

CLAIM SUMMARY / DETERMINATION

Claim Number: J13014-0008
Claimant: Braund Fishing Group
Type of Claimant: Private (US)
Type of Claim: Loss of Profits and Earning Capacity
Claim Manager: (b) (6)
Amount Requested: \$528,537.91

FACTS

INCIDENT

On June 30, 2013, the F/V LONE STAR sank and discharged oil into the Igushik River, posing a substantial threat of a discharge of oil into Bristol Bay, a navigable water of the United States. There were approximately 14,500 gallons of diesel, hydraulic and lube oil, and gasoline on board the vessel. At the time of the incident (b) (6) owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

2013 OVERVIEW OF BRISTOL BAY SALMON FISHERIES¹

The Bristol Bay management area includes all coastal and inland waters east of a line from Cape Newenham to Cape Menhikof.² The area includes nine major river systems; Naknek, Kvichak, Alagnak, Egegik, Ugashik, Wood, Nushagak, Igushik, and Togiak. Collectively, these rivers are home to the largest commercial sockeye salmon, *Onocorhynchus nerka* fishery in the world. Sockeye salmon are by far the most abundant salmon species that return to Bristol Bay each year.³ The Bristol Bay area is divided into five management districts (Naknek-Kvichak, Egegik, Ugashik, Nushagak, and Togiak) that correspond to major river systems. The management objective for each river is to achieve salmon escapements within established ranges while harvesting fish in excess of those ranges through orderly fisheries. In addition, regulatory management plans have been adopted for individual species in certain districts.⁴

Since 1993, the value of the commercial salmon harvest in Bristol Bay has averaged \$111.8 million, with sockeye salmon being the most valuable, averaging \$109.9 million annually.⁵ Management of the commercial fishery in Bristol Bay is focused on discrete stocks with harvests directed at terminal areas around the mouths of major river systems. Each stock is managed to achieve a spawning escapement goal based on sustained yield. Escapement goals are achieved by regulating fishing time and area by emergency order (EO) and/or adjusting weekly fishing schedules. Legal gear for the commercial salmon fishery includes both drift and set gillnets.⁶ Drift gillnet permits are the most numerous at 1,862 in Bristol Bay and of those, 1,709 registered to fish in 2013. In 2013, a total of 978 set gillnet permits were issued in Bristol Bay and of those 854 fished in 2013.⁷

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

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

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

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

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

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

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

Run Strength Indicators

Fishery managers in Bristol Bay have several early indicators of sockeye salmon run size, including the preseason forecast, the False Pass commercial fishery, an offshore test fishery operating from Port Moller, genetic stock identification, individual district test fishery programs and the early performance of the commercial fishery. These pieces of information may not give a correct assessment of run size, but collectively, they form patterns such as relative strengths of year classes, discrepancies from the forecast (relative to expected year class contributions), or differences in run timing that can be important to successful management of the commercial fishery.⁸

Preseason Forecasts

Total inshore (excluding harvest in other areas) sockeye salmon production for Bristol Bay in 2013 was forecast to be 25.1 million⁹. The Bristol Bay sockeye salmon inshore harvest was predicted to reach 16.6 million fish. Runs were expected to meet spawning escapement goals for all river systems in Bristol Bay.¹⁰

The forecast for the sockeye salmon run to Bristol Bay in 2013 was the sum of individual predictions for nine river systems¹¹ and four major classes.¹² Adult escapement and return data from brood years 1972 to 2009 were used in the analyses.^{13 14}

Predictions for each age class returning to a river system were calculated from models based on the relationship between adult returns and spawners or siblings from previous years. Tested models included simple linear regression and recent year averages. All models were evaluated for time series trends. Models chosen were those with statistically significant parameters having the greatest past reliability¹⁵ based on mean absolute deviation, mean absolute percent error, and mean percent error between forecasts and actual returns for the years 2010 through 2012.¹⁶

Nushagak District

The 2013 Nushagak District commercial sockeye salmon harvest, including the Igushik River which is subject of this claim, reached 3.2 million fish, 4% below the preseason projected harvest of 3.3 million fish and 44% below the 1993-2012 average harvest of 5.7 million sockeye salmon.¹⁷ Escapement in the district's three major river systems was 1,183,348 for Wood River, 387,744 for Igushik River, and

⁸ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3

⁹ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1-Comparison of inshore sockeye salmon forecast versus actual run, escapement goals versus actual escapements, and projected versus actual commercial catch, by river system and district, in thousands of fish, Bristol Bay, 2013. P. 26.

¹⁰ *id*

¹¹ Kvichak, Alagnak, Naknek, Egegik, Ugashik, Wood, **Igushik**, Nushagak-Mulchatna, and Togiak.

