AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

IMPLEMENTATION OF THE OIL POLLUTION ACT

(109–67)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

APRIL 27, 2006

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

28–282 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

DON YOUNG, Alaska, *Chairman*

THOMAS E. PETRI, Wisconsin, *Vice-Chair*
SHERWOOD L. BOEHLERT, New York
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
JOHN L. MICA, Florida
PETER HOEKSTRA, Michigan
VERNON J. EHLERS, Michigan
SPENCER BACHUS, Alabama
STEVEN C. LATOURETTE, Ohio
SUE W. KELLY, New York
RICHARD H. BAKER, Louisiana
ROBERT W. NEY, Ohio
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
ROBIN HAYES, North Carolina
ROB SIMMONS, Connecticut
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
MARK R. KENNEDY, Minnesota
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
JON C. PORTER, Nevada
TOM OSBORNE, Nebraska
KENNY MARCHANT, Texas
MICHAEL E. SODREL, Indiana
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
LUIS G. FORTUÑO, Puerto Rico
LYNN A. WESTMORELAND, Georgia
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio

JAMES L. OBERSTAR, Minnesota
NICK J. RAHALL, II, West Virginia
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
JUANITA MILLENDER-MCDONALD, California
ELIJAH E. CUMMINGS, Maryland
EARL BLUMENAUER, Oregon
ELLEN O. TAUSCHER, California
BILL PASCRELL, JR., New Jersey
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
SHELLEY BERKLEY, Nevada
JIM MATHESON, Utah
MICHAEL M. HONDA, California
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
ANTHONY D. WEINER, New York
JULIA CARSON, Indiana
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
LINCOLN DAVIS, Tennessee
BEN CHANDLER, Kentucky
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
ALLYSON Y. SCHWARTZ, Pennsylvania
JOHN T. SALAZAR, Colorado
JOHN BARROW, Georgia

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

FRANK A. LOBIONDO, New Jersey, Chairman

HOWARD COBLE, North Carolina
WAYNE T. GILCHREST, Maryland
PETER HOEKSTRA, Michigan
ROB SIMMONS, Connecticut
MARIO DIAZ-BALART, Florida
DAVID G. REICHERT, Washington, *Vice-Chair*
CONNIE MACK, Florida
LUIS G. FORTUÑO, Puerto Rico
CHARLES W. BOUSTANY, JR., Louisiana
DON YOUNG, Alaska
(Ex Officio)

BOB FILNER, California, Ranking Democrat
CORRINE BROWN, Florida
GENE TAYLOR, Mississippi
JUANITA MILLENDER-MCDONALD, California
MICHAEL M. HONDA, California
ANTHONY D. WEINER, New York
BRIAN HIGGINS, New York
BRIAN BAIRD, Washington
JAMES L. OBERSTAR, Minnesota
(Ex Officio)

CONTENTS

TESTIMONY

	Page
Gilmour, Rear Admiral Thomas, Assistant Commandant for Prevention, U.S. Coast Guard, Department of Homeland Security	3
Kennedy, David, Director, Office of Response and Restoration, National Oceanic and Atmospheric Administration, U.S. Department of Commerce	3
Lane, Jan, Director, National Pollution Funds Center	3

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Gilmour, Rear Admiral Thomas	21
Kennedy, David	29
Lane, Jan	21

SUBMISSION FOR THE RECORD

Lane, Jan, Director, National Pollution Funds Center, response to a question from Rep. Coble	10

IMPLEMENTATION OF THE OIL POLLUTION ACT

Thursday, April 27, 2006

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION, WASHINGTON, D.C.

The committee met, pursuant to call, at 10:00 a.m. in room 2167, Rayburn House Office Building, Hon. Frank A. LoBiondo [chairman of the committee] presiding.

Mr. LOBIONDO. Good morning. The Subcommittee will come to order.

The Coast Guard and Maritime Transportation Subcommittee is meeting this morning to oversee oil spill prevention and response programs implemented under the Oil Pollution Act of 1990 and to review the level of funding in the Oil Spill Liability Trust Fund.

Over the past two years, we have been reminded time and again the importance of the Coast Guard's oil spill prevention and response responsibilities. As recently as two days ago, the Coast Guard responded to a seven mile long oil slick in the Delaware Bay, which is still under investigation. This spill, coupled with the recent hurricanes in the Gulf Coast region, and last year's large oil spills in the Delaware River and off the coast of Alaska have resulted in the release of millions of gallons of crude oil into U.S. waters. I commend the Coast Guard and its many Federal, State and local partners for the response to these incidents.

In response to these spills, Congress has taken several steps to provide the Coast Guard with additional authorities to improve its capabilities to prevent and response to oil spills. The House has passed H.R. 1412, the Delaware River Protection Act, and a conference report on H.R. 889, the Coast Guard and Maritime Transportation Act of 2006, has adopted the provisions included in H.R. 1412.

The conference report includes a provision that will adjust oil spill liability limits for vessels to reflect the changes in the inflation since the passage of the Oil Pollution Act of 1990. This provision will encourage the use of double hulled vessels by more than doubling liability limits on single hulled vessels, making them more expensive to operate than the safer double hulled alternative. The provision will also restore a great share of the responsibility for costs associated with the spills to the vessel owner and will enhance the solvency of the Oil Spill Liability Trust Fund.

I, however, am very concerned about the effect recent events may have on the long term health of the fund. The Coast Guard's inves-

tigation into the Athos I oil spill has found no evidence of violations by the river pilot or of the vessel, nor can we identify the owners of the object that struck the vessel's hull. I hope the witness will provide us with an update on the investigation into the spill and the potential cost to the fund if no liable party is identified.

I am also concerned about the potential use of oil spill liability trust funds to pay for damages in the Gulf region resulting from Hurricane Katrina. We have received estimates that the cost associated with the response and restoration activities could reach up to $800 million. I hope to learn more about whether the Administration is suggesting that some of these costs be absorbed by the Fund and how this could affect the Fund's balance.

I am also interested in hearing testimony regarding the Federal Government's research and development efforts under OPA. OPA requires Federal agencies to conduct a wide scope of oil spill research. However, we have made very little progress towards this goal.

I believe that it is extremely important we continue to develop technologies and procedures to improve our prevention and response to oil spills. In the conference report on H.R. 889, we included a provision to authorize a program to investigate technologies and procedures to remove or otherwise mitigate submerged oil in U.S. waterways. I hope the enactment of this provision will spur the Administration to support further research in these areas.

Before I introduce our witnesses, I would like to express my appreciation and that of the Committee to Admiral Gilmour for his more than 30 years of dedicated service to our Country. Admiral, congratulations, and we wish you a well-deserved retirement.

I look forward to your testimony this morning, and I now would like to turn to Mr. Filner for any statement he may have.

Mr. FILNER. Thank you, Mr. Chairman, and thank you for scheduling this hearing.

We passed the landmark legislation, the Oil Pollution Act of 1990, in the wake of the Exxon Valdez disaster in Alaska. It had languished in the House and Senate for years until Congress got this wake-up call that it was in our national interest to make sure that disasters like that don't happen again. But marine casualties do continue to occur, perhaps not spilling as much oil, but impacting our local communities nonetheless.

Mr. Chairman, I would like to focus on three issues and hope the panel might refer to them. First, given our 16 year history since enactment of the Oil Pollution Act, are the limits of liability of ship owners proportional to the risk or damage that their vessels could cause to our coastal communities? Second, as we saw with the accident of the New Carissa in Oregon several years ago, bunker fuels can cause a lot of damage to our coastline and environment. However, the double hulled requirements of the OPA only apply to tankers and tank vessels that transport oil as cargo. It does not require any improved safety protection for fuel tanks, even though a large ship today can carry as much fuel as a World War II tanker.

Third, Hurricane Katrina, and you mentioned this, Mr. Chairman, has resulted in a large amount of oil being spilled along our Gulf Coast. What is the potential liability exposure of the Oil Pollu-

tion Liability Trust Fund to help pay for these cleanup and remediation costs? Did vessel owners and shore based oil facility operators take normally prudent measures when they saw the storm coming, or did their failure, for example, to fill their storage tanks with water contribute to the oil being spilled from these tanks?

