

Report to the Congress

January 1992

FINANCIAL AUDIT

Trans-Alaska Pipeline Liability Fund





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United States General Accounting Office Washington, D.C. 20548

Comptroller General of the United States

B-208638

January 17, 1992

To the President of the Senate and the Speaker of the House of Representatives

This report presents the results of our review of the independent certified public accountants' audit of the Trans-Alaska Pipeline (TAP) Liability Fund's financial statements as of December 31, 1990. We also assessed progress toward disposing of the TAP Fund's balances and terminating the Fund in accordance with section 8102 of the Oil Pollution Act of 1990 (Public Law 101-380).

In the auditors' opinion, the TAP Fund's financial statements as of December 31, 1990, are fairly presented in all material respects in accordance with generally accepted accounting principles. The independent auditors' reports on the TAP Fund's internal control structure and on its compliance with laws and regulations are also provided. As of December 31, 1990, the TAP Fund had \$286 million of net assets available to pay outstanding claims and administrative expenses. No amounts are currently available for transfer to the Oil Spill Liability Trust Fund due to the pending claims and associated administrative expenses. The TAP Fund cannot be terminated until these claims are settled and expenses paid.

The Trans-Alaska Pipeline Liability Fund is a nonprofit corporate entity created in 1973 by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(4)). The TAP Fund is governed by the U.S. Department of the Interior and administered by a Board of Trustees. The Fund was established to pay claims for damages, including cleanup costs, resulting from oil discharges from vessels transporting Trans-Alaska Pipeline System oil loaded at Alaskan terminals to ports under U.S. jurisdiction. The TAP Fund was initially funded up to \$100 million by assessing owners of oil, including the state of Alaska, a fee of 5 cents per barrel of oil loaded at the Trans-Alaska terminal at Valdez, Alaska. The liability of the TAP Fund is generally limited to that increment of damages in excess of \$14 million, but not in excess of \$100 million, per oil spill incident occurring before August 18, 1990. Additional information on the organization and the purpose of the TAP Fund is provided in the notes to the financial statements, which are included in this report.

The Oil Pollution Act of 1990 provides that the TAP Fund shall reserve amounts necessary to pay administrative expenses and to pay applicable claims. Once the Comptroller General certifies that these reserves

have been established, the state of Alaska is to be reimbursed for its pro rata share of contributions to the TAP Fund, and remaining fund equity balances are to be transferred to the Oil Spill Liability Trust Fund. This new fund was created to provide compensation for damages resulting from incidents occurring on or after August 18, 1990. The TAP Fund will then be terminated 60 days after the Comptroller General of the United States has certified that all claims have been resolved and all administrative expenses have been paid.

The Trans-Alaska Pipeline Liability Fund contracted with an independent certified public accounting firm, Deloitte & Touche, to audit its 1990 financial statements. We reviewed the 1990 audit under provisions of the Trans-Alaska Pipeline Authorization Act, which authorize us to audit the TAP Fund's financial transactions, and the Oil Pollution Act, which requires that we certify that reserves have been established and all claims and expenses paid. To fulfill our responsibilities, avoid duplication and unnecessary expense, and make the most efficient use of our available resources, we reviewed the independent auditors' work and reports.

We conducted our review of the auditors' work in accordance with generally accepted government auditing standards. To determine the reasonableness of the auditors' work and the extent to which we could rely on it, we

- reviewed the auditors' approach and planning of the audit;
- evaluated the qualifications and independence of the audit staff;
- reviewed the financial statements and auditors' reports to evaluate compliance with generally accepted accounting principles and generally accepted government auditing standards; and
- reviewed the auditors' working papers to determine (1) the nature, timing, and extent of audit work performed, (2) the extent of audit quality control methods the auditors used, (3) whether the auditors obtained an understanding of the TAP Fund's internal control structure, (4) whether the auditors tested transactions for compliance with applicable laws and regulations, and (5) whether the evidence in the working papers supported the auditors' opinion on the financial statements and on the internal control structure and compliance reports.

In the opinion of Deloitte & Touche, the Trans-Alaska Pipeline Liability Fund's financial statements present fairly the net assets available for claims and expenses as of December 31, 1990, and the changes in net

assets available for claims and expenses for the year then ended, in conformity with generally accepted accounting principles. The auditors' opinion also emphasizes that an uncertainty exists in determining liability for potential claims and administrative expenses which may exceed net assets available for claims. The 1989 financial statements, which are presented for comparative purposes, were also audited by Deloitte & Touche; however, our review was limited to the 1990 financial statements. Deloitte & Touche's reports on internal control structure and on compliance with laws and regulations did not disclose any material weaknesses or noncompliance with laws and regulations.