¹² Age 1.2, 1.3, 2.2, and 2.3, plus age 0.3 and 1.4 for Nushagak.

¹³ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

¹⁴ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 2 – Inshore forecast of sockeye salmon returns by age class, river system, and district, in thousands of fish, Bristol Bay, 2013, p. 27.

¹⁵ Accuracy and precision.

¹⁶ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 3.

¹⁷ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, p.26 and Appendix A15 – Inshore commercial catch and escapement of sockeye salmon in the Nushagak District by river system, in numbers of fish, Bristol Bay, 1993 – 2013, p. 81.

894,172 sockeye salmon for Nushagak River.¹⁸ Nushagak and Igushik sockeye salmon escapements exceeded the upper ends of their escapement goal ranges, and Wood River sockeye salmon escapement fell within the escapement goal range.¹⁹

Commercial fishing for set gillnets was announced to begin in the Nushagak District late on June 21, 2013 and the drift gillnet fleet would start at 11:00 a.m. on June 22.²⁰ The beginning of the commercial fishing season was met by a severe storm with winds exceeding 50 knots.²¹ The storm affected commercial fishing into the early hours of June 24. Through June 24, 2013, the cumulative Wood River escapement was 599,460 sockeye salmon.²² Managers continued to announce liberal fishing openings. The set gillnet fishery, opened on June 21, and was extended for the rest of the season.²³

Commercial fishing in the Nushagak District continued until 9:00 a.m. July 23, 2013, at which time managers switched from sockeye salmon management to coho salmon management. The total sockeye salmon harvest of 3.2 million fish was 4% below the preseason forecast of 3.3 million fish.²⁴

Commercial fishing with set gillnet gear began in the Igushik Section of the Nushagak District on June 15 when a market became available.²⁵ The Igushik River tower project began enumerating sockeye salmon on June 24.²⁶ The Igushik River sockeye salmon forecast was relatively low, so managers restricted fishing time to eight hours per day until June 21, when openings were increased to 12 hours.²⁷ On June 23, commercial fishing was extended for 24 hours.²⁸ Escapement was strong beginning with the first day of counts, and fishing was extended until further notice.²⁹

Igushik Section

The Igushik River fishing season ended early when the F/V Lone Star sank in the mouth of the Igushik River on the morning of June 30, 2013. ADF&G closed fishing immediately until the incident could be evaluated. The fishery reopened in the afternoon of July 1 but was closed again on July 5 after reports of contaminated fish were received. The Igushik River set gillnet fishery remained closed for the remainder

¹⁸ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45. Table 17 – Final daily and cumulative escapement estimates by species, Nushagak River sonar project, Bristol Bay, 2013, p. 46.

¹⁹ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Appendix A1 – Escapement goal ranges and actual counts of sockeye salmon by river system, in thousands of fish, Bristol Bay, 1993-2013, p. 66.

²⁰ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

²¹ Alaska department of Fish and Game, Fishery Management Report No. 14-23, May 2014, p. 13.

²² Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45.

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

²⁴ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 1, 19, and 20, p. 26, 50, and 51).

²⁵ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

²⁶ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45.

²⁷ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

²⁸ *id*

²⁹ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 16 – Daily sockeye salmon escapement tower counts by river system, Westside Bristol Bay, 2013, p. 45. Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

of the season and a six statute mile radius from the mouth of the Igushik River was closed to drift gillnet fishing as well.³⁰

The Igushik River escapement increased as a result of the River closure. The final escapement of 387,744 exceeded the upper end of the escapement goal range of 150,000 to 300,000 fish.^{31 32} The Igushik River sockeye salmon escapement exceeded the upper end of the escapement goal range by 29%.³³ The late opening for the season, the limited fishing hours early on and the early salmon run all contributed to the season's escapement figures..

Ex-Vessel Value

The Bristol Bay 2013 harvest of all salmon species was 16.4 million fish with a preliminary ex-vessel value³⁴ of \$141 million which is 26% above the 20-year average and ranks 7th over that same period. The weights, harvests, and prices listed in Table 1³⁵ were used to estimate ex-vessel value. This estimate does not include future price adjustments, loyalty bonuses, and differential prices for refrigerated versus non-refrigerated fish. Although the harvest was below the historical average, the increased price per pound caused the value to be above average.³⁶

Sockeye Salmon

The 2013 Bristol Bay sockeye salmon run was slightly under forecast and early to very early depending on the river system. Spring temperatures in the Bering Sea were closer to long term averages during the salmon season than the last several years. Total sockeye harvest and total inshore run were 6% and 12% below forecast.³⁷

Overall 15,376,432 salmon were harvested in the Bristol Bay 2013 season at an average weight of six pounds per fish. These fish were sold at an average of \$1.50/lb to 34 different companies. The Igushik fishing area accounted for 321K of the fish harvested. The State reported that this harvest for the Igushik was 29 percent higher than forecasted while the overall Bristol Bay Sockeye harvest was reported to be about 30% below the 20-year average.³⁸

³⁰ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Table 18 – Commercial fishing emergency orders, by district and statistical area, Bristol Bay Westside, 2013, p. 48 – 49.

