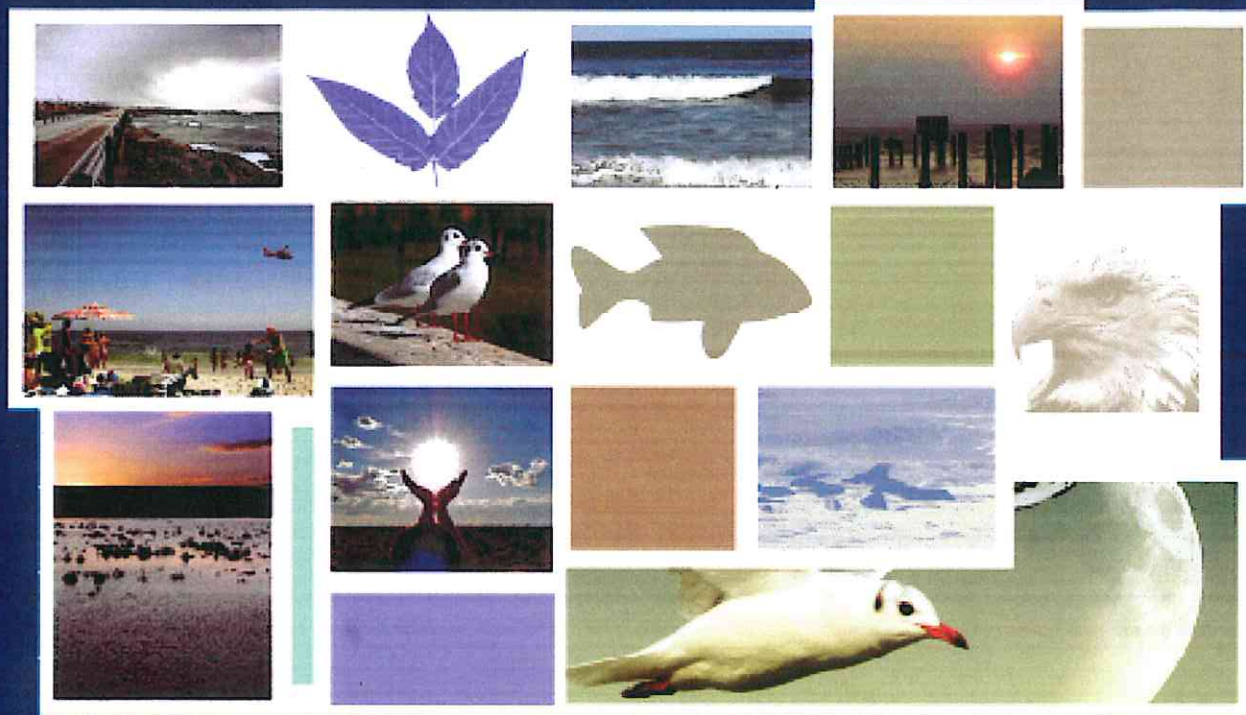


National Pollutions Fund  
Center  
(Federal Oil Spill Liability  
Trust Fund)

*(Attachment 2)*



# NPFC Mission Overview

Department of Homeland Security  
U.S. Coast Guard  
National Pollution  
Funds Center



## Contents

Introduction	1
Oil Pollution Act	1
CERCLA and Superfund	1
Disaster Funding	2
Vision & Mission	3
NPFC Vision Statement	3
NPFC Mission Statement	3
Core Values	4
Whom Do We Touch?	5
Organization	6
Cross-Functional Coordination	7
Regional Case Teams	8
Oil Spill Liability Trust Fund (OSLTF)	9
History of the Fund	9
Revenue Sources	9
Fund Components	10
Removal Actions	10
State Access	11
Claims	11
Funding for Natural Resource Damages	12
Agency Appropriations	13
Coast Guard Superfund Use	14
History	14
Coast Guard CERCLA Responses	14
Coast Guard Disaster Responses	14
Vessel Financial Responsibility Certification	15
Guidance Materials	16

## Introduction

As millions of gallons of oil are transported and stored across the United States every day, we are faced with the possibility of an accidental spill that can devastate wildlife, endanger our water, and impact our economy.

The U.S. Coast Guard's National Pollution Funds Center (NPFC), committed to protecting America's environment, provides protection up-front by certifying that oil-carrying vessels have the financial ability to pay in the case of an oil spill. When spills do occur, the NPFC provides funding for quick response, compensates claimants for cleanup costs and damages, and takes action to recover costs from responsible parties.



Craig A. Bennett  
Director, NPFC

### Oil Pollution Act

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. It does so by creating a comprehensive prevention, response, liability, and compensation regime to deal with oil pollution to U.S. navigable waters caused by vessels or facilities. OPA significantly 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 liability limits, 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 billion Oil Spill Liability Trust Fund (OSLTF or Fund) to pay for expeditious oil removal and uncompensated damages. OSLTF administration was delegated to the U.S. Coast Guard by Executive Order; and on February 20, 1991, the NPFC was commissioned to perform this function.

### CERCLA and Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) gave the Federal government the authority and the funding (i.e., Superfund) to clean up sites contaminated by hazardous waste. CERCLA response authority includes response to intentional releases of industrial or military hazardous materials by terrorists, resulting in an overlap of pollution response and homeland security. Although the EPA administers Superfund, the Coast Guard responds to releases and substantial threats of releases of hazardous materials in the coastal zone, the Great Lakes, and inland river ports.

