

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PSF, INC., PETER PAN SEAFOOD
COMPANY, LLC, & SILVER BAY
SEAFOODS - VALDEZ, LLC

Defendants.

Civ. No. 3:24-cv-00112-HRH

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendants PSF, Inc., (as successor to Peter Pan Seafoods, Inc.), Peter Pan Seafood Company, LLC, and Silver Bay Seafoods - Valdez, LLC, as the recent purchaser and operator of the Valdez Facility, violated Section 301 of the Clean Water Act (“Act”), 33 U.S.C. § 1311.

The Complaint alleges that Defendants violated the Act at facilities in Valdez or King Cove or both because they discharged seafood waste not in compliance with their National Pollutant Discharge Elimination System (“NPDES”) permits issued by the EPA and the Alaska Department of Environmental Conservation (“ADEC”) pursuant to Section 402 of the Act, 33 U.S.C. § 1342(a).

Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C.

§ 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. In the event Defendant Peter Pan Seafood Company, LLC transfers ownership or operation of the King Cove Facility or Defendant Silver Bay Seafoods - Valdez Facility, LLC transfers ownership or operation of the Valdez Facility, the transferring Defendant shall ensure that the terms of this Consent Decree will be binding on any transferee as specifically applicable to the transferee's operation of the transferred Facility. At least 30 Days prior to such transfer, the transferring Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and DOJ, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the King Cove Facility or the Valdez Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants Peter Pan and SBS shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants Peter Pan and SBS shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“ADEC” means the Alaska Department of Environmental Conservation;

“Auditor” means the Third-Party Auditor defined in Appendix A;

“Complaint” means the complaint filed by the United States in this action;

“Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXIV);

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

“Defendants” means PSF, Inc., Peter Pan Seafood Company, LLC, and Silver Bay Seafoods – Valdez, LLC;

“Defendant Peter Pan” means Peter Pan Seafood Company, LLC;

“Defendant PSF” means PSF, Inc.;

“Defendant SBS” means Silver Bay Seafoods – Valdez, LLC;

“DOJ” means the United States Department of Justice and any of its successor departments or agencies;

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” means the definition provided in Section XIV;

“General Permit” means the Alaska Pollutant Discharge Elimination System General Permit for Onshore Seafood Processors in Alaska (APDES Permit No. AKG521-000) and any successor permit that may be applicable during the term of this Consent Decree;

“King Cove Facility” means Defendant Peter Pan’s seafood processing facility located at 500K Cannery Row, King Cove, Alaska, 99612, and all related property, equipment, outfalls, and facilities;

“King Cove Permit” means the NPDES permit issued to the King Cove Facility (NPDES Permit No. AK-0052388) and any successor permit that may be applicable during the term of this Consent Decree;

“Paragraph” means a portion of this Decree identified by an Arabic numeral;

“Parties” means the United States and Defendants;

“Section” means a portion of this Decree identified by a Roman numeral;

“United States” means the United States of America, acting on behalf of EPA; and

“Valdez Facility” means Defendant SBS’s seafood processing facility located at 219 South Harbor Drive, Valdez, Alaska 99686, and all related property, equipment, outfalls, and facilities, which was formerly owned and operated by Defendants PSF and Peter Pan and which is now owned and operated by Defendant SBS. The Valdez Facility does not include Defendant SBS’s adjacent seafood processing facility located at 209 South Harbor Drive, Valdez, Alaska 99686.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendants PSF and Peter Pan are obligated to and shall pay the sum of \$750,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of February 8, 2024.

9. Defendants PSF and Peter Pan shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Alaska after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants PSF and Peter Pan shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

PSF, Inc.
3015 112th Avenue NE, Suite 100
Bellevue, WA 98004
Attn: Mark JoHahnson, President
Email: johahnson@wsi.us

With a copy to:

Davis Wright Tremaine LLP
920 5th Ave, Suite 3300

Seattle, WA 98104
Attn: Josph Weinstein
Email: jweinstein@dwt.com

on behalf of Defendant PSF. Defendants PSF and Peter Pan may change the individual to receive payment instructions on each of its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

10. At the time of payment, Defendant PSF shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to DOJ via email or regular mail in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez LLC* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-1-1-12463.

11. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating their federal income tax.

V. COMPLIANCE REQUIREMENTS

12. Defendants Peter Pan and SBS shall comply with applicable requirements of the Act and regulations promulgated pursuant to the Act. In addition, Defendant SBS shall comply with the General Permit as applied to the Valdez Facility, and Defendant Peter Pan shall comply with the King Cove Permit. Defendants SBS and Peter Pan shall comply respectively with any future APDES and NPDES permits to which the Valdez or King Cove Facilities are subject.

13. Defendant Peter Pan shall comply with and implement all provisions of the Independent Third-Party Audit Protocol attached hereto as Appendix A.

14. At the Valdez Facility, Defendant SBS shall institute source control procedures; monitor the seafood waste pile; and perform other work in accordance with the specifications and schedule set forth in the Valdez Facility Statement of Work attached hereto as Appendix B.

15. At the King Cove Facility, Defendant Peter Pan shall never use the outfall previously identified as Outfall 001 that was decommissioned by May 2023; and shall monitor the seafood waste pile in accordance with the specifications and schedule set forth in the King Cove Facility Statement of Work attached hereto as Appendix C.

16. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

17. If the submission is approved pursuant to Paragraph 16(a), the submitting Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 16(b) or (c), the submitting Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other document that EPA determines are technically severable from any disapproved portions.

18. If the submission is disapproved in whole or in part pursuant to Paragraph 16(c) or (d), the submitting Defendant shall, within 45 Days or such other time as the United States and submitting Defendant agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the

preceding Paragraphs. If the resubmission is approved in whole or in part, the submitting Defendant shall proceed in accordance with the preceding Paragraph.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require the submitting Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies.

20. If the submitting Defendant elects to invoke Dispute Resolution as set forth in Section IX (Dispute Resolution) concerning a decision by EPA to disapprove, approve specified conditions, or modify a deliverable, the submitting Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 49 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

21. Any stipulated penalties applicable to the original submission, as provided in Section VII, accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the submitting Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

22. Permits. Where any compliance obligation under this Section requires a Defendant to obtain a federal, state, or local permit or approval, the Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation if the

Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

23. Defendants Peter Pan and SBS shall submit the following reports to EPA and DOJ at the addresses set forth in Section XIII (Notices):

a. By March 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII, Defendants Peter Pan and SBS shall submit by email an annual report for the preceding twelve months that includes the status of any construction or compliance measures required under Section V; completion of applicable compliance milestones identified in Paragraph 31.b; problems encountered or anticipated, together with implemented or proposed solutions related to the construction or compliance measures required under Section V; status of permit applications described in Paragraph 22; and any reports to ADEC or other state agencies under the General Permit or King Cove Permit.

b. The annual reports submitted under Paragraph 23.a shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the Defendant shall so state in the report. The Defendant shall then investigate the cause of the violation and submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day the Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligations to provide

the notice required by Section VIII (Force Majeure).

24. Whenever any violation of this Consent Decree, the General Permit, or the King Cove Permit or any other event affecting Defendants' performance under this Decree may pose an immediate threat to the public health or welfare or the environment, the appropriate Defendant shall notify EPA by email as soon as possible, but no later than 24 hours after the Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

25. Each report submitted by a Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

26. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

27. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

29. A Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

30. Late Payment of Civil Penalty. If Defendants PSF and Peter Pan fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendants PSF and Peter Pan shall pay a stipulated penalty of \$20,000 per Day for each Day that the payment is late.

