



Testimony

Before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

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## OIL SPILLS

# Cost of Major Spills May Impact Viability of Oil Spill Liability Trust Fund

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Physical Infrastructure



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Highlights of [GAO-10-795T](#), a testimony before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

On April 20, 2010, an explosion at the mobile offshore drilling unit *Deepwater Horizon* resulted in a massive oil spill in the Gulf of Mexico. The spill's total cost is unknown, but may result in considerable costs to the private sector, as well as federal, state, and local governments. The Oil Pollution Act of 1990 (OPA) set up a system that places the liability—up to specified limits—on the responsible party. The Oil Spill Liability Trust Fund (Fund), administered by the Coast Guard, pays for costs not paid for by the responsible party.

GAO previously reported on the Fund and factors driving the cost of oil spills and is beginning work on the April 2010 spill. This testimony focuses on (1) how oil spills are paid for, (2) the factors that affect major oil spill costs, and (3) implications of major oil spill costs for the Fund. It is largely based on GAO's 2007 report, for which GAO analyzed oil spill cost data and reviewed documentation on the Fund's balance and vessels' limits of liability. To update the report, GAO obtained information from and interviewed Coast Guard officials.

## What GAO Recommends

In 2007, GAO recommended that the Coast Guard (1) adjust liability limits for inflation and (2) determine whether liability limits should vary by vessel type. The Coast Guard agreed with both recommendations and implemented the former but not the latter recommendation.

View [GAO-10-795T](#) or key components. For more information, contact Susan Fleming at (202) 512-2834 or [flemings@gao.gov](mailto:flemings@gao.gov).

## OIL SPILLS

### Costs May Impact Viability of Oil Spill Liability Trust Fund

#### What GAO Found

OPA places the primary burden of liability for the costs of oil spills on the responsible party in return for financial limitations on that liability. Thus, the responsible party assumes the primary burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and compensating parties that were economically harmed). To pay both the costs above this limit and costs incurred when a responsible party does not pay or cannot be identified, OPA authorized use of the Fund, up to a \$1 billion per spill, which is financed primarily from a per-barrel tax on petroleum products. The Fund also may be used to pay for natural resource damage assessments and to monitor the recovery activities of the responsible party, among other things. While the responsible party is largely paying for the current spill's cleanup, Coast Guard officials said that they began using the Fund—which currently has a balance of \$1.6 billion—in May 2010 to pay for certain removal activities in the Gulf of Mexico.

Several factors, including location, time of year, and type of oil, affect the cleanup costs of noncatastrophic spills. Although these factors will certainly affect the cost of the Gulf spill—which is unknown at this time—in this spill, additional factors such as the magnitude of the oil spill will impact costs. These factors can affect the breadth and difficulty of recovery and the extent of damage in the following ways:

- **Location.** A remote location can increase the cost of a spill because of the additional expense involved in mounting a remote response. A spill that occurs close to shore can also become costly if it involves the use of manual labor to remove oil from sensitive shoreline habitat.
- **Time of year.** A spill occurring during fishing or tourist season might carry additional economic damage, or a spill occurring during a stormy season might prove more expensive because it is more difficult to clean up than one occurring during a season with generally calmer weather.
- **Type of oil.** Lighter oils such as gasoline or diesel fuels dissipate and evaporate quickly—requiring minimal cleanup—but are highly toxic and create severe environmental impacts. Heavier oils such as crude oil do not evaporate and, therefore, may require intensive structural and shoreline cleanup.

Since the Fund was authorized in 1990, it has been able to cover costs not covered by responsible parties, but risks and uncertainties exist regarding the Fund's viability. For instance, the Fund is at risk from claims resulting from spills that significantly exceed responsible parties' liability limits. Of the 51 major oil spills GAO reviewed in 2007, the cleanup costs for 10 exceeded the liability limits, resulting in claims of about \$252 million. In 2006, Congress increased liability limits, but for certain vessel types, the limits may still be low compared with the historic costs of cleaning up spills from those vessels. The Fund faces other potential risks as well, including ongoing claims from existing spills, claims related to sunken vessels that may begin to leak oil, and the threat of a catastrophic spill—such as the recent Gulf spill.

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Mr. Chairman, Ranking Member McCain, and Members of the Subcommittee:

I appreciate the opportunity to be here today to discuss the costs of major oil spills and the potential impacts on the Oil Spill Liability Trust Fund (Fund). On April 20, 2010, an explosion from a well site at which the mobile offshore drilling unit (MODU), *Deepwater Horizon*, had been drilling resulted in a spill of national significance in the Gulf of Mexico, which is, to date, only partially contained. Since the explosion occurred, oil has been leaking into the Gulf of Mexico at an estimated rate of between 12,000 and 19,000 barrels per day, according to the National Incident Command's Flow Rate Technical Group, making this one of the largest, if not the largest spill in U.S. waters to date.<sup>1</sup> BP, which leased the *Deepwater Horizon* at the time of the explosion, continues to try to contain the leak. The total cost of cleaning up this massive and potentially unprecedented spill, the untold damage to the environment, as well as the potential impact to the livelihood and the economic status of the region, will be undetermined for some time. However, current estimates suggest that spill cleanup and related damages claims will be in the tens of billions of dollars—well beyond the costs of the *Exxon Valdez*. This spill and future spills all have the potential to result in considerable costs to the private sector, as well as federal, state, and local governments.

The Oil Pollution Act of 1990 (OPA),<sup>2</sup> which was enacted after the *Exxon Valdez* spill in 1989, established a “polluter pays” system that places the primary burden of liability for the costs of spills up to a statutory maximum, on the party responsible. OPA also established the Fund to pay for oil spill costs when the responsible party cannot or does not pay.<sup>3</sup> The Fund is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries and administered by the National Pollution Funds Center (NPFC) within the

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<sup>1</sup>The Flow Rate Technical Group is comprised of federal scientists, independent experts, and representatives from universities around the country. It includes representatives from U. S. Geological Survey, National Oceanic and Atmospheric Administration, Department of Energy, Coast Guard, Department of the Interior's Minerals Management Service, the national labs, National Institute of Standards and Technology, University of California-Berkeley, University of Washington, University of Texas, Purdue University, and several other academic institutions. BP is not involved in the Flow Rate Technical Group except to supply raw data for the scientists and experts to analyze.

<sup>2</sup>Pub. L. No. 101-380, 104 Stat. 489 (1990).

<sup>3</sup>The Fund also pays for the costs of certain federal agency operations.

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U.S. Coast Guard. While this system is well understood, the total costs involved in responding to oil spills are less clear. Costs paid by the Fund are required to be documented and reported, but the costs paid by the party responsible for the spill are not required to be reported.<sup>4</sup> The resulting lack of information about the total cost of spills, the significant claims made on the Fund to cover the costs beyond the established OPA liability limits borne by the responsible party, and the potential impact of a catastrophic spill of unprecedented costs, have all raised concerns about the Fund's long-term viability.