Mr. Chairman, last year the Subcommittee took some small steps in helping to address some of the issues raised by the large oil spill on the Delaware Bay that affected your district. It is time for this Subcommittee to look at the Oil Pollution Prevention program from a national and international perspective and see what improvements need to be made to help decrease the likelihood of future oil spills in the United States.

Thank you again, Mr. Chairman, for scheduling this hearing. I look forward to working with you to improve oil pollution prevention and liability systems.

Mr. LOBIONDO. Thank you, Mr. Filner.

Mr. Coble, would you like to start off with anything?

Mr. COBLE. Thank you, Mr. Chairman. I will be very brief.

Admiral, I just want to reiterate what the Chairman said. We appreciate your years of good service with America's oldest continuous sea-going service and best wishes to you.

Mr. Chairman, I am told that Hurricane Katrina, you touched on this, I think, peripherally, caused at least ten major oil spills in the Gulf region, resulting in the release of approximately 8 million gallons of oil into the waterways in the region. I hope that one of the witnesses might touch on the manner in which these hurricane-related costs are currently being funded in the Gulf region.

It is good to have you all with us, and I yield back, Mr. Chairman.

Mr. LOBIONDO. Thank you, Mr. Coble.

Mr. Taylor? OK. Mr. Taylor will pass.

We are very pleased with our panel today. We have Rear Admiral Thomas H. Gilmour, who is Assistant Commandant for Marine Safety, Security and Environmental Protection for the United States Coast Guard. We have Ms. Jan P. Lane, the Director of the National Pollution Funds Center for the United States Coast Guard. And Mr. David Kennedy, Director of the Office of Response and Restoration, for the National Oceanic and Atmospheric Association.

We thank the panel members. Admiral Gilmour, please proceed.

TESTIMONY OF REAR ADMIRAL THOMAS GILMOUR, ASSISTANT COMMANDANT FOR PREVENTION, UNITED STATES COAST GUARD, DEPARTMENT OF HOMELAND SECURITY; JAN LANE, DIRECTOR, NATIONAL POLLUTION FUNDS CENTER; DAVID KENNEDY, DIRECTOR, OFFICE OF RESPONSE AND RESTORATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE

Admiral GILMOUR. Thank you, Mr. Chairman.

Mr. Chairman, Representative Filner and distinguished members of the Committee, good morning. I am Rear Admiral Thomas Gilmour, Assistant Commandant for Prevention. And with me, as

stated, is Ms. Jan Lane, the Director of the National Pollution Funds Center.

We are pleased to appear before you today to discuss oil pollution prevention and the Oil Spill Liability Trust Fund. Congress enacted the Oil Pollution Act of 1990 in the wake of the Exxon Valdez spill in Prince William Sound and a rash of other major spills. OPA's scope was ambitious, as it set new requirements for vessel construction, crew licensing and manning, mandating contingency planning, enhancing Federal response capability, broadening enforcement authorities, increased penalties and created a new research and development program and increased the liability for those responsible vessels and facilities that spill oil.

The Oil Spill Liability Trust Fund has been referred to as the cornerstone of the OPA 1990 regime. The Fund provides the resources for Federal incident-specific response and is available to compensate individuals, businesses, natural resource trustees and State and local governments for their costs and damages resulting from a spill when responsible parties do not pay.

The Fund is also used by Congress as a source for direct appropriations to the various Federal agencies responsible for the administration and enforcement of OPA, which supports programs to prevent spills, to coordinate preparedness for spill response at the national, State and local levels. Enhanced spill research and development initiatives compensate injured parties and make polluters pay when spills occur.

The enormous success of the OPA 1990 regime can be measured in large part by the overall reduction in the quality of oil spilled since 1990. The combination of OPA and the Fund has been highly effective in achieving the success and in comprehensively addressing oil pollution risks and damages. Despite the many success stories over the 16 years since OPA was enacted, risks to the long term viability of the Fund persists. The financial rate or tax on oil expired in 1994, but fortunately in the summer of 2005, Congress provided for the resumption of the financing rate. The rate is effective this month and continues in effect through the end of 2014, with revenue to be deposited to the Fund.

While a resumption of the financing rate is an important step in ensuring continued viability of the Fund, there are new challenges on the horizon. One key issue is the limit on liability. OPA provides for adjustments to vessel liability limits by regulation to reflect increases in the consumer price index, but limits have not been adjusted for the CPI since OPA was enacted. While the Coast Guard has taken steps toward making the CPI base adjustment for vessels through regulation, we believe the magnitude of the adjustment needed is greater than what the CPI based adjustments will provide.

A responsible party's liability for removing costs and damages is limited unless certain exceptions apply. The liability limit for a vessel spill is based on a formula that considers a vessel's tonnage and whether the vessel, ship or barge, is a tank vessel or a non-tank vessel. Liability limits for on-shore facilities, off-shore facilities and deepwater ports are set at designated amounts.

Fundamental to OPA is the polluter pays principle. Thus, the issue is whether the current liability limits are sufficient to support the polluter pays principle.

The catastrophic impacts of Hurricanes Katrina and Rita included substantial damage to oil production infrastructure and an estimate discharge of more than 9 million gallons of oil. Fortunately the Stafford Disaster Relief and Emergency Act funds were available to finance the Federal response and assistance in connection with the environmental cleanup. The Fund has not been tapped for cleanup costs of oil spills caused by these hurricanes. However, we are concerned about major claims exposure for natural resource damage and for oil removal costs and damages incurred by responsible parties and other third parties.

While responsible parties are generally liable under the Oil Pollution Act for costs, they too may present a claim to the Fund for their costs and damages that exceed their applicable OPA liability limit, or for their costs and damages if they can establish one of the OPA complete defenses to liability.

One OPA defense that is likely to be seriously tested as a result of these hurricanes is the act of God defense. One of the principal reasons the Fund was created was to provide for a source of funding in response and compensation when responsible parties do not pay. The question today is whether that risk is properly apportioned between the responsible parties and the Fund. Clearly, responsible party limits, at least for vessels, are long overdue for an increase. That need was recognized in H.R. 1412, the Delaware River Protection Act, which Chairman LoBiondo introduced and which was subsequently incorporated in large part as Title VI of H.R. 889, the Coast Guard and Marine Transportation Act of 2006.

We look forward to working closely with Congress as we report further on the adequacy of liability as a means to ensure the polluter pays its fair share and that the OPA and the Fund regime continues to provide effective and efficient oil spill prevention, response and compensation services to the public.

Thank you again for the opportunity to testify before you today, and we will be happy to answer questions.

Mr. LOBIONDO. Thank you, Admiral Gilmour.

Ms. Lane, thank you for being here. Please proceed. I'm sorry, Mr. Kennedy.

Mr. KENNEDY. Thank you for the opportunity to present NOAA's role in response, restoration and research under the Oil Pollution Act. I am David Kennedy, Director of the Office of Response and Restoration at NOAA.

OPA created a comprehensive prevention response liability and compensation regime to respond to oil pollution incidents. Under OPA, NOAA acts as a natural resource trustee for coastal and marine resources. NOAA's responsibilities include working through the national and regional response teams to ensure the most appropriate response and cleanup actions are taken to protect resources from further injury, working with our co-trustees to assess and restore injured natural resources, and carrying out oil spill research and development under Title VII of OPA.

Our Nation must be prepared to respond to major oil spills. The near-simultaneous Athos I and Selandang Ayu referred to already

spills in late 2004 and the magnitude of oil spilled again referred to after Hurricanes Katrina and Rita last fall serve as reminders of that fact.

NOAA's response to each incident is dependent on the skill's characteristics. Using its expertise and state of the art technology, NOAA forecasts the movement and behavior of spilled oil, evaluates the risks to resources and recommendations protection priorities and appropriate cleanup actions. In addition, NOAA scientists and economists work with other trustees and responsible parties to ensure the coastal and marine resources injured by oil spills are restored.