During our review, we found nothing to indicate that Deloitte & Touche's opinion on the TAP Fund's 1990 financial statements is inappropriate or cannot be relied on. Nor did we find anything to indicate that the auditors' reports on internal control structure and on compliance with laws and regulations were inappropriate or cannot be relied on. We believe that the financial statements, together with Deloitte & Touche's opinion and our review of that work, provide the Congress with a dependable basis for evaluating the TAP Fund's financial position.

The Exxon Valdez Claim

On March 24, 1989, the Exxon Valdez, an oil tanker owned and operated by the Exxon Shipping Company and loaded with oil from the Valdez terminal, ran aground off the coast of Alaska causing a 240,000 barrel oil spill. Total damages related to the spill far exceeded the TAP fund liability per incident of \$100 million, less the \$14 million deductible, established in the Trans-Alaska Pipeline Authorization Act. Litigation filed subsequently alleged that multiple incidents occurred. While the Fund vigorously disputes that contention, its potential liability for this claim and others as well as administrative expenses may exceed the Fund's \$286 million of net assets available for claims as of December 31, 1990. However, the Fund is authorized, subject to the approval of the Secretary of the Interior, to borrow money needed to pay claims from any commercial source. In addition, should the value of the TAP Fund drop below \$100 million, the TAP Authorization Act provides for replenishing the Fund through assessing a fee of 5 cents per barrel of oil loaded at the Valdez pipeline terminal.

The Exxon Shipping Company and the TAP Fund initially agreed that Exxon would administer and pay all Exxon Valdez claims and could subsequently submit claims to the TAP Fund for reimbursement. The act's implementing regulations require that all claims must be submitted within 2 years of an event. On December 14, 1990, a federal court ruled

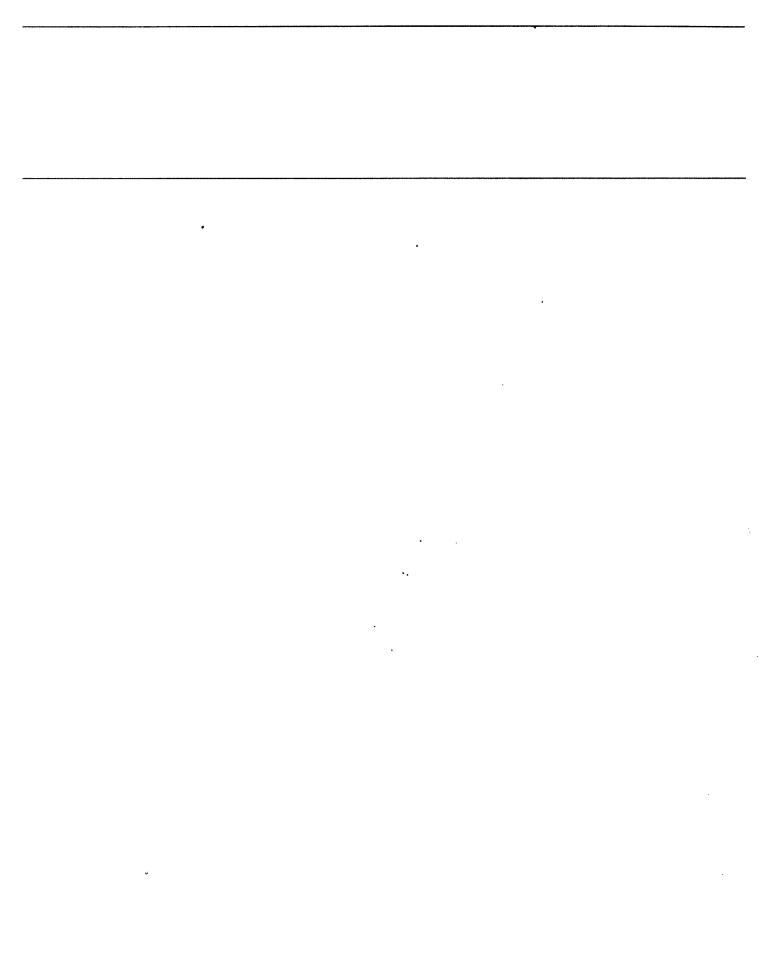
that claimants were required to seek administrative resolution of claims with the TAP Fund before proceeding against the Fund in court. The court also ruled that the TAP Fund could not delegate its responsibility to settle claims to the Exxon Shipping Company. Accordingly, the TAP Fund terminated its agreement with Exxon and established a claims handling function. It is now in the process of evaluating more than 29,000 claims currently pending for administrative resolution with the TAP Fund. The Fund hopes to have these claims resolved by March 1, 1992. Under 43 U.S.C. 1653(c)(2), the Fund is not strictly liable for damages arising from a claimant's negligence. Accordingly, the TAP Fund intends to contest any claims filed by the Exxon Shipping Company. The TAP Fund also intends to seek reimbursement from Exxon for any third-party claims paid arising from the Exxon Valdez incident. Note 4 to the 1990 financial statements discloses all contingencies against the TAP Fund.

