

CLAIM SUMMARY / DETERMINATION

Claim Number: J13014-0009
Claimant: Peter Pan Seafoods Inc
Type of Claimant: Corporate
Type of Claim: Loss of Profits and Earnings
Claim Manager: [REDACTED]
Amount Requested: \$55,454.47

FACTS:

On June 30, 2013, at 0700L (local time),¹ 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 [REDACTED] owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

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.²

The Bristol Bay management area includes all coastal and inland waters east of a line from Cape Newenham to Cape Menshikof.³ 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.⁴ 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.⁵

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.⁶ 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.⁷ 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 2013.⁸

¹ POLREP One.

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

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

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

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.

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

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 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.⁹

Preseason Forecasts

Total inshore (excluding harvest in other areas) sockeye salmon production for Bristol Bay in 2013 was forecast to be 25.1 million¹⁰. 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.¹¹

The forecast for the sockeye salmon run to Bristol Bay in 2013 was the sum of individual predictions for nine river systems¹² and four major classes.¹³ Adult escapement and return data from brood years 1972 to 2009 were used in the analyses.^{14 15}

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 reliability¹⁶ based on mean absolute deviation, mean absolute percent error, and mean percent error between forecasts and actual returns for the years 2010 through 2012.¹⁷

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.¹⁸ 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.¹⁹ Nushagak and Igushik sockeye salmon escapements

⁹ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3

¹⁰ 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.

¹¹ *id*

¹² Kvichak, Alagnak, Naknek, Egegik, Ugashik, Wood, **Igushik**, Nushagak-Mulchatna, and Togiak.

¹³ Age 1.2, 1.3, 2.2, and 2.3, plus age 0.3 and 1.4 for Nushagak.

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

¹⁵ 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.

¹⁶ Accuracy and precision.

¹⁷ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

¹⁸ 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.

¹⁹ 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.

exceeded the upper ends of their escapement goal ranges, and Wood River sockeye salmon escapement fell within the escapement goal range.²⁰

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 22.²¹ The beginning of the commercial fishing season was met by a severe storm with winds exceeding 50 knots.²² 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.²³ Managers continued to announce liberal fishing openings. The set gillnet fishery, opened on June 21, and was extended for the rest of the season.²⁴

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.²⁵

Commercial fishing with set gillnet gear began in the Igushik Section of the Nushagak District on June 15 when a market became available.²⁶ The Igushik River tower project began enumerating sockeye salmon on June 24.²⁷ 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.²⁸ On June 23, commercial fishing was extended for 24 hours.²⁹ Escapement was strong beginning with the first day of counts, and fishing was extended until further notice.³⁰

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.³¹

²⁰ 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.

²¹ 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.

²² Alaska department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

²³ 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.

²⁴ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

²⁵ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, 19, and 20, p. 26, 50, and 51).

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ *id*

³⁰ 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.

³¹ 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.

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.^{32 33} The Igushik River sockeye salmon escapement exceeded the upper end of the escapement goal range by 29%.³⁴ 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 value³⁵ 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 1³⁶ 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.³⁷

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.³⁸

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.³⁹

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

³² 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.

³³ The river closure reduced harvest in that area of the district and allowed increased escapement into the Igushik River.

³⁴ 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.

³⁵ 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.

³⁶ 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.

³⁷ Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, pgs. 1 – 2.

³⁸ Alaska Department of Fish and Game Division of Commercial Fisheries, 2013 Bristol Bay Salmon Season Summary, p. 4.

³⁹ Alaska Department of Fish and Game Division of Commercial Fisheries.

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).⁴⁰

PPSF is in the business of processing and selling 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.⁴¹

Nichiro Peter Pan Seafoods, Inc. (NPPPI), 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.⁴²

PPSF holds their corporate office in Seattle, Washington. Executive and Administrative support, sales, marketing, purchasing and finance are all run from this location.⁴³

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 (PPSF-Dillingham, Claimant) 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.⁴⁴

Claim

Initial Claim

The initial claim was presented to the Oil Spill Liability Trust Fund (OSLTF or the Fund) on January 09, 2015. At the time of PPSF's claim submission to the Fund, it initially sought from the Fund an alleged Lost Profits and Earnings Capacity in the amount of **\$368,381**⁴⁵ for lost profits and interest alleged to have resulted from the F/V LONE STAR oil spill incident and subsequent closure of the Igushik River to salmon fishing. PPSF based its entire claim on the alleged loss of fish that it would have bought from the Braund Fishing Group.⁴⁶ PPSF could not buy or sell Braund Fishing Group's lost catch during the river closure and therefore resulted in lost profits due to the spill.