³¹ Alaska Department of Fish and Game, Fishery Management Report No. 14-23, May 2014, Appendix A1 – Escapement goal ranges and actual counts of sockeye salmon by river system, in thousands of fish, Bristol Bay 1993 – 2013, p. 66 -67.

³² The river closure reduced harvest in that area of the district and allowed increased escapement into the Igushik River.

³³ Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, p.1. Table 5, Bristol Bay sockeye salmon goals and escapement, 2013, p. 3.

³⁴Ex-Vessel value: The post-season adjusted price per pound for the first purchase of commercial harvest. The ex-vessel value is usually established by determining the average price for an individual species, harvested by a specific gear, in a specific area. The delivery condition of the product is usually taken into consideration when the average price is established.

³⁵ Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, Table 1 – Average price, weight, and value of salmon harvest in Bristol Bay, 2013, p. 2.

³⁶ Alaska Department of Fish and Game Division of Commercial Fisheries, News Release, 2013 Bristol Bay Salmon Season Summary, pgs. 1 – 2.

³⁷ Alaska Department of Fish and Game Division of Commercial Fisheries, 2013 Bristol Bay Salmon Season Summary, p. 4.

³⁸ Alaska Department of Fish and Game Division of Commercial Fisheries.

CLAIMANT AND CLAIM

Claimant

Braund Fishing Group (Braund, Group, or Claimant) is an aggregate Bristol Bay set net commercial fishing operation that was comprised of nine Bristol Bay set net permit holders^{39 40} during the 2013 fishing season. Braund proclaims to be the number one producer of Bristol Bay salmon for Peter Pan Seafoods Inc., (PPSF) over the past several fishing seasons. Braund has 20 to 30 personnel each fishing season. The Group fishes the Bristol Bay from the first day to the last day that their fish processor purchases salmon in Bristol Bay.⁴¹ After Peter Pan Seafoods stops purchasing salmon for the season, Braund Fishing Group engages in direct marketing shipments of salmon out of Dillingham. Braund asserts to fish 24 hours a day, 7 days a week the entire fishing season, each season.

“Braund Fishing Group,” is a name created by the claimant, for the purpose of submitting this claim to the OSLTF.⁴² The claimant is a business entity organized under a sole proprietorship that does not operate under a typical corporate structure. Mr. and Mrs. (b) (6) are the sole proprietorship and own all the vessels, fishing gear, property, equipment, cabins, repair facilities and their own individual permits and sites. The other permit holders in the Group own their individual permits and sites. The Group is comprised of fishermen whom are individual permit holders that work for Mr. and Mrs. (b) (6). A large portion of the Group’s proceeds, after cannery withholdings, are paid to Mr. and Mrs. (b) (6) and then distributed to permit holders.⁴³ Some permit holders are paid in combination directly from the cannery and directly from Mr. and Mrs. (b) (6) after the final settlement occur with the cannery.⁴⁴

Mr. (b) (6) is the administrator and Attorney-in-fact representing Braund Fishing Group’s nine Bristol Bay, Alaska set net permit holders. All Braund Fishing Group permit holders have signed Power of Attorney forms appointing (b) (6) as their attorney-in-fact to act on their behalf regarding any and all matters pertaining to commercial fishing losses associated with the F/V LONE STAR incident and resulting oil spill, including but not limited to, administration of claims, litigation, as well as, collection and recovery of damages.⁴⁵

Claim

The claim was presented to the Oil Spill Liability Trust Fund (OSLTF or the Fund) on January 07, 2015. At the time of the Braund Group’s initial claim submission to the Fund, it initially sought, from the Fund, an alleged Lost Profits and Earnings in the amount of \$536,857.91. However, Mr. (b) (6) claim also contained a Real or Personal Property element in the amount of \$8,320, for gill set net repairs. On January 22, 2015, the NPFC removed the \$8,320 for the net repairs and placed them under a Real or Personal Property claim (J13014-0013). Mr. (b) (6) was notified about this change on January 22, 2016 via email⁴⁶. The new sum certain for this Lost Profits and Earnings claim (J13014 – 0008) is, \$528,537.91. Mr. (b) (6) was notified of this change via email on January 22, 2016.⁴⁷

The Claim is divided into three parts:

³⁹ (b) (6)
In 2013, a temporary emergency medical transfer was executed naming (b) (6) as temporary permit holder for the 2013 fishing. – (b) (6) held (b) (6) permit for year 2013.

