Washington Spend Plan for the
Consolidated Appropriations Act, 2021
Fishery Participant Assistance
Prepared by the State of Washington

November 1, 2021

BACKGROUND

This spend plan was developed under a grant made by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NOAA Fisheries") to the Pacific States Marine Fisheries Commission (PSMFC) in the amount of $116,841,151. NOAA Fisheries allocated $40 million for PSMFC to distribute according to this Washington state spend plan.

The purpose of the grant is to provide assistance to fishery participants, shellfish aquaculture and fishery-related businesses, and tribes affected by the novel coronavirus pandemic (COVID-19) in Alaska, the West Coast states, Hawaii, and the Pacific territories. The grant originated from the $300 million in total fishery assistance appropriated by Congress in the Consolidated Appropriations Act, 2021 (Public Law: 116-260). Of the $300 million, Congress designated $30 million for all federally recognized Tribes in coastal states and the Great Lakes and $15 million for Great Lakes states – leaving the remaining funds of $255 million to be allocated amongst coastal states. This is the second round of funds for COVID-19 related fishery participant assistance and is in addition to the $300 million that Congress appropriated in Section 12005 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No: 116-136). Congress stipulated in the Consolidated Appropriations Act, 2021 that Section 12005 of the CARES Act serves as the guiding statute for assistance to fishery participants directly and indirectly impacted by COVID-19. For the purposes of this spend plan, the Section 12005 of the CARES Act will be called Round 1 and the Consolidated Appropriations Act, 2021 Round 2.

PSMFC will distribute the funds available to Washington state according to this spend plan. After administrative fees from NOAA and PSMFC, the total amount available for PSMFC to distribute is $39,379,255. The state will not deduct additional fees for its work on the plan.

The provisions of this plan, once reviewed and approved by NOAA, may be used for any future funds appropriated by Congress for the same purpose. Once NOAA Fisheries allocates those funds to PSMFC and the state spend plans, addendums may be used to modify provisions of this plan after the application period opens.

PLAN DEVELOPMENT AND APPROVAL

The plan was developed by the Office of Governor Jay Inslee with assistance from the Washington Department of Fish and Wildlife, Washington Department of Agriculture, Washington Department of Commerce, and the Office of Financial Management. This plan will be reviewed and approved by NOAA Fisheries. PSMFC will administer the application and disbursement process, as detailed below.

OVERARCHING APPROACH FOR WASHINGTON'S SPEND PLAN

Direct payments will be made to qualifying businesses based on COVID-19-related losses that were incurred between August 1 and December 31, 2020 in full or over a period of at least 28 consecutive days within it, as further detailed below. All applications submitted electronically or post-marked by the deadline will be evaluated. The order of receipt will not affect eligibility or disbursement amount. Applications post-marked after the due date will not be considered. Direct payment disbursement amounts received by qualifying businesses and individuals will depend on the sum of approved claims and available funds and other factors, as described below.

Eligibility will be based on self-certification and a signed affidavit from the applicant, to be provided with the application materials. Applicants must show a greater than 35% loss of gross revenues for their fishery-related business in the time period specified in 2020 compared to average revenue for the same time period for the five prior years, 2015-2019. Further detail is provided below including exceptions to the prior 5-year period (e.g. for business less than 5 years old).

Applicants. will submit their applications and affidavits to PSMFC and will be subject to audit by the U.S. Department of Commerce Office of Inspector General. Applicants will be required to have documentation supporting their revenue losses and other eligibility criteria, as well as proof of funds received, but will not submit this supporting documentation to PSMFC. Instead, such documentation will be retained for no less than 3 years after the close of the grant award between NOAA and the Pacific States Commission, or 3 years after the resolution of any ongoing audits, whichever is longer. All documents must be made available for inspection upon request by the Federal Government or the Pacific States Marine Fisheries Commission.

APPLICATION PERIOD AND APPEALS

PSMFC will begin the application period as soon as possible after receiving NOAA Fisheries' approval of this spend plan. Applicants will have 60 days to apply from the date when application materials become available on the PSMFC website (https://www.psmfc.org/cares-act-the-coronavirus-aid-relief-and-economic-security-act).

The application period is anticipated to begin in mid-November 2021. PSMFC will notify applicants by postcard of the plan's approval and application availability using the addresses listed on the relevant license or permit with the state's assistance. The state has coordinated with the Alaska Department of Fish and Game and PSMFC to ensure that all eligible licenses and permits and addresses will be included.

PSMFC will also publish instructions for submitting materials, including the deadline for submission of application materials and the timeframe for the distribution of funds. All applications must be signed and mailed to PSMFC and must be post-marked by the deadline.

PSMFC will receive and review applications and approve claim eligibility, determine direct payment amounts, and disburse payments. PSMFC, in coordination with the agencies developing this spend plan, will follow up with applicants as necessary to clarify information and will notify applicants that do not meet eligibility requirements or provide necessary certification or sufficient documentation. Applicants will have one week from the time of notification to correct deficiencies for PSMFC review and final determination, after which all decisions will be final.

