Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

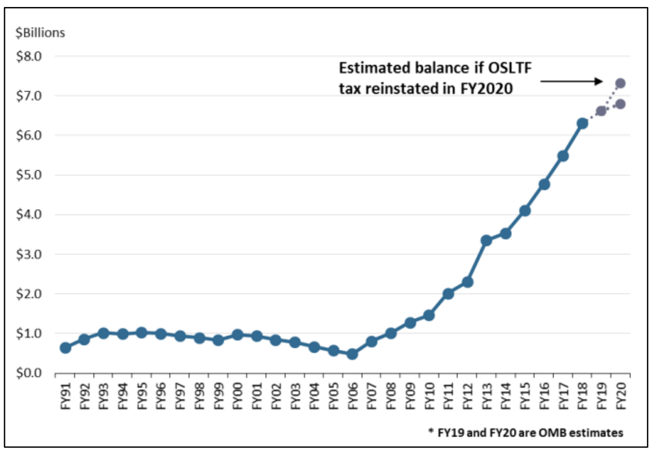
April 3, 2019

The Oil Spill Liability Trust Fund Tax: Background and Reauthorization Issues in the 116th Congress

The Oil Spill Liability Trust Fund (OSLTF) provides an immediate source of funds for federal responses to oil spills and compensation for certain 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).

Historically, 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 five-fold over the last decade, largely through the accrual of receipts from the excise tax, which expired December 31, 2018. The President's FY2020 budget request proposed to reinstate the per-barrel tax. As **Figure 1** indicates, if the tax were reinstated, the FY2020 end-of-year balance would increase by about $500 million.

Figure 1. OSLTF Year-End Unappropriated Balances
Actual (FY1991-FY2018) and estimated (FY2019-FY2020)



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 oil spill policy issues, including oil spill response, liability, and compensation. 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 In addition, OPA transferred monies into the OSLTF from existing liability funds: the Clean Water Act revolving fund (repealed), the Deepwater Port Liability Fund, the Trans-Alaska Pipeline Liability Fund, and the Offshore Oil Pollution Compensation Fund.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. The tax expired on December 31, 1994, and was not in effect until Congress reinstated the tax in 2006 through the Energy Policy Act of 2005 (P.L. 109-58). The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) increased the tax rate to 8 cents per barrel through December 31, 2016, and to 9 cents per barrel starting in 2017. The rate was 9 cents per barrel when it expired in 2018.

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 costs, including response costs and damage 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 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.

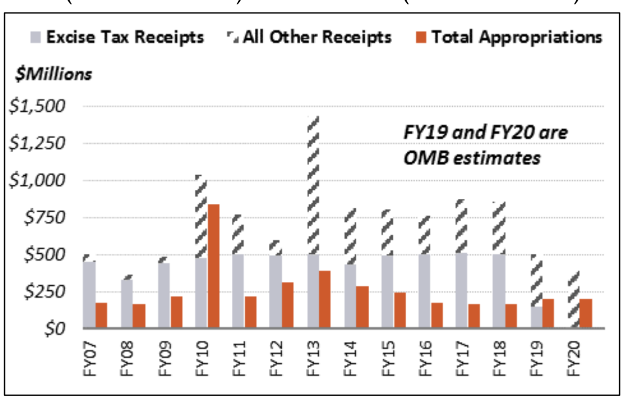
Although the OSLTF per-incident cap has not been breached to date, some oil spills in recent years have resulted in costs paid by responsible parties that exceeded $1 billion. For example, payments from BP and other responsible parties associated with the 2010 *Deepwater Horizon* spill exceeded $65 billion. 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 presents excise tax receipts, other fund receipts (described below), and the fund appropriations between FY2007 and FY2018 with Office of Management and Budget estimates for FY2019 and FY2020. This figure starts with FY2007, the year the tax was reinstated pursuant to P.L. 105-98. Appropriations presented in **Figure 2** illustrate the combined total of permanent and discretionary appropriations from the fund.

Figure 2. OSLTF Fund Receipts and Appropriations

Actual (FY2007-FY2018) and estimated (FY2019-FY2020)



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

Between FY2007 and FY2018 (the most recent year of non-estimated data), appropriations from the fund totaled $3.37 billion. Total excise tax receipts were $5.67 billion. Other receipts totaled $3.77 billion, including:

- $2.13 billion from fines and penalties,
- $1.28 billion from cost recoveries, and
- $362 million from interest on investments in U.S. Treasury securities.

Over this time period, the fund's annual balance increased steadily (**Figure 1**). The fund's annual balance increases generally matched the annual excise tax receipts. The tax expired 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 ($2.1 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). 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 recent expiration of the per-barrel excise tax presents 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 likely continue to accrue to the OSLTF—such as fines and penalties, cost recoveries, and interest—but their amounts are uncertain. For instance, if future appropriations from the trust fund were to exceed total receipts, the interest earnings could decrease over time.

Reauthorizing the excise tax is one option to provide a source of dedicated receipts to finance the OSLTF. Several Members have introduced legislation in the 116th Congress that would reinstate the tax. S. 617 (Grassley) would, among other provisions, reinstate the tax through December 31, 2019. S. 865 (Sullivan) would, among other provisions, reinstate the tax indefinitely, but the tax would terminate if the fund's unobligated balance rose above $7 billion and restart if the balance decreased to $5 million or less. This proposal would also amend the tax code to include oil-sands-derived crude oil within the scope of the per-barrel tax.

Another option could 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.*) may 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; CRS Report R43128, *Oil Sands and the Oil Spill Liability Trust Fund: The Definition of "Oil" and Related Issues for Congress*, by Jonathan L. Ramseur; and CRS Report R43251, *Oil and Chemical Spills: Federal Emergency Response Framework*, by David M. Bearden and Jonathan L. Ramseur.

Jonathan L. Ramseur, jramseur@crs.loc.gov, 7-7919

IF11160