Mr. Chairman, in response to your request, we are just beginning work related to the April 2010 spill and its implications for the Fund. However, we have done considerable work looking at the cost of major spills in recent years and the factors that contribute to making spills particularly expensive to clean up and mitigate. While our previous work focused on spills from vessels and not offshore facilities, it is likely that many of the same factors that we identified that affect the cost of the oil spills will apply to the current oil spill. Additionally, our previous work identified several potential risks to the Fund and made recommendations to the Commandant of the Coast Guard to address some of the risks.

My remarks today are intended to provide a context for looking at the nation's approach to paying the costs of such spills. Specifically, my testimony focuses on (1) how oil spills are paid for, (2) the factors that affect major oil spill costs, and (3) the implications of major oil spill costs for the Oil Spill Liability Trust Fund.<sup>5</sup> My comments are based primarily on our September 2007 report on oil spill costs, which was issued to the Senate Committee on Commerce, Science, and Transportation, and the

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<sup>4</sup>The financial activities of the Fund and the resulting fund balance are included in the financial statements and disclosures for the Department of Homeland Security.

<sup>5</sup>The National Oil and Hazardous Substances Pollution Contingency Plan states that any oil discharge that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern shall be classified as a major spill. For the purposes of our 2007 report, however, we defined major spills as spills with total removal costs and damage claims that exceed \$1 million.

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House Committee on Transportation and Infrastructure.<sup>6</sup> In our 2007 report, we determined that there were 51 major oil spills— with removal costs and damage claims totaling at least \$1 million— that occurred in U.S. waters from 1990 through 2006.<sup>7</sup> Collectively, from public and nonpublic sources, we estimated that responsible parties and the Fund have paid between approximately \$860 million and \$1.1 billion to clean up these spills and compensate affected parties. Responsible parties paid between about 72 to 78 percent of these costs. The 51 major spills (exceeding \$1 million in total costs) we identified, which constituted about 2 percent of the 3,389 vessel spills that occurred from 1990 to 2006, varied greatly from year to year in number and cost and showed no discernible trends in frequency or size.<sup>8</sup>

In preparing our September 2007 report we analyzed oil spill removal cost and claims data from NPFC, the National Oceanic and Atmospheric Administration’s (NOAA) Damage Assessment, Remediation, and Restoration Program, and the Department of the Interior’s (DOI) Natural Resource Damage Assessment and Restoration Program and U.S. Fish and Wildlife Service. We also analyzed cost data obtained from vessel insurers

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<sup>6</sup> GAO, *Maritime Transportation: Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain*, GAO-07-1085 (Washington, D.C.: Sept. 7, 2007). The Coast Guard and Maritime Transportation Act of 2006, Pub. L. No. 109-241, 120 Stat. 516 (2006), directed us to conduct an assessment of the cost of response activities and claims related to oil spills from vessels that have occurred since January 1, 1990, for which the total costs and claims paid was at least \$1 million per spill. The mandate required that the report summarize the costs and claims for oil spills that have occurred since January 1, 1990, that total at least \$1 million per spill, and the source, if known, of each spill for each year. We were not directed to look at spills from offshore facilities.

<sup>7</sup>Our analysis excluded spills for which final costs were not yet known because all claims had not been addressed.

<sup>8</sup>In order to determine the spill cost estimates for the 51 spills in our 2007 report, we obtained the best available cost data from a variety of sources because private-sector and total costs for cleaning up spills and paying damages are not centrally tracked and maintained. We then combined the information that we collected from these various sources to develop cost estimates for the oil spills. However, because the cost data are somewhat imprecise and the data we collected vary somewhat by source, we presented the cost estimates in ranges. The lower and higher bounds of the range represent the low- and high-end of cost information we obtained. Based on reviews of data documentation, interviews with relevant officials, and tests for reasonableness, we determined that the data were sufficiently reliable for the purposes of our report.

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and through contract with Environmental Research Consulting.<sup>9</sup> We also interviewed NPFC, NOAA, and state officials responsible for oil spill response, as well as industry experts and representatives from key industry associations and a vessel owner. In addition, we reviewed documentation from the NPFC regarding the Fund balance and vessels' limits of liability. Earlier this month, we obtained updated information from and interviewed NPFC officials to update our September 2007 report's findings and to gather information on the recent oil spill in the Gulf of Mexico. In addition, we have just started work on the Oil Spill Liability Trust Fund at the request of the Chairman of this Subcommittee and other congressional members.

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## Summary

OPA establishes a “polluter pays” system that is intended to act as a deterrent by placing the primary burden of liability<sup>10</sup> for the costs of spills on the party responsible for the spill in return for financial limitations on that liability.<sup>11</sup> Under this system, the responsible party assumes, up to a specified limit that is subject to certain conditions, the burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and payment of compensation to parties that were economically harmed by the spill). Above the specified limit, which varies depending on the type of vessel or facility, the responsible party is no longer financially liable. Responsible parties are liable without limit, however, if the oil discharge is the result of gross negligence or willful misconduct, or a violation of federal operation, safety, or construction regulations. To pay costs above the limit of liability, as well as to pay costs when a responsible party does not pay or cannot be

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<sup>9</sup>Environmental Research Consulting is a private consulting firm that specializes in data analysis, environmental risk assessment, cost analyses, expert witness research and testimony, and development of comprehensive databases on oil and chemical spills in service to regulatory agencies, nongovernmental organizations, and industry.

<sup>10</sup>In the case of a vessel, the responsible party is “any person owning, operating, or demise chartering the vessel.” 33 U.S.C. § 2701(32)(A). In the case of an offshore facility the responsible party is the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act ... for the area in which the facility is located (if the holder is a different person than the lessee or permittee) ... 33 U.S.C. § 2701(32)(C). NPFC has designated the source of the discharges for this incident as BP Exploration and Production, Inc. as lessee for the area, and Transocean Holdings, Inc., as the owner of the mobile offshore drilling unit, and as such, are responsible parties. To date, only BP is paying costs associated with this spill.

<sup>11</sup>This testimony focuses only on the liability imposed by OPA.

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identified, OPA authorized use of the Fund, which is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries. Offshore facilities' limit of liability is all removal costs plus \$75 million for damage claims.<sup>12</sup> The Fund also may be used to pay for natural resource damage assessments and to monitor the recovery activities of the responsible party, among other things. Coast Guard officials said that they began using the Fund in May 2010 to pay for removal activities in the Gulf of Mexico.

