

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	J13014-0009
<b>Claimant:</b>	Peter Pan Seafoods Inc
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Loss of Profits and Earnings
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$368,381.00

### ***INCIDENT***

On June 30, 2013, the F/V LONE STAR sank and discharged oil into the Igushik River, posing a substantial threat of a discharge of oil into Bristol Bay, a navigable water of the United States. There were approximately 14,500 gallons of diesel, hydraulic and lube oil, and gasoline on board the vessel. At the time of the incident (b) (6) and (b) (6) owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

### **2013 Overview of Bristol Bay Salmon Fisheries**<sup>1</sup>

The Bristol Bay management area includes all coastal and inland waters east of a line from Cape Newenham to Cape Menchikof.<sup>2</sup> The area includes nine major river systems; Naknek, Kvichak, Alagnak, Egegik, Ugashik, Wood, Nushagak, Igushik, and Togiak. Collectively, these rivers are home to the largest commercial sockeye salmon, *Onocorhynchus nerka* fishery in the world. Sockeye salmon are by far the most abundant salmon species that return to Bristol Bay each year.<sup>3</sup> The Bristol Bay area is divided into five management districts (Naknek-Kvichak, Egegik, Ugashik, Nushagak, and Togiak) that correspond to major river systems. The management objective for each river is to achieve salmon escapements within established ranges while harvesting fish in excess of those ranges through orderly fisheries. In addition, regulatory management plans have been adopted for individual species in certain districts.<sup>4</sup>

Since 1993, the value of the commercial salmon harvest in Bristol Bay has averaged \$111.8 million, with sockeye salmon being the most valuable, averaging \$109.9 million annually.<sup>5</sup> Management of the commercial fishery in Bristol Bay is focused on discrete stocks with harvests directed at terminal areas around the mouths of major river systems. Each stock is managed to achieve a spawning escapement goal based on sustained yield. Escapement goals are achieved by regulating fishing time and area by emergency order (EO) and/or adjusting weekly fishing schedules. Legal gear for the commercial salmon fishery includes both drift and set gillnets.<sup>6</sup> Drift gillnet permits are the most numerous at 1,862 in Bristol Bay and of those, 1,709 registered to fish in 2013. In 2013, a total of 978 set gillnet permits were issued in Bristol Bay and of those 854 fished in 2013.<sup>7</sup>

### **Run Strength Indicators**

Fishery managers in Bristol Bay have several early indicators of sockeye salmon run size, including the preseason forecast, the False Pass commercial fishery, an offshore test fishery operating from Port Moller, genetic stock identification, individual district test fishery programs and the early performance of the commercial fishery. These pieces of information may not give a correct assessment of run size, but

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<sup>1</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p.2.

<sup>2</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1.

<sup>3</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014.

<sup>4</sup> Alaska Department of Fish and Game, Fishery Management, Report No. 14-23, May 2014.

<sup>5</sup> Alaska Department of Fish and Game Fishery Management, Report No. 14-23, May 2014.

<sup>6</sup> Alaska Department of Fish and Game Fishery Management, Report No. 14-23, May 2014.

<sup>7</sup> Alaska Department of Fish and Game Fishery Management, Report No. 14-23, May 2014.

collectively, they form patterns such as relative strengths of year classes, discrepancies from the forecast (relative to expected year class contributions), or differences in run timing that can be important to successful management of the commercial fishery.<sup>8</sup>

### Preseason Forecasts

Total inshore (excluding harvest in other areas) sockeye salmon production for Bristol Bay in 2013 was forecast to be 25.1 million<sup>9</sup>. The Bristol Bay sockeye salmon inshore harvest was predicted to reach 16.6 million fish. Runs were expected to meet spawning escapement goals for all river systems in Bristol Bay.<sup>10</sup>

The forecast for the sockeye salmon run to Bristol Bay in 2013 was the sum of individual predictions for nine river systems<sup>11</sup> and four major classes.<sup>12</sup> Adult escapement and return data from brood years 1972 to 2009 were used in the analyses.<sup>13 14</sup>

