (i) identification of interrogatories as to which answers may be compiled from previously produced

documents pursuant to Rule 33(c), Federal Rules of Civil Procedure, or Rule 33(c), Alaska Rules of Civil Procedure; (ii) any objections, including the basis for the objections, to the interrogatories; and (iii) any proposed stipulations of fact in lieu of answers.

Within fifteen (15) days of service of the Preliminary Response Plan, the designated counsel for the requesting side and counsel for the responding party shall meet and confer (either by telephone or in-person) regarding any issues raised by such Plan. At this conference, the parties shall determine to what extent answers shall be served within sixty (60) days of service of the interrogatories, and resolve by written stipulation any other issues raised by the Plan including, for example, alternative schedules or any deferred or reserved objections. Issues not resolved or reserved by stipulation may be submitted to the Discovery Master not earlier than sixty (60) days following service of the interrogatories.

4. Service of Responses. Responses to the interrogatories shall be served upon designated counsel for the requesting side within sixty (60) days of service of the interrogatories, and any stipulation obtained in accordance with the Preliminary Response Plan shall be incorporated therein.

C. Requests for Admission.

1. Scheduling of Requests for Admissions.

(a) Timing. Requests for Admissions may be served upon approval of the discovery plan by the court.

(b) Scope. The plaintiffs may serve upon any defendant party and defendants may serve upon any plaintiff party Requests for Admissions.

2. Responses to Requests for Admissions. Within sixty (60) days of service of any set of Requests for Admission, the party from whom discovery is requested shall serve answers and objections.

V. DEPOSITION DISCOVERY.

The following procedure will be followed for all depositions (including depositions of non-parties).

A. One Deposition Rule.

Except as otherwise provided by this discovery plan, or by order of the Discovery Master or court upon a showing of good cause, no witness may be deposed more than once in these proceedings. Good cause will not be found where the party seeking the order knew or reasonably should have known at the time of the first deposition the facts claimed to necessitate the taking of the subsequent deposition.

B. Notice and Scheduling of Depositions.

1. Commencement of Depositions. Depositions may commence upon approval of the discovery plan by the court, provided, however, that early depositions shall be scheduled with due regard to the benefits of awaiting answers to initial

interrogatories and compliance with comprehensive document requests.

2. Scheduling of Depositions. For purposes of scheduling depositions, the calendar will be divided into "segments," each of which will consist of two weeks. Except as agreed by all parties and except as provided in subsection G, plaintiffs shall only be permitted to schedule depositions during the odd numbered segments, while defendants shall only be permitted to schedule depositions during the even numbered segments. After every two (2) segments (4 weeks), there shall be one (1) week in which no depositions occur, except as provided in subsection G or unless otherwise agreed by the parties.

The parties shall negotiate through designated counsel the deponents and schedule for depositions for each two (2) successive deposition segments. Such schedule shall be completed no later than forty-five (45) days prior to the commencement of the next two (2) deposition segments. The parties shall make reasonable allowance for the availability and convenience of the witness and the requirements of the parties as to the assignment of counsel to handle such depositions.

No later than forty-five (45) days prior to the commencement of the next two (2) deposition segments, each side shall serve upon designated counsel notices of depositions pursuant to Rule 30 of the Federal Rules of Civil Procedure or Rule 30 of the Alaska Rules of Civil Procedure for witnesses

on whom agreement was reached. Such notices shall include the deposing side's estimate of the time required to complete the deposition.

If such negotiation does not result in setting a reasonable and mutually agreeable schedule, either side may issue a mandatory notice of deposition for witnesses on whom agreement was not reached and such notice shall include the deposing side's estimate of the time required to complete the deposition. The side issuing a mandatory notice of deposition shall so indicate in the caption of the notice and recite in such notice the effort made to negotiate a mutually agreeable schedule and the reason that such negotiations were not successful. Any party opposing a mandatory notice must serve upon designated counsel an objection within seven (7) calendar days of service of the notice of mandatory deposition. Resolution of the dispute shall be submitted to the Discovery Master as provided in this discovery plan.

In the event that the Discovery Master fails to rule on or before the fifteenth day prior to the first day of the ensuing two (2) segments, the disputed deposition shall be removed from the calendar for that segment.

