

CLAIM SUMMARY / DETERMINATION

Claim Number: J13014-0008
Claimant: ██████ Fishing Group
Type of Claimant: Private (US)
Type of Claim: Loss of Profits and Earnings
Claim Manager: ████████████████████
Amount Requested: \$528,537.91

FACTS¹:

INCIDENT

On June 30, 2013, at 0700L (local time),² the F/V LONE STAR sank and discharged oil into the Igushik River, Alaska, 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, ████████████████████ owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under Oil Pollution Act.

OVERVIEW OF 2013 SET-NET FISHING SEASON ON THE IGUSHIK RIVER

The NPFC relied heavily on the Alaska Department of Fish and Game, (ADF&G) Division of Commercial Fisheries, 2013 Bristol Bay Area Management Report as an objective source of information to aid in the measurement of this claim, initially and on reconsideration. As of the 2013 Commercial Fishing Season, the ADF&G had been managing and tracking the salmon in the Bristol Bay for 52-years.³

The Bristol Bay management area includes all coastal and inland waters east of a line from Cape Newenham to Cape Menshikof.⁴ 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.⁵ 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.⁶

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.⁷ 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

¹ The initial determination, dated March 01, 2016 is incorporated and referenced throughout the document.

² POLREP One

³ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 1

⁴ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1.

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

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

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

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.⁸ 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 2013.⁹

Run Strength Indicators

Fishery managers in Bristol Bay have several early indicators of sockeye salmon run size, including the pre-season 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 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.¹⁰

Preseason Forecasts

Total inshore (excluding harvest in other areas) sockeye salmon production for Bristol Bay in 2013 was forecast to be 25.1 million¹¹. 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.¹²

The forecast for the sockeye salmon run to Bristol Bay in 2013 was the sum of individual predictions for nine river systems¹³ and four major classes.¹⁴ Adult escapement and return data from brood years 1972 to 2009 were used in the analyses.^{15 16}

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 reliability¹⁷ based on mean absolute deviation, mean absolute percent error, and mean percent error between forecasts and actual returns for the years 2010 through 2012.¹⁸

⁸ Alaska Department of Fish and Game Fishery Management, Report No. 14-23, May 2014.

⁹ Alaska Department of Fish and Game Fishery Management, Report No. 14-23, May 2014.

¹⁰ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3

¹¹ 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.

¹² *id*

¹³ Kvichak, Alagnak, Naknek, Egegik, Ugashik, Wood, **Igushik**, Nushagak-Mulchatna, and Togiak.

¹⁴ Age 1.2, 1.3, 2.2, and 2.3, plus age 0.3 and 1.4 for Nushagak.

¹⁵ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

¹⁶ 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.

¹⁷ Accuracy and precision.

¹⁸ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

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.¹⁹ 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.²⁰ 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.²¹

Commercial fishing for set gillnets was announced to begin in the Nushagak District late on June 21, 2013 and the drift gillnet fleet would start at 11:00 a.m. on June 22.²² The beginning of the commercial fishing season was met by a severe storm with winds exceeding 50 knots.²³ 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.²⁴ Managers continued to announce liberal fishing openings. The set gillnet fishery, opened on June 21, and was extended for the rest of the season.²⁵

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.²⁶

Commercial fishing with set gillnet gear began in the Igushik Section of the Nushagak District on June 15 when a market became available.²⁷ The Igushik River tower project began enumerating sockeye salmon on June 24.²⁸ 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.²⁹ On June

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ Alaska department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

²⁴ 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.

²⁵ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

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

²⁷ 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.

²⁸ 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.

²⁹ 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.

23, commercial fishing was extended for 24 hours.³⁰ Escapement was strong beginning with the first day of counts, and fishing was extended until further notice.³¹

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.³²

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.^{33 34} The Igushik River sockeye salmon escapement exceeded the upper end of the escapement goal range by 29%.³⁵ The late opening for the season, the limited fishing hours early on and the early salmon run all contributed to the season's escapement figures..

Ex-Vessel Value

The Bristol Bay 2013 harvest of all salmon species was 16.4 million fish with a preliminary ex-vessel value³⁶ of \$141 million which is 26% above the 20-year average and ranks 7th over that same period. The weights, harvests, and prices listed in Table 1³⁷ 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.³⁸

³⁰ *id*

³¹ 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.

³² 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.

³³ 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.

³⁴ The river closure reduced harvest in that area of the district and allowed increased escapement into the Igushik River.

³⁵ 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.

³⁶Ex-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.

³⁷ 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.

³⁸ Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, pgs. 1 – 2.

litigation, as well as, collection and recovery of damages. The powers of attorney have now all expired. New powers of attorney will, therefore, have to be submitted to the Director, National Pollution Funds Center (NPFC) to settle the claim.⁴⁷

CLAIM

The claim was presented for payment by the Oil Spill Liability Trust Fund (OSLTF or the Fund) on January 07, 2015. At the time of the [REDACTED] Group’s initial claim submission to the Fund, it initially sought, from the Fund, an alleged Lost Profits and Earnings Capacity in the amount of \$536,857.91.⁴⁸ However, The [REDACTED] Group’s claim also contained a Real or Personal Property element in the amount of \$8,320, for gill set-net repairs. On January 22, 2016, the NPFC removed the \$8,320 for the net repairs and placed them under a Real or Personal Property claim (J13014-0013). [REDACTED] was notified of this change on January 22, 2016 via email⁴⁹. The new sum certain for this Lost Profits and Earnings claim (J13014 – 0008) is, **\$528,537.91**. [REDACTED] acknowledged this change via email on January 22, 2016.⁵⁰

The claim was presented as three separate parts:

1. Vessel Charter Claim: \$6,000

The vessel charter claim is for the [REDACTED] vessels that were chartered to the responsible party, on July 01, 2013, to place containment boom around the F/V LONE STAR. [REDACTED] is claiming \$6,000 for the unpaid vessel charter for F/V LOGOS and F/V BLINKO at a charter hourly rate (1 vessel/1captain/1 deckhand) of \$1500 an hour for two of [REDACTED] vessels that were chartered for two hours each. The claimant has, however, now been paid this amount. This portion of the claim is, therefore, denied.⁵¹

2. Claim A: \$422,149.35

- (a) Claim A Damages: \$408,585.40. Claim A Interest: \$13,563.95
- (b) Sites legally registered in Igushik District 6/16/13 through 8/04/13

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Gross Damages</u> ⁵²	<u>Net Damages</u>
[REDACTED]	[REDACTED]	\$ 85,661.22	\$ 83,581.22
[REDACTED]	[REDACTED]	\$ 139,384.82	\$ 137,304.82
[REDACTED]	[REDACTED]	\$ 89,475.65	\$ 87,395.65
[REDACTED]	[REDACTED]	\$ 102,383.71	\$ 100,303.71
Total		\$ 416,905.40	\$ 408,585.40

⁴⁷ See Powers of Attorney tab in the Claimants’ binder at pages 381 through 428.

