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Congressional Requesters

Subject: *Deepwater Horizon Oil Spill: Update on Federal Financial Risks and Claims Processing*

On April 20, 2010, an explosion occurred on BP America Production Company's (BP) leased mobile offshore drilling unit *Deepwater Horizon*. The total cost to clean up the massive and unprecedented oil spill in the Gulf of Mexico following the *Deepwater Horizon* explosion (including costs to help pay for the spill's adverse impact on businesses and individuals in the region) are yet unknown, but have been estimated in the tens of billions of dollars. The extent to which the federal government will ultimately be required to pay costs associated with the *Deepwater Horizon* oil spill remains unclear.

The complex legal framework in place for oil spill liability and response funding will play an integral role in determining who is responsible and will ultimately pay the costs associated with the *Deepwater Horizon* oil spill. In this regard, the Oil Pollution Act of 1990,¹ as amended (OPA), which Congress enacted after the *Exxon Valdez* spill in 1989, authorized use of the Oil Spill Liability Trust Fund (Fund) to pay for certain oil spill cleanup costs and damages using federal tax revenues for immediate response costs and when the responsible parties cannot be identified or do not pay. OPA also provided that the federal government may subsequently seek reimbursement for these costs from responsible parties.² The Fund, which is administered by Coast Guard's National Pollution Funds Center (NPFC), is subject to a \$1-billion cap on the total amount of expenditures per incident.

NPFC designated two BP subsidiaries—BP Exploration and Production and its guarantor, BP Corporation North America, Inc.—and five other companies as responsible parties for *Deepwater Horizon* oil spill related claims. Shortly after the spill, at the direction of NPFC, BP began to receive and process all claims against responsible parties. In June 2010, at the urging of the White House and Department of Justice, BP established a new claims processing facility—the Gulf Coast Claims Facility (GCCF). GCCF began operations on August 23, 2010, and is responsible for handling claims from individuals and businesses for damages resulting from the *Deepwater Horizon* oil spill. For those claims submitted to the GCCF that are rejected or not paid within 90 days, claimants may file OPA-compensable claims with NPFC to request reimbursement from the Fund.

BP also established an irrevocable trust (Trust), to which BP is to provide a total of \$20 billion by 2014, primarily for the purpose of paying GCCF and other claims related to the *Deepwater Horizon* oil spill.³ The Trust is to pay some OPA-compensable claims and some other

¹Pub. L. No. 101-380, 104 Stat. 489 (1990).

²The Fund also pays for the costs of certain federal agency operations.

³BP established the Trust under Delaware law, which generally provides that the principal of the trust can be used only for the purposes stated in the trust agreement and that the terms of the trust agreement cannot be modified and are legally enforceable by the trustees. BP pledged collateral to cover its funding commitment to the Trust.

claims for personal injuries that are not OPA-compensable, but for which BP would be liable under other federal or state laws, such as the Jones Act or state oil pollution acts.⁴

In November 2010,⁵ we reported on our preliminary assessment of the potential financial risks to the federal government associated with the *Deepwater Horizon* oil spill cleanup costs. The attached briefing provides information updated since our preliminary assessment. For this briefing our objectives are to provide updated information on (1) the financial risks to the federal government associated with the cap on expenditures from the Fund and (2) claims submitted to and reviewed NPFC and GCCF, and those paid by GCCF. We also provide an update of the status of agency actions to respond to the recommendations made in our November 2010 report. This is the second in a planned series of three reports on our work in this area.

Our third report, planned for the summer of 2011, is intended to be a capping report with an updated assessment of: (1) the financial risks to the federal government associated with the Fund; (2) NPFC Fund cost reimbursements and claims and related processes; and (3) the federal framework for monitoring and oversight of responsible parties' actions to pay costs associated with the *Deepwater Horizon* oil spill.

Scope and Methodology

To provide an update on the financial risks to the federal government and the Fund, we obtained and summarized available data from NPFC on obligated and actual costs incurred and reviewed publicly available financial information of responsible parties through March 2011. We also obtained updated data on reported costs incurred in relation to the cap on expenditures from the Fund.

In order to update information about claims submitted and reviewed by NPFC and GCCF, we used available NPFC and GCCF claims data through March 2011, to describe the number and types of claims filed by individuals and businesses against the Trust and the Fund, and the number and dollar amounts claimed, reviewed, and paid. We also obtained information on NPFC's claims contingency planning for handling potential surges in claims submitted related to the *Deepwater Horizon* oil spill. We also obtained information from NPFC officials about the status of the recommendations made in our November 2010 report.

We conducted our work from November 2010 to March 2011 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to meet our stated objectives and that we discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for our findings and conclusions. We performed limited procedures to determine the Fund expenditures reported were reasonable for our reporting purposes.

