U.S. Department of Homeland Security

United States Coast Guard

Oil Spill Liability Trust Fund (OSLTF)

Annual Report
FY 2004 – FY 2008

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EXECUTIVE SUMMARY

This annual report is provided to record the level of funds currently in the Oil Spill Liability Trust Fund (OSLTF), provide projections for levels of funds through FY 2016, and report accomplishments of the OSLTF (the Fund) over the past five years (FY 2004 – FY 2008).

Level of Funds

The level of funds in the OSLTF at the end of FY 2008 exceeded $1 billion for the first time since 2002. Based on past spending trends and the resumption of the barrel tax, the OSLTF is expected to gradually grow until the tax expires on December 31, 2017. The tax was reinstated in accordance with the Energy Policy Act of 2005. In November 2008, the Energy Improvement and Extension Act of 2008 increased the tax from 5 cents per barrel to 8 cents per barrel through December 31, 2016 and to 9 cents per barrel from then until December 31, 2017. This forecast is tempered by Coast Guard experience that the actual removal costs and damages the OSLTF may pay are highly dependent on the number and severity of oil spills. A single major or catastrophic oil spill could have a significant impact on the OSLTF balance and these projections.

Long-Term OSLTF Viability

The current structure of the OSLTF as it has evolved is not self-sustaining absent tax revenue. The Oil Pollution Act of 1990 (OPA) provides that the OSLTF is the ultimate insurer for oil spill removal costs and damages when those responsible do not pay. In many incidents, liable responsible parties (RPs) cannot be located, do not have the ability to pay, or have defenses or limits to their liability. Therefore, recoveries from liable parties cannot fully reimburse the removal costs and damages expended from the OSLTF.

While penalty deposits and interest on the fund balance provide significant OSLTF revenue, they do not make up the shortfall in cost recovery from liable parties. In addition, the OSLTF must make substantial contributions to agency annual appropriations, as well as payments in support of the Prince William Sound Oil Spill Recovery Institute (OSRI) and the Alaska Denali Commission (Denali).

The impact of the OSLTF is significant and far-reaching. First, the OSLTF is available to fund cleanup of oil discharges, supporting Federal responses by Coast Guard and U.S. Environmental Protection Agency (EPA) Federal On-Scene Coordinators (FOSCs). Second, a viable OSLTF compensates those persons who incur removal costs or damages as a result of an oil spill. Significantly, state and local governments receive important compensation for their qualifying spill response projects. Finally, Federal agency operations are funded by appropriations from the OSLTF, as directed by Congress.

BACKGROUND

The OPA addressed the wide-ranging problems associated with prevention, response, and compensation for oil pollution from vessels and facilities in our nation's navigable waters, adjoining shorelines, and exclusive economic zone (EEZ). OPA greatly increased Federal oversight of maritime oil transportation, while providing greater environmental safeguards. This was accomplished by setting new requirements for vessel construction and crew licensing and manning, mandating contingency planning, enhancing Federal response capability, broadening enforcement authority, increasing penalties, creating new research and development programs, increasing potential liabilities, adding new compensation provisions, and significantly broadening financial responsibility requirements.

Title I of OPA established new and higher liability limits for oil spills, with commensurate changes to financial responsibility requirements. It substantially broadened the scope of damages, including natural resource damages, for which polluters are liable. It also provided for the use of a $1 billion OSLTF to pay for expeditious oil removal and uncompensated damages. In section 7 of Executive Order 12777, the President delegated management responsibility for the OSLTF to the Secretary of the Department in which the Coast Guard is operating. Upon re-delegation by the Secretary, the Commandant of the Coast Guard delegated responsibility to the newly created National Pollution Funds Center (NPFC), as an independent unit reporting directly to the Coast Guard Assistant Commandant for Resources.

HISTORY OF THE FUND

In August 1990, when President George H. W. Bush signed OPA into law and authorized use of the OSLTF, the Fund was already four years old. Congress created the Fund in 1986, but did not pass legislation to authorize the use of the money or the collection of revenue to maintain it. Only after the 1989 *T/V EXXON VALDEZ* oil spill and the passage of OPA, was authorization granted. Provisions establishing the Fund can be found at 26 U.S.C. 9509. In addition to authorizing use of the OSLTF, OPA consolidated the liability and compensation requirements of certain prior Federal oil pollution laws and their supporting funds, including:

- The Federal Water Pollution Control Act (FWPCA) 311k revolving fund,
- The Deepwater Port Liability Fund,
- The Trans-Alaska Pipeline Liability Fund, and
- The Offshore Oil Pollution Compensation Fund.

With the gradual consolidation of these funds and the collection of a tax on the petroleum industry, the OSLTF balance increased to more than $1 billion. Fund uses were delineated by OPA section 1012 (33 U.S.C. 2712) to include:

- Removal costs incurred by USCG and EPA FOSCs;
- Payments to Federal, state, and Indian tribe trustees to conduct Natural Resource Damage Assessments (NRDAs) and restorations;
- Payment of claims for uncompensated removal costs and damages; and
- Administrative, operational, and personnel costs and expenses incidental to implementation, administration, and enforcement of OPA and certain provisions of section 311 of the FWPCA (33 U.S.C. 1321).

OPA included a sunset provision for the tax that supported the OSLTF that expired on December 31, 1994. In 2005, Congress reinstated the tax as a provision of the 2005 Energy Policy Act. Those provisions became effective on April 1, 2006. In November 2008, the Energy Improvement and Extension Act of 2008 increased the tax from 5 cents per barrel to 8 cents per barrel through December 31, 2016 and to 9 cents per barrel from then until December 31, 2017. This increase was effective immediately.