Predictions for each age class returning to a river system were calculated from models based on the relationship between adult returns and spawners or siblings from previous years. Tested models included simple linear regression and recent year averages. All models were evaluated for time series trends. Models chosen were those with statistically significant parameters having the greatest past reliability<sup>15</sup> based on mean absolute deviation, mean absolute percent error, and mean percent error between forecasts and actual returns for the years 2010 through 2012.<sup>16</sup>

### Nushagak District

The 2013 Nushagak District commercial sockeye salmon harvest, including the Igushik River which is subject of this claim, reached 3.2 million fish, 4% below the preseason projected harvest of 3.3 million fish and 44% below the 1993-2012 average harvest of 5.7 million sockeye salmon.<sup>17</sup> Escapement in the district's three major river systems was 1,183,348 for Wood River, 387,744 for Igushik River, and 894,172 sockeye salmon for Nushagak River.<sup>18</sup> Nushagak and Igushik sockeye salmon escapements exceeded the upper ends of their escapement goal ranges, and Wood River sockeye salmon escapement fell within the escapement goal range.<sup>19</sup>

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<sup>8</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3

<sup>9</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1-Comparison of inshore sockeye salmon forecast versus actual run, escapement goals versus actual escapements, and projected versus actual commercial catch, by river system and district, in thousands of fish, Bristol Bay, 2013. P. 26.

<sup>10</sup> *id*

<sup>11</sup> Kvichak, Alagnak, Naknek, Egegik, Ugashik, Wood, **Igushik**, Nushagak-Mulchatna, and Togiak.

<sup>12</sup> Age 1.2, 1.3, 2.2, and 2.3, plus age 0.3 and 1.4 for Nushagak.

<sup>13</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

<sup>14</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 2 – Inshore forecast of sockeye salmon returns by age class, river system, and district, in thousands of fish, Bristol Bay, 2013, p. 27.

<sup>15</sup> Accuracy and precision.

<sup>16</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

<sup>17</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, p.26 and Appendix A15 – Inshore commercial catch and escapement of sockeye salmon in the Nushagak District by river system, in numbers of fish, Bristol Bay, 1993 – 2013, p. 81.

<sup>18</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45. Table 17 – Final daily and cumulative escapement estimates by species, Nushagak River sonar project, Bristol Bay, 2013, p. 46.

<sup>19</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Appendix A1 – Escapement goal ranges and actual counts of sockeye salmon by river system, in thousands of fish, Bristol Bay, 1993-2013, p. 66.

Commercial fishing for set gillnets was announced to begin late on June 21, 2013 and the drift gillnet fleet would start at 11:00 a.m. on June 22.<sup>20</sup> The beginning of the commercial fishing season was met by a severe storm with winds exceeding 50 knots.<sup>21</sup> The storm affected commercial fishing into the early hours of June 24. Through June 24, 2013, the cumulative Wood River escapement was 599,460 sockeye salmon.<sup>22</sup> Managers continued to announce liberal fishing openings. The set gillnet fishery, opened on June 21, and was extended for the rest of the season.<sup>23</sup>

Commercial fishing in the Nushagak District continued until 9:00 a.m. July 23, 2013, at which time managers switched from sockeye salmon management to Coho salmon management. The total sockeye salmon harvest of 3.2 million fish was 4% below the preseason forecast of 3.3 million fish.<sup>24</sup>

Commercial fishing with set gillnet gear began in the Igushik Section of the Nushagak District on June 15 when a market became available.<sup>25</sup> The Igushik River tower project began enumerating sockeye salmon on June 24.<sup>26</sup> The Igushik River sockeye salmon forecast was relatively low, so managers restricted fishing time to eight hours per day until June 21, when openings were increased to 12 hours.<sup>27</sup> On June 23, commercial fishing was extended for 24 hours.<sup>28</sup> Escapement was strong beginning with the first day of counts, and fishing was extended until further notice.<sup>29</sup>

### *Igushik Section*

The Igushik River fishing season ended early when the F/V Lone Star sank in the mouth of the Igushik River on the morning of June 30, 2013. ADF&G closed fishing immediately until the incident could be evaluated. The fishery reopened in the afternoon of July 1 but was closed again on July 5 after reports of contaminated fish were received. The Igushik River set gillnet fishery remained closed for the remainder of the season and a six statute mile radius from the mouth of the Igushik River was closed to drift gillnet fishing as well.<sup>30</sup>

The Igushik River escapement increased as a result of the River closure. The final escapement of 387,744 exceeded the upper end of the escapement goal range of 150,000 to 300,000 fish.<sup>31 32</sup> The Igushik River

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<sup>20</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

<sup>21</sup> Alaska department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

<sup>22</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45.