31. Compliance Milestones and Requirements.

a. The following stipulated penalties shall accrue per violation per Day for each violation of each milestone and requirement identified in subparagraph 31.b and shall be paid by the violating Defendant:

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$3,000	1st through 14th Day
\$6,000	15th through 30th Day
\$12,000	31st Day and beyond

b. Appendix A: Submission of the proposed Auditor (§§ 2, 3), Retention of Auditor (§ 4), Initiation and Completion of Audit (§ 5), Submission of the Audit Report (§ 6); Submission of the Final Audit Report (§ 6), Final Audit Report Certification (§ 7); Submission of Action Plan (§ 8), and Implementation of each specific action required by Action Plan, in accordance with the schedule identified therein (§ 9);

Appendix B: Discharging more than 250,000 pounds of seafood processing waste

from any Valdez Facility outfall per year and/or failing to contract with a sufficient number of vessels (§ 1.a-b); failing to install or use piping between the Valdez Facility and the adjacent SBS plant (§ 1.c); Submission of Source Reduction Report (§ 2); Submission of BMP and QAPPs (§ 3), Submission of Benthic Assessment QAPPs (§ 7), Completion of Benthic Assessments consistent with requirements of §§ 5-6 (§§ 4, 9), Submission of Benthic Assessment Reports (§ 8), Submission of Seafloor Survey Work Plans, Completion of Seafloor Surveys, and Submission of Seafloor Survey Reports (§ 11), Submission of Hydrodynamic and Water Quality Study Work Plan and Completion of Hydrodynamic and Water Quality Study (§ 12, 13), Submission and Implementation of Remediation Plan (§ 14);

Appendix C: Submission of Seafloor Survey Work Plans, Completion of Seafloor Surveys, and Submission of Seafloor Survey Report (§ 1).

32. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1 st through 14 th Day
\$1,000	15 th through 30 th Day
\$2,000	31 st Day and beyond

33. Transfer of Ownership. If Defendants Peter Pan or SBS fail to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 4, the appropriate Defendant shall pay a stipulated penalty of \$5,000 per occurrence.

34. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

35. The owing Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

36. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 34, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the United States and the disputing Defendant or by a decision of EPA that is not appealed to the Court, the owing Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the owing Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the owing Defendant shall pay all accrued penalties determined to be owing, together with interest, within 30 Days of receiving the final appellate court decision.

38. Defendants shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 8 and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If an owing Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, that Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for a Defendant's failure to pay any stipulated penalties.

40. The payment of penalties and interest, if any, shall not alter in any way a Defendant's obligation to complete the performance of the requirements of this Consent Decree.

41. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for a Defendant's violation of this Decree or applicable law, including but not limited to an action against a Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

42. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of a Defendant, of any entity controlled by that Defendant, or of that Defendant's contractors, that delays or prevents the performance of any obligation under this

Consent Decree despite the Defendant's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay or non-performance are, minimized to the greatest extent possible. "Force majeure" does not include financial inability to perform any obligation under this Consent Decree.

43. If any event occurs for which either Defendant will or may claim a force majeure, that Defendant shall provide notice by email to EPA. The deadline for the initial notice is three days after the Defendant first knew or should have known that the event would likely delay or prevent performance. A Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by that Defendant knew or should have known.

44. If a Defendant seeks to assert a claim of force majeure concerning the event, within seven Days after the notice under Paragraph 43, the Defendant shall submit a further notice to EPA that includes (a) an explanation and description of the event and its effect on Defendant's completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for Defendant to complete the requirements of the Consent Decree; (d) Defendant's rationale for attributing such delay to a force majeure; (e) a statement as to whether, in the opinion of that Defendant, such event may

cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting the claim that the delay was attributable to a force majeure.

45. Failure to submit a timely or complete notice or claim under Paragraph 43 or 44 regarding an event precludes the Defendant from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether the Defendant has exercised its best efforts, under Paragraph 42.

46. After receipt of any claim of force majeure, EPA will notify the Defendant of its determination whether the Defendant is entitled to relief under Paragraph 42, and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

47. If a Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 30 Days after receipt of EPA's notice under Paragraph 46. In any such proceeding, the Defendant has the burden of proving that it is entitled to relief under Paragraph 42, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 42 through 44. If a Defendant carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by that Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. A Defendant's failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of a Defendant arising under this Decree precludes a Defendant from raising any such issue as a defense to any such enforcement action.

49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the United States and the disputing Defendant cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. A Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Defendant's position and any supporting documentation relied upon by the Defendant.