Since its establishment, the NPFC has served as the fiduciary agent for the portion of the Superfund used by the Coast Guard. EPA provides the funds to the Coast Guard through Inter-Agency Agreements (IAGs); the funds are used for costs incurred in removal operations following a CERCLA incident and for the ongoing costs of building and maintaining response capabilities (training, equipment, personnel).

## **Disaster Funding**

The Stafford Act provides federal assistance to state and local governments impacted by a significant disaster or emergency, such as hurricanes or terrorist acts. These events fall under the National Response Plan (NRP).

If the President issues a Federal Disaster Declaration, FEMA-administered Stafford Act funds become available for a wide variety of emergency Mission Assignments. The Coast Guard has frequently been called upon to conduct operations supporting these Mission Assignments, which routinely include response to oil and hazardous materials spills/releases and periodically may involve search and rescue, law enforcement, and marine debris removal.

The NPFC serves as the fiduciary agent for the portion of the Stafford Act funding assigned to the Coast Guard for pollution response. Disaster relief funds for pollution response (ESF-10) are made available to the Coast Guard through IAGs. The funds are used for costs incurred in removal operations following a Presidential disaster declaration.



## Vision & Mission

### **NPFC Vision Statement**

The NPFC aspires to be the model fiduciary manager of a federal trust fund and the implementing agency of a premiere financial responsibility program. We realize our vision through quality; equitable and timely customer service; innovative leveraging of technology to increase productivity; and continuous focus on our regulatory mandates, as well as our stakeholders' diverse interests.

### **NPFC Mission Statement**

The NPFC has fiduciary responsibility to administer the OSLTF, manage the portion of the Superfund that the Coast Guard uses, and oversee the vessel financial responsibility provisions of OPA. In accordance with OPA and other pertinent legislative mandates, the NPFC implements programs to accomplish these seven objectives:

#### ***1. Administer the Oil Spill Liability Trust Fund***

The past decade has seen a wide range of laws passed by the Congress to improve financial management in the Federal government. Two prominent examples are the Chief Financial Officer (CFO) Act and the Debt Collection Improvement Act. The NPFC has enhanced its business processes as a result of these laws, employing rigorous fiduciary management and reporting systems to meet statutory requirements established for federal trust funds such as the OSLTF.

#### ***2. Provide funding for federal removal actions in response to a discharge or a substantial threat of discharge of oil to navigable waters of the United States***

When an oil or hazardous substance spill occurs in U.S. navigable waters, or there is a substantial threat of such a spill, the Responsible Party (RP) is expected to act promptly. The NPFC maintains a system that provides funds 24-hours-a-day for Federal On-Scene Coordinator (FOSC) needs, either to immediately respond or to monitor the RP's cleanup activities. Funds may also be accessed by states for oil removal actions.

#### ***3. Compensate claimants for OPA removal costs or damages***

OPA expands the scope of damages claimants can recover and does away with the traditional admiralty ship owners' protection. Traditional protection generally limited the scope of pure economic damages to only those who owned property physically impacted by oil and often limited the extent of liability of the ship owner to the value of the ship. The NPFC compensates those who have suffered certain damages or incurred removal costs because of a discharge or a substantial threat of a discharge of oil to U.S. navigable waters.

#### ***4. Provide funding to natural resource trustees for Natural Resource Damage Assessment (NRDA) and restoration***

For oil spills affecting natural resources, trustees may choose to submit a request to conduct the initiation of an NRDA. This established procedure allows the trustees, acting through a Federal Lead Administrative Trustee (FLAT), to gain access to OSLTF funds to complete these "pre-assessment" activities. The NPFC provides responsive adjudication of claims and distributes information to potential claimants and the public for NRD claims.

### **5. Recover OPA removal costs and damages from responsible parties (RPs)**

An underlying principle of OPA is to reduce the probability of an oil spill incident. The law is designed to motivate potential polluters to act more responsibly by holding them strictly liable for costs and damages resulting from oil spills into U.S. navigable waters. Such action is encouraged by enforcement of cost recovery under OPA. NPFC's goals are to ensure that:

- ◆ Parties responsible for oil pollution or substantial threat of oil pollution are identified
- ◆ All removal costs and damages are documented accurately and submitted promptly
- ◆ RPs pay such costs and damages

### **6. Issue certificates of financial responsibility (COFRs) for vessels**

OPA substantially increased the scope and limits of liability for vessel owners and operators. Operators of U.S.- and foreign-flag vessels over 300 gross tons generally are prohibited from operating in U.S. waters without first demonstrating their financial ability to pay for pollution removal costs and damages. The NPFC is responsible for issuing vessel COFRs in accordance with OPA and CERCLA. The Coast Guard and U.S. Customs Service field units enforce the COFR requirement. Currently, about 19,000 vessels carry COFRs issued by the Coast Guard.

### **7. Provide funding for Coast Guard responses to discharges or the substantial threats of a discharge of hazardous substances**

CERCLA and the Hazardous Substance Superfund give the Federal government flexibility in identifying and addressing releases of hazardous substances and provide monies to identify, prioritize, and clean up the nation's uncontrolled hazardous waste sites. The NPFC provides funding for removal action from a portion of the Superfund to FOSCs for incidents in the coastal zone, Great Lakes, and inland river ports.