No later than fifteen (15) days prior to the first day of the ensuing two (2) segments, plaintiffs' designated counsel and defendants' designated counsel will send a final joint schedule for those segments to the Discovery Master. Thereafter, there will be no changes to the schedule for those segments, except for good cause or as provided in subsection G,

infra. Immediate notice of any such changes will be given by telephone to plaintiffs' designated counsel, defendants' designated counsel and the Discovery Master.

C. Non-Party Witnesses.

For a non-party witness, noticing counsel shall serve upon designated counsel a copy of the subpoena along with a copy of the notice of deposition. If the noticing counsel intends to request any deponent to produce documents at the deposition by subpoena duces tecum or otherwise, the noticing counsel will serve a copy of the request or subpoena duces tecum along with the notice of deposition.

D. Depositions of Corporations and Associations.

Any deposition of a public or private corporation, partnership, association or governmental agency noticed in accordance with this discovery plan must comply with the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure or Rule 30(b)(5) of the Alaska Rules of Civil Procedure. Notwithstanding the provisions of section A, supra, regarding the "One Deposition Rule," persons designated by any entity noticed for deposition pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, or Rule 30(b)(5), Alaska Rules of Civil Procedure, may also be deposed in their individual capacity. However, the provisions of section II.B will apply to such subsequent depositions.

E. Document Requests Directed to Party Deponents.

Except for good cause shown, a party noticing a deposition shall not include a Rule 34, Federal Rules of Civil

Procedure, or Rule 34, Alaska Rules of Civil Procedure, production of documents request in deposition notices. It is intended that, except in special circumstances, document exchanges be accomplished under section V.A of this discovery plan.

F. Place of Depositions.

Except for good cause shown, all depositions in any one track in any segment will be held in the same region. Depositions will be held in the city most convenient to the witnesses to be examined. On the West Coast, depositions may be held in Anchorage, Seattle or Los Angeles. On the East Coast, depositions may be held in New York, Philadelphia or Washington, D.C. In the Midwest, depositions may be held in Houston, Cleveland, Bartlesville or Dallas. (Depositions may be held in other cities where sufficient witnesses reside in or near such cities to justify holding depositions there.)

At any one city, depositions will be held at the place designated by noticing counsel unless otherwise agreed by all attending counsel.

G. Depositions Taking More Than the Estimated Time.

Depositions not completed within the estimated time shall at the option of the witness continue from day to day, holidays and weekends excepted, until completed and without deferral of any other previously scheduled deposition. If the witness is not available to continue beyond the time initially scheduled for his deposition, counsel responsible for that deposition shall schedule a time for the deposition to

continue. The side that scheduled the deposition shall be entitled to have such deposition continued to a specific date during that side's next segment.

H. Holidays.

No deposition may be scheduled on the dates of previously scheduled court hearings, or on legal holidays, as that term is defined in Rule 6(a) of the Federal Rules of Civil Procedure or Rule 6(a) of the Alaska Rules of Civil Procedure. For purposes of this discovery plan, the term "legal holidays" also includes the following: Thanksgiving (Thursday and Friday), Good Friday, Rosh Hashana, Yom Kippur, Alaska Day, Seward's Day, the first two days of Passover, and the two week period beginning on the Monday before Christmas.

I. Time of Depositions.

Depositions may only be scheduled on Monday through Friday during any segment. Depositions may not be scheduled before 9:00 a.m. and may not continue after 5:00 p.m., absent consent from the deponent and all attending counsel. The deposition shall proceed with due diligence. In addition, deposing counsel has the absolute right to extend any deposition up to two (2) hours when counsel, in good faith, believe such extension will avoid the need to continue that deposition on a subsequent day and such continuance will not impose an undue burden on the health of the deponent.

J. Conduct of Deposition.

Both sides shall reach a written agreement among themselves prior to the deposition as to the sequence in which

individual attorneys may examine and that sequence shall be followed. Each attorney must pass the witness before examination may be conducted by any other attorney. The interrogation may not seek to elicit an answer already given at the same deposition. Each attorney shall be responsible to be aware of prior inquiry and testimony and not to duplicate such inquiry.

Each examining attorney must ask all questions on all subject matters before passing the witness and, except for proper re-direct examination, that attorney may not open new subjects or reopen old subjects after passing a witness.