Results in Brief

With reported Fund costs of about \$629.5 million as of March 31, 2011, NPFC had obligated or incurred costs that could result in over 60 percent of the amount available under the Fund's statutory \$1-billion-per-incident-expenditure-cap.⁶ If, regardless of any reimbursements from responsible parties, total Fund expenditures exceed the \$1-billion cap, agencies may be required to rely on

⁴The Jones Act 46 U.S.C. § 30104, establishes liability for injury or death of seamen incurred in the course of their employment.

⁵GAO, *Deepwater Horizon Oil Spill: Preliminary Assessment of Federal Financial Risks and Cost Reimbursement and Notification Policies and Procedures*, [GAO-11-90R](#) (Washington, D.C.: Nov. 12, 2010).

⁶The \$1-billion cap is concurrent with a \$500-million cap on expenditures for natural resource damages and related assessments.

reallocating their appropriated funding to cover costs they incur or obtain supplemental funding. In addition, agencies may be unable to cover some of their costs and NPFC would be unable to pay any additional claims to individuals and businesses related to the *Deepwater Horizon* oil spill. We are reiterating our prior matter that Congress should consider changing the calculation of expenditures made against the Fund's \$1-billion-per-incident-expenditure-cap to take into account reimbursements from responsible parties. Ultimately, the federal government's financial risk will continue to be closely linked with actions taken by the responsible parties to pay such costs. To date, BP has continued to fund the Trust established in August 2010 to pay for *Deepwater Horizon* oil spill claims as agreed.

With respect to claims processing, NPFC has taken a number of steps to monitor the GCCF's claims processing in planning for contingencies to help ensure it can effectively process any future surges in the number of claims it receives as a result of rejected GCCF claims that NPFC may receive for adjudication related to the *Deepwater Horizon* oil spill. These actions helped NPFC to process a sharp increase in the number of claims that individuals and businesses submitted to NPFC in December 2010. NPFC officials told us they monitor ongoing GCCF activities in order to forecast and take actions to mitigate potential surges in the number of claims that may come to NPFC for adjudication. As of March 2011, GCCF had established four types of claims payments—Emergency Advanced Payments, Quick Payments (Final), Interim Payments, and Full Review Payments (Final). As of March 31, 2011, GCCF had paid approximately \$3.7 billion on 281,308 claims and denied over 4,000 claims.

In response to our previous recommendations, NPFC reported that it plans to update its policies and procedures in August and October 2011 to address three of the four recommendations made in our November 2010 report. These recommendations were directed at helping NPFC establish and maintain effective cost reimbursement policies and procedures for the Fund and update NPFC's current policies to reflect current organization, structure and management's directives. For the other recommendation, NPFC contends that its current procedures, which allow for invoices sent to responsible parties to serve as notification for cost recovery, provide adequate documentation of responsible party designation. However, NPFC intends to review, clarify, and update its designation procedures by October 31, 2011. We believe that clarification of this process is necessary. As stated in our November 2010 report, we found that NPFC's existing procedures for notifying responsible parties, including the use of an invoice as notification of "responsible party" designation, were not clear. For example, NPFC sent an invoice for reimbursement to one of the *Deepwater Horizon* oil spill responsible parties that it considered as formal notification of the entity's financial responsibilities. However, a representative of the entity later publicly stated it had not received notification of a "responsible party" designation.

Agency Comments and Our Evaluation

We provided a draft of our briefing to the Department of Homeland Security's (DHS) and the Department of Justice's (DOJ) management for comment. DHS commented that NPFC continues to disagree with what it understands to be GAO's concern that a notice of designation of a discharge source issued to some responsible parties, but not to all responsible parties that are eventually identified, risks confusion and breakdowns in the claims management and cost reimbursement process. However, it also commented that NPFC intends to review, clarify, and update its designation procedures on or by October 31, 2011. DOJ commented that GAO has not identified any statutory responsibility that NPFC failed to fulfill under OPA Title 1, nor identified any policy basis for our responsible party notification recommendation.

We did not assert that NPFC did not comply with law or policy. Nonetheless, as we previously reported, clarification of responsible party designation procedures is necessary to avoid possible confusion over responsibility and breakdowns in the claims management and cost reimbursement

process. Consequently, we are encouraged that NPFC intends to update its procedures to clarify responsible party designations.

We are sending copies of this correspondence to the appropriate congressional committees. We are also sending copies to the Secretary of Homeland Security, the Director of NPFC, the Attorney General of the United States, and to other interested parties. This correspondence will also be available at no charge on our Web site at <http://www.gao.gov>.

Should you or your staff have any questions concerning this correspondence, please contact Susan Ragland at (202) 512-8486 or raglands@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Kim McGatlin, Assistant Director; F. Abe Dymond, Assistant General Counsel; Jehan Abdel-Gawad; Donald Holzinger; Mark Kaufman; Jason Kelly; Chari Nash-Cannaday; Donell Ries; and Doris Yanger.