## **Core Values**

The NPFC recognizes that our values directly influence the manner in which we carry out our missions and fulfill our vision. NPFC's values are:

- ◆ To conduct our activities with the highest standards of professionalism and ethics and to treat all of our customers fairly.
- ◆ To recognize our people as our most important asset and to fully empower them to carry out their assigned responsibilities, supported with necessary resources, held accountable for what they do, and rewarded for their accomplishments.
- ◆ To ensure success and a balanced work-life environment through teamwork, fostering motivation, diversity, challenge, wellness, and personal growth.
- ◆ To maximize productivity through the use of innovative information technology (IT).
- ◆ To value and seek out input from our customers and use that input to continuously improve our work processes.
- ◆ To embrace the Coast Guard's core values of honor, respect, and devotion to duty.

## Whom Do We Touch?

The NPFC routinely interacts with multiple public and private entities to include:

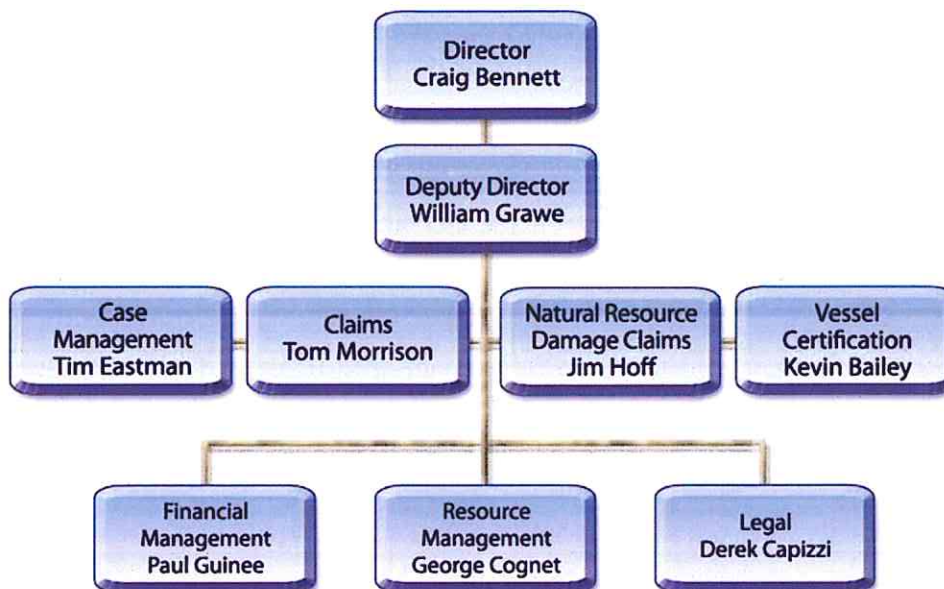
- ◆ Coast Guard and U.S. Environmental Protection Agency (EPA) FOSCs and other components of the National Response System
- ◆ 7,400 vessels operators and 2,600 owners plus a myriad of port agents, Protection and Indemnity Club correspondents, and attorneys
- ◆ 2,700 RPs and their associated staffs
- ◆ 1,500 private third-party claimants (from citizens with oil on their seawall to major shipping companies)
- ◆ The environmental staff of states and their governors' offices
- ◆ All designated natural resource trustees—Federal, state, and Indian tribe
- ◆ All representatives on the National Response Team





## Organization

NPFC is organized into seven divisions as shown in the organizational chart below.



