

## CLAIM SUMMARY / DETERMINATION

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| <b>Claim Number:</b>     | H19001-0002                               |
| <b>Claimant:</b>         | T&T Marine Salvage, Inc.                  |
| <b>Type of Claimant:</b> | OSRO                                      |
| <b>Type of Claim:</b>    | Removal Costs                             |
| <b>Claim Manager:</b>    | [REDACTED]                                |
| <b>Amount Requested:</b> | \$92,212.83                               |
| <b>Action Taken:</b>     | <b>Offer in the amount of \$64,526.81</b> |

### I. EXECUTIVE SUMMARY:

On October 23, 2018, U.S. Coast Guard Sector Guam established Port Heavy Weather Condition (PHWC) Yankee in advance of Typhoon Yutu within the ports of Guam and Commonwealth of the Northern Mariana Islands (CNMI) which required all vessels greater than or equal to 200 GT to depart port or to have obtained written authorization from the Captain of the Port (COTP) prior to the establishment of PHWC Yankee to remain in port. In addition, the order established that upon setting PHWC Zulu, all ports and marinas would be closed and all cargo/bunkering operations within the port must stop.<sup>1</sup> The motor yacht GRAND MARIANA<sup>2</sup> which was subject to, and aware of the Order, failed to depart port at the direction of the COTP and failed to request a waiver to remain in port.<sup>3</sup>

On October 26, 2018, the GRAND MARIANA grounded and posed a substantial threat to discharge oil into Tanapag Harbor, Saipan, a navigable waterway of the United States.<sup>4</sup> Sector Guam notified the National Response Center (NRC) of the incident.<sup>5</sup> Pride Keen Limited, (Pride Keen) the owner and operator of the GRAND MARIANA, arrived on-scene and hired Oil Spill Response Operations Company (OSROCO) and T&T Marine Salvage, Inc. (T&T) to assess the damage to the GRAND MARIANA and to remove fuel which posed a substantial threat of discharge into Tanapag Harbor.<sup>6</sup> Sector Guam responded and issued an Administrative Order (Admin Order) to Pride Keen to remove the fuel from the GRAND MARIANA by October 27, 2018,<sup>7</sup> and provided additional time after Pride Keen failed to remove the fuel within the deadline.<sup>8</sup>

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<sup>1</sup> CG Sector Guam PHWC Yankee order issued October 23, 2018. PHWC Yankee order was distributed to the CNMI port community.

<sup>2</sup> The GRAND MARIANA I, VIN 1008437, is a 123.7-foot, 444 GT passenger yacht with a fiberglass hull. It was built on September 1, 2003 and is Cayman Islands flagged. See, CG Vessel Critical Profile for the GRAND MARIANA I, VIN 1008437. Note, the proper name of the vessel is the GRAND MARIANA. See CG Sector Guam response to the NPFC dated September 15, 2020, response to question 5

<sup>3</sup> CG Sector Guam response to the NPFC dated July 28, 2020, response to question 1.

<sup>4</sup> CG POLREP 1 DTG R310705Z Oct 18.

<sup>5</sup> National Response Center Report #1228564 reported on October 25, 2018 at 0700 EST.

<sup>6</sup> CG POLREP 1 DTG R310705Z Oct 18.

<sup>7</sup> CG Sector Guam Admin Order issued to Pride Keen Limited dated October 26, 2018. The Admin Order required Pride Keen to remove the fuel from all tanks, engines, fuel lines and all other sources onboard that contained oil. In addition, the Admin Order required Pride Keen to conduct a full environmental impact assessment and provide a proposed salvage plan in writing to the cognizant CG on-scene coordinator and territory on-scene coordinator.

<sup>8</sup> CG POLREP 2 DTG R020809Z Nov 18.