Susan Ragland
Director
Financial Management and Assurance

Enclosure

List of Requesters

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Tom Carper
Chairman
Subcommittee on Federal Financial Management, Government Information, Federal Services, and
International Security
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Sheldon Whitehouse
Chairman
Subcommittee on Oversight
Committee on Environment and Public Works
United States Senate

The Honorable Mary Landrieu
Chairwoman
Subcommittee on Disaster Recovery
Committee on Homeland Security
United States Senate

The Honorable Michael C. Burgess
The Honorable Nick J. Rahall, II
House of Representatives



***Deepwater Horizon* Oil Spill: Update on Federal Financial Risks and Claims Processing**

Briefing for Congressional Requesters

Introduction

Objectives, Scope, and Methodology

Background

Results in Brief

- Risk that Total Expenditures from the Fund Will Reach the Cap
- Claims-Processing Status Update
- Status of Prior Recommendations

Conclusions

Agency Comments and Our Evaluation

On April 20, 2010, an explosion occurred on BP America Production Company's (BP) leased mobile offshore drilling unit, *Deepwater Horizon*. The total cost to clean up the massive and unprecedented oil spill in the Gulf of Mexico following the *Deepwater Horizon* explosion, as well as costs to help pay for the spill's adverse impact on businesses and individuals in the region, are not yet known, but have been estimated in the tens of billions of dollars. Further, the extent to which the federal government will ultimately be required to pay any of the costs associated with the *Deepwater Horizon* oil spill remains unclear.

In November 2010,¹ we reported on our preliminary assessment of the potential financial risks to the federal government associated with the *Deepwater Horizon* oil spill cleanup costs. The overall objectives for our work in this area are to assess (1) financial risks to the federal Oil Spill Liability Trust Fund (Fund) and the federal government as a result of the *Deepwater Horizon* oil spill, (2) the Coast Guard's National Pollution Funds Center's (NPFC) cost reimbursement and claims policies and procedures for *Deepwater Horizon* oil spill costs, and (3) the framework for federal monitoring and oversight efforts over the responsible parties for the *Deepwater Horizon* oil spill, including federal efforts to oversee BP's and the Gulf Coast Claims Facility's (GCCF) *Deepwater Horizon* oil-spill claims payments.

¹GAO, *Deepwater Horizon Oil Spill: Preliminary Assessment of Federal Financial Risks and Cost Reimbursement and Notification Policies and Procedures*, GAO-11-90R (Washington, D.C.: Nov. 12, 2010).

This briefing provides information updated since our preliminary assessment in November 2010. For this briefing, our objectives are to provide updated information related to the *Deepwater Horizon* oil spill on:

- (1) the financial risks to the federal government associated with the cap on expenditures from the Fund and
- (2) claims submitted to and reviewed by NPFC and GCCF, and those paid by GCCF.

We also provide an update of the status of agency actions to respond to the recommendations made in our November 2010 report.

This is the second in a planned series of three reports on our work in this area.

Our third report, planned for the summer of 2011, is intended to be a capping report addressing our overall objectives.

To provide an update on the financial risks to the federal government, we obtained and summarized available data from NPFC on obligated and actual costs incurred and reviewed publicly available financial information of responsible parties through March 2011. We also obtained updated data on reported costs incurred in relation to the cap on expenditures from the Fund.

In order to update information about claims submitted and reviewed by NPFC and GCCF, we used available NPFC and GCCF claims data through March 2011, to describe the number and types of claims filed by individuals and businesses against the Trust and the Fund, and the number and dollar amounts claimed, reviewed, and paid. We also obtained information on NPFC's claims contingency planning for handling potential surges in claims submitted related to the *Deepwater Horizon* oil spill.

We also obtained information from NPFC officials about the status of the recommendations made in our November 2010 report.

We conducted our work from November 2010 to March 2011 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to meet our stated objectives and that we discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for our findings and conclusions.

We performed limited procedures to determine the Fund expenditures reported were reasonable for our reporting purposes.

A complex landscape of laws and regulations governs the liability for oil spill costs of different parties. Injuries and damages that arise from an oil spill incident are governed by federal statutes and common law, federal securities laws, and various state laws. For example, the Oil Pollution Act of 1990 (OPA),² as amended, places the primary liability for the cost of the oil spills—up to certain limits—on the responsible party or parties for removal costs and damages specified in OPA (referred to as OPA-compensable damages). OPA authorizes the use of the Fund, which NPFC administers, for federal cleanup and natural resource restoration. NPFC monitors the sources and uses of the Fund, adjudicates claims submitted to the Fund for payment, and pursues reimbursements from responsible parties for costs and damages paid by the Fund and certain other recoverable costs.

Under OPA, the authorized limit on expenditures to be paid from the Fund is currently \$1-billion in total expenditures per incident, with a concurrent limit of \$500 million per incident for natural resource damage assessments and claims.

²Pub. L. No. 101-380, 104 Stat. 489 (1990).