⁴⁸ The total economic loss asserted in the claim letter was \$530,857.91. The amounts detailed later in each part of the claim, however, totaled \$536,857.91.

⁴⁹ See email to [REDACTED] dated 2016 01 22

⁵⁰ [REDACTED] acknowledged this change via email dated 2016 02 12.

⁵¹ See email of 2013 03 27 from [REDACTED] to [REDACTED].

⁵² These damages are not inclusive of the vessel charter however, they are inclusive of the homepack and fuel costs.

3. Claim B: \$100,388.55⁵³

(a) Claim B Damages: \$97,225.34, Claim B Interest: \$3,163.21

(b) Sites legally registered in Igushik District, no later than, 7/10/13 through 8/04/13⁵⁴

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Damages⁵⁵</u>
[REDACTED]	[REDACTED]	\$ 19,359.94
[REDACTED]	[REDACTED]	\$ 19,736.57
[REDACTED]	[REDACTED]	\$ 20,220.32
[REDACTED]	[REDACTED]	\$ 18,808.82
[REDACTED]	[REDACTED]	\$ 19,099.69
Total		\$ 97,225.34

Claimants' Basis for the Entire Claim

The [REDACTED] Group's Lost Profits and Earnings claim (Claims A and B) is based on the [REDACTED] Group's estimate of the gross value of sockeye salmon that the [REDACTED] Group would have caught and delivered, in 2013, but for the incident-related closures.⁵⁶ In addition to the loss of round pounds that the claimant asserts it would have delivered to Favco, Inc., in the amount of [REDACTED] pounds of sockeye salmon, which gives an asserted total lost harvest of [REDACTED] pounds of sockeye salmon. The [REDACTED] Group also seeks the replacement costs of salmon that would have been processed and distributed to the [REDACTED] Group and permit holders as Homepack,⁵⁷ in the amount of \$15,300, additional fuel costs incurred in the amount of \$9,900.57, and interest that has accrued since June 30, 2013, in the amount of \$16,727.16. [REDACTED] Group's total asserted damages plus interest for this claim is **\$528,537.91**. (See chart below).

Total Peter Pan Sales Lost Harvest (LBS)	Total Favco Sales Lost Harvest (LBS)	Total Lost Harvest (LBS)	Total Peter Pan Sales Lost Harvest Damages (6/30/2013 - 7/24/2013)	Total Favco Sales Lost Harvest Damages (7/25/2013 - 8/04/2013)	Total Homepack Damages	Total Fuel Costs	Total Oil Spill Damages	Interest Total	Vessel Charter paid by RP	[REDACTED] Total Damages + Interest
[REDACTED]	[REDACTED]	[REDACTED]	\$445,176.41	\$35,433.77	\$15,300.00	\$9,900.57	\$505,810.75	\$16,727.16	\$6,000.00	\$528,537.91

Initial Offer Made to Claimant

⁵³ The claimants' calculation of damages has a \$0.01 error involved. For the Claim B portion of this claim, Mr. [REDACTED] asserts that the [REDACTED] Group incurred \$97,225.35 in damages; however the damages total, \$97,225.34.

Mr. [REDACTED] alleges that the night before the F/V Lone Star incident, the [REDACTED] Group fishermen that were fishing in the Combine and Coffee Point subdistricts planned to move down to the Igushik subdistrict but could not move down to the Igushik subdistrict because of the oil spill incident. See Claimants' Explanation of Damages, p. 11.

⁵⁵ These damages are not inclusive of the vessel charter however, they are inclusive of the homepack and fuel costs.

⁵⁶ Claimants' Confidential Business Information, p.5.

⁵⁷ Fish that is taken home to the crew.

On March 01, 2016, the National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), the NPFC offered **\$91,903.30** as full compensation for OPA claim number J13014-0008.

To determine injury/compensation, the NPFC reviewed the [REDACTED] Group's fishing records for 2013 and relied heavily on the 2013 State of Alaska research and records. More specifically, in measuring and quantifying the damage, the NPFC relied on the Alaska State Escapement Data for 2013 as well as the State's information on the average price of Salmon in 2013.⁵⁸

The State of Alaska made it clear that the salmon that pass through the Igushik fishing grounds are counted five (5) days later while passing the Igushik Tower.⁵⁹ This would mean that a fish passing through the Igushik fishing grounds on June 30th would be counted on the 5th of July. Similarly, fish passing through the fishing grounds on the 5th would be counted by the State on the 10th. Applying this information to the State's escapement data supports that on June 30 almost 66% of the 2013 Igushik River salmon run had passed or was passing through the fishing grounds. The state escapement data further supports that a full 85% of the 2013 Igushik Sockeye run had passed the fishing grounds by the 5th of July, thus leaving only 15% of the Salmon run for the harvest or escapement during the balance of the 2013 run.

By applying these percentages to the amount of fish caught by the [REDACTED] Group prior to the spill, one can project the lost opportunity and loss due to the closure of the fishing season. The NPFC spreadsheet used during the initial adjudication, titled "Exhibit 1 –NPFC Spreadsheet," provides that analysis. The fishermen that had fish tickets into July, were treated as though they only landed 85% of what they would have with a full season and those that had no fish tickets for July were treated as though they had only landed 66% of what they would have landed. Overall, the River closure analysis supported a loss of 45,941.80 pounds of salmon as a result of the incident. Additionally, the claim support demonstrated that there was a loss of fish during the initial sinking and disruption as nets were being hauled. While tapes provided by the claimant showed the fish being landed as nets were hauled in, there was some loss that occurred by having the nets out of the water during this interruption in fishing.

The NPFC used the methodology above because it ties directly to the reported 2013 Sockeye Salmon inshore run, as determined by the State of Alaska. It correlates directly to the actual rate of catch by each of the fishermen within the [REDACTED] Group for the impacted year and uses the actual harvest and escapement data from the State for the impacted season while incorporating the actual timing of the impacted year's run. Once the total fish caught was obtained, the NPFC was able to figure out the loss of opportunity for the rest of the season. By utilizing the State's published average price per pound of fish at \$1.50 for Sockeye (and not all fish used in determining a fisherman's catch were sockeye) and the claimants' catch by pound, the NPFC was able to provide an offer of **\$91,903.30** for lost catch to the [REDACTED] Group.

Request for Reconsideration

On April 07, 2016, the [REDACTED] Group requested reconsideration of the NPFC's initial claim determination based on the claimant's asserted new facts and supporting documentation.⁶⁰ The [REDACTED] Groups' arguments on Reconsideration will be discussed in the NPFC Analysis section of this Determination.

