—Overview—

National Pollution Funds Center and Oil Pollution Act of 1990, Title I

NPFC Created to Implement OPA 90, Title I

In 1990, Congress passed the Oil Pollution Act (OPA) to help address a wide range of issues associated with preventing, responding to, and paying for oil pollution. Title I of OPA established oil spill liability and compensation requirements, including the Oil Spill Liability Trust Fund (OSLTF) to pay for federal removal activities and compensate for damages when there is a discharge or substantial threat of discharge of oil to navigable waters, adjoining shorelines or the Exclusive Economic Zone (hereafter "discharge"). In 1991, the United States Coast Guard (USCG) created the National Pollution Funds Center (NPFC) to implement certain provisions of OPA, Title I, administer the OSLTF, and ensure funding for federal response and recovery from liable persons.

Primary Objectives of OPA , Title I

The primary objectives of OPA, Title I, are:

- To ensure that there are adequate funds to provide for a rapid and effective federal response to a discharge
- To implement a compensation mechanism (claims process) to pay those damaged by discharges when the liable responsible party does not pay
- To establish a liability and compensation regime that serves as a deterrent to potential responsible parties for oil spills and establish a mechanism (Certificates of Financial Responsibility or COFRs) to ensure that owners and operators of certain vessels have funds to pay for oil spill removal and damages up to certain limits

Payments from the Oil Spill Liability Trust Fund

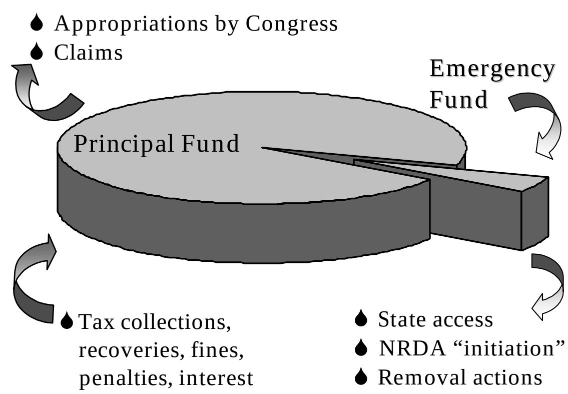
The OSLTF is used to cover a variety of needs and provides payment of:

- Removal Costs (including costs of monitoring removal actions and abating substantial threats of discharges) consistent with the National Contingency Plan (NCP)
- Costs incurred by federal trustees to initiate natural resource damage assessments
- Claims for uncompensated removal costs consistent with the NCP and for uncompensated damages, including natural resource damages
- Appropriations for federal administrative and operational costs, including research and development, to implement OPA

Providing Ready Access to Funding for Oil Spill Response

Whether from a breach in a vessel's hull or a leak from an onshore storage tank, an enormous amount of oil can be discharged, causing devastating damage and triggering millions of dollars of cleanup costs and related damages. Title I of OPA authorized the OSLTF up to $1 billion to pay for removal costs and damages when the responsible party does not pay. The Energy Policy Act of 2005 later increased the maximum size of the Fund to $2.7 billion.

The Structure of the Fund



There are two primary components to the OSLTF.

1. The *Emergency Fund* is available for Federal On-Scene Coordinators (FOSCs) to respond to discharges and for federal trustees to initiate natural resource damage assessments. The Emergency Fund is a recurring $50 million available to the President annually.
2. The remaining *Principal Fund* balance is used to pay claims, fund appropriations by Congress to Federal agencies to administer the provisions of OPA, and support research and development.

Emergency Funding

A core mission of the NPFC is to administer the disbursement and ensure proper use of the Emergency Fund, 24 hours a day, every day, so that the FOSC can immediately respond to a discharge or monitor prompt and effective cleanup activities by the responsible party (RP). The OSLTF can be used by FOSCs to cover expenses associated with mitigating the threat of an oil spill, as well as the costs of oil spill containment, countermeasures, cleanup, and disposal activities. While the use of the OSLTF is most closely associated with discharges from ships, it has increasingly been used for discharges at industrial or onshore oil storage and production facilities.

Cost Recovery
Through OPA and other environmental statutes, Congress made it clear that polluters should bear the costs when pollution occurs. NPFC takes aggressive action to recover OSLTF costs from the liable RP. The overall response and cleanup process can be complex and costly. It is important that the removal costs are accurately identified and documented for each phase of the response. The NPFC provides detailed guidance and support to federal responders to ensure that all removal costs are proper uses of the Fund and are carefully tracked and documented. The FOSC provides the NPFC with a report of all removal costs associated with the incident. The NPFC then ensures that all the appropriate documentation is available to support the charges and presents the bill to the RP. This bill includes all federal removal costs. It may also include claims that were paid by the NPFC to other parties for uncompensated removal costs, damages to natural resources or property, and other economic losses attributable to the discharge. Payments made by the responsible party are deposited into the Principal Fund of the OSLTF. Costs that cannot be collected from the RP may be referred to the Department of Treasury's Debt Management Service for collection or to the Department of Justice to pursue litigation against the RP.

Compensating Claimants for Removal Costs and Damages

If an individual, organization, or the environment (NRD trustees) suffers certain damages as a result of a discharge, OPA entitles them to seek compensation. Indeed, fair compensation is an important aspect of final recovery from the spill. The NPFC has the authority to use the OSLTF to pay for uncompensated removal costs and damages. Claims not paid by the RP or resulting from “mystery” spills may be submitted to the NPFC for payment. Claimants may include federal, state, and local government entities, oil spill response organizations (OSROs), businesses, and members of the general public.