Estimated Timeline

Applications become available	November 15, 2021
Application Deadline	January 14, 2022 (60 days from website availability)
Application Review and Appeals	February 28, 2022 (45 days)
Disbursement payments sent	March 14, 2022
Final Report	April 28, 2022

SCALING METHOD AND EQUITABLE ADJUSTMENT

Washington is home to one of the nation's largest commercial fishing, shellfish aquaculture, and seafood economies. The businesses eligible to apply under this plan range from relatively small sole proprietorships to corporations with annual revenues in the hundreds of millions of dollars range, if not larger. All fishery and seafood related businesses are being affected by the pandemic through a mix of increased operating costs and decreased revenues. And all would likely have earned more profit under typical economic conditions. At the same time, the state understands that many sectors will not meet the greater than 35% loss in gross revenues threshold.

All in all, the total amount and mix of claims that will be submitted under this Round 2spend plan is unknown and cannot be reliably forecasted. With that uncertainty, the state decided to make no subdivision among the sectors. Claims will be placed into the same pool. Claims made under Round 1 were six times the available funding. The state expects that the total amount of eligible claims will exceed the total funding available to the Washington spend plan again for this round. This section describes how payments will be adjusted if they do. This spend plan includes a step not included in Round 1 and aimed at ensuring that payments received in Round 2 are not disproportionately larger than those received by Round 1 recipients.

Marginal Rate Adjustment

With several large revenue companies in the state, it is also possible that the losses experienced by some could take up a major portion of the available assistance. In Round 1, the top 20 recipients received 60% of the total funding. The state continues to wish to reduce the effect of proportional scaling on smaller businesses while also recognizing the importance of larger businesses to the seafood economy. Therefore, if claims do exceed the total available funding, as in Round 1 claims will be reduced using the following marginal rates:

- The first $200,000 of the claim will not be reduced.
- Bracket 1: dollars $>$ $200,000 and $\leq$ $1,000,000 will be reduced by 10%.
- Bracket 2: dollars $>$ $1,000,00 and $\leq$ $10,000,000 will be reduced by 20%.
- Bracket 3: dollars $>$ $10,000,000 will be reduced by 30%.

Marginal means that, like the federal income tax, the specified rates only apply to dollars above the bracket's threshold. The total reduction on a claim will be less than the marginal rate. For example, a claim of $350,000 would be reduced by a total of 3.3% percent because only $150,000 of the claim would be subject to the 10% reduction.[1] Likewise, a claim of $3 million would be reduced by a total of 16.0% and a claim of $12 million by 20.7%. The formula for calculating the reduction and a table showing the amount reduced for scaled claims of varying amounts will be included in the instructions. Applicants will not be responsible for making the calculation. The information will be provided so that applicants have information on how their claim may be adjusted. PSMFC will make the calculation when claims are processed.

If the marginal rate reductions are more than is needed to bring the claims in line with the total funding amount, then the surplus funds will be distributed back to claims greater than $200,000 proportionally.

Proportional Scaling

If the total amount of eligible claims is still over the total funding amount after the marginal rate reduction, then all disbursements will be reduced proportionally to the shortfall. This reduction is additional to and made after the marginal rate reductions. For instance, if total eligible claims are twice the size of the funding available after the marginal rate reductions have been made, then claims would be reduced to 50% of the submitted amount (i.e., 1/2). If total claims come in four times the size of the available funding, then claims would be reduced to 25% (i.e., 1/4) of the submitted amount. This is referred to below as proportional scaling or reduction. The resulting claims are referred to below as "scaled claims."

The instructions will include information for applicants that will show how their claimed loss would be reduced under various proportional scaling levels. As the examples above show, the formula for the scaled claim is based on dividing the total funding amount (i.e. $39,379,255) by the total claimed amount. Without knowing the total amount claimed, the proportional reduction cannot be determined ahead of time. Again, proportional scaling will only occur should the total amount of eligible claims exceed the total funding available after the marginal rate reduction.

Contingent Adjustment for Equitable Treatment of Claims between Rounds 1 and 2

The two rounds of funding available under the Washington spend plans serve the same purpose. Therefore the aim is to treat eligible losses between the two rounds as similarly as possible. Although the amount of eligible revenue losses for the Round 2 claim period is unknown, it is possible that the ratio of total eligible claims to available funding will be substantially lower than in Round 1. In such a case, eligible claimants would receive payment at a higher rate than in Round 1 and for no reason other than that the funding and Washington spend plans divided 2020 into two periods.

The eligible claim amount for each applicant is the applicant's qualifying losses after being reduced by the marginal rate reduction. The sum of all applicant's eligible claims in Round 1 was roughly 5.1 times more than the total funding available (i.e. 5.1-to-1). If the corresponding ratio for Round 2 is lower than

[1] To walk through the example, $350,000 - $200,000 = $150,000 is the amount subject to the 10% reduction. And 10% * $150,000 = $15,000 is the amount reduced. The resulting payment would be $335,000.