⁴¹ Claimant’s Explanation of Damages, p. 1.

⁴² Claimant’s letter to the NPFC dated 2015 10 20, p. 4

⁴³ Claimant’s letter to the NPFC dated 2015 10 20, p. 4

⁴⁴ Claimant’s letter to the NPFC dated 2015 10 20, p.4

⁴⁵ See Power of Attorney tab in the Claimant’s binder at pages 381 through 428.

⁴⁶ See email to Mr. (b) (6), dated 2016 01 22

⁴⁷ Mr. (b) (6) acknowledged this change via email dated 2016 02 12.

1. Vessel Charter Claim: \$6,000

The vessel charter claim is for the Braund vessels that were chartered to the RP, on July 01, 2013, to place containment boom around the F/V LONE STAR. Mr. (b) (6) is claiming \$6,000 for the unpaid vessel charter for F/V LOGOS and F/V BLINKO at a charter hourly rate (1 vessel/1captain/1 deckhand) of \$1500 an hour for two of Braund's vessels that were chartered for two- hours each.

2. Claim A: \$422,149.35

(a) Claim A Damages: \$408,585.40. Claim A Interest: \$13,563.95

(b) Sites legally registered in Igushik District 6/16/13 through 8/04/13

Permit Holder	Permit No.	Damages ⁴⁸	Less Net Repairs
(b) (6)	S04T 64849 C	\$ 85,661.22	\$ (83,581.22)
(b) (6)	S04T 58959 A	\$ 139,384.82	\$ (137,304.82)
(b) (6)	S04T 57362 A	\$ 89,475.65	\$ (87,395.65)
(b) (6)	S04T 58444 W	\$ 102,383.71	\$ (100,303.71)
Total		\$ 416,905.40	\$ (408,585.40)

3. Claim B: \$100,388.56

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

(b) Sites legally registered in Igushik District, no later than, 7/10/13 through 8/04/13⁴⁹

Permit Holder	Permit No.	Damages ⁵⁰
(b) (6)	S04T 60084 Q	\$ 19,359.94
(b) (6)	S04T 59970 N	\$ 19,736.57
(b) (6)	S04T 60963 H	\$ 20,220.32
(b) (6)	S04T 60856 C	\$ 18,808.82
(b) (6)	S04T 59580 B	\$ 19,099.69
Total		\$ 97,225.34

Claimant's Basis for the Entire Claim

The Claimant's basis for its claim includes the gross value of sockeye salmon (loss of round pounds – unprocessed, as delivered to the dock)⁵¹ that the Claimant alleges it would have caught and delivered, in 2013, to PPSF, in the amount of 251,512 pounds of sockeye salmon. The loss of round pounds that Claimant asserts it would have delivered to Favco, Inc., in the amount of 9,953 pounds of sockeye salmon, which gives an asserted total lost harvest of 261,465 pounds of sockeye salmon. The Claimant seeks the replacement costs of salmon that would have been processed and distributed to the (b) (6) crew

⁴⁸ These damages are not inclusive of the vessel charter however, they are inclusive of the homepack and fuel costs.

⁴⁹ Mr. (b) (6) alleges that the night before the F/V Lone Star incident, the Braund Group fishermen that were fishing in the Combine and Coffe Point subdistricts planned to move down to the Igushik subdistrict but could not move down to the Igushik subdistrict because of the oil spill incident. See Braund's Explanation of Damages, p. 11.

⁵⁰ These damages are not inclusive of the vessel charter however, they are inclusive of the homepack and fuel costs.

⁵¹ Claimant's Confidential Business Information, p.5.

and permit holders as Homepack,⁵² in the amount of \$15,300, additional fuel costs incurred in the amount of \$9,900.57, and interest that has accrued since June 30, 2013, in the amount of \$16,727.16. Braund's total damages plus interest for this claim is **\$528,537.91**.

Total Peter Pan Sales Lost Harvest (LBS)	Total Favco Sales Lost Harvest	Total Lost Harvest (LBS)	Total Peter Pan Sales Lost Harvest Damages (6/30/2013 7/24/2013)	Total Favco Sales Lost Harvest Damages (7/25/2013 8/04/2013)	Total Homepack Damages	Total Fuel Costs	Total Oil Spill Damages	Interest Total	Vessel Charter paid by RP	Braund Total Damages + Interest
251,512	9,953	261,465	445,176.41	\$35,433.77	15,300.00	\$9,900.57	505,810.75	\$16,727.16	6,000.00	528,537.91

RP Presentment

Claimant made presentment to the RP on October 15, 2014, in the amount of \$530,857.91. On October 23, 2014, Braund Group received correspondence from Matthews & Zahare, P.C., legal Counsel for the Responsible Party, denying the claim. The NPFC received Braund Group's claim on January 08, 2015.