K. Simultaneous Depositions.

Except as agreed by the parties, or as otherwise provided in this discovery plan, or upon order of the Discovery Master or court, no more than two (2) depositions during any segment may be scheduled to take place at the same time.

L. Notice of Intent to Attend a Deposition.

Unless otherwise ordered under Rule 26(c), Federal Rules of Civil Procedure, or Rule 26(c), Alaska Rules of Civil Procedure, depositions may be attended by counsel of record in these proceedings, members or employees of their firms, attorneys engaged by a party to these proceedings for the purpose of the deposition, the individual parties to these proceedings or one representative of any corporate or governmental parties, experts or consultants engaged by counsel or a party to assist in preparation for trial, the deponent and counsel for the deponent. Except by stipulation, only one

attorney may examine or note objections on behalf of any party during the deposition. In addition, nothing in this paragraph shall prohibit any party from seeking a protective order on the grounds that the number of persons attending the deposition is unreasonable. Both sides will make every reasonable effort to restrict the number of persons who attend any deposition. Attorneys' fees for attendance at a deposition may not be awarded to counsel who unnecessarily attend depositions. Any counsel intending to attend a scheduled deposition shall inform liaison counsel or designated counsel within seven (7) days prior to the deposition. Such notice shall also indicate all persons who will accompany counsel. Individuals in excess of the number of persons identified by a party may be excluded if notice was not given in accordance with this section.

M. Document Predesignation.

Unless counsel for the party noticing the deposition and the deponent's counsel shall agree otherwise, the following deposition document predesignation procedure shall be followed.

No later than thirty (30) days prior to a deposition date, the side noticing a deposition shall serve on deponent's counsel and designated counsel of plaintiffs and of defendants, a list of all documents (either by document production number, or, for documents previously used in a deposition by exhibit number) which counsel anticipates using as an exhibit or referring to during the deposition. No later than twenty (20) days prior to a deposition date, all other counsel who intend to conduct any examination of the witness shall serve on

deponent's counsel and on designated counsel of plaintiffs and of defendants, a list of any additional documents (either by document production number or by exhibit number) which counsel anticipates using or referring to during the deposition. No later than seven (7) days prior to a deposition, all counsel who intend to conduct any examination of the witness shall serve on the deponent's counsel and on designated counsel of plaintiffs and of defendants, a list of any additional documents (either by document production number or by exhibit number) which such counsel anticipates using or referring to during the deposition. This final designation may include only documents identified, in good faith, in response to the immediately prior designation. In all cases, if a document intended to be used as an exhibit does not have a document production number or an exhibit number, a copy of such document shall be supplied with the list.

Where the deponent is a non-party to the litigation, counsel designating documents shall be obliged to serve, together with the list referred to above, hard copies of the designated documents upon the witness or the witness' counsel. The cost of making and serving such copies will be borne by counsel designating the documents.

N. Marking of Deposition Exhibits.

Each document marked for identification at the depositions shall be given a unique exhibit number as opposed to any identifying numbers employed in the document production process.

To the extent practicable, each exhibit will be identified by the same number at every subsequent deposition. In the event that an identical document is inadvertently marked at different depositions with two or more exhibit numbers, as soon as practicable thereafter, the party or parties marking the document will choose one exhibit number for the document and advise the court reporter, defendants' liaison counsel and plaintiffs' liaison counsel of the choice. The court reporter will correct the applicable transcripts to reflect the corrected exhibit number.

The index of exhibits annexed to each deposition transcript shall reflect the document production number, as well as the exhibit number, for each marked exhibit.

O. Objections.

1. Procedure. Except as may otherwise be stipulated amongst counsel, Rule 32 of the Federal Rules of Civil Procedure or Rule 32 of the Alaska Rules of Civil Procedure shall govern the matter of all objections at depositions.

All objections to the form of the questions will be preserved by noting with a statement sufficient to enable the interrogating attorney to reformulate the question desired.

The objection of one counsel to a question need not be repeated by any other counsel to preserve that objection on behalf of the party represented by such other counsel.

2. Continuation of Deposition. Counsel may elect to seek an immediate telephone ruling from the Discovery

Master, but, if he is not available, counsel shall be obligated to continue the deposition as to matters not in dispute.