Since TAP Fund officials are still in the process of resolving claims against it and incurring associated administrative expenses and since the total amount payable under those claims may exceed the current net assets of the Fund, the trustees of the Fund have not established reserves for claims and expenses as provided in the Oil Pollution Act. Accordingly, we cannot make the certifications which initiate distribution of the Fund's balances. We will monitor the Fund's progress in resolving claims against it and certify balances as required by section 8102 of the Oil Pollution Act of 1990.

We are sending copies of this report to the Director of the Office of Management and Budget, the Secretary of the Treasury, the Secretary of the Interior, and the Chairman of the Board of Trustees of the Trans-Alaska Pipeline Liability Fund.

Charles A. Bowsher Comptroller General of the United States

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Contents

| Opinion Letter | | 1 |
|--|--|----------------|
| Auditors' Opinion | | 8 |
| Auditors' Report on Internal Control Structure | | 9 |
| Auditors' Report on Compliance With Laws and Regulations | | 11 |
| Financial Statements | Statements of Net Assets Available for Claims and Expenses Statements of Changes in Net Assets Available for Claims and Expenses Notes to Financial Statements | 12 12 13 |

Abbreviation

TAP

Trans-Alaska Pipeline

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Auditors' Opinion

Deloitte & Touche

1000 Wilshire Boulevard Los Angeles, California 90017-2472 Telephone: (213) 688-0800

Telex. 910 3214090 Facsimile (213) 688-0100

INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of Trans-Alaska Pipeline Liability Fund:

We have audited the accompanying statements of net assets available for claims and expenses of the Trans-Alaska Pipeline Liability Fund (the "Fund") as of December 31, 1990 and 1989, and the related statements of changes in net assets available for claims and expenses for the years then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and the standards for financial audits contained in the U.S. General Accounting Office Government Auditing Standards (1988 Revision). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for claims and expenses of the Trans-Alaska Pipeline Liability Fund as of December 31, 1990 and 1989, and the changes in net assets available for claims and expenses for the years then ended, in conformity with generally accepted accounting principles.

As discussed in Notes 4 and 5, there are certain claims against the Fund. Because of the complexity of these claims under the Trans-Alaska Pipeline Authorization Act (the "TAP Authorization Act"), it is not currently possible to determine the liability, if any, under such claims, or when any amounts would be required to be paid by the Fund. Resolution of these contingencies may result in liabilities in excess of the net assets available for claims, in which case, additional fee income would have to be collected in accordance with the provisions of the TAP Authorization Act. Further, upon resolution of these contingencies, it is contemplated that any remaining net assets of the Fund would be transferred to a new fund under the Oil Pollution Act of 1990.

Delotte | Jonah

Auditors' Report on Internal Control Structure

Deloitte & Touche



1000 Wilshire Boulevard Los Angeles, California 90017-2472 Telephone: (213) 688-0800 Telex: 910 3214090 Facsimile: (213) 688-0100

To the Board of Trustees of Trans-Alaska Pipeline Liability Fund:

We have audited the financial statements of the Trans-Alaska Pipeline Liability Fund (the "Fund") for the year ended December 31, 1990, and have issued our report thereon dated September 24, 1991, which included an explanatory paragraph referring to contingencies discussed in Notes 4 and 5 to these financial statements. Our audit was made in accordance with generally accepted accounting standards and the standards for financial audits contained in the United States General Accounting Office Government Audit Standards (1988, Revision).

In planning and performing our audit of the Fund's financial statements we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control structure.

The Fund's management is responsible for establishing and maintaining a system of internal accounting control. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of control procedures. The objectives of a system are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles.