5.1 to 1 but higher than 5-to-1, PSMFC will make no adjustment to Round 1 payments. If, however, the equivalent Round 2 ratio is 5-to-1 or lower, PSMFC will follow these steps to align payments between the two rounds:

- Sum the eligible claims across both rounds and divide by $77,942,595 (i.e. the total funds available across both rounds). The result is the “two-round ratio” of eligible claims to available funds.
- Pay eligible Round 2 applicants by adjusting their eligible claim amounts by the two-round ratio.
- Provide additional payments to Round 1 recipients so that the total of the first and second payments matches the two-round ratio (i.e. the ratio of the eligible claim to the sum of the two payments equals the two-round ratio).

To illustrate using a scenario where Round 2 total eligible claims show a 4-to-1 ratio to the Round 2 funding, the two-round ratio would be roughly 4.55-to-1. With the equitable alignment, Round 2 recipients would receive 21.97% of their eligible claim amounts instead of 25%. And Round 1 recipients would receive a second payment that brought the total amount received from 19.55% to 21.97% of their Round 1 eligible claim amount. This would increase the median payment to the Round 1 recipients by $1,864 and the average payment by $7,022.

Only applicants that applied and received payment from the Washington spend plan in Round 1 will be eligible to receive the additional payment from the equitable alignment. The only exception is for the Commercial Fishing sector applicants that applied but were ineligible for Round 1 because of the Alaska residency/address issue. If these applicants reapply and receive payment for their Jan-July 2020 losses in Round 2, they would receive the Round 1 increase as well.

The additional payments could be relatively small for many recipients. However, even if the Round 2 ratio turns out to the minimum 5-to-1, then close to $450,000 in total would be shifted from Round 2 to Round 1. PSMFC may combine payments into a single check for applicants receiving both a Round 2 payment and an extra Round 1 payment.

With the timing and structure of the grants, it would be impractical to address the reverse situation where Round 1’s ratio of claims to available funds is lower than Round 2’s. Payments will not be retrieved from Round 1 recipients if Round 2’s ratio is higher.

Any extra payment received by Round 1 applicants remains subject to the no-more-than-whole requirement. This requirement and a means for applicants to avoid receiving overpayment are described below.

QUALIFYING CRITERIA AND LIMITATIONS

Qualifying criteria are derived from Sec. 12005 of the CARES Act, guidance from NOAA fisheries, and this spend plan:

- Applicants must be a fishery-related Washington business as defined below.

- Applicants must have incurred revenue losses of greater than 35% as compared to their prior 5-year average (2015-2019) with exceptions for those in business less than 5 years. Eligible revenue losses are defined below.
- The revenue loss must have been incurred as a direct or indirect result of the COVID-19 pandemic.
- Applicants must be at least 18 years old.
- Commercial Fishing applicants should include all of their eligible losses in a single state spend plan. The other sectors should split their losses based on the location of their operations. For such businesses, the same losses may not be claimed under more than one state spend plan.

ELIGIBLE WASHINGTON FISHERY-RELATED BUSINESSES

NOAA Fisheries allocated the $300 million in fishery participant assistance from Round 2 in proportion to fishery-related revenues by sector as in Round 1. For the non-tribal spend plans, NOAA Fisheries classified revenues into the following sectors: Charter/For-Hire (limited to saltwater), Commercial Fishing and Shellfish Aquaculture, and the Seafood Sector (buyers, processors, wholesalers). This spend plan uses those same sectors to define eligible fishery-related Washington businesses.

As part of the allocation formula, NOAA Fisheries assigned Commercial Fishing sector revenues earned by fishing businesses in Alaska to the Washington spend plan if the vessel's owner was listed as a resident of Washington with the Alaska Commercial Fishery Entry Commission.[2] A residency adjustment was also made for vessels fishing in the West Coast at-sea whiting fishery. No residency adjustments were made for the Aquaculture, Seafood, or Charter sectors. This spend plan includes additional guidance on residency criteria based on experience with Round 1. PSMFC will assist applicants with questions about residency and which spend plan to apply under.

For purposes of this spend plan, a Washington fishery-related business is a business that earns revenues through sales and activities authorized by one of the license or permit types listed in Table 1. Applicants must hold one or more of the license or permit types listed in Table 1 to be eligible to apply. . In addition to these license and permit requirements, there are also requirements for residency or place of business and on what type of revenues are eligible to claim under this spend plan, as described below.