<sup>23</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

<sup>24</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, 19, and 20, p. 26, 50, and 51).

<sup>25</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

<sup>26</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45.

<sup>27</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

<sup>28</sup> *id*

<sup>29</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45. Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

<sup>30</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

<sup>31</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Appendix A1 – Escapement goal ranges and actual counts of sockeye salmon by river system, in thousands of fish, Bristol Bay 1993 – 2013, p. 66 -67.

sockeye salmon escapement exceeded the upper end of the escapement goal range by 29%.<sup>33</sup> Some of this escapement was due to late season opening, limited fishing hours, and an early run.

### Ex-Vessel Value

The Bristol Bay 2013 harvest of all salmon species was 16.4 million fish with a preliminary ex-vessel value<sup>34</sup> of \$141 million which is 26% above the 20-year average and ranks 7<sup>th</sup> over that same period. The weights, harvests, and prices listed in Table 1<sup>35</sup> were used to estimate ex-vessel value. This estimate does not include future price adjustments, loyalty bonuses, and differential prices for refrigerated versus non-refrigerated fish. Although the harvest was below the historical average, the increased price per pound caused the value to be above average.<sup>36</sup>

### Sockeye Salmon

The 2013 Bristol Bay sockeye salmon run was slightly under forecast and early to very early depending on the river system. Spring temperatures in the Bering Sea were closer to long term averages during the salmon season than the last several years. Total sockeye harvest and total inshore run were 6% and 12% below forecast.<sup>37</sup>

Overall 15,376,432 salmon were harvested in the Bristol Bay 2013 season at an average weight of six pounds per fish. These fish were sold at an average of \$1.50/lb to 34 different companies. The Igushik fishing area accounted for 321K of the fish harvested. The State reported that this harvest for the Igushik was 29 percent higher than forecasted while the overall Bristol Bay Sockeye harvest was reported to be about 30% below the 20-year average.<sup>38</sup>

## **CLAIMANT AND CLAIM**

### Claimant

Peter Pan Seafoods, Inc., (PPSF) was incorporated in the State of Washington on March 22, 1950. PPSF is a wholly owned subsidiary of Maruha Capital Investment, Inc. (MCII), a wholly owned subsidiary of Maruha Nichiro Holdings, Inc. (the Parent), a publicly held corporation in Japan, through the Parent's wholly owned subsidiary, Maruha Nichiro Sea foods, Inc. (Maruha Nichiro Sea foods).<sup>39</sup>

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<sup>32</sup> The river closure reduced harvest in that area of the district and allowed increased escapement into the Igushik River.

<sup>33</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, p.1. Table 5, Bristol Bay sockeye salmon goals and escapement, 2013, p. 3.

<sup>34</sup>**Ex-Vessel value:** The post-season adjusted price per pound for the first purchase of commercial harvest. The ex-vessel value is usually established by determining the average price for an individual species, harvested by a specific gear, in a specific area. The delivery condition of the product is usually taken into consideration when the average price is established.

<sup>35</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, Table 1 – Average price, weight, and value of salmon harvest in Bristol Bay, 2013, p. 2.

<sup>36</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, pgs. 1 – 2.

<sup>37</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, 2013 Bristol Bay Salmon Season Summary, p. 4.

<sup>38</sup> Alaska Department of Fish and Game Division of Commercial Fisheries.

<sup>39</sup> Moss – Adams LLP Report of Independent Auditors and Consolidated Financial Statements with Supplemental information, December 31, 2013 and 2012. p. 9.