51. The United States will send the Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Judicial Dispute Resolution. A Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within twenty-one Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 49, unless the United States raises a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

53. The United States shall respond to the Defendant's motion within the time period allowed by the Local Rules of this Court. The Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

54. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50 pertaining to the adequacy or appropriateness of deliverables, procedures to implement deliverables, schedules or any other items requiring approval by EPA under this Consent

Decree; the adequacy of the performance of compliance requirements undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 50, the Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree under applicable principles of law.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If a Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

56. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in

accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by

Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Decree.

57. Upon request, EPA shall provide Defendants Peter Pan and SBS, as applicable, splits of any samples taken by EPA.

58. Until three years after the termination of this Consent Decree as to the respective Defendant, Defendants Peter Pan and SBS shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendant Peter Pan's or Defendant SBS's performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants Peter Pan and SBS, as applicable, shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

59. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants Peter Pan and SBS shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the relevant Defendant shall deliver any such documents, records, or other information to EPA. A Defendant may assert that certain

documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

60. A Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that a Defendant seeks to protect as CBI, the Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

61. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

62. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

63. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing

regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 62. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Valdez Facility and King Cove Facility, whether related to the violations addressed in this Consent Decree or otherwise.

64. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facilities, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 62.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1311(a), *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

66. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the

rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

67. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

68. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIII. NOTICES

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email, with a preference for email, addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12463

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12463

As to EPA by email: martich.tara@epa.gov

soden.caitlin@epa.gov

R10enforcement@epa.gov

As to Defendant Peter Pan: Robert A. Gillam, CFA
Chief Executive Officer & Chief Investment Officer
McKinley Management, LLC
rgillam@mckinleymgmt.com

As to Defendant PSF:

PSF, Inc.
3015 112th Avenue NE, Suite 100
Bellevue, WA 98004
Attn: Mark JoHahnson, President
Email: johahnson@wsi.us

With a copy to:

Davis Wright Tremaine LLP
920 5th Ave, Suite 3300
Seattle, WA 98104
Attn: Jospheh Weinstein
Email: jweinstein@dwt.com

As to Defendant SBS:

Silver Bay Seafoods – Valdez, LLC
Attn: General Counsel or Compliance Director
208 Lake Street, Suite 2E
Sitka, Alaska 99835

legal@silverbayseafoods.com

With a copy to:

tiffany.lake@silverbayseafoods.com

70. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

71. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

73. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

74. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

75. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 54, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

76. After Defendant Peter Pan has completed the requirements of Section V (Compliance Requirements) for the King Cove Facility, has thereafter maintained continuous satisfactory compliance with this Consent Decree and the King Cove Permit for a period of two years, has paid any accrued stipulated penalties as required by this Consent Decree, and the civil penalty has been paid, Defendant Peter Pan may serve upon the United States a Request for Termination, stating that Defendant Peter Pan has satisfied those requirements, together with all necessary supporting documentation.

77. After Defendant SBS has completed the requirements of Section V (Compliance Requirements) for the Valdez Facility, has thereafter maintained continuous satisfactory compliance with this Consent Decree and the General Permit for a period of 2 years, and has paid any accrued stipulated penalties as required by this Consent Decree, Defendant SBS may serve upon the United States a Request for Termination, stating that Defendant SBS has satisfied those requirements, together with all necessary supporting documentation.

78. Following receipt by the United States of a Request for Termination, the United States and the requesting Defendant shall confer informally concerning the Request and any disagreement as to whether the requesting Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the United States and the requesting Defendant shall submit, for the Court's approval, a joint stipulation terminating the Decree as to the requesting Defendant.

79. If the United States does not agree that the Decree may be terminated as to the requesting Defendant, that requesting Defendant may invoke Dispute Resolution under Section IX. However, no Defendant shall seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

80. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

81. Each undersigned representative of Defendants and the delegated authority for the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that that person is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party that person represents to this document.

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

83. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the Decree herein.

XXI. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

84. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of Paragraphs 5, 12 – 17, 22 – 23, 25, 56 – 59, and related Appendices A, B, and C, is restitution, remediation, or required to come into compliance with law.