Several factors affect the costs of a noncatastrophic spill, according to industry experts and agency officials and the studies we reviewed—the spill's location, the time of year it occurs, and the type of oil spilled. Additionally, the magnitude of the oil spill will also impact costs of the *Deepwater Horizon* spill. A remote location, for example, can increase the cost of a spill because of the additional expense involved in mounting a remote response. Similarly, a spill that occurs close to shore rather than further out at sea can become more expensive because it may involve the use of manual labor to remove oil from sensitive shoreline habitat. Time also has situation-specific effects, in that a spill that occurs at a particular time of year might involve a much greater cost than a spill occurring in the same place but at a different time of year. For example, a spill occurring during fishing or tourist season might carry additional economic damage, or a spill occurring during a typically stormy season might prove more expensive because it is more difficult to clean up than one occurring during a season with generally calmer weather. The specific type of oil affects costs because the type of oil can affect the amount of cleanup needed and the amount of natural resource damage incurred. Lighter oils such as gasoline or diesel fuels dissipate and evaporate quickly—requiring minimal cleanup—but are highly toxic and create severe environmental impacts. Heavier oils such as crude oil do not evaporate and, therefore, may require intensive structural and shoreline cleanup; and while they are less toxic than light oils, heavy oils can harm waterfowl and fur-bearing mammals through coating and ingestion. Each spill's cost reflects the particular mix of these factors, and no factor is clearly predictive of the outcome. Although the total costs of the Gulf Coast spill will be unknown for some time, many of the same key factors such as location, time of year, oil type, and the magnitude of the oil spilled, will certainly impact the

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<sup>12</sup>When responsible parties' costs exceed their limit of liability and the limit is upheld—because there was no gross negligence willful misconduct, or violations of federal regulations by the vessel owner or operator—the responsible party is entitled to file a claim on the Fund to be reimbursed for costs in excess of the limit.

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costs of this spill. For example, the spill occurred in the spring in an area of the country—the Gulf Coast—that relies heavily on revenue from tourism and the commercial fishing industry. According to one expert, the loss in revenue from suspended commercial and recreational fishing in the Gulf Coast states is currently estimated at \$144 million per year.<sup>13</sup>

Since it was authorized in 1990, the Fund has been able to cover costs that responsible parties have not paid from noncatastrophic spills, but risks and uncertainties exist regarding the Fund's viability. In particular, the Fund is at risk from claims resulting from spills that significantly exceed responsible parties' liability limits. The effect of such spills can be seen among the 51 major oil spills we identified in 2007: 10 of them exceeded the limit of liability, resulting in claims of about \$252 million on the Fund. In the Coast Guard and Maritime Transportation Act of 2006, Congress increased these liability limits,<sup>14</sup> but additional attention to the limits appears warranted because the liability limits for certain vessel types may still be disproportionately low compared with their historic spill cost. For example, of the 51 major spills since 1990, 15 resulted from tank barges. The average cost for these 15 tank barge spills was about \$23 million—more than double the average liability limit (\$10.3 million) for these vessels. In its August 2009 report examining oil spills that exceeded the limits of liability, the Coast Guard had similar findings on the adequacy of some of the current limits and their potential effect on the the Fund. Aside from issues related to limits of liability, the Fund faces other potential drains on its resources, including ongoing claims from existing spills, claims related to already-sunken vessels that may begin to leak oil, and the threat of a catastrophic spill—such as the *Deepwater Horizon*—which could have a significant impact on the Fund's viability.

In our September 2007 report, we recommended that the Commandant of the Coast Guard (1) determine whether and how liability limits should be changed, by vessel type, and make recommendations about these changes to Congress and (2) adjust the limits of liability for vessels every 3 years to reflect changes in inflation, as appropriate. The Department of Homeland Security (DHS), including the Coast Guard, generally agreed with the report's contents and agreed with the recommendations. In July 2009, the

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<sup>13</sup>McKinney, Larry, *The Deepwater Horizon Oil Spill—Putting a Price on the Priceless*, Harte Research Institute for Gulf of Mexico Studies (Corpus Christi, Tex.: 2010).

<sup>14</sup>33 U.S.C. § 2704(b). The estimate of \$65 million is based on Pub. L. No. 109-241, § 603, 120 Stat. 516, 553 (2006).

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Commandant of the Coast Guard implemented our recommendation to adjust limits of liability for vessels every 3 years to reflect changes in inflation,<sup>15</sup> but to date, has not implemented our recommendation to determine whether and how liability limits should be changed by vessel type and make recommendations about these changes to Congress. We continue to believe that adjusting liability limits for particular vessel types, notably tank barges, would ensure that the “polluter pays” principle is carried out in practice.

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## The Primary Burden of Liability for the Costs of Oil Spills Is on the Responsible Party, up to Specified Limits

OPA establishes a “polluter pays” system that places the primary burden of liability for the costs of spills on the party responsible for the spill in return for financial limitations on that liability. Under this system, the responsible party assumes, up to a specified limit, the burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and payment of compensation to parties that were economically harmed by the spill). Above the specified limit, the responsible party generally is no longer financially liable. Responsible parties are liable without limit, however, if the oil discharge is the result of gross negligence or willful misconduct, or a violation of federal operation, safety, and construction regulations. OPA’s “polluter pays” system is intended to provide a deterrent for responsible parties who could potentially spill oil by requiring that they assume the burden of responding to the spill, restoring natural resources, and compensating those damaged by the spill, up to the specified limit of liability. (See table 1 for the limits of liability for vessels and offshore facilities.)

In general, liability limits under the OPA depend on the kind of vessel or facility from which a spill comes. For an offshore facility, liability is limited to all removal costs plus \$75 million. For tank vessels, liability limits are based on the vessel’s tonnage and hull type. In both cases, certain circumstances, such as gross negligence, eliminate the caps on liability altogether. According to the Coast Guard, the leaking well in the current spill is an offshore facility. As noted earlier, pursuant to OPA, the liability limit for offshore facilities is all removal costs plus \$75 million for damage claims. The Coast Guard also notes that liability for any spill on or above the surface of the water in this case would be between \$65 million

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<sup>15</sup>74 Fed. Reg. 31358, July 1, 2009. This interim rule was finalized in January 2010. 75 Fed. Reg. 750, January 6, 2010.

and \$75 million. The range derives from a statutory division of liability for mobile offshore drilling units.<sup>16</sup> For spills on or above the surface of the water, mobile offshore drilling units are treated first as tank vessels up to the limit of liability for tank vessels and then as offshore facilities.<sup>17</sup>

**Table 1: Description of Vessels and Offshore Facilities and Current Limits of Liability**

Vessels	Description	Limit of liability
Oil tanker	An oil tanker is a ship designed to carry oil in large tanks.	Single hull: Vessels greater than 3,000 gross tons: the greater of \$3,200 per gross ton or \$23,496,000 million. Vessels less than or equal to 3,000 gross tons: the greater of \$3,200 per gross ton or \$6,408,000 million.
Tank barge	A tank barge is a non-self-propelled vessel that carries liquid, solid, or gaseous cargos in bulk in tanks primarily through rivers and inland waterways.	Double hull: Vessels greater than 3,000 gross tons: the greater of \$2,000 per gross ton or \$17,088,000 million. Vessels less than or equal to 3,000 gross tons: the greater of \$2,000 per gross on or \$4,272,000 million.
Cargo ship or freighter	A cargo ship or freighter is a vessel that transports non-oil goods and materials.	The greater of \$1,000 per gross ton or \$854,400.
Fishing vessel	A fishing vessel is a ship that is used to catch fish for commercial use.	
Offshore facility	An offshore facility is any facility of any kind located in, on, or under any of the navigable waters of the U.S., and any facility of any kind that is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.	All cleanup costs plus \$75 million.
Mobile offshore drilling unit (MODU)	A mobile offshore drilling unit is a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility.	For a discharge on or above the surface of the water, a MODU is first treated as a tank vessel up to the limit of liability for tank vessels. For costs above the vessel liability limit, the MODU is treated as an offshore facility.