CLAIMANT'S SUPPORT DOCUMENTATION

Claimant's support documentation was submitted to the NPFC in three separate binders, consisting of information that the claimant marked as Business Confidential Information. Claimant also provided DVD discs that documented the Braund Group rapidly hauling their nets. The support documentation will be discussed below.

Fishing District Transfer Agent Forms

The Braund Group provided Transfer Agent Forms to prove that the decision and intent to transfer permits to the Igushik in mid-season was made before the oil spill incident. Claimant asserts that some of the fishermen from the Braund Group planned to move on June 29, 2013, the night before the oil spill incident, from the Nushagak section to the Igushik Section.

Power of Attorney

Mr. (b) (6) acts as the Attorney-in-Fact for the Braund Group members that are part of this claim.⁵³ Mr. (b) (6) provided signed Power-of-Attorney forms and valid driver's licenses for each fisherman.

Proof of the Igushik Fishery Leases for each Set Net Site and Permit Holder

Braund Group's original claim submission contains proof of all permit holders' Igushik District registrations to demonstrate that each fisherman in the Group was legally permitted to fish in the Igushik Commercial District. Mr. (b) (6) also submitted Igushik fishery leases for each set net site as well as an Igushik fishery map that shows areas that are not leased or open beach sites.

⁵² Fish that is taken home to the crew.

⁵³ (b) (6), (b) (6), (b) (6).

Catch History – Gross Earnings

The Claimant provided Peter Pan Seafoods, Inc., Bristol Bay Settlement Summaries, for years 2011 through 2014, which demonstrate the Braund Group permit holders' (each permit holder) net fish value, less taxes.

Complete Tax Returns for Years 2010 through 2014

On April 17, 2015, the NPFC requested that Mr. (b) (6) submit complete tax returns for years 2010 through 2014 for the Group⁵⁴. On November 09, 2015, the Fund received each member of the Braund Group's individual tax returns.

Letter from Favco

Mr. (b) (6) submitted a letter from Favco⁵⁵ to demonstrate that in 2013 Mr. (b) (6) and Favco had planned to ship Igushik Sockeye to Favco's processing facility, in Anchorage, from July 25, 2013 through August 02, 2013 and that the market price for Sockeye would have been \$3.56 per pound.

Mr. (b) (6) also provided fish landing tickets for Favco, for years between 2009 through 2015 to show the historical pounds of salmon caught and sold to Favco.

Homepack

Mr. (b) (6) provided a letter from PPSF⁵⁶ in regards to the PPSF fillet cost for the Braund Fishing Group. The letter states that in 2013, the Peter Pan Seafoods, Inc. (PPSF) Dillingham Facility sold #1 grade, pin bone out, vacuum packaged sockeye fillets (1 lb. – 2 lb. size category) for \$8.50 per pound and that those fillets were available at that cost to fishermen, crew, and the public. The letter further explains that PPSF provides a service in producing a small portion of the sockeye fillets from the Braund Fishing Group's catch towards the end of the fishing season. PPSF states in its letter that PPSF was unable to offer this service to the Braund Group in 2013 because of the oil spill incident. Therefore, according to PPSF, there were no Homepacks of sockeye fillets in 2013.

Spring Adjustment

In the same PPSF letter,⁵⁷ PPSF also explained its spring price adjustment calculation. PPSF states that the Bristol Bay spring price adjustment is based on the fisherman's harvest of sockeye salmon from the previous fishing season. PPSF Management set a ceiling dollar amount for the Bristol Bay price adjustment. The Spring Adjustment is allocated to the fishermen based on production thresholds of their over-all catch of sockeye salmon for the season. PPSF further explains that the higher producing fishing operations receive a higher adjustment price per pound and that the discretionary price adjustment was allocated to the Braund Fishing Group as well as other set net operations that fished for Peter Pan.

State Landing Data (Fish Tickets) for the Years 2010 through 2015, for each Permit Holder

Mr. (b) (6) submitted copies of all available State landing data (fish tickets) for the years 2010 through 2014 for each permit holder. Mr. (b) (6) explained that any missing fish tickets would be a result of loss

⁵⁴ See NPFC letter, dated April 17, 2015 to Mr. (b) (6).

⁵⁵ Favco letter dated 2015 10 21

⁵⁶ PPSF letter dated 2015 10 09

⁵⁷ PPSF letter dated 2015 10 09

during inclement weather, lack of sleep during the season, or other clerical errors. Mr. (b) (6) further explains that a lot of the tickets arrive at the Braund cabin wet, crumpled, or they get lost or are illegible.