On November 1, 2018, Sector Guam issued a Notice of Federal Assumption to Pride Keen<sup>9</sup> and assumed control of the pollution removal activities as Pride Keen had failed to abate or remove the threat of pollution from the GRAND MARIANA.<sup>10</sup> On November 18, 2018, Captain Chase, U.S. Coast, Sector Guam, sent the NPFC a letter in regards to “Support of Claim for Substantial Threat to the Environment, on October 22, 2018 during M/V GRAND MARIANA I response efforts.”<sup>11</sup>

In accordance with the Oil Pollution Act of 1990, the owner of the M/V GRAND MARIANA I (Hull ID No. 1008437) was identified as the Responsible Party (RP) for the incident.<sup>12</sup> Pride Keen Limited is the registered owner.<sup>13</sup> Pride Keen responded and hired OSROCO and T&T Marine to assess the damage sustained by the GRAND MARIANA and to remove the 15,500 gallons of fuel which posed a substantial threat of discharge into Tanapag Harbor. A survey of the vessel confirmed that the vessel was hard aground and identified three cracks in the hull with free communication with the sea.<sup>14</sup> T & T presented its invoices to the RP.<sup>15</sup> The RP did not respond to the claimant. The claimant then presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$92,212.83.<sup>16</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$64,526.81 of the requested \$92,212.83 is compensable and offers this amount as full and final compensation of this claim.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

Sector Guam's area of responsibility (AOR) in the Western Pacific includes the Commonwealth of the Northern Mariana Islands (CNMI) and is subject to frequent heavy weather, including the potential for organized, tropical cyclones classified by maximum sustained wind speeds. In the Eastern Hemisphere, these cyclones are called typhoons, and they can form and intensify rapidly. Based upon the meteorological conditions in the Sector Guam AOR, the typhoon season for the Sector Guam AOR extends from January 1 through December 31. Therefore, the Sector Guam AOR remains in Port Heavy Weather Condition (PHWC) WHISKEY (winds of 39 mph and above possible within 72 hours) as a default condition.<sup>17</sup> Changes to PHWCs are communicated throughout the port community through a variety of means. Within the CNMI, changes to PHWC are distributed via email to port community members from an email distribution list maintained by the CG Marine Safety Detachment (MSD) Saipan. That email distribution list is updated upon request from a member of the port community or at the discretion of MSD Saipan. Additionally, changes to PHWC are announced at briefings in the CNMI emergency operational center. Lastly, MSD Saipan personnel conduct

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<sup>9</sup> CG Sector Guam Notice of Federal Assumption issued to Pride Keen Limited dated November 1, 2018.

<sup>10</sup> CG POLREP 2 DTG R020809Z Nov 18.

<sup>11</sup> Letter to the NPFC from the FOSC of Sector Guam dated November 18, 2018.

<sup>12</sup> CG POLREP 1 DTG R310705Z Oct 18, Section 1(d).

<sup>13</sup> *Id.*

<sup>14</sup> CG POLREP 1 DTG R310705Z Oct 18.

<sup>15</sup> T & T Marine OSLTF Claim Form, question 5 dated May 14, 2021.

<sup>16</sup> 33 CFR 136.103(c).

<sup>17</sup> CG Sector Guam Heavy Plan dated April 22, 2015.

port assessments after each PHWC change. Vessels identified in port during this assessment are contacted and reminded to make appropriate preparations for heavy weather or to prepare to leave port. The vessel owners failing to comply with the direction provided by MSD Saipan are subject to COTP orders mandating their compliance.<sup>18</sup>

Additionally, Apra Harbor/Port of Guam, Tanapag Harbor/Port of Saipan, Port of Rota, and the Port of Tinian are not considered safe havens during a typhoon due to their low topography. Specifically, these ports do not provide adequate windbreak or barriers against tidal surges; therefore, there is no harbor of refuge within the Sector Guam Captain of the Port (COTP) AOR.<sup>19</sup> As a result, Sector Guam has determined that the risk of damage to the ports during heavy weather is minimized when the number of commercial vessels in port is decreased and requires all ocean-going commercial vessels and ocean-going tug/barge combinations over 200 gross tons (GT) generally be required to depart the port by order of the COTP when heavy weather approaches. However, if any vessels 200 GT or over are unable to depart the port, that vessel must request a waiver from the COTP to remain in port by submitting a Remaining in Port Checklist which identifies the vessel's need to remain in port and provides important information such as the vessel's location, amount of fuel on-board and operational status of the vessel's machinery (main engines, generators, bilge pumps, firefighting pumps, etc.).<sup>20</sup>