⁵⁸ Fishery Management Report No. 14 – 23, 2013 Bristol Bay Area annual Management Report.

⁵⁹ The 5-Day delay is based on [REDACTED], Area Biologist, email to the NPFC, dated 2016 01 14.

⁶⁰ [REDACTED] Request for Reconsideration Letter, dated April 05, 2016, p. 1, attached to an email dated April 07, 2016.

Further, the [REDACTED] Group requests that the NPFC recalculate the NPFC's methodological approach that was taken when initially adjudicating the claim.⁶¹ Also, the [REDACTED] Group has requested that the NPFC provide them with a revised claim determination offer based on the information that was provided by Mr. [REDACTED] with the [REDACTED] Groups' Reconsideration Request.

[REDACTED] Groups' Support Documentation on Reconsideration

The [REDACTED] Group submitted the following supporting documentation to the NPFC with its Reconsideration Request.

- Letter from [REDACTED], ADF&G Nushagak/Togiak Area Management Biologist, which contain 2013 Commercial Salmon Fishing Season Questions asked by [REDACTED] and answers that were provided by Mr. [REDACTED], dated April 01, 2016.
- Emails between [REDACTED] and [REDACTED] that contain the April 01, 2016 letter.
- 2013 – 2015 Igushik Weight Comparison – Printed from Excel file produced by ADF&G.⁶²
- Emails between Mr. [REDACTED] and [REDACTED] that discuss the Igushik weight comparison.⁶³
- ADF&G documentation on Genetic Stock Composition of the Commercial Harvest of Sockeye Salmon in Bristol Bay, Alaska, 2006 – 2008.
- Appendix D10 – Proportion and Harvest estimates (including 90% credibility intervals) by reporting group from mixtures of sockeye salmon harvested in Nushagak District, Bristol Bay, Alaska, 2006.
- Peter Pan Seafoods, Inc. letter, to [REDACTED] [REDACTED] dated, May 15, 2014, Re: 2013 Commercial Fishing Season Sockeye Salmon Price Paid to [REDACTED] Fishing Group. This letter states that for the 2013 commercial fishing season the [REDACTED] Fishing Group permit holders delivered 199,419 pounds of iced sockeye salmon and 22,319 pounds of non-iced sockeye salmon, respectively. Accordingly, Peter Pan Seafoods, Inc. paid the [REDACTED] Fishing Group permit holders an average of [REDACTED] per pound of sockeye salmon for the 2013 commercial fishing season. PPSF states in the letter, that the [REDACTED] Group was paid a pre-settlement base price of [REDACTED] per pound of sockeye salmon, ice incentive of \$ [REDACTED] per pound of sockeye salmon, and a spring adjustment of \$ [REDACTED] per pound of sockeye salmon.
- Favco letter, dated October 21, 2015 to the United States Coast Guard, Claims Manager for National Pollution Funds Center. The letter provides that the [REDACTED] Group has a long history of selling fish to Favco and that the Group historically shipped fresh Sockeye caught in the Igushik Subdistrict of the Nushagak District in Bristol Bay, Alaska via airfreight from Dillingham to Favco's processing facility in Anchorage, Alaska.⁶⁴
- Alaska Fish Radio article, dated May 23, 2014, *Inseason Salmon Prices are Tough To Track*. This was submitted to support Mr. [REDACTED] argument that prices reflect bonuses for iced fish, dock deliveries, and other agreements between a buyer and seller.
- The [REDACTED] Fishing Group Permit Ownership/Catch History.
- AIFMA LEADER, Alaska Independent Fishermen's Marketing Association, News Letter, dated November 2013, Pages, 1 – 6.⁶⁵

⁶¹ Claimant's Request for Reconsideration, p. 1.

⁶² See 2013-2015 Igushik Weight Comparison graph with Hand Written title and Mr. [REDACTED] email address written on the paper.

⁶³ See email string between Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] dated April 05, 2016

⁶⁴ The Favco letter also states that in 2015, the [REDACTED] Fishing Group shipped [REDACTED] + pounds of sockeye salmon to Favco.

⁶⁵ The AIFMA LEADER is in regards to the 2013 Bristol Bay Ex-Vessel Salmon prices and the value of the various species of salmon.

- ADF&G Fishery Management Report No. 14-23, 2013 Bristol Bay Area Annual Management Report, Table 12. – Inshore run of sockeye salmon by age class, river system, and district, in thousands of fish, Bristol Bay, 2013.
- Handwritten statement written and signed by Mr. [REDACTED] dated April 06, 2016, asserting that Mr. [REDACTED], former ADF&G Nushagak area Management Biologist, and current Peter Pan Seafoods Manager advised Mr. [REDACTED] that applying a 3-day lag from when fish pass through the Igushik District counting towers was a reasonable assumption.⁶⁶
- BMW Build Your Own 2016 x5 Advertisement – to support Mr. [REDACTED] assertion that the [REDACTED] Fish Group sells salmon “akin” to BMW.
- U.S. Energy Information Administration, *Today in Energy*, dated July 22, 2014, Fuel economy and Average vehicle cost vary significantly across vehicle types – to demonstrate the listed average vehicle price.⁶⁷

NPFC ANALYSIS ON RECONSIDERATION

Upon receipt of the [REDACTED] Group’s request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission.

The 2013 Igushik Salmon Fishing Season was impacted by the sinking of the F/V LONE STAR in the Igushik River fishing grounds, resulting in the River closure and then ultimately closing the fishing season. The set-net fishermen that were fishing for Sockeye in the Igushik River lost the opportunity to catch fish and the claimants demonstrated that they had a loss of profits and earnings capacity as a result of the closure of the River. Given the season by season and fishery specific differences, the NPFC relied heavily on the actual data provided by the State of Alaska, from the very specific 2013 Igushik River Sockeye Salmon fishery. The NPFC measured the [REDACTED] Group’s damages, in pounds, by using the claimant’s actual fish tickets for landed fish in 2013, to determine the rate at which the Group was catching fish.

The [REDACTED] Group’s Arguments on Reconsideration

The [REDACTED] Group’s reconsideration request argues many points, including its capacity to catch [REDACTED] lbs of fish in a single day,⁶⁸ and implies a loss of 47,761 fish alone, on June 30th.⁶⁹ Mr. [REDACTED] argues that his expertise as a “highline” fisherman sets him apart from other fishermen and argues that the NPFC should not apply State averages in our determination of loss to them.⁷⁰ Mr. [REDACTED] also states that a catch rate is not static⁷¹ and, after the other commercial fishermen leave the River, the amount of fish available to the [REDACTED] Group increases;⁷² all factors the [REDACTED] Group asserts that the NPFC did not take into account during our initial adjudication of the [REDACTED] Group’s claim.