PPSF's Dillingham Plant receives some of their deliveries from the Braund Fishing Group permit holders.⁴⁷ Claimant asserted that the Braund Fishing Group represents the entire Igushik area deliveries

⁴⁰ Moss – Adams LLP Report of Independent Auditors and Consolidated Financial Statements with Supplemental information, December 31, 2013 and 2012. p. 9.

⁴¹ *id*

⁴² *id*

⁴³ www.ppsf.com/facilities/index.aspx#king

⁴⁴ *id*

⁴⁵ Peter Pan Seafoods, Inc. letter to the Fund dated December 31, 2014.

⁴⁶ See, Braund claim J13014-0008.

⁴⁷ The Braund fishing group permit holders are an aggregate Bristol Bay set-net commercial fishing operation comprised of nine set net permits holders and had a total of 22 operational personnel in 2013. (See claim file).

that were scheduled for the Dillingham Plant.^{48 49} Claimant also asserted that the Braund Fishing Group delivers high quality sockeye because of fish handling practices and the use of slush ice, as well as, Braund's ability to catch the larger size sockeye.

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.⁵⁰ 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.⁵¹

During the initial claim submission, PPSF stated that its claim had 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

Initially, the claimant asserted that both of these losses are extrapolated from the 2014 year-end financial profit/loss report⁵² for the Dillingham facility and that unit values for the two components for all affected production lines⁵³ are multiplied by the lost production quantities that would have been derived from the lost round pounds from the Braund fishing Group's permit holders. However, during reconsideration of this claim, the NPFC asked the claimant to further explain how its 2013 losses are extrapolated from the 2014 year-end financial profit/loss report. In an email, dated July 28, 2016, Mr. ██████████ clarified that PPSF's losses are based on the 2013 incident and reflected in 2013 fiscal reports.⁵⁴

The initial claim asserts a plant loss of \$360,725.⁵⁵ This included the sum of overhead costs 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%.⁵⁶ The sum of all the components of this claim, on initial, is **\$368,381**.

On December 23, 2015, the National Pollution Funds Center (NPFC), denied the claim because the claimant did not establish that it suffered a loss of profits through the financial documentation that was provided for Peter Pan as a whole or through its Dillingham processing plant which could be directly attributed to the F/V LONE STAR spill incident. Also, interest in the amount of \$7,656 was denied because interest is not an OPA compensable cost.

RP Presentment

Claimant made presentment to the RP on October 17, 2014, in the amount of \$366,499.⁵⁷ On October 29, 2014 PPSF received correspondence from Matthews and Zahare, P.C., legal counsel for Burrece

⁴⁸ Claim, p. 5.

⁴⁹ Loss of round pounds – unprocessed, as delivered to the dock. These are pounds that would have been processed by the PPSF Dillingham facility.

⁵⁰ Salted salmon eggs.

⁵¹ Claim p. 2

⁵² See, Plant specific P&Ls from which Peter Pan based the claim calculations.

⁵³ Canned Sockeye (Talls), Cured Sockeye (Sujiko), Cured Sockeye (Ikura), and Frozen Sockeye (Fillets).

⁵⁴ See email dated July 28, 2016 from ██████████. Also, it is important to note that prior to the email being sent to the Fund from ██████████, the NPFC held a phone conference on Thursday, July 28, 2016, with ██████████ where the explanation was also explained verbally.

⁵⁵ The sum of Margin and the lost factory overhead for the Dillingham facility.

⁵⁶ Interest loss through date of claim using the September 26, 2014 U.S. Treasury Bill 10 year interest rate.

⁵⁷ 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

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.

Request for Reconsideration

On April 15, 2016, the claimant requested Reconsideration of the NPFC's initial determination based on the claimant's asserted new facts and supporting documentation.

The claim on Reconsideration is limited to the loss of harvest and delivery from four permitted members of the Braund Fishing Group; [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁵⁸ PPSF asserts that during the 2013 season it lost **74,893** pounds of red salmon at \$0.74 per pound resulting in a loss, on Reconsideration of **\$55,454.47**.⁵⁹

Claimant's Support Documentation on Reconsideration

PPSF's support documentation was submitted to the NPFC with its Reconsideration Request.