Contracts and Agreements

The NPFC requested that Mr. (b) (6) submit all contracts that he has in place between himself and the other fishermen in his group. Mr. (b) (6) explains in a letter to the NPFC, dated, October 29, 2015, that the Braund Group operates without formal written contracts. Mr. (b) (6) describes the Braund Group as a “tight-knit” group of fishermen who operate with a “handshake” deal. Mr. (b) (6) states that the “handshake” agreement works for the Braund Group, and that there is complete trust among the Group.⁵⁸

APPLICABLE LAW:

Damages include damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The Fund shall be available to the President for the payment of uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. §2712(4).

All claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title. 33 U.S.C. §2713(a). If a claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may commence an action in court against the responsible party or guarantor or present the claim to the Fund. 33 U.S.C. §2713(c).

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

With regard to claims for loss of profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, et seq.

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

“In addition to the requirements of Subparts A and B of this part, a claimant must establish the following—

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be

⁵⁸ Braund letter to NPFC dated 2015 10 29, p. 13.

clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.” 33 CFR 136.233 (a) – (d).

The compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136.235 (a) – (e).

NPFC ANALYSES

Reconstructing and determining a loss of profits due to a reduction in fish caught is an extremely challenging endeavor. While the claimant has argued some very specific strategies for quantifying the losses for the members of the “Braund Group” the strategies include some assumptions that are not fully supported. In reviewing this claim, the NPFC finds that fishing in the Igushik River fishing grounds within the Nushagak District of the Bristol Bay Salmon fisheries were negatively impacted by the sinking of the F/V Lonestar at the mouth of the river on June 30, 2013 and the resultant oil spill incident and response. The success of the fishermen each year is completely dependent upon that years “run” both in size and timing. Historical data and comparisons to other years are highly variable depending on the size of the run, when the state opens or closes a fishery and when the run comes in.

The claimant is a group of salmon fishermen and salmon permit holders from the Nushagak District of Bristol Bay. While the group and the individual fishermen collectively fish more than the Igushik River and they catch more than just Sockeye Salmon, for the purposes of quantifying lost catch as a result of this incident, the NPFC analyzed the “Group’s” fish caught for 2013 as if they were all sockeye salmon and also attributed all fish to the impacted area, although certain permits and fishermen had the ability to catch in other locations within the Nushagak District, which includes the impacted Igushik.⁵⁹ The NPFC’s method used the actual individual fisherman (permit holders) catch rate for the impacted year for the portion of the run that the fisherman had unimpacted access to the run.

Escapement

As put forward by the claimant, the catch or harvest within the Igushik was closely monitored and documented by the State of Alaska. The State has closely managed and tracked the salmon fishery in Bristol Bay for many years and has 57- years of history. The commercial catch and escapement data captured by the State fish towers combined with fish ticket reports for catch determine the state reported run data for the “Inshore Commercial Catch and Escapement” data⁶⁰. The Igushik River Tower counts the escapement for the Igushik River section and Alaska State reports that the fish are counted 5 days after passing through the Igushik area fishing grounds, so there is a five day delay in when the counts are registered and when that portion of the years run has passed through the fishing grounds.⁶¹

Escapement Ranges

The State of Alaska notes that the 2013 Salmon Fishery run for the Igushik River fishing ground was one of the earliest runs on record.⁶² In fact, the 167,202 fish counted by the Igushik tower through June 30,

⁵⁹ Mr. (b) (6) alleges that the night before the F/V Lone Star incident, the Braund Group fishermen that were fishing in the Combine and Coffe Point subdistricts planned to move down to the Igushik subdistrict but could not move down to the Igushik subdistrict because of the oil spill incident. See Braund’s Explanation of Damages, p. 11.

⁶⁰ Table 20 of State report.

⁶¹ The lag time is based on (b) (6), Area Biologist, email to the NPFC, dated 2016 01 14.

⁶² State of Alaska, Fishery Management Report No. 14 – 23

2013 was the single largest June escapement count for the Igushik River recorded going back to 1958. The annual average for the month of June from 1958 through 2015 is 40,803 fish. The State documented that the 2013 Igushik River Inshore Commercial Season Run as 708,198 fish with a catch of 321,162 and an escapement of 387,036.

Using the daily count records for escapement and applying the five day delay from when fish pass through the fishing grounds before they get counted indicates that 254,208 of the 387,036 total fish for the 2013 escapement had passed through the fishing grounds by the end of June. This escapement represents a total of 65.7% or 66% of all escapement and that percentage fairly represents the amount of the run that had passed the fishing grounds at the time of the incident.