Many of the [REDACTED] Group’s arguments on reconsideration are not supported by fact or evidence. Although the claimant states that the [REDACTED] Group has the capacity to catch [REDACTED] lbs of fish in a

⁶⁶ [REDACTED] signature is not on the Affidavit.

⁶⁷ [REDACTED] Group is comparing the quality of its fish to the higher end vehicles and that the NPFC’s initial offer devalued the [REDACTED] Group’s quality of fish that are caught and sold on the market.

⁶⁸ See Claimant’s Reconsideration letter dated April 5, 2016, p. 3.

⁶⁹ See Claimant’s Reconsideration letter dated April 5, 2016, p. 4. Claimant asserts that he would have caught [REDACTED] lbs of fish on June 30th. Claimant asserts that he caught [REDACTED] lbs of fish, leaving a loss of 47,761lbs of fish.

See Claimant’s Reconsideration letter dated April 5, 2016, p. 8.

⁷¹ See Claimant’s Reconsideration letter dated April 5, 2016, p. 12-13.

⁷² See Claimant’s Reconsideration letter dated April 5, 2016, p. 9.

single day,⁷³ this assertion has not been proven through any of the contemporaneous documents, including fish tickets, provided by the claimant that this has ever happened. Additionally, the historic fish tickets that the [REDACTED] Group provided to the NPFC have not demonstrated the claimant's asserted potential "to put away" [REDACTED] pounds on June 30th. There is no evidence that such amounts have been realized by the [REDACTED] Group, in the Igushik River on a single day. This lack of evidence brings doubt to Mr. [REDACTED] assertion of loss pounds for June 30th.⁷⁴ Additionally, video of the nets being hauled does not show 100K lbs of fish escaping. However, the video does clearly show that most of the fish being hauled in remained in the boat.

The NPFC fully understands the [REDACTED] Group's arguments regarding the ability to catch more fish after the other commercial fishermen leave the River and it will be discussed below under "Post Run Catch." Further, the NPFC agrees that catch rates are not static. However, the NPFC relied on State of Alaska documentation/resources which shows that the 2013 Salmon run in the Igushik River was "early to very early" in 2013. The State resources also support the NPFC's determination that, with the unexpected early salmon run, most of the fish were caught before the spill incident occurred. The NPFC relied on the State records to obtain the total fish run for 2013, while also using the [REDACTED] Group's landing tickets before the spill incident occurred, and applied that to determine the Group's catch rate for the portions of the season/run that were lost to the claimants. The NPFC's original offer included 15% more fish at the same catch rate as the claimant fished early in the season, although the higher volume of the fish run had passed. On reconsideration, the claimants argue and disagree with the NPFC's Methodology.⁷⁵ However, the claimants did not provide a different type of methodology that would accurately capture its loss. Other arguments presented by the claimant are addressed below.

5 Day Delay

The commercial catch and escapement data that is captured by the State fish towers, combined with the State fish tickets for fish landed, determine the State reported run data for the inshore Commercial Catch and Escapement totals.⁷⁶ The Igushik River Tower counts the escapement for the Igushik River section and the State reports that the fish are counted five (5) days after passing through the Igushik area fishing grounds.⁷⁷ The NPFC used the State's escapement numbers as published to determine the Sockeye Salmon run for the impacted location and time. While every fish is different, the State expert projects that on average, a salmon gets counted at the Igushik River fish tower five days after the fish swims through the fishing grounds. This indicates that there is a delay of five days between the fishing grounds to the counting tower. In the NPFC's initial determination, the Fund relied on the State delay data in computing when the fish passed the impacted fishery.

On reconsideration of its claim, Mr. [REDACTED] argues that the Fund has taken the five-day delay period that was provided by the State and turned it into fact and asserts that it is not a credible scientific fact and should not be used in the NPFC's determination.⁷⁸ The [REDACTED] Fishing Group would prefer that the Fund use their expertise in the area of fishing, which assumes a three-day lag period instead.⁷⁹ As evidence, the claimants submitted a signed letter to the Fund from Mr. [REDACTED] [REDACTED] the same area

⁷³ See Claimant's Reconsideration letter dated April 5, 2016, p. 3, paragraph e a.

⁷⁴ Claimant's fish tickets can be found in Binders dated October 29, 2015, submitted by [REDACTED] [REDACTED]. Also, the NPFC documented each fish via the NPFC Spreadsheet/Methodology.

⁷⁵ The NPFC's methodology uses the actual 2013 run numbers. The claimant's actual harvest rate for unimpacted period, actual fish tickets, and objectionable State reported data.

⁷⁶ Fishery Management Report No. 14-23, 2013 Bristol Bay Area annual Management Report.

⁷⁷ [REDACTED] [REDACTED] email to the NPFC dated, 2016 01 14.

⁷⁸ See Claimant's Reconsideration letter dated April 5, 2016.

⁷⁹ See Claimant's Reconsideration letter dated April 5, 2016, page 2.

Biologist that the NPFC used to obtain State information regarding the five-day delay. The [REDACTED] letter contained questions and answers.⁸⁰ Mr. [REDACTED] provided that the five-day lag is an approximation that the department uses for management purposes. Some fish go faster and some slower.⁸¹ Mr. [REDACTED] further states that the five-day number is an approximation that is used based on experience and knowledge passed on by predecessors.⁸² When Mr. [REDACTED] asked Mr. [REDACTED] if a lot of Igushik salmon reach the counting tower in three days,⁸³ Mr. [REDACTED] provided that the State does not have “good” data for Mr. [REDACTED] question and that the five day delay is an approximation that the State of Alaska uses, based on experience and knowledge.⁸⁴ Additionally, under reconsideration, Mr. [REDACTED] provided a hand-written statement titled, Affidavit, signed by himself, which states that [REDACTED] a former ADF&G Nushagak District Manager and current Peter Pan Seafoods Fleet Manager, states that a three day lag time is a reasonable assumption.

While the [REDACTED] Group disagrees with the NPFC’s use of the five-day delay assumption, no persuasive evidence has been provided on reconsideration, to establish that the 5-day delay figure is unreasonable, despite Mr. [REDACTED] direct communication with Mr. [REDACTED] a State Biologist. The State did not change their assessment and use of a five day delay from the fishing grounds to the counting towers. Additionally, Mr. [REDACTED] hand-written statement titled, Affidavit, which was written and signed by Mr. [REDACTED] himself, is self serving and not documented evidence from Mr. [REDACTED] regarding the five-day lag period. Therefore, upon reconsideration, the NPFC, again, finds that on average, it takes five days for a sockeye salmon to swim through the fishing grounds to the counting tower. On reconsideration of this claim, the 5 day delay will be used in measuring the claimant’s opportunity lost. This is applied in the NPFC’s spreadsheet analyses, below. The NPFC understands that fish reach the counting tower at various times, depending on various factors as the fish pass through the fishing grounds. However, the NPFC finds that the State’s assessment of the five-day average delay supercedes any other piece of evidence that has been submitted to the Fund in regards to this claim because it has been used for many years by the State in its surveys of the fish that swim through the Igushik River.