P. Information To Be Available on Assertion of Claims of Privilege.

Where a claim of privilege is asserted during a deposition:

1. The attorney asserting the privilege shall identify during the deposition the nature of the privilege (including work product) which is being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state or federal law, indicate the privilege rule being invoked;

2. If sought, the following information shall be provided at the time the privilege is asserted to the extent the information is readily obtainable from the witness being deposed, unless divulgence of such information would cause disclosure of privileged information:

(a) For documents: (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document including, where appropriate, the author, addressee, and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(b) For oral communications: (1) the name of the person making the communication and the names of the person present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of communication; and (3) the general subject matter of the communication;

3. Any objection on the ground of privilege asserted during a deposition may be amplified by the objector subsequent to the deposition;

4. After a claim of privilege has been asserted, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, including (a) the applicability of the particular privilege being asserted, (b) circumstances which may constitute any exception to the assertion of the privilege, (c) circumstances which may result in the privilege having been waived, and (d) circumstances which may overcome a claim of qualified privilege.

Q. Telephone Rulings by the Discovery Master.

In the event that counsel should seek a telephone ruling by the Discovery Master, the hearing shall be conducted in such a manner so that all examining counsel attending the deposition and the court reporter can hear and participate in the proceeding. The court reporter shall make a transcript of the conference call proceedings.

R. Videotaped Depositions.

The testimony at any deposition may be recorded by videotaping. Notice of intent to take a videotaped deposition shall be given no later than fifteen (15) days before the commencement of the deposition.

The following procedures will govern all depositions which are videotaped:

1. The deposition of any witness which is videotaped shall also be simultaneously stenographically recorded and later transcribed by a court reporter;

2. The witness shall be first duly sworn on camera by an officer authorized to administer oaths;

3. The deposition shall be recorded in VHS format on equipment furnished and operated by an impartial technician;

4. The background behind the witness shall be of a plain, moderately dark color;

5. A monitor shall be used so that the picture composition is viewable by all counsel;

6. If counsel for the parties and the witness cannot agree upon physical arrangements, such as the placement of the witness, the camera or cameras and/or the microphones, these matters shall be submitted to the Discovery Master for resolution;

7. The video operator shall certify under oath that the proceedings have been recorded accurately and that the videotape accurately reflects such recording;

8. The original videotape recording shall be preserved in the custody of the deposition court reporter, together with the original stenographic transcript, in its original condition, until further order of the court or Discovery Master;

9. It shall be the duty of the court reporter to record when a videotape is changed, when examination by each of the various counsel commences and ends and whenever there

is an interruption of the continuous tape exposure for the purposes of off-the-record discussions, mechanical failures, or other similar technical problems;

10. The videotape operator shall note any objections upon an index listing the pertinent videotape reel and videotape recorder counter number, a copy of which index will be retained with the original recording and will be furnished to defendants' designated counsel and plaintiffs' designated counsel;

11. Prior to the use of any videotaped deposition at trial, the court will rule on objections to questions and to the admissibility of any answers given during the deposition. A copy of the original videotape deposition will be made available, and all the objections, colloquy of counsel, and any question and answer ruled inadmissible will be deleted from that copy. Upon application of any party, the court also will review the videotape of the deposition to determine if the videotape may be viewed by the jury. No videotaped deposition in which any party desires a portion deleted may be exhibited to the jury unless it has first been edited in accordance with this paragraph;

12. The stenographic transcription shall serve as the log of the deposition for the purpose of identifying objections, admissions of exhibits, and questions, testimony, or colloquy which are objected to prior to trial as set forth in subparagraph 11. Any such material objected to shall be specifically identified by the objecting party by reference to

page and line numbers of the transcript and to the index of the videotape described above;

13. The cost of producing the original videotape of a witness' testimony and the cost of one copy for deponent or his counsel shall be borne by the party upon whose request the deposition was videotaped. Any party may order a copy of the original videotape from the videotape operator at its own expense;

14. The cost of presenting the recording in court at the trial shall be borne by the offering party;

15. The original video recording may not be edited or altered.

S. Telephonic Depositions.

The testimony at any deposition may be taken by telephone. Notice of intent to take a telephonic deposition shall be given no later than fifteen (15) days before the commencement of the deposition. If any party objects to the taking of the deposition by telephone, the deposition must be taken in person.