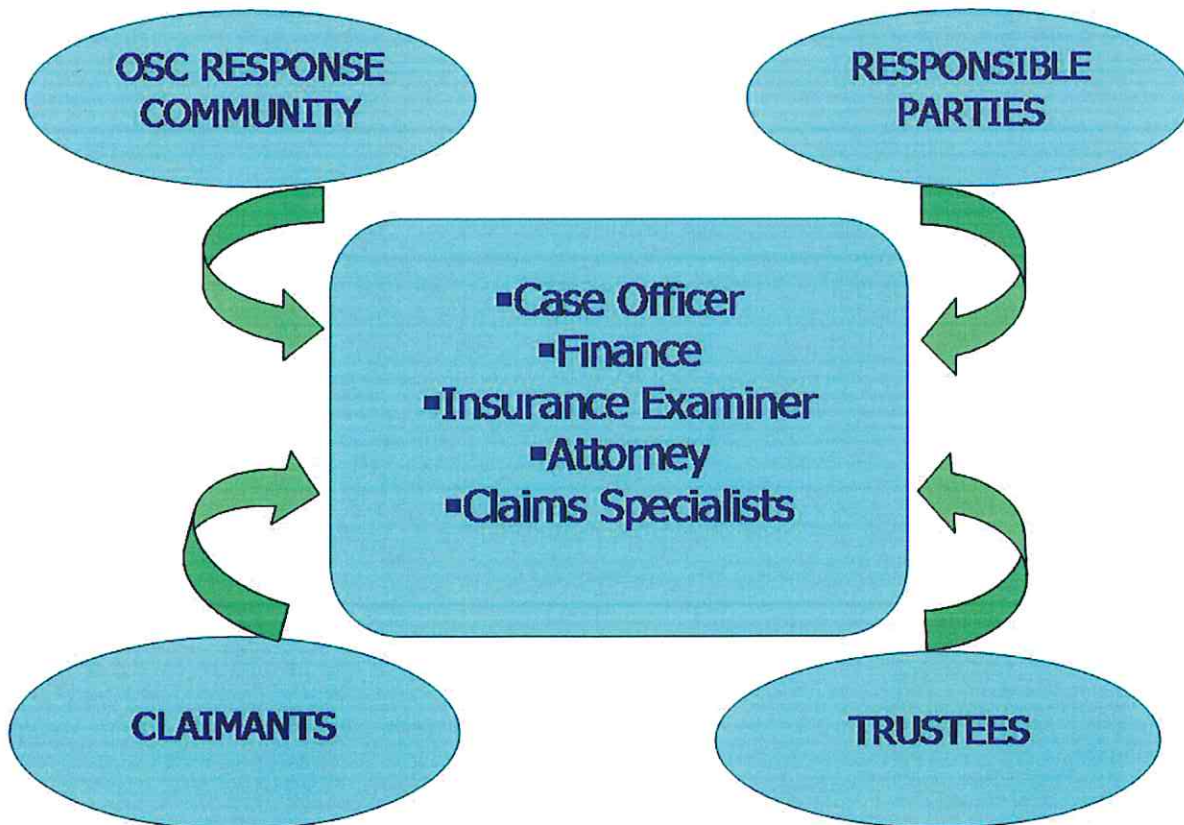
- ◆ **Vessel Certification** – Certifies vessel operators’ maintenance of financial responsibility for oil/hazardous substance pollution from vessels in U.S. waters. Receives and processes enforcement inquiries. Provides information to the field concerning the detainment and release of U.S.- and foreign-flag vessels under the certification enforcement program.
- ◆ **Case Management** – Ensures emergency funding is available to support responses to the substantial threat or actual discharge of oil or the release of hazardous substances into U.S. navigable waters. Acts as the primary point of contact with the pollution response community. Provides for accurate cost documentation and effective cost recovery.
- ◆ **Claims** – Adjudicates claims for uncompensated removal costs and OPA-specified damages from a discharge of oil or the substantial threat of discharge of oil into U.S. navigable waters.
- ◆ **Natural Resource Damage (NRD) Claims** – Provides funding for the Initiation of NRD activities and adjudicates NRD claims and loss-of-use subsistence claims caused by a discharge of oil or the substantial threat of a discharge into U.S. navigable waters. (NRD claims can only be submitted by federal, state, Indian tribe, or foreign trustees, as designated pursuant to OPA, Executive Order, and federal regulations.)
- ◆ **Financial Management** – Provides fund management and oversight for OSLTF, CERCLA, and pollution-related disaster funds under the Stafford Act and the NRP. Coordinates all budgeting functions, including planning and programming. Prepares financial statements in accordance with the Chief Financial Officers Act.
- ◆ **Resources Management** – Provides administrative and technical support for human resources, information technology, facilities management, information dissemination, and records management by leveraging available resources and technology to enable NPFC to consistently deliver services in a way that balances performance, quality and cost.
- ◆ **Legal** – Provides legal support for the Command, including advice on funding cleanups, adjudicating claims, cost recovery, and the legal aspects of vessel financial responsibility. Provides litigation support to the U.S. Department of Justice (DOJ).

## Cross-Functional Coordination

Although the NPFC is organized by division, it also operates as a matrix-based organization centered around four regional Case Teams, each with its own geographic responsibility as described on the following page. A Regional Manager serves as the central internal coordinator and external point of contact for the pollution response community and leads each Case Team. Case Teams are composed of case officers and technical experts from each functional area, including the following:

- ◆ An Attorney
- ◆ A Financial Manager
- ◆ An Insurance Examiner
- ◆ A Claims Manager
- ◆ An NRD Claims Manager
- ◆ Other specialists as required

The Case Team is part of the National Response System, consisting of federal, state, and local agencies. The Case Team works closely with the FOOSC and other members of the response community. The Case Team acts as a natural working group to manage all fund-related aspects of cases to ensure appropriate OSLTF/CERCLA fund access, effective cost recovery, education through outreach efforts, and resolution of other related financial issues.



## Regional Case Teams

### Team I

Responsible for most of the Coast Guard District 8 (CGD8) (including MSD Minneapolis-St. Paul AOR) and EPA Regions VI and VII. Includes Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Nebraska, and Iowa. Does not include CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, and Pittsburgh Captain of the Port (COTP) zones.



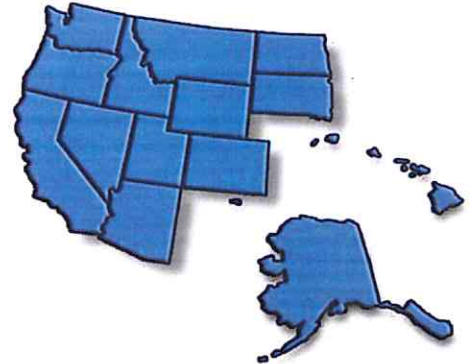
### Team II

Responsible for CGD7, portions of CGD5 and CGD8, EPA Region II (Caribbean Section), and EPA Region IV. Includes CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, and Pittsburgh COTP zones; CGD5 Hampton Roads and Wilmington COTP zones; and the U.S. Virgin Islands, Puerto Rico, Florida, Georgia, South Carolina, Tennessee, North Carolina, Kentucky, Alabama, Mississippi, Virginia (COTP Hampton Roads zone only), and Pennsylvania (COTP Pittsburgh zone only).



### Team III

Responsible for CGD11, CGD13, CGD14, CGD17, and EPA Regions VIII, IX, and X. Includes Arizona, California, Nevada, Utah, Colorado, North Dakota, South Dakota, Wyoming, Montana, Idaho, Washington, Oregon, Alaska, Hawaii, Guam, and American Samoa.