- Natural Resources Consultants, Inc. (NRC) letter, dated April 08, 2016.
- PPSF Economic Loss Summary.
- Moss Adams LLP Report of Independent Auditors.
- PPSF Consolidated Statements of Income.
- 2013 U.S. Corporation Income Tax Return, Form 1120
- Supplemental Discussion on Questions Raised regarding this Claim, dated April 08, 2016.
- NRC letter to [REDACTED], dated April 15, 2016.
- Exhibit A, demonstrating PPSF's Loss of Raw Pounds and Loss Value.
- Exhibit B - Dillingham Packer, Actual- Proj, Plant income Statement.
- Exhibit 4: ADF&G, Summary of News Release, Emergency Orders.
- Tab 1 – Nushagak District catch of Sockeye Salmon and Igushik Set-net catch, exclusive of the Wood River special harvest area, 2012-2015.
- Tab 2 – Peter Pan Seafoods record of delivery/purchase of sockeye by Igushik set-net permit number and fisherman, 2011-2015.

Claimant's Arguments on Reconsideration

On Reconsideration, PPSF- Dillingham, explains that in 2013, the Dillingham Plant processed fish for 42 days and the peak of the season occurred over a period of nine (9) days. Because of the remote location and the demand for labor, all of the Dillingham employees are hired from outside of the location. PPSF provides the airfare, food, and lodging for their employees during the duration of their employment. PPSF further explains that if there are no fish to process, the airfare costs, food, and lodging remain fixed. All other fixed overhead costs are also committed and unrecoverable, in preparing the facility for the salmon season.⁶⁰ The claimant asserts to not have alternative employment or business opportunities, or mitigative strategies to offset its fixed overhead costs. It argues that every pound that goes through the

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.

⁵⁸ See Natural Resources Consultants, Inc. (NRC) letter to [REDACTED], dated April 08, 2016, p. 2 of 10, line number 5.

⁵⁹ See Claimant's NRC letter to [REDACTED], dated April 08, 2016. The claimed loss of \$0.74 per pound consists of \$0.688 in overhead fixed costs and \$0.052 profit. These fish would have been processed at the Dillingham Facility.

⁶⁰ Maintenance, repairs, and freight.

plant contributes to lowering the unit fixed overhead cost and contributes additional margin to the company in the form of a finished product.⁶¹

PPSF-Dillingham states that its P&L report reflects saved overhead and demonstrates normal business expenses that were not incurred as a result of the oil spill incident. PPSF-Dillingham further states that its direct labor costs, taxes, as well as any incremental utilities consumption that the lost Braund Group fish would have required in processing are reflected in the P&L report.⁶²

PPSF-Dillingham explains that the salmon tender vessels that are chartered by PPSF are contracted with a guaranteed daily rate and a specified number of charter days. When a sub-section closes down, within the greater Bristol Bay fishing district, the tender vessels that have been servicing the fleet in this closed area can then be relocated to a section that is open to fishing. PPSF states that when the Igushik Section was closed, in 2013, the tender vessel, Carla Rae C, was relocated to the Nushagak Section. The relocation of the vessel did not enable Peter Pan to purchase additional fish in that Section because that area was being serviced by its regular fishing fleet and asserts that the Carla Rae C was relocated to utilize the remaining guaranteed contractual charter days.⁶³

The claimant asserts that the committed fixed costs that are demonstrated in PPSF's final P&L Statement would have been absorbed by the additional pounds that the Braund group was unable to harvest and the additional margin that those pounds would have brought as finished product. 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.⁶⁴

PPSF-Dillingham calculated the loss contribution to the overhead and the margin that would have been derived from the raw pounds that were not delivered to PPSF in Dillingham. PPSF-Dillingham took the overall contributions by raw pound from the Dillingham plant for the 2013 set-net fishing season and applied them to the lost pounds.⁶⁵

Claimant asserts that all of the Igushik fish would be processed at their Dillingham Plant in Bristol Bay, Alaska.⁶⁶ Peter Pan also asserts that in year 2013, its overhead costs for the Dillingham plant was \$8,511,496.⁶⁷ According to the PPSF Costing Report, PPSF processed 12,369,086 pounds of salmon and that the overhead costs per pound for Dillingham equals \$.688 per pound. The average gross profit for all species in Dillingham was \$.052 per pound purchased.⁶⁸