Source: GAO.

<sup>16</sup>A MODU is a vessel capable of use as an offshore facility.

<sup>17</sup>The estimate of \$65 million is based on the tonnage of the *Deepwater Horizon* and thus the liability that would be calculated for it as a tank vessel, and \$75 million is the cap on liability for offshore facilities.

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For example, if an offshore facility's limit of liability is \$75 million (not counting removal costs, for which there is unlimited liability for offshore facilities) and a spill resulted in \$100 million in costs, the responsible party has to pay up to \$75 million in damage claims—leaving \$25 million in costs beyond the limit of liability.<sup>18</sup> Under OPA, the authorized limit on federal expenditures for a response to a single spill is currently set at \$1 billion, and natural resource damage assessments and claims may not exceed \$500 million. OPA requires that responsible parties must demonstrate their ability to pay for oil spill response up to statutorily specified limits. Specifically, by statute, with few exceptions, offshore facilities that are used for exploring for, drilling for, producing, or transporting oil from facilities engaged in oil exploration, drilling, or production are required to have a certificate of financial responsibility that demonstrates their ability to pay for oil spill response up to statutorily specified limits. If the responsible party denies a claim or does not settle it within 90 days, a claimant may commence action in court against the responsible party, or present the claim to the NPFC.

OPA also provides that the Fund<sup>19</sup> can be used to pay for oil spill removal costs and damages when those responsible do not pay or cannot be located. This may occur when the source of the spill and, therefore, the responsible party is unknown, or when the responsible party does not have the ability to pay. In other cases, since the cost recovery can take a period of years, the responsible party may become bankrupt or dissolved.

NPFC manages the Fund by disbursing funds for federal cleanup, monitoring the sources and uses of funds, adjudicating claims submitted to the Fund for payment, and pursuing reimbursement from the responsible party for costs and damages paid by the Fund. The Coast Guard is responsible for adjusting vessels' limits of liability for significant increases in inflation and for making recommendations to Congress on

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<sup>18</sup>When responsible parties' costs exceed their limit of liability and the limit is upheld—because there was no gross negligence or violations of federal regulations by the vessel owner or operator—the responsible party is entitled to file a claim on the Fund to be reimbursed for costs in excess of the limit. The NPFC reviews the claim to determine which costs are entitled to compensation under and the responsible party is reimbursed from the Fund.

<sup>19</sup>The Fund was originally established under the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, title VIII, § 8033 (Oct. 21, 1986) (*codified at* 26 U.S.C. § 9509), to fund oil spill response activities, but Congress did not authorize its use until enactment of OPA in 1990.

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whether other adjustments are necessary to help protect the Fund.<sup>20</sup> DOI's Minerals Management Service is responsible for adjusting limits of liability of offshore facilities.

Response to large oil spills is typically a cooperative effort between the public and private sector, and there are numerous players who participate in responding to and paying for oil spills. To manage the response effort, the responsible party, the Coast Guard, EPA, and the pertinent state and local agencies form the unified command, which implements and manages the spill response.<sup>21</sup>

OPA defines the costs for which responsible parties are liable and the costs for which the Fund is made available for compensation in the event that the responsible party does not pay or is not identified.<sup>22</sup> These costs, or "OPA compensable" costs, are of two main types:

- **Removal costs:** Removal costs are incurred by the federal government or any other entity taking approved action to respond to, contain, and clean up the spill. For example, removal costs include the equipment used in the response—skimmers to pull oil from the water, booms to contain the oil, planes for aerial observation—as well as salaries and travel and lodging costs for responders.
- **Damages caused by the oil spill:** Damages that can be compensated under OPA cover a wide range of both actual and potential adverse effects from an oil spill, for which a claim may be made to either the responsible party or the Fund. Claims include natural resource damage claims filed by trustees, claims for uncompensated removal costs and

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<sup>20</sup>33 U.S.C. § 2704(d).

<sup>21</sup>The Incident Command System (ICS) is a standardized response management system that is part of the National Interagency Incident Management System. The ICS is organizationally flexible so that it can expand and contract to accommodate spill responses of various sizes. The ICS typically consists of four sections: operations, planning, logistics, and finance/administration.

<sup>22</sup>33 U.S.C. § 2702(b). In the case of a vessel, the responsible party is "any person owning, operating, or demise chartering the vessel." 31 U.S.C. § 2701(32)(A). In the case of an offshore facility the responsible party "is the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act ... for the area in which the facility is located (if the holder is a different person than the lessee or permittee) ...." 31 U.S.C. § 2701(32)(C).

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third-party damage claims for lost or damaged property and lost profits, among other things.<sup>23</sup>

The Fund has two major components—the Principal Fund and the Emergency Fund. The Principal Fund provides the funds for third-party and natural resource damage claims, limit of liability claims, reimbursement of government agencies' removal costs, and provides for oil spill-related appropriations. A number of agencies—including the Coast Guard, EPA, and DOI—receive an annual appropriation from the Principal Fund to cover administrative, operational, personnel, and enforcement costs. To ensure rapid response to oil spills, OPA created an Emergency Fund that authorizes the President to spend \$50 million each year to fund spill response and the initiation of natural resource damage assessments, which provide the basis for determining the natural resource restoration needs that address the public's loss and use of natural resources as a result of a spill.

Emergency funds not used in a fiscal year are carried over to the subsequent fiscal years and remain available until expended. To the extent that \$50 million is inadequate, authority under the Maritime Transportation Security Act of 2002 grants authority to advance up to \$100 million from the Fund to pay for removal activities. These emergency funds may be used for containing and removing oil from water and shorelines, preventing or minimizing a substantial threat of discharge, and monitoring the removal activities of the responsible party. NPFC officials told us in June 2010 that the emergency fund has received the advanced authority of \$100 million for the Federal On-Scene Coordinator to respond to the spill and for federal trustees to initiate natural resource damage assessments along with an additional \$50 million that had not been

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<sup>23</sup>OPA authorizes the United States, states, and Indian Tribes to act on behalf of the public as natural resource trustees for natural resources under their respective trusteeship. Trustees often have information and technical expertise about the biological effects of pollution, as well as the location of sensitive species and habitats that can assist the federal on-scene coordinator in characterizing the nature and extent of site-related contamination and impacts. Federal Trustees include Commerce, DOI, the Departments of Agriculture, Defense, and Energy, and other agencies authorized to manage or protect natural resources.