I would like to share with you three examples of NOAA's past response and restoration work. On November 26th in 2004, the MT Athos I, a 750 foot tanker, hit several submerged objects in the Delaware River, spilling approximately 265,000 gallons of heavy oil. In addition to surface and shoreline oiling, a portion of the oil migrated below the water surface, complicating the response and assessment efforts. During the event, NOAA provided oil trajectory analysis, weather forecasts, shoreline impact assessments, and recommendations on environmentally appropriate cleanup techniques.

The NOAA navigation response team conducted emergency navigational surveys to locate the objects responsible for the incidents and to identify potential sunken oil collection points. U.S. Coast Guard suspended vessel traffic through the area, and the Salem Nuclear Power Plant shut down two reactors as a precaution to prevent oil-fouled water intakes. The detection of submerged oil was a critical economic issue in this case, essential to the reopening of the port and the reactivation of the power plant. NOAA led a special task force to develop detection and mitigation methods for the submerged oil. NOAA's efforts aided in the rapid return of normal vessel traffic and helped the plant, a significant regional power supplier, come back online.

NOAA also led State and Federal trustees in efforts to initiate natural resource damage assessment. NOAA continues to work closely with Fish and Wildlife Service in the States of New Jersey, Delaware and Pennsylvania to restore coastal marine resources injured from the Athos spill. On December 7th and 8th of 2004, the cargo vessel Selandang Ayu lost power and ran aground and broke in half in the shores of Unalaska Island, Alaska, losing about 60,000 tons of soybeans along with 335,000 gallons of fuel oil. Again, NOAA conducted shoreline and aerial surveys and prepared a comprehensive map of shoreline contamination as well as providing on-scene weather information.

NOAA staff coordinated environmental issues for the unified command, including technical matters related to potential dispersant use and trajectory forecasts for the residual oil on board. NOAA also worked with the Coast Guard and State of Alaska to monitor cleanup operations. NOAA continues to work with other natural resource trustees and the responsible party to conduct a damage assessment.

Public meetings have been held to solicit local input on potential restoration alternatives. And NOAA is committed to providing the public with up to date information and opportunities for review and

comment during the damage assessment restoration planning process.

As it relates to Katrina, the magnitude of environmental impacts of the aftermath of Katrina are unprecedented. As has been mentioned, 9 million gallons roughly released, thousands of vessels sunk and stranded. NOAA was one of the first Federal agencies to respond after the Coast Guard, and we provided staffing to multiple command posts, provided U.S. Coast Guard, EPA and States with critical scientific information to support cleanup and recovery. This included the assessment, prioritization and mitigation of over 1,000 hazardous material releases.

Thank you for the opportunity to talk about NOAA's important work under OPA. My written statement has more in-depth description of our work and current research efforts. Of course, I would be happy to answer any questions. Thank you.

Mr. LOBIONDO. Thank you, Mr. Kennedy.

Mr. Filner?

Mr. FILNER. Thank you for being here this morning.

As I outlined in my opening remarks, I had several areas of interest. For example, the limits of liability for cleanup and restoration, as I understand it, were established under OPA after the Exxon Valdez. But the limits are based on gross tonnage of the vessel and are not necessarily risk-based.

So I guess the questions I have, do the limits of liability in OPA reflect the risk with cleaning up an oil spill after a marine casualty whether the oil was transported as fuel or as cargo? Can we get to a risk-based kind of a coverage here?

Ms. LANE. I think the only thing that we could probably look to is recent data that we have been able to collect over the past several years. And recent data would suggest that for certain high risk vessels that limits may be disproportionately low and should be raised well above CPI levels, which as you know, could only be achieved through Congressional action.

The cost data in respect to oil spills from cargo vessels and tank barges, or costs that exceeded limits, indicate that liability limits for those vessel types may pose the greatest risk. And since 1999, there have been 55 vessel incidents involving over $1 billion in incident costs that have resulted in oil removal costs and damages of $800 million in excess of their OPA liability limits. That is, 80 percent of the cost of those 55 incidents exceeded their liability limits. Eighty-three percent of those costs were realized in 29 incidents, about more than half the incidents involving 2 tank ships, 13 tank barges and 14 cargo vessels. And only one of these, the DPL 152 that recently hit a submerged platform in the Gulf after Hurricane Katrina, had double hulls. All the others were single hulls.

Sixty-one percent of the excess liability costs that we have seen were for tank barges and cargo vessel spills alone. In addition, there were 26 incidents involving smaller vessels, small fishing and other vessels, where limits were exceeded. But those incidents represented only 17 percent of the costs.

Fourteen of the larger cases have resulted in $240 million in claims to the Fund and four additional cases are ongoing, which we believe could result in claims of more than $160 million to the Fund. We believe that this data shows that the OSLTF may be at

a disproportionate risk for removal costs and damages, particularly with respect to tank barges and cargo vessels. Because limits on that particular class of vessels are relatively low compared to tankers and compared to the risk of a spill. And that CPI liability increases alone may not be adequate to reflect the appropriate share of risk between polluters and the OSLTF.

Mr. FILNER. And so what conclusions do you draw? What adjustments should we make in the limits of liability? Do you have some specifically related to those figures that we should change?

Ms. LANE. We don't have any specific levels that we would recommend. The Administration has not reviewed it. H.R. 889 asks us to take a look at that. I am not sure if we will have adequate time within the 45 day reporting requirement to provide any recommendations on specific limits. I think we would look to a dialogue with Congress and with the industry about what limits might be appropriate, based on the data that we've seen.

Mr. FILNER. That is one area we ought to talk more about.

Just briefly on Hurricane Katrina, Mr. Chairman, there were many examples, I think the sum totals were given in the testimony. There was one oil company which had a 250,000 barrel above-ground storage tank, and it was dislodged and damaged. The tank at the time contained, as I understand, 65,000 barrels of crude oil and released approximately 25,000 barrels of that. And it impacted about 1,700 homes in an adjacent neighborhood.

As I understand it, a prudent owner would have filled the tank with water to prevent the storm surge from lifting it off its foundation. This was not done by the oil company. Should they be allowed to limit their liability for this oil spill and have the Federal Government pay for the cost, or should we talk about again what a prudent owner should have done?

Ms. LANE. I think that that really gets to the question of claims and whether or not responsible parties will be able to file a claim against the Fund successfully. In some cases, they may be claiming a defense to their liability. One defense may be an act of God defense. And we will be looking at that very closely, as I am sure you are aware, act of God in the statute is defined as an unanticipated grave natural disaster, other natural phenomenon of an exceptional, inevitable and irresistible character.

Mr. FILNER. No, but that was the election in 1994. That was not an act of God.

[Laughter.]

Mr. FILNER. Read that definition again so people can get what I was saying.

Ms. LANE. The effects of which could not have been predicted or avoided by the exercise of due care or foresight. And to establish the defense, the act of God must be the sole cause of the discharge. Each claim that we receive will be adjusted on its merits, taking into account the specific circumstances of the discharge.

To the extent possible, we will look at industry standards as well as facility plans for design, construction, maintenance of the facility, as well as prevention, preparedness, including shutdown procedures and response. And we will look at the extent to which the facility owners complied with both industry standards and their

specific facility plans, and the extent of due care and foresight that was taken in preparing for the storm and preventing the discharge.

It is worth noting that prior to Katrina, we had received six act of God claims from responsible parties against the Fund. They were all vessel spills and all were denied on the basis that they did not meet the due care, foresight and sole cause thresholds of the defense.

In general, I would say that it is a very difficult defense to establish. However, with Katrina, I think we will be breaking new ground, as has been experienced in so many other areas with Katrina, because of the magnitude and severity of the storm. We could find that RPs are more successful in asserting this defense than they have been in the past. But again, we will have to look at each case on a case by case basis.

Mr. FILNER. Right. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Admiral Gilmour, the Coast Guard estimated approximately $750 million was available in the Oil Spill Liability Trust Fund at the beginning of fiscal year 2006. Do you have an estimate as to the balance currently held within that fund?

Admiral GILMOUR. Sir, I am going to let Ms. Lane handle that question. She has the answer for you.

Mr. COBLE. OK, thank you.