Claimant's Exhibit B demonstrates the claimant's gross profit, in the far right column, on all the products that were produced in the Dillingham Facility. Peter Pan grossed \$36,201,324 in sales, less the direct costs of, \$27,042,643, less the overhead costs in the amount of \$8,511,496, which equates to \$647,186. Peter Pan divided \$647,186 by 12,369,086 round pounds that were purchased and came to \$.052 per pound profit.⁶⁹

While on Reconsideration, PPSF-Dillingham retained [REDACTED] of Natural Resource Consulting, (NRC) a fishery biologist who is experienced in loss of income claims that pertain to the Alaska fishing

⁶¹ PPSF letter to NPFC, dated April 08, 2016, Supplemental Discussion on Questions Raised Regarding this Claim.

⁶² PPSF letter to NPFC, dated April 08, 2016, Supplemental Discussion on Questions Raised Regarding this Claim.

⁶³ PPSF letter to NPFC, dated April 08, 2016, Supplemental Discussion on Questions Raised Regarding this Claim.

⁶⁴ PPSF letter to NPFC, dated April 08, 2015, Supplemental Discussion on Questions Raised Regarding this Claim.

⁶⁵ See PPSF's request for Reconsideration letter, dated April 15, 2016, p. 1 of 2.

⁶⁶ See, Economic Loss Summary, first paragraph.

⁶⁷ See PPSF's Exhibit A.

⁶⁸ Claimant's Exhibit A – Peter Pan's costing report for the Dillingham Processing Plant in Bristol Bay.

⁶⁹ Claimant's Exhibit B – Peter Pan's Plant Income Statement.

industry, to calculate the loss of red salmon catches that would have been delivered to PPSF-Dillingham from the Braund Group set-net fishermen that were impacted by the spill.⁷⁰

As mentioned above, the claim on reconsideration is limited to the four permitted Braund Group fishermen that were unable to harvest and sell salmon to PPSF, after the River closure. To determine the claimant's loss analysis, ██████ obtained Peter Pan's 2011 – 2015 sockeye delivery/purchase records for each of the four permits that were impacted. Using the available data for the two years before and after the 2013 season, ██████ determined each fisherman's percentage of the Igushik set-net harvest. The calculated loss of harvest and delivery to Peter Pan-Dillingham equates to that fisherman's performance multiplied by the Igushik's projected set-net catch in 2013, absent the spill and less the actual deliveries of sockeye to Peter Pan during the 2013 open fishing periods.⁷¹

██████ applied each of the four fishermen's history of sales relative to the Igushik set-net catch, for years 2011 through 2015 to produce the fishermen's delivery average.⁷² ██████ then took the calculated harvest and divided it by the average delivery history to produce the harvest/delivery to Peter Pan's Dillingham Plant in 2013, absent the spill/closures. Finally, ██████ took the harvest number and divided it by the average delivery in pounds to get the harvest/delivery, less actual harvest delivery and loss number, by pounds.⁷³ This procedure was done for each of the four permits that were scheduled to deliver sockeye salmon to PPSF-Dillingham, in 2013.⁷⁴

██████ states in his letter to ██████ that the deliveries made to Peter Pan Seafoods totaled, 154,013 pounds and the projected loss of deliveries was calculated to be 74,893 pounds. He then asserts that, absent the spill and the closures, the four sites would have produced about 228,906 pounds of sockeye. ██████' calculations resulted in an asserted loss that equates to 32.7% of the projected total, which he claims to be similar but less than a 40% loss incurred by the Igushik sub district.⁷⁵

NPFC ANALYSIS ON RECONSIDERATION

Upon receipt of the Claimant'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 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 fish and the claimant demonstrated that they had a loss 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 from the very specific 2013 Igushik River Sockeye Salmon fishery. The NPFC measured Peter Pan-Dillingham's damages by using the Braund Group's actual fish tickets, for landed fish in 2013, to determine the rate at which the fishermen were catching fish.