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apportioned in 2006. Officials said they began using emergency funds at the beginning of May to pay for removal activities in the Gulf of Mexico.<sup>24</sup>

The Fund is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries. The balance of the Fund (including both the Principal and the Emergency Fund) has varied over the years (see fig. 1).<sup>25</sup> The Fund's balance generally declined from 1995 through 2006, and from fiscal year 2003 through 2007, its balance was less than the authorized limit on federal expenditures for the response to a single spill, which is currently set at \$1 billion. This was in part because the Fund's main source of revenue—a \$0.05 per barrel tax on U.S. produced and imported oil—was not collected for most of the time from 1995 through 2006.<sup>26</sup> However, the Energy Policy Act of 2005 reinstated the barrel tax beginning in April 2006.<sup>27</sup> Subsequently, the Emergency Economic Stabilization Act of 2008 increased the tax rate to \$0.08 per barrel through 2016.<sup>28</sup> The balance in the Fund as of June 1, 2010, was about \$1.6 billion.<sup>29</sup> With the barrel tax once again in place, NPFCA anticipates that the Fund will be able to cover

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<sup>24</sup>Under 33 U.S.C. § 2702, the responsible party is liable for the removal costs and damages that result from an oil spill and thus will be responsible for reimbursing the Fund for these expenses.

<sup>25</sup>OPA consolidated the liability and compensation provisions of four prior federal oil pollution initiatives and their respective trust funds into the Oil Spill Liability Trust Fund and authorized the collection of revenue and the use of the money, with certain limitations, with regards to expenditures. The prior federal laws regarding oil pollution included the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, the Trans-Alaska Pipeline Authorization Act, and the Outer Continental Shelf Lands Act Amendments of 1978. Congress created the Fund in 1986 but did not authorize collection of revenue or use of the money until it passed OPA in 1990.

<sup>26</sup>The tax expired in December 1994. Besides the barrel tax, the Fund also receives revenue in the form of interest on the Fund's principal revenues from amounts recovered from responsible parties for damages resulting from oil spills, from penalties paid pursuant to the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, or the Trans-Alaska Pipeline Authorization Act, and from certain other sources.

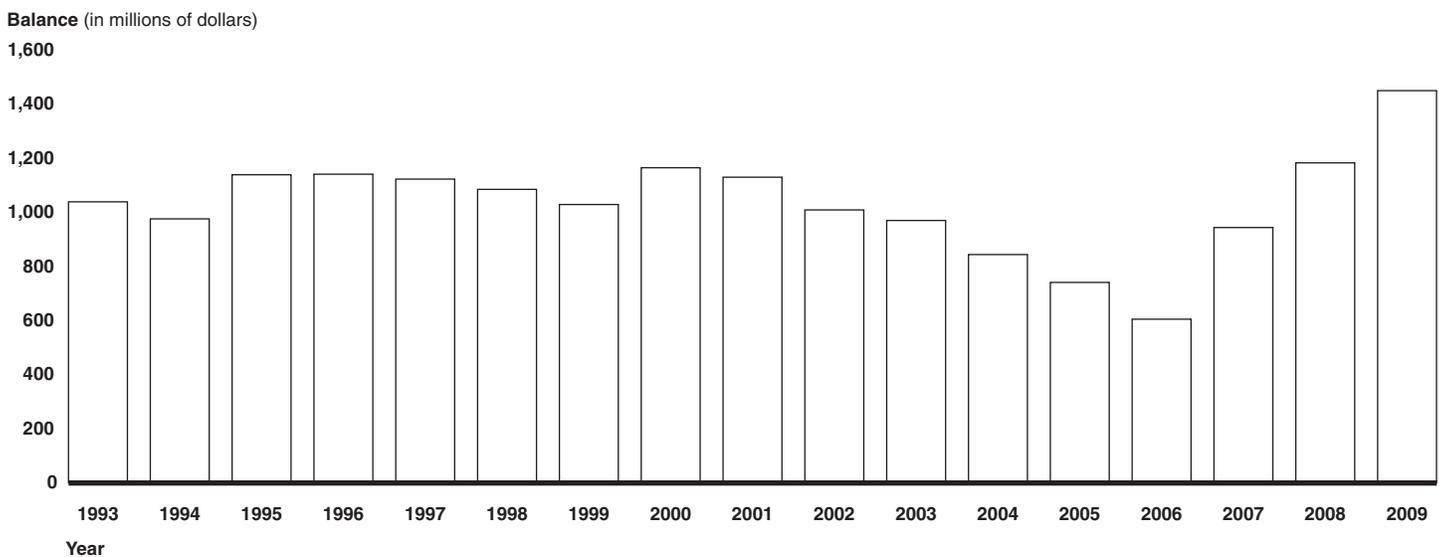
<sup>27</sup>Pub. L. No. 109-58, §1361, 119 Stat. 594 (2005).

<sup>28</sup>Pub. L. No. 110-343, § 405, 122 Stat. 3765, 3860. In 2017, the per-barrel tax increases to \$0.09. The tax is scheduled to terminate at the end of 2017.

<sup>29</sup>In 2007, we reported that the balance of the Fund was about \$600 million at the end of fiscal year 2006, which at the time, was well below its peak of \$1.2 billion in 2000. The decline in the Fund's balance primarily reflected an expiration of the barrel tax on petroleum in 1994. However, the tax was reinstated in 2005 and increased to \$0.08 per barrel in 2008; as a result, the Fund is now at its highest balance.

potential noncatastrophic liabilities.<sup>30</sup> In 2007 we reported several risks to the Fund, including the threat of a catastrophic spill. Although the Fund's balance has increased, significant uncertainties remain regarding the impact of a catastrophic spill—such as the *Deepwater Horizon*—or multiple catastrophic spills on the Fund's viability.

**Figure 1: Oil Spill Liability Trust Fund Balance, Fiscal Years 1993-2009**



Source: GAO analysis of NPFC data.

Note: The Fund balance increase in 2000 was largely due to a transfer of \$181.8 million from the Trans-Alaska Pipeline Liability Fund.

<sup>30</sup>Related GAO products include GAO, *U.S. Coast Guard National Pollution Funds Center: Improvements Are Needed in Internal Control Over Disbursements*, [GAO-04-340R](#) (Washington, D.C.: Jan. 13, 2004); and GAO, *U.S. Coast Guard National Pollution Funds Center: Claims Payment Process Was Functioning Effectively, but Additional Controls Are Needed to Reduce the Risk of Improper Payments*, [GAO-04-114R](#) (Washington, D.C.: Oct. 3, 2003).