PPSF is in the business of processing and selling of seafood products. Substantially all raw seafood is purchased from independent fishermen participating in fisheries throughout Alaska. Salmon products account for the largest share of total PPSF's sales. Other major product lines include crab, halibut, cod, Pollock, and black cod. Products are sold primarily to wholesalers and distributors throughout the world.<sup>40</sup>

Nichiro Peter Pan Seafoods, Inc. (NPPI), American Beauty, Inc. (American Beauty), and Ocean Leader Inc. (Ocean Leader) are wholly owned subsidiaries of PPSF. The subsidiaries are holding companies and each holds a 25% interest in separate unconsolidated affiliates.<sup>41</sup>

PPSF holds their corporate office in Seattle, Washington. Executive and Administrative support, sales, marketing, purchasing and finance are all run from this location.<sup>42</sup>

PPSF operates four processing facilities in Alaska. King Cove, Port Moller, Valdez and Dillingham. Alleged fish losses subject to this claim would have been processed at the Dillingham facility.

PPSF's Dillingham operation is located on the shores of the Nushagak River in Bristol Bay Alaska. It is PPSF's oldest facility and the oldest continually operating Cannery in Alaska. The products produced by this operation are fresh & frozen salmon products as well as canned. Due to the tremendous volume of product that is normally available during the peak season, Peter Pan utilizes its Tender fleet of 30 plus vessels to ship the Bristol Bay product to other PPSF processing facilities. The Dillingham Plant employs approximately 320 employees. It also has one of the largest affiliated fishing fleets in Bristol Bay with over 180 drift-net fishing boats and 110 set-net operations. The months of operation are April through August.<sup>43</sup>

### **Claim**

PPSF seeks **\$368,381**<sup>44</sup> for lost profits and interest alleged to have resulted from the LONE STAR incident and subsequent closure of the Igushik River to salmon fishing. PPSF bases its entire claim on the alleged loss of fish that it argues it would have bought from the Braund Fishing Group.<sup>45</sup> PPSF alleges that it did not buy and could not sell Braund Fishing Group's lost catch during the river closure and therefore, it lost profits on the lost catch due to the spill.

Peter Pan Seafoods' Dillingham Plant receives some of their deliveries from the Braund fishing group permit holders.<sup>46</sup> Braund Fishing Group represents the entire Igushik area deliveries that were scheduled for the Dillingham Plant.<sup>47 48</sup> Claimant asserts that the Braund Fishing Group delivers high quality sockeye because of fish handling practices and the use of slush ice and Braund's ability to catch the larger size sockeye.

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<sup>40</sup> *id*

<sup>41</sup> *id*

<sup>42</sup> [www.ppsf.com/facilities/index.aspx#king](http://www.ppsf.com/facilities/index.aspx#king)

<sup>43</sup> *id*

<sup>44</sup> Peter Pan Seafoods, Inc. letter to the Fund dated December 31, 2014.

<sup>45</sup> See, Braund claim J13014-0008.

<sup>46</sup> The Braund fishing group permit holders are an aggregate Bristol Bay set-net commercial fishing operation comprised of nine setnet permits holders and had a total of 22 operational personnel in 2013. (See claim file).

<sup>47</sup> Claim, p. 5.

<sup>48</sup> Loss of round pounds – unprocessed, as delivered to the dock. These are pounds that would have been processed by the PPSF Dillingham facility.

According to the claimant, 80% of the salmon is processed into a value added fillet product type. The remaining twenty percent is directed to the high end one pound tall can, solid quality as a top can grade for buyers. Because of freshness and the larger size egg skeins, eighty percent of this roe (eggs) is processed into a finished sujiko product type.<sup>49</sup> The yield of roe (salmon egg) products for the entire season at Dillingham is applied to those pounds for calculating that lost roe product as well.<sup>50</sup>

PPSF's claim has two components to the financial loss as a result of the alleged round pounds:

- Margin on sales of affected product
- Lost factory overhead absorption for the Dillingham facility

Both of these losses are extrapolated from the 2014 year-end financial profit/loss report<sup>51</sup> for the Dillingham facility. Unit values for the two components for all affected production lines<sup>52</sup> are multiplied by the lost production quantities that would have been derived from the lost round pounds from the Braund fishing group permit holders.

Claimant asserts a plant loss of \$360,725.<sup>53</sup> This cost includes the sum of overhead cost in the amount of \$146,554 and the sum of margin in the amount of \$214,171, with interest that accrued beginning March 01, 2014 through December 31, 2014, in the amount of \$7,656 at an interest rate of 2.54%.<sup>54</sup> The sum of all components of this claim is **\$368,381**.