For purposes of this report, we classified the Fund's significant internal controls into the following control areas:

- Receipts and disbursements
- Claims and accruals

We obtained an understanding of the design of relevant policies and procedures that comprise the control structure, determined whether they have been placed in operation, and assessed control risk. We determined that it was more effective to expand our audit tests to substantiate the balance of accounts associated with the respective control areas, which can also serve to identify weaknesses in internal control structure.

Auditors' Report on Internal Control Structure

Because of inherent limitations in any system of internal accounting control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our considerations of internal control structure, made for the limited purpose described in the first paragraph, would not necessarily disclose all reportable conditions.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the company's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements. A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected with a timely period by employees in the normal course of performing their assigned functions. During our tests, however, we noted no matters involving the internal control structure and its operation that we considered to be a reportable condition as defined above.

This report is intended solely for the use of the United States General Accounting Office and the Trans-Alaska Pipeline Liability Fund. This restriction is not intended to limit the distribution of this report, which, upon acceptance by the addressee, is a matter of public record.

Deboitte & Touche

September 24, 1991

Auditors' Report on Compliance With Laws and Regulations

Deloitte & Touche



1000 Wilshire Boulevard Los Angeles, California 90017-2472 Telephone: (213) 688-0800

Telex: 910 3214090 Facsimile: (213) 688-0100

To the Board of Trustees of Trans-Alaska Pipeline Liability Fund:

We have audited the financial statements of the Trans-Alaska Pipeline Liability Fund (the "Fund") for the year ended December 31, 1990, and have issued our report thereon dated September 24, 1991, which included an explanatory paragraph referring to contingencies discussed in Notes 4 and 5 to these financial statements. Our audit was made in accordance with generally accepted accounting standards and the standards for financial audits contained in the United States General Accounting Office Government Audit Standards (1988, Revision), and, accordingly, included such tests of the accounting records and such other auditing procedures, including tests of compliance with the Trans-Alaska Pipeline Liability Fund Regulations contained in Title 43, CFR Subtitle A, Sections 29.3, .6, .7, .11, .12 and .13 established by the United States Department of the Interior ("Regulations"), as we considered necessary in the circumstances. The Fund's management is responsible for compliance with the terms and provisions of the above Regulations.

In connection with our audit, nothing came to our attention that cause us to believe that the Fund was not in compliance with the terms and provisions of the above Regulations. We selected and tested transactions and records to determine the Fund's compliance with laws and regulations, noncompliance with which could have a material effect on the financial statements of the Fund. The results of our tests indicated that, for the items tested, the Fund complied with those provisions of laws and regulations, noncompliance with which could have a material effect on the financial statements. Nothing came to our attention that caused us to believe that, for the items not tested, the Fund was not in compliance with laws or regulations, noncompliance with which could have a material effect on the Fund's financial statements. It should be noted, however, that our audit was not directed primarily toward obtaining knowledge of noncompliance with such Regulations.

This report is intended solely for the use of the United States General Accounting Office and the Trans-Alaska Pipeline Liability Fund. This restriction is not intended to limit the distribution of this report, which, upon acceptance by the addressee is a matter of public record.

September 24, 1991

Delatte Jouche

Statements of Net Assets Available for Claims and Expenses

| DECEMBER 31, 1990 AND 1989 | | | |
|--|--------------|---------------|---|
| | <u>Notes</u> | <u>1990</u> | <u>1989</u> |
| ASSETS: | | | |
| Investments: | 2 | | |
| United States government securities | | \$136,413,015 | \$151,356,435 |
| Commercial paper, variable notes | | 14,856,057 | |
| Mortgage-backed securities | | 77,947,742 | 99,332,847 |
| Long-term debentures | | 46,607,334 | 15,882,870 |
| Invested cash | | 9,477,307 | 3,136,583 |
| Interest receivable | | 3,504,503 | 4,699,158 |
| Prepaid expenses and other assets | | 67,053 | 27,192 |
| Total assets | | 288,873,011 | 274,435,085 |
| LIABILITIES: | | | |
| Accrued administrative expenses | 4 | 551,509 | 845,598 |
| Accrued claims | | 2,316,287 | *************************************** |
| Total liabilities | | 2,867,796 | 845,598 |
| NET ASSETS AVAILABLE FOR CLAIMS AND EXPENSES | 4, 5 | \$286,005,215 | <u>\$273,589,487</u> |

See notes to financial statements.