### Team IV

Responsible for CGD1, CGD9, portions of CGD5, and EPA Regions I, II (less Caribbean Section), III, and V. Includes CGD5 COTP Philadelphia and Baltimore zones, Minnesota (less MSD Minneapolis-St. Paul AOR), Michigan, Wisconsin, Illinois, Indiana, Ohio, New York, Vermont, New Hampshire, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, Virginia (less COTP Hampton Roads zone), West Virginia (less COTP Huntington), Pennsylvania (less COTP Pittsburgh zone), Maryland, Delaware, and Washington, D.C.



## Oil Spill Liability Trust Fund (OSLTF)

### 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 necessary for its maintenance. It was only after the T/V Exxon Valdez grounding and the passage of OPA that authorization was granted. In addition to authorizing use of the OSLTF, OPA consolidated the liability and compensation requirements of certain prior federal oil pollution laws and the supporting funds, including the:

- ◆ Federal Water Pollution Control Act (FWPCA)
- ◆ Deepwater Port Act
- ◆ Trans-Alaska Pipeline System (TAPS) Authorization Act
- ◆ Outer Continental Shelf Lands Act

With the consolidation of those funds and the collection of a tax on the petroleum industry, the Fund increased to \$1 billion. Fund uses were delineated by OPA to include:

- ◆ Payment of removal cost authorized by FOSC under the National Contingency Plan (NCP)
- ◆ State access for removal actions
- ◆ Payments to federal, state, and Indian tribe trustees to conduct natural resource damage assessments and restorations
- ◆ Payment of claims for uncompensated removal costs and damages
- ◆ Research and development, and other specific appropriations to Federal Agencies

The Energy Policy Act of 2005 reinstated the tax effective April 1, 2006. In November 2008 the Energy Improvement and Extension Act of 2008 increased the tax from 5 cents/barrel (bbl) to 8 cents/bbl through December 31, 2016 and to 9 cents/bbl from then until December 31, 2017. This increase was effective immediately.

### Revenue Sources

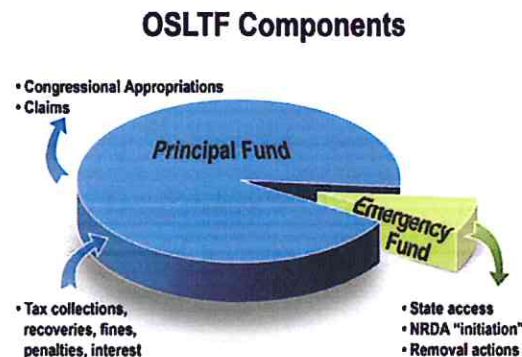
The OSLTF has several recurring and nonrecurring sources of revenue.

- ◆ **Barrel Tax** – The largest source of revenue has been a 5-cent per barrel tax, collected from the oil industry on petroleum produced in, or imported to, the U.S. The tax was suspended on July 1, 1993, because the Fund reached its statutory limit. It was reinstated on July 1, 1994, but ceased on December 31, 1994, because of the “sunset” provision in the law. The 2005 Energy Policy Act reinstated the tax effective April 1, 2006. The Energy Improvement and Extension Act of 2008 increased the tax from 5 cents/bbl to 8 cents/bbl through December 31, 2016 and to 9 cents/bbl from then until December 31, 2017. This increase was effective immediately.
- ◆ **Transfers** – A second major source of revenue has been transfers from other existing pollution funds listed above. Total transfers into the Fund since 1990 have exceeded \$550 million. No additional funds remain to be transferred to the OSLTF.
- ◆ **Interest** – Another recurring source of OSLTF revenue is the interest on the Fund principal from U.S. Treasury investments. As a result of historically low interest rates, interest income has declined significantly in recent years.
- ◆ **Cost Recoveries** – Cost recovery from RPs is another source of revenue; those responsible for oil incidents are liable for costs and damages. NPFC bills RPs to recover costs expended by the Fund. As these monies are recovered, they are deposited into the Fund.
- ◆ **Penalties** – In addition to paying for clean-up costs, RPs may incur fines and civil penalties under OPA, the FWPCA, the Deepwater Port Act, and the TAPS Authorization Act.

## Fund Components

The OSLTF has two major components—the Emergency Fund for FOSC removal activities and the initiation of an NRDA, and the Principal Fund for all other authorized uses. OPA requires these components to be used for separate, distinct purposes. Expenditures from the Fund for any one oil pollution incident are limited to \$1 billion, and natural resource damage assessments and claims in connection with any single incident are limited to \$500 million.

- ◆ **Emergency Fund** – To ensure rapid, effective response to oil spills, the President has the authority to make available, without Congressional appropriation, up to \$50 million each year to fund removal activities and initiate NRDA. Funds not used in a fiscal year are available until expended. To the extent the \$50 million is inadequate, up to \$100 million from the OSLTF may be advanced to fund removal activities.
- ◆ **The Principal Fund** – The Principal Fund, that portion of the OSLTF exclusive of the Emergency Fund, is used primarily to carry out three functions:
  - ★ Adjudication and payment of claims for certain uncompensated removal costs and damages (appropriation from Congress not required)
  - ★ Implementation, administration, and enforcement of OPA through Congressional Appropriations
  - ★ Research and development through Congressional Appropriation



## Removal Actions

The OSLTF provides funding for oil pollution removal activities when oil is discharged into the navigable waters, adjoining shorelines, and the Exclusive Economic Zone (EEZ) of the United States. Funding is also provided to prevent or mitigate the substantial threat of such an oil discharge. The Emergency Fund may be used for the following types of removal activities and costs. The list includes, but is not limited to, the following:

- ◆ Containing and removing oil from water and shorelines
- ◆ Preventing or minimizing a substantial threat of discharge
- ◆ Monitoring the activities of RPs

Examples of removal costs include:

- ◆ 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
- ◆ Completion of documentation
- ◆ Identification of RPs

The Coast Guard has responsibility for removal actions in the coastal zone, while EPA has responsibility in the inland zone.