TABLE 1. ELIGIBLE LICENSES AND PERMITS INCLUDE ONLY THE FOLLOWING:

Sec. 12005 Sector	
Charter Sector	• Washington salmon or non-salmon charter license (RCW 77.65.150), resident or non-resident.
Seafood Sector	• Washington Limited fish seller endorsement (RCW 77.65.510) • Washington Fish dealer license (RCW 77.65.280)

[2] https://www.cfec.state.ak.us

Shellfish Aquaculture	● Aquatic Farm Registration or Washington Department of Health license authorizing the harvest of cultivated stock for human consumption: Shellstock Shipper License, Shucker-Packer, or Harvester. ● For in-state hatchery or nursery facilities, a WDFW Shellfish Transfer permit for planting or selling seed in-state. ● For out-of-state hatcheries run by a Washington-based business, a WDFW Shellfish Import Permit authorizing the planting or sale of shellfish seed into the state if the hatchery is not covered by another Consolidated Appropriations Act, 2021 Round 2 spend plan.
Commercial Fishing (subject to residency requirements)	**Landings into Washington** ● Washington resident commercial license that authorizes fishing for or delivery of food fish or shellfish in the state. ● Non-resident food fish or shellfish under a state commercial fishing or delivery license if the owner or holder resides in a U.S. state or territory that is not covered by another Consolidated Appropriations Act, 2021 Round 2 spend plan. **Revenues earned from Alaska catches** Owner of the following licenses or permits: ● Commercial Fisheries Entry Commission Commercial Vessel License or Fishery Permit. ● Pacific Halibut and Sablefish Individual Fishing Quota Program Fishing permit ● Bering Sea and Aleutian Islands Crab Rationalization Individual Fishing Quota Permit **West Coast At Sea Whiting** Owners of permit or vessel as listed on: ● Sector endorsed federal Pacific Coast Groundfish Fishery limited entry permit for Catcher-Processors and vessels delivering catch to Mothership processors. ● federal Mothership (MS) permit for Mothership Processors. **Other**

	● Washington residents that did not make landings into Washington but landed fish or shellfish into another state or territory under a license or permit not listed above if such activity is not covered by another Consolidated Appropriations Act, 2021 Round 2 spend plan. ● Owners of federal West Coast Groundfish Quota Share Permits. ● Vessel owners who charter their vessel for state or federal fisheries research surveys in marine waters (subject to case-by-case review required by NOAA Fisheries).

UNIT OF BUSINESS AND BUSINESS ARRANGEMENTS LIKE LEASING

In general, businesses should apply using the same business structure listed on the license or permit or that they use to file federal taxes. At the same time, the state recognizes the diversity of business arrangements that exist among those eligible for assistance under this plan and so provides flexibility for applicants to apply in the manner that is in their best interests based on accounting, tax, financial, and other business purposes. However, all applicants are subject to audit and must be able to demonstrate how revenues match to individuals and business units. And, revenues among related applicants must be appropriately segregated and not double counted. All individuals and businesses receiving assistance, whether directly via PSMFC or passed through a business organization or arrangement, should be prepared to show that they are compliant with the “no more than whole” requirement (described below).

Applicants that received payment from a Round 1 spend plan should apply as the same tax entity in Round 2 unless the license or permit or business arrangements are different enough to justify applying as a different tax entity. In addition to a diversity of business organizations, Commercial and Charter sector operations fishing under limited entry licenses and permits often involve leasing or other contractual arrangements for sharing of the fishing privileges granted by a license or permit. Similarly, the spend plan covers multiple catch share programs (e.g., individual fishing quota programs) where fishing privileges held by multiple persons are fished under a single license or permit. For such situations, all parties with ownership or contractual interest in the licenses and permits (including IFQ permits) are eligible to apply. Applicants involved in such arrangements may apply using a single application and share any payment received according to their agreements. Or if doing so would better suit their circumstances, persons may apply separately based on their respective shares of the revenues. Under no circumstances, however, can the same revenue losses be claimed on more than one eligible application. Separate applications for shared revenues must describe how the revenue loss is apportioned between the applications so it is clear to reviewers and auditors that the total claim for shared revenues does not exceed the actual loss.

All applicants must meet the greater than 35% loss threshold and satisfy the other eligibility criteria based on their own individual revenue histories and circumstances. For example, a license owner that leases a commercial fishing license for a fixed fee and received full payment in 2020 would not qualify under that license because they would not have incurred the required loss in gross revenues of greater than 35%. The business holding the lease and fishing the license would still be eligible if a loss of greater than 35% was incurred.

COMMERCIAL FISHING SECTOR RESIDENCY REQUIREMENTS:

Applicants applying for revenues earned from the eligible commercial fishing licenses and permits listed in Table 1 must also satisfy the requirements described within this section. The residency requirements depend on whether the applicant is a natural person ("individual") or an entity and how the eligible licenses or permits are held.

With coordination among PSMFC and the West Coast states and Alaska on residency requirements for Round 2 spend plans, Commercial Fishing sector applicants should now only be eligible to apply to one of the state spend plans. In rare cases, some applicants in this sector may also meet the eligibility criteria in another state's spend plan. However, applicants may not apply for assistance in another state or territory if applying under the Washington spend plan or vice versa.