The following procedures will govern all depositions which are taken by telephone:

1. The deposition of any witness which is taken by telephone shall also be simultaneously stenographically recorded and later transcribed by a court reporter;

2. The deposition shall be conducted in such a manner so that all counsel participating in the deposition and the court reporter can hear and participate in the proceeding.

3. The court reporter shall be located with the witness or, by stipulation of all of the parties participating, at the office of one of the attorneys;

4. The court reporter shall first record the identity of all counsel participating in the telephone deposition; and

5. The cost of the telephonic deposition shall be borne by the party upon whose request the deposition was taken by telephone.

T. Recording Transcription and Correction of Deposition Transcripts.

1. Method of Reporting. All depositions shall be recorded by machine stenography and shall also be recorded on audio tape. The reporter shall make available upon request a written transcript and a WordPerfect or ASCII disk of the transcript. The party noticing a deposition shall be responsible to pay the cost of the original transcript.

2. Selection of Court Reporters.

(a) Designated counsel shall prepare a list of mutually agreeable and qualified deposition reporters in each city in which depositions are scheduled. To the extent possible, court reporters familiar with these proceedings who have demonstrated the capacity to deliver accurate transcripts within a reasonable time and at reasonable costs should be employed in subsequent depositions.

(b) The side who arranges for a deposition shall be responsible to arrange for a qualified court reporter and to assure that the court reporter is aware of the court

reporter's duties under this discovery plan. The parties will agree to a written set of instructions to be delivered to court reporters.

3. Consecutive Pagination. Each page of the transcript of any deposition shall include a header containing the following information: volume number (in Arabic numerals); page number; the surname of the witness and the date on which the testimony was given. The following is an example of a header that would comply with this paragraph: Volume 3, page 148, Jefferson, 10/10/90.

4. Consecutive Enumeration of Volumes of Transcript. Regardless of the number of days during the deposition of any one witness and regardless of any adjournments prior to completion of the deposition of any individual witness, there will be assigned a separate and sequential volume number for each day on which testimony is given and the pages of each volume will be numbered sequentially from the first page of the first volume. Where two parts of any volume of a transcript are bound separately in order to comply with a protective order, such volumes shall nevertheless be assigned the volume number for the day on which the protected testimony is given and shall be paginated sequentially with the remainder of the transcript.

U. Correction and Attestation of Transcript by Witness.

Changes by the witness to transcripts of depositions must be made within forty-five (45) days of delivery of the original of the last volume of said deposition transcript. In

the absence of changes or unless signature by the witness has been specifically demanded, signature to deposition transcripts is waived and such transcripts may be used for all purposes as if signed under oath. In any event, transcripts may be used as if signed prior to receipt of signed transcripts.

The transcripts of depositions need only be signed by the witness at the conclusion of the last volume. Court reporters shall be instructed to prepare a certificate for the witness referring to the entire transcript. Witnesses may sign transcripts under penalty of perjury in lieu of attestation before a notary, or may sign a transcript before any notary.

V. Correction of Mistranscription.

1. Suggestions for Correction. Any attorney may request correction of any deposition transcript by submitting suggestions for correction within forty-five (45) days of delivery of the volume of transcript to be corrected. The procedure for making such corrections shall be as follows:

(a) Time to Suggest Correction. Suggestions for correction shall be sent in writing to designated counsel for both sides within forty-five (45) days of delivery of any volume of transcript. Suggestions for correction shall, where necessary, state the basis for making the proposed correction.

(b) Notice of Suggestion to Witness. The attorney representing the witness shall be responsible to advise the witness of any suggestion for correction.

(c) Objections to Suggestions for Correction. If a witness or any attorney disputes a suggestion for

correction, he or she shall so advise designated counsel for both sides in writing within forty-five (45) days of the date of the original suggestion for correction.

(d) Acceptance of Suggested Correction. If no objection to a suggestion for correction is submitted to designated counsel within forty-five (45) days of the date of the original suggestion for correction, such correction shall be deemed authorized inso facto and the custodian of the original transcript shall post such correction to the transcript.