## State Access

State access to the OSLTF is provided by OPA and is a process through which states can directly receive federal funds for immediate removal costs in response to an actual or substantial threat of a discharge of oil, after coordination with and approval by the FOSC. In accordance with OPA, states are limited to \$250,000 per incident for removal costs, consistent with the NCP. State access does not supersede or preclude the use of other federal payment regimes. States may also obtain federal funding for oil spill removal actions by supporting the FOSC or by using the claims process. Neither of these methods is subject to the \$250,000 limit per incident.

## Claims

Claims may be presented to the NPFC using several vehicles depending on the classification of the claim. The Claims Adjudication Division accepts claims for uncompensated removal costs incurred and damages suffered as a result of an oil pollution incident. The NRD Claims Division accepts claims from authorized claimants for damages to natural resources (NRD claims are described more fully on the next page). Both divisions have developed internal procedures for processing and adjudicating claims for consistency with the law and regulations as described in the following two sections.

To centralize the OSLTF claims process, the Coast Guard received an unlimited delegation of authority from the President to adjudicate claims presented to the OSLTF. This authority was further delegated to the NPFC on March 12, 1992. The NPFC's claim procedures attempt to strike a reasonable balance between the objectives of compensating deserving claimants and acting as a fiduciary for the Fund by ensuring that the funds are spent properly. Before claimants can be compensated, they must satisfy the statutory requirements of OPA. For example, the incident must involve a discharge of oil or a substantial threat of a discharge of oil into U.S. navigable waters, and the claim must be submitted within prescribed time periods (three years for damages, six years for removal costs). Additionally, a claimant must claim a damage or removal cost compensable under OPA and must have first presented the claim to the RP or guarantor except in certain circumstances.

The most common claim type received by the NPFC is removal cost claims. These claims may be submitted by any person who has incurred costs for removal actions that are consistent with the NCP. Removal cost claimants include state governments, putative RPs who can show that the oil came from another source, cleanup 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. In all instances, the removal activity should be coordinated with the FOSC for purposes of establishing that there was a discharge or substantial threat of a discharge of oil into navigable waters and that the actions taken were consistent with the NCP. The NPFC will reimburse the reasonable uncompensated cost of oil removal.

All claims submitted to the NPFC must first be submitted to the RP, generally the owner or operator of the source of the discharge or substantial threat of discharge of oil into the navigable waters of the United States. One exception to this is that state governments may submit claims for uncompensated removal costs directly to the NPFC.

As a result of this exception, the NPFC Removal Claims Branch has been able to develop an expedited claims procedure for state governments. The state government representatives and the NPFC claims representatives reach agreement ahead of time on the evidence to be submitted by the state, the labor and equipment rates to be used in all responses, and the level of coordination required with the FOSC. In some cases, this process has shortened the adjudication time for state government claims to less than a week. 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.

## Funding for Natural Resource Damages

Under OPA, “natural resources” include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including resources of the EEZ), any state or local government or Indian tribe, or any foreign government.

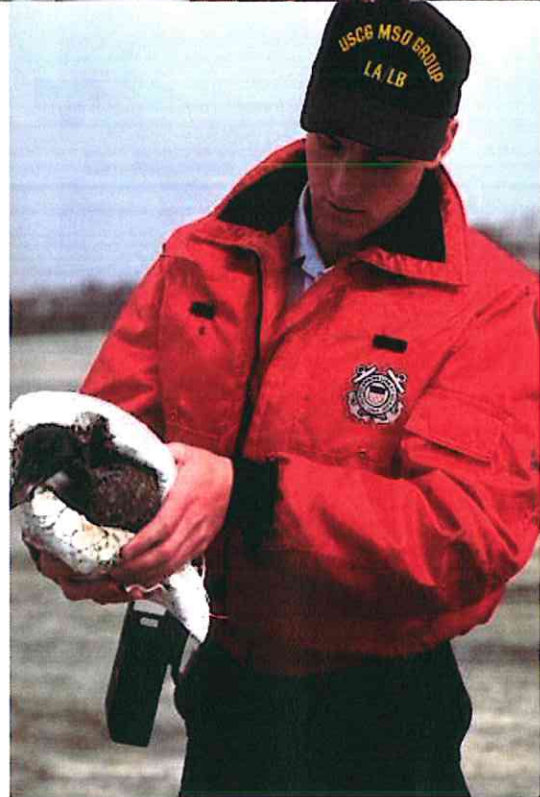
Designated federal, state, Indian, and foreign natural resource trustees can request funding for natural resource damages under OPA. The President has designated the U.S. Departments of Commerce (NOAA, DOC), Interior, Defense, Agriculture, and Energy as the federal trustees. State trustees are designated by each state’s governor. The head of a foreign government designates the trustee who shall act on behalf of that government. The governing body of any Indian tribe designates tribal officials who may act on behalf of the tribe or its members. Further, an Indian tribe must be recognized as eligible for special programs and services provided by the United States because of their status as Indians, and must have governmental authority over lands belonging to or controlled by the tribe.