For purposes of this section, the terms deliveries or delivery refer to raw fish or shellfish offloaded to a buyer, sales made under a limited fish seller endorsement, and the first-offload of fish or shellfish processed at-sea.

A. Residency requirements for those applying as an individual

If applying as an individual, applicants meet the residency requirement for this spend plan if they:

a. Held a Washington resident license (of a license type listed in Table 1) in 2019 or 2020;
b. Only earned revenues from a federal or non-resident permit or license of another state but would have been eligible to purchase a Washington resident license in 2020 under the requirements of RCW 77.08.075; or
c. Held a non-resident Washington license and is resident of a state for which NOAA Fisheries did not designate a spend plan and earned at least as much of their 2015-2019 eligible revenues from deliveries into Washington as into any other one state.

B. Residency requirements for those applying as an entity

The residency requirements for applicants that apply as entities depend on whether the entity's permits or licenses are held in the name of individuals or in the name of an entity.

1. Licenses and permits held in the name of individuals

For licenses and permits held in the name of individuals, the entity will meet the residency requirements of this spend plan if those individual or individuals meet the residency requirements listed for individuals (see Section A). If the entity holds licenses from multiple individuals and some do not meet those requirements, then the entity may apply to this spend plan if the 2015-2019 eligible revenues earned by the individuals that do meet the residency requirements are greater than or equal to those earned by residents that do not.

Again, applicants do not need to apply as a single entity and may apply separately based on their respective revenue histories. In no instance may applicants receive assistance from this or other spend plans based on the same claimed losses.

2. *Licenses and permits held in the name of an entity*

The residency requirements for entities earning revenues from license and permits held in the name of the entity or related entities depend on whether the named entity is listed as a foreign or domestic entity with the Washington Secretary of State.

Domestic entities will meet the residency requirements for this spend plan if 2015-2019 revenues from deliveries made into Washington and Alaska, individually or combined, are greater than or equal to those earned from deliveries into any other state.

Foreign entities will meet the residency requirements for this spend plan if their revenues from deliveries into Washington are greater than those earned from those into any other state. In the event that Washington revenues and those of another state are equal and larger than those from any other state, the entity will only meet the residency requirements for this spend plan if it is not registered as a domestic entity in the states with equal earned revenues.

3. *Licenses and permits held in the name of a mix of individuals and entities*

If the entity earned its eligible revenues from licenses and permits held in the names of a mix of entities and individuals, then the residency requirements of this spend plan will be met as long as the majority of the entity's revenues were earned by the licenses and permits that meet the requirements for individuals and entities described above in Sections B.1 and B.2.

Caution on Residency Violations

In reviewing Round 1 applications, PSMFC identified a number of individuals listed as holding resident licenses in more than one state or holding a resident license of one state while applying from an address in a different state. Holding a Washington resident license improperly or when also holding a resident license from another state may constitute a felony in Washington (see RCW 77.15.650) and violate the laws of other states as well. Applicants to this spend plan in Round 2 that PSMFC identifies as suspect in terms of residency status will be referred for enforcement or the appropriate administrative processes in each applicable state. If the appropriate authorities determine that the applicant held a resident license or permit improperly, the applicant will be deemed ineligible under this spend plan. If the violation is not confirmed until after payments from the spend plan are distributed, audit or prosecution may seek return of any payment received under the Washington or other spend plans.

ELIGIBLE REVENUES: DIRECT OR INDIRECT RESULT OF THE PANDEMIC

The provisions of Sec. 12005 of the CARES Act governing both Round 1 and 2 require revenue losses to have been incurred as a direct or indirect result of the coronavirus pandemic. Considering the Commercial Fishing and Charter sectors, losses experienced in 2020 for some fisheries are known to be a mix of pandemic conditions and natural factors affecting fish stocks. Given the intertwined causes and widespread effects of the pandemic, it is presumed that revenue losses in 2020 were directly or indirectly incurred because of the pandemic. However, in limited cases, it was known before the pandemic that certain fishery opportunities would not be open in 2020 because of stock status or other conversation and management reasons. The application instructions will include a list of such fisheries and revenues from the fisheries listed will not qualify as eligible under this spend plan. The list is non-exhaustive. Revenue losses may also be deemed ineligible if the information available to PSMFC and partners definitively shows that the losses were unrelated to the pandemic.

ELIGIBLE REVENUES: PLACE AND TYPE OF BUSINESS/OPERATION/SALES

Holders of an eligible license or permit may need to adjust which revenues they claim under the spend plan based on the requirements of this section. The requirements relate to place of fishing or business activity, type of species, and type of sale. The requirements differ among sectors with the differences based on the Commercial Fishing sector residency adjustments made by NOAA Fisheries when allocating Round 2 funding among state, territorial, and tribal spend plans.