Claimant provided; Moss-Adams Consolidated Financial Statements for years 2009 - 2014, 2010-2013 Income Tax Returns, Tender Information, Dillingham, Bristol Bay Processing Facility Plant Specific Profit and Loss Statements for years 2010 – 2014, and portions of Braund Group's claim,<sup>55</sup> as evidence of PPSF's loss.

## **RP Presentment**

Claimant made presentment to the RP on October 17, 2014, in the amount of \$366,499.<sup>56</sup> On October 29, 2014 PPSF received correspondence from Matthews and Zahare, P.C., legal counsel for Burrece Fisheries, Inc., denying the claim and referencing the NPFC / OSLTF as a resource for uncompensated damages. The NPFC received PPSF's claim on January 08, 2015.

## **APPLICABLE LAW:**

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

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<sup>49</sup> Salted salmon eggs.

<sup>50</sup> Claim p. 2

<sup>51</sup> See, Plant specific P&Ls from which which Peter Pan based the claim calculations.

<sup>52</sup> Canned Sockeye (Talls), Cured Sockeye (Sujiko), Cured Sockeye (Ikura), and Frozen Sockeye (Fillets).

<sup>53</sup> The sum of Margin and the lost factory overhead for the Dillingham facility

<sup>54</sup> Interest loss through date of claim using the September 26, 2014 U.S. Treasury Bill 10 year interest rate.

<sup>55</sup> Braund Group's Claim "A" and Claim "B" along with Braund's Loss Valuation.

<sup>56</sup> It is important to note at the time of RP presentment, the plant loss was \$360,725 with a 2.54% interest rate. At the beginning date of interest lost was March 01, 2014. The interest loss through October 17, 2014 was \$5,774 bringing the claim at the time of RP presentment to \$366,499 (See Peter Pan Seafoods, Inc. Loss Valuation Calculation, dated 10/16/2014. This is a \$1,882 difference due to interest. The claimant continued to add the interest between the time the RP denied the claim and the time the claimant submitted their claim to the Fund.

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

“In addition to the requirements of Subparts A and B of this part, a claimant must establish the following—

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.” 33 CFR 136.233 (a) – (d)

The compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136. 235 (a) – (e).

#### **NPFC DETERMINATION:**

PPSF seeks \$368,381 for alleged lost profits and interest resulting from the LONE STAR incident and subsequent closure of the Igushik River to salmon fishing. The support documentation that the Claimant provided fails to prove a loss of profits due to the Lone Star oil spill incident, and will be discussed in further detail below.

#### **Moss Adams Consolidated Financial Statements**

Claimant provided consolidated financial reports submitted by Moss-Adams, LLP for the years 2009-2012 and 2014. Moss-Adams is an independent auditor that provides PPSF with consolidated financial statements and supplemental information. The claimant provided these reports to the Fund to support a yearly summary of gross profits and net income (gains and losses) on a year by year basis.<sup>57</sup>

The NPFC reviewed the Moss-Adams, Reports that PPSF submitted to support its yearly summary of gross profits. The Moss-Adams Audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidated financial statements include the accounts

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<sup>57</sup> Moss Reports December 31, 2009 through December 31, 2014.

of Peter Pan Seafoods, Inc. and wholly owned subsidiaries. In these reports, it is stated that, all significant intercompany transactions and accounts were eliminated from these reports.<sup>58</sup> The company recognizes revenue from product sales upon shipment to their customers or when the customer picks up the product, based upon the terms of the sale and title transfer of the product.

PPSF's Notes to Consolidated Financial Statements state, under *Business Risks and Uncertainties*, that vessels fishing in U.S. waters face uncertainties due to changing prices and demand, competing supplies and exchange rate fluctuations, as well as fishing closures because of environmental and habitat issues. These conditions might have significant adverse effects on the Company's future profitability.<sup>59</sup> This statement alone provides that Peter Pan Seafoods, Inc. and Subsidiaries realize the business risks and uncertainties that are related to the industry.