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## Several Factors, including Location, Time of Year, and Type of Oil, Combine in Unique Ways and Affect the Cost of Each Oil Spill

Location, time of year, and type of oil are key factors affecting oil spill costs of noncatastrophic spills, according to industry experts, agency officials, and our analysis of spills. Given the magnitude of the current spill, however, the size of this spill will also be a factor that affects the costs. Officials also identified two other factors that may influence oil spill costs to a lesser extent—the effectiveness of the spill response and the level of public interest in a spill. In ways that are unique to each spill, these factors can affect the breadth and difficulty of the response effort or the extent of damage that requires mitigation.

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## Location Affects Costs in Different Ways

According to state officials with whom we spoke and industry experts, there are three primary characteristics of location that affect costs:

- **Remoteness:** For spills that occur in remote areas, spill response can be particularly difficult in terms of mobilizing responders and equipment, and they can complicate the logistics of removing oil from the water—all of which can increase the costs of a spill.
- **Proximity to shore:** There are also significant costs associated with spills that occur close to shore. Contamination of shoreline areas has a considerable bearing on the costs of spills as such spills can require manual labor to remove oil from the shoreline and sensitive habitats. The extent of damage is also affected by the specific shoreline location.
- **Proximity to economic centers:** Spills that occur in the proximity of economic centers can cost more when local services are disrupted. For example, a spill near a port can interrupt the flow of goods, necessitating an expeditious response in order to resume business activities, which could increase removal costs. Additionally, spills that disrupt economic activities can result in expensive third-party damage claims.

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## Time of Year Affects Local Economies and Response Efforts

The time of year in which a spill occurs can also affect spill costs—in particular, affecting local economies and response efforts. According to several state and private-sector officials with whom we spoke, spills that disrupt seasonal events that are critical for local economies can result in considerable expenses. For example, spills in the spring months in areas of the country that rely on revenue from tourism may incur additional removal costs in order to expedite spill cleanup, or because there are stricter standards for clean up, which increase the costs. The time of year

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in which a spill occurs also affects response efforts because of possible inclement weather conditions such as harsh winter storms and even hurricanes that can result in higher removal costs because of the increased difficulty in mobilizing equipment and personnel to respond to a spill in adverse conditions.

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### Type of Oil Spilled Affects the Extent of the Response Effort and the Amount of Damage

The different types of oil can be grouped into four categories, each with its own set of effects on spill response and the environment. Lighter oils such as jet fuels, gasoline, and diesel fuel dissipate and evaporate quickly, and as such, often require minimal cleanup. However, these oils are highly toxic and can severely affect the environment if conditions for evaporation are unfavorable. For instance, in 1996, a tank barge that was carrying home-heating oil grounded in the middle of a storm near Point Judith, Rhode Island, spilling approximately 828,000 gallons of heating oil (light oil). Although this oil might dissipate quickly under normal circumstances, heavy wave conditions caused an estimated 80 percent of the release to mix with water, with only about 12 percent evaporating and 10 percent staying on the surface of the water.<sup>31</sup> Natural resource damages alone were estimated at \$18 million, due to the death of approximately 9 million lobsters, 27 million clams and crabs, and over 4 million fish.

Heavier oils, such as crude oils and other heavy petroleum products, are less toxic than lighter oils but can also have severe environmental impacts. Medium and heavy oils do not evaporate much, even during favorable weather conditions, and can blanket structures they come in contact with—boats and fishing gear, for example—as well as the shoreline, creating severe environmental impacts to these areas, and harming waterfowl and fur-bearing mammals through coating and ingestion. Additionally, heavy oils can sink, creating prolonged contamination of the sea bed and tar balls that sink to the ocean floor and scatter along beaches. These spills can require intensive shoreline and structural clean up, which is time-consuming and expensive. For example, in 1995, a tanker spilled approximately 38,000 gallons of heavy fuel oil into the Gulf of Mexico when it collided with another tanker as it prepared to lighten its oil to another ship.<sup>32</sup> Less than 1 percent (210 gallons) of the oil was

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<sup>31</sup>National Research Council of the National Academies, *Oil in the Sea III: Inputs, Fates, and Effects* (Washington, D.C.: 2003). Numbers do not add to 100 percent due to rounding.

<sup>32</sup>Lightering is the process of transferring oil at sea from a very large or ultra-large carrier to smaller tankers that are capable of entering the port.

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recovered from the sea, and, as a result, recovery efforts on the beaches of Matagorda and South Padre Islands were labor intensive, as hundreds of workers had to manually pick up tar balls with shovels. The total removal costs for the spill were estimated at \$7 million.

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### Other Factors also Affect Spill Costs

In our 2007 report, we also reported that industry experts cited two other factors that also affect the costs incurred during a spill.

- **Effectiveness of Spill Response:** Some private-sector experts stated that the effectiveness of spill response can affect the cost of cleanup. The longer it takes to assemble and conduct the spill response, the more likely it is that the oil will move with changing tides and currents and affect a greater area, which can increase costs. Some experts said the level of experience of those involved in the incident command is critical to the effectiveness of spill response. For example, they said poor decision making during a spill response could lead to the deployment of unnecessary response equipment, or worse, not enough equipment to respond to a spill. Several experts expressed concern that Coast Guard officials are increasingly inexperienced in handling spill response, in part because the Coast Guard's mission has been increased to include homeland security initiatives.
- **Public interest:** Several experts with whom we spoke stated that the level of public attention placed on a spill creates pressure on parties to take action and can increase costs. They also noted that the level of public interest can increase the standards of cleanliness expected, which may increase removal costs.

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### Key Factors Will Likely Influence Cost of Gulf Coast Spill

The total costs of the *Deepwater Horizon* spill in the Gulf of Mexico are currently undetermined and will be unknown for some time even after the spill is fully contained. According to a press release from BP, as of June 7, 2010, the cost of the response amounted to about \$1.25 billion, which includes the spill response, containment, relief well drilling, grants to the Gulf states, damage claims paid and federal costs. Of the \$1.25 billion, approximately \$122 million (as of June 1, 2010) has been paid from the Fund for the response operation, according to NPFC officials.<sup>33</sup> The total

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<sup>33</sup>Of the \$122 million, \$4.2 million has been used to by the federal trustees to initiate natural resource damage assessments. Under 33 U.S.C. § 2702, the responsible party is liable for the removal costs and damages that result from an oil spill and thus will be responsible for reimbursing the Fund for these expenses.

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costs will not likely be known for a while, as it can take many months or years to determine the full effect of a spill on natural resources and to determine the costs and extent of the natural resource damage. However, the spill has been described as the biggest U.S. offshore platform spill in 40 years, and possibly the most costly.