Costs and damages covered by the Fund include—

- Uncompensated removal costs
- Damages to natural resources
- Damages to real or personal property
- Loss of subsistence
- Loss of profits or earning capacity
- Loss of government revenues
- Increased cost of public services

RPs may also submit claims to NPFC if they pay or incur removal costs and damages in excess of the applicable OPA liability limit and can establish entitlement to the limit. RPs can also present claims to the NPFC if they can establish a defense to liability under OPA when a discharge is solely caused by an act of war, an Act of God, or certain acts of third parties. These defenses are narrowly construed.

Claim Submission
Generally claims, except state government claims for uncompensated removal costs, must first be submitted to the RP. If the RP denies or fails to settle the claim within 90 days, the claimant may file an action in court against the RP or submit a claim to NPFC. Claims may also be submitted first to the NPFC if the responsible party cannot be identified.

There are time limitations on presenting claims to the NPFC. Claims for removal costs must be presented within six years after the date of completion of all removal actions for the incident. Damage claims must be presented within three years after the date on which the injury and its connection with the discharge were reasonably discoverable with the exercise of due care.

The NPFC does not have a required form for OSLTF claims submission, but has developed a model claim form to assist claimants with their submissions. In all cases, the claimant bears the burden to prove the claim and should provide all of the information deemed necessary to support the claim.

Adjudication
When the NPFC receives a claim, it is first reviewed by a Claims Manager to ensure that the claim meets certain statutory and regulatory requirements for compensation. Additional information may be requested, including documentation of costs, activities, and damages. Once the NPFC makes a determination, the claimant has 60 days to accept or reject the determination.

As a condition of payment from the OSLTF, the claimant must turn over (subrogate) all rights to recover from the RP; this enables the NPFC to seek recourse from the RP. If the claimant rejects a compensation offer, or if the claim is denied, the claimant may then submit one request for reconsideration within 60 days after the determination was mailed to the claimant.

Natural Resource Damage Claims

Discharges from vessels and facilities into navigable waters of the United States can have devastating impacts on wildlife sanctuaries, protected wetlands, unspoiled seashores, and pristine rivers and lakes. Fortunately, there is a safety net to help cover the costs of reclaiming our nation's invaluable natural resources following a discharge.

Every day, across the country, discharges threaten to injure or destroy our natural resources. Restoring, rehabilitating, and replacing these resources comes with a high price tag. It is the duty of the RP to pay for damages incurred when a discharge injures these natural resources. When the RP does not pay, the NPFC can provide access to the OSLTF as a second line of defense.

NRD Claimants

Those who own, manage, or hold in trust natural resources are designated as trustees and may submit natural resource damage (NRD) claims. The President designates federal trustees. The governor of each state designates state and local officials as state trustees. Certain Indian tribes, recognized by the United States government, can designate a representative to act as their tribal trustee. Trustees include:

- Department of Agriculture
- Department of Commerce (National Oceanic and Atmospheric Administration)
- Department of Defense
- Department of Energy
- Department of the Interior
- States and Territories, Indian Tribes, and Foreign Governments

Funding Mechanisms

NPFC provides funding for natural resource damages in several ways:

- Initiate Requests for Funding of Pre-assessment Activities
- Assessment and / or Restoration Claims
- Emergency Restoration Claims

Compensation

Natural resource damage claims are intended to pay for the costs of assessing damage; for restoring, rehabilitating, replacing, or acquiring the equivalent of the natural resources injured by the discharge; and to compensate for the lost use of the affected resources. Depending on the circumstance, claims can provide funding "up-front" or in a reimbursable manner. Damages claimed must be based on a plan that has been made available for public comment.

Certificate of Financial Responsibility Program

The United States relies on tankers, barges, and other vessels to transport oil and chemical-based products on our nation's waterways. A discharge of either oil or hazardous chemicals from these vessels can have a devastating impact on the environment. Congress has made clear, in OPA and other environmental statutes, that the parties responsible for water pollution should bear the cleanup costs. The Certificate of Financial Responsibility (COFR) program reflects this guiding principle.

The NPFC administers the COFR program. A COFR is issued to vessel operators who have demonstrated their ability to pay for cleanup and damage costs up to their liability limits required by OPA. With a few limited exceptions, vessels greater than 300 gross tons, or vessels of any size that are lightering or transshipping oil in the Exclusive Economic Zone (EEZ), are required to establish evidence of financial responsibility and comply with the COFR regulations in order to operate in U.S. waters. There are nearly 19,000 COFRs presently issued that are generally valid for three years.

Limits of Liability

The limits of liability are based on a particular vessel's tonnage. The Delaware River Protection Act of 2006, title VI of the Coast Guard and Maritime Transportation Act of 2006, amended the limits of liability under OPA for discharges and substantial threats of discharge of oil from vessels. See the NPFC's Web site (www.uscg.mil/npfc) for the current applicable limits.

Penalties

Operators who do not comply with the COFR requirements are subject to:

- Detainment
- Denial of entry into U.S. ports
- Civil penalties of up to $32,500 per day
- Seizure or forfeiture of the vessel

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