On July 05, 2013, fishing was closed on the Igushik River by the State of Alaska⁶³. Using the same methodology, the July 10th Igushik Tower counts (July 5 closure plus five day delay) demonstrates that 85% of the run had passed the fishing grounds by the July 05, 2013. Therefore all of Braund's fishing permits that continued to fish beyond July 01, 2013 lost an opportunity to catch 15% of the run and it also means that those fishermen landed only 85% of what they would have been landed, if the Braund Group had the opportunity to fish the entire run.

NPFC Spreadsheet and Methodology

The NPFC documented each fish ticket, per fisherman, on an excel spreadsheet which was the easiest and most convenient way of recreating fishing years 2010 through 2015. The NPFC analyzed the Group's fish that were caught in 2013, the impacted year, as if they were all Sockeye Salmon, to determine the "catch rate."

Exhibit A is a summary spreadsheet⁶⁴ of what the Braund group reported to have caught, by each fisherman. Each fisherman has an entry in the column labeled, "Opportunity Lost," which represents the pounds of fish that were not caught, based upon whether the fisherman stopped fishing at the end of June or after the July 5th River closure. The number of pounds that were lost was determined by using the individual catch as percentage of the run and then applying the amount of the run that was lost.

If a fisherman fished for 85% of the run (using the escapement numbers) then the total pounds of fish that the fisherman caught was then divided by .85 (representing the 85% of the run that was fished). Similarly, a fisherman that stopped landing catches on June 30, 2013, their catch was divided by .66 to arrive at what the catch should have been, had the fisherman not missed 34% of the run. The total catch projected is then reduced by what was landed to determine the pounds of fish that were lost. As demonstrated in the NPFC spreadsheet (exhibit A) this number equates to the Total of the Opportunity Lost, for the Braund Group.⁶⁵

In addition to this season ending opportunity loss, the claimant demonstrated that at the time of the sinking in an effort to clear nets, fishing was disrupted and an increased number of fish escaped.. To recognize and quantify this loss, the total escapement counted between July 3rd through July 6th was added and divided by four (4) to determine the average and then divided by the total escapement to determine what the daily percentage of sockeye run was passing through the fishing grounds during the period of disruption. The result was that during the June 30th and July 1st disruption period, 5.6% of the 2013 Sockeye Inshore Run was passing through the Igushik fishing grounds per day.

Supplemental 5.6%

⁶³ State of Alaska, Fishery Management Report No. 14 – 23.

⁶⁴ NPFC Spreadsheet

⁶⁵ An additional 45,942 pounds of fish.

The NPFC spreadsheet has a column entitled “supplemental 5.6%”. This column takes the fisherman’s projected catch (actual catch increased by the loss of opportunity poundage) and multiplies it by 5.6% to arrive at an additional loss due to the disruption. Collectively the fishing group has another 15,327 pounds of fish attributed for the disruption. In aggregate, using this methodology, the Braund Group lost approximately 61,268.8 pounds of fish.

Analyses of Claim Support Documents

The NPFC reviewed all of the claim documents provided. The fishing permit transfer forms show that five of the fishermen that were fishing in the Nushagak section of Registration planned to transfer to the Igushik section of the River. The transfer forms do not provide when the fishermen were planning to transfer; however, the fishermen had to transfer no later than July 10, 2013.⁶⁶

The NPFC finds that the Settlement Summaries provide a financial overview of what the Braund Group earned during years 2011 through 2014. The affected year, 2013 Summary, provides that the Braund Group earned, after taxes, \$357,791.75 for a delivery of 231,401 pounds of various species of salmon. The average price reported by the State of Alaska is \$1.50 per pound for sockeye salmon, the PPSF summary shows that PPSF paid \$1.50 per pound for only the Reds (Sockeye) species of salmon, which is the most caught species of salmon delivered to PPSF, during the 2013 fishing season.

The NPFC reviewed the income tax returns and found that the income tax returns do not support the Braund Group’s end of year gains and losses as a whole, due to the nature of the Braund Group’s business structure. Braund Fishing Group is a name created by the Claimant for the purpose of this claim. Mr. and Mrs. Braund are a business entity organized under a sole proprietorship. The Claimant asserts that the Braund Group is a group of fishermen that come together every fishing season to fish. The “Groups” proceeds, after cannery withholdings are paid to Mr. and Mrs. (b) (6) and then distributed to the permit holders according to the “handshake” agreement that is in place among the fishermen.

The NPFC reviewed and analyzed the 2010 through 2015 fish tickets provided by the claimant. Comparing the results of each years fishing is highly variable depending on the size of the run, when the state opens or closes a fishery, weather and when the run comes in. However, the NPFC did use the actual 2013 fish tickets to establish the individuals actual catch rate leading up to the incident. This helped provide the basis to evidence a loss as noted above under the *NPFC Spreadsheet and Methodology* section.

