

Overview of Oil Spill Liability Trust Fund (OSLTF)

In August 1990, President George H. W. Bush signed OPA into law and authorized use of the OSLTF. 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.

1. 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:
 - a. Payment of removal cost authorized by FOSC under the National Contingency Plan (NCP)
 - b. State access for removal actions
 - c. Payments to federal, state, and Indian tribe trustees to conduct natural resource damage assessments and restorations
 - d. Payment of claims for uncompensated removal costs and damages
 - e. Research and development, and other specific appropriations to Federal Agencies
2. The OSLTF has several recurring and nonrecurring sources of revenue:
 - a. 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.
 - b. Transfers from other pollution funds listed above.
 - c. Interest on the Fund principal from U.S. Treasury investments.
 - d. Cost recovery from RPs is another source of revenue; those responsible for oil incidents are liable for costs and damages. The National Pollution Funds Center (NPFC) bills RPs to recover costs expended by the Fund. As these monies are recovered, they are deposited into the Fund.
 - e. 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.
3. The OSLTF has two major components—the Emergency Fund for FOSC removal activities and the initiation of a Natural Resource Damage Assessment (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.
 - a. 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 to initiate NRDA's. Funds not used in a fiscal year are available until expended. Up to \$100 million may be advanced for fund removal activities.
 - b. Principal Fund – That portion exclusive of the Emergency Fund, is used primarily to carry out three functions:
 - i. Adjudication and payment of claims for certain uncompensated removal costs and damages (appropriation from Congress not required)
 - ii. Implementation, administration, and enforcement of OPA through Congressional Appropriations
 - iii. Research and development through Congressional Appropriation
4. 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:
 - a. Containing and removing oil from water and shorelines

- b. Preventing or minimizing a substantial threat of discharge
 - c. Monitoring the activities of RPs
5. The Coast Guard has responsibility for removal actions in the coastal zone, while EPA has responsibility in the inland zone.
 6. 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 the claims process. Neither of these methods is subject to the \$250,000 limit per incident.
 7. Claims may be presented to the NPFC using several vehicles depending on the classification of the claim.
 - a. Claims Adjudication Division – accepts claims for uncompensated removal costs incurred and damages suffered as a result of an oil pollution incident.
 - b. NRD Claims Division – accepts claims from authorized claimants for damages to natural resources.
 - c. Removal Claims Branch – develops and expedites the claims procedure for state governments.
 - d. Both divisions have developed internal procedures for processing and adjudicating claims for consistency with the law and regulations.
 8. 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. 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 damage or removal cost compensable under OPA and must have first presented the claim to the RP or guarantor except in certain circumstances.
 9. 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. 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.
 10. 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.
 11. 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 pre-assessment 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.
 12. 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).

13. 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.
14. 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.
15. 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.
16. 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	\$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
Additional amounts are also applicable under CERCLA:	
Any vessel other than a tank vessel	The limits of liability are the greater of . . .
	\$950 per gross ton or \$800,000
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.