(e) Acceptance of Objections to Suggested Corrections. If objections to proposed corrections are submitted to designated counsel within forty-five (45) days of the date of the original suggestion for correction, the person who made the original suggestion may notify designated counsel of nonacceptance of the objection within seven (7) days of the date of such objection. Unless written notice of nonacceptance is received within seven (7) days, the objection is sustained and the suggested correction waived inso facto.

(f) Requests for Review of Notes by Court Reporter. In the event of nonacceptance of an objection, the person who made the original suggestion for correction shall be responsible to request review of the suggested correction by the court reporter.

(g) Review of Request for Correction. If, after consulting his or her original notes and audio tapes, the court reporter concurs in a suggestion for correction, the

court reporter shall so advise designated counsel for both sides and the custodian of the original transcript shall post the correction to the transcript accordingly. If, after review of his or her original notes, the court reporter does not concur in the suggestion for correction, the suggestion shall be deemed rejected.

(h) Settlement of Mistranscription by Discovery Master. Rejection of a suggested correction by the court reporter shall not preclude a timely motion to the Discovery Master to require correction of the transcript.

W. Custody and Conformance of Transcripts by Counsel.

The attorney to whom the original transcript of a deposition is first delivered by the court reporter shall have the following responsibilities:

1. Delivery of Transcript to Witness for Review.

Providing the transcript of the deposition to the witness and reminding the witness of his or her right to change or correct the transcript and of the time within which such correction must be made, if at all.

2. Notification of Witness of Suggestions for Correction. Promptly advising the witness of any timely suggestions for correction made by counsel and responses thereto.

3. Advising Designated Counsel of Changes to Transcript. Advising designated counsel for both sides and the court reporter of changes or corrections made by the witness.

Advising designated counsel for both sides of any objection by the witness to suggestions for correction.

4. Obtaining Signature of Witness. Obtaining the signature of a witness to the transcript if required.

5. Conforming Original of Transcript. Posting corrections to the transcript, whether made by the witness or counsel pursuant to suggestions for correction.

6. Delivery of Original Transcript to Liaison Counsel. Finally, delivering the original of the transcript (as corrected or signed as the case may be) to liaison counsel for the side that scheduled the deposition. Originals in the possession of liaison counsel shall be available on reasonable notice for inspection by the opposite side.

X. Court Reporter's Duties.

A court reporter is relieved of all duties as to signature and delivery of the transcript except the following:

1. To promptly and accurately complete the transcript and to furnish the original and copies thereof on ASCII or Wordperfect disk, on the terms agreed between counsel and the reporter;

2. To furnish the original of the transcript to counsel for the party who produced the witness, or in the case of non-party witnesses, to the attorney who conducted the first interrogation at the deposition.

3. To retain his or her original notes and audio tape.

4. To review his or her original notes and audio tapes of the deposition where suggestions for correction are referred to the court reporter and to concur in suggestions for correction, where, in the sole and professional opinion of the reporter, the reporter's notes and audio tapes support the correction, but not otherwise.

Y. Miscellaneous Deposition Procedures.

1. Witness Fees. Any witness fees and expenses required to be paid by the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure shall be the responsibility of the party noticing the deposition.

2. Exceptions. Exceptions to the foregoing deposition procedures will be permitted only upon agreement of defendants' designated counsel and plaintiffs' designated counsel, or with approval of the Discovery Master (or court if an appeal is taken) for good cause shown.

VI. RESOLUTION OF DISCOVERY DISPUTES.

A. Compliance Requirements.

Except as may be otherwise provided herein, neither the Discovery Master nor the court shall consider any discovery dispute unless counsel for the moving party shall certify compliance with the following procedures or that a good faith, conscientious effort was made to comply.

Any party seeking or opposing discovery shall be responsible first to coordinate its request or opposition to a request with other parties on the same side and all parties on each side have a duty to cooperate, including in the preparation of motions and accompanying memoranda.

B. Obligation to Confer.

Except upon motion and for good cause shown, before the filing of any motion to resolve a discovery dispute, counsel for the party seeking such an order shall serve upon designated counsel a notice of intent to file a motion to resolve the discovery dispute. Upon receipt of such notice, designated counsel for both sides shall meet in person or by telephone within five (5) days, unless otherwise agreed by the parties, to confer about the dispute and to attempt to resolve their differences. Following such conference, the party seeking an order may prepare a motion and memorandum setting forth the matters on which the sides were unable to agree and serve it on the other side as set forth below.