Average Weight of Sockeye Salmon

According to the Alaska Department of Fish and Game Divison of Commercial Fisheries, there were 15,376,432 salmon harvested in the Bristol Bay 2013 season at an average weight of six pounds per fish.⁸⁵ On page 5 of Mr. [REDACTED] Reconsideration letter, he argues that the average weight of a sockeye salmon that was harvested in the Igushik River during the 2013 season was 2.86 kilograms or 6.30 pounds, and not 6 pounds as stated in the initial determination.⁸⁶

Claimant’s argument, however, is an estimate based on general data. The NPFC believes it is more accurate to calculate the claimant’s loss using the claimant’s actual fish tickets that were provided by the claimant to determine the amount of pounds caught during the 2013 season. The NPFC used the actual poundage that was landed and documented from the Fish Landing Tickets. Those documented fish pounds were applied in the Fund’s measurement of loss determination.

⁸⁰ [REDACTED] letter to Mr. [REDACTED] dated April 01, 2016.

⁸¹ [REDACTED] letter to Mr. [REDACTED] dated April 01, 2016, p. 5, number 7-a.

⁸² [REDACTED] letter to Mr. [REDACTED] dated April 01, 2016, p. 5, number 7-c.

⁸³ [REDACTED] letter to Mr. [REDACTED] dated April 01, 2016, p. 5, number 7-b.

⁸⁴ [REDACTED] letter to Mr. [REDACTED] dated April 01, 2016, p. 5, number 7-b.

⁸⁵ 2013 Bristol Bay Area Annual Management Report, p. 88 Appendix A22, The average round weight, in pounds, of the commercial catch by species, Bristol Bay , 1993-2013.

⁸⁶ See 2016 04 01 letter from mr. [REDACTED] supporting th the average weight of an Igushik Salmon being 6 pounds.

2013 Price Per Pound

On reconsideration, claimant argues it sold sockeye salmon to Peter Pan Seafoods for [REDACTED] per pound and states that the NPFC made a factual error relying on ADF&G data indicating an average sale price of \$1.50 per pound for sockeye salmon because it is a pre-settlement base price and does not reflect the final price paid. Mr. [REDACTED] further states that a portion of his landed salmon would have been sold for [REDACTED] to Favco and that data was not included in the ADF&G data.⁸⁷

Mr. [REDACTED] provided a Peter Pan, 2013 Bristol Bay Settlement Summary which demonstrates that the [REDACTED] Group was paid the base price of [REDACTED] per pound for Reds, as a presettlement base price. The Peter Pan base price does not include incentives, that were later paid to the [REDACTED] Group.

The NPFC used the \$ [REDACTED] base price that the [REDACTED] Group received from Peter Pan,⁸⁸ in its initial claim determination to calculate the lost value/lost income of the [REDACTED] Group's catch. On reconsideration, the NPFC uses the same base price that Peter Pan paid the claimant for each pound of Reds (sockeye salmon) that were sold to Peter Pan Seafoods.

Regarding the claimed Ice Incentive of \$ [REDACTED]⁸⁹ per pound, the NPFC does not find this cost compensable. The ice incentive was paid to the claimant by Peter Pan Seafoods, for fish that were caught and sold to Peter Pan Seafoods, on ice. There is no evidence provided in the record that the [REDACTED] Group bought and stored ice and then was unable to use the ice, due to the oil spill incident. Further, by not having to purchase ice for the fish that was not caught in 2013, the claimant, quite likely, has realized a saved expense. Therefore, the \$ [REDACTED] Ice Incentive is not a compensable cost from the Fund. If the [REDACTED] Group bought ice in advance and had to waste it due to not being able to use it, attributed to the spill, they have not proven that fact in this claim.

Regarding the claimed Spring Adjustment of \$ [REDACTED] per pound,⁹⁰ the claimant provided a letter from Peter Pan Seafoods, during the initial claims process, that they were paid this amount per pound of sockeye salmon.⁹¹ During the reconsideration process, the NPFC reached out to Peter Pan Seafoods and requested additional evidence to prove that Peter Pan paid the [REDACTED] Group the Spring Adjustment for the 2013 Salmon Fishing Season. Peter Pan Seafoods provided the NPFC a copy of the check that was paid to Mr. [REDACTED] [REDACTED] in the amount of [REDACTED] on May 14, 2014.⁹² Each fisherman was paid a different amount, which was based on the pounds of fish that was delivered to Peter Pan during the 2013 fishing season.⁹³ Therefore, the NPFC finds the \$ [REDACTED] per pound Spring Incentive is compensable for the lost fish that would have been delivered to Peter Pan. The NPFC's methodology for its offer is explained in further detail below.

⁸⁷ See Claimant's Reconsideration Letter, p. 14, paragraph j.

⁸⁸ See Peter Pan Seafoods 2013 Settlement Summary for the [REDACTED] Group.

⁸⁹ See Claimant's Reconsideration Letter, p. 14, paragraph m, l, b.

⁹⁰ See Claimant's Reconsideration Letter, p. 14, paragraph m, 1, c.

⁹¹ May 15, 2014, Peter Pan Seafood letter to [REDACTED] that acknowledges the members of the set-net operation and provided the presettlement base price of [REDACTED], Ice Incentive of \$ [REDACTED] per pound of sockeye salmon and a Spring Adjustment of \$ [REDACTED] per pound of sockeye salmon. Signed by Mr. [REDACTED], Bristol Bay Manager.

⁹² See Peter Pan Seafoods check # 3328374 paid to [REDACTED] [REDACTED]

⁹³ See Peter Pan Seafoods check stub, file copy for payments made to [REDACTED] [REDACTED], [REDACTED] in year 2014 for the 2013 fishing season.

