

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

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

THIS DOCUMENT RELATES TO
ALL CASES

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MAY 27 1997

Oil Spill Public Information Center
645 G Street
Anchorage, AK 99501

FOR REFERENCE

Do Not Take From This Room

Cook Inlet Pot Shrimp Claimants
Lower Cook Inlet Roe Herring Seine Claimants
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Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
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LEGAL NOTICE

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

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

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

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

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

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

Aquaculture Associations	Kodiak Dungeness Crab
Businesses	Kodiak Food Bait Herring
Cannery Workers	Kodiak Miscellaneous Finfish
Municipalities	Kodiak Miscellaneous Shellfish & Kelp
Native Subsistence Claimants	Kodiak Roe Herring Drift
Personal Injury	Kodiak Roe Herring Seine
Personal Property	Kodiak Salmon Beach Seine
Signatory Native Corporations	Kodiak Salmon Seine
Real Property	Kodiak Salmon Set Net
Recreational Use	Kodiak Scallops
Subsistence	Prince William Sound Dungeness Crab
Tenders	Prince William Sound Food Bait Herring
Chignik Salmon Seine	Prince William Sound King Crab
Cook Inlet Dungeness Crab	Prince William Sound 1989 Fund
Cook Inlet Miscellaneous Finfish	Prince William Sound Miscellaneous Finfish
Cook Inlet Pot Shrimp	Prince William Sound Miscellaneous Shellfish and
Lower Cook Inlet Roe Herring	Aqua Farm Permits
Cook Inlet Salmon Drift	Prince William Sound Pot Shrimp
Cook Inlet Salmon Seine	Prince William Sound Roe Herring Drift
Cook Inlet Salmon Set	Prince William Sound Roe Herring Seine
Cook Inlet Tanner Crab	Prince William Sound Roe on Kelp Pounds

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PLAN OF DISTRIBUTION OF ALLOCATIONS
TO THE AREA BUSINESS CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories.

This distribution plan proposes a distribution method for allocations to the Area Business Claim Category. Plaintiffs' counsel³ ask the Court to approve as fair, adequate and reasonable: eligibility criteria for area business claimants; a list of 162 area businesses which satisfy the eligibility criteria and therefore may participate as claimants in the Area Business Claim Category ("Participating Businesses"); a methodology for determining Participating Businesses' shares of allocations to the Area Business Claim Category; and Participating Businesses' "Final Percent Shares" of allocations to the Area Business Claim Category. Plaintiffs' counsel propose that any putative area business claimant not listed among Participating Businesses be required to file an objection to this distribution plan in accordance with the terms of the Notice, or else be forever barred from participating.

I. PARTICIPATING BUSINESSES
A. ELIGIBILITY CRITERIA

Consistent with the terms of the Court-approved Allocation Plan, a claimant is eligible for the Area Business Claim Category only if the claimant: (1) was engaged in the business of providing goods, equipment or services at the time of the spill;⁴ (2) filed a timely lawsuit on the claimant's own behalf as a direct action plaintiff or putative class representative;⁵ (3) is a signatory to plaintiffs' joint

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

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

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴Plaintiffs' counsel propose that, to satisfy this condition, a business must either have: been operating at the time of the spill; been in the process of starting up operations at the time of the spill, and had its startup delayed by the spill; or taken substantial steps to begin operation at the time of the spill, but been prevented from ever coming into operation by the spill.

⁵*See* Allocation Plan 13. *See also* Order Certifying Commercial Fishing Class, Native Class and Landowner Class (Mar. 14, 1994) ("Class Certification Order"). The Class Certification Order, *inter alia*, decertified the area business class certified by the state court, and required putative class members to file lawsuits on their own behalf within 180 days of March 14, 1994. Area businesses that failed to comply with the filing deadlines set in the Class Certification Order do not share in recoveries governed by the Court-approved Allocation Plan. The Court made this clear in Order 317 (pp. 14-15), in which the Court dismissed objections to the Allocation Plan filed on behalf of two purported processors which failed to file lawsuits, and held "In its (continued...)

prosecution agreement,⁶ and (4) did not settle and release its punitive damage claims against the Exxon defendants. Claimants satisfying these four criteria will be referred to as "putative area business claimants." In addition, an area business claim must: (5) not qualify for the Aquaculture Association, Commercial Fishing, Native Corporation, Processor or Tender Claim Categories; and (6) be for economic losses proximately caused by the *EXXON VALDEZ* oil spill.⁷

After extensive review and arms-length negotiation with area business plaintiffs and their counsel, plaintiffs' counsel have concluded that the 162 Participating Businesses listed on Tables 1 and 2 attached satisfy these criteria. Plaintiffs' counsel have concluded that no other claims can qualify for the Area Business Claim Category, and therefore propose to allow only Participating Businesses to share in allocations to the Area Business Claim Category.⁸

B. FISHING-RELATED AND NON-FISHING BUSINESSES

Plaintiffs' counsel would subdivide Participating Businesses into two categories: "fishing-related" and "non-fishing." *See infra*. Fishing-related Participating Businesses, listed on Table 1, were directly and substantially involved in the chain of harvesting, preparation and distribution to market of seafood -- e.g., suppliers of commercial fishing equipment, repairers of commercial fishing vessels and equipment, and seafood broker/buyers. All other Participating Businesses fall into the non-fishing category, and are listed on Table 2.

II. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Allocation Plan, Participating Businesses share in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁹ \$87,311,000 from the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;¹⁰ \$24,722,000 collected from Exxon,¹¹ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,¹² plus interest,¹³ from judgments against Exxon which are not yet collected. The projected area business matrix share is 0.2795% of the signatories' share of the Alyeska Settlement and 0.28% of signatories' other recoveries.¹⁴

A. NATIVE/MUNICIPALITY/KODIAK ISLAND BOROUGH AND UNCOLLECTED RECOVERIES

Plaintiffs' counsel expect the Area Business Claim Category to be allocated roughly \$69,000 from Native/Municipality/Kodiak Island Borough recoveries, \$161,000 from the uncollected Phase IIA judgment and prejudgment interest, and \$13,351,000 from the

(...continued)

⁵Order certifying the commercial fishing class, native class and landowner class, the court set September 7, 1994, as the last date upon which business entities could file suit for damages resulting from the oil spill."

⁶The Court-approved Allocation Plan governs: "(1) all punitive damage recoveries; and (2) all compensatory damage recoveries, except those by the United States of America, the State of Alaska, Daniel DeNardo, Donald Ferguson, Tom Lakosh, Rainbow King Lodge, the non-signatory Native corporations and the 'Seattle seven' seafood processors." *Id.* 27. The Allocation Plan allocated all of these recoveries to signatories except the 4.277% of punitive damage recoveries specifically allocated to the six non-signatory Native Corporations. *See* Order 317, p.49 n.71. Thus, only signatories are eligible to make claims against the Area Business Claim Category.

⁷The Allocation Plan (p.13) limited recognized area business damages to profits lost from 1989 through 1995 as a result of the spill, and realized losses of equity and assets by owners of businesses driven out of operation by the spill.

⁸Only putative area business claimants have standing to object to this distribution plan. By the terms of the Court-approved Allocation Plan (see p.12), any area business that failed to file a timely lawsuit in compliance with the Class Certification Order is not entitled to share in recoveries governed by the Allocation Plan or this distribution plan. Because the Allocation Plan fixed the percentage allocation to the Area Business Claim Category, only putative area business claimants have any financial interest how allocations to the Area Business Claim Category are distributed.

⁹Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program, including settlements which plaintiffs reached individually with the Exxon defendants, and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

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

¹¹This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

¹²This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"); \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"); and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

¹³Post-judgment interest accrues at the rate of 5.9% *per annum*.

¹⁴The area business matrix share of the Alyeska Settlement is lower than that of signatories' other recoveries, because the Alyeska Settlement was shared in by plaintiffs which do not share in other recoveries -- e.g., municipalities which did not file direct action lawsuits.

uncollected punitive damages judgment,¹⁵ less attorneys' fees, litigation expenses and claims administration expenses which the Court approves.¹⁶ These amounts do not include post-judgment interest, in which the Area Business Claim Category also will share.¹⁷

B. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), in the Final Distribution to be conducted once all recoveries are collected, the Area Business Claim Category will be allocated its matrix share of all signatories' recoveries -- including Exxon Claims and TAPL Fund payments, the Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, the Phase IIA judgment, prejudgment interest and the punitive damages judgment -- less previous payments to Participating Businesses from individual settlements and signatories' common recoveries. This will be accomplished through a combination of offsets from allocations to other claim categories and distributions to individual Participating Businesses. *See infra*.

C. SUMMARY

If signatories collect the projected \$4,825,716,000 in additional recoveries, the Area Business Claim Category will be allocated roughly \$14,547,000 (less attorneys' fees and expenses),¹⁸ which includes \$69,000 from Native/Municipality/Kodiak Island Borough recoveries, \$244,000 from the Alyeska Settlement, \$161,000 from the uncollected Phase IIA judgment and prejudgment interest, \$13,351,000 from the uncollected punitive damages judgment, and \$561,000 from Exxon Claims and TAPL Fund recoveries. These amounts do not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court and Participating Businesses to evaluate this distribution plan under the assumption that the Area Business Claim Category ultimately will be allocated \$14,547,000 plus interest.

III. FINAL PERCENT SHARES

Allocations to the Area Business Claim Category will be distributed among Participating Businesses using Final Percent Shares, which are Participating Businesses' percent shares of allocations to the Area Business Claim Category.¹⁹ Final Percent Shares, listed on Table 3 attached, were derived in the following manner.

Plaintiffs' Allocation Committee determined each Participating Business' "matrix damages," after review of damage reports and arm's-length negotiations with its counsel. "Matrix damages" include lost profits from 1989 through 1995 caused by the spill, and realized losses of equity and assets by owners of businesses driven out of operation by the spill.²⁰ *See* Allocation Plan 25. Losses of non-fishing Participating Businesses were discounted by 50% relative to those of fishing-related Participating Businesses, to reflect greater litigation risk.²¹ Each Participating Business' Final Percent Share equals its proportional share of all Participating Businesses' total matrix damages.²²

¹⁵A settlement with Exxon for a lesser amount might be reached before appeals are resolved. Any such settlement would be subject to judicial approval after plaintiffs are given notice and opportunity to object. Conversely, plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁶Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹⁷It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

¹⁸This amount and other allocations to the Area Business Claim Category will be deposited into an interest-bearing account designated for the claim category, and held by the Exxon Qualified Settlement Fund pursuant to the terms of this Court's Order Establishing The Exxon Qualified Settlement Fund And Appointing An Administrator (Jan. 25, 1995).