C. Submission to the Discovery Master.

1. **Movant's Motion and Memorandum of Points and Authorities.** Unless otherwise agreed, the movant's motion and memorandum of points and authorities in support of its motion for a discovery order shall be served upon liaison counsel and on the designated counsel for the side of the party or parties opposing relief within twenty (20) days from the date of the dispute conference provided for in section B. Such motion and

memorandum shall be filed with the Discovery Master in the first instance.

2. Memorandum of Points and Authorities in Opposition. Unless otherwise agreed, within twenty (20) days of receipt of movant's motion and memorandum, the party opposing the relief requested shall either (a) advise the moving party of its agreement to the relief requested or (b) serve a memorandum of points and authorities in opposition to the proposed discovery motion. Such memorandum shall be served on liaison counsel and designated counsel for the moving side, and shall be filed with the Discovery Master in the first instance.

3. Decision Package for Discovery Master. Unless both sides agree to a different time, within five (5) days of service of the memorandum of points and authorities in opposition, designated counsel for each side shall discuss by telephone or in person whether they can resolve the dispute themselves or need to submit the dispute to the Discovery Master. If the dispute is not resolved, the moving party shall so notify the Discovery Master of the dispute.

4. Scheduling Order by Discovery Master. Within five (5) days after submission of the materials required above, the Discovery Master shall issue a scheduling order specifying:

(a) The date for submission of a reply brief by the moving party, if any is deemed appropriate by the Discovery Master.

(b) The date for submission of any other brief, evidence or supporting material desired or permitted by the Discovery Master (which date may be simultaneous with the filing of movant's reply brief).

(c) Any provisional order concerning the conduct of discovery.

(d) The date for argument or evidentiary hearing, if deemed necessary by the Discovery Master or if requested by both parties.

5. Hearings. All hearings on discovery disputes may be held by conference telephone call or in person, at the discretion of the Discovery Master, depending on the availability of counsel, the nature of the motion and the needs of the Discovery Master.

6. Rulings by Discovery Master. The Discovery Master shall rule upon all discovery disputes presented to him by issuing a written decision which shall be filed with the court and served on liaison counsel and any party's counsel specifically appearing in connection with that ruling, unless all parties stipulate to waive the written ruling or if the Master, in his discretion, determines to rely on an available stenographic transcript of his oral ruling.

7. Expedited Decision-Making by Discovery Master. Notwithstanding any matter set forth above, the Discovery Master may, sua sponte, or upon the oral or written application of any party, expedite briefing and/or hearing on any discovery matter. The party requesting an expedited resolution shall

explain the reasons why it is being requested. Any oral application requesting an expedited resolution may be heard by telephone, with the approval of the Discovery Master.

Unless relieved by order of the Discovery Master for good cause shown, counsel applying for an expedited resolution shall give reasonable advance notice of such application to liaison counsel or the parties.

D. Appeals from Decisions of the Discovery Master.

1. Finality. Unless appealed as provided for herein, the rulings of the Discovery Master on discovery disputes shall be final and shall be deemed the rulings of the court. Failure to appeal such ruling shall not constitute a failure to preserve such issue for purposes of any later appeal.

2. Notice of Appeal. Any party aggrieved by a ruling of the Discovery Master may, within seven (7) days from the date of the Discovery Master's final written decision or the availability of the written or transcribed order, file a notice of appeal with the Discovery Master. Any finding or conclusions, or parts thereof, to which objection is made shall be specifically designated in the notice of appeal. Within five (5) days of the filing of the notice of appeal, the Discovery Master shall transmit all original papers and exhibits previously served upon the Discovery Master, including any transcripts of proceedings or memoranda, to the court for its determination of the appeal.

3. Appellate Procedure. Within ten (10) days after filing of the notice of appeal with the Discovery Master, the party appealing the decision of the Discovery Master shall file an opening brief which shall not exceed twenty (20) pages. The responding party shall file its brief, which shall not exceed twenty (20) pages, within twenty (20) days of the filing of the notice of appeal. Any reply brief shall be filed with the court within twenty-five (25) days of the filing of the notice of appeal and shall not exceed ten (10) pages. No further briefing shall be allowed except with the court's permission.