Following the *Deepwater Horizon* oil spill, the Coast Guard, without in any way relieving other responsible parties of liability, directed BP to establish a single claims facility for all responsible parties to centralize claims processing for claimants.³ In June 2010, at the urging of the White House and the Department of Justice, BP established a new claims processing facility—GCCF—and announced creation of a \$20 billion escrow account (Trust) to satisfy claims resolved by GCCF and certain other claims, including natural resource damages. BP has also pledged collateral to secure its obligation to contribute the full \$20 billion to the Trust.

BP established GCCF to provide a mechanism for individuals and businesses to file claims for costs and damages incurred as a result of the *Deepwater Horizon* oil spill. Because NPFC bills the responsible parties directly for costs agencies have incurred in response to the *Deepwater Horizon* oil spill, BP pays these costs and they are not paid from the Trust. Payments received by NPFC from BP are deposited into the Fund.

Individuals and businesses are required to first file with GCCF for *Deepwater Horizon*-related oil spill claims. For those claims submitted to GCCF that are rejected or not paid within 90 days, claimants may file OPA-compensable claims with NPFC to request reimbursement from the Fund.

³On May 11, 2010, NPFC notified BP and Transocean Holdings Incorporated that BP's advertising and claims processing were sufficient, and Transocean should not advertise and should coordinate claims processing with BP. According to NPFC officials, NPFC wanted to avoid public confusion and have only one responsible party advertise for claims.

GCCF began operations and started accepting claim forms on August 23, 2010. GCCF, administered by Kenneth R. Feinberg, draws funds from the Trust to pay claims. The payments are intended to provide compensation for both OPA-compensable and certain non-OPA-compensable claims.

BP established an irrevocable Trust (for the announced escrow account) on August 6, 2010, designating three trustees⁴ with fiduciary responsibility to collect promised contributions from BP and make disbursements to permitted categories of beneficiaries. BP committed to fund the Trust on a quarterly basis over 3-1/2 years for a total of \$20 billion to be paid into the Trust as of 2014.⁵ The Trust is to pay some OPA-compensable claims and some other claims for personal injuries that are not OPA-compensable, but for which BP would be liable under other federal or state laws, such as the Jones Act or state oil pollution acts.⁶

⁴The three trustees are Citigroup Trust-Delaware, N.A., which serves as the corporate trustee, and John S. Martin, Jr. and Kent D. Syverud, who serve as individual trustees.

⁵The funding schedule for the escrow account agreed to by the administration and BP was for contributions by BP of \$5 billion a year for 4 years. BP later confirmed that the funding schedule would include an initial deposit of \$3 billion, which was made on August 9, 2010, with an additional deposit of \$2 billion made in the fourth quarter of 2010 and \$1.25 billion a quarter thereafter until the entire \$20 billion has been deposited.

⁶The Jones Act 46 U.S.C. § 30104, establishes liability for injury or death of seamen incurred in the course of their employment.

With reported Fund costs of about \$629.5 million as of March 31, 2011, NPFC has incurred costs that could result in payments of over 60 percent of the funds available under the Fund's statutory \$1-billion-per-incident-expenditure-cap.⁷ If total Fund expenditures for the *Deepwater Horizon* oil spill exceed \$1 billion, agencies may be required to rely on reallocating their appropriated funding to cover costs they incur or obtain supplemental funding. In addition, agencies may be unable to cover some costs and NPFC would be unable to pay any additional claims related to the *Deepwater Horizon* oil spill. Ultimately, the federal government's financial risk will continue to be closely linked with actions taken by BP and the other responsible parties to pay claims and other costs. To date, BP has continued to meet its stated commitment to pay the costs associated with the *Deepwater Horizon* oil spill and has continued to fund the August 2010 agreement establishing a \$20 billion Trust that GCCF can draw from to pay claims.

With respect to claims processing, NPFC actions are necessarily closely tied to those of GCCF. NPFC has taken a number of steps to monitor GCCF's claims processing in planning for contingencies to help ensure it can effectively process any future surges in the number of claims it receives as a result of rejected GCCF claims that NPFC may receive for adjudication related to the *Deepwater Horizon* oil spill. These actions helped NPFC to process a sharp increase in the number of claims individuals and businesses submitted to NPFC in December 2010.

⁷The \$1-billion cap is concurrent with a \$500-million cap on expenditures for natural resource damages and related assessments.

On our previous recommendations, NPFC reported that it plans to update its policies and procedures in August and October 2011 to address three of the four recommendations made in our November 2010 report. For the other recommendation, NPFC contends that its current procedures, which allow for invoices sent to responsible parties to serve as notification for cost recovery, provide adequate documentation and notification of responsible party designations. We disagree. As stated in our November 2010 report, we found that NPFC's existing procedures for notifying responsible parties using invoices did not clearly communicate their "responsible party" designation. For example, an official from a *Deepwater Horizon* oil spill responsible party who had received an invoice from NPFC, stated during a July 2010 hearing that his company had not received notification of designation. Also, NPFC sent the notice to Transocean Holdings Incorporated, but Transocean replied that the correct entity is Transocean Holdings, LLC.