XXII. HEADINGS

85. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIII. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIV. APPENDICES

87. The following Appendices are attached to and part of this Consent Decree:
“Appendix A” is the Independent Third-Party Audit Protocol;
“Appendix B” is the Valdez Facility Statement of Work; and
“Appendix C” is the King Cove Facility Statement of Work.

Dated and entered this ___ day of _____, 2024.


UNITED STATES DISTRICT JUDGE

Signature page for *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez, LLC*

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 5/24/24


KATHERINE L. MATTHEWS
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, CO 80202
303-844-1365 office
Katherine.Matthews@usdoj.gov

Signature page for *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez, LLC*

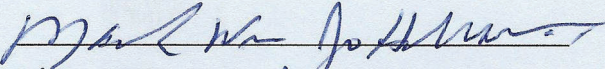
FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

BEVERLY LI Digitally signed by BEVERLY LI
Date: 2024.05.15 11:32:34 -07'00'

BEVERLY LI
Regional Counsel
CAITLIN SODEN
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel
1200 Sixth Avenue, Suite 155, M/S ORC-11-C07
Seattle, Washington 98101-3140
(206) 553-6635

Signature page for *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez, LLC*
FOR PSF, INC.:

4/19/2024
Date


President, PSF, Inc.

Signature page for *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez, LLC*
FOR PETER PAN SEAFOOD COMPANY, LLC:

4/17/2024

Date



Rob Gillam

Signature page for *United States v. PSF, Inc., Peter Pan Seafood Company, LLC, & Silver Bay Seafoods - Valdez, LLC*

FOR SILVER BAY SEAFOODS - VALDEZ, LLC:

By: Silver Bay Seafoods, L.L.C., its Manager

4/19/2024

Date

Cora Campbell

By: Cora Campbell, Its: President and CEO

APPENDIX A
INDEPENDENT THIRD-PARTY AUDIT PROTOCOL

1. Defendant Peter Pan shall retain, at its expense, a Third-Party Auditor (“Auditor”) to conduct an in-person, comprehensive Clean Water Act (“CWA”) compliance audit (“CWA Compliance Audit” or “Audit”) of each seafood processing facility it owns or operates in Alaska. The Auditor shall prepare a Final CWA Compliance Audit Report (“Final Audit Report”) to assist Peter Pan in developing a plan for monitoring and ensuring future compliance with the CWA (“Action Plan”).

2. Within 60 Days of the Effective Date, Defendant Peter Pan shall submit to EPA the name and qualifications of a proposed Auditor that Peter Pan certifies meets the following conditions:

a. The Auditor has demonstrated the requisite expertise and experience in evaluating and maintaining complex, multi-facility compliance programs – preferably in the seafood processing industry – for monitoring and managing compliance with the CWA.

b. The Auditor and its personnel have not conducted research, development, design, construction, financial, engineering, legal, consulting, nor any other advisory services for Peter Pan or any of its related companies within the last three years.

c. The Auditor and its personnel shall not provide any other commercial, business, or voluntary services to Peter Pan for at least two years following submittal of the Final Audit Report required by Paragraph 6.

d. Peter Pan shall not provide future employment to any of the Auditor's personnel who managed, conducted, or otherwise participated in the Audit for at least three years following submittal of the Final Audit Report.

3. EPA shall notify Peter Pan in writing within 30 Days of receipt of Peter Pan's submission under Paragraph 2 of this Appendix whether it approves of the proposed Auditor. If EPA rejects a proposed Auditor, within 20 Days of receipt of EPA's notification, Peter Pan shall submit to EPA another proposed Auditor that meets the conditions set forth in Paragraph 2.

4. Within 30 Days of EPA approval of a proposed Auditor, Peter Pan shall retain such Auditor to perform the Audit that meets the objectives set forth in Paragraph 5. Peter Pan shall ensure that all personnel who conduct or otherwise participate in Audit activities have certified that they satisfy the conditions set forth in Paragraph 2 before receiving any payment from Peter Pan.