Our work for this testimony did not include a thorough evaluation of the factors affecting the current spill. However, some of the same key factors that have influenced the cost of 51 major oil spills we reviewed in 2007 will likely have an effect on the costs in the Gulf Coast spill. For example, the spill occurred in the spring in an area of the country—the Gulf Coast—that relies heavily on revenue from tourism and the commercial fishing industry. Spills that occur in proximity of tourist destinations like beaches can result in additional removal costs in order to expedite spill cleanup, or because there are stricter standards for cleanup, which increase the costs. In addition, according to an expert, the loss in revenue from suspended commercial and recreational fishing in the Gulf Coast states is currently estimated at \$144 million per year.<sup>34</sup> Another factor affecting spills' costs is the type of oil. The oil that continues to spill into the Gulf of Mexico is a light oil—specifically “light sweet crude” oil—that is toxic and can create long-term contamination of shorelines, and harm waterfowl and fur-bearing mammals. According to the U.S. Fish and Wildlife Service, many species of wildlife face grave risk from the spill, as well as 36 national wildlife refuges that may be affected. In recent testimony, the EPA Deputy Administrator described the *Deepwater Horizon* spill as a “massive and potentially unprecedented environmental disaster.”

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## The Fund Has Been Able to Cover Costs Not Paid by Responsible Parties, but Risks and Uncertainties Remain

To date, the Fund has been able to cover costs from major spills that responsible parties have not paid, but risks and uncertainties remain. We reported in 2007 that the current liability limits for certain vessel types, notably tank barges, may have been disproportionately low relative to costs associated with such spills. In addition, the Fund faced other potential risks to its viability, including ongoing claims from existing spills and the potential for a catastrophic oil spill. The current spill in the Gulf of Mexico could result in a significant strain on the Fund, which currently has a balance of about \$1.6 billion.

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<sup>34</sup>McKinney, Larry, *The Deepwater Horizon Oil Spill—Putting a Price on the Priceless*, Harte Research Institute for Gulf of Mexico Studies (Corpus Christi, Tex.: 2010).

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## Further Attention to Limits of Liability Is Needed

The Fund has been able to cover costs from major spills that responsible parties have not paid, but additional focus on limits of liability is warranted. Limits of liability are the amount, under certain circumstances, above which responsible parties are no longer financially liable for spill removal costs and damage claims, in the absence of gross negligence or willful misconduct, or the violation of an applicable federal safety, construction, or operating regulation.<sup>35</sup> If the responsible party's costs exceed the limit of liability, the responsible party can make a claim against the Fund for the amount above the limit. Major oil spills that exceed a vessel's limit of liability are infrequent, but their effect on the Fund can be significant. In our 2007 report, we reported that 10 of the 51 major oil spills that occurred from 1990 through 2006 resulted in limit-of-liability claims on the Fund.<sup>36</sup> These limit-of-liability claims totaled more than \$252 million and ranged from less than \$1 million to more than \$100 million. Limit-of-liability claims will continue to have a pronounced effect on the Fund. NPFC estimates that 74 percent of claims under adjudication that were outstanding as of January 2007 were for spills in which the limit of liability had been exceeded. The amount of these claims under adjudication was \$217 million.

In 2007, we identified two key areas in which further attention to these liability limits appeared warranted and made recommendations to the Commandant of the Coast Guard regarding both—the need to adjust limits periodically in the future to account for significant increases in inflation and the appropriateness of some current liability limits. Regarding the need to adjust liability limits to account for increases in inflation, we reported that the Fund was exposed to about \$39 million in liability claims for the 51 major spills from 1990 through 2006 that could have been saved if the limits of liability had been adjusted for inflation as required by law, and recommended adjusting limits of liability for vessels every 3 years to reflect significant changes in inflation, as appropriate.<sup>37</sup> Per requirements

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<sup>35</sup>See 33 U.S.C. § 2704 for a more complete discussion of the liability limits and exceptions.

<sup>36</sup>Additional spills had costs in excess of the vessel's limit of liability, but either the limit was not upheld or no claim was filed by the responsible party.

<sup>37</sup>OPA requires the President, who has delegated responsibility to the Coast Guard, through the Secretary of Homeland Security, to issue regulations not less often than every 3 years to adjust the limits of liability to reflect significant increases in the Consumer Price Index. Congress reiterated this requirement in the Coast Guard and Maritime Transportation Act of 2006 by requiring that regulations be issued 3 years after the enactment of the act (July 11, 2006) and every 3 years afterward to adjust the limits of liability to reflect significant increases in the Consumer Price Index.

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in OPA as amended by the Delaware River Protection Act, the Coast Guard published an interim rule in July 2009—made final in January 2010—that adjusted vessels’ limits of liability to reflect significant increases in the Consumer Price Index, noting that the inflation adjustments to the limits of liability are required by OPA to preserve the deterrent effect and polluter-pays principle embodied in the OPA liability provisions.<sup>38</sup> DOI has been delegated responsibility by the President to adjust the liability limits for offshore facilities and this responsibility has been redelegated by DOI to the Minerals Management Service.<sup>39</sup> To date, these liability limits have not been adjusted for inflation.

The Coast Guard and Maritime Transportation Act of 2006 significantly increased the limits of liability.<sup>40</sup> Both laws base the liability on a specified amount per gross ton of vessel volume, with different amounts for vessels that transport oil commodities (tankers and tank barges) than for vessels that carry oil as a fuel (such as cargo vessels, fishing vessels, and passenger ships). The 2006 act raised both the per-ton and the required minimum amounts, differentiating between vessels with a double hull, that helps prevent oil spills resulting from collision or grounding, and vessels without a double hull.<sup>41</sup> For example, the liability limit for single-hull vessels larger than 3,000 gross tons was increased from the greater of \$1,200 per gross ton or \$10 million to the greater of \$3,000 per gross ton or \$22 million.

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<sup>38</sup>74 Fed. Reg. 31358, July 1, 2009.

<sup>39</sup>Executive Order 12777, October 18, 1991, and *Department of the Interior Organization Manual*, Part 118, Chapter 1, Section 1.2, June 18, 2008.

<sup>40</sup>Pub. L. No. 109-241, § 603, 120 Stat. 516, 554. Vessels’ liability limits were raised again in 2009 by the Coast Guard to reflect significant increases in inflation, as required by OPA. However, the 2006 adjustment in liability limits, which increased an average of 125 percent for the 51 vessels involved in major oil spills, were substantially higher than the rise in inflation during the period.

<sup>41</sup>OPA requires that all tank vessels (greater than 5,000 gross tons) constructed (or that undergo major conversions) under contracts awarded after June 30, 1990, operating in U.S. navigable waters must have double hulls. Of the 51 major oil spills, all 24 major spills from tank vessels (tankers and tank barges) involved single-hull vessels.