Risk That Total Expenditures from the Fund Will Reach the Cap

Federal agencies continue to incur *Deepwater Horizon*-related removal and other costs. As NPFC continues to make expenditures from the Fund to reimburse federal agency costs and directly pay for other *Deepwater Horizon*-related costs, NPFC reported, as of March 31, 2011, it has incurred costs that could result in payments of over 60 percent of the funds available under the \$1-billion-per-incident-expenditure-cap from the Fund. Once the expenditures reach the cap, NPFC will be precluded from making any additional cost reimbursements to agencies or paying any additional claims related to the *Deepwater Horizon* oil spill.

Risk That Total Expenditures from the Fund Will Reach the Cap (cont.)

According to internal Coast Guard reports, as of March 31, 2011, NPFC had obligated or incurred approximately \$629.5 million against the Fund toward the \$1-billion-per-incident-expenditure-cap.⁸ This amount includes:

- \$451.4 million obligated against the Fund to reimburse government agencies' Pollution Removal Funding Authorizations (Federal Authorizations) and Military Interdepartmental Purchase Requests (MIPR). Of the total obligated amount, as of March 31, 2011, NPFC had approved about \$193.9 million for payment.⁹
- \$130.2 million expended by the Coast Guard and charged directly to the Fund. These costs are referred to by the Coast Guard as direct costs and include contracts and travel directly related to the oil spill response.¹⁰
- \$47.8 million obligated against the Fund for the initiation of natural resource damage assessments (NRDA) to the Department of the Interior (DOI).¹¹

⁸An obligation is a commitment, such as a contract, that creates a legal liability for the payment of goods and services ordered or received. NPFC's procedures for monitoring the amount spent toward the cap use the actual expenditures and obligated amounts.

⁹Federal Authorizations authorize reimbursement of federal and nonfederal government agencies from the Fund for oil-spill-response and removal activities. NPFC uses MIPRs rather than Federal Authorizations for the Department of Defense and certain other agencies.

¹⁰According to the Coast Guard, direct costs are operating costs that it otherwise would not have incurred but for the oil spill.

¹¹There is a statutory cap of \$500 million in expenditures from the Fund per incident for natural resource damage assessments and claims. 26 U.S.C. § 9509(c)(2).

Risk That Total Expenditures from the Fund Will Reach the Cap (cont.)

NPFC officials told us that they have not estimated a time frame for when they anticipate the cap will be reached. However, they stated that there is a significant risk the cap could be reached in fiscal year 2011 as agencies continue to conduct significant removal activities related to the *Deepwater Horizon* oil spill.

If expenditures from the Fund collectively exceed the \$1-billion-per-incident-cap, agencies and claimants could no longer receive reimbursement from the Fund. In that event, federal agencies might have to turn to options such as requesting supplemental appropriations or reallocating funds from their annual appropriations or using other agency budgetary resources to cover costs that would otherwise be reimbursed by the Fund. Further, if agencies stopped funding *Deepwater Horizon* oil-spill-related activities, this could affect the federal government's ability to complete oil spill removal and other related efforts.

Risk That Total Expenditures from the Fund Will Reach the Cap (cont.)

Ultimately, the federal government's financial exposure will continue to be closely linked with BP and the other responsible parties' actions concerning the *Deepwater Horizon* oil spill. BP has committed to paying costs for the *Deepwater Horizon* oil spill including reimbursing the Fund for its *Deepwater Horizon*-related expenditures, even to the extent such costs exceed the \$20 billion it has agreed to set aside. However, circumstances may occur that adversely impact BP or other responsible parties' financial condition or ability (above BP's collateralized pledge) to pay such claims including reimbursing the Fund for *Deepwater Horizon* costs paid.

Through March 2011, BP has continued to fund the Trust established in August 2010 to pay for *Deepwater Horizon* oil spill claims as agreed. BP committed to fund a \$20 billion irrevocable Trust on a quarterly basis over 3-1/2 years. As of March 31, 2011, BP has made the required payments that total \$6.25 billion. In addition, as shown on table 1, GCCF has paid approximately \$3.7 billion on over 280,000 claims from the Trust as of March 31, 2011.

Table 1: Claims Paid by GCCF as of March 31, 2011 (unaudited)

Dollars in millions

Type	Number of claims paid	Amount
Emergency Advanced Payments	169,005	\$2,580.2
Interim Payments	4,313	48.4
Quick Pay (Final) ^a	101,474	947.0
Full Review (Final) ^a	6,516	79.0
Total^b	281,308	\$3,654.6

Source: GAO analysis of GCCF data.