The claimant's arguments on reconsideration are assertions and are not fully supported by fact. PPSF-Dillingham used a history of sales relative to Igushik set-net catch from four Braund Group fisherman to demonstrate that they suffered a loss of 74,893 lbs of sockeye salmon by averaging years 2011 – 2012 and 2014 – 2015 of harvested and delivered sockeye salmon in order to determine the amount of sockeye salmon that was not harvested or delivered to Peter Pan during the 2013 fishing season.⁷⁶

⁷⁰ See PPSF's request for Reconsideration letter, dated April 15, 2016, p. 1 of 2.

⁷¹ NRC letter to ██████, April 08, 2016, p. 3 of 10.

⁷² NRC letter to ██████, April 08, 2016, p. 4 of 10.

⁷³ NRC letter to ██████, April 08, 2016, p. 4 of 10.

⁷⁴ ██████ = 7,316 lbs., ██████ = 7,134 lbs., ██████ = 22,259 lbs., and ██████ = 38,184 lbs.

⁷⁵ NRC letter to ██████, April 08, 2016, p. 5 of 10.

⁷⁶ See ██████ – NRC – Letter to ██████, dated April 8, 2016, p. 4 of 8.

The NPFC does not find the claimant's use of historical years to prove its loss to be convincing. PPSF-Dillingham's claimed loss is stated as the loss of deliveries by the Braund Group's fishermen's catch in the Igushik River during the 2013 sockeye salmon season to PPSF-Dillingham facility. Therefore, the NPFC used the Braund Group's 2013 fish tickets to determine that after the River closure, the Braund Group would have harvested and possibly delivered no more than 44,809.9144 pounds of sockeye salmon to the Dillingham Plant. Therefore, the NPFC denies the Claimant's assertion of 74,893 pounds of sockeye salmon that would have been delivered to PPSF.⁷⁷

The NPFC relied on State of Alaska documentation/resources which show that the 2013 Salmon run on the Igushik River was "early to very early," in 2013. The State resources also supports that with the unexpected early salmon run, most of the fish run took place before the spill incident occurred. The NPFC relied on the State records to obtain the total fish run for 2013, while also using the Braund Group's landing tickets before the spill incident occurred and applied that to the Group's catch rate, for the rest of the season.

According to the Alaska Department of Fish and Game Division of Commercial Fisheries, there were 15,376,432 salmon harvested in the Bristol Bay during the 2013 season at an average weight of six pounds per fish.⁷⁸ The total run for the Igushik River was 708,198. The total run is encumbered by a catch total of 321,162 and an escapement of 387,036.⁷⁹ 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.⁸⁰

The NPFC calculated the Braund Group's lost fish, using the Braund Group's actual fish tickets that were provided by the Braund Fishing Group 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 to the Fund's measurement of loss determination.⁸¹

The claimant's claim on reconsideration is based, specifically, on its fixed overhead costs at their Dillingham facility. Any loss of round pounds of salmon affects this cost. The claimant's net profit calculation is based upon revenues from all salmon products that are produced and sold from the round pounds of salmon that are purchased, in this case, from the Braund Group.⁸² On reconsideration, PPSF-Dillingham hired NRC, [REDACTED], to help analyze and explain its claim for loss of profits.⁸³

The claimant's expert analyses divided PPSF's Dillingham facility total overhead costs of \$8,511,496 by the 12,369,086 sum of raw pounds.⁸⁴ This equals a \$0.688 overhead cost per pound.

The average net profit for all species of salmon in Dillingham is \$0.052 per round pound purchased.⁸⁵ Claimant's Exhibit B (far right column) demonstrates its gross profit of all products produced at the

⁷⁷ Please refer to the NPFC's Spreadsheet.

⁷⁸ 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.

⁷⁹ See 2013 Bristol Bay Area Annual Management Report, p. 52, Table 20 – Inshore commercial catch and escapement of sockeye salmon, in numbers of fish, Bristol Bay, 2013.

⁸⁰ Please refer to the State's Igushik River Tower Count table.

⁸¹ The NPFC counted the Red Salmon that were caught and documented, in 2013, for the Braund Group.

⁸² See NRC letter, dated April 15, 2016 to Mr. [REDACTED].

⁸³ See NRC letters, dated April 8, 2016 and April 15, 2016, both to [REDACTED].

⁸⁴ See Claimant's exhibit A, Peter Pan's Cost Report for the Dillingham Facility in the Bristol Bay and Exhibit B, P&L Statement and the Economic Loss Summary.