On October 22, 2018, Sector Guam established PHWC X-Ray in advance of Typhoon Yutu within the ports of Guam and CNMI which informed all vessel masters to prepare for PHWC Yankee which they estimated would be issued on October 23, 2018. Specifically, the order established that upon setting PHWC Yankee, all vessels 200GT and over were required to depart port or request a waiver from the COTP to remain in port by submitting a Remaining in Port Checklist.<sup>21</sup> During their port assessment, MSD Saipan personnel discovered the GRAND MARIANA in port and unable depart port in advance of Typhoon Yutu. As a result, MSD Saipan issued a Notice of Federal Interest (NOFI) to Pride Keen advising them of the GRAND MARIANA's substantial threat to discharge oil into Saipan Harbor and of Pride Keen's responsibilities and financial liability in the event of an oil spill from their vessel.<sup>22</sup>

On October 23, 2018, Sector Guam established PHWC Yankee in advance of Typhoon Yutu within the ports of Guam and CNMI which required all vessels greater than or equal to 200 GT to depart port or to have obtained written authorization from the COTP prior to the establishment

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<sup>18</sup> Email from Sector Guam to the NPFC dated October 22, 2020 for claim H19001-0001.

<sup>19</sup> The CG Captain of the Port enforces regulations for the protection and security of coastal and inland operational areas, including vessels, harbors, and waterfront facilities; anchorages; bridges; safety and security zones; and ports and waterways.

<sup>20</sup> CG Sector Guam Heavy Plan dated April 22, 2015. Sector Guam's authority to implement and enforce the Port Heavy Weather Conditions identified within their Heavy Weather Plan resides in part within the Ports and Waterways Safety Act which provides the CG Captain of the Port broader regulatory authority over regulated and non-regulated areas such as improvements in the supervision and control of all types of vessels operating in U.S. navigable waters.

<sup>21</sup> CG Sector Guam PHWC X-Ray order issued October 22, 2018. PHWC X-Ray order was distributed to the CNMI port community via email by MSD personnel. There were four individuals representing the GRAND MARIANA on the email distribution to include [REDACTED] and [REDACTED]. Additionally, Mr. [REDACTED], was also notified of the PHWC X-RAY order via email. See, email from MSD Saipan to Mr. [REDACTED].

<sup>22</sup> MSD Saipan Notice of Federal Interest issued to Pride Keen Limited dated October 22, 2018. In addition, on the same day, MSD Saipan issued a Notice of Federal Interest to Pride Keen for the substantial threat of oil discharge posed by the GRAND MARIANA II as this vessel had also failed to depart port in advance of Typhoon Yutu. See email from Sector Guam to the NPFC dated October 8, 2020 for claim H19001-0001.

of PHWC Yankee to remain in port. In addition, the order established that upon setting PHWC Zulu, all ports and marinas would be closed and all cargo/bunkering operations within the port must stop.<sup>23</sup> The GRAND MARIANA<sup>24</sup> failed to depart port at the direction of the COTP and failed to request a waiver to remain in port.<sup>25</sup>

As a result, Sector Guam issued an Admin Order to Pride Keen which required the removal of all fuel from the GRAND MARIANA's fuel tanks, engines, fuel lines, and any other potential sources onboard that may have oil products in them in advance of the impending typhoon and prior to shifting to the designated mooring.<sup>26</sup> Pride Keen failed to comply with the Admin Order as their efforts to remove fuel from the GRAND MARIANA were unsuccessful.<sup>27</sup>

Later that day, Sector Guam established PHWC Zulu within the port of Guam and CNMI which closed all ports and marinas and stopped all cargo/bunkering operations within the port.<sup>28</sup>

On October 24, 2018, the GRAND MARIANA was moved to a mooring within Tanapag Harbor, but due to deteriorating weather, it was deemed unsafe for divers to properly moor the vessel as desired. As a result, the vessel was anchored within the lagoon with two anchors set out to secure her position.<sup>29</sup>