^a As of March 31, 2011, 38 percent of the payments from GCCF were paid as either Quick Pay or Full Review, both of which require these claimants to sign a release waiving any rights they may have against responsible parties to file or participate in legal action, or to submit any claim to NPFC for payment.

^b As described in our November 2010 report, claims approved by GCCF are paid from a Trust established and funded (up to \$20 billion) by BP. Prior to the establishment of GCCF, BP had received and directly paid claims from individuals and businesses totaling \$396.0 million.

As of March 2011, while GCCF has established four types of claim payments and paid over \$3.6 billion.

- Emergency Advanced Payments. Payments that were available to individuals and businesses that experienced financial hardship resulting from damages incurred from the *Deepwater Horizon* oil spill and filed claims by November 23, 2010.¹²
- Quick Pay (Final). Payments to a claimant who has been paid an Emergency Advance Payments by GCCF which require the claimant to sign a release¹³ and within 14 days be paid \$5,000 if an individual claimant or \$25,000 if a business claimant without having to submit additional supporting documents or go through further claims review.
- Interim Payments. Payments for documented past damages caused by the *Deepwater Horizon* oil spill. The Interim Payments will not compensate for future losses or damages.
- Full Review (Final). Payments for all past and future losses caused by the *Deepwater Horizon* oil spill. Claimants who accept a final payment are required to sign a release.¹³

¹²According to GCCF's Web site, claims under Emergency Advanced Payments could be submitted through November 23, 2010, and were adjudicated and paid through December 15, 2010. Since the deadline expired, this payment is no longer available.

¹³Both Quick Pay and Full Review Claims require claimants to sign a release waiving any rights they may have against responsible parties, to file or participate in legal action, or to submit any claim to NPFC for payment.

With respect to claims processing, NPFC has taken a number of steps in planning for contingencies to help ensure it can effectively handle any surges in the number of claims it receives for adjudication as a result of rejection from GCCF related to the *Deepwater Horizon* oil spill. NPFC officials told us they monitor ongoing GCCF activities in order to forecast and take actions to mitigate potential surges in the number of claims that may come to NPFC for adjudication.

NPFC has established a contract through October 31, 2011, for additional claims reviewers.¹⁴ The contract states that the contractor-provided services should allow NPFC management to make decisions based on the contractor's review. It also states that in all cases, NPFC is the final adjudicator on all claims.

In addition, NPFC officials told us that NPFC has plans to augment its claims division using Coast Guard reservists and could also reassign NPFC staff as needed to assist in the claims adjudication process.

¹⁴Although the contract is currently effective through October 31, 2011, NPFC officials said they could issue additional task orders, so that the contract could be used to provide NPFC with additional support operations through October 31, 2012.

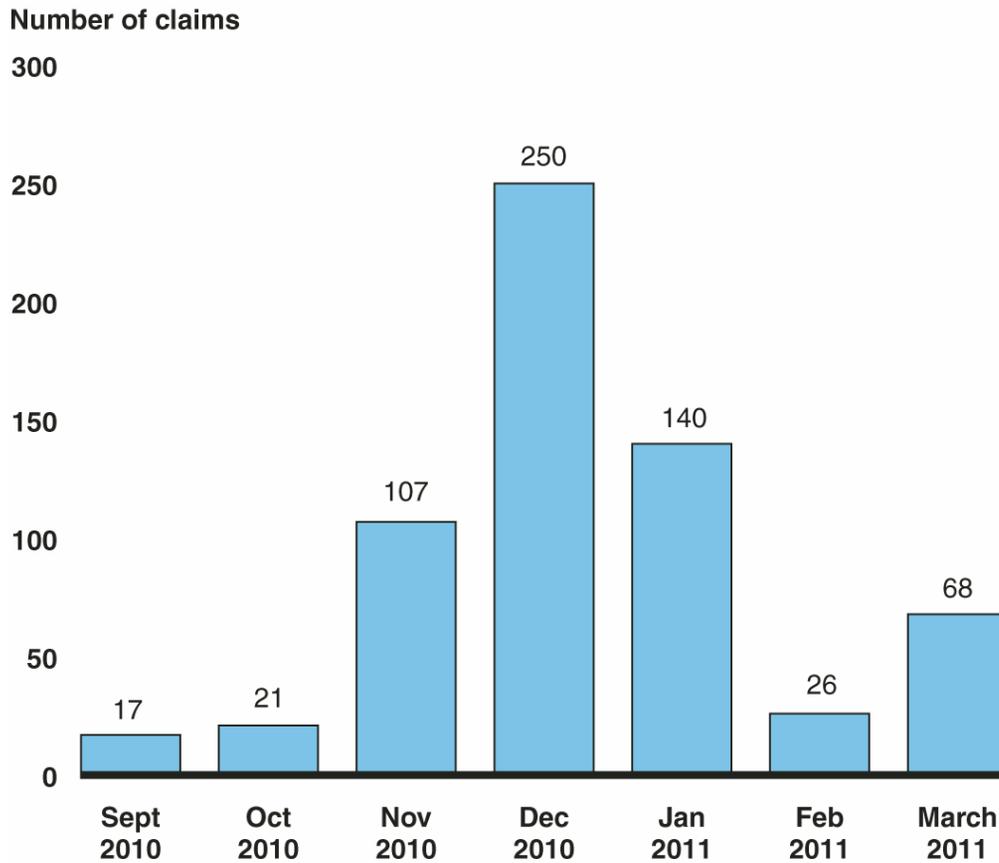
To date, NPFC's actions have enabled it to manage its claims processing workloads. For example, in December 2010, NPFC experienced a surge in claims after 90 days had elapsed from receipt of many initial claims by GCCF,¹⁵ and the deadline for submitting certain claims to GCCF had passed.