Dillingham facility. Gross Sales of \$36,201,324, less total costs of \$27,042,643, less overhead costs of \$8,511,496, equals \$647,185. This amount divided by the 12,369,086 round pounds purchased equals the net profit of \$0.052 per pound during the 2013 salmon season.⁸⁶

As mentioned above, the claimant's expert calculated the claimed loss based on an asserted 74,893 pounds of sockeye salmon that were not harvested or delivered to PPSF's Dillingham facility, by the Braund Group. The claimant asserts a calculated total of \$55,454 is based upon the overhead fixed costs of \$0.688 per pound that would have been recovered plus the \$0.052 per pound of profit for a total of \$0.74 per pound.

The NPFC reviewed the financial data that PPSF-Dillingham provided on reconsideration,⁸⁷ which satisfies the proof of loss requirements under 33 CFR 136.233. We compared those financials with the report that was provided by Natural Resources Consultants, Inc. The NPFC finds that the claimant provided sufficient enough evidence to show their overhead costs are seasonally fixed. Each salmon fishing season, PPSF-Dillingham must provide the airfare, food, and lodging for their employees during the duration of their employment. These start up and continued expenses are seasonally fixed. All overhead costs in preparing the facility for the salmon season are also seasonally fixed and unrecoverable. There were no saved expenses provided, as the claimant's sole income comes from pounds of salmon provided from pre-established boats or fisherman, including the claimed Braund fisherman. The NPFC finds claimant's argument that, every pound that goes through the plant contributes to lowering the facility's fixed overhead cost and contributes additional margin to the company in the form of a finished product, acceptable. Therefore, the NPFC accepts claimant's loss of overhead costs of \$0.74 per pound. However, the NPFC does not agree with claimant's asserted loss of 74,893 pounds of sockeye salmon. The NPFC's Methodology and offer amount will be discussed below.

NPFC Spreadsheet / Methodology of Compensation Reconsideration Summary

For the purpose of determining and documenting the loss of red sockeye pounds that PPSF would have bought from the Braund Group, the NPFC utilized a spreadsheet, which will be an enclosure to this determination. The NPFC spreadsheet contains information that was taken directly from the Braund Group's fish tickets however, PPSF-Dillingham's calculated loss is based upon the raw pounds of sockeye salmon that were not harvested by the Braund Group's permitted set-net sites and not delivered to PPSF in Dillingham, during the 2013 sockeye fishing season due to the oil spill incident.

Opportunity Lost – Pounds Missed During State Run

State of Alaska records note that the 2013 fishing season was going to run through or around, July 23, 2013.⁸⁸ 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.⁸⁹

Salmon runs vary greatly from year to year. The NPFC focused on the actual 2013 impacted year run in it's analysis. Specifically, it researched 2013 State records to understand what the actual fish run, harvest and escapement data was. It also learned that fish are counted five days after passing through the fishing

⁸⁵ See Claimant's exhibit A, Peter Pan's Cost Report for the Dillingham Facility in the Bristol Bay and Economic Loss Summary.

⁸⁶ See Claimant's Exhibit A, Peter Pan's Cost Report for the Dillingham Facility in the Bristol Bay and Exhibit B, P&L Statement and the Economic Loss Summary.

⁸⁷ Consolidated Statements of Income, its 2013 U.S. Corporation Income Tax Return, Loss of Raw Pounds and Value, along with the Dillingham plant income statement.

⁸⁸ See, [REDACTED] letter to [REDACTED], dated April 01, 2016.

⁸⁹ 2013 Bristol Bay Area Annual Management Report.

grounds. For 2013, the State notes that the run was early to very early. 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.⁹⁰

By applying these percentages to the amount of fish caught by the Braund Group prior to the spill, one can project the lost opportunity 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 what they would have landed. Overall, the River closure analysis supports a loss of 44,809.91 pounds of sockeye salmon during the period when PPSF had its buyer boat available. 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, & 6th and used the average of these escapement numbers. The average escapement was then divided by the State's total escapement number for the year.⁹² This resulted in a determination that supports an average of 5.6% of the run that passed through the Igushik fishing area each day during this four day period of the 2013 run, which, when applied to the Braund Group fishermen in the Igushik pre-incident catch rate, translates into no more than a 5.6% reduction/impact to their harvest of those that were fishing in the River.

