

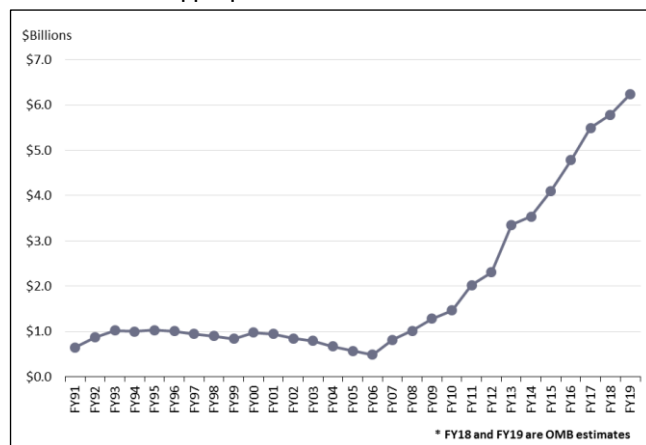
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The Oil Spill Liability Trust Fund Tax: Reauthorization Issues and Legislation in the 115th Congress

The Oil Spill Liability Trust Fund (OSLTF) provides immediate access to funds for a federal response to an oil spill and compensation for damages. The regulatory procedures of the National Contingency Plan establish a framework for coordinating a federal response with state and local officials (40 C.F.R. Part 300).

The OSLTF has been financed primarily by a per-barrel excise tax on domestic crude oil and imported petroleum products. As illustrated in **Figure 1**, the unappropriated balance of the trust fund increased severalfold over the last decade, largely due to the tax receipts. The authority to collect the tax expired December 31, 2017. The Bipartisan Budget Act of 2018 (P.L. 115-123) reinstated the tax authority through December 31, 2018, with an effective date of March 1, 2018.

Figure 1. Oil Spill Liability Trust Fund
End of Year Unappropriated Balances, FY1991-FY2019



Source: Prepared by CRS; data from Office of Management and Budget, annual *Budget of the United States Government*, Appendices.

OSLTF Background and Overview

The 1989 *Exxon Valdez* oil spill led to questions in Congress regarding the effectiveness of federal oil spill response capabilities. The Oil Pollution Act of 1990 (OPA, P.L. 101-380) established a new federal oil spill liability framework, replaced existing federal liability frameworks, and amended the Clean Water Act oil spill response authorities. In addition, OPA transferred monies into the OSLTF from existing liability funds (the Clean Water Act revolving fund, the Deepwater Port Liability Fund, the Trans-Alaska Pipeline Liability Fund, and the Offshore Oil Pollution Compensation Fund).

Under OPA, parties responsible for an oil spill may be liable for cleanup costs, natural resource damages, and specific economic damages, including personal property

damage and lost profits or earning capacity. OPA provides (1) limited defenses from liability—act of God, act of war, and act or omission of certain third parties—and (2) conditional liability limits (i.e., caps) for cleanup costs and other eligible damages.

The Omnibus Budget Reconciliation Act of 1986 established the OSLTF (P.L. 99-509), but the act did not authorize appropriations for the fund or authorize its use. The 1986 act also included provisions to establish an excise tax to support the fund, but the tax did not take effect at the time, because a condition triggering the effective date of the tax authority was not met. Subsequent laws authorized the OSLTF taxing authority, appropriations from the fund, and eligible uses for the fund. The tax first took effect at 5 cents per barrel on January 1, 1990. In the intervening years, the taxing authority expired and was resumed, and the tax rate was adjusted. The current tax rate is 9 cents per barrel.

The OSLTF is subject to both permanent and discretionary appropriations. Discretionary appropriations from the OSLTF have provided funding to several agencies for oil-spill-related activities. The permanent appropriations are limited to a maximum of \$150 million annually. Permanent appropriations provide an immediate funding source to pay for eligible activities, including federal response actions, eligible claims submitted by affected parties, and natural resource damages. The U.S. Coast Guard administers the OSLTF through its National Pollution Funds Center.

OPA authorizes the federal government to recover payments, including response costs and claims, made from the OSLTF through the enforcement of liability against responsible parties. Recovered funds are to be deposited back into the trust fund.

The responsible parties may also perform and pay for response actions up front with their own monies, subject to direction from the federal government's on-scene coordinator. If a responsible party's payments were to exceed its OPA liability limit, the party may seek reimbursement from the OSLTF for the difference.

Since its inception, there has been a statutory limitation on expenditures from the fund that could be used for any individual incident. Congress set this limit so that any one individual spill would not deplete the fund. OPA set the per-incident cap at \$1 billion. Within this \$1 billion limit, natural resource damage awards cannot exceed \$500 million.

Although the OSLTF per-incident cap has not been breached to date, some oil spills in recent years have

resulted in costs paid by responsible parties that exceeded \$1 billion. For example, payments from BP and other responsible parties associated with the 2010 *Deepwater Horizon* spill were above \$65 billion. After the incident, some Members of Congress proposed legislation to increase or remove the per-incident cap, but these bills were not enacted.

OSLTF Balance, Receipts, and Spending

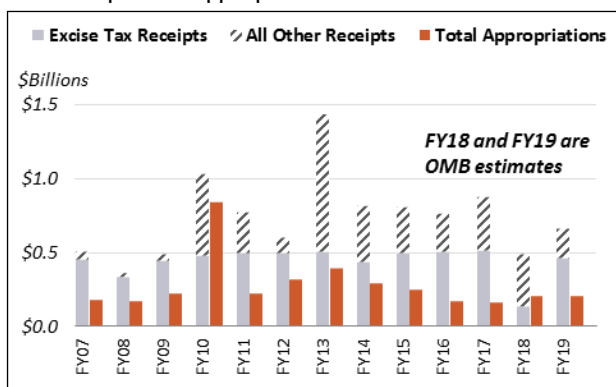
Figure 2 illustrates the end-of-year unappropriated balances for the OSLTF between FY1991 and FY2017 with Office of Management and Budget (OMB) estimates for FY2018 and FY2019.

Since the tax was reinstated on April 1, 2006, the unappropriated balance of the OSLTF has increased severalfold. Between FY2007 and FY2017 (the most recent year of non-estimated data), the excise tax provided annual average receipts of \$470 million. The OMB-estimated balance for the end of FY2019 is \$6.25 billion. This projection includes \$465 million in FY2019 excise tax receipts based on OMB's assumption that the tax authority will be in effect in 2019. In its FY2019 budget proposal, the Trump Administration proposed to reinstate the tax without specifying a termination date.

Receipts from sources other than the excise taxes have contributed to the fund's growth in recent years. **Figure 2** presents the trends in the excise tax receipts, other fund receipts (described below), and the fund appropriations since the tax was reauthorized in FY2007. Appropriations presented in **Figure 2** illustrate the combined total of permanent and discretionary appropriations from the fund.

Figure 2. Oil Spill Liability Trust Fund

Fund Receipts and Appropriations, FY2007-FY2019



Source: Prepared by CRS; data from Office of Management and Budget, annual Budget of the United States Government, Appendices.

Between FY2007 and FY2017, total excise tax receipts were \$5.17 billion. Other receipts totaled \$3.30 billion, including:

- \$1.83 billion from fines and penalties,

- \$1.20 billion from cost recoveries, and
- \$277 million from interest on investments in U.S. Treasury securities.

The tax is scheduled to expire on December 31, 2018. If the tax were not reinstated, future fund balances would depend on the difference between fund expenditures and continued receipts from fines and penalties, cost recoveries, and interest. The recent trends for some of these receipts may not continue in the future. In particular, the fine and penalty receipts were significantly greater (\$1.9 billion) in the eight years after the 2010 *Deepwater Horizon* spill than the fine and penalty receipts collected in the eight years before the spill (\$137 million). However, fines and penalties from that spill are scheduled to provide additional revenue through 2031. Pursuant to a Clean Water Act civil penalty settlement between the federal government and BP involving the *Deepwater Horizon* spill, the fund is scheduled to receive annual receipts of \$76 million through 2031.

Reauthorization Issues for Congress

The expiration (December 31, 2018) of the per-barrel excise tax may present a range of policy issues for Congress regarding financing the OSLTF. The sufficiency of the remaining balance of the trust fund would depend on the number, magnitude, and impacts of future spills and the financial viability of the responsible parties, who would remain liable for response costs and damages with or without the tax. Some receipts would continue to accrue to the OSLTF from fines and penalties, cost recoveries, and interest, but the interest would decrease over time as the remaining balance is expended if appropriations from the trust fund were to exceed continuing receipts.

Authorizing the excise tax after December 31, 2018, is one option to provide a source of dedicated receipts to finance the OSLTF. Another option would be to transfer monies from the General Fund of the U.S. Treasury to the OSLTF as needed, similar to the Superfund Trust Fund for responding to releases of hazardous substances. The Stafford Act (42 U.S.C. 5121 *et seq.*) would also provide another potential source of federal funds if the President were to declare an oil spill a major disaster or emergency under that statute. However, such a presidential declaration has not been made solely for a human-caused oil spill to date.

For additional information, see CRS Report RL33705, *Oil Spills: Background and Governance*, by Jonathan L. Ramseur.

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