Statements of Changes in Net Assets Available for Claims and Expenses

| YEARS ENDED DECEMBER 31, 1990 AND 1989 | | | |
|---|-------|----------------------|---|
| | Notes | <u>1990</u> | <u>1989</u> |
| NET ASSETS AVAILABLE FOR CLAIMS AND EXPENSES, BEGINNING OF YEAR | | <u>\$273,589,487</u> | <u>\$246,959,661</u> |
| INVESTMENT INCOME: | | | |
| Interest income: | | | |
| United States government securities | | 11,925,424 | 10,391,318 |
| Mortgage-backed securities | | 7,989,258 | 5,384,087 |
| Other short-term investments | | 883,569 | 5,007,475 |
| Long-term debentures | | 1,938,560 | 981,734 |
| Security lending fees | | 123,170 | 104,011 |
| Total interest income | | 22,859,981 | 21,868,625 |
| (Loss) gain on sale of securities | | (832,592) | 8,050,469 |
| Total investment income | | 22,027,389 | 29,919,094 |
| OPERATING EXPENSES: | | | |
| Legal services | 4 | 4,023,619 | 1,445,439 |
| Accounting and consulting services | 4 | 1,468,919 | 807,192 |
| Investment services | | 886,384 | 727,029 |
| Administrative | | 135,683 | 57,440 |
| Meeting expenses | | 115,126 | 107,142 |
| Auditing services | | 16,875 | 9,000 |
| Insurance | | 1,768 | 136,026 |
| Total operating expenses | | 6,648,374 | 3,289,268 |
| INVESTMENT INCOME IN EXCESS OF OPERATING EXPENSES | | 15,379,015 | 26,629,826 |
| CLAIMS PAID AND ACCRUED | 4 | 2,963,287 | *************************************** |
| INVESTMENT INCOME IN EXCESS OF OPERATING EXPENSES AND CLAIMS PAID AND ACCRUED | | 12,415,728 | 26,629,826 |
| NET ASSETS AVAILABLE FOR CLAIMS AND EXPENSES, END OF YEAR | 5 | \$286,005,215 | <u>\$273,589,487</u> |

See notes to financial statements.

Notes to Financial Statements

YEARS ENDED DECEMBER 31, 1990 AND 1989

1. GENERAL DESCRIPTION OF THE FUND

The Trans-Alaska Pipeline Liability Fund (the "Fund") is a nonprofit corporation created by Section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1653(c)(4), (the "TAP Authorization Act"). The purpose of the Fund is to pay claims, compensable under the TAP Authorization Act, resulting from oil spills from vessels that both load at the terminal facility of the Trans-Alaska Pipeline System (the "TAP system") and then transport crude between the terminal in Valdez, Alaska to ports under United States jurisdiction. The Fund is administered by the Board of Trustees under regulations promulgated by the United States Department of the Interior. (43 C.F.R. Part 29)

With certain exceptions not pertinent here, the Fund is liable for certain oil spill damages, as specified in the regulations, in excess of \$14 million up to \$100 million per incident. The owner and operator of the vessel are jointly and severally liable for the first \$14 million of such claims. Pursuant to 43 U.S.C. Section 1653(c)(8), (11), the Fund is subrogated to the claims of those it pays under applicable laws in the event of proven negligence.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

<u>Valuation of Investments</u> - Investments are stated at cost. At December 31, 1990 and 1989, market value exceeded cost by approximately \$5.6 million and \$5.3 million, respectively. Interest income is accrued as earned. The cost of investment securities sold is determined on the specific identification method.

The Fund is prohibited from investing in securities or obligations of those companies (or their affiliates) who hold the right-of-way to use the TAP system. The Fund is also prohibited from investing in securities or obligations of any investment advisor or custodian of the Fund or its affiliates.

<u>Fee Income</u> - The Fund is entitled to receive a fee of five cents per barrel of oil loaded on board ships at the Trans-Alaska Pipeline terminal at Valdez, Alaska if and when the market value of the Fund is below \$100 million. The market value of the Fund's net assets has exceeded \$100 million since August 1981.

Expenses of the Fund - All expenses incurred in the administration of the Fund are authorized by the Board of Trustees and paid by the Fund.

3. TAX STATUS OF THE FUND

The Fund has received favorable determination letters from the Internal Revenue Service and the Franchise Tax Board of the State of California with respect to the tax-exempt status of the Fund.