All sectors:

- Applicants should apply using gross revenues.
- Revenues generated from fishing trips in freshwater or sale of freshwater species do not qualify as eligible revenues.
- Eligible revenues are those generated from fishing trips or the sale of fish and shellfish. Income earned through other activities of the business, such as income earned through leasing of real estate, does not qualify as eligible revenue.
- Retail sales and sales by restaurants are also excluded from eligible revenues per NOAA Fisheries guidance. Sales authorized by the Washington limited fish seller endorsement and recorded on fish and shellfish receiving tickets are not classified as retail for purposes of the spend plan and are therefore eligible. Revenues for sales made by Washington Fish Dealers of seafood they commercially harvested and accounted for under an Alaska Direct Marketer permit are also not classified as retail for purposes of this spend plan.

Commercial Fishing Sector:

Applicants that meet the residency requirements stated above must include all of their eligible revenues under this spend plan no matter the place of harvest.

Charter Sector:

Eligible revenues for Charter Sector applicants include those from trips made under the respective license types in Table 1. Revenues for the Charter Sector are based on the location of the operation (so resident and non-resident licenses are eligible). Washington residents that operate charter businesses in Alaska should apply under the Alaska spend plan for lost revenues from those businesses.

Aquaculture Sector:

Shellfish Aquaculture Sector businesses should only include revenues earned from sales made from hatchery and growing operations located in the state. The exception, as noted in Table 1, is for out-of-state hatchery operations run by Washington based businesses and which were not covered by another Consolidated Appropriations Act, 2021 Round 2 spend plan.

Seafood Sector:

For the Seafood Sector, eligible revenues are those earned from transactions authorized by a Washington fish dealer license or WA Limited fish seller endorsement. Revenues earned from out-of-state facilities do not qualify as eligible revenues. For example, revenue from facilities located in Alaska would fall under the Alaska spend plan even if owned by a Washington based business.

ELIGIBLE TIME PERIOD AND CALCULATING AVERAGE REVENUES

The spend plan covers eligible losses incurred between August 1 and December 31, 2020. Applicants may claim losses for the full period or for any partial, consecutive period within it of 28 days or more.

Applicants must identify their loss window period and the gross revenues earned during that time. Applicants must also report their prior 5-year average gross revenues for the corresponding window period during 2015-2019. For example, if a partial window period of Aug. 15 - Dec. 15 2020 is claimed, the applicant would combine all eligible gross revenues earned between Aug. 15 - Dec. 15 from 2015 to 2019 and divide by five to get the average. The reduction in gross revenues incurred during the loss period must be greater than 35% of the 2015-2019 average. PSMFC will adjust revenues to constant dollars using the Consumer Price Index (see application instructions).

Applicants may use either the cash or accrual method of accounting to determine when revenues were earned and losses incurred. For instance, in the Commercial Fishing sector, revenues may not be received at the time of delivery recorded on fish tickets. So applicants may use the fish ticket date (i.e. “accrual”) or the date the money was received or deposited (i.e. “cash”) to date when the revenue was earned. The state recognizes that the July 31/August 1 division between Round 1 and Round 2 is one that businesses have not used before and does not align with calendar year or quarterly reporting. Therefore, although applicants are expected to use the same method, i.e. cash or accrual, used for standard financial and tax reporting the spend plan does not require it. However, applicants that applied for Round 1 assistance must use the same method they used in Round 1 when applying for Round 2 so that revenues are appropriately assigned to either the Jan-July or Aug-Dec claim periods.

Applicants who experienced a federally designated fishery disaster, 2015-2019

Applicants who experienced a federally designated fishery disaster during 2015-2019, and the disaster year(s) make the difference between meeting the greater than 35% threshold and not, then the applicant may substitute the next earliest non-disaster year(s) into the five-year average calculation. The State is not currently aware that such situations exist. However, with the large number of commercial fisheries potentially eligible for assistance under the Washington spend plan and many businesses with diverse fishing portfolios, the possibility cannot be ruled out. The burden is on applicants to demonstrate that including disaster years in their 2015-2019 gross revenue average would keep them from exceeding the greater than 35% loss threshold.

Applicants without a full five years of revenue history 2015-2019

Applicants without a full five years with which to calculate their 2015-2019 average should use as many years as they have within that timeframe to calculate their individualized averages. Using the extreme case, if a business only had revenues in 2019, then 2020 revenues should be compared against revenues from 2019. Applicants who use this approach will have their claims evaluated against those from comparable applicants that based their claims on the full 2015-2019 average. Comparable applicants are those who earned revenues in the same sectors and using the same licenses or permits and the same fishery or line of business. Applications will collect information used to identify comparable applicants. Applicants with less than five years of 2015-2019 history will be limited to the median payment made to comparable applicants. If there are fewer than three comparable applicants receiving payment, the claim will be denied.