### *NRDA Initiate Requests*

In response to an OPA incident, the Emergency Fund of the OSLTF can be used to pay for the initiation of natural resource damage assessment (INRDA) conducted by designated natural resource trustees. In the preassessment phase, outlined in 15 CFR §990, Subpart D, trustees must determine jurisdiction, undertake preliminary data collection, assess the effectiveness of the response, identify feasible restoration measures, and provide a notice of intent to conduct restoration planning. Executive Order 12777 limits payments to the five federal trustees that may act to allocate funds for pre-assessment activities among all affected trustees.

The NPFC and the FLAT execute an IAG for each OPA incident requiring funds to initiate an NRDA. The FLAT submits a request for the initiation on behalf of the affected federal, state, Indian tribe, or foreign trustees to the NPFC’s NRD Claims Division to coordinate access to the OSLTF. The IAG is reviewed for conformity with OPA requirements, applicable federal regulations, and NPFC operating procedures and ensures that the FOSC is notified that preassessment phase activities are being performed for the incident.



While the criteria for funding eligibility remain the same, the NPFC does not impose absolute time limits on federal trustees for NRDA Initiate IAGs. The length of time depends on the particular situation and is determined jointly by NPFC and the trustees.

### **NRD Claims**

NPFC started paying claims for NRD in 1999. Until that time, the NPFC relied on a 1995 Comptroller General opinion that specified OPA provide for payment of NRD claims from the OSLTF only by appropriation. In late 1997, the DOJ Office of Legal Counsel made a determination that NRDs would be payable from the OSLTF Principal Fund without further appropriation, like other OPA damage and removal cost claims. As a result, the NPFC established and organized an NRD Claims Division to adjudicate and pay NRD claims, the first of which was paid in September 1999.

Under OPA, the trustees assess natural resource damages and develop and implement plans to restore damaged natural resources. The costs of damage assessment and restoration must be determined with respect to plans adopted by the trustee. These plans must be developed and implemented only after adequate public notice and consideration of all public comments.

To file an NRD claim with the NPFC, the statute of limitations under OPA is whichever is later: three years from the date the injury and connection with the discharge was reasonably discovered with due care, or three years from the date the assessment was completed in accordance with NRDA regulations (15 CFR 990, promulgated by NOAA).

Only designated trustees may submit OPA NRD claims. Notice of designation should be provided to the NPFC to establish the authority of the claimant who is submitting the claim.

The procedure for submission of the claim to the NPFC is the same for trustees as it is for other claimants. For example, the NRD claim should be presented to the RP or its guarantor before submission to the NPFC for payment through the OSLTF.

### **Agency Appropriations**

Multiple 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 delegated by Executive Order 12777. 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 responsible parties; and improved cooperative relationships among responding agencies and oil industry stakeholders, including periodic drills and implementation of changes to the NCP, Area Contingency Plans and National Response System (NRS).

Organizations currently receiving appropriations from the Fund are:

- ◆ Coast Guard
- ◆ Environmental Protection Agency
- ◆ Minerals Management Service (Department of the Interior)
- ◆ Pipeline Safety Administration (Department of Transportation)
- ◆ Department of the Treasury
- ◆ Prince William Sound Oil Spill Recovery Institute (OSRI)
- ◆ Denali Commission



## Coast Guard Superfund Use

### History

CERCLA established the Superfund to provide monies to identify, prioritize, and clean up the nation's uncontrolled hazardous waste sites. The Superfund, administered by EPA, was created as an important CERCLA component to give the Federal government flexibility in identifying and addressing potentially harmful releases of hazardous substances. The Superfund provides the funds that enable federal agencies to respond immediately to hazardous substance releases and contamination problems that pose a threat to public health and the environment. Removal costs are recovered from the RP(s) by EPA.

### Coast Guard CERCLA Responses

Since August 1981, Coast Guard FOSCs have responded to releases and substantial threats of releases of hazardous substances, pollutants, or contaminants (HAZMAT) in the coastal zone, the Great Lakes, and inland river ports as designated in the NCP. The Coast Guard National Strike Force (NSF) Strike Teams provide highly trained personnel to support these responses. The NCP designates the NSF as a national resource available to all of the FOSCs conducting removal operations throughout the United States, its territories, and possessions.

Since its establishment, NPFC has served as the fiduciary agent for the portion of the Superfund used by the Coast Guard. EPA provides the funds to the Coast Guard through IAGs which are used for the ongoing costs of building and maintaining response capabilities (training, equipment, personnel) and for costs incurred in removal operations following a CERCLA incident.

The number of Coast Guard responses to releases of HAZMAT is externally driven by the number of such incidents that occur and are reported. Public awareness of the danger and adverse environmental impacts caused by these releases affects the number that is reported. The total cost per year is more dependent on the size of the responses than the number.

CERCLA authority includes response to intentional releases of industrial or military HAZMAT by terrorists, resulting in an overlap of pollution response and homeland security.



## Coast Guard Disaster Responses

The Coast Guard, under the National Response Framework (NRF), is tasked with pollution response (oil and hazardous chemicals/pollutants/contaminants) under Emergency Support Function 10 (ESF-10). If the President declares a disaster and ESF-10 actions must be taken, FEMA can assign the Stafford Act funds for Coast Guard pollution response activity. Such activity can include FOSC-directed removals and the deployment of Strike Teams and other special teams. NPFC serves as the Coast Guard's financial manager for these responses.

During a disaster, the NPFC coordinates ESF-10 Funds among the responding Coast Guard FOSC's district offices, FEMA and EPA regional offices, and the Joint Field Offices (IFO) set up in each state, as prescribed by the NRF issued by DHS.