The NPFC finds the Moss-Adams reports provide a financial overview of Peter Pan Seafoods, Inc., and its subsidiaries. However, the reports do not break down profits which can be directly attributable to fish caught in the Igushik River section and sent to the Dillingham processing facility. This includes the claimant's margin on sales of affected product, and lost factory overhead absorption at the Dillingham, Alaska facility.

#### 2010 – 2013 U.S. Corporation Income Tax Returns

The income tax returns were provided by Claimant to demonstrate a year end for gross sales and total income. Claimant points to the year 2010 as being a partial year; April through December. PPSF changed its financial year to calendar year in 2010 and was PPSF's last tax return filing separately from their parent company. Years 2011 and 2012 were consolidated with their parent company.

The NPFC reviewed the income tax returns and found, as stated above, that the income tax returns do not support the claimant's margin on sales of affected product nor does it support lost factory overhead absorption for the Dillingham, Alaska facility. As with the Moss-Adams reports, the income tax returns capture the end of year gains and losses for PPSF as a whole, but do not break down its profit components into enough detail to support claimant's alleged losses.

#### Tender Information

There were three fishing tenders that took deliveries from the (b) (6) operation in the Igushik section in 2013: TN001 – "Cindria Gene," TN0103 – "Carla Rae C," and TNB202 – "Watchman." The Claimant provided a 2013 Fishing Tender report for the Igushik Section and the 2013 Carla Rae C History report.<sup>60</sup> The Tender reports demonstrate how much salmon, in raw pounds, was delivered to the PPSF, Dillingham facility by these specific tenders from the Igushik Section on June 17, 2013 through July 05, 2013. According to the Query FT Tick – Ticket Data, Number PPFT 69, the Carla Rae C took a total of 159,704 lbs of salmon from the (b) (6) operation between June 23, 2013 through July 19, 2013. Between June 17, 2013 through July 03, 2013, 70 deliveries were made to all three tenders in Bristol Bay, which equates to 156,733 lbs of salmon that were taken from the (b) (6) operation.

The NPFC evaluated the Peter Pan Seafoods Inc., 2013 Bristol Bay Settlement Summary which demonstrates that 231,401 pounds of salmon were received by Peter Pan Seafoods, Inc., from the Braund Group.<sup>61</sup>

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<sup>58</sup> Moss Reports December 31, 2014, p. 8.

<sup>59</sup> Moss Reports December 31, 2014, p. 20.

<sup>60</sup> See, Claimant's Query FT Tick – for All Tender 2013 for Igushik Section and the Query FT Tick for the Carla Rae C 2013 Tender History.

<sup>61</sup> Peter Pan, 2013 Bristol Bay Settlement Summary demonstrates that the Braund Group's gross settlement for 2013 was \$367,089.25 for 231,401 pounds of salmon.

PPSF made the business decision to move the Carla Rae C out of the Igushik **before** the Braund group pulled gear. The Claimant has not provided enough support to show where the Carla Rae C went and what the tender was being used for.

#### Dillingham – Bristol Bay Processing Facility Plant Specific Profit & Loss Statements (P&L's)

##### Margin on Sales Affected Product

The Claimant provided the Dillingham Plant's P&L's to demonstrate its unit values for margin on sales of its alleged affected product which are multiplied by the asserted loss of production quantities that would have been derived from the lost round pounds. Claimant states that the P&Ls are the basis of its claim.<sup>62</sup>

Claimant asserts that the Dillingham plant's 2014 end of year results are reflected in the 2014 P&L statements and that PPSF bases its claim on the 2014 statement. The NPFC reviewed these P&L statements and finds no evidence to support a loss of profits based on a reduction of fish from the Igushik River or nearby Igushik Section. The P&Ls document that Peter Pan Seafoods receive seafood from multiple plants in Alaska and that they were doing so through years 2013 and 2014. Although the P&Ls do demonstrate that there was a reduction in margin on product for the Dillingham plant, Claimant has not proven whether this reduction was due to the 2013 Bristol Bay fishery as a whole or that it was specifically tied to the LONE STAR incident in the Igushik River at the end of the Sockeye run. Additionally, OPA regulations require that the compensable amount of loss of profits "is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136. 235 (a) – (e). Claimant has not provided evidence which would show saved overhead or normal business expenses not incurred as a result of the incident, nor has it shown mitigative strategies used to offset any alleged loss. Finally, Claimant has not proven that the inability to purchase and sell the Braund Group's fish economically impaired Peter Pan Seafoods as a whole, resulting in a loss of profits for the company.