NPFC OFFER

To determine injury/compensation, the NPFC reviewed the Claimant’s fishing records for 2013 and relied heavily on the 2013 State of Alaska research and records. More specifically, in measuring and quantifying the damage, the NPFC relied on the Alaska State Escapement Data for 2013 as well as the State’s information on an average price of Salmon in 2013.⁶⁷

The State of Alaska made it clear that the salmon that pass through the Igushik fishing grounds are counted five (5) days later while passing the Igushik Tower.⁶⁸ This would mean that a fish passing through the Igushik fishing grounds on June 30th would be counted on the 5th of July. Similarly, fish

⁶⁶ The Claimant provided transfer forms for (b) (6), and (b) (6).

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

⁶⁸ The 5-Day delay is based on Tim Sands, Area Biologist, email to the NPFC, dated 2016 01 14.

passing through the fishing grounds on the 5th would be counted by the State on the 10th. Applying this information to the State's escapement data supports that on June 30 almost 66% of the 2013 Igushik River salmon run had passed or was passing through the fishing grounds. The state escapement data further supports that a full 85% of the 2013 Igushik Sockeye run had passed the fishing grounds by the 5th of July, thus leaving only 15% of the Salmon run for the harvest or escapement during the balance of the 2013 run.

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

The NPFC used the State data for escapement counts at the tower between July 3rd through July 6th. These four days represent the fish escapement from when fish passed through the fishing grounds on June 28th through July 01st. These escapement rates were averaged and it was determined that an average of 5.6 percent of the run was passing through the fishing grounds per day during that time frame. To compensate for the disruption from June 30th into July 01st, each fisherman's catch is being increased by an additional 5.6% for a total increase of another 15327.023 pounds of fish bringing the total lost catch due to disruption and closures to 61,268.86 pounds. This 61,268.86 pounds represents a near 27% increase over the 231K⁶⁹ pounds of fish that the Braund Group caught and sold. The Alaska State data provides that the lost fish is valued at \$1.50 per pound which is more than Braund was receiving from Peter Pan for all species of salmon, bringing the total valuation of loss of profits to \$91,903.30.

Denied Costs

Vessel Charter Claim: \$6,000

As noted above, the vessel charter claim is for the Braund vessels that were chartered to the RP, on July 01, 2013, to place containment boom around the F/V LONE STAR. However, this cost has been paid by the RP in the amount of \$6,252⁷⁰ on March 17, 2015⁷¹ and therefore, the vessel charter claim in the amount of \$6,000 is denied.

Additional Fuel: \$9,900.57

Claimant asserts that he incurred an increase in fuel costs that are alleged to be associated with Braund's end of season pack-up of camp. Peter Pan's fishing tender, the CARLA RAE C, left the Igushik fishing district prior to the Braund Fishing Group leaving the area for the season. Braund Fishing Group typically utilizes a PPSF fish tender to tow the Braund vessels and haul Braund's gear, provisions, and personnel, between Braund's camp and Dillingham.⁷² However, due to the River closure, the CARLA RAE C, went back to Dillingham earlier than the Braund Group. Therefore, the Braund Group hauled its

⁶⁹ This number represents the number of pounds that were sold to PPSF, based on the PPSF Settlement Summary. Based on the fish tickets that were legible and submitted to the Fund, 227K pounds of salmon was landed by the Braund Group in 2013.

⁷⁰ Mr. (b) (6) paid paid \$252. In interest costs.

⁷¹ (b) (6) check number 1423, dated March 17, 2015, to (b) (6).

⁷² The distance between the Braund camp and Dillingham is 34 miles.

own gear and vessels to Dillingham as opposed to loading the gear on a tender and towing the vessels back to Dillingham.

The Braund group did not provide any documentation that supports its claim of increased fuel costs. Therefore, the increased fuel costs in the amount of \$9,900.57 is denied.

Interest: \$16,727.16

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

CONCLUSION

The NPFC used the above methodology because it ties directly to the reported 2013 Sockeye Salmon inshore run as determined by the State of Alaska. It correlates directly to the actual rate of catch by each of the fishermen within the Braund Group for the impacted year and uses the actual harvest and escapement data from the state for the impacted season while incorporating the actual timing of the impacted years run. Once the total fish caught was obtained, the NPFC was able to figure out the loss of opportunity for the rest of the season. By utilizing the State's published average price per pound of fish at \$1.50 for Sockeye (and not all fish used in determining a fisherman's catch were sockeye) and published average pound per fish (6 lbs), the NPFC is able to provide an offer of \$91,903.30 for lost catch to the Braund Group.

Offer Amount: \$91,903.30

Claim Supervisor: (b) (6)

Date of Supervisor's review: 3/01/2016

Supervisor Action: *Approved*