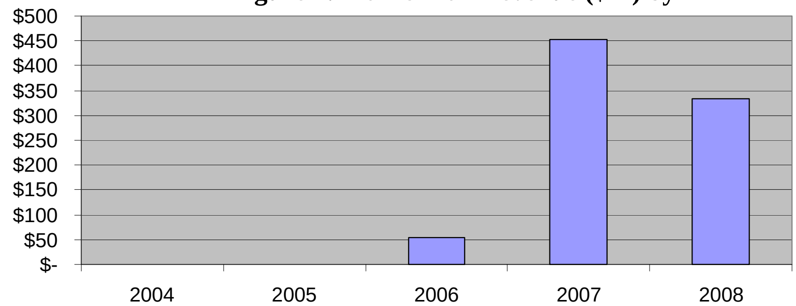
FUND REVENUE SOURCES

The OSLTF has several recurring and nonrecurring sources of revenue.

Barrel Tax

The largest source of revenue is a 5¢ per barrel tax, collected from the oil industry on petroleum produced in or imported to the United States (Figure 1). The tax expired on December 31, 1994, pursuant to 26 U.S.C. 4611(f)(1). The tax was reinstated by the Energy Policy Act of 2005, and was increased by the Energy Improvement and Extension Act of 2008. That law increased the tax from 5 cents per barrel to 8 cents per barrel through December 31, 2016 and to 9 cents per barrel from then until December 31, 2017. The tax is currently being deposited in the OSLTF.

Figure 1: Barrel Tax Revenue ($M) by FY



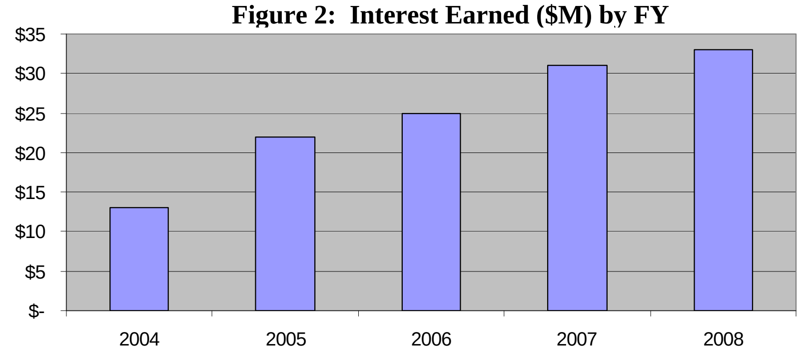
Transfers

A second major source of revenue was transfers from other existing pollution funds. Total transfers into the Fund since 1990 have exceeded $550 million. Over $216 million in transfers from the Oil Pollution Fund, the Offshore Oil Pollution Compensation Fund, and the Deepwater Port Liability Fund were deposited into the Fund in 1990. The largest source has been the Trans-Alaska Pipeline Liability Fund (TAPS), which transferred $335 million over the period of 1995 to 2000. No additional funds remain to be transferred to the OSLTF.

Interest

Interest on the Fund principal from U.S. Treasury investments is an ongoing source of OSLTF revenue (Figure 2). The Department of the Treasury serves as the OSLTF's investment manager.

Figure 2: Interest Earned ($M) by FY



Cost Recoveries from Responsible Parties

A fourth source of revenue is cost recoveries from RPs. Those responsible for oil incidents are liable for costs and damages. The NPFC has a billing and collection program to recover costs expended by the OSLTF, carried out in accordance with the U.S. debt collection laws. Figure 3 shows cost recoveries for FY 2004 to FY 2008, which fluctuated between $7 million and $16 million per year.

Figure 3: OPA Costs Recovered ($M) by FY

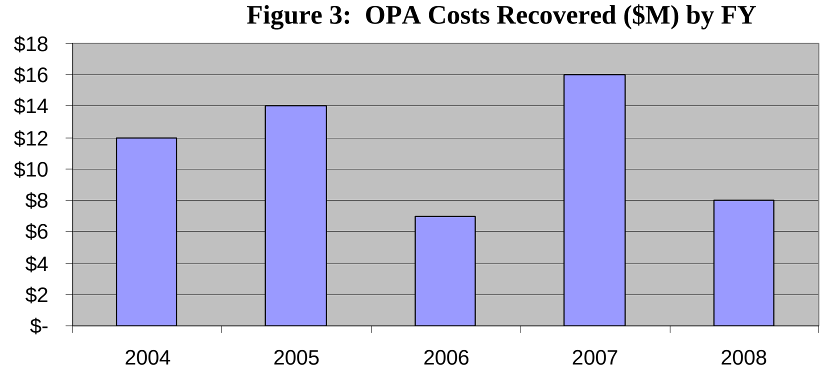
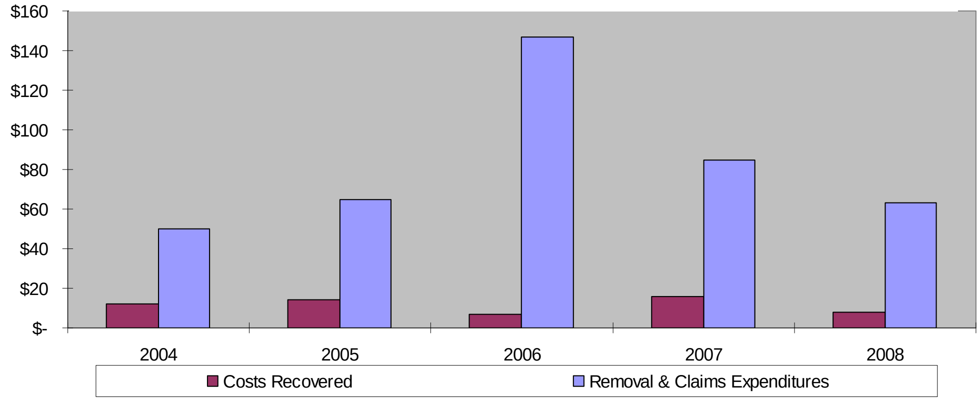