During the passage of Typhoon Yutu, the GRAND MARIANA broke her moorings within Tanapag Harbor and grounded approximately 150 meters off of Micro Beach in Tanapag Harbor, Saipan. At the time of the grounding, the GRAND MARIANA contained approximately 15,500 gallons of fuel.<sup>30</sup>

On October 27, 2018, Sector Guam returned to PHWC Whiskey within the CNMI following the passage of Typhoon Yutu.<sup>31</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, Pride Keen Limited is the owner of the M/V GRAND MARIANA (Hull ID No. 1008437) and is identified as the Responsible Party (RP) for the incident.<sup>32</sup> On May 25, 2021, the NPFC issued a Responsible Party Notification

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<sup>23</sup> CG Sector Guam PHWC Yankee order issued October 23, 2018. PHWC Yankee order was distributed to the CNMI port community via email by MSD Saipan. There were five individuals representing the GRAND MARIANA on that email distribution to include [REDACTED] and [REDACTED].

<sup>24</sup> The GRAND MARIANA, VIN 1008437, is a 123.7-foot, 444 GT passenger yacht with a fiberglass hull. It was built on September 1, 2003 and is Cayman Islands flagged. See, CG Vessel Critical Profile for the GRAND MARIANA I, VIN 1008437. Note, the proper name of the vessel is the GRAND MARIANA. See CG Sector Guam response to the NPFC dated September 15, 2020, response to question 5.

<sup>25</sup> CG Sector Guam response to the NPFC dated July 28, 2020, response to question 1 on claim H19001-0001.

<sup>26</sup> CG Sector Guam Administration Order issued to Pride Keen Limited dated October 23, 2018.

<sup>27</sup> CG Sector Guam response to the NPFC dated July 28, 2020, response to question 2 on claim H19001-0001.

<sup>28</sup> CG Sector Guam PHWC Zulu order issued October 23, 2018. PHWC Zulu order was distributed to the CNMI port community via email by MSD personnel. There were five individuals representing the GRAND MARIANA on the email distribution to include [REDACTED] and [REDACTED]. See email with PHWC Zulu order attached dated October 23, 2018.

<sup>29</sup> Claimant's letter to the NPFC dated July 10, 2020, response to question 7 on claim H19001-0001.

<sup>30</sup> Claim submission dated May 14, 2020 on claim H19001-0001.

<sup>31</sup> CNMI-FEMA Joint Information Center release dated October 27, 2018.

<sup>32</sup> CG POLREP 1 DTG R310705Z Oct 18.

letter to Imperial Pacific International (CNMI) LLC.<sup>33</sup> A Responsible Party Notification letter notifies the owner and / or operator that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.<sup>34</sup>

### *Recovery Operations*

On October 22, 2018, T & T received notification from Pride Keen that the M/V GRAND MARIANA I was in need of towage from Saipan due to an imminent threat of a typhoon forecast to hit the area between October 24-25. At the time of the notification, the GRAND MARIANA was estimated to have 15,000 gallons of fuel onboard. However, due to the proximity of the storm and the late notification, T & T was unable to tow the vessel from the port into the open sea. Following is a description of actions undertaken by T & T.