##### Loss of Raw Poundage

To demonstrate PPSF's alleged loss of raw poundage, PPSF provided the Braund Group's Claim A portion of Braund's claim that supports Braund Fishing Group's alleged total damages, between June 30, 2013 and July 24, 2013.<sup>63</sup> PPSF also provided Braund Group's Claim B portion of Braund's claim that supports Braund Fishing Group's alleged total damages, between July 10, 2013 through August 01, 2013.<sup>64</sup> In addition, PPSF submitted the Braund Group's Loss Valuation which demonstrates Braund Group's Explanation of Calculation of Damages.<sup>65</sup>

Providing another Claimant's claim support does not support its own claim of a loss of profits and earnings. The NPFC understands that the Braund Group is a supplier to the Peter Pan Seafoods' Dillingham Facility; however Claimant's facility services all of Bristol Bay. Peter Pan Seafoods does not solely depend on the Braund Group's supply of raw poundage to stay in business or in competition with

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<sup>62</sup> 2015 05 22 Email from Claimant with P&Ls attached.

<sup>63</sup> Braund Group's Claim A portion of its claim. Pages 49 – 63.

<sup>64</sup> Braund Group's Claim B portion of its claim, Pages 79 – 101.

<sup>65</sup> Braund Group's Claim support Pages 91 – 103

other Seafood companies. Claimant has not shown saved overhead or normal expenses not incurred as a result of the incident, which are required by the regulations.<sup>66</sup>

According to Alaska DFG, the State tracks and manages the salmon fisheries by counting and tracking fish escapement. For the Igushik section, fish that have made it to the Igushik River Tower get counted. The State provided the NPFC the daily fish escapement counts from the tower, noting that the Igushik River run of salmon was early in 2013. The State also advised that the fish that get counted normally pass through the area permitted for fishing about five days prior to reaching the tower.<sup>67</sup> During the 2013 Igushik River Salmon run, 387,036 fish were counted, as escapement.<sup>68</sup> Of these, 225,138 were counted through July 04, 2013.<sup>69</sup> This indicates that 58% of the salmon run was completed before the Lonestar sank on June 30<sup>th</sup>. 329,712<sup>70</sup> of the fish were counted through July 10<sup>th</sup>, representing 85 percent of the salmon run had passed through the fishing grounds by July 5<sup>th</sup> when the state imposed a permanent closure for fishing. The State of Alaska reports that at the time of the River closure, 321,162<sup>71</sup> fish were harvested from the Igushik River. The NPFC finds that the statistics that are provided by the State of Alaska reasonably demonstrate that 15% of the 2013 Igushik Salmon run was limited to all 34 of the commercial salmon processors and buyers operating in Bristol Bay from harvesting and marketing over 15+million salmon.<sup>72</sup> Overall 15,376,432 salmon were harvested during the 2013 Bristol Bay fishing season, at an average weight of six pounds per fish. These fish were sold at an average of \$1.50 per pound to the 34 commercial salmon processors. The Igushik fishing area accounted for 321,000 of the fish harvested. The State reported that the 2013 harvest for the Igushik was 29 % higher than forecasted while the overall Bristol Bay Sockeye harvest was reported to be about 30% below the 20-year average.

The NPFC finds that attributing a loss to individual production facilities facing an overall Bristol Bay harvest that was down by 30+% from historic numbers, in addition to quantifying its loss of profits when the salmon price was at an extreme high, is more than challenging. This potential loss is even more challenging to demonstrate when one considers that the distributors get to set and determine market price of finished product after the fact.