Favco/Post Processor/Buyer Boat Season Portion of the "Run"

On April 07, 2015, the NPFC requested that the ██████ Group provide evidence that demonstrates the Favco prices and on April 20, 2015 the NPFC requested that the ██████ Group provide detailed records of the sales of fish to Favco for the years 2010 through 2014.⁹⁴

The ██████ Group provided evidence that after Peter Pan closes its window to buying fish from the ██████ Group for the season, the ██████ Group then sells its fish to Favco and would have done so through August 1, 2013, but for the F/V LONE STAR incident. The ██████ Group submitted a letter to the Fund, from Favco, Inc.,⁹⁵ that demonstrates the claimants' intent to sell fish to Favco. The letter also demonstrates that there is a history between Favco and the ██████ Group. The claimants also submitted a letter to the Fund from Mr. ██████ ADF&G Nushagak/Togiak Area Management Biologist, dated April 01, 2016, acknowledging that the Igushik Section would have been kept open through August, but for the F/V Lone Star incident. On that basis, the claimants argue that they should receive \$3.56 per pound for their Favco fish.

The NPFC does not find the claimed Favco rate of ██████ per pound compensable because the ██████ Group did not provide detailed records, as requested. The ██████ Group did provide a few fish tickets that indicated sales of fish to Favco, for year 2012, but no other (2010-2011 and 2014) years were provided for comparables. The NPFC understands that the fish that are caught, to be sold to Favco, are typically fished after the fishing season has ended, therefore, there are no fish tickets. However, the claimants did not provide any other documented evidence in the record that allows the NPFC to properly measure how many pounds of fish are sold to Favco in comparable years.⁹⁶

The record is clear that the ██████ Group would have received the \$█████ per pound from Favco. However, claimants has not proven which portion of this price per pound is profit vs. revenue. There are substantial expenses that are incurred before receiving the claimed price per pound. It is clear in the record that the claimants have expenses associated with Favco. There are costs to ice down the fish and to fly them to the processing facility in Anchorage. In addition, there are expenses to operate the fishing group, (i.e. the cost to repair his fishing vessels, feed his fishermen, and run the camps.⁹⁷ Claimants have not proven how much of the \$█████ per pound is profit.

However, the claimants provided data/evidence which supports that after the buyer boats for Peter Pan Seafoods leave the fishing grounds, the claimants continue to catch fish and that they package, label, and sell through Favco.⁹⁸ Unfortunately, the data provided by the claimants to determine how many fish would have been caught is very weak, and for 2013 is non-existent. Therefore, on Reconsideration, the NPFC relied on a spreadsheet entitled *Igushik River Historical Daily Escapement Counts Tower*, that was provided by the State of Alaska.⁹⁹ This spreadsheet captures Igushik River fish escapement from June 18th through August 5th for 57 years (1958-2015). In using this objective data, the NPFC used the final eight (8) days of the month of July to estimate the fishing season's post processor catch, as recorded at the

⁹⁴ See NPFC email to Mr. ██████ dated, April 20, 2015 and letter to dated April 07, 2015.

⁹⁵ Favco letter to the United States Coast Guard, Claims Manager, dated October 21, 2015

⁹⁶ See 33 CFR 136.233(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."

⁹⁷ Revenue minus Expenses equals Profits.

⁹⁸ ██████' April 1, 2016 letter supports that the ██████ Group would have fished through August.

⁹⁹ Please refer to the Igushik River Historical Daily Escapement Counts Tower Spreadsheet that was provided to the Fund by Mr. ██████, Alaska Biologist. This spreadsheet contains escapement counts that take place on the Igushik River and dates back to 1958 and runs through to 2015.

State counting tower.¹⁰⁰ The NPFC found that, historically, the data represents 3.6% of the annual run. The NPFC applied the 3.6% to the claimant's 2013 catch rate to determine that [REDACTED] pounds of sockeye could have been caught and marketed through the [REDACTED] Group. However, the [REDACTED] Group did not provide expenses related to Favco revenue. Therefore, the NPFC finds it reasonable to apply the same average price of a \$1.50 per pound, based on the price that is documented by the State of Alaska. The NPFC's methodology for its offer is explained in detail below.

NPFC Spreadsheet /Methodology of Compensation on Reconsideration Summary

In the process of reviewing and adjudicating the reconsideration of this claim, the NPFC used and modified the NPFC Spreadsheet that was provided to the claimant in the initial determination (Exhibit 1 – NPFC Spreadsheet). On reconsideration the claimant argued that it only requested compensation for sockeye salmon and did not want to be compensated for any other species of salmon.¹⁰¹ Therefore, upon reconsideration, the NPFC removed all pounds related to non-sockeye salmon, as requested by the claimant.¹⁰²

Opportunity Lost - Pounds Missed During State Run

The claimants provided evidence that they would have continued to fish through August but for the spill and Mr. [REDACTED] statement supports this because of the early to very early run however, there is a lack of State documentation to support this.

State of Alaska records note that the 2013 fishing season was going to run through or around, July 23, 2013.¹⁰³ Because of the spill incident, fishing operations in the Igushik River ended on July 5th after reports of contaminated fish were received. The set gillnet fishery remained closed for the remainder of the season and an area of six statute miles from the mouth of the Igushik River was closed to drift gillnet fishing as well.¹⁰⁴

On reconsideration, the NPFC applied the same methodology as in its original determination, since claimant did not provide any useful evidence on reconsideration that would change the NPFC's approach. The State's escapement data supports that on June 30th almost 66% of the 2013 Igushik River salmon run had passed or was passing through the fishing grounds. The state escapement data further supports that a full 85% of the 2013 Igushik Sockeye run had passed the fishing grounds by the 5th of July, thus leaving only 15% of the Salmon run for the harvest or escapement during the balance of the 2013 run.¹⁰⁵ On reconsideration, the NPFC continued to use the state escapement data as it is an impartial and reliable source. The 2013 harvest or escapement numbers were derived from the State's Igushik River Tower Count table that the NPFC acquired while adjudicating this claim on reconsideration. The table was obtained from Mr. [REDACTED], ADF&G Biologist.

By applying these percentages to the amount of fish caught by the [REDACTED] Group prior to the spill, one can project the lost opportunity and loss due to the closure of the fishing season. The NPFC's Enclosure (3) - NPFC Methodology Spreadsheet on Reconsideration provides that analysis. The fishermen that had fish tickets into July, are treated as though they only landed 85% of what they would have with a full season and those that had no fish tickets for July were treated as though they had only landed 66% of

¹⁰⁰ See *Igushik River Historical Daily Escapement Counts Tower*.

¹⁰¹ See Claimant's Reconsideration letter dated April 5, 2016, page 13.

¹⁰² This includes removal of all Pinks, Chum, Coho, and Kings from the NPFC calculations.

¹⁰³ See, [REDACTED] letter, dated April 1, 2016, page 1.

¹⁰⁴ 2013 Bristol Bay Area Annual Management Report.

¹⁰⁵ Please refer to the State's Igushik River Tower Count table.

what they would have landed. Overall, the River closure analysis supports a loss of [REDACTED] pounds of sockeye salmon during the period when processors had buyer boats available.¹⁰⁶ See NPFC reconsideration spreadsheet for details.