1. On, October 23, 2018, T & T personnel in Saipan began preparing to lighter fuel from the vessel;
2. On October 24, 2018, T & T received approval from the GRAND MARIANA Maintenance Manager to remove fuel from the GRAND MARIANA while the personnel in Guam and Saipan stood by with the pollution equipment. However, after numerous attempts to defuel the vessel, personnel were unable to get any product pumped out of the GRAND MARIANA due to not having access to the tanks via the vessel's manifold. The U.S. Coast Guard ordered T & T to stop their attempts due to lightening;
3. On October 25, 2018, GRAND MARIANA broke her mooring lines during the typhoon and grounded approximately 170 meters off a recreational beach. T & T's Salvage Master, [REDACTED] and Dive Supervisor, [REDACTED] departed Singapore for Guam and T & T office personnel worked with the yacht owners for contractual and commercial needs as well as structural drawings of the vessel. T & T personnel were in contact with Salvage Engineering Response Team (SERT) for the salvage plans and the vessel's engineering details. T & T began booming operations by placing 400 feet of permanent harbor boom around the GRAND MARIANA. Once the booming operations were complete, the boats and personnel secured at Charlie dock for the evening;
4. On October 26, 2018, T & T personnel stood by with a pneumatic pump and pollution equipment, while they maintained the boom around the GRAND MARIANA. Discussions were on-going regarding security to ensure payment of the project. The engineers in Houston, Texas and Singapore requested structural drawings from the vessel owners while working on the salvage plans. Communication between T & T and SERT continued throughout the day;
5. On October 27, 2018, Salvage Master [REDACTED] and Dive Supervisor [REDACTED] arrived in Saipan via a U.S. Coast Guard Cutter in Guam. T & T personnel continued to standby with the pneumatic pump and the pollution equipment. The

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<sup>33</sup> NPFC RP Notification Letter dated May 25, 2021

<sup>34</sup> To date, the NPFC has not heard from the RP regarding these costs.

- vessel remained secured at Charlie Dock and preparation for salvage and lightering the vessel were to begin once all personnel were onshore;
6. On October 28, 2018, On-site inspection of the GRAND MARIANA commenced. Salvage Master, [REDACTED] worked with USCG LT [REDACTED] in requesting the on-site inspection report of the GRAND MARIANA. T & T personnel continued to maintain the boom around the GRAND MARIANA and reset the boom anchors as winds shifted. Discussions continued for security to ensure payment for the project. Engineers in Houston, Texas and Singapore worked on plans and communications with SERT wee ongoing;
  7. On October 29, 2018, T & T proposed all recovery plans submitted to the vessel owner's representative. T & T personnel continued to standby with the pneumatic pump and pollution equipment while maintaining the boom around GRAND MARIANA. Discussions for security to ensure payment for the project were still in progress and engineers in Houston and Singapore were still working on plans as communication with SERT was still ongoing;
  8. On October 30, 2018, T & T drafted correspondence with USCG LCDR [REDACTED] which explained the situation with the salvage plan and the security request from the RP regarding payment. T & T personnel continued to standby with the pneumatic pump and pollution equipment while maintaining the boom that was placed around the GRAND MARIANA. Discussions for security to ensure payment of the project were ongoing and engineers in Houston, Texas and Singapore were working on the plans. Communication with SERT continued; and
  9. On October 31, 2018, T & T personnel stood by with the pneumatic pump and pollution equipment. They also continued to maintain the boom around the GRAND MARIANA. Discussions for security to ensure payment for the project were ongoing. Engineers in Houston, Texas and Singapore continued to work on the plans as communication with SERT continued.<sup>35</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>36</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>37</sup> When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>38</sup>

## **III. CLAIMANT AND NPFC:**

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.<sup>39</sup> On May 20, 2021, the NPFC received a claim for uncompensated removal costs from T & T Marine Salvage, Inc. The claim included an OSLTF

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<sup>35</sup> Claimant's attachment 3 to AI Received and identified as T&T Daily Description of Duties. This attachment covers the entire Recovery Operations section of this Claim Determination.

<sup>36</sup> 33 U.S.C. § 2701 *et seq.*

<sup>37</sup> 33 CFR 136.103.

<sup>38</sup> *Id.*

<sup>39</sup> 33 CFR 136.103.

Claim Form, receipts for travel and miscellaneous items, as well as the T & T Marine Salvage, Inc. invoice dated December 18, 2018 in the amount of \$92,212.83<sup>40</sup>

This claim is for the response actions that were performed prior to the U.S. Coast Guard issuing a Notice of Federal Assumption (NOFA) to Pride Keen under the Federal Project Number (FPN) H19001 on November 1, 2018 and in accordance with the FOSC Memo to the NPFC dated November 18, 2018 regarding the FOSC's determination that the substantial threat was effective on October 22, 2018.<sup>41</sup>

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>42</sup> As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.<sup>43</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>44</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

#### **V. DISCUSSION:**

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>45</sup> An RP's liability is strict, joint, and several.<sup>46</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>47</sup> OPA was intended to cure these deficiencies in the law.