In the event of simultaneous appeals in the state and federal court, the state judge and the federal judge will coordinate the disposition of the appeals.

4. Extraordinary Circumstances. Upon application and a finding of extraordinary circumstances, the court may, in its discretion, conduct an expedited proceeding to review any ruling of the Discovery Master. The timing and form of the proceeding shall be at the discretion of the court.

E. Docket.

The Discovery Master shall maintain a master docket of all pleadings, briefs, exhibits, decisions, findings or other related determinations, including transcripts of related proceedings. The Discovery Master shall also maintain a miscellaneous docket of all correspondence directed to or transmitted by the Discovery Master.

VII. DISCOVERY MASTER.

A. Selection.

In the event that the Discovery Master selected by the court is unable to carry out his duties, the parties, through designated counsel, shall confer in an attempt to reach agreement on a replacement. To the extent that there is disagreement, each side may simultaneously serve and file no more than three recommendations to the court as to an appropriate replacement. Explanatory memoranda may accompany this initial filing, but shall not exceed five (5) pages in length. Objections to such recommendations, not to exceed five (5) pages in length, may be filed within ten (10) days of service.

B. Powers and Duties.

The Discovery Master shall be empowered to hear, in the first instance, all disputes between the parties concerning discovery matters and to take such steps as are necessary and in accord with the provisions of this discovery plan and the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure to resolve such disputes.

C. Compensation.

The Discovery Master shall be compensated at the rate of \$155.00 an hour. The Discovery Master shall submit periodic statements for time spent by him on these proceedings to liason counsel for both sides. Such statements may be submitted monthly or quarterly at the option of the Discovery Master. Plaintiffs shall be responsible to pay one-half of the cost of the Discovery Master's services and defendants shall be responsible to pay one-half of the Discovery Master's services,

services, provided, however, that on any matter decided by him, any side or party may move to have the cost of the Special Master's time taxed as a sanction or the Discovery Master may, on his own motion, assess the cost of his time to either side in such proportion as he finds appropriate.

D. Ex Parte Communications.

There shall be no ex parte communications with the Discovery Master.

VIII. ADDITIONAL DISCOVERY PROCEDURES.

All parties shall have the right at any time to submit to the Discovery Master proposed additional rules of procedure. Such proposed rules shall be served upon liaison counsel for each side.

Within fourteen (14) days of service of proposed additional rules, any party may serve upon liaison counsel written objections to the proposed additional rules of procedures. Within fourteen (14) days thereafter, the parties shall confer to resolve, if possible, any disagreements. Thereafter, the proposed rule changes shall be submitted to the Discovery Master and those changes upon which there is disagreement shall be resolved in accordance with section VII of this discovery plan.

X. PRODUCTION/INSPECTION OF PHYSICAL EVIDENCE AND SITES.

In connection with the production of items of physical evidence and inspection of sites, the parties shall cooperate and confer with one another so that appointed counsel, their experts and technicians may have access during

regular business hours to relevant sites and items of physical evidence, subject to reasonable notice in accordance with Rule 34 of the Federal Rules of Civil Procedure or Rule 34 of the Alaska Rules of Civil Procedure. Such access shall include the ability to bring on equipment necessary to measure and photograph as agreed between the parties. Any testing, sampling, or scheduling may be pursuant to agreement of the parties and, if unable to reach agreement, disputed issues shall be submitted to the Discovery Master for resolution in the manner for which provision is made in section VII on this discovery plan.

XI. MISCELLANEOUS.

A. Delivery of Notices.

All documents required to be served under this discovery plan shall be delivered by hand, telecopier, Federal Express Mail or other method which will insure delivery within two (2) business days.

B. Time.

In computing any period of time prescribed or allowed by this discovery plan, the provisions of Rule 6(a) of the Federal Rules of Civil Procedure or Rule 6(a) of the Alaska Rules of Civil Procedure shall be followed.

C. Extension of Time. Upon a showing of good cause, any party may apply to the Discovery Master for an extension of time.