### **NPFC Independent Research**

In addition to reviewing all of the documentation submitted to the Fund, by the Claimant, the NPFC researched and reviewed Alaska State fishing articles and publications, including the Alaska Department of Fish and Game Division of Commercial Fisheries 2013 Bristol Bay Salmon Season Summary and the Alaska Department of Fish and Game Fishery Management Report No. 14-23. The Nushagak District,<sup>73</sup> 2013 commercial sockeye salmon harvest reached 3.2 million fish, which were 4% below the preseason projected harvest of 3.3 million fish and 44% below the 1993-2012 average harvest of 5.7 million sockeye salmon.<sup>74</sup> Although the harvest was below the historical average, the increased price per pound caused the value to be above average.<sup>75</sup>

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<sup>66</sup> 33 CFR 136.233(d) and 33 CFR 136.235(d) respectively.

<sup>67</sup> See 2015 11 17 Email from DFG to the NPFC.

<sup>68</sup> 2013 Bristol Bay Area Annual Management Report, Table 20, P. 52.

<sup>69</sup> See Alaska DF&G Spreadsheet that was provided to the NPFC via email on November 17, 2015.

<sup>70</sup> See Alaska DF&G Spreadsheet that was provided to the NPFC via email on November 17, 2015.

<sup>71</sup> See Table 20, Alaska Report. Igushik River Catch – 321,162, Escapement – 387,036, total run – 708,198.

<sup>72</sup> Equates to 56,000 pounds of Salmon.

<sup>73</sup> The Nushagak District encompasses the entire Bristol Bay fishing area.

<sup>74</sup> Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, p.26 and Appendix A15 – Inshore commercial catch and escapement of sockeye salmon in the Nushagak District by river system, in numbers of fish, Bristol Bay, 1993 – 2013, p. 81.

<sup>75</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, pgs. 1 – 2.

The NPFC finds the below average harvest of 44% in 2013 compared to a 20 year average is an indicator of something larger than the spill incident, which affected only one river entrance. The Northwest region of Bristol Bay, which includes the Snake River, was also closed to fishing for 2013 by regulation. Additionally, the NPFC found the 2013 Bristol Bay sockeye salmon run was early to very early depending on the river system, which was also noted to be a time of inclement weather that affected the commercial fishery as a whole. Total sockeye harvest and total inshore run were 6% and 12% below forecast.<sup>76</sup>

The NPFC finds the lower harvest for 2013 only increased the price per pound, which caused the value to be above average. Thus, Claimant has not proven a loss of profits affected their business. In addition, it appears the salmon run was early for 2013, which would have helped mitigate any loss later in the season from the LONE STAR sinking.

### Conclusion

Submitting Braund Fishing Group's claim as PPSF's claim for loss of profits is not reasonable or in-line with the requirements for this type of claim under OPA.<sup>77</sup> Additionally, the total inshore (excluding harvest in other areas) sockeye salmon production for Bristol Bay in 2013 was forecast to be 25.1 million. Claimant uses this forecast in order to properly staff PPSF's Dillingham facility. Because the actual salmon run harvest for all of Bristol Bay was only 15,376,432, which was 30% below the 20 year average, it would be a contributing factor to any alleged overhead loss by the Claimant. Also, the Igushik fishing area accounted for 321,000 of the fish harvested, which translates into just over 2% of all of Bristol Bay's harvest. In addition, the State reported that the harvest for the Igushik was 29 % higher than forecasted. All of these facts make a loss of profits challenging to prove. Claimant's Dillingham facility brings in Salmon from all of Bristol Bay, which had a below average harvest of 44% for 2013. Finally, as the State noted above, the 2013 Salmon run was early to very early, indicating that most of the catch had passed prior to the spill incident. Claimant has failed to prove a loss as discussed above through the financial documents provided.

Claimant failed to establish that it suffered a loss of profits of \$360,725 through the financial documentation provided for Peter Pan as a whole or its Dillingham processing plant which could be directly attributed to the LONE STAR spill incident. Additionally, the claimed Interest in the amount of \$7,656 is denied because interest is not an OPA compensable cost.

This claim is denied.

Claim Supervisor: (b) (6) (b) (6)

Date of Supervisor's review: 12/23/2015

Supervisor Action: *Denial Approved*

<sup>76</sup> Alaska Department of Fish and Game Division of Commercial Fisheries, 2013 Bristol Bay Salmon Season Summary, p. 4.

<sup>77</sup> OPA regulations require claimants seeking a claim for loss of profits to provide the "amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents...."33 CFR 136.233(c).