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However, our analysis of the 51 major spills showed that the average spill cost for some types of vessels, particularly tank barges, was higher than the limit of liability, including the new limits established in 2006.<sup>42</sup> Thus, we recommended that the Commandant of the Coast Guard determine whether and how liability limits should be changed by vessel type, and make specific recommendations about these changes to Congress. In its August 2009 Annual Report to Congress on OPA liability limits, the Coast Guard had similar findings on the adequacy of some of the new limits.<sup>43</sup> The Coast Guard found that 51 spills or substantial threats of a spill have resulted or are likely to result in removal costs and damages that exceed the liability limits amended in 2006. Specifically, the Coast Guard reported that liability limits for tank barges and cargo vessels with substantial fuel oil may not sufficiently account for the historic costs incurred by spills from these vessel types. The Coast Guard concluded that increasing liability limits for tank barges and non tank vessels—cargo, freight, and fishing vessels—over 300 gross tons would increase the Fund balance. With regard to making specific adjustments, the Coast Guard said dividing costs equally between the responsible parties and the Fund was a reasonable standard to apply in determining the adequacy of liability limits.<sup>44</sup> However, the Coast Guard did not recommend explicit changes to achieve either that 50/50 standard or any other division of responsibility.

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## Other Challenges Could also Affect the Fund's Condition

The Fund also faces several other potential challenges that could affect its financial condition:

- *Additional claims could be made on spills that have already been cleaned up:* Natural resource damage claims can be made on the Fund for years after a spill has been cleaned up. The official natural resource damage assessment conducted by trustees can take years to complete,

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<sup>42</sup>The 15 tank barge spills and the 12 fishing/other vessel spills in our review had average costs greater than both the 1990 and 2006 limits of liability. For example, for tank barges, the average cost of \$23 million was higher than the average limit of liability of \$4.1 million under the 1990 limits and \$10.3 million under the new 2006 limits.

<sup>43</sup>U.S. Coast Guard, *Oil Pollution Act Liability Limits: Annual Report to Congress, Fiscal Year 2009* (Aug. 18, 2009).

<sup>44</sup>We did not assess the reasonableness of adopting such a standard in determining liability limits.

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and once it is completed, claims can be submitted to the NPFCA for up to 3 years thereafter.<sup>45</sup>

- *Costs and claims may occur on spills from previously sunken vessels that discharge oil in the future:* Previously sunken vessels that are submerged and in threat of discharging oil represent an ongoing liability to the Fund. There are over 1000 sunken vessels that pose a threat of oil discharge.<sup>46</sup> These potential spills are particularly problematic because in many cases there is no viable responsible party that would be liable for removal costs. Therefore, the full cost burden of oil spilled from these vessels would likely be paid by the Fund.
- *Spills may occur without an identifiable source and, therefore, no responsible party:* Mystery spills also have a sustained effect on the Fund, because costs for spills without an identifiable source—and therefore no responsible party—may be paid out of the Fund. Although mystery spills are a concern, the total cost to the Fund from mystery spills was lower than the costs of known vessel spills in 2001 through 2004. Additionally, none of the 51 major oil spills was the result of discharge from an unknown source.
- *A catastrophic spill could strain the Fund's resources:* In 2007, we reported that since the 1989 *Exxon Valdez* spill, which was the impetus for authorizing the Fund's usage, no oil spill has come close to matching its costs—estimated at \$2.2 billion for cleanup costs alone, according to the vessel's owner.<sup>47</sup> However, as of early June, the response for the *Deepwater Horizon* spill had already totaled over \$1 billion, according to BP, and to date, the spill has not been fully contained. As a result, the Gulf of Mexico spill could easily eclipse the *Exxon Valdez*, becoming the most costly offshore spill in U.S. history.

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<sup>45</sup>33 U.S.C. § 2712(h)(2). Federal response costs for spills that resulted from hurricanes Katrina and Rita were paid from the Stafford Act Disaster Relief Funds. However, private parties can seek reimbursement from the Fund for cleanup costs and damages in the future. According to NPFCA, as of June 2010, claims related to Katrina and Rita have been relatively minor.

<sup>46</sup>Michel, J., D. Etkin, T. Gilbert, J. Waldron, C. Blocksidge, and R. Urban; 2005. *Potentially Polluting Wrecks in Marine Waters: An Issue Paper Prepared for the 2005 International Oil Spill Conference*.

<sup>47</sup>The *ExxonValdez* only discharged about 20 percent of the oil it was carrying. A catastrophic spill from a vessel could result in costs that exceed those of the *Exxon Valdez*, particularly if the entire contents of a tanker were released in a 'worst-case discharge' scenario.

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The Fund is currently authorized to pay out a maximum of \$1 billion on a single spill for response costs, with up to \$500 million for natural resource damage claims. Although the Fund has been successful thus far in covering costs that responsible parties did not pay, it may not be sufficient to pay such costs for a spill—such as the *Deepwater Horizon*—that are likely to have catastrophic consequences. While BP has said it will pay all legitimate claims associated with the spill, should the company decide it will not or cannot pay for the costs exceeding their limit of liability, the Fund may have to bear these costs. Given the magnitude of the *Deepwater Horizon* spill, the costs could result in a significant strain on the Fund.

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## Options for Addressing the Fund's Vulnerabilities

Recently, several options have been identified to address the Fund's vulnerabilities. In particular, the Congressional Research Service (CRS)<sup>48</sup> has identified options to address the vulnerabilities, and Members of Congress have also introduced legislation that would address the risks to the Fund.<sup>49</sup> These options include:

- **Increasing liability limits.** CRS proposes raising the liability caps for vessels so that the responsible party would be required to pay a greater share of the costs before the Fund is used. In addition, S. 3305 proposes raising the liability limit for damage claims related to offshore facilities from \$75 million to \$10 billion.
- **Increasing the per-barrel tax.** CRS and congressional options include increasing the current per-barrel tax used to generate revenue for the Fund in order to raise the Fund's balance—H.R. 4213 proposes raising the tax from the current \$0.08 per barrel to \$0.34. According to CRS, this option would increase the likelihood that there is sufficient money available in the Fund if costs exceed the responsible party's liability limits.
- **Including oil owners as liable parties.** CRS suggests expanding the definition of liable parties to include the owner of the oil being transported by a vessel.

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<sup>48</sup>Congressional Research Service, *Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress* (Washington, D.C.: 2010).

<sup>49</sup>S. 3305, S. 3306, and H.R. 4213, 111th Cong. 2010.

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In addition, the Administration announced a proposal on May 12, 2010, that addresses several aspects of the response to the *Deepwater Horizon* spill, primarily by changing the way the Fund operates. It includes, among other things, proposals to increase the statutory limitation on expenditures from the Fund for a single oil spill response from \$1 billion to \$1.5 billion for spill response and from \$500 million to \$750 million per spill for natural resource damage assessments and claims. In addition, similar to the CRS and congressional proposals, the Administration is proposing an increase on the per-barrel tax to \$0.09 this year, 7 years earlier than the current law requires.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

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## GAO Contact and Staff Acknowledgments

For questions about this statement, contact Susan Fleming at (202) 512-2834 or [flemings@gao.gov](mailto:flemings@gao.gov). Individuals making key contributions to this testimony include Jeanette Franzel, Heather Halliwell, David Hooper, Hannah Laufe, Stephanie Purcell, Susan Ragland, Amy Rosewarne, Doris Yanger, and Susan Zimmerman.

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