Figure 4: Removal and Claims Expenditures vs. Cost Recovered ($M) by FY

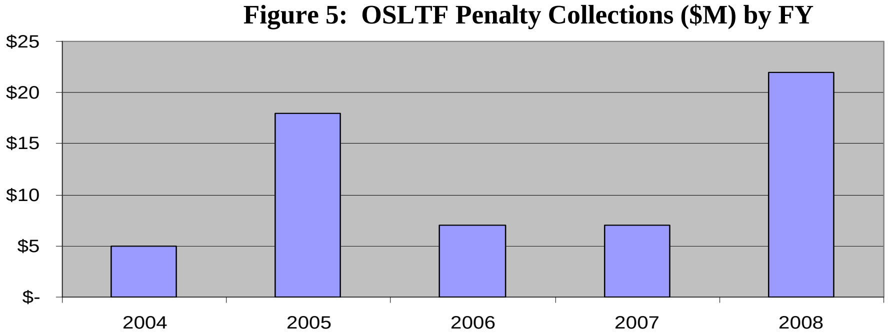


NPFC collected 16% of the OSLTF removal and claims expenditures made during the period FY 2004 to FY 2008 as shown in Figure 4. There are several barriers to achieving a higher rate of recovery. In nearly 50% of spills, the FOSC is unable to identify the source of the spill or identify a RP. Costs expended in excess of a RP's liability limit are generally unrecoverable. The prospect of successful cost recovery for a Federal Project involving an onshore facility is also generally low. Many Federal projects arise from legacy environmental problems associated with aging infrastructure such as leaking underground storage tanks, abandoned pipelines, leaking oil wells, and abandoned oil production facilities. Unfortunately, in many instances like these, the government cannot collect because of lack of sufficient evidence to litigate successfully or otherwise compel the RP to pay, or because the RP is bankrupt, deceased, or otherwise unable to pay. These projects are typically complex and costly, often involving removal over a period of years, as action is taken to cleanup the soil and groundwater, which is discharging to navigable waters.

Penalties

Specific penalties paid pursuant to section 311 of the FWPCA, the Deepwater Port Act of 1974, and section 207 of the Trans-Alaska Pipeline System Authorization Act are required to be deposited into the Fund. Penalty deposits are generally between $4 million and $7 million per year; but as illustrated by Figure 5, significantly larger penalties were deposited to the Fund in FY 2005 and FY 2008.

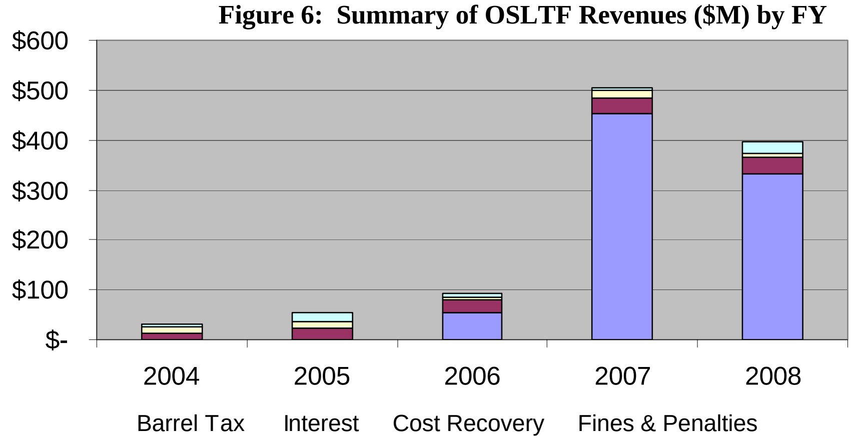
Figure 5: OSLTF Penalty Collections ($M) by FY



Summary of Revenues

A summary of OSLTF revenues can be found in Figure 6.

Figure 6: Summary of OSLTF Revenues ($M) by FY



FUND EXPENSES

The Emergency Fund

To ensure rapid, effective response to oil spills, OPA section 6002 provides that the President has the authority to make available from the OSLTF, without further appropriation, up to $50 million each year to fund removal activities and initiate NRDAs. Funds not used in a fiscal year are carried over to subsequent fiscal years and remain available until expended. To the extent that $50 million is inadequate, authority was granted under section 323 of the Maritime Transportation Security Act (MTSA) of 2002 to advance up to $100 million from the OSLTF to fund removal activities. This provision has not been utilized to date.

Removal Activities

The OSLTF provides funding for oil pollution removal activities when oil is discharged into the navigable waters, adjoining shorelines, and the EEZ of the U.S. Funding is also provided to prevent or mitigate the substantial threat of such an oil discharge. The Emergency Fund may be used for—but is not limited to—containing and removing oil from water and shorelines, preventing or minimizing a substantial threat of discharge, and monitoring the removal activities of RPs. Examples of removal costs include the cost of:

- Contract services (e.g., cleanup contractors),
- Equipment used in removals,
- Chemical testing required to identify the type and source of oil,
- Proper disposal of recovered oil and oily debris,
- Costs for government personnel and temporary government employees hired for the duration of the spill response, and
- Completion of documentation.

The Coast Guard has responsibility for removal actions in the coastal zone, while EPA has responsibility in the inland zone. Figures 7 and 8 show the number of new cases opened and the corresponding dollar amounts for Coast Guard and EPA removal actions. It is important to note that these cases do not represent all cases where oil is spilled, but only those incidents where the OSLTF has been accessed.

Figure 7: USCG vs. EPA Cases by FY

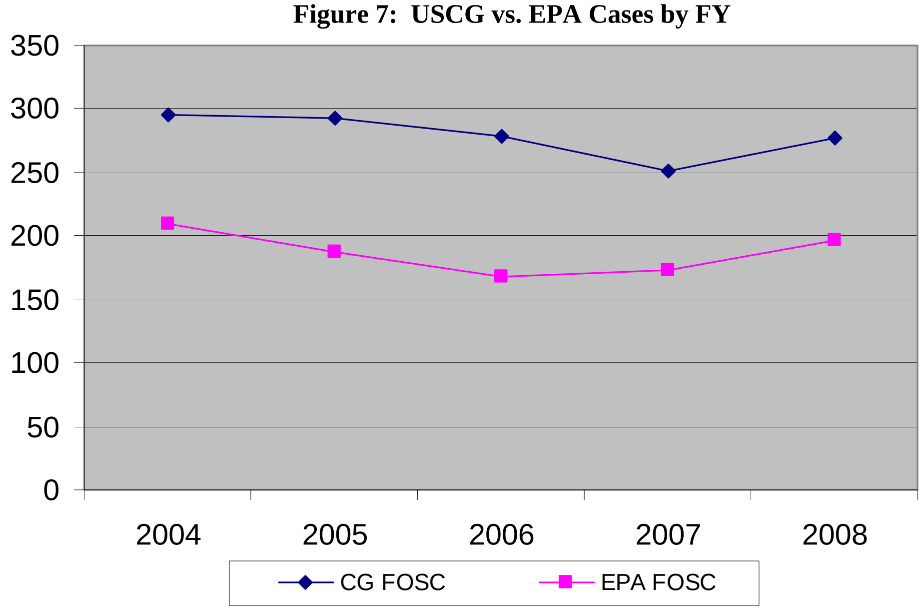
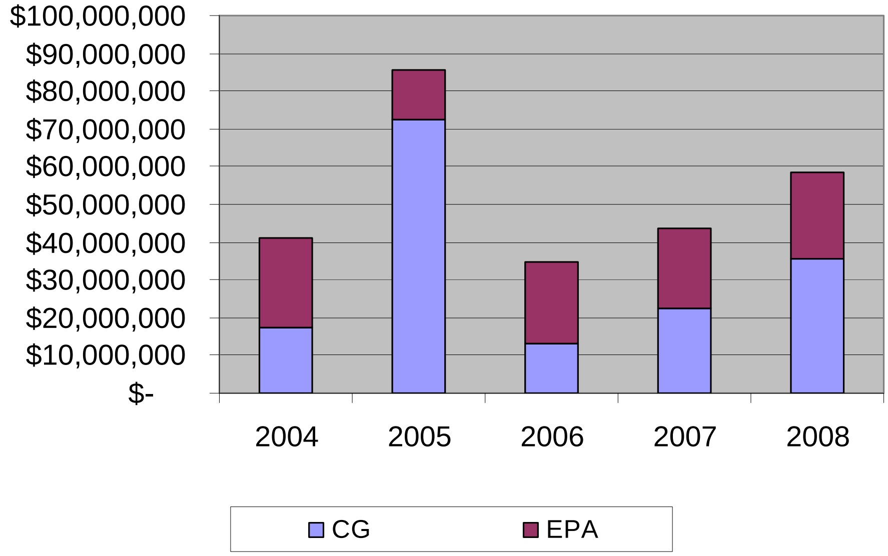


Figure 8: OSLTF Response Funds Assigned by FY



EPA cases are generally removal actions occurring at onshore facilities. There are several apparent reasons for the significant number and cost of spills from facilities. First, the vast oil production industry infrastructure, as previously stated, is aging. A great number of oil wells that were drilled (onshore and offshore) have been depleted and are now abandoned, most with no identifiable RP. Many of these pollution sites are 20 to 50 years old—pre-dating current state regulatory programs—and have not been properly maintained.

Second, a complex factor in the domestic oil production economy has been the wide cyclical swings in the price per barrel of crude oil. As a result, the domestic oil industry has produced a large number of marginal or non-viable oil well facilities which are "abandoned" when production is no longer economically viable, leaving behind a grim environmental legacy.

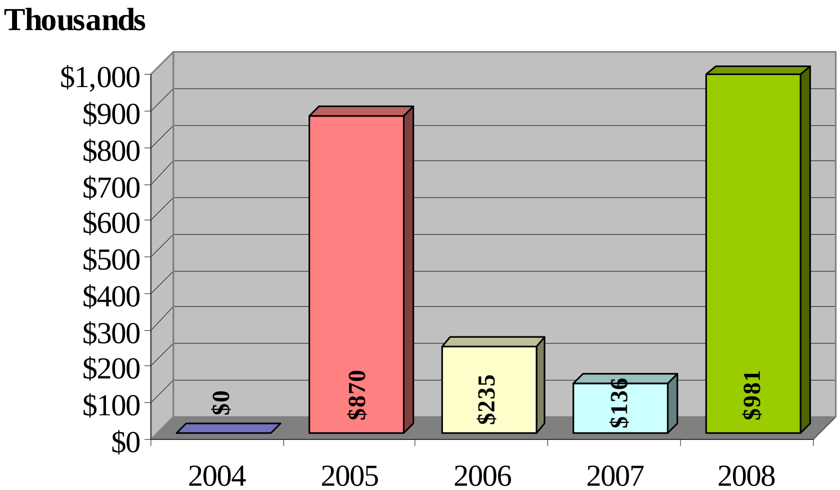
A third factor is that the vast majority of onshore oil-producing, -transporting, and -storing facilities that spill or threaten to spill are older facilities that do not have adequate insurance at the time of the spill. When no viable RP is identified or no insurance coverage is available, response costs are likely to be borne directly by the OSLTF Emergency Fund without effective recourse. OPA, as originally designed, did not anticipate the extent to which the OSLTF would be needed to address water pollution threats from aging, often derelict, land-based facilities.

Many of these same arguments are directly cited by and corroborated in a 2001 report to the President by the National Energy Policy Development Group (National Energy Policy Development Group, *Reliable, Affordable, and Environmentally Sound Energy for America's Future*, May 2001, p. 3-10).

Mystery spills, or spills for which a RP cannot be identified, also have a sustained impact.

NRDA Initiate Requests

Figure 9: OSLTF Initiates by FY



The Emergency Fund is also available to pay for the initiation of natural resource damage assessment (INRDA) led by designated Federal natural resource trustees. The NPFC and the Federal Lead Administrative Trustee (FLAT) execute an Inter-Agency Agreement (IAG) for each OPA incident requiring funds for preassessment phase activities. Natural resource trustees include authorized representatives of the U.S. Departments of Commerce (NOAA), Interior, Defense, Agriculture, and Energy, as well as states, Indian tribes, and foreign trustees. However, pursuant to Executive Order 12777, use of the Emergency Fund to initiate an assessment is available exclusively to the five Federal trustees. The FLAT may further allocate funds among all other participating trustees. Initiates have not had a significant impact on the OSLTF, as Figure 9 reflects for the past five years. The large initiate in FY 2005 was for the *M/V SELENDANG AYU* case. That request was reduced to approximately $255,000 in 2007, as the RP reimbursed the trustees for the majority of preassessment costs. The predominant initiate in 2008 was in response to a spill in Guanica Bay, Puerto Rico.

Significant OSLTF Cases 2004-2008

Table 1 provides summary information regarding OSLTF cases that exceeded $350 thousand in removal costs and claims over the past five years.

Table 1: Significant OSLTF Cases 2004–2008 by FY

FPN	Project Name	Source of Spill	On-Scene Coordinator	Total Cost
2004 Cases				
H04007	F/V MWALIL SAAT - H04007	Vessel (Non-COFR)	Guam	$3,413,514
E04116	LONSDALE BLEACHERY- E04116	Mystery	EPA Region 1	$2,250,000
E04503	HARTFORD PLUME - E0450	Facility	EPA Region 5	$1,500,000
H04010	M/V AJMAN 2 - H04010	Vessel (COFR)	Guam	$825,764
M04020	M/V ORIENTAL I - M04020	Vessel (Non-COFR)	Jacksonville	$732,643
E04634	OPMI-EDNA DELCAMBRE - E04634	Facility	EPA Region 6	$726,312
E043Z1	MYSTERY - E043Z1	Facility	EPA Region 3	$670,000
E04308	GOOSE CREEK WELLS - E04308	Facility	EPA Region 3	$524,630
P04006	MYSTERY - P04006	Mystery	Delaware Bay	$432,758
A04010	KINDER MORGAN - A04010	Facility	San Francisco	$352,737
2005 Cases				
P05005	T/V ATHOS I - P05005	Vessel (COFR)	Delaware Bay	$143,221,156
J05003	M/V SELENDANG AYU - J05003	Vessel (COFR)	Anchorage	$6,667,778
S05003	DALCO PASS SPILL - S05003	Vessel (COFR)	Seattle	$2,233,294
G05002	T/B EMC 423 - G05002	Vessel (COFR)	Chicago	$1,870,307
H05013	M/V CASITAS - H05013	Vessel (Non-COFR)	Honolulu	$1,710,672
S05049	GIG HBR MARINA FIRE - S05049	Mystery	Seattle	$1,700,863
A05015	ALBION - A05015	Vessel (Non-COFR)	San Francisco	$1,207,064
B05026	M/V HAMMURABI - B05026	Vessel (COFR)	New York	$1,142,385
E05303	EXXON MOBIL ALLENTOWN - E05303	Facility	EPA Region 3	$975,000
S05002	THE BOSS - S05002	Vessel (Non-COFR)	Portland OR	$926,070
H05006	CAPE FLATTERY - H05006	Vessel (COFR)	Honolulu	$852,944
M05025	M/V SEA ASTRIDE - M05025	Vessel (Non-COFR)	San Juan	$659,084
E05913	PYRAMID LK PIPELINE - E05913	Facility	EPA Region 9	$597,206
E05657	MONGRUE OIL CO-4100RA - E0565	Facility	EPA Region 6	$515,000
J05009	LCM's - J05009	Vessel (Non-COFR)	Anchorage	$463,107
S05037	M/V FLORENCE FILBERN - S05037	Vessel (Non-COFR)	Seattle	$421,880
N05019	ABANDONED FACILITY - N05019	Facility	Galveston	$364,072
2006 Cases				
E06502	DELTA FUELS - E06502	Facility	EPA Region 5	$4,330,391
E06505	DEARBORN REFINING - E06505	Facility	EPA Region 5	$3,000,000
N06047	CITGO REFINERY - N06047	Facility	Port Arthur	$2,103,246
N06059	MAMA LERE - N06059	Vessel (COFR)	Port Arthur	$1,212,338
M06027	CMA CGM VERNET - M06027	Vessel (COFR)	Savannah	$789,219
S06024	F/V HERON - S06024	Vessel (Non-COFR)	Seattle	$750,000
E06306	SPRAGUE FARM - E06306	Facility	EPA Region 3	$732,473
E06431	MAYFIELD HODGES #7 - E06431	Facility	EPA Region 4	$731,000
E06430	MAYFIELD HODGES #6 - E06430	Facility	EPA Region 4	$731,000
P06017	M/V BERMUDA ISLANDER - P06017	Vessel (COFR)	Delaware Bay	$686,390
J06015	M/V COUGAR ACE - J06015	Vessel (COFR)	Anchorage	$393,266
906131	MAY OIL UST SPILL	Facility	Claims Case Only	$376,845
906047	MYSTERY STORAGE TANK SPILL	Mystery	Claims Case Only	$375,123

FPN	Project Name	Source of Spill	On-Scene Coordinator	Total Cost
2007 Cases				
N07016	EXPERT O&G WELL - N07016	Facility	New Orleans	$12,108,715
M07029	GUANICA, PR OIL SPILL - M07029	Mystery	San Juan	$8,430,725
S07052	LST-1166 - S07052	Vessel (COFR)	Portland OR	$3,000,000
E07202	CURTIS FARM - E07202	Facility	EPA Region 2	$2,970,000
H07005	TONG CHENG - H07005	Vessel (COFR)	Honolulu	$2,084,451
E08906	BELL LEASE - E08906	Facility	EPA Region 9	$1,800,000
E07603	NORTH LAKE OOLOGAH - E07603	Facility	EPA Region 6	$1,680,000
G07002	SUNOCO SERVICE STA. - G07002	Facility	EPA Region 5	$1,255,849
G07003	SENECA - G07003	Vessel (Non-COFR)	Sault Ste. Marie	$1,211,045
E07628	COFFEYVILLE RESOURCES - E07628	Facility	EPA Region 6	$1,100,050
E07709	COFFEYVILLE RESOURCES - E07709	Facility	EPA Region 7	$852,270
E07807	WHITEFISH RIVER GAS S - E07807	Facility	EPA Region 8	$550,000
E07617	OIL PATCH OPS, RRM - E07617	Facility	EPA Region 6	$527,395
E07408	BELMONT DYERS PLANT - E07408	Facility	EPA Region 4	$478,035
H07003	KOTOBUKI MARU NO. 38 - H07003	Vessel (COFR)	Honolulu	$458,613
M07011	F/V CHALLENGER - M07011	Vessel (Non-COFR)	St. Petersburg	$356,055
2008 Cases				
E08430	PARTIN NO 5 WELL - E08430	Facility	EPA Region 4	$1,800,000
N08057	DM932 - N08057	Vessel (Non-COFR)	New Orleans	$9,025,000
P08018	SEAWITCH - P08018	Vessel (Non-COFR)	Baltimore	$6,500,000
A08003	COSCO BUSAN - A08003	Vessel (COFR)	San Francisco	$3,525,000
N08076	MYSTERY - N08076	Mystery	Houston-Galveston	$3,000,000
P08020	BIG BOY & SCOOBY DOO - P08020	Vessel (Non-COFR)	Delaware Bay	$1,000,000
J08021	NORTHERN MARINER - J08021	Vessel (Non-COFR)	Valdez	$900,000
M08005	M/V MELISSA MICHELLE - M08005	Vessel (Non-COFR)	St. Petersburg	$397,480

Claims

OPA provides that any person or government may present a claim for compensation for removal costs or damages resulting from an oil pollution incident covered by the Act. Claims can be presented for:

- Uncompensated removal costs,
- Natural resource damages,
- Damage to real or personal property,
- Loss of profits and earning capacity,
- Loss of subsistence use of natural resources,
- Loss of government revenues, and
- Increased cost of public services.

To centralize the OSLTF claims process, the President delegated authority to pay claims from the OSLTF to the Secretary of the Department in which the Coast Guard is operating. Upon re-delegation by the Secretary, the Commandant of the Coast Guard further delegated that authority to the NPFC on March 12, 1992. On September 25, 1997, the Department of Justice (DOJ) determined that natural resource trustees could assert claims against the OSLTF for reimbursement of uncompensated natural resource damages.

Before claimants can be compensated, they must satisfy the statutory requirements of OPA. The incident must involve a discharge of oil or a substantial threat of a discharge of oil from a vessel or facility into the navigable waters, adjoining shorelines, or the EEZ of the U.S. The removal actions for which costs are claimed must be consistent with the National Contingency Plan (NCP), and the claim must be submitted within express time periods (generally three years for damages, six years for removal costs).

The most common claim type received by the NPFC is removal cost claims. These claims may be presented by any person who has incurred costs for removal actions that are consistent with the NCP. Removal cost claimants include state governments, RPs who can show that the oil came from another source, response contractors who have not been paid by the hiring RP, and members of the public who have discovered a spill and responded to the need for cleanup. Most of the removal cost claims presented to the NPFC are state claims.

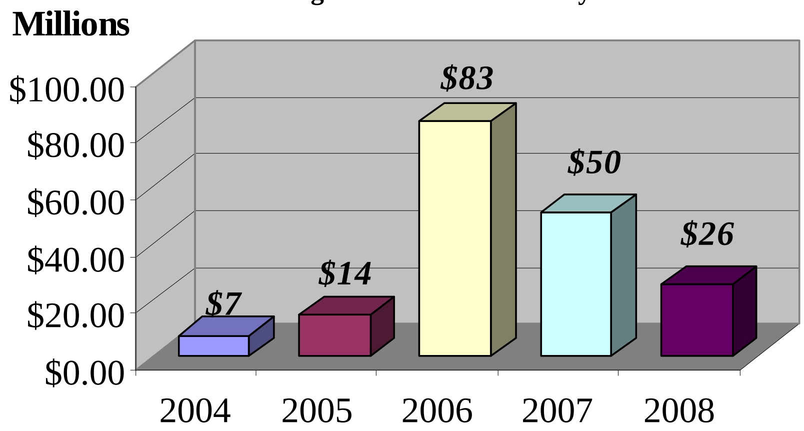
The highest dollar value claims were received from RPs who asserted that they paid incident costs (clean-up, claims, etc.) in excess of their limit of liability and/or claim a full defense to their liability. These claims often comprise around 10% of the number of NPFC's pending claims, but more than 50% of the dollar value of our pending workload.

Natural resource trustees may submit claims for assessment, emergency restoration, and/or restoration. A claim that the RP does not pay, or for which the RP is not known, may be considered for payment by the NPFC. The three year statute of limitation for submitting damage claims may be extended if NRD trustees use the NRDA regulations found at 15 CFR §990. Less common than removal cost claims, NRD claims are often considered to be more complex and costly.

Claims for OPA-compensable removal costs and damages must be presented to the RP or guarantor before approaching the Fund for compensation, except under certain circumstances. Two exceptions to this are that state governments may present claims for uncompensated removal costs directly to the NPFC, and claimants may present removal or damage claims directly to the NPFC if there is no known RP. Other exceptions allow a claim to be presented directly to the Fund when the Fund advertises for such claims or when an RP presents a claim based on an OPA defense or liability limit.

Figure 10 shows claims paid for the past five years (FY 2002 to FY 2006). Significant claims payments in 2007 were associated with a large number of claims from the *M/V ATHOS I* spill and one large NRD claim from the natural resource trustees for the *M/V New Carissa* spill.

Figure 10: Claims Paid by FY



Agency Appropriations

Several federal agencies receive annual appropriations from the OSLTF to cover specific administrative, operational, personnel, enforcement, and research and development costs as authorized in OPA, and as delegated by Executive Order 12777 (Table 2). Agency responsibilities for carrying out OPA requirements include regulation, administration, and enforcement of changes in vessel construction; tighter controls on licensing and manning; new requirements for vessel and facility operations and response planning; stricter liability and compensation requirements including increased financial responsibility, management of the OSLTF, compensation to claimants, and cost recovery from RPs; and improved cooperative relationships among responding agencies and oil industry stakeholders, to include periodic drills and implementation of changes to the NCP, Area Contingency Plans, and National Response System (NRS).

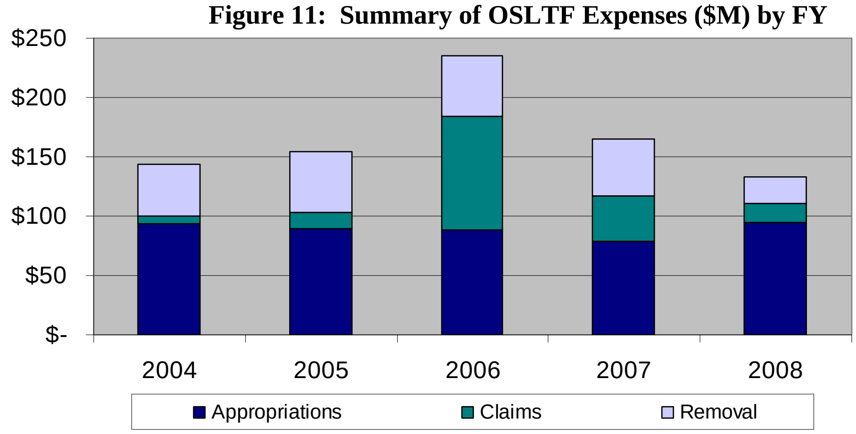
Table 2: Agency OSLTF Appropriations ($K) by FY

Agency	2004	2005	2006	2007	2008
USCG	$52,000	$46,500	$46,035	$44,550	$45,000
EPA	$16,113	$15,872	$15,330	$15,734	$17,326
Minerals Management Service (DOI) & DOC	$ 7,017	$ 7,006	$ 6,903	$ 6,903	$ 6,403
DOT (RSPA)	$12,771	$14,800	$14,850	$ 6,827	$18,810
ACOE & Treasury	$ 40	$ 51	$ 70	$ 50	$ 70
Prince William Sound Oil Spill Recovery Institute	$ 880	$ 863	$ 851	$ 840	$ 1,095
Denali Commission	$ 4,274	$ 4,252	$ 4,227	$ 4,201	$ 5,831

Summary of Expenses

OSLTF expenses are comprised of oil spill responses/removals, claims, and annual appropriations to federal agencies (Figure 11).

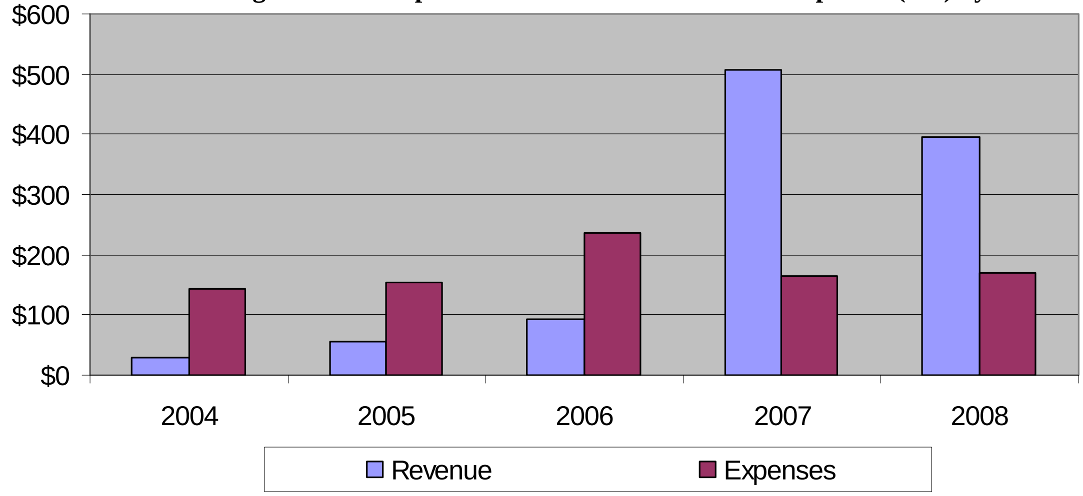
Figure 11: Summary of OSLTF Expenses ($M) by FY



COMPARISON OF REVENUES AND EXPENSES

Figure 12 compares the incoming revenues to the outgoing fund expenditures in the OSLTF for FY 2004 to FY 2008. In 2007 the trend of expenditures exceeding revenue was reversed, in large part due to the Energy Policy Act of 2005's five-cent per barrel tax on oil, effective April 1, 2006.

Figure 12: Comparison of OSLTF Revenue and Expenses ($M) by FY



THE OSLTF AND NATIONWIDE SPILL RESPONSE

A principal purpose of the Fund is to ensure the President has the resources to respond when oil is discharged or substantially threatens to discharge into navigable waters, adjoining shorelines, and the EEZ. A healthy fund balance helps to ensure that the $50 million annual emergency response appropriation can be authorized. Consequently, the President will have the necessary resources for response.

Table 3 shows the distribution, by state, of OSLTF response funds over the past five years. Every state, as well as the District of Columbia, the Commonwealth of Puerto Rico, and the various Territories administered by the Department of the Interior (DOI) have reaped the benefits of a Federal response system and OSLTF funding for oil spill clean-up activities. Although not all states have done so in the past five years, every state has needed to access the Fund since its inception. All states continue to be at risk for oil spills. Without the OSLTF, states would have to provide funds for these highly visible emergency events, further straining their domestic emergency response capabilities.

Twenty-seven of the 57 states, territories, and possessions had combined OSLTF costs which exceeded $1 million during FY 2004-FY 2008. New Jersey, Louisiana, and California have long shorelines and see significant oil transport and production; therefore, it follows that they have many spills which require Federal funds. Over $8 million in federal funds were used for remote clean-up operations in response to a major spill of unknown origin in the Caribbean Sea of which a portion of these funds were for NRDA of sensitive shorelines and reefs in Puerto Rico. Clearly, the federal response mechanism, the NCP, and the OSLTF provide a significant benefit to all aforementioned parties which assume the operational and financial burden of responding to oil spills on their navigable waters and shorelines.

Table 3: Oil Spill Response Funds by State FY 2004–FY 2008

State	Funding	State	Funding
Alaska	$ 5,657,464	Mississippi	$ 2,807,823
Alabama	$ 1,731,599	Montana	$ 688,311
American Samoa	$ 29,061	North Carolina	$ 1,069,036
Arizona	$ 238,034	North Dakota	$ 7,401
California	$ 12,166,544	Nebraska	$ 15,000
Colorado	$ 668,969	New Hampshire	$ 383
Connecticut	$ 306,136	New Jersey	$145,570,078
District of Columbia	$ 21,683	New Mexico	$ 149,325
Delaware	$ 448,969	Nevada	$ 6,204
Florida	$ 3,550,778	New York	$ 5,033,109
Federated States of Micronesia (Terr.)	$ 39,148	Ohio	$ 6,022,768
		Oklahoma	$ 3,615,939
Georgia	$ 1,264,442	Oregon	$ 3,904,391
Guam (Comm.)	$ 4,330,787	Pennsylvania	$ 4,852,194
Hawaii	$ 2,006,338	Puerto Rico (Comm.)	$ 9,816,067
Iowa	$ 97,252	Rhode Island	$ 2,477,459
Idaho	$ 498,393	South Carolina	$ 286,335
Illinois	$ 3,158,257	Tennessee	$ 2,392,363
Indiana	$ 308,780	Texas	$ 6,895,697
Kansas	$ 883,747	Utah	$ 187,810
Kentucky	$ 6,282,466	Virginia	$ 881,651
Louisiana	$ 36,409,818	Virgin Islands (Terr.)	$ 123,727
Massachusetts	$ 1,121,198	Vermont	$ 25,424
Maryland	$ 6,844,853	Washington	$ 7,328,903
Maine	$ 183,614	Wisconsin	$ 161,454
Michigan	$ 5,842,453	West Virginia	$ 1,982,351
Minnesota	$ 104,214	Wyoming	$ 315,073
Missouri	$ 593,168		

In the event the OSLTF was depleted, the President would still have the statutory responsibility under the Federal Water Pollution Control Act (FWPCA) to respond to oil spills. Arguably, this would place the Federal Government in the position it was in prior to the *T/V EXXON VALDEZ* spill in Prince William Sound, when the President had authority to respond, but did not have adequate resources in the FWPCA 311k fund to do so.

The Department of Homeland Security has promulgated the National Response Plan (NRP), mandated by the Homeland Security Act. The NRP is the nation’s all-hazards approach when responding to a major emergency, including a terrorist attack. The NRP incorporates the NCP as one of two major subordinate plans under the NRP. The OSLTF is a key component of the NCP. All NRP planners and participants expect OSLTF funding to be available in the event of a terrorist incident that results in a major oil spill.

Another major purpose of the Fund is to compensate third parties for removal costs and damages when polluters do not pay. If the Fund were exhausted, persons who have a right to compensation under OPA would be deprived of a ready source of compensation and would have to resort to more costly and time-consuming litigation against a non-paying responsible party. In passing OPA, Congress intended that injured persons would not have to resort to litigation in order to be compensated (House Report 101-653, August 1, 1990, p. 117). Further, in many instances, responsible parties cannot be located or simply do not have the financial ability to pay claimants. Thus, in the absence of a viable Fund, claimants may have no effective means of compensation.

The largest category of claimants to the OSLTF is states, which submit removal cost claims for oil spills for which they are the sole responders. These same state organizations are often part of the "first responders" community that DHS is committed to supporting.

Additionally, as previously noted, the Fund is the source for substantial annual appropriations to various agencies, principally the Coast Guard and EPA. If the Fund were exhausted, Federal appropriations would have to come from other sources, or the activities financed from such appropriations would have to be reduced. Even before the Fund is exhausted, the balance will decline to a point at which all of the current uses cannot be fully supported. Current appropriations may take precedence over all prior enacted uses as the most recent expression of Congressional intent.

ACRONYMS

CFR	Code of Federal Regulations
COFR	Certificate of Financial Responsibility
Denali	Denali Commission
DHS	Department of Homeland Security
DOC	Department of Commerce
DOI	Department of the Interior
DOT	Department of Transportation
EEZ	Economic Exclusive Zone
EOY	End of Year
EPA	U.S. Environmental Protection Agency
EF	Emergency Fund
FLAT	Federal Lead Administrative Trustee
FOSC	Federal On-Scene Coordinator
Fund	Oil Spill Liability Trust Fund
FWPCA	Federal Water Pollution Control Act, as amended
FY	Fiscal Year
IAG	Inter-Agency Agreement
INRDA	Initiate Natural Resource Damage Assessment
MTSA	Maritime Transportation Security Act
NCP	National Contingency Plan
NOAA, DOC	National Oceanographic and Atmospheric Administration, Department of Commerce
NPFC	National Pollution Funds Center
NRD	Natural Resource Damage
NRDA	Natural Resource Damage Assessment
NRP	National Response Plan
OPA	Oil Pollution Act of 1990
OSLTF	Oil Spill Liability Trust Fund
OSRI	Prince William Sound Oil Spill Recovery Institute
RP	Responsible Party
TAPS	Trans-Alaska Pipeline System Liability Fund
Treasury	Department of the Treasury
U.S.C.	U.S. Code
USCG	U.S. Coast Guard