Ms. LANE. As you probably know, we will be providing a report to Congress which includes a nine year forecast of the Fund. It was recently cleared by the Administration and you should be receiving that soon. What that report will show is that the current balance of the Fund is $662 million. And the emergency fund balance is $46 million.

I can provide you some additional details on the revenue forecast and expense forecast and projected balances that will be reflected in that report, if you would like, sir.

Mr. COBLE. Well, how does this current balance——

Mr. LOBIONDO. Excuse me, yes, we would like that.

Ms. LANE. OK.

[The information received follows:]

OSLTF Forecast (excluding potential Katrina claims):

- **Current balance - $660M**
- **Renewal of Tax in April 2006 will generate approximately $200M per year in tax revenue based on Treasury estimates.**
- **Balance expected to fall to level of $500M in FY07 as a result of several large claims (e.g. ATHOS I, NEW CARISSA, LUCKENBACH)**
- **Balance expected to gradually increase to $900M by FY2013 and then begin to decline again in FY2014 when the tax sunsets.**
- **The total estimated exposure to the OSLTF from the ATHOS I spill is approximately $270M:**
  - **Responsible Party claim $124M**
  - **Third Party/NRD Claims $95M**
  - **Federal cleanup costs $51M**
- **All Pollution Response (ESF-10) costs for hurricanes Katrina/Rita were covered by Stafford Act – currently $181M. Potential impacts to OSLTF remain uncertain.**

Mr. LOBIONDO. Thank you.

Ms. LANE. Again——

Mr. LOBIONDO. If we could provide that in a written response afterwards.

Ms. LANE. Yes.

Mr. COBLE. Thank you, Mr. Chairman.

How does this available balance currently held within the Fund carry out the spill prevention response and restoration actions? What do you say to that?

Ms. LANE. Of the various agencies? There are several different components to that. I think one very important component is the agency appropriations that are received every year for the agencies that have a key role in the implementation of OPA 1990. They receive about $90 million a year for their roles and responsibilities in prevention, preparedness, response infrastructure, compensation, liability and R&D. It provides the ready capability for agencies for the Federal Government to be able to respond to spills when they occur.

Also there is a $50 million emergency fund appropriation that is a portion of that balance. And it is available for all response costs that are required for responding to the spill, for removal costs, and those funds generally are available for the Federal responders as well as State responders and——

Mr. COBLE. But are you comfortable with the current balance?

Ms. LANE. I would say that we are very fortunate that the tax was reinstated last summer. That will be bringing an additional $200 million into the Fund on average each year. And that certainly will go a long way to keeping the Fund healthy.

There are, as a result of a number of spills, larger spills that we have seen in the past couple of years, I believe that they are going to tax the Fund significantly over the next couple of years, particularly with respect to claims, particularly with respect to the Athos. And we would expect to see the Fund balance over the next couple of years probably by the end of fiscal year 2007 drop to a level of about $500 million. And then after those Athos costs, or payments, are made, and barring any large Katrina claims or other large spills, we should see the balance start to gradually increase again until the tax revenue expires.

Mr. COBLE. OK. Well, at the outset, I expressed interest in how the hurricane-related response and restoration costs in the Gulf region are being funded. I don't believe you all addressed that. If you did, I missed it. How about addressing that?

Ms. LANE. Yes, sir, I would be happy to do that.

Again, we have a report to Congress, which you should get soon, which will provide a little bit more detail. But unfortunately, that report will not make any specific predictions about the specific impact on the Fund. At this time, the estimates are really impossible to quantify. We just simply don't have the data. The $800 million that was indicated earlier was just a very rough estimate, based on our experience, historical estimates, experience with the Exxon Valdez, experience with the Athos and other large spills that we have seen.

What the report will do is just try and address the potential impacts. And it will show that to date, there have been no costs

charged to the OSLTF for Katrina. We are all aware of the magnitude of the spills down there, some 900 million gallons spilled, 6 major, 5 medium spills, 120 wrecked or destroyed offshore platforms in the Gulf, 300 pipelines destroyed.

And in addressing all this, the Coast Guard has received $178 million in Stafford Act funding for ESF–10 pollution removal activities to respond to those incidents. However, we believe that the potential for claims still exists, based on our experience with other large spills.

Mr. COBLE. Well, this will be addressed, I presume, in more detail when your report is forthcoming.

Ms. LANE. Yes, sir, but we really are not able in the report to specifically quantify the amount of impact on the Fund.

Mr. COBLE. OK. I think my time has expired, Mr. Chairman. I yield back.

Mr. LOBIONDO. Thank you.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. I want to thank our witnesses.

What percentage of barges that operate in American waters—just a couple quick questions—what percentage of barges as of today are double hulled? What percentage of tankers in the Jones Act trade are double hulled? What percentage of international commerce tankers, those coming from overseas, are double hulled?

Second question, directly to Admiral Gilmour, I never want to miss the opportunity to brag on the great job the Coasties did in Hurricane Katrina. A lot of guys leaned forward, made great decisions at the end of the month when I know there were a lot of aviation fuel and steaming fuel and again, if FEMA had done half as well as you all, Michael Brown might still be on the Government payroll.

So the question to the Coasties is, one of the outcomes of the storm, particularly on the Mississippi Gulf Coast, is that every single waterfront fueling facility was out of business. Shrimp season comes up, you need two things to run a shrimp boat. Well, you need a crew. You have to have a boat, a crew, oil and ice. And since every one of our waterfront facilities is gone, and because the business has not been good for the past few years, I am noticing a great reluctance of people to invest in waterfront oil and facilities.

What if anything can we do with the Oil Pollution Act to try to grant some waivers or at least work with people who are willing to run a fuel truck to the water's edge so we can start fueling boats this summer and for those people who understand the business, at least get them fuel. I am going to ask, I know that is an involved question, but I want you all to think that through, because I know most of those truckers probably did not have the insurance they need to fuel boats. But I can tell you that folks who were in the business are not jumping back into the business. And so we have to find something to fuel those boats, and I want you to think about that.

Lastly, to Ms. Lane, I heard with great interest that the costs of, apparently what you are telling me is that the cost of the cleanups are not matching the fines. As someone who was here for the passage of the Oil Pollution Act in 1990 when we were talking about

unlimited liability, my question to you would be, did we actually have to reach into appropriated funds to pay for those cleanups, or to date, has that money been coming out of the Trust Fund? And if it has been coming out of the Trust Fund, are annual collections meeting annual outlays, or are we dipping into previous year collections to make last year's outlays?

And lastly, for Mr. Filner, in fairness, at least in the case of one of those spills, the Murphy oil spill in Chalmette, Louisiana, it is not only an act of God, but the levees that the taxpayers of the United States built failed. And so I would hope that we would keep that in mind. Had the levees not failed, there would not have been a spill at the Murphy oil facility in Chalmette. Just wanted to throw those two cents in there.

Admiral GILMOUR. Sir, on your first question, about percentages of tankers, tank barges and then foreign tank vessels coming in, I would like to follow up and make sure I give you the right answers. My gut feeling is right now the majority are, but, and I have seen the numbers but I would like to come back.

Mr. TAYLOR. The reason for that, Admiral, is not too long after the passage of it, I attended a dinner with a lot of international tank owners. And some of them made some remarks like, we are just going to wait until the last minute and then we are going to go to Congress and say, either give us a waiver or you get no oil.

So again, it might have been a guy who had one too many martinis, or it might have been a real threat. So what I am trying to think, and it was made several years ago. So that is the reason, are they complying or aren't they? Are they complying on a time line that gets us to 100 percent by the mandated days?

Admiral GILMOUR. Yes, sir, I can positively answer that we inspect every vessel with OPA 1990 in mind and review their records. So they are meeting the time line. The results of concerns on insurance, I think, when OPA 1990 happened, and that did not happen at the end of the period where they were——

Mr. TAYLOR. If the Chairman will indulge me, one of the other things that was said that night, and only you and Ms. Lane and Mr. Kennedy would be in a position to see if this has actually happened, one of the other things that again, followed after one too many martinis, somebody said what we will do is we will just start a paper corporation in the Bahamas and that way if there is a massive spill, that paper corporation that has no assets gets hit with the bill and we walk away scot-free. Have you seen any evidence of that happening with spills that have occurred to date?

