

CLAIM SUMMARY / DETERMINATION

**Claim Number:** J13014-0013  
**Claimant:** [REDACTED] Fishing Group  
**Type of Claimant:** Private (US)  
**Type of Claim:** Real or Personal Property  
**Claim Manager:** [REDACTED]  
**Amount Requested:** \$8,320.00

**FACTS:**

On June 30, 2013, The F/V LONE STAR sank and discharged oil into the Igushik River, posing a substantial threat of a discharge of oil into Bristol Bay, a navigable water of the United States. There were approximately 15,500 gallons of diesel, hydraulic and lube oil, and gasoline on board the vessel. At the time of the incident [REDACTED] and [REDACTED] owned the vessel and Burrece Fisheries, Inc, operated the vessel; all are responsible parties under OPA.

***CLAIMANT AND CLAIM***

**Claimant**

[REDACTED] Fishing Group ([REDACTED] Group, or Claimant) is an aggregate Bristol Bay set net commercial fishing operation that was comprised of nine Bristol Bay set net permit holders<sup>1</sup>during the 2013 fishing season. [REDACTED] proclaims to be the number one producer of Bristol Bay salmon for Peter Pan Seafoods Inc., (PPSF) over the past several fishing seasons. [REDACTED] has 20 to 30 personnel each fishing season. The Group fishes the Bristol Bay from the first day to the last day that their fish processor purchases salmon in Bristol Bay.<sup>2</sup> After Peter Pan Seafoods stops purchasing salmon for the season, [REDACTED] Fishing Group engages in direct marketing shipments of salmon out of Dillingham. [REDACTED] asserts to fish 24 hours a day, 7 days a week the entire fishing season, each season.

“[REDACTED] Fishing Group,” is a name created, by the claimant, for the purpose of submitting this claim to the OSLTF.<sup>3</sup> The claimant is a business entity organized under a sole proprietorship that does not operate under a typical corporate structure. [REDACTED] [REDACTED] [REDACTED] are the sole proprietorship and own all the vessels, fishing gear, property, equipment, cabins, repair facilities and their own individual permits and sites. The other permit holders in the Group own their individual permits and sites. The Group is comprised of fishermen whom are individual permit holders that work for [REDACTED] [REDACTED] [REDACTED]. A large portion of the Group’s proceeds, after cannery withholdings, are paid to [REDACTED] [REDACTED] [REDACTED] and then distributed to permit holders.<sup>4</sup> Some permit holders are paid in combination directly from the cannery and directly from [REDACTED] [REDACTED] [REDACTED], after the final settlement occur with the cannery.<sup>5</sup>

<sup>1</sup> [REDACTED], and [REDACTED].

<sup>2</sup> Claimant’s Explanation of Damages, p. 1.

<sup>3</sup> Claimant’s letter to the NPFC dated 2015 10 20, p. 4.

<sup>4</sup> Claimant’s letter to the NPFC dated 2015 10 20, p. 4.

<sup>5</sup> Claimant’s letter to the NPFC dated 2015 10 20, p. 4.

Mr. [REDACTED] is the Administrator and Attorney-in-Fact representing [REDACTED] Fishing Group's nine Bristol Bay, Alaska set net permit holders. All [REDACTED] Fishing Group permit holders have signed Power of Attorney forms appointing [REDACTED] as their Attorney-in-Fact to act on their behalf regarding any and all matters pertaining to commercial fishing losses associated with the F/V LONE STAR incident and resulting oil spill, including but not limited to, administration of claims, litigation, as well as, collection and recovery of damages.<sup>6</sup>

### **Claim**

On January 07, 2015, The [REDACTED] Group submitted a Lost Profits and Earnings claim (J13014 – 0008) to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the amount of \$536,857.91. However, Mr. [REDACTED] claim also contained a Real or Personal Property element in the amount of \$8,320, for gill set net repairs. On January 22, 2015, the NPFC removed the \$8,320 for the net repairs costs under a Real or Personal Property claim (this claim, J13014 – 0013). Mr. [REDACTED] was notified about this change on January 22, 2016 via email.<sup>7</sup> On February 12, 2016, Mr. [REDACTED] acknowledged this change via email.<sup>8</sup>

The claimant is requesting \$8,320 in costs to replace/repair its gill set nets that were damaged during the F/V LONE STAR oil spill incident.