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<sup>40</sup> T & T claim submission received on May 20, 2021.

<sup>41</sup> Letter to the NPFC from the FOSC of Sector Guam dated November 18, 2018.

<sup>42</sup> 33 CFR Part 136.

<sup>43</sup> See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

<sup>44</sup> See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>45</sup> 33 U.S.C. § 2702(a).

<sup>46</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>47</sup> *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”<sup>48</sup> The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>49</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>50</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>51</sup> The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.<sup>52</sup>

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.<sup>53</sup>

Upon review and adjudication of the claim submission, the NPFC made an initial request for additional information to T & T in support of its claim<sup>54</sup> which is summarized and broken down as follows:

1. T & T Marine claimed costs specific to the vessel, MT CHAMORRO in the amount of \$22,600.00 for services provided on October 23, 2018. The NPFC requested that the claimant provide:
  - a. The invoice generated for the costs claimed on 10/23/18 in the amount of \$22,600.00;
  - b. The pricing sheet that supports the amount charged on 10/23/18 for the MT CHAMORRO;
  - c. An explanation of the work performed by the MT CHAMORRO on 10/23/18; and

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<sup>48</sup> 33 U.S.C. § 2701(31).

<sup>49</sup> 33 U.S.C. § 2701(30).

<sup>50</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>51</sup> 33 CFR Part 136.

<sup>52</sup> 33 CFR 136.105.

<sup>53</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>54</sup> Email to T & T requesting a variety of additional information dated June 9, 2021.



- d. Proof of payment by T & T in the amount of \$22,600.00 for services dated 10/23/18.<sup>55</sup>
2. Provide a copy of a fuel receipt in the amount \$113.48 dated Tuesday, 10/23/18;
  3. Provide a copy of T & T's daily description of duties performed;
  4. Provide a copy of the Service Agreement executed as part of the GRAND MARIANA's vessel response plan;
  5. Provide a copy of all subcontractor dailies, pricing and proofs of payment;
  6. Provide a copy of all pictures, work logs and field notes;
  7. Provide a copy of all proof of payment for any third party costs;
  8. Provide an explanation of how T & T absorbed the costs for OSROCO and Cabras Marine costs that are included in this claim;
  9. On 10/23/18 – with respect to Purchase Order # 9449 for \$113.00, OSROCO/ [REDACTED] i charges and with respect to Purchase Order 0852 (for OSROCO) [REDACTED] and [REDACTED] for \$113.00 x 2 (\$226.00). Please explain exactly what these costs are;
  10. On 10/23/18 – with respect to PACTOURS Invoice for (Saipan Marine) invoice / Airfare/ [REDACTED] and [REDACTED]. Please provide proof of payment for each person;
  11. On 10/23/18 – with respect to PACTOURS Invoice for (Cabras Marine Corp) invoice / Airfare/ [REDACTED] and [REDACTED]. Please provide proof of payment for each person; and
  12. On 10/30/18 - Hyatt Regency charge for [REDACTED]: Provide an itemized receipt for the food costs contained in the Kili Food dinner claimed in the amount of \$160.55.

On June 24, 2021, the NPFC received an extensive amount of documentation that was in response to the NPFC's June 9, 2021 request for additional information. That response included an index/explanation on the June 9, 2021 email from NPFC to T & T that provided responses and references in blue font.<sup>56</sup>

In its request for additional information, the NPFC requested that T & T provide a copy of the Service Agreement executed as part of the GRAND MARIANA's vessel response plan.<sup>57</sup> On June 24, 2021, T & T provided Attachment 4 to their response which contained the OSRO Agreement for the Grand Mariana dated March 26, 2018. That agreement contained the rate schedule of pricing for the majority of items invoiced and claimed.<sup>58</sup> As part of the NPFC's independent research, it obtained a copy of the Shore Infrastructure Logistics Center (SILC) Emergency Response Basic Ordering Agreement (BOA)<sup>59</sup> contract between T & T and the United States Coast Guard (USCG).<sup>60</sup> T & T provided a rate sheet which ultimately became the governing document used to measure and adjudicate T & T's costs that were submitted with its

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<sup>55</sup> *Id.*

<sup>56</sup> See email to T & T dated June 9, 2021 whereby Mr. [REDACTED] answered NPFC's questions in blue font.