If you have a total failure to collect on spills or substantial failure to collect on spills because someone has succeeded in insulating themselves, isolating themselves by creating a paper corporation overseas?

Admiral GILMOUR. I would say, and Ms. Lane can talk to those vessels that went over their liability, but certainly I can only think of one case where the owner walked away and that was the Berman spill in Puerto Rico. That was a U.S. operated company.

But other than that, I can't think of cases where people walked away.

Mr. TAYLOR. How were they able to walk away?

Admiral GILMOUR. Well, in that case I think their limit was——

Ms. LANE. It was $10 million.

Admiral GILMOUR. Yes, it was $10 million and it happened, their limit was reached very quickly.

Ms. LANE. Their insurer paid up to their limit, and then the Coast Guard took over.

Mr. TAYLOR. OK.

Ms. LANE. I don't believe we have seen any cases where a responsible party has refused to respond at all, if the responsible party is known.

Mr. TAYLOR. OK. How about the other questions? Ms. Lane?

Ms. LANE. I think the one question that you had regarding whether the excess liability costs have been charged to the Fund or charged to the appropriated funds, and the answer to that is, they have been charged to the OSLTF and not appropriated funds. Then the other question was, how do I see the revenues and expenses and whether or not we are bringing enough money into the Fund to cover the expenses. I think my response to that would be prior to the passage, to the reinstatement of the tax last summer, the answer would be that revenues were not adequate to cover expenses and we saw a declining balance in the Fund.

With the reinstatement of the tax and the additional $200 million coming into the Fund each year, I believe that trend is changing. But again, it is dependent upon the number of spills that you have in any given year and the magnitude of those spills that could change at any time.

I think historically speaking, revenues are balanced fairly well with expenses at the current time. However, I would note that the $2.7 billion level that was designated in the Energy Bill last year, the new level of the Fund, we don't ever expect to reach that level. By 2014, the tax turns off. Our forecast will show that we expect the balance to be at about $830 million.

Mr. TAYLOR. Mr. Chairman, one last question?

Mr. LOBIONDO. Sure, go ahead.

Mr. TAYLOR. I am going to guess that on the day we passed the Oil Pollution Act, the value of a barrel of oil was about $18 a barrel. Today it is in the low 70's, last time I looked. And I am asking this in the form of a question. Has the fact that the value of oil has shot up rather dramatically, and yet the liabilities have remained fairly constant, does that in any way create a situation where the shipper has less of an incentive to have adequate insurance?

Ms. LANE. I believe that ship owners do have adequate insurance. In fact, most ship owners have insurance well above the limits of liability that are specified in the law. And with respect to an incentive, I am not sure that I can comment on that. I think there are a lot of reasons why we need to increase those, the limits of liability, at least commensurate with the CPI adjustments that have occurred since 1990. I believe the data shows that we should increase them above those CPI adjustments as well.

Mr. TAYLOR. I will welcome your recommendations on the increase of those limits.

Ms. LANE. Yes, sir.

Mr. TAYLOR. Thank you.

Thank you, Mr. Chairman.

Mr. LOBIONDO. Just a quick follow-up on the solvency of the Fund. I know the report is going to maybe give us a better picture. But if you dip below zero, do you have borrowing authority? How do you handle that?

Ms. LANE. We have borrowing authority into the emergency fund from the principal fund. If the principal fund, if the OSLTF goes to zero, I am not sure if that same $100 million borrowing authority would apply. But certainly we would have to come to Congress and seek supplemental appropriations to cover those costs.

Mr. LOBIONDO. OK. On the Athos I, I believe it was stated that the potential claims to exceed $265 million or $270 million, in addition to the $252 million that has already been paid from the Fund for response activities. Have the owners of the Athos I presented a third party defense for the Coast Guard's review?

Ms. LANE. They have presented a claim to us for costs in excess of their liability limit. They spent $124 million on a spill. Their limit was $45.5 million. So their excess costs were $78.5 million.

They presented $124 million claim to us requesting reimbursement for the $78.5 million. We have to look at all their costs in order to determine whether or not all the costs, all the $124 million that was spent is compensable. And we have gotten several indications from the responsible party that they do plan to submit a third party defense claim to us, at the point at which their entitlement to hold their limit is granted, if that happens, if we grant that.

Mr. LOBIONDO. How does the Coast Guard review and adjudicate claims for response action or natural resource damage?

Ms. LANE. We rely on the regs and we have put together a set of guidance, internal guidance that is based on those, the regs that provide the requirements and the process that has to be undertaken on the part of the trustees in order to file a claim with the Fund. And we worked very closely with the trustees in developing that guidance.

Mr. LOBIONDO. On Katrina, I guess the big question that you have to deal with is whether this was an act of God or not?

Ms. LANE. Could I get back to you on that?

[Laughter.]

Mr. LOBIONDO. How is that going to start to unfold? How are you going to start to get your arms around this one?

Ms. LANE. I guess the thing I would say on that is that we really have not made a broad determination that an act of God defense would apply here. We are really going to have to look at each claim as they are presented to the Fund on a case by case basis. And again, to the extent possible, we will look at industry standards and the facilities response plans. And with respect to prevention, preparedness, response, their shutdown procedures and the extent to which they complied with industry standards and their own facility plans.

Mr. LOBIONDO. That is going to be pretty tough.

Ms. LANE. It will be.

Mr. LOBIONDO. On the phase-out of the single hulled vessels, do you expect because of what is happening with the European Union and the time line that has been established there that the number of single hulled tank vessels operating in U.S. waters will—what

do you think the numbers are going to be? Significantly increased when they do what they are going to do?

Ms. LANE. I am going to defer to Admiral Gilmour on that.

Admiral GILMOUR. Sir, I do not think it will have a significant effect on those vessels that trade here. And I say that because I think most of the vessels that do trade in the United States, foreign, certainly domestic, have been built to OPA 1990. It could have influenced those vessels that are in worldwide trade. So it could have a slight impact on reducing the number of single hulled vessels that come to the United States.

Mr. LOBIONDO. I may have a couple more. Mr. Baird?

Mr. BAIRD. I thank the Chairman, I thank our witnesses.

Following up on Mr. Taylor's questioning, it sounds like, pretty obviously from your figures, Ms. Lane, that the cost of the accidents are basically exceeding the liability limits on a pretty reliable basis. What, and maybe Mr. Kennedy can comment on this, what are the factors that have made that happen? What has happened that has made those limits no longer apparently realistic?

Ms. LANE. I believe the costs of response has increased since 1990, just obviously with the cost of inflation. But just the cost of responding to the spill. In many areas, in many cases, you will be in an area that has very sensitive resources. And the cost to protect those resources probably add to the costs of this bill as well.

Mr. BAIRD. And we haven't given, Congress hasn't given you folks the authority to increase that liability limit commensurate with that cost increase?

Ms. LANE. We, the statue did provide a provision that required adjustment for CPI every three years, yes, sir.

Mr. BAIRD. But at the cost, the point you were making earlier, if the cost exceeds CPI, then we are going to fall back a little bit each year?

Ms. LANE. Yes, sir.

Mr. BAIRD. And so that might be something the Committee would—now, the consequence of that, presumably as you are pointing out I think is greater demand on the Fund than had been anticipated.

Ms. LANE. Yes, sir.

Mr. BAIRD. What would be the consequence of raising the liability limit? What impacts would that have if we did that?

Ms. LANE. It probably depends on how high you raise them. And——

Mr. BAIRD. Let's suppose we raised it so that the median, so that we hit the mark half the time, so that half the time, versus it sounded like 80 percent, the costs are 80 percent more or less of the times exceeding the limits, let's suppose we cut it down to 50 percent. Just hypothetically, what would be the pros and cons of that?

Ms. LANE. I think from industry standpoint, if you raise the limits, the cost of insurance would inevitably go up. And I would expect that those costs would be passed on to the consumer in the form of increases in goods and services.

Obviously the impact on the Fund would be positive, because we would be paying out a lot fewer costs in those incidents where limits were exceeded.