5. Within 60 Days of being retained, the Auditor shall initiate the Audit. The Audit shall be completed no later than 180 Days after commencement. During the Audit, the Auditor shall:

a. assess existing wastewater discharge and management operations at each of the seafood processing facilities owned and operated by Peter Pan in Alaska (the "Peter Pan Facilities") to determine each facility's compliance with the CWA;

b. identify any deficiencies in Peter Pan's CWA compliance at each of the Peter Pan Facilities and provide recommendations to correct those deficiencies, including recommended changes to improve wastewater discharge and management operations at each facility;

c. provide recommendations to Peter Pan to develop proposed, facility-specific best management practices (BMPs) for each of the Peter Pan Facilities that comply with the NPDES permit applicable to that facility;

d. provide recommendations to Peter Pan on establishing or improving any existing company-wide compliance programs and policies to ensure CWA compliance, including to identify and respond to changes in CWA requirements and Peter Pan's obligations at the Peter Pan Facilities under the CWA;

e. provide recommendations to Peter Pan on the structure and content of a software system that will enable Peter Pan to electronically track CWA compliance, including completion of required training of employees and managers ("Software Tracking System") across all Peter Pan Facilities in Alaska;

f. provide recommendations to Peter Pan on developing an employee training program covering CWA compliance, including training on all applicable BMPs, for each of the Peter Pan Facilities. Each Peter Pan employee shall receive basic CWA compliance training when the employee is hired. Each Peter Pan employee with responsibilities for CWA compliance at each of the Peter Pan Facilities shall receive more extensive CWA compliance training when the employee is hired and be required to participate in refresher trainings annually;

g. provide recommendations to Peter Pan on delineating and memorializing in writing the CWA compliance roles and responsibilities of Peter Pan's Quality Assurance Director and at least one member of senior management; and

h. prepare an Audit Report setting forth the Auditor's findings, conclusions and recommendations and, specifically including but not limited to the

recommended BMPs, Software Tracking System, and memorialization of roles and responsibilities of Peter Pan employees for CWA compliance for each of the Peter Pan Facilities.

6. Peter Pan shall ensure that the Auditor concurrently submits the Audit Report to EPA and Peter Pan within 60 Days of completing the Audit. The Audit Report shall include summaries of relevant oral communications between the Auditor and Peter Pan employees. Upon EPA's request, Peter Pan shall also ensure that the Auditor provides to EPA copies of all documents reviewed and identifies all Peter Pan personnel who were interviewed during the Audit. Peter Pan shall have 60 Days to review and comment on the Audit Report and to recommend modifications thereto. Peter Pan shall concurrently submit any comments and recommended modifications to EPA. The Auditor shall have 45 Days to review any comments submitted by Peter Pan and to submit a revised and Final Audit Report, to both Peter Pan and EPA, if necessitated together with a change log documenting any changes.

7. Peter Pan shall ensure that the Auditor includes in the Final Audit Report a certification that the Auditor has remained in compliance with all of the conditions set forth in Paragraph 2 above and shall continue to follow such conditions until three years after the Final Audit Report is submitted to EPA.

8. Within 60 Days of receiving the Final Audit Report, Peter Pan shall submit to EPA for review and approval a draft Action Plan that responds to all of the findings, conclusions, and recommendations set forth in the Final Audit Report and incorporates each element described in Paragraph 5. Peter Pan shall include in the Action Plan specific timelines by which Peter Pan shall implement specific actions to correct each and every deficiency identified in the Final Audit Report, including the date(s) that such actions are scheduled to occur. The Action Plan shall include a description of any completed actions Peter Pan has

already taken to correct deficiencies identified in the Final Audit Report, including a description of how the deficiencies were corrected and the date(s) Peter Pan completed the action.

9. Review and approval of the Action Plan will be in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree and if necessary, the Dispute Resolution Process set forth in Section IX of the Consent Decree. Once EPA approves the Action Plan, Peter Pan shall implement the Action Plan according to the schedule identified therein.

10. Neither Peter Pan nor the United States will be bound by any recommendations or conclusions of the Auditor. However, if Defendant violates any requirement of this Consent Decree, Defendant will be liable for stipulated penalties to the United States, pursuant to Section X (Stipulated Penalties) regardless of the recommendations or conclusions of the Auditor.