Supplemental 5.6%

The first disruption to the 2013 fishing season, which can be attributed to the spill, occurred 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 1st. To recognize and quantify this loss, the NPFC used the daily escapement counts provided by the State on July 3, 4, 5 & 6¹⁰⁷ and took the average of these escapement numbers. The average escapement was then divided by the State's total escapement number for the year.¹⁰⁸ This resulted in a determination that an average of 5.6% of the run passed through the Igushik fishing area each day during this four day period of the 2013 run, which, when applied to the [REDACTED] Group fishermen in the Igushik pre-incident catch rate, translates into no more than a 5.6% reduction/impact to their harvest of those in the river.

The NPFC spreadsheet (initial and reconsideration) has a column titled "Supplemental 5.6%." This column takes the fishermen's total pounds of fish caught using fish tickets provided by the claimants, divided by the percent of the run that had passed, multiplied by 5.6% (actual catch increased by the loss of opportunity poundage) to arrive at an additional loss during the closing and opening of the Igushik River from June 30-July 1st. During this disruption period, four [REDACTED] Group fishermen were fishing in the Igushik River. The other five [REDACTED] Group fishermen were fishing at Coffee Point, well outside and to the North of the Igushik River spill. The claimants produced lease transfer documents which evidence that the five fishermen fishing at Coffee Point were going to transfer down into the Igushik River, but were unable to due to the spill. The Fund accepted the claimants' assertion that the fishermen fishing at Coffee Point through June were going to move down to the Igushik River. The NPFC's initial determination, offered a 5.6% disruption to all nine [REDACTED] Group fishermen; resulting in [REDACTED] pounds of fish.

Upon reconsideration of the claim, the NPFC re-evaluated the true loss of pounds during this one day disruption. There is no evidence in the record that the five fishermen at Coffee Point caught any less fish from June 30-July 1st than if they had been in the Igushik River and these five fisherman were able to continue fishing during this disruption. In fact, the Coffee Point fishermen planned to move down to the Igushik River would have caused a disruption in and of itself; the fishermen would have had to pull their nets to make the move which would have resulted in lost catch time, regardless of the oil spill. Therefore, upon reconsideration the NPFC only offers the 5.6% disruption to the four fishermen that were actively fishing in the Igushik River prior to the spill and then were not able to continue during this one day disruption. The NPFC spreadsheet distinguishes the fishermen that were fishing at Coffee Point during the disruption period by highlighting their fish totals in green. The NPFC offered a 5.6% allowance, to the four [REDACTED] Group fisherman fishing in the Igushik River during the one day disruption which documents a total loss of [REDACTED] pounds of sockeye. See NPFC spreadsheet for details.

¹⁰⁶ On Reconsideration, the NPFC removed all other species of salmon which provided a lower number than in the initial determination.

¹⁰⁷ See [REDACTED] [REDACTED] email with attached spreadsheet labeled Irtower. The State fish tower captures fish escapement, on average, five days after the fish move across the fishing grounds. Since the disruption on the fishing grounds was from June 30th – July 1st, the NPFC quantifies this loss by taking fish escapement counts from two days before the disruption (June 28 and 29) and two days during the disruption (June 30 and July 1st). These counts were 20898+22764+29070+14142 which equals 86,874 and averages 21,718.5 fish escapement.

¹⁰⁸ See 2013 Bristol Bay Area Annual Management Report, Table 20-Inshore commercial catch and escapement of sockeye salmon, in numbers of fish, Bristol Bay, 2013. The total escapement for the Igushik River in 2013 was 387,036.

Post Peter Pan Portion of the 2013 Season - 3.6%

As explained above, the NPFC used the Igushik River, Historical Daily Escapement Counts Tower Spreadsheet, that was provided to the Fund by Mr. [REDACTED] in order to calculate the loss realized after the normal State run fishing season would have been over. This spreadsheet contains daily escapement counts on the Igushik River which dates back to 1958 and runs through the end of the fishing season, 2015. Utilizing Mr. [REDACTED] spreadsheet, the NPFC used the daily escapement rate based on the daily average between years 1958 and 2013. The total daily escapement from July 24-31st indicates that the escapement for that week was 3.6%.¹⁰⁹ The NPFC used this figure to makeup for the lack of contemporaneous records for the end of the 2013 fishing season. Therefore, using that figure, the NPFC applied the opportunity missed and the supplemental 5.6% that was multiplied by the 3.6% to demonstrate a Post Run Opportunity Lost, in total pounds, which is represented at the bottom of the NPFC's spreadsheet in the amount of 9854.45 lbs of fish that would have been caught at the end of July in 2013.

Spring Incentive

The NPFC will allow compensation for the loss of \$ [REDACTED] per pound from Peter Pan as discussed above. To measure the Spring Incentive, the NPFC multiplied the sum of the lost opportunity and the supplemental 5.6% disruption by [REDACTED]. Finally, the NPFC summed the information and totals to achieve the offered amount on reconsideration.

When initially adjudicating this claim, the NPFC used the average price of \$1.50 per pound while measuring the claim and did not include incentives. However, on Reconsideration, based on the evidence that was provided by Peter Pan, the NPFC used the NPFC spreadsheet to determine how much spring incentive will be offered to the [REDACTED] Group, based on the Opportunity Lost total amount. The NPFC added the total Opportunity Lost amount with the total supplemental amount, then multiplied those two separate amounts by \$ [REDACTED], which provided the incentive amounts, per fisherman. Then, a combined spring incentive total was achieved by tallying the individual fisherman's spring incentives together, in the amount of \$ [REDACTED].¹¹⁰ Please note that when the NPFC initially adjudicated this claim, the NPFC analyzed the Group's fish that were caught in 2013, as if they were all Sockeye Salmon, to determine the "catch rate," and offered the [REDACTED] Group [REDACTED] per pound for all species of fish. On reconsideration, of this claim, the NPFC only adjudicated the Reds/Sockeye Salmon; all other species of Salmon were removed from the calculations, per the claimant's request.

Spreadsheet Summary

On reconsideration, all pounds for other species of salmon, other than Reds (sockeye salmon) have been backed out of the NPFC analyses, per the claimants' argument, in its reconsideration letter on page 13, paragraph b. The NPFC added the total pounds of Reds (sockeye salmon) that the [REDACTED] Group harvested, and was officially documented through fish tickets, during the 2013 fishing season.¹¹¹ The NPFC spreadsheet shows a variance in the total pounds between the fish tickets that the claimant submitted to the Fund and the Peter Pan Settlement Summary, (2663) which indicates the difference, by pounds, of what the [REDACTED] Group landed and the pounds of sockeye salmon that were purchased by

¹⁰⁹ This includes any lost pounds that would have been sold to Favco.