4. CONTINGENCIES

In July 1987, an oil spill resulted from TAP system oil from the vessel <u>Glacier Bay</u>. The owner/operator of the vessel did not pay \$14 million in claims, a step necessary to trigger Fund liability under the TAP Authorization Act as then worded, until mid-1990. Promptly thereafter, the Fund negotiated complete final settlements with all private claimants, pursuant to which the Fund paid approximately \$9.5 million, in return for complete releases and dismissal of all claims against it. The Fund has since been reimbursed by the vessel owner for all but approximately \$3 million, in return for which the Fund released the vessel owner from all claims or causes of action it may have against the vessel owner. The financial statement reflects the net claims cost paid and accrued of \$2,963,287 as of December 31, 1990. The Fund retains the right to recover reimbursement up to \$3 million from other potentially liable parties. A claim asserted by the United States in the amount of \$400,000 is currently the subject of negotiations between the vessel owner and the United States.

In March 1989, the vessel <u>Exxon Valdez</u> loaded with TAP system oil from the Valdez, Alaska terminal facilities ran aground on Bligh Reef off the coast of Alaska in Prince William Sound, causing a spill of 240,000 barrels of TAP system oil. The oil tanker was owned and operated by Exxon Shipping Company.

Until December 14, 1990, by agreement with the Fund, the owner/operator was administratively paying claims compensable under the TAP Authorization Act in excess of the \$14 million threshold in lieu of the Fund, subject to the Fund's audit and review. The vessel owner has to date reportedly paid over \$300 million in third-party claims for damages. A number of lawsuits were filed naming the Fund as a defendant, all of which are consolidated in the United States District Court for the District of Alaska. On December 14, 1990, that Court ruled that claimants were required to prosecute claims administratively with the Fund before proceeding against the Fund in court, and ruled that the Fund could not delegate its responsibility to determine claims to the owner/operator. Accordingly, the Fund withdrew from the claims-handling arrangement with the owner/operator and established a claims-processing function. Subject to a number of contingencies, the Fund has advised the Court that it hopes to have completed the task of evaluating more than 29,000 claims before it by March 1, 1992. Claims filed in regard to the Exxon Valdez allege that multiple incidents occurred. If so, and the Fund vigorously disputes that contention, the Fund's potential liability would be multiplied by the number of incidents times \$86 million and could, under some scenarios, and when coupled with administrative expenses, exceed the assets presently in the Fund. Because of the complexity of the claims and the applicable statutes and regulations, it is not currently possible to determine how much the Fund will pay out or when such pay-out would occur. Should the Fund be required to pay any amounts, the Fund may have rights to reimbursement from the defendants or other third parties in accordance with the provisions of the TAP Authorization Act and otherwise.

In February 1990, an oil spill resulted from the vessel American Trader off the coast of Huntington Beach, California. The Fund has been named as a defendant in federal court actions resulting from this spill, along with the owner/operator and others, seeking damages in an undetermined amount. The United States District Court for the Central District of California has ruled that the incident does come within the TAP Authorization Act, but that ruling, with which the Fund respectfully disagrees, is subject to review in the court of appeals. The Fund has received a claim for \$5.4 million from the vessel owner. Should the Fund be required to pay any amounts, the Fund may have rights to reimbursement from the defendants or other third parties in accordance with the provisions of the TAP Authorization Act or otherwise.

Under the TAP Authorization Act, the Fund's potential liability resulting from the foregoing incidents ranges from \$0 to \$86 million per incident (\$100 million maximum liability less the initial \$14 million for which the owner/operator is strictly liable). Liabilities, if any, will be accrued and charged to net assets available for claims when it has been determined that the Fund is liable and the amount of liability has been determined. Also, the Fund expects its administrative expenses to remain at high levels in 1991 as a result of these incidents.

From January 1 through August 18, 1990 (see Note 5 to the financial statements below), the Fund was notified of 17 other separate oil spill incidents. No claims have been presented to the Fund because of the insufficient magnitude of each incident, or because the incident did not fall within the TAP Authorization Act.

5. TERMINATION OF THE FUND

On August 18, 1990, the President signed into law the Oil Pollution Act of 1990, Public Law 101-380 ("1990 Act"). The legislation provides that the Fund will go out of existence after the payment of all claims arising before passage of the Act plus administrative expenses related to such claims. Any amounts remaining in the Fund would then be transferred to a fund newly created by the 1990 Act, and any spill after August 18, 1990 will be the responsibility of the Oil Spill Liability Trust Fund.

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