APPENDIX B
VALDEZ FACILITY STATEMENT OF WORK

Source Reduction

1. To immediately reduce the amount of seafood processing waste discharged from the outfall at the Valdez Facility, Defendant SBS shall not discharge more than 250,000 pounds of seafood processing waste from any Valdez Facility outfall per year.

a. Defendant SBS shall contract with a sufficient number of vessels, and in no event less than two vessels, each equipped with a high efficiency pump to remove seafood processing waste from the Valdez Facility and dispose of it offshore.

b. For the 2024 seafood processing season, Defendant SBS shall transport seafood processing product from the Valdez Facility to the adjacent SBS plant for processing or freezing using bulk trucking, toled trucks, or other means.

c. By June 15, 2025, SBS shall install and use piping between the Valdez Facility and the adjacent SBS plant to transport seafood processing product from the Valdez Facility to the adjacent SBS plant.

2. Ninety (90) Days before the 2025 seafood processing season, Defendant SBS shall submit to EPA for review and approval, in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree, a Source Reduction Report that identifies specific measures to minimize discharges of seafood processing waste to Valdez Facility outfalls, which may include: (a) strategic placement of collection points on the Valdez Facility processing floor to collect seafood processing product; (b) maximizing the use of seafood waste holding tank capacity at the Valdez Facility; (c) transferring whole fish from the Valdez Facility to the adjacent SBS plant for filet production and to maximize pet food product; and (d) utilizing vessels for discharging seafood processing waste offshore. Upon approval by

EPA, SBS shall implement the measures in the Source Reduction Report in accordance with the timelines identified therein.

Best Management Practices

3. When Defendant SBS has updated the Best Management Practices (“BMP”) Plan and Quality Assurance Project Plans (“QAPPs”) for the Valdez Facility in accordance with the General Permit, Defendant SBS shall submit those documents to EPA.

Studies and Seafood Waste Pile Remediation

4. **Benthic Assessments:** Defendant SBS shall conduct benthic assessments at the Valdez Facility in 2025 and 2028, no later than 120 Days from the last Day of the applicable year’s processing season.

5. The assessments shall characterize the spatial extent of the seafood waste pile(s) and the associated benthic community. In addition, the assessments shall make comparisons to benthic communities present on the ambient seafloor beyond the influence of the seafood waste pile(s). Defendant SBS shall conduct sediment profile imaging to examine the spatial extent and environmental impact (i.e., the zone of impact of seafood wastes to the benthos) of the seafood waste pile(s).

6. Defendant SBS shall conduct sampling from the historic center of the seafood waste pile(s) until no influence of seafood waste is detectable on the sediment surface and no apparent impacts from organic enrichment are observed in the benthic community. Defendant SBS shall sample at locations beyond the boundary of the seafood waste pile(s) for use as comparison locations to determine impact on benthic communities.

7. Not later than 90 Days prior to planned commencement of fieldwork for each required benthic assessment (i.e., in both 2025 and 2028), Defendant SBS shall submit to EPA

for review and approval a benthic assessment Quality Assurance Project Plan (“Benthic Assessment QAPP”).

8. Within six months of completing the fieldwork component of each required benthic assessment, Defendant SBS shall submit a benthic assessment report to EPA for review and approval.

9. Following the 2028 benthic assessment required under Paragraph 4, if the Valdez Facility Zone of Deposit exceeds 0.5 acres, as calculated using the methodology described in Appendix E of the General Permit Defendant SBS shall conduct benthic assessment surveys every three years through termination of the Consent Decree to monitor the size of the Valdez Facility Zone of Deposit. Defendant SBS shall submit benthic assessment reports to EPA for review and approval within 180 Days after completing the fieldwork component of the assessment for each assessment required under this Paragraph.

10. Review and approval of Benthic Assessment QAPPs and benthic assessment reports shall be in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree.