## Vessel Financial Responsibility Certification

The United States depends on marine transportation for the majority of its imports and exports, including chemical- and petroleum-based products. Oil spill incidents occur from all types of vessels, not just tankers. Section 1016 of OPA requires operators of vessels over 300 gross tons, using the navigable waters of the U.S., or vessels of any size that lighter or transship oil in the EEZ of the United States, to provide evidence of their financial ability to satisfy liability claims for removal costs and damages up to the prescribed limits.

The primary goals of NPFC's Certificates of Financial Responsibility (COFR) program are to ensure that RPs are identified and held financially responsible to the full extent of the law for any expenses involved in dealing with any specific vessel water pollution incident. This certification is accomplished by issuing COFRs to vessel operators who have demonstrated adequate evidence of financial responsibility as established by law.

In 2006, the vessel limits of liability under OPA were amended as shown in the table below.

If the vessel is a . . .	The limits of liability are the greater of . . .
Tank vessel greater than 3,000 gross tons with a single hull, double sides only, or double bottom only	\$3,000 per gross ton or \$22,000,000.
Tank vessel less than or equal to 3,000 gross tons with a single hull, double sides only, or double bottom only	\$3,000 per gross ton or \$6,000,000.
Tank vessel greater than 3,000 gross tons with a double hull	\$1,900 per gross ton or \$16,000,000.
Tank vessel less than or equal to 3,000 gross tons with a double hull	\$1,900 per gross ton or \$4,000,000.
Any vessel other than a tank vessel	\$950 per gross ton or \$800,000.

Additional amounts are also applicable under CERCLA:

If the vessel is . . .	The limits of liability are the greater of . . .
Over 300 gross tons carrying hazardous substance as cargo,	\$300 per gross ton or \$5,000,000.
Any other vessel over 300 gross tons,	\$300 per gross ton or \$500,000.

Failure to establish acceptable evidence of financial responsibility, documented by a COFR, may result in prevention or cessation of operation, vessel detainment, denial of entry to a U.S. port, a civil penalty of up to \$32,500 per day of violation, or seizure and forfeiture of the vessel. The law does not apply to public vessels. The financial responsibility requirements also do not apply to non-self-propelled barges carrying no oil as cargo or fuel or hazardous substances as cargo.

The NPFC processes thousands of COFR transactions each year, including new issues, name changes, renewals, and revocations.

The E-COFR Web site ([www.uscg.mil/npfc/COFRs](http://www.uscg.mil/npfc/COFRs)) gives enforcement officials access to COFR information on a daily basis. It also gives the international shipping communities the ability to submit COFR applications on-line and contact the COFR staff via e-mail.

## Guidance Materials

The NPFC has an extensive library of guidance materials that provide customers with a wealth of information on the NPFC, its roles and missions, and funds access and use. All guidance materials are available online on the NPFC's Web site at [www.uscg.mil/npfc](http://www.uscg.mil/npfc).

- ◆ The **NPFC User Reference Guide (eURG)** serves as a single-source library for anyone who may need to gain access to the OSLTF or the portion of Superfund accessible to the Coast Guard. The User Reference Guide contains all of the Technical Operating Procedures (TOPs) listed below, as well as many other OSLTF access and financial management references. Visitors may download portions of the library as multiple files or may access each of its documents individually.
  - ★ The **TOPs** serve as Coast Guard guidance documents for Fund users. They provide an efficient means to compile and submit documentation. All NPFC TOPs are consolidated in the NPFC User Reference Guide. A brief description of each TOPs is provided below.
    - **Removal Cost TOPs** provide clear guidelines to determine valid and necessary removal costs for a substantial threat or an actual oil discharge.
    - **Resource Documentation TOPs** assist FOSCs in documenting and reporting resources associated with removal activities.
    - **State Access TOPs** describe the procedures for states to access the OSLTF, including requirements for documenting expenses, investigative requirements, and submitting documents for reimbursement.
    - **Designation of Source TOPs** aid FOSCs in conducting investigations to identify sources of a substantial threat or actual discharge of oil, duly notify the RPs and their guarantors, and designate the source so that claimants may submit their claims to the RPs.
  - ★ NPFC provides a number of **claims guidance** documents within the eURG, each one targeting a different type of claimant in order to meet the specific needs of each customer.
    - The **Claimant's Guide** provides information to potential claimants on how to file claims and on what types of claims they may submit. Although it provides an overview of the entire claims process, it is especially targeted to those submitting claims for damage to real or personal property, loss of profits or earning capacity, loss of government revenues, or increased cost of public services.
    - The Claims Process and **OSRO FAQs** (Frequently Asked Questions from Oil Spill Response Organizations) is designed to help OSROs better understand how to submit a claim for uncompensated removal costs and provides suggestions for making both preparation and approval processes easier.
    - The **Responsible Party Claim Submission Guidance** explains how RPs can submit a claim for reimbursement of removal costs and damages that asserts either an affirmative defense or an entitlement to a limit on liability.
    - The **NRD Funding Guidelines** provide guidance to trustees in preparing and submitting NRD claims and to Initiate Requests to the NPFC.
- ◆ The **NPFC Certificates of Financial Responsibility Web site** serves as a reference guide for Coast Guard field personnel and the Maritime Shipping Industry, with links to COFR and E-COFR applications. It is available on the COFR website at [www.uscg.mil/npfc/COFRs](http://www.uscg.mil/npfc/COFRs).
  - ★ The COFR application contains information on vessels that have been issued COFRs. This data is updated daily (M-F) as vessels are added or deleted from the list.
  - ★ The E-COFR application permits users to apply for, renew, change, and pay the COFR filing fee via the Web.