<sup>57</sup> Email to T & T requesting a variety of additional information dated June 9, 2021.

<sup>58</sup> Attach 4 - OSRO Agreement which includes the rate schedule beginning on page 13 of 31 and included as part of T & T's response to NPFC on June 24, 2021.

<sup>59</sup> USCG BOA Number: HSCG84-17-A-N00059 dated February 7, 2017.

<sup>60</sup> Email to T & T dated June 9, 2021.

claim.<sup>61</sup> The NPFC used the USCG BOA contract<sup>62</sup> only when a billed line item was not found within the T & T rate schedule identified as Attachment 4 of the June 24, 2021 email response from T & T. Items approved, denied or approved in part are identified by line item in the NPFC's Summary of Costs spreadsheet with comments identifying the source of the information used to support the NPFC's decision to pay, deny or pay in part for a given line item.<sup>63</sup>

In support of the claimed costs and the response activities performed between October 23, 2018 and October 31, 2018, the NPFC relied upon a letter dated November 18, 2018 from Captain Chase, U.S. Coast Guard, Sector Guam to the NPFC re: "Support of Claim for Substantial Threat to the Environment on October 22, 2018 during M/V GRAND MARIANA I response efforts."<sup>64</sup> The letter substantiates that pollution mitigation actions were required beyond pollution removal in situ. Captain Chase was the FOSC and in that capacity he determined that it was critical and justified to relocate the M/V GRAND MARIANA I to mitigate the threat of significant harm to the marine environment and to ensure safe navigation without port disruption. The Captain further stated in his letter that the actions taken to date were consistent with policies noted in reference (b) of the letter, regarding response to substantial threats to public health or welfare of the United States and the use of the Oil Spill Liability Trust Fund (OSLTF).<sup>65</sup> This letter serves as FOSC coordination of the response actions that were performed by T&T from October 23, 2018 through October 31, 2018.

T & T was able to provide the majority of the requested additional information to the NPFC. T&T did not provide the requested documentation regarding charges for the MT CHAMORRO on October 23, 2018. The NPFC requested proof of payment from T & T for the charges associated with the MT CHAMORRO.<sup>66</sup>

In its reply to the NPFC's request for additional information, T & T indicated that the MT CHAMORRO was "Paid and settled through OSROCO."<sup>67</sup> Based on T & T's response to the request for proof of payment for the MT CHAMORRO, T & T must demonstrate that the costs are both uncompensated and that they possess the subrogable rights to request compensation for those costs. As such, the NPFC made a second request for additional information on July 6, 2021. The NPFC requested that T&T provide the proof of payment for the MT CHAMORRO costs claimed, as well as provide any settlement documents that were associated with the payment for the MT CHAMORRO costs.<sup>68</sup> Since T & T has not replied to the NPFC's second request for additional information pertaining to the MT CHAMORRO costs, the costs in the amount of \$22,600.00 and its associated 15% administrative markup claimed in the amount of \$3,390.00 are denied as not properly supported by the record. The total amount denied for the MT CHAMORRO costs and associated markup costs total \$25,990.00.

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<sup>61</sup> Oil Spill Response Operations Company LLC and T & T Marine Salvage, Inc. Sector Guam and CNMI, OSRO Designation and Emergency Response Services Agreement, Exhibit 4, Page 13 – 21 of 31.

<sup>62</sup> USCG BOA Number: HSCG84-17-A-N00059 dated February 7, 2017.

<sup>63</sup> See, NPFC's Summary of Costs spreadsheet, Column AI entitled "Source Document Identification and Location".  
<sup>64</sup> *Id.*

<sup>65</sup> Letter to the NPFC from the FOSC of Sector Guam dated November 18, 2018.