11. **Seafloor Surveys**: Following the Effective Date of the Consent Decree, Defendant SBS shall conduct at least one seafloor survey of the Valdez Facility seafood waste pile(s) starting in 2024 every year within 60 Days of the processing season’s end, through the termination of the Consent Decree. Not later than 90 Days prior to planned commencement of the initial survey, Defendant SBS shall submit to EPA for review and approval a seafloor survey work plan, which shall describe the methodology for conducting a seafloor survey. At a minimum, seafloor surveys shall have a scope that extends beyond the Valdez Facility Zone of Deposit and shall include core samples at survey points at and outside the visible edge of the

Valdez Facility Zone of Deposit. The Zone of Deposit size shall be calculated using the methodology described in Appendix E of the General Permit, or any subsequent permit.

Defendant SBS shall submit to EPA a report for each seafloor survey within 60 Days after completing the field component of the seafloor survey. Review and approval of the seafloor survey work plans and seafloor survey reports shall be in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree.

12. **Hydrodynamic and Water Quality Study**: During the seafloor survey to be conducted in 2024, Defendant SBS shall conduct a Hydrodynamic and Water Quality Study. No later than 90 Days prior to planned field work, Defendant SBS shall submit a Hydrodynamic and Water Quality Study workplan to EPA for review, comment, and approval. The Hydrodynamic and Water Quality Study workplan shall include a proposal to measure current velocity and direction at a depth similar to the depth at the thickest accumulation of seafood waste in the Valdez Facility Zone of Deposit near the end of the Valdez Facility outfall at approximately 45 meters (m) below mean lower low water (MLLW) and from depths of 40 m, 50 m, 55 m, and 60 m to assess potential changes in the current at the seafloor bottom as the bottom depth varies.

13. The Hydrodynamic and Water Quality Study workplan shall also include a proposal to take continuous replicate measurements of (i) conductivity (salinity), temperature, depth, and dissolved oxygen from just above the seafloor to the water surface; and (ii) baseline TSS (to demonstrate TSS reduction) measurements via grab samples taken from just above the seafloor, mid column, and near surface.

14. **Pile Remediation**: If the Valdez Facility Zone of Deposit exceeds 0.5 acres as measured during the 2028 benthic assessment required under Paragraph 4, then no later than

270 Days following the 2028 benthic assessment, Defendant SBS shall submit a Remediation Plan to EPA for review, comment, and approval. The Remediation Plan shall include a proposal and schedule for removal or reduction of the Zone of Deposit to 0.5 acres. SBS may propose a maximum discharge limit for seafood processing waste from the Valdez Facility outfall(s), as an alternative to remediation.

a. If EPA approves the Remediation Plan, Defendant SBS shall implement the approved Remediation Plan according to its schedule;

b. If EPA determines that remediation is not beneficial, Defendant SBS shall ensure that its discharges of seafood processing waste do not result in an increase in the Valdez Facility Zone of Deposit from its measured size at the date that EPA makes that determination for so long as the Consent Decree remains in effect. To achieve this requirement, Defendant SBS shall conduct seafloor surveys, a Hydrodynamic and Water Quality Study, and benthic assessments in accordance with Paragraphs 7-16.

15. Review and approval of the seafloor survey work plans, seafloor survey reports, Hydrodynamic and Water Quality Study work plan and the Remediation Plan will be in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree.

APPENDIX C
KING COVE FACILITY STATEMENT OF WORK

1. **Seafloor surveys**: Following the Effective Date of the Consent Decree, Defendant Peter Pan shall conduct at least one seafloor survey of the King Cove Facility seafood waste pile(s) every year within two months of the processing season's end, until termination of the Consent Decree. Not later than 90 Days prior to planned commencement of the initial survey, Defendant Peter Pan shall submit to EPA for review and approval a seafloor survey work plan, which shall describe the methodology for conducting a seafloor survey. At a minimum, seafloor surveys shall have a scope that extends beyond the King Cove Facility Zone of Deposit and shall include core samples at survey points at and outside the visible edge of the King Cove Facility Zone of Deposit. The Zone of Deposit size shall be calculated using the methodology described in Appendix F of the King Cove Permit, or any subsequent permit. Defendant Peter Pan shall submit to EPA a report for each seafloor survey within two months after completing the field component of the seafloor survey. Review and approval of the seafloor survey work plans and seafloor survey reports will be in accordance with Paragraphs 16-21 (Approval of Deliverables) of the Consent Decree.