Commercial Fishing and Charter sector applicants that have two to four years of history within 2015-2019 and the years of participation are non-consecutive (i.e. 2016, 2017, and 2019) may still be eligible subject to the additional requirements in this paragraph. Non-consecutive years of participation may occur because of legitimate vessel, health, economic (e.g. low prices) reasons. In such a case, to be eligible for this spend plan one of the active years must have been 2018 or 2019 or the applicant must have earned revenue from the relevant fishery in 2020. Second, the years where a license or permit were held by the applicant but not fished may be excluded from the average only if the applicant did not fish in the relevant fishery at all during the year. If instead it was a shift in timing where the applicant did fish earlier or later than the period claimed on the application, then revenues from the applicable permits and licenses should be treated as zero when calculating average revenues for the claim period.

Applicants for which 2020 was their first year in business

The state heard feedback from multiple people in the Commercial Fishing sector that 2020 was the first year they were able to run their own operations. This includes individuals with years of experience in the fisheries as crew. The state recognizes the challenges new entrants face and believes that such individuals and businesses are deserving and in need of assistance.

Applicants in this situation will have their 2020 revenues evaluated against those of comparable applicants and 2015-2019 revenues from the relevant fishery or line of business. The applicant must have fished or operated in 2020. For the Commercial Fishing sector, fish ticket revenues will be used to calculate the distribution of average ex-vessel revenues 2015-2019 and 2020 associated with the license or permit types and fisheries if possible. The percentile of the applicant's 2020 revenues will be matched to the percentile from the 2015-2019 distribution. For example, if the applicants 2020 revenues corresponded to the 75th percentile (i.e. 25% of participants earned more and 75% earned less than the revenues), then the 75th percentile value from the 2015-2019 revenues would be used to calculate whether the greater than 35% threshold is met and determine the size of the loss. For sectors where revenue data is not readily available to PSMFC, the distributions will be calculated from the revenue information provided by comparable applicants. If there are not enough comparable applicants with which to calculate percentiles, the median value will be used as the proxy. If there are not three or more comparable applicants receiving payment under the spend plan, the application will be denied.

Applicants who did not operate during the claim period

Some businesses did not operate at times of year when they typically would have either because of regulatory closures resulting from the pandemic or because of a choice to not operate out of concern over the health or financial risks created by the pandemic. Such businesses will show a 100% loss compared to their 2015-2019 average gross revenues during the relevant time period. Regulatory closures put into place for conservation and management reasons unrelated to the pandemic do not qualify and must be factored out.

The state also recognizes that businesses that did not fish or operate during the 2020 claim period will not have incurred the same level of variable operating costs as those that did. Moreover, businesses that operated in 2020 often experienced increased operating costs. This spend plan does not take increased costs into account because eligibility is based on gross revenues. Because of avoided costs, businesses claiming losses for a timeframe where they did not fish or operate will have their original claims reduced in the following manner:

- Charter Sector: claims will be reduced by 40% for businesses that did not fish during August-December 2020 unless the applicant elects and self-certifies that payments will be shared with crew or charter offices or both. If such an election and self-certification is made, the claim will only be reduced by 20%.
- Commercial Fishing: applicants will have their claims reduced by 55% if they did not participate in the relevant fishery or fisheries August-December 2020 unless they elect to and self-certify that payments will be shared with crew. If such an election and self-certification is made, the claim will only be reduced by 20%.
- Seafood Sectors: if the business did not make payments to harvesters or otherwise purchase fish and shellfish during August-December 2020 the claim will be reduced by 75%. This percentage is based on the percentage of gross revenues going to pay for fish and shellfish products. Because such payments go to other businesses that are potentially eligible for assistance under this spend plan, there is no election and self-certification option offered for this sector.
- Shellfish Aquaculture: no reductions will be made. Because of the different cost structure and conditions in this sector, the state did not see the same fairness considerations that existed in the other sectors.

These reductions for avoided costs will be made by PSMFC when processing the claims and will be applied before any marginal rate or proportional scaling reductions are made.

The difference in the avoided cost percentages are based on estimates of the percentage of gross revenues that go to pay for variable costs in each sector. Variable costs are those that vary with participation and would have been avoided by not fishing or operating. Fixed costs in contrast, like moorage and loan payments, are incurred whether the business operated or not. Further definition of variable costs will be included in the instructions or supplemental materials. If applicants can demonstrate that their 2015-2019 average variable costs differ from the estimated percentages, they may use their specific averages in place of those listed above.

Round 1 Applicants Who Applied to the Alaska Spend Plan

The different timing and development of the Round 1 state spend plans caused unintentional gaps in residency eligibility resulting in applicants applying to a spend plan for which they were then deemed ineligible. Per the guidance of Washington's Round 1 spend plan, applicants who fished in Alaska were instructed to apply to the state in which the address listed on the CFEC license/permit. Later guidance increased the requirement that residency involve more than just having a mailing address in the state.

As a result, there were a handful of applicants who had a mailing address in Alaska or Washington without residency.