Admiral GILMOUR. Sir, if I could just add on to that, at some point I think the industry would think about trading in the U.S. at some point.

Mr. BAIRD. Would think about what? I missed your point.

Admiral GILMOUR. At some point, if you raise the liability limits high enough, industry could think twice about trading in the United States. It might limit the number of vessels that would trade. I was assuming your question was going to unlimited liability.

Mr. BAIRD. No, it really wasn't. I think there has to be some economic calculus where you say at this point you protect the Fund, you provide some assurance, but you still provide the sort of super-catastrophic protection.

Did we see, have we seen, in effect we are indemnifying the insurance industry a little bit. Have we seen a lowering, a commensurate lowering of rates?

Ms. LANE. I am not sure I have that data. I am not aware of any lowering of rates.

Mr. BAIRD. Several years ago, post-September 11th, we set limits based on terrorist attacks. I actually tried to see if we couldn't do something to say, well, if the public is going to indemnify insurance industry, they ought to somehow pass the savings on to the consumers. And I don't know that we ever mandate that, but it is common sense to me that we might want to consider it.

Just the thought I had, the discussion so far is mostly focused on acts of God. When the legislation was written, it was obviously 10 years prior to September 11th. How does that factor in terrorist attacks? What impacts do they have on various issues that have come up today in terms of liability, who would bear that, how the funds would respond to that, etc.?

Ms. LANE. I think in the case of a terrorist act, that would probably be viewed, more likely it would not be viewed as an act of war. There are certain criteria that probably would not be met with today's view of terrorism. So we would probably generally view the defense in an act of terrorism as a third party defense.

And in the case of a third party defense again, you would look at the case on a case by case basis, you would look at the facts of the case. The third party defense requires that the incident be solely caused by a third party. It requires that no contractual relationship with a third party exists, and that they exercise due care with respect to the oil and took precautions against foreseeable acts or omissions of a third party.

I guess the limits of liability are also an issue that come into view when you are talking about a terrorist act and whether or not they may be susceptible to unlimited liability. And I think our view on that is that simply failure to stop removal actions once limits are reached or financial resources are unavailable would not in and of itself be viewed as a failure to cooperate. So it is likely that their limits would apply in a terrorism act and then we would need to look closely at the merits of the case to determine whether or not they could successfully claim a third party defense.

Mr. BAIRD. I appreciate that. May I ask one final question?

Overall, we talk a lot in Congress about emergency supplementals. We try to deal with how we can anticipate various

emergencies. Here is a program that has set out to do that, where we actually tried to set up a fund in anticipation rather than drawing on the Treasury yet again. Overall, do you think this program has worked fairly well, and might it be a model for other opportunities to prepare for emergencies?

Ms. LANE. I do. I think it has worked very well. I think one key to making it work is having a sustained revenue source. And I think the tax provides that. And I would hope that in 2014 that there would be consideration to continuing that sustained revenue source. I believe that is the only way that it would work. And I think it could serve as a model in other areas.

Admiral GILMOUR. Sir, if I could add on. The tremendous benefit of having the Fund available, having been in this business before and after, is in case that Chairman LoBiondo just brought up with the spill, the last couple of days, the mystery spill in Delaware Bay, and that we can act immediately to clean, not worrying about the costs and then going after the responsible party, which we have done successfully in a number of cases. But it just gives us the ability to do what needs to be done.

Mr. BAIRD. Mr. Kennedy, any comments on that?

Mr. KENNEDY. I would just echo what has already been said. As a user of the Fund, I don't know of anything out there like it. It does allow us to respond immediately. It does ensure that we are there and doing the right thing, regardless of whether other funds are available. So as a model, I think it has been very successful.

Mr. BAIRD. I very much appreciate the expertise and the comments of the panelists. Thank you very much.

Mr. LOBIONDO. Thank you. Mr. Diaz-Balart?

Mr. DIAZ-BALART. No questions at this time, Mr. Chairman.

Mr. LOBIONDO. Back on Katrina for a minute, how long will the Stafford funds be available?

Ms. LANE. I believe those funds will be available through the remainder of this fiscal year, the $178 million. And those are just Coast Guard funds. There are other removal activities underway that EPA is carrying out. And I don't have any information on the extent of their resources and how long they expect to continue to rely on the Stafford Act.

Mr. LOBIONDO. Mr. Kennedy, what if any long term environmental impact from the Athos I spill is now documented or are you concerned about?

Mr. KENNEDY. We are continuing to do the environmental assessment with the other trustees. I am not aware, and I don't think we have final results that will lead us to be able to say with any surety at this moment what the long term effects will be. There certainly were effects as the result of the spill. We are looking at potential ways to do restoration based on some of the impact to the wildlife.

In particular, along the coast, some of the fishing issues and certainly of course, we had a power plant that got shut down. Those are not long term impacts necessarily. So I think we are still working and we don't have answers to the long term impact. But I think as we often see, there is a significant recovery from those injuries already occurring.

Mr. LOBIONDO. Originally when the Athos I spill took place, I think if I am remembering correctly, because of the nature of the crude, it was felt that an awful lot of it had sunk to the bottom. Do we have a feeling for, if anything is left down there or where we stand on that, Admiral? Or Mr. Kennedy, do you?

Mr. KENNEDY. I think I can field that, in that we were involved in trying to track that submerged oil. And we have done a lot of looking since, and we are not aware of any of that in any significant amount that is left. And we did monitor, we went into the next year and did a lot of surveys after the fact, thinking possibly it would come up in the bays. We haven't found any evidence. We think a majority of it is gone, yes.

Mr. LOBIONDO. Also for you, Mr. Kennedy, Title VII of the Oil Pollution Act authorizes an extensive oil spill pollution research program to be directed by the Interagency Coordinating Committee on Oil Pollution Research. It seems that very little has been done. No interest? Why have we not done more here?

Mr. KENNEDY. Title VII laid out about five major areas that we should address, including the Interagency Committee. Developing a plan, if you will, and then an annual report, a couple of other items in there. There was a lot of interest initially, tremendous draw of experts from all over the Country sat down to actually do the plan. And I think the Coast Guard chaired that, those sections as we developed the plan.

But once the plan was more in place, and it was extremely comprehensive, there have been no funds. So although individually and collectively, collaboratively, all of the different agencies have done research, we have been doing research for a long time with the Coast Guard, and sometimes with industry and others, it has been out of our own budgets. There is no setaside funds to actually move that ball forward, if you will.

And so it is kind of hard when you have a plan and no funds to move it forward in any kind of comprehensive way.

Mr. LOBIONDO. I am not sure, I think, Admiral, this may be for you. There was a recent article or news report about a violation of the act to prevent pollution from ships. It was a ship that had apparently developed an elaborate bypass system that it was clearly their intention to dump and I think several individuals have been convicted of willfully and knowingly violating this ocean pollution law.

Can you give us any comments about how we can improve our awareness of these kinds of activities? I mean, this seemed like it was a big company that, this wasn't just somebody taking a bucket of something and dumping it overboard. They had a plan to do this. I mean, do we have any way of checking if anybody else has got some of these type of systems that we ought to be trying to uncover?

Admiral GILMOUR. Yes, sir. We, working with the Department of Justice over the last seven or eight years, have taken a very aggressive stance on looking for bypassing of oily water separators. In fact, I brought along a copy of a Coast Guard Proceedings magazine that I would be glad to leave with you from last year that talks about some of the cases we have done. And the most recent one from here is about two years old.

But I think the best thing that can happen is that these cases go forward and these people are held to justice and fines are levied. So I think we have been very successful at that in a number of cases, and the Department of Justice, with the Coast Guard, have an aggressive program to find when that happens in the United States. In fact, many folks, including the European Union, are looking at our program or a similar program for the European Union.

Mr. LOBIONDO. Are the recent convictions the result of improved intelligence gathering, or did we just get lucky?

Admiral GILMOUR. It is a combination of our inspections, our surveillance. Many of the cases were found from overflights. And the third area that we get is a lot of crew complaints. We will get a crewman that will come to us and say, this is happening. So it is a combination.