NPFC claims data showed that the number of monthly claims submitted to NPFC for the *Deepwater Horizon* oil spill significantly increased during the period from November 2010 to January 2011. (See Figure 1.) According to an NPFC official, this increase may be attributed to:

- Passage of GCCF's November 23, 2010, deadline for submitting Emergency Payment Claim applications;
- Public announcements made by GCCF's Administrator that GCCF was trying to clear its Emergency Payment Claims backlog by December 15, 2010; and
- November 23, 2010, was 90 days from when GCCF started accepting claims and in accordance with NPFC policies, if after 90 days the claim is without resolution, claims can be submitted to NPFC.

¹⁵Under OPA and the implementing federal regulations and policies, if the designated 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 a claim to NPFC.

Figure 1: Total Number of *Deepwater Horizon* Oil Spill Claims Presented to NPFC (unaudited)



Source: GAO analysis of NPFC data.

Note: NPFC first began receiving *Deepwater Horizon* oil spill-related claims in September 2010. The claims presented to NPFC through March 31, 2011, totaled \$186 million.

The potential for another increase in the number of claims presented for payment to NPFC may occur again if a large number of claimants who are denied payments by GCCF choose to file their claims with NPFC at, or about, the same time. As of March 31, 2011, according to GCCF's Web site,¹⁶ GCCF had, in addition to paying over 281,000 claims, denied over 4,000 claims from individuals and businesses, and issued determination letters that found over 3,000 claimants suffered no loss.

As of March 31, 2011, GCCF had more than 100,000 claims under review with additional claims being submitted daily. Among the claims under review, GCCF indicated that about 39,000 claims require additional information in order to be processed. Claimants who are denied payment by GCCF or whose claims are not settled within 90 days may pursue the following four options:

- Appeal GCCF's decision, if the claim is in excess of \$250,000 under procedures established by GCCF Administrator;
- Commence litigation against the responsible parties in court;¹⁷
- File a claim with NPFC;¹⁸ or
- Do nothing.

¹⁶ *Claimant Review Status as of March 31, 2011*, <http://www.gulfcoastclaimsfacility.com> (accessed April 1, 2011).

¹⁷ Numerous individuals, businesses, states, and the federal government have commenced various actions in a number of courts against several companies, including BP, seeking damages or declaratory or injunctive relief under several laws, including OPA. Many of these pending cases have been consolidated in multidistrict litigation in the U.S. District Court for the Eastern District of Louisiana. See <http://www.laed.uscourts.gov/OilSpill/OilSpill.htm>.

¹⁸ If a claimant decides to commence litigation against the responsible parties, NPFC will not review the same claim until the litigation has concluded.

NPFC's March 31, 2011, data showed that since the *Deepwater Horizon* oil spill occurred in April 2010 it had received over 629 claims, totaling \$186 million from individuals and businesses for this spill. NPFC had issued determinations for more than 538 of these claims (for about \$163 million), all of which were denials.

NPFC denied the claims for the following reasons:

- Failure to prove damages were the result of the spill (39 percent)
- Lack of documentation (34 percent)
- Failure to prove damages (10 percent)
- Paid or being paid by responsible party (9 percent)
- Withdrawn by Claimant (5 percent)
- Not compensable under OPA, and therefore, not payable from the Fund (2 percent)
- Fraud (1 percent)

It is unclear at this time, if any, and if so how many, of the over 100,000 claims pending with GCCF, as of March 31, 2011, will ultimately result in claimants filing a claim with NPFC.

Since we last reported in November 2010, GCCF has updated its payment options and the deadlines associated with those options. GCCF's decisions and related actions affect the number of claims submitted to NPFC. When the deadlines were reached for the Emergency Advanced Payments claims to GCCF, a surge of claims were subsequently submitted to NPFC in December 2010.

NPFC has stated that actions are underway to address three of the four recommendations we made in our November 2010 report. Table 2 provides a status on the recommendations.