The NPFC spreadsheet has a column titled, "Supplemental 5.6%." This column takes the fisherman's total pounds of fish caught, using fish tickets provided by the claimant, 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 Braund Group fishermen were fishing in the Igushik River and Five Braund Group fishermen were fishing at Coffee Point, which is outside and to the North of the Igushik River spill. The NPFC determines that the Supplemental 5.6% represents the disruption to the four fishermen that were actively fishing in the Igushik River prior to the spill and then were not able to continue fishing during the one day disruption from June 30 – July 1st. 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 offers a 5.6% allowance, to the four Braund Group fishermen fishing in the Igushik River during the one day disruption which documents a total loss of 10,319.66 pounds of sockeye salmon. See the NPFC spreadsheet for details.

⁹⁰ Please refer to the State's Igushik River Tower Count table.

⁹¹ See [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.

⁹² 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.

Spreadsheet Summary

The NPFC added the total pounds of sockeye salmon that the Braund Group harvested and was officially documented through fish tickets,⁹³ during the 2013 fishing season, which is 219,075 pounds.⁹⁴ The Peter Pan Settlement Summary supports that in 2013, Peter Pan purchased 221,738 pounds of salmon from the Braund Group. The NPFC spreadsheet shows a variance in the total pounds (2,663) between the fish tickets that the Braund Group submitted to the Fund and the Peter Pan Settlement Summary, which indicates the unattributed difference between the evidence that was provided.⁹⁵ The NPFC divided the 2,663 pounds of Reds that were purchased by Peter Pan, but not provided through Braund's fish tickets, by the percent of the run that passed through the fishing grounds, (0.85) which equates to 3,132.94. The Fund then multiplied that amount (3,132.94) by the remaining percent of the run remaining (0.15) to come to 469.94 pounds of additional opportunity lost.⁹⁶

To determine a loss during the 2013 sockeye salmon season, the NPFC used each fisherman's pre-incident catch/harvest as a percentage of the run. The early closure reduced the Braund Group's harvest by 44809.91 pounds of salmon and the June 30th disruption resulted in the Braund Group losing an additional 10319.66 pounds of sockeye. Ultimately, the Braund Group was unable to deliver 55129.58 raw pounds of salmon to the Peter Pan Seafoods.⁹⁷ Those pounds of fish multiplied by the claimant's asserted calculated loss, on Reconsideration, of \$0.74 per pound gives an offer amount of **\$40,795.89**.

Opportunity Lost to Fisherman	Pounds	Pounds x \$0.74
Shortened Season	44809.9144	\$33,159.34
Disruption (5.6%)	10319.6620	\$7,636.55
Totals	55129.5764	\$40,795.89

Conclusion

The NPFC reviewed and considered all of the claimant's arguments and evidence provided on Reconsideration as well as the administrative record that was created during the initial adjudication of this claim. The NPFC's offer and Methodology correlates directly from the reported 2013 Bristol Bay Sockeye Salmon run that was based on State documented records, evidence Braund provided through their fish tickets and the claimant's P&L statements. The NPFC agrees to and uses the claimant's calculated loss of \$0.74 per pound for Sockeye Salmon and the NPFC, articulated, Supplemental loss of 5.6%. Finally, the NPFC is able to provide an offer of **\$40,795.89** to the claimant.

⁹³ The Braund Group submitted State fish documents and the NPFC documented those tickets in the NPFC Spreadsheet.

⁹⁴ Can be found in NPFC spreadsheet at the bottom of Column R.

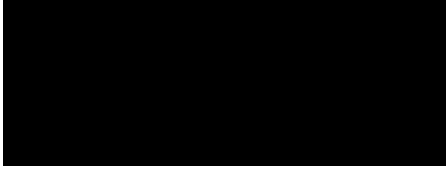
⁹⁵ See, Column R, Line 210 – 211 on the NPFC spreadsheet.

⁹⁶ Braund Group's 2013 fish tickets totaled 219,075 lbs of sockeye salmon. PPSF documents a total of 221,738 lbs of sockeye salmon delivered to them from the Braund Group. The difference is 2,663 lbs. The 469.94 difference is added into the Opportunity Lost Pounds Missed portion of the spreadsheet. See Column R, S, and T line 208 on the NPFC spreadsheet.

⁹⁷ Columns T through V.

Determined Amount on Reconsideration: \$40,795.89

Claim Supervisor:



Date of Supervisor's review: 8/12/2016

Supervisor Action: *Approved*

Supervisor Comments: