U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

MAY - 8 2006

The Honorable Robert Byrd
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This letter responds to the FY 2006 Department of Defense Appropriations Conference Report (109-359), which directs the Department of Homeland Security to provide the House and Senate Appropriations Committees an analysis of 1) the projected impacts to the Oil Spill Liability Trust Fund (OSLTF) for any Oil Pollution Act removal and damage costs resulting from Hurricanes Katrina and Rita, and 2) a plan to address the expected funding shortfall.

The enclosed analysis builds on the "Report On Implementation of the Oil Pollution Act of 1990" submitted in May 2005 pursuant to section 707 of the Coast Guard Maritime Transportation Act of 2004 (Public Law 108-293), which included the history of the fund, the projected decline in the fund balance, and the impacts of the OSLTF decline. Subsequent to that report, the passage of the Energy Policy Act of 2005 resumed the per barrel oil tax beginning in April 2006.

While there have not yet been any Hurricane Katrina or Rita related expenses against the OSLTF, we anticipate that Responsible Parties, Natural Resource Trustees, and other third parties will submit claims against the OSLTF in the future. This could significantly impact the viability of the fund if the adjudicated claims exceed fund balances.

An identical letter has been sent to Chairman Gregg, and to the Chairman and Ranking Member of the House Subcommittee on Homeland Security, Committee on Appropriations. If I can provide further assistance, please feel free to call me at (202)-205-4613.

Sincerely,

Janet Hale for
Under Secretary for Management

Enclosure

U. S. DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

Report to Congress:

Oil Spill Liability Trust Fund Hurricane Impact

OIL SPILL LIABILITY TRUST FUND HURRICANE IMPACT

Introduction

This analysis is provided pursuant to the fiscal year 2006 Department of Defense Appropriations Conference Report (109-359), which directs the Department of Homeland Security (DHS) to provide the House and Senate Appropriations Committees an analysis of the projected impacts to the Oil Spill Liability Trust Fund (OSLTF) for any Oil Pollution Act of 1990 (OPA 90) removal and damage costs resulting from Hurricanes Katrina and Rita, and a plan to address the expected funding shortfall.

This analysis builds on the "Report On Implementation of the Oil Pollution Act of 1990" submitted in May 2005 pursuant to section 707 of the Coast Guard Maritime Transportation Act of 2004 (Public Law 108-293), which included the history of the fund, the projected decline in the fund balance, and the impacts of the OSLTF decline. Subsequent to that report, the passage of the Energy Policy Act of 2005 resumed the per barrel oil tax beginning in April 2006. With resumption of these tax revenues, and barring significant impacts from the hurricanes or other major oil pollution incidents, the fund was projected to remain viable. The resultant devastation caused by Hurricanes Katrina and Rita, however, may challenge these original projections; we anticipate that Responsible Parties, Natural Resource Trustees, and other third parties will submit claims against the fund, which could adversely impact the viability of the fund if the adjudicated claims exceed fund balances.

Level of Fund and Long Term OSLTF Viability

The level of funds in the OSLTF at the end of April 2006 was $662 million. Based on past spending trends, known OSLTF commitments, and the resumption of tax revenue, current forecasts (**excluding** Hurricane losses) indicate the OSLTF balance is expected to reverse its downward trend in FY 2008 and slowly rebuild itself, achieving a level of approximately $1 billion by the time the per barrel tax sunsets in 2014. We anticipate claims resulting from the 2005 hurricanes may impact the viability of the fund, however we do not yet have detailed estimates of future fund liabilities, due to lack of information about costs incurred by the private sector to clean up oil contamination in the aftermath of Hurricane Katrina.

As a result of Hurricanes Katrina and Rita there were six major, five medium, and over 5000 minor oil and hazmat responses. Additional minor spills continue to be identified and addressed. It is estimated that over 9 million gallons of oil was released, and this total does not include oil released from the 5000 minor spills. A detailed summary of these spills is provided on pages 5-6.

As of April 2006, there has been only one claim resulting from Hurricane Katrina and no Hurricane Rita expenses charged to the fund. All Katrina and Rita oil pollution response activities thus far have been funded by either Stafford Act Disaster Relief Fund (DRF) funding or by a responsible party. The Coast Guard has received $178 million in DRF funds for coastal zone hazardous materials response, and the EPA has received a similar amount for inland zone response. These funds are expected to be sufficient through April 30, 2006. Any additional clean-up costs will be evaluated by the Administration for appropriate source of funding and will be paid for either from additional DRF allocations or via OSLTF expenditures.

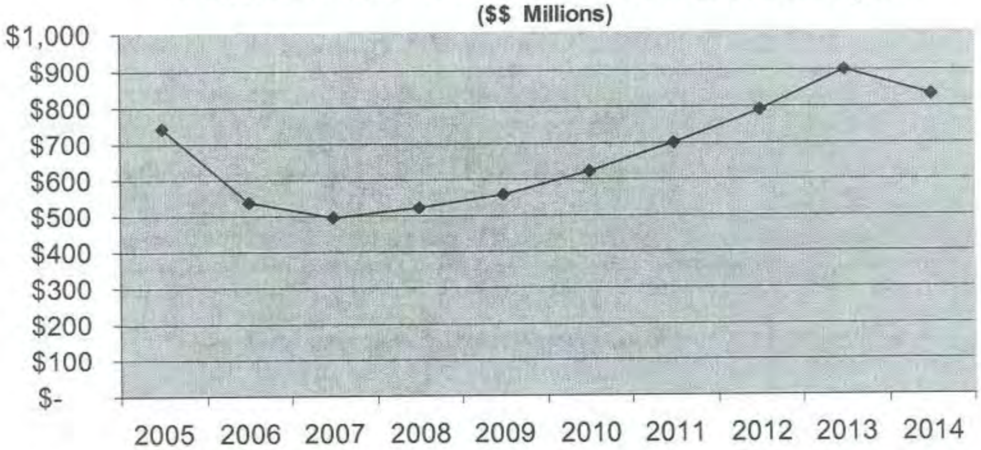
A greater threat to the OSLTF is from claims for reimbursement of clean-up costs filed in the future by parties who have paid to remediate oil spills. While none have been received to date, it is possible that Responsible Parties (RPs) who have spent their own money in response to the spills may try to seek reimbursement from the OSLTF. These claims would have to be evaluated on a case by case basis. If they meet the requirements of OPA 90 they would represent legitimate claims against the fund. It is unclear how much has been spent by the major refineries and other facility owners in their response to these hurricane related spills.

NOAA, as Federal lead for the Natural Resource Damage (NRD) Trustees, has indicated that there will be a potential for natural resource damage assessment and restoration claims (earliest date mid-2006) ranging from $150-$250 million.

The size and number of potential damages and NRD claims that could impact the fund is currently difficult to estimate with any degree of certainty. Because the Coast Guard does not have an accurate estimate of the private sector costs incurred in the post-Katrina clean up of oil spills, at this point it is not possible to predict future fund liabilities with any reasonable degree of certainty.

The current OSLTF forecast, anticipating the resumption of tax revenue (approximately $200 million per year) from the per barrel oil tax in April 2006, was projected to remain healthy if past trends were to continue (i.e. no significant hurricane related impacts to the fund) (Figure (a)).

Figure (a)
OSLTF Forecast Balance with No Hurricane Impact
($$ Millions)



OIL SPILL LIABILITY TRUST FUND HURRICANE IMPACT

Details associated with these forecasts are presented on the following page. This forecast differs slightly from the estimates contained in the President's budget submission. First, because the per barrel oil tax sunsets (by statute) on Dec 31st of 2014, we used that timeframe for the tax revenue estimate. Treasury forecasts in the President's budget assume the tax revenue continues out to 2015 and 2016. Knowing that the tax will sunset, we feel that our estimate is the most accurate depiction of the anticipated revenue stream. Second, the "Claims-other" forecast changed due to an increase in the number and amount of damages claims subsequent to the President's budget submission (examples include spills in the Chicago Sanitary & Ship Canal; the Sergo-Zakairdze spill in Puerto Rico; and the Rebel Barge DBL-152, which struck a sunken offshore oil platform following last summer's hurricanes). Similarly, the significant "Claims-Athos" forecast has gone up because more claims have been filed since the budget was submitted. We also know that the trustees are still formulating their claims, and we have learned of businesses in the region impacted by the Athos spill who are still preparing their claims.

FORECAST EXCLUSIVE OF HURRICANE CLAIMS

Oil Spill Liability Trust Fund (OSLTF): FY2005 - 2014

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
REVENUES:	*Actual*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*
Barrel Tax	$0	$88,000,000	$183,000,000	$192,000,000	$203,000,000	$212,000,000	$223,000,000	$233,000,000	$244,000,000	$64,000,000
Cost Recoveries	$14,035,220	$6,000,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000
Penalties	$17,925,110	$4,500,000	$4,500,000	$4,500,000	$4,500,000	$4,500,000	$4,500,000	$4,500,000	$4,500,000	$4,500,000
Interest on Investments	$21,655,443	$31,811,898	$23,189,907	$21,221,793	$22,386,740	$23,901,490	$26,685,374	$30,061,965	$34,013,749	$38,608,461
Transfers in (TAPS)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Revenue	$53,615,773	$130,311,898	$216,689,907	$223,721,793	$235,886,740	$246,401,490	$260,185,374	$273,561,965	$288,513,749	$113,108,461
EXPENSES:										
Emergency Fund (EF)	$50,760,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000
Claims - Other	$13,675,346	$24,800,000	$52,000,000	$22,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000
Claims - Athos	$101,283	$85,400,000	$37,000,000	$15,000,000	$15,000,000	$0	$0	$0	$0	$0
Claims - NRD	$675,710	$78,963,319	$31,800,000	$17,970,000	$24,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000
OSRI (earmark)	$862,945	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000
Denali (earmark)	$4,252,043	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000
Transfer to CG (approps)	$46,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000	$44,500,000
Transfer to EPA (approps)	$15,872,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000	$16,000,000
Transfer to DOI (approps)	$7,006,294	$7,100,000	$7,100,000	$7,100,000	$7,100,000	$7,100,000	$7,100,000	$7,100,000	$7,100,000	$7,100,000
Transfer to other DOT (approps)	$14,880,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000	$19,000,000
Transfer to Treasury (approps)	$50,794	$60,000	$60,000	$60,000	$60,000	$60,000	$60,000	$60,000	$60,000	$60,000
Total Expenses	$154,636,415	$330,823,319	$262,460,000	$196,630,000	$200,660,000	$181,660,000	$181,660,000	$181,660,000	$181,660,000	$181,660,000
FY Net Change - Revenue less Expenses	($101,020,642)	($200,511,421)	($45,770,093)	$27,091,793	$35,226,740	$64,741,490	$78,525,374	$91,901,965	$106,853,749	($68,551,539)
Projected EOY Fund Asset Balance	$739,811,579	$539,300,158	$493,530,064	$520,621,857	$555,848,597	$620,590,087	$699,115,460	$791,017,425	$897,871,175	$829,319,635

Prepared 2/9/2006

Assumptions:

Barrel tax - Based on FY07 Revenue Estimate provided by Treasury, Office of Tax Analysis, Receipts Forecasting Division - 12/13/2005. Tax expires 12/31/2014.

Fines and Penalties - Based on historical rates

Interest on Investments - Based on projected 4.3% Treasury Investment rate applied against Previous Year's Ending Balance.

Emergency Fund - Based on historical usage.

Athos Claims - Reflects potential total claims of $152.5M

Note: Treasury Investment Rate used to forecast the interest earned on a given years balance invested is a program management estimate made by NPFC. The 4.3% rate used for this forecast reflects real historical returns adjusted slightly for current trends in interest rates. The actual interest rates in the future are unknown. Title 26, Subtitle I, Chapter 98, Subchapter A of the Internal Revenue Code established the trust fund in Section 9509. Treasury policy is to invest approximately 50% of the fund's investment holdings in market-based Treasury Bills with consecutive 6-month maturities. An additional 25% is invested in overnight securities. The remaining 25% is invested in long-term market based notes and bonds.

Appendix -- Summary of Hurricane Katrina & Rita Related Spills

As of January 24, 2006 there have been over 9 million gallons of oil released from six major and five medium spills. In addition there have been over 5,000 minor spill responses. New minor spills are being identified and responded to daily.

- **Summary of 6 major incidents:**
  - The Bass Enterprises, South Cox Bay facility at Cox Bay, LA, suffered two tank failures. 3,800,000 gallons were discharged; 1,900,000 gallons recovered to date. Efforts to identify and remove lingering pollution continue.
  - The Bass Enterprises North facility at MM 36 LMR suffered shifted and leaking tanks. 460,000 gallons were discharged; 116,000 gallons recovered to date. Efforts to identify and remove lingering pollution continue.
  - The Shell Nairn facility in Port Sulphur, LA, suffered a ruptured pipeline. 140,000 gallons were discharged; 11,000 gallons recovered to date. Additional cleanup pends due to private property access issues.
  - The Murphy Oil facility in Mereaux, LA, suffered a ruptured tank. 1,100,000 gallons discharged; 750,000 gallons recovered to date. Coast Guard responders conducted initial gross oil containment; EPA retains lead for overall site jurisdiction. Hundreds of homes in the adjacent areas were saturated by oil. Household cleanup continues. Media reports that many homeowners have accepted a settlement with Murphy Oil, while other homeowners have initiated a class action lawsuit.
  - The Chevron Pipeline Empire facility in Port Sulphur, LA, suffered a pipeline rupture. 1,400,000 gallons discharged; 75,000 gallons were recovered. Efforts to identify and remove lingering pollution continue.
  - The Shell Pilot Town facility in Pilot Town, LA, suffered a breached pipeline. 1,100,000 gallons discharged; 950,000 gallons were recovered. Efforts to identify and remove lingering pollution continue.

- **Summary of 5 medium incidents:**
  - The Sundown East facility in Potash, LA, suffered ruptured tanks and piping. 52,000 gallons were discharged; 16,000 gallons recovered to date. Response efforts to identify and address the sources of persistent sheening are ongoing.
  - The Sundown West facility in Potash, LA, suffered ruptured tanks and piping. 13,000 gallons were discharged; 8,000 gallons recovered to date. Efforts to identify and remove lingering pollution on private property continue.
  - At the Chevron Port Fourchon Pipeline facility, in Port Fourchon, LA, a potable water tank was lifted by the hurricane and impacted valves and pipelines in the facility tank farm. 54,000 gallons were discharged; approximately 45,000 gallons of diesel/water mix recovered to date.

- At the Texas Point – Sabine Services facility near Sabine, TX, one 504,000-gallon capacity tank was lifted and moved 3 miles into a marsh by Hurricane Rita. 34,000 gallons were discharged; approximately 12,000 gallons of #2 diesel was removed from the tank and surrounding area. Removal operations were conducted by constructing a temporary pipeline to a tank barge. Efforts to identify and remove lingering pollution continue.
- At the Dynergy Venice facility in Venice, LA two tanks ruptured. 25,000 gallons discharged; 19,000 gallons were recovered. Efforts to identify and remove lingering pollution continue.

➢ **Other Significant Incidents:**

- ITB REBEL/ DBL 152 - An integrated tug and barge struck a submerged oil platform that was sunk by Hurricane Rita. Unknown amount of oil discharged (possibly up to 3 million gallons). 1,400,000 gallons has been recovered. Another approximately 2 million gallons have been lightered from the damaged vessel. The barge has been towed to a shipyard and is undergoing inspection prior to disposal. The responsible party reports response expenditures to date of approximately $36 million. CG OSLTF funding ceiling currently at $450K with $360,000 expended against the ceiling to date. The responsible party's limit of liability is $11.7 million. They have contacted the National Pollution Funds Center regarding the submission of an excess of liability claim against the OSLTF.