<sup>66</sup> *Id.*

<sup>67</sup> See email sent to T & T dated June 9, 2021 whereby Mr. [REDACTED] answered NPFC's questions in blue font.

<sup>68</sup> Email to T & T dated July 6, 2021.

The remaining costs that have been denied by the NPFC total \$1,696.02 and are itemized in the NPFC's Summary of Costs spreadsheet. The denied costs are identified and categorized as follows:

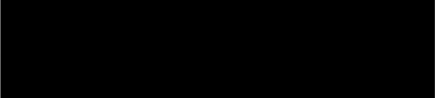

1. Supervisor OT rate was adjusted from \$98.00 per hr. that was claimed and reduced to \$97.50 per hour in accordance with Attachment 4 rate sheet pricing. The NPFC denied \$13.50 for this category;
2. Operator ST and OT rates were charged at \$55.00 per hr. for ST and \$83.00 per hr. for OT. The NPFC reduced all ST and OT rates to \$52.00 per hr. for ST and \$78.00 per hour for OT in accordance with Attachment 4 rate sheet pricing. The NPFC denied a total of \$124.00 for excessive hourly rates charged for Operator;
3. The NPFC denied the request for fuel for pumps on 10/23/18 in the amount of \$113.48 as no receipt was provided;
4. PVC gloves were charged randomly at the incorrect rate according to Attachment 4 and also there were instances where the quantity was flawed. The NPFC adjusted all instances of gloves according to the proper rate and quantity based on the number of personnel working each day. The total amount denied associated with PVC Gloves is \$88.00;
5. Standby rates charged for a workboat at a rate of \$155.00 is denied for all instances as Attachment 4 pricing has no terms and conditions for justifying standby rates and when the NPFC referred to the USCG BOA, that contract states standby is prohibited therefore the NPFC is denying all standby rates charged. The total standby rates denied total \$930.00;
6. Tyveks were charged randomly at the incorrect rate according to Attachment 4 and also there were instances where the quantity was flawed. The NPFC adjusted all instances of Tyveks according to the proper rate and quantity based on the number of personnel working each day. The total amount denied associated with Tyveks is \$48.00;
7. Per Diem rates were adjusted according to the GSA allowable Government rate of \$87.00 per instance at the time and location of the incident. The NPFC has denied all amounts of per diem in excess of the GSA Government per diem rate of \$87.00. The total amount denied is \$196.00;
8. On 10/25/18 – there were two amounts claimed for taxi service in the amounts of \$10.22 and \$9.25, respectively. The receipt associated with the charge for \$10.22 has no amount indicating the charge so it is denied as unsupported by the record and the charge of \$9.25 is on an expense report with no supporting receipt and therefore also denied as not supported by the record. Both items are denied in the amount of \$19.47;
9. On 10/28/18 – there were two instances of sim card purchases in the amounts of \$20.00 and \$40.00, respectively. There is no evidence to indicate who they were purchased for and why so the costs are denied in the total amount of \$60.00;
10. On 10/29/18 – the Project Manager was charged on the daily as 8 ST hours however the math did not balance to the hours claimed on the daily invoiced pricing. The math worked out to indicate 9.1882 hrs. of ST so the NPFC allowed the 8 hrs. of ST for this date and the difference is denied as a math error in the amount of \$101.00; and
11. On 10/31/18 – there is a rental car charge claimed as \$169.17 however the supporting documentation only supports \$166.60 therefore \$2.57 is denied.

**OVERALL DENIED COSTS: \$27,686.02<sup>69</sup>**

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above T & T Marine Salvage, Inc. request for uncompensated removal costs is approved in the amount of **\$64,526.81**.

This determination is a settlement offer,<sup>70</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>71</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>72</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

|                              |   |
|------------------------------|---|
|                              |    |
| Claim Supervisor:            |  |
| Date of Supervisor's review: | <i>8/30/21</i>  |
| Supervisor Action:           | <i>Offer Approved</i>   |

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<sup>69</sup> See, NPFC's Summary of Costs spreadsheet,

<sup>70</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>71</sup> 33 CFR § 136.115(b).

<sup>72</sup> 33 CFR § 136.115(b).