Mr. LOBIONDO. Is there like a hot line or how do they know to come to you?

Admiral GILMOUR. Many different ways. They can either call the local captain of the port or certainly we have a 1–800 number for pollution response. The majority of the time, though, is when our inspectors go on and they confide in us, crew members confide in us.

But in many cases we find evidence of the problem.

Mr. LOBIONDO. OK. I want to thank the panel very much. We look forward to the reports that are coming out. Good luck on the challenges that you have in the future. And I am sure we are going to be in touch.

The Committee stands adjourned.

[Whereupon, at 11:11 a.m., the subcommittee was adjourned.]

U. S. Department of Homeland Security

United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
FAX: (202) 366-7124

DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

STATEMENT OF

REAR ADMIRAL THOMAS GILMOUR
ASSISTANT COMMANDANT FOR PREVENTION

AND

JAN LANE
DIRECTOR, NATIONAL POLLUTION FUNDS CENTER

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

U. S. HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Mr. Chairman, Representative Filner, and distinguished Members of the Committee: Good afternoon. I am RADM Thomas H. Gilmour, Assistant Commandant for Prevention, and with me today is Ms. Jan Lane, Director of the National Pollution Funds Center. We are pleased to appear before you today to discuss oil pollution prevention and the Oil Spill Liability Trust Fund.

Congress enacted the Oil Pollution Act of 1990 (OPA) in the wake of the T/S EXXON VALDEZ oil spill in Prince William Sound, Alaska and a rash of other major spills. OPA's scope was ambitious, including extensive provisions to prevent the circumstances under which spills occur, to enhance federal authority and resources to respond to spills and to compensate those who incur removal costs or damages when spills do inevitably occur to our nation's navigable waters, adjoining shorelines, and exclusive economic zone.

OPA set new requirements for vessel construction, crew licensing and manning, mandated contingency planning, enhanced federal response capability, broadened enforcement authority, increased penalties, created new research and development programs, and increased the liability of those responsible for the vessels and facilities that spill oil. OPA added entirely new compensation provisions for a wide array of costs and damages caused by oil spills, and significantly strengthened financial responsibility requirements to ensure that persons liable for large vessel and offshore facility spills have the ability to compensate claimants up to their liability limit.

The Oil Spill Liability Trust Fund ("Fund") has been referred to as the cornerstone of the OPA regime. While the various federal agencies are the engine for federal administration and enforcement of OPA, the Fund has been the fuel. The Fund provides the resources for federal incident specific response. The Fund is available to compensate individuals, businesses, natural resource trustees and state and local governments for their costs and damages resulting from a spill when responsible parties do not pay. The Fund is also used by Congress as a source for direct appropriations to the various federal agencies responsible for administration and enforcement of OPA. Those appropriations provide funds to support programs to prevent spills, to coordinate preparedness for spill response at the national, state and local levels, enhance spill research and development initiatives, to compensate injured parties and to make polluters pay when spills occur.

The enormous success of the OPA regime can be measured in large part by the overall reduction in the quantity of oil spilled since 1990. The partnership between OPA and the Fund has been highly effective in achieving this success and in comprehensively addressing oil pollution risks and damages.

Despite the many success stories over the 16 years since OPA was enacted, risks to the long-term viability of the Fund persist. In the May 12, 2005, Implementation of the Oil Pollution Act of 1990 Report to Congress, the Coast Guard addressed risks to the Fund and concerns that with the expiration of the financing rate, or tax, on oil in 1994, the Fund was not self sustaining. As a result the Coast Guard expected the Fund to be exhausted by fiscal year 2009. By late summer of 2005, Congress provided for a resumption of the financing rate pursuant to section 1361 of the Energy Policy Act of 2005. The rate is effective this month and continues in effect through the end of 2014, with revenue to be deposited to the Fund. While the resumption of the financing rate is an important step in ensuring continued viability of the Fund there are new challenges on the horizon.

One key issue that continues to come up has been limits on liability. The inadequacy of vessel liability limits has begun to be felt only in recent years with the increase in the number and cost of responsible party claims for costs and damages in excess of liability limits presented for payment from the Fund. We recognize significant limit adjustments are needed, at least in respect to vessels. For vessels, liability limits are based on vessel type (tank and non-tank) and gross tonnage. OPA also provides for adjustment to those limits by regulation to reflect increases in the Consumer Price Index (CPI). Limits have not been adjusted for CPI increases since OPA was enacted. While the Coast Guard has taken steps toward making CPI based adjustments for vessels through regulation, we believe the magnitude of the adjustment needed is greater than what CPI based adjustments will provide. The Department has supported those provisions of H.R. 889 and H.R. 1412 that would ensure liability limits are adequate. We therefore welcomed the recent results of the conference committee on H.R. 889, the "Coast Guard and Maritime Transportation Act of 2006." As reported by the committee, section 603 of H.R. 889 increases vessel liability limits by 50% or more to reflect CPI increases since OPA was enacted.

OPA Limits on Liability

Under section 1004 of OPA (33 U.S.C. 2704), a responsible party's liability for removal costs and damages is limited, unless certain exceptions apply. The liability limit for a vessel spill is based on a formula that considers the vessel tonnage and whether the vessel (ship or barge) is a tank vessel or non-tank vessel. Liability limits for onshore facilities, offshore facilities, and deepwater ports are set at designated amounts. Fundamental to OPA is the "polluter pays" principle. Thus the issue is whether the current liability limits are sufficient to support the "polluter pays" principle.

The catastrophic impacts of Hurricanes Katrina and Rita included substantial damage to oil production infrastructure and the estimated discharge of more than 9 million gallons of oil. Fortunately Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) disaster relief funds were available to finance federal response and assistance in connection with environmental cleanup. The Fund has not been tapped for federal cleanup of oil spills caused by these hurricanes. However, we are concerned about the potential for major claims to be filed for natural resource damages and for oil removal costs and damages incurred by responsible parties, and other third parties. While responsible parties are generally liable under the Oil Pollution Act for such costs, they too may present a claim to the Fund for their costs and damages that exceed their applicable OPA liability limit or for all their costs and damages if they can establish one of the OPA complete defenses to liability. One OPA defense that is likely to be seriously tested as a result of these hurricanes is the "Act of God" defense.

Major oil spills will always present a risk to the Fund, one that cannot be predicted with any specificity. The response and compensation challenges presented by the catastrophic spill to the Delaware River from the T/S ATHOS I in November 2004 is one relatively recent example and its effects on the Fund are still being determined. The fund managers project as much as $270 million in claims could be presented for adjudication. While a portion of those claims would be in the form of a third party damage claim, the claims of the responsible party, which are based on alleged entitlement to limit liability and alleged defenses, comprise the largest portion of the risk.

One of the principal reasons the Fund was created was to provide a source of financing for response and compensation when responsible parties do not pay. The question today is whether that risk is properly apportioned between the responsible parties and the Fund. Clearly responsible party liability limits, at least for vessels, are long overdue for an increase. That need was recognized in H.R. 1412, the "Delaware River Protection Act," which Chairman LoBiondo introduced and which was subsequently incorporated in large part as Title VI of H.R. 889, the "Coast Guard and Maritime Transportation Act of 2006." We look forward to working closely with Congress as we report further on the adequacy of liability limits as a means to ensure the polluter pays its fair share and that the OPA and Fund regime continues to provide effective and efficient oil spill prevention, response and compensation services to the public.

The Fund in Brief

Section 9509 of the Revenue Code (26 U.S.C. 9509) authorizes the establishment of the Fund.

Fund Revenues

The Fund has had two principal sources of revenue. The largest source of revenue had been a 5¢ per barrel tax, imposed on crude oil received at U.S. refineries and on certain petroleum products entered into the United States pursuant to 26 U.S.C. 4611. That tax expired as scheduled on December 31, 1994, pursuant to 26 U.S.C. 4611(f)(1). The Energy Policy Act of 2005, in section 1361, recently reinstated this revenue source starting in April 2006 and continuing in effect through December 2014.