Alaska and Washington intended to allow eligibility to these applicants and they were excluded to no fault of their own. Increased coordination in preparation for Round 2 should prevent this situation from happening again. However, to address the Round 1 situation applicants that were deemed ineligible but meet the Round 2 residency requirements will receive payment for their Round 1 applications in Round 2 and be paid at 19.55% of their eligible claim (i.e. the percentage resulting from the Round 1 ratio of total eligible claims to available funding). Applicants in this situation will be contacted and asked if they are interested in having their application considered in Round 2 and to renew their affidavits if so. PSMFC will issue these payments as soon as possible and the payments will be deducted from the total available funding used for the Round 2 proportional scaling. These applicants will need to submit a separate application if they wish to apply for Round 2 funds and losses incurred during the August 1-December 30, 2020 timeframe.

CONSIDERING REVENUES EARNED OUTSIDE OF THE LOSS PERIOD AND ACCOUNTING FOR OTHER FORMS OF ASSISTANCE – “NO MORE THAN WHOLE”

Federal rules state that the sum of all Consolidated Appropriations Act, 2021 fishery participant assistance funding, any additional COVID-19 related federal financial assistance, and traditional revenue, including state unemployment, received cannot exceed the claimant’s annual average gross revenues from 2015-2019. In other words, those receiving payments cannot be made “more than whole”.

Feedback received by the state during development of this plan revealed confusion among potential applicants about the “no more than whole” requirement and how it relates to the greater than 35% loss threshold. This spend plan covers losses incurred between August 1 and December 31, 2020 and allows claim periods within that period as small as 28 consecutive days. Some applicants will have fishery related revenues in 2020 that fall within their claimed loss period and a portion that does not.

For purposes of evaluating the greater than 35% loss threshold, applicants should only consider revenues earned during the claimed loss period and compare those against their averages for the same period during 2015-2019. In contrast, when evaluating being made “more than whole,” applicants must include all revenues earned and all forms of federal assistance received in 2020 as prescribed in the application materials.

All in all, it is permissible for the sum of 2020 revenues and assistance to bring the business above the 35% loss threshold as long as the business remains at or below its 2015-2019 average gross revenues.

More detail on how to account for other forms of federal assistance may be provided with the application instructions.

RETURN OF FUNDS

The state anticipates that recipients of Round 1 assistance may exceed their 2015-2019 average revenues due to the combination of various forms of financial assistance and traditional revenues. If this occurs, the recipient is required to return all or a portion of their Round 1 assistance to PSFMC to meet the threshold of being "made no more than whole". Should there be a surplus of funds from Round 1, an addendum will be submitted to NOAA-Fisheries outlining how the funds will be distributed.

To reduce overpayments and allow applicants to avoid running afoul of the no-more-than-whole requirement, the application for Round 2 funds will collect information from applicants on the maximum payment they could receive without concern for exceeding their 2015-2019 average gross revenues. The amount identified will be treated as the applicant's maximum eligible claim amount for Round 2. For applicants that received Round 1 payments, it will also serve to limit any additional payment made to the applicant under the equitable alignment of claims between Round 1 and Round 2 (described above). Round 1 applicants that do not apply for Round 2 assistance will also be given the opportunity to identify the maximum additional payment they could receive before being made more-than-whole.

The state also anticipates that recipients of Round 2 assistance may exceed their 2015-2019 average revenues. However, because it is unlikely that Congress will appropriate additional fishery participants assistance funds, the state will wait until it knows the amount of surplus funds to determine how these funds will be redistributed. The distribution method for the Round 2 surplus funds will be detailed in an addendum to this plan.

APPLICATION DOCUMENTATION AND REQUIREMENTS

Application materials will include a check list, application worksheet and self-certification and assurances form, application form, and W-9 Form. Applications will provide the documentation and certification necessary to demonstrate revenue losses related to COVID-19 as required by Round 1 for Round 2, federal fund direct-payment rules, and Washington's spend plan. Application documentation and certification includes the following for each business applicant.

- Certification that the applicant's business is an eligible fishery-related Washington business, and that the applicant or another representative of the business will not apply for Consolidated Appropriations Act, 2021 Round 2funding relief from any other state, territory or tribe for the same revenue losses claimed in the Washington application.
- Identification of timeframe used for losses in 2020 (August 1 through December 31 options only) and comparison years.
- Documentation of gross revenues across all fisheries participated in during the selected timeframe for 2020 and comparison years.
- Certification that COVID-related losses in 2020 exceeded 35% of the average for comparison years. Certification of total loss difference in gross revenue attributable to COVID-19 between selected timeframe for 2020 and average gross revenue for the same timeframe across all fisheries during comparison years.
- Certification that if applicant receives any additional COVID-19 related federal financial assistance and/or is able to collect traditional revenue, the sum of all funds will not exceed the applicant's average annual revenue earned across the previous 5 years. If applicant's total annual revenue for 2020, including fishery participant assistance relief, exceeds the total average annual revenue for the comparison years, the applicant must reimburse the federal government through PSMFC for the surplus up to the amount received for that relief.

- Certification requirements for federal direct payments.