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

²⁰Some Participating Businesses partially settled compensatory damage claims for the 1989 season. Their 1989 losses are not included in matrix damages.

²¹This Court dismissed on *Robins Dry Dock* grounds claims of all area businesses that did not suffer physical contact from oil. Order No. 189, Motion For Summary Judgment On Claims By Area Businesses And Municipalities On Robins Dry Dock Grounds (Mar. 23, 1994). Based on this ruling, to determine matrix shares in the Allocation Plan, area business damages were discounted by 85% relative to damages of plaintiffs which survived summary judgment (such as commercial fishermen in "oiled" areas). *See* Allocation Plan 5-6, 13. After consultation with counsel for area business claimants, the Allocation Committee concluded that a fair distribution between fishing-related and non-fishing businesses should reflect fishing-related businesses' better prospects for successful appeal of Order 189. Accordingly, for purposes of distribution among area businesses, damages of non-fishing businesses are discounted by 50% relative to damages of fishing-related businesses.

²²Area business claims of at least one area business, Port William Wilderness Lodge, survived the Exxon defendants' motion for summary judgment. Accordingly, the Allocation Committee concluded that it is fairer to discount for litigation risk losses of Port William Wilderness Lodge by 50% relative to non-area business claimants, rather than 85% like other area businesses whose area business claims did not survive summary judgment.

(continued...)

IV. DISTRIBUTIONS IN THE SUPPLEMENTAL CLAIMS PROGRAM

Upon judicial approval of a distribution plan for the Area Business Claim Category, plaintiffs' counsel will distribute Participating Businesses' \$69,000 allocation from Native/Municipality/Kodiak Island Borough recoveries using Final Percent Shares. Participating Businesses' shares of this amount (which include attorneys' fees) are listed on Table 3.

V. ADJUSTMENTS FOR PREVIOUS COMPENSATION

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

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to all claimants, including Participating Businesses, would be adjusted to reflect the extent to which they have already been compensated.²³ Nothing would be distributed to claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date. Claimants paid less will be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

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

(...continued)

²²Plaintiffs' counsel are unaware of any other Participating Business whose lost profit claims survived summary judgment. If, however, there are such businesses, their matrix damages will be increased based upon a 50% rather than 85% discount rate.

²³This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category, plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.

Table 1
FISHING-RELATED AREA BUSINESSES

Amussen, G. & J., dba Alaska Bait Co.	Kopecky, J.
Baker, L., dba Kodiak Supreme	Kroll, H., dba New Wave Seafoods, Inc.
Beedle, K., dba Evans Pressure Wash	Lian, E., dba Area E Fisheries, Inc.
Blue Star Aquaculture	Ljubich & Plancich, dba Dockton Bait Co.
Bucinsky & Collins, dba Arctic Seafood Co.	Lobo, E. & D., dba Marine Matrix N.W., Inc.
Budd, G., dba Budd Enterprises	Maw R.
Can-Alaska Trading Co.	McCubbins, L., dba Scurvey Creek Fishery Man.
Carlson, E., dba Carlson Fisheries	McLenaghan, M., dba Comm. Pac. Sales & Ser., Inc.
Clarke, G., dba Cordova Networks	McSwain, M.
Cordova Air Service	Monnett & Rotterman, dba Enhydra Research
Damm, K., dba Marine Welding	Morris, B., dba Good Gear
DeValle, G.	Mukluk, Inc.
Dyer, L., dba Greatland Refrigeration	Neligh, G., dba Stratoplex Polymer Eng. Co.
Edelman, D., dba Oceanside Enter.	Northland Fresh
Fagg, F., dba Fagg's Marine Refrig.	Ocean Premium Mlking
Garcia, C. & D.	Pan-Ak. Int'l Ser., Inc.
Geoffroy, J., dba Iceberg Seafood Co.	Pemberton, B.
Gildnes, O., dba Viking Net Supply	Perrine & Rushton, dba R & P Marine
Hagmuller, W., dba Eyak Trucking	Plumb, R.
Home Harbor Seafoods	Posciri, M., dba B & M Trucking
Hood, J., dba Kodiak Service Co.	Redden Mar. Supply
Hutchens, F.	Reyes, R.
James, T. & C., dba C-Store	Samson Mar. Frght. Co.
Johnson, D.	Satathite, J.
Johnson, W., dba Global Fish	Swoboda, T.
Jovanovich Supply Co.	Tisdall, D.
Knauf, J., dba Northwest Bait Supply, Inc.	Tokyo Chokuhan
Kodiak Transfer Co.	Van Devere, L. Dyer
Kodiak Western Charters	Webber, W., dba Webber Mar. & Man.
Kodiak & Western Trawler Group	