Table 2: Status of Prior Recommendations

Prior recommendation	Status
<p>In order to help establish and maintain effective cost reimbursement policies and procedures for the Fund, we recommended that the Secretary of Homeland Security direct the Director of the Coast Guard’s NPFC to update NPFC’s policies and procedures to include:</p>	
<p>1. Current Fund reimbursement-billing practices that reflect both a percentage of federal agencies’ obligations as well as expenditures, and</p>	<p>NPFC officials acknowledged that the billing practices for <i>Deepwater Horizon</i> are not documented in the agency’s policies and procedures. NPFC officials told us they plan to formally incorporate the practices into its policies and procedures by October 31, 2011.</p>
<p>2. Specific procedural guidance on processing DOD requests for reimbursement using Military Interdepartmental Purchase Requests.</p>	<p>NPFC officials told us they plan to formally incorporate the procedures into NPFC’s policies and procedures by October 31, 2011.</p>



Status of Prior Recommendations (cont.)

Department of Homeland Security

Prior Recommendation	Status
<p>In order to ensure that responsible parties are properly notified of their responsibilities for an oil spill, we recommend that the Secretary of Homeland Security direct the Director of NPFC to</p>	
<p>3. Update NPFC’s current policies to reflect current organization and structure and management’s directives, and</p>	<p>NPFC officials stated that NPFC’s current policies will be updated to reflect current organization and structure and management’s directives by August 31, 2011.</p>
<p>4. Update NPFC’s current procedures to provide detailed guidance and procedures for identifying and documenting responsible party notification.</p>	<p>NPFC officials disagreed with our recommendations and stated its responsible party designations are unrelated to the imposition of liability under OPA and that they serve the purpose of getting a responsible party to advertise the <i>Deepwater Horizon</i> oil spill claims process. NPFC’s procedures provide that responsible parties and their guarantors are to be notified of their oil spill-related responsibilities. In accordance with its current procedures, NPFC sent formal letters of designation to some, but not all, of the responsible parties it identified for the <i>Deepwater Horizon</i> oil spill. To other responsible parties, NPFC provided only invoices that reflected NPFC’s assessment of liability for removal costs. NPFC’s existing procedures for notifying responsible parties using invoices did not clearly communicate their “responsible party” designation. We continue to believe that NPFC’s procedures for identifying and documenting responsible party notification needs to be updated to clearly indicate the required mechanism used to identify and notify responsible parties of their financial obligations related to oil spills, including <i>Deepwater Horizon</i>.</p>

In our November 2010 report we offered a matter for congressional consideration that the Congress may want to consider setting a Fund cap per incident based upon net expenditures (expenditures less reimbursements). Since that report, expenditures have continued to be paid from the Fund and continue to approach the legislated cap. Given the risk that total expenditures from the Fund may reach the currently legislated cap, we are reiterating our prior suggestion that the Congress should consider amending the Oil Pollution Act of 1990, as amended (OPA),¹⁹ or enacting new legislation that changes the calculation of expenditures made against the Fund's \$1-billion-per-incident-expenditure-cap to take into account reimbursements from responsible parties.

We continue to believe that NPFC's procedures for identifying and documenting responsible party notification needs to be updated to clearly indicate the required mechanism to be used to notify responsible parties. Related to the *Deepwater Horizon* oil spill, NPFC sent formal letters of designation to some, but not all, of the responsible parties it identified. It provided only invoices to some responsible parties that reflect NPFC's assessment of liability for removal costs. NPFC's existing procedures for notifying responsible parties using invoices did not clearly communicate their "responsible party" designation. Consequently, we reiterate our previous recommendation that NPFC update its procedures to clearly indicate the required mechanism to be used to notify responsible parties for the *Deepwater Horizon* oil spill and future spills, in order to avoid confusion on whether an entity has financial responsibility for payment of oil-spill-related costs.

¹⁹The Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, established the Fund and its original expenditure caps, and OPA modified the expenditure caps to their current level. See 26 U.S.C. § 9509(c)(2).

We provided a draft of our briefing to the management of the Departments of Justice and Homeland Security for comment. We received comments from the Department of Homeland Security on this briefing which stated NPFC continues to disagree with what it understands to be GAO's concern that a notice of designation of a discharge source issued to some responsible parties, but not to all responsible parties that are eventually identified, risks confusion and breakdowns in the claims management and cost reimbursement process. However, it also commented NPFC intends to review, clarify, and update its designation procedures on or by October 31, 2011. The Department of Justice also provided comments. In regards to our recommendation that NPFC update its procedures to provide detailed guidance and procedures for identifying and documenting responsible party notification, DOJ stated that GAO has not identified any statutory responsibility that NPFC failed to fulfill under OPA Title 1, nor has GAO identified any policy basis for this recommendation.

We did not assert that NPFC did not comply with legal requirements or policy concerning responsible party designations. Nonetheless, as we previously reported, clarification of responsible party designation procedures is necessary to avoid possible confusion over responsibility and breakdowns in the claims management and cost reimbursement process. Consequently, we are encouraged that NPFC intends to update its procedures to clarify responsible party designations.

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