¹¹⁰ Column W.

¹¹¹ This equals [REDACTED] lbs of Sockeye Salmon. Not all fish tickets were legible and not all tickets were turned in by claimant because some were damaged during the fishing season or lost.

Peter Pan.¹¹² The Peter Pan Settlement Summary supports that in 2013, Peter Pan purchased [REDACTED] pounds of salmon from the [REDACTED] Group. The NPFC divided the variance (2663) in pounds of Reds (sockeye salmon) by the percent of the run that had passed (.85%). The remaining 15% represents the opportunity lost, which equals, [REDACTED]

The NPFC added the Total Opportunity Lost¹¹⁴ for each member of the [REDACTED] Group, which equates to 44809.91 pounds of salmon that would have been caught, if not for the oil spill. The NPFC then calculated the sum of the supplemental, the post run, and the spring incentive.¹¹⁵ Those figures were based on each fisherman's total harvest, which includes incentives. All totaled, it provides a collective loss of pounds not harvested as a result of the closure, in the amount of [REDACTED]

The NPFC used each fisherman's pre-incident catch/harvest as a percentage of the run to determine the actual harvest lost for the 2013 fishing season. The early closure reduced the [REDACTED] Group's harvest by 44809.91 pounds of salmon. The June 30th disruption resulted in the [REDACTED] Group losing an additional, 10319.66 pounds of sockeye. These fish, at \$ [REDACTED] per pound, would have earned the Group, \$ [REDACTED] and \$ [REDACTED] respectively. Additionally, on Reconsideration, the claimant demonstrated that they would have received an additional \$ [REDACTED] per pound, in the form of a spring incentive check from Peter Pan. Finally, on Reconsideration, the claimant demonstrated that they would have caught and marketed an additional [REDACTED] pounds of sockeye. Unfortunately, the claimant did not demonstrate a higher value or price for the fish that were caught after the buyer boats departed. Therefore, the NPFC valued the fish at the State in season price/per pound rate.

			Pounds	In Season Value \$ [REDACTED]/lb	Spring Incentive Value \$ [REDACTED]/lb
[REDACTED] fish captured through Fish Tickets			[REDACTED]	[REDACTED]	
[REDACTED] fish purchased by Peter Pan			[REDACTED]	[REDACTED]	
Opportunity Lost to Fisherman					
	Shortened Season		[REDACTED]	[REDACTED]	[REDACTED]
	Disruption		[REDACTED]	[REDACTED]	[REDACTED]
	Post Season		[REDACTED]	[REDACTED]	
		Totals	[REDACTED]	[REDACTED]	[REDACTED]
			Offer		\$105,194.1757

¹¹² See, Column R, Line 210-211 on the NPFC spreadsheet.

¹¹³ Claimant's 2013 fish tickets totaled [REDACTED] lbs of Sockeye Salmon. PPSF documents a total of [REDACTED] lbs of Sockeye Salmon delivered to them from the [REDACTED] Group. The difference is 2663 lbs. 15% of that difference is added into the Opportunity Lost lbs Missed portion of the spreadsheet. See Column R, S and T line 210 on the NPFC spreadsheet.

¹¹⁴ Column T on NPFC Spreadsheet.

¹¹⁵ Columns U, V, and W, on the NPFC Spreadsheet.

¹¹⁶ Column X on the NPFC Spreadsheet.

Denied Costs on Reconsideration

On Reconsideration, the claimants do not argue the vessel charter, additional fuel costs, and interest that the NPFC denied in the initial determination. However, those costs remain as components of the claimant's sum certain and therefore will be discussed below.

Vessel Charter Claim: \$6,000

As noted in the NPFC's initial determination, the vessel charter claim is for the [REDACTED] vessels that were chartered to the RP, on July 01, 2013, to place containment boom around the F/V LONE STAR. However, the vessel charter costs were satisfied by the RP in the amount of \$6,252¹¹⁷ on March 17, 2015 and therefore, the vessel charter claim in the amount of \$6,000 is denied.¹¹⁸

Additional Fuel: \$9,900.57

In its initial claim submission, the claimants assert that the [REDACTED] Group incurred an increase in fuel costs that are alleged to be associated with the [REDACTED] Group's end of season pack-up of camp. Peter Pan's fishing tender, the CARLA RAE C, left the Igushik fishing district prior to the [REDACTED] Fishing Group leaving the area for the season. [REDACTED] Fishing Group typically utilizes a PPSF fish tender to tow the [REDACTED] Group's vessels and to haul the [REDACTED] Group's gear, provisions, and personnel, between fishing camp and Dillingham.¹¹⁹ However, due to the River closure, the CARLA RAE C, went back to Dillingham earlier than the [REDACTED] Group. Therefore, the [REDACTED] Group hauled its own gear and vessels to Dillingham as opposed to loading the gear on a tender and towing the vessels back to Dillingham.

The NPFC denied these costs in the initial claim determination because claimant did not provide evidence (receipts for the cost of the additional fuel or the amount that the [REDACTED] Group spends in fuel for the entire fishing season). On reconsideration, the claimant did not to provide any new evidence. Therefore, the increased fuel costs in the amount of \$9,900.57 are denied.

Interest: \$16,727.16

The [REDACTED] Group claims interest in the amount of \$16,727.16. Interest is not an OPA compensable cost and is therefore denied in the amount of \$16,727.16.

Homepack: \$15,300.00

On April 07, 2015, the NPFC requested that the [REDACTED] Group provide evidence that demonstrates the Homepack price¹²⁰. The claimants provided a letter from Peter Pan Sea Foods¹²¹ in regards to the Peter Pan Sea Foods fillet cost for the [REDACTED] Fishing Group. The letter states that in 2013, Peter Pan Seafoods, Inc., Dillingham Facility, sold #1 grade, pin bone out, vacuum packaged sockeye fillets (1 lb. – 2 lb. size category) for [REDACTED] per pound and that those fillets were available at that cost to fishermen, crew, and the public. The letter further explains that Peter Pan Sea Foods provides a service in producing a small portion of the sockeye fillets from the [REDACTED] Fishing Group's catch towards the end of the fishing season. Peter Pan Sea Foods states in its letter that they were unable to offer this service to the

¹¹⁷ Mr. [REDACTED] paid interest costs in the amount of \$252.

¹¹⁸ See Matthews and Zahare check number 1423, dated March 17, 2015 paid to [REDACTED] [REDACTED]

¹¹⁹ The distance between the [REDACTED] camp and Dillingham is 34 miles.

¹²⁰ See NPFC letter dated April 7, 2015, to [REDACTED] Fishing Group.

¹²¹ PPSF letter dated 2015 10 09