### **APPLICABLE LAW:**

#### **General Claim Requirements**

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

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

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

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident.

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<sup>6</sup> See Power of Attorney tab in the Claimant's binder at pages 381 through 428.

<sup>7</sup> See email to Mr. [REDACTED], dated 2016 01 22.

<sup>8</sup> See Mr. [REDACTED]'s email to the NPFC, dated 2016 02 12.

## Real or Personal Property

Under 33 CFR 136.213(a) a claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

Under 33 CFR 136.215(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish—

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.

Under 33 CFR 136.217 (a) the amount of compensation allowable for damaged property is the lesser of –

- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (2) The difference between value of the property before and after the damage; or
- (3) The replacement value.

## DETERMINATION OF LOSS:

In Mr. ██████ Explanation of Damages, he explains that on June 30<sup>th</sup> at 0900, the Alaska Department of Fish and Game, (ADF&G), issued a short notice announcement that closed the Igushik set gillnet fishery due to the F/V LONE STAR sinking. Mr. ██████ explained that there was an observable presence of oil sheen in the vicinity of the sinking at the mouth of the Igushik River and that the ██████ Fishing Group was instructed by ADF&G and Peter Pan Seafoods to pull the gear from the water prior to the tide change.<sup>9</sup> The ██████ Fishing Group's concern was that the sheen would wash down through the set net sites once the tide began to ebb, which would result in a contamination of fish that were already caught in the nets.

Mr. ██████ submitted video footage to the Fund that documented harsh weather that included heavy winds and rain. Mr. ██████ states that the notice of closure, oil spill contamination threat, large quantity of fish in the nets and rough weather all prevented the orderly hauling of fishing gear. Mr. ██████ further explained that as a result of the oil spill, unavoidably dangerous conditions were created and significant damage occurred to the ██████ Group's fishing gear.<sup>10</sup>

## Analysis

The NPFC reviewed the ADF&G Announcement 19<sup>11</sup> and it specifically states that all Igushik set net fishermen should pull their gear as soon as **safely** possible.

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<sup>9</sup> See Mr. ██████'s 2013 ██████ Fish Group: Lone Star Accident/Oil Spill – Explanation of Damages, p. 4.

<sup>10</sup> See Mr. ██████'s 2013 ██████ Fish Group: Lone Star Accident/Oil Spill – Explanation of Damages, p. 5.

<sup>11</sup> ADF&G, Westside Salmon Announcement 19, Emergency Order 23, dated 6/30/2013, Time: 0900.

The NPFC reviewed claimant's DVD discs submitted as evidence of net damage. Some of the DVD disc footage documents the fisherman retrieving their nets over the vessel's roller system in an orderly fashion, removing fish as the nets come onboard and placing the fish in iced bins. Other footage documents the fisherman retrieving their nets as fast as possible over the vessel's gunwhale (not using the roller system) without removing the fish from the nets, while stepping on the nets and fish as they piled up in the bottom of the boat. In addition, fisherman were cutting their nets to free some of the fish piled up in the bottom of the boat.

The Fund understands that the claimant had to pull their nets in a timely manner. However, the [REDACTED] Group made a business decision to haul its nets in an aggressive manner over the gunwhale of the vessel instead of using the roller system, and to cut its nets to free the fish once onboard the vessel.

OPA law requires that these net damages must be a result of the oil spill incident. 33 U.S.C. §2702(a). The nets were not damaged by the oil spill. The State of Alaska's requirement for the claimant to pull their gear as soon as safely possible did not require the claimant to damage their fishing gear/nets in the process. Claimant's concern that the oil spill contamination threat precipitated the more rapid removal of the nets however, it does not provide a good explanation for damaging their own nets and gear in the process. Additionally, rough weather is part of fishing in this part of Alaska and cannot be directly attributed to the oil spill.

After reviewing the documentation submitted by the claimant, the NPFC finds that the claimed net damage was caused by the method that the claimant chose to retrieve its nets and free the fish once onboard; not by the oil spill.

### Conclusion

The NPFC finds claimant failed to prove that the nets were damaged because of the oil. Therefore, for that reason, The [REDACTED] Group's claim in the amount of \$8,320 for damaged nets is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 03/02/2016

Supervisor Action: ***Denial Approved***