Table 2
NON-FISHING AREA BUSINESSES

Adkins, F.	Clemens, P.
Alaska Safari Inc. - Valhalla Lodge	Conway, P., dba Alaska Eagle Lodge
Alaska Sojourns, Inc.	Coray, D., dba Silver Sal. Cr. Lodge
Andersen, M., dba Andersen Elec.	Cordova Electric Coop
Ashford, J. & F., dba Kodiak Tours	Criner, G., dba Stevenson Tr. & Const.
Ashford, J. & F., dba Kodiak Ferry Term.	Daus, R., dba C&R Charters
Ashford, J. & F. dba Barney's Liquors	Dittrick, R., dba Wilder. Birding Adven.
Ausman, D., dba Gold Coast Floating Lodge	Elias, T., dba Hunter Fisher Tax.
Bell, J.	Farmer, R., dba Deshka R. Lodge
Berg, R., dba Rod N Real Charters	Ferguson, D., dba Copper R. Exp.
Berg, T., dba Ak. Fishing Adventures	Flynn, E., dba Eve's Hair Design
Boyd, G., dba Ram River Out.	Foster, W., dba Perl Island Lodge
Brown, L., dba Airport Depot Diner	Gabbert, P., dba Gabbert's Fish Camp
Brown, L., dba Laura's Liquor Shoppe	Gale, M.
Bruns, D., dba Sunshine Daycare	Gayle, S. & P., dba Chitina Cache Store
Bundy, R., dba Island Plumbing & Heating	Godfrey Chiropractic
CJM/Unit Company J.V.	Goll, C., dba Rainbow R. Lodge

Grove, S., dba Klutina R. Campground
 Gunnerson, E., dba Gunnerson Cons. Co.
 Hammersmith, M. & P., dba Forest Hts Subd.
 Hammersmith, M. & P., dba M. Eccles Apart.
 Holmes, R. & S., dba Holmes King Sal. Charters
 Holmquist, R., dba Be A Dreamer Charters
 Hunt, D., dba D&L Taxi
 Israel, M., dba Ak Sportfishing Lodge
 J & P Enterprises
 Jackson, D., dba Jackson Mobile Home Park
 John, L., dba Great Ak Fish Camp
 Johnson Bros. Guide & Out.
 Karluk Lodge
 Kinney, J.
 Ko, C., dba New Korean Travel
 Kodiak Electric Ass'n
 KWT Wire, Inc.
 Kritchen, L., dba Kritchen Fur Co.
 Kuder, V. & J., dba The Barn
 Latschaw, R., dba Peninsula R. Charters
 Lee, A., dba Ak Waterfowl Adventures
 Mack, V., dba Upik Fur Products
 Mackintosh, M., dba Pioneer Car Wash
 Mannarino, C., dba Killer Whale Cafe
 Miller, T., dba Copper River Boat Rep.
 Morgan, R., dba Kodiak Adventures
 Nielson, J.
 Noey, S., dba Anglers Wild. Adventures
 Norman, M., dba Quest Charters & Tours
 Oaksmith, S., dba Clover B. Fishing Lodge
 Oldow, R.
 Ozmina, R., dba Gail Sea Mar. Charters
 Pettit, D., dba Copper Highway Heating
 Piekarski, A., dba King Bear Lodge
 Pingatore, L., dba Cordova Drug

Pipkin, J., dba J&P Gen. Store
 Port William Wilderness Lodge
 Powell Est. of R. (Jus' 4-D Halibut Ch.)
 Quality Electrical Systems
 Rankin, J. & P., dba Flinn's Too
 Rankin, J., dba Flinn's Clothing & Sp. Goods
 Raymond, L., dba Montague Island Lodge
 Ridl, D., dba Inlet Charters
 Ronnegard, E. & D., dba Windsinger Cafe
 Sackman, K., dba Copper R. Adventures
 Samson, G., dba Greg's Sport Fish Guide Ser.
 Schultz, R. & O.
 Schultz, R. & O., dba Mobile Grid Trailers
 Smith, K., dba Drifters Landing
 Solmonson, P. & L. dba PWS Kayak Center
 Stanton, J., dba Bear Lake Air
 Steen, K. & R., dba Steen's Home Furn. & Gifts
 Terry, K., dba Ak Blue Ice Gl. Water
 The Kodiak Fisherman
 Tuhy, M., dba 2 E Fish & Ak Sp. Angling Photo.
 Tungate & Cain Beach Gold Mining P'ship
 Urata, G.
 Walker, T.
 Walker, K. & J.
 Waltrip, L.
 Ward, L., dba Klutina R. Gas & Liquor
 Waterfield, H.
 Waterfield Eng. Ass's, Inc.
 Watkins, W.
 Welch, J.
 Wheeler Enter., Inc., dba Hoover's Moovers
 Williamson, R. & S., dba Gateway Charter
 Wilson, K. & J., dba Ak. Wild. Adventures
 Zantek, D., dba Alaska Salmon Co.

Table 3
FINAL PERCENT SHARES AND SUPPLEMENTAL CLAIMS PROGRAM DISTRIBUTIONS

	Final Percent Share	Supplemental Claims Program Distribution
Adkins, F.	0.0248%	\$17
Alaska Safari Inc. - Valhalla Lodge	0.2806%	\$194
Alaska Sojourns, Inc.	0.1964%	\$136
Amussen, G. & J., dba Alaska Bait Co.	0.4599%	\$317
Andersen, M., dba Andersen Elec.	0.1386%	\$96
Ashford, J. & F., dba Kodiak Tours	0.1276%	\$88
Ashford, J. & F., dba Kodiak Ferry Term.	0.0933%	\$64
Ashford, J. & F., dba Barney's Liquors	0.1286%	\$89
Ausman, D., dba Gold Coast Floating Lodge	0.0370%	\$26
Baker, L., dba Kodiak Supreme	0.3943%	\$272
Beedle, K., dba Evans Pressure Wash	0.0355%	\$24
Bell, J.	0.0076%	\$5
Berg, R., dba Rod N Real Charters	0.2757%	\$190
Berg, T., dba Ak. Fishing Adventures	1.0636%	\$734
Blue Star Aquaculture	0.8588%	\$593
Boyd, G., dba Ram River Out.	0.0457%	\$32
Brown, L., dba Airport Depot Diner	0.1169%	\$81
Brown, L., dba Laura's Liquor Shoppe	0.0080%	\$6
Bruns, D., dba Sunshine Daycare	0.0504%	\$35
Bucinsky & Collins dba Arctic Seafood Co.	0.1070%	\$74
Budd, G., dba Budd Enterprises	0.3670%	\$253
Bundy, R., dba Island Plumbing & Heating	0.0276%	\$19
Can-Alaska Trading Co.	0.3209%	\$221
Carlson, E., dba Carlson Fisheries	0.9169%	\$633
CJM/Unit Company J.V.	0.8517%	\$588
Clarke, G., dba Cordova Networks	0.1268%	\$87
Clemens, P.	0.1611%	\$111

Conway, P., dba Alaska Eagle Lodge	0.1589%	\$110
Coray, D., dba Silver Sal. Cr. Lodge	0.0171%	\$12
Cordova Air Service	0.5121%	\$353
Cordova Electric Coop	4.2937%	\$2,963
Criner, G., dba Stevenson Tr. & Const.	0.1993%	\$138
Damm, K., dba Marine Welding	1.8465%	\$1,274
Daus, R., dba C&R Charters	0.0823%	\$57
DelValle, G.	0.0377%	\$26
Dittrick, R., dba Wilder. Birding Adven.	0.1540%	\$106
Dyer, L., dba Greatland Refrigeration	1.5281%	\$1,054
Edelman, L., dba Van Devere III	0.0481%	\$33
Elias, D., dba Oceanside Enter.	0.0489%	\$34
Fagg, T., dba Hunter Fisher Tax.	0.7776%	\$537
Farmer, R., dba Deshka R. Lodge	0.8372%	\$578
Ferguson, D., dba Copper R. Exp.	0.0233%	\$16
Flynn, E., dba Eve's Hair Design	0.0254%	\$18
Foster, W., dba Perl Island Lodge	0.4564%	\$315
Gabbert, P., dba Gabbert's Fish Camp	0.0392%	\$27
Gale, M.	0.0183%	\$13
Garcia, C. & D.	0.3056%	\$211
Gayle, S. & P., dba Chitina Cache Store	0.0113%	\$8
Geoffroy, J., dba Iceberg Seafood Co.	0.7396%	\$510
Gildnes, O., dba Viking Net Supply	0.3605%	\$249
Godfrey Chiropractic	0.0791%	\$55
Goll, C., dba Rainbow R. Lodge	0.0762%	\$53
Grove, S., dba Klutina R. Campground	0.0034%	\$2
Gunnerson, E., dba Gunnerson Cons. Co.	0.1078%	\$74
Hagmuller, W., dba Eyak Trucking	0.6056%	\$418
Hammersmith, M. & P., dba Forest Hts Subd.	0.0312%	\$22
Hammersmith, M. & P., dba M. Eccles Apart.	0.0459%	\$32
Holmes, R. & S., dba Holmes King Sal. Charters	0.0241%	\$17

Holmquist, R., dba Be A Dreamer Charters	0.3058%	\$211
Home Harbor Seafoods	0.1859%	\$128
Hood, J., dba Kodiak Service Co.	0.1870%	\$129
Hunt, D., dba D&L Taxi	0.0419%	\$29
Hutchens, F.	0.0725%	\$50
Israel, M., dba Ak Sportfishing Lodge	0.0588%	\$41
J & P Enterprises	3.6087%	\$2,490
Jackson, D., dba Jackson Mobile Home Park	0.1203%	\$83
James, T. & C., dba C-Store	0.1513%	\$104
John, L., dba Great Ak Fish Camp	1.0294%	\$710
Johnson, D.	0.0733%	\$51
Johnson, W., dba Global Fish	0.2045%	\$141
Johnson Bros. Guide & Out.	0.1016%	\$70
Jovanovich Supply Co.	0.2537%	\$175
Karluk Lodge	0.0382%	\$26
Kinney, J.	0.0757%	\$52
Knauf, J., dba Northwest Bait Supply, Inc.	0.3785%	\$261
Ko, C., dba New Korean Travel	0.1210%	\$83
Kodiak & Western Trawler Group	4.3364%	\$2,992
Kodiak Electric Ass'n	0.4532%	\$313
Kodiak Transfer Co.	0.8518%	\$588
Kodiak Western Charters	0.6988%	\$482
Kopecky, J.	0.0636%	\$44
Kritchen, L., dba Kritchen Fur Co.	0.0908%	\$63
Kroll, H., dba New Wave Seafoods, Inc.	0.2681%	\$185
Kuder, V. & J., dba The Barn	0.0444%	\$31
KWT Wire, Inc.	0.6058%	\$418
Latschaw, R., dba Peninsula R. Charters	0.0422%	\$29
Lee, A., dba Ak Waterfowl Adventures	0.0249%	\$17
Lian, E., dba Area E Fisheries, Inc.	3.7157%	\$2,564
Ljubich & Plancich dba Dockton Bait Co.	0.6331%	\$437

Lobo, E. & D., dba Marine Matrix N.W., Inc.	0.1944%	\$134
Mack	0.0645%	\$45
Mackintosh, M., dba Pioneer Car Wash	0.1289%	\$89
Mannarino, C., dba Killer Whale Cafe	0.3191%	\$220
Maw, R.	0.0037%	\$3
McCubbins, L., dba Scurvey Creek Fishery Man.	0.4279%	\$295
McLenaghan, M., dba Comm. Pac. Sales & Ser., Inc.	0.3637%	\$251
McSwain, M.	0.1259%	\$87
Miller, T., dba Copper River Boat Rep.	0.1208%	\$83
Monnett & Rotterman dba Enhydra Research	1.1669%	\$805
Morgan, R., dba Kodiak Adventures	0.0620%	\$43
Morris	0.0533%	\$37
Mukluk, Inc.	0.3042%	\$210
Neligh, G., dba Stratoplex Polymer Eng. Co.	0.1937%	\$134
Nielson	0.0081%	\$6
Noey	0.1113%	\$77
Norman, M., dba Quest Charters & Tours	0.6112%	\$422
Northland Fresh	4.1194%	\$2,842
Oaksmith	0.0370%	\$26
Ocean Premium Mkting	0.9883%	\$682
Oldow, R.	0.0251%	\$17
Ozmina, R., dba Gail Sea Mar. Charters	0.0118%	\$8
Pan-Ak. Int'l Ser., Inc.	3.7248%	\$2,570
Pemberton, B.	0.0214%	\$15
Perrine & Rushton dba R & P Marine	0.2061%	\$142
Pettit, D., dba Copper Highway Heating	0.0465%	\$32
Piekarski, A., dba King Bear Lodge	0.0706%	\$49
Pingatore, L., dba Cordova Drug	0.1053%	\$73
Pipkin, J., dba J&P Gen. Store	0.0474%	\$33
Plumb, R.	0.0611%	\$42
Port William Wilderness Lodge	1.4345%	\$990

Posciri, M., dba B & M trucking	0.1424%	\$98
Powell Est. of R. (Jus' 4-D Halibut Ch.)	0.2210%	\$152
Quality Electrical Systems	0.0452%	\$31
Rankin, J. & P., dba Flinn's Too	0.0387%	\$27
Rankin, J., dba Flinn's Clothing & Sp. Goods	0.4847%	\$334
Raymond, L., dba Montague Island Lodge	0.0391%	\$27
Redden Mar. Supply	10.1619%	\$7,012
Reyes, R	0.0633%	\$44
Ridl, D., dba Inlet Charters	0.0362%	\$25
Ronnegard, E. & D., dba Windsinger Cafe	0.0724%	\$50
Sackman, K., dba Copper R. Adventures	0.1713%	\$118
Samson, G., dba Greg's Sport Fish Guide Ser.	0.5122%	\$353
Samson Mar. Frght. Co.	2.3147%	\$1,597
Satathite, J.	0.0764%	\$53
Schultz, R. & O.	0.0037%	\$3
Schultz, R. & O., dba Mobile Grid Trailers	0.1091%	\$75
Smith, K., dba Drifters Landing	0.1910%	\$132
Solmonson, P. & L., dba PWS Kayak Center	0.0554%	\$38
Stanton, J., dba Bear Lake Air	0.0869%	\$60
Steen, K. & R., dba Steen's Home Furn. & Gifts	0.0749%	\$52
Swoboda, T.	0.0837%	\$58
Terry, K., dba Ak Blue Ice Gl. Water	0.0359%	\$25
The Kodiak Fisherman	0.1848%	\$128
Tisdall, D.,	0.0703%	\$49
Tokyo Chokuhan	24.2279%	\$16,717
Tuhy, M., dba 2 E Fish & Ak Sp. Angling Photo.	0.0643%	\$44
Tungate & Cain Beach Gold Mining P'ship	0.3576%	\$247
Urata, G.	0.0351%	\$24
Van Devere, T.	0.0076%	\$5
Walker, K. & J.	0.0061%	\$4
Walker, L.	0.1803%	\$124

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

In re:
The EXXON VALDEZ

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

THIS DOCUMENT RELATES TO
ALL CASES

**PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE AQUACULTURE ASSOCIATION CLAIM CATEGORY**

Waltrip, L., dba Klutina R. Gas & Liquor	0.1221%	\$84
Ward, H.	0.0514%	\$35
Waterfield	1.1323%	\$781
Waterfield Eng. Ass's, Inc., W.	1.5725%	\$1,085
Watkins, W., dba Webber Mar. & Man.	0.0019%	\$1
Webber, J.	1.4238%	\$982
Welch dba Hoover's Moovers	0.1031%	\$71
Wheeler Enter., Inc., R. & S. dba Gateway Charter	0.3960%	\$273
Williamson, K. & J. dba Ak. Wild. Adventures	0.0298%	\$21
Wilson, D., dba Alaska Salmon Co.	0.0713%	\$49
Zantek	0.2292%	\$158

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The *EXXON VALDEZ* Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. This distribution plan proposes a method for distributing allocations to the Aquaculture Association Claim Category, which the Court-approved Allocation Plan (p.12) limits to claims by Cook Inlet Aquaculture Association (CIAA), Kodiak Regional Aquaculture Association (KRAA) and Prince William Sound Aquaculture Corporation (PWSAC). CIAA, KRAA and PWSAC agree to the terms of this distribution plan. Plaintiffs' counsel³ ask the Court to approve it as fair, adequate and reasonable.⁴

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As described more fully in the Allocation Plan, CIAA, KRAA and PWSAC share in signatories' common recoveries, which presently include: roughly \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund;⁵ \$87,311,000 from the

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

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

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴No party except CIAA, KRAA and PWSAC has standing to object to this distribution plan. The Allocation Plan fixed the percentage allocation to the Aquaculture Association Claim Category, and limited claimants to CIAA, KRAA and PWSAC. Therefore, only CIAA, KRAA and PWSAC have any financial interest how allocations to the Aquaculture Association Claim Category are distributed.

⁵Plaintiffs' counsel estimate that signatories recovered approximately \$186,271,000 from the Exxon Claims Program, including settlements which Participating Processors reached individually with the Exxon defendants, and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined and lowered their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:
The EXXON VALDEZ

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

THIS DOCUMENT RELATES TO
ALL CASES

PLAN OF DISTRIBUTION OF ALLOCATIONS TO
THE RECREATIONAL USE CLAIM CATEGORY

Plaintiffs' Plan Of Allocation Of Recoveries Obtained By Plaintiffs In Litigation Arising From The Exxon Valdez Oil Spill, filed with this Court on January 12, 1996 and approved as modified by this Court on June 11, 1996 ("Allocation Plan"),¹ establishes the allocation of recoveries among major groups of "signatory" plaintiffs² ("signatories") organized into claim categories. As provided in the Court-approved Allocation Plan (p.26), allocations to the Recreational Use Claim Category will not be distributed to individual plaintiffs, but will be contributed to a trust fund to be used for purposes of restoration and recreational enhancement ("recreational use trust fund"). Plaintiffs' counsel³ have not yet completed arrangements for a recreational use trust fund, and will submit a proposal to the Court once arrangements are complete. In this document, plaintiffs' counsel propose a methodology for determining allocations to the recreational use trust fund from future recoveries, and estimate expected allocations. Plaintiffs' counsel ask the Court to approve the proposed methodology as fair, adequate and reasonable.

I. RECOVERIES SUBJECT TO THIS DISTRIBUTION PLAN

As set forth in the Court-approved Allocation Plan, the recreational use trust fund shares in signatories' common recoveries, which presently include roughly: \$200,298,000 already distributed from the Exxon Claims Program and TAPL Fund,⁴ \$87,311,000 from

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

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

³"Plaintiffs' counsel" are plaintiffs' Court-appointed Co-Lead Counsel, Liaison Counsel, and Executive Committee, and counsel who executed plaintiffs' joint prosecution agreement. Plaintiffs' counsel are filing a separate distribution plan with the Court for each claim category, including an omnibus distribution plan for "un-oiled" fishery claim categories.

⁴Plaintiffs' counsel estimate that signatory plaintiffs recovered approximately \$186,271,000 from the Exxon Claims Program and \$14,027,000 from the TAPL Fund. *See* Allocation Plan 28. Since the Allocation Plan was filed in January 1996, plaintiffs' counsel have refined, and lowered, their estimate of signatories' recoveries from the Exxon Claims Program. In this document, dollar amounts are rounded to the nearest \$100 or \$1,000, as appropriate.

the Alyeska Settlement, most of which was distributed in the Alyeska Claims Program;⁵ \$24,722,000 collected from Exxon,⁶ to be distributed in the Supplemental Claims Program; and a projected \$4,825,716,000,⁷ plus interest,⁸ from judgments against Exxon which have not yet been collected.⁹ The recreational use matrix share is 0.008% of signatories' recoveries.

A. THE SUPPLEMENTAL CLAIMS PROGRAM

In the Supplemental Claims Program plaintiffs' counsel will allocate to the recreational use trust fund roughly \$1,900 from Native/Municipality/Kodiak Island Borough recoveries, less attorneys' fees approved by the Court.¹⁰

B. PROJECTED FUTURE RECOVERIES

Plaintiffs' counsel expect the recreational use trust fund to be allocated roughly \$4,600 from the Phase IIA judgment and prejudgment interest, and \$383,000 from signatories' share of the punitive damages judgment, as they are collected, less attorneys' fees, litigation expenses and claims administration expenses which the Court approves. These figures do not include post-judgment interest, in which the recreational use trust fund also will share.¹¹

C. THE FINAL DISTRIBUTION

As set forth in the Allocation Plan (*see* 38-39), because recreational use plaintiffs were paid nothing by Exxon Claims or the TAPL Fund, in the Final Distribution to be conducted once all of signatories' recoveries are collected, the recreational use trust fund will be allocated the recreational use matrix share of signatories' aggregate Exxon Claims and TAPL Fund recoveries. Also in the Final Distribution, because the recreational use allocation of \$155,000 from the Alyeska Settlement exceeded its matrix share (roughly \$7,000), the difference (projected at \$148,000) will be deducted from the allocation to the recreational use trust fund.

D. SUMMARY

If signatory plaintiffs succeed in collecting the projected \$4,825,716,000 in additional recoveries, the recreational use trust fund's allocation from all recoveries will be roughly \$416,000 (less attorneys' fees and expenses), which includes \$2,000 from Native/Municipality/Kodiak Island Borough recoveries, \$7,000 from the Alyeska Settlement, \$4,600 from the uncollected Phase IIA judgment and prejudgment interest, \$381,000 from the uncollected punitive damages judgment, and \$16,000 from Exxon Claims and TAPL Fund recoveries. This amount does not include post-judgment interest.

Exxon has appealed the judgments against it, thereby delaying the date when signatories ultimately collect all their recoveries, and creating risk that the full amounts might never be collected. Plaintiffs' counsel fully expect to prevail in Exxon's appeals, and believe it prudent for the Court to expect that the recreational use trust fund ultimately will be allocated \$416,000 plus interest.

II. ADJUSTMENTS FOR PREVIOUS COMPENSATION

As described *supra*, once punitive damage recoveries are collected, there will be a Final Distribution in which offsets will be made for distributions from prior recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska Settlement and Native/Municipality/Kodiak Island Borough recoveries. *See* Allocation Plan 38-39. The allocation to the recreational use trust fund will be adjusted by the difference between its matrix share of these recoveries, and what it actually received. The object will be to apply matrix shares, which are the best measure of a fair and equitable allocation among claim categories, to all of signatories' recoveries.

⁵ Alyeska settled for \$98 million, of which roughly \$10,689,000 was paid to non-signatory Native corporations.

⁶ This amount includes \$23,506,000 collected from settlements with Exxon by Alaska Native and municipality plaintiffs, and \$1,216,000 (\$724,000 plus interest) collected by Kodiak Island Borough from a state court judgment against Exxon. The combined \$24,722,000 will be referred to as the "Native/ Municipality/Kodiak Island Borough recoveries." The Allocation Plan was filed before the Kodiak Island Borough judgment was collected, and therefore anticipated that only \$23,506,000 from Native and municipality settlements would be distributed in the Supplemental Claims Program. *See* Allocation Plan Table 7.

⁷ This amount consists of a \$19,590,000 compensatory damage judgment won in the federal court Phase IIA trial ("Phase IIA judgment"), \$37,971,000 in prejudgment interest awarded by the federal court ("prejudgment interest"), and \$4,768,155,000 (95.363%) of the \$5,000,005,000 punitive damages judgment won in federal court ("punitive damages judgment"). The remaining \$231,850,000 (4.637%) of the punitive damages judgment is allocated to non-signatory Native corporations.

⁸ Post-judgment interest accrues at the rate of 5.9% *per annum*.

⁹ Plaintiffs' cross appeals could lead to greater compensatory damage recoveries.

¹⁰ Plaintiffs' counsel are separately asking the Court to approve attorneys' fees of 22.4% of signatories' recoveries from Native/Municipality/Kodiak Island Borough recoveries and uncollected recoveries. *See* Notice. Plaintiffs' counsel also will seek reasonable expenses of litigation, notice and claims administration. *Id.*

¹¹ It is impossible to reliably predict at this stage how much post-judgment interest, if any, signatories ultimately will collect.

Plaintiffs' counsel do not expect to be able to make additional interim distributions after the Supplemental Claims Program and before the Final Distribution, because the Exxon defendants are not expected to pay anything more until the litigation is finally resolved. If additional interim distributions do become possible, distributions to claimants of all types, including the recreational use trust fund, will be adjusted to reflect previous payments.¹² Claimants already paid more than their Final Percent Share of their claim category's matrix share of signatories' recoveries to date would receive nothing, and claimants paid less would be paid in proportion to the shortfall. This methodology simply extends forward in time the fundamental principle of the Final Distribution, set forth in the Court-approved Allocation Plan, that matrix shares and Final Percent Shares should govern the distribution of all of signatories' recoveries.

With this methodology, plaintiffs' counsel do not expect the recreational use trust fund to receive any additional allocations until the Final Distribution. The \$157,000 already allocated to the recreational use trust fund from the Alyeska Settlement and Native/Municipality/ Kodiak Island Borough recoveries exceeds its total matrix share (roughly \$30,000) of recoveries from the Exxon Claims Program, TAPL Fund, Alyeska Settlement, Native/Municipality/Kodiak Island Borough recoveries, and the uncollected Phase IIA judgment and prejudgment interest.

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

¹² This would be done in the following manner. Denote the amount to be distributed as the "Interim Recovery." For every claimant in every claim category -- including the recreational use trust fund as the sole "claimant" in the Recreational Use Claim Category -- plaintiffs' counsel would calculate: a "gross claim value" equal to the claimant's Final Percent Share, times the matrix share of the claimant's claim category, times the total amount of signatories' recoveries collected to date (including the Interim Recovery) (the gross claim value of the recreational use trust fund would equal the recreational use matrix share times signatories' recoveries to date); and a "net claim value" equal to the gross claim value minus previous payments to the claimant (from Exxon Claims, the TAPL Fund, the Alyeska Settlement, individual settlements, Native/Municipality/Kodiak Island Borough recoveries, etc.), or zero if the claimant's previous payments exceed the gross claim value. Plaintiffs' counsel would distribute the Interim Recovery in proportion to net claim values.