The other principal revenue source was the transfer of balances from the various legacy oil pollution funds replaced by the Fund, just as OPA consolidated and replaced the various related oil pollution regimes served by those funds:

- The Federal Water Pollution Control Act (FWPCA) 311k revolving fund,
- The Deepwater Port Liability Fund,
- The Trans-Alaska Pipeline Liability Fund, and
- The Offshore Oil Pollution Compensation Fund.

Total legacy fund transfers into the Fund since 1990 total approximately $551 million. Over $216 million in transfers from the Oil Pollution Fund, Offshore Oil Pollution Compensation Fund, and Deepwater Port Liability Fund were deposited into the Fund in 1990. The largest source has been the Trans-Alaska Pipeline Liability Fund (TAPS), which transferred $335 million over the period 1995 to 2000. No additional amounts remain to be transferred to the Fund.

Another significant source of revenue is the interest on the Fund principal from U.S. Treasury investments. Interest income has declined significantly in recent years, as a result of historically low interest rates, falling to $13.5 million (or 45% of revenue) in FY 2004. However, with interest rates rising and fund balances increasing due to the reinstatement of the barrel tax, interest revenue should rise.

Another source of revenue is cost recoveries from responsible parties. Those responsible for oil incidents are liable for costs and damages resulting from the spill. The NPFC has a collection program to recover federal removal costs and removal cost and damage claims paid from the Fund. Cost recoveries usually fluctuate between $3 million and $12 million per year.

Penalties paid pursuant to section 311 of the FWPCA, section 309(c) of the FWPCA for violations of section 311, the Deepwater Port Act of 1974, and section 207 of the Trans-Alaska Pipeline Authorization Act are required to be deposited into the Fund. Penalty deposits are generally between $4 million and $7 million per year, with two very large penalties deposited to the Fund in FY 2000 and FY 2003.

Fund expenses

Section 1012 of OPA (33 U.S.C. 2712) further delineated Fund uses, including most importantly Fund availability to the President for payment of:

- Federal removal costs;
- Claims for uncompensated removal costs and damages, including natural resource damages; and
- Administrative, operational, and personnel costs and expenses incidental to implementation, administration, and enforcement of OPA

Federal removal costs – emergency fund

To ensure rapid, effective response to oil spills, section 6002 of OPA provides that the President has the authority to make available from the Fund, without further appropriation, up to $50 million each year to respond and remove oil spills and to initiate Natural Resource Damage Assessments. These amounts remain available until expended. To the extent that $50 million is inadequate, authority was granted under Section 323 of the Maritime Transportation Security Act (MTSA) of 2002 to advance up to $100 million from the OSLTF to fund removal activities. This provision has not been utilized to date, however, had the responsible party in the T/V ATHOS I spill not accepted responsibility, it may well have been used to ensure effective response, where total response costs exceeded $175 million. The NPFC manages use of these removal cost funds, providing ready financing when Coast Guard or EPA Federal Coordinators respond to a spill.

Claims

OPA provides that any person or government may present a claim for compensation for removal costs or damages resulting from an oil pollution incident covered by the Act. Claims can be presented for:

- Uncompensated Removal Costs,
- Natural Resource Damages,
- Damage to Real or Personal Property,
- Loss of Profits and Earning Capacity,
- Loss of Subsistence Use of Natural Resources,
- Loss of Government Revenues, and
- Increased Cost of Public Services.

Responsible parties may also file claims for removal costs and damages they pay or incur in certain situations. They may be compensated from the Fund if they can establish one of the defenses provided under OPA (spill caused solely by "Act of God," "Act of war," or "sole fault of a third party"), or to the extent their costs and damages exceed the applicable OPA liability limit. To date, the largest claims paid from the Fund have been paid to responsible parties.

The Fund is available to pay claims without further appropriation and the NPFC is delegated authority to process, adjudicate and pay such claims. The NPFC claim procedures strike a reasonable balance between the objectives of compensating deserving claimants and acting as a fiduciary for the Fund. Before claimants can be compensated, they must establish that the removal costs or damages claimed resulted from a discharge of oil or a substantial threat of a discharge of oil from a vessel or facility into the navigable waters, adjoining shorelines, or the exclusive economic zone of the United States. The removal actions for which costs are claimed must be consistent with the National Contingency Plan (NCP), and the claim must be submitted within express time periods (generally three years for damages, six years for removal costs).

Claimants must first present their claims to the responsible party or guarantor except in certain circumstances. State governments may present claims for uncompensated removal costs directly to the NPFC. Any claimant may present removal cost or damage claims directly to the NPFC if the source of the spill is not known. Other exceptions allow a claim to be presented directly to the Fund when the Fund advertises for such claims or when the claimant is a responsible party presenting a claim based on an OPA defense or liability limit.

The most common claims paid by NPFC are state claims for removal costs.

OPA Implementation - Agency Appropriations

Various federal agencies receive annual appropriations from the Fund for administrative, operational, personnel, enforcement, and research and development costs as authorized in OPA and as delegated by Executive Order 12777. Agency responsibilities for carrying out OPA requirements include regulatory development and enforcement, program implementation and research and development programs for prevention, preparedness, response, compensation and liability as required by OPA. Specific initiatives include the establishment of double and single hull vessel requirements; implementation of vessel traffic systems; tighter controls on licensing and manning; requirements for vessel and facility (onshore, offshore and pipelines) operations and response planning; ongoing spill response readiness including the National Response Teams, Federal Coordinators, and the National Response Center; improved cooperative relationships among responding agencies and oil industry stakeholders, including periodic drills and implementation of changes to the National Contingency Plan, Area Contingency Plans and National Response System; stricter liability and compensation requirements including increased financial responsibility, compensation to claimants, and cost recovery from responsible parties; and overall management of the OSLTF.

Appropriations from the Fund are the responsibility of the various agencies. The Coast Guard has no role or oversight responsibility with respect to the appropriations for other agencies. Year to year, the total appropriations to agencies from the Fund have been the largest expenditure, exceeding combined amounts expended for federal response and payment of claims.

Fund Forecast

The current Fund balance is approximately $662 million. The passage of the Energy Policy Act of 2005 resumed the per barrel oil tax beginning in April 2006. The Fund is projected to remain viable barring any significant impacts from the hurricanes or other major oil pollution incidents. To date there have been no Hurricane Katrina or Rita related expenses against the OSLTF.

Based on past spending trends, known Fund commitments, and the resumption of revenue, current forecasts (**excluding** Hurricane losses) indicate the OSLTF balance is expected to reverse it's downward trend in FY 2008 and slowly rebuild itself, achieving a level of approximately $830 million by the time the per barrel tax sunsets in 2014.

As a result of Hurricanes Katrina and Rita there were 6 major, 5 medium, and over 5000 minor oil and hazmat responses. Additional minor spills continue to be identified and addressed. It is estimated that over 9 million gallons of oil was released, and this total does not include oil released from the 5000 minor spills.

All Katrina and Rita oil pollution response activities thus far have been funded by either Stafford Act funding or by a responsible party. The Coast Guard has received $178 million in Stafford Act funds for coastal zone hazardous materials response. These funds are expected to be sufficient through FY2006.

A bigger threat to the OSLTF is from claims. On April 13, 2006, NPFC received its first claim resulting from Hurricane Katrina, for real and personal property damage in the amount of $478,000. It is also possible that Responsible Parties who have spent their own money in response to the spills may try to claim either a limit of liability or Act of God defense and seek reimbursement from the OSLTF. These claims would have to be evaluated on a case by case basis. If they meet the requirements of OPA 90 they would constitute legitimate claims against the fund. There is no way to know with any degree of certainty how much has been spent by the major refineries and other facility owners in their response to these Hurricane related spills.

NOAA, as the federal Administrative Trustee for the Natural Resource Damage (NRD) Trustees, has indicated that there will be a potential for assessment and restoration claims depending on responsible party cooperation and the ultimate determination in respect to any Act of God defense.

The size and number of potential damages and NRD claims that could impact the fund is currently impossible to estimate with any degree of certainty. Based on press reports of what the major facilities are spending on clean up, and the sheer size of this Katrina disaster, as well as historical cost data from other large spills, the total claims submitted are still being evaluated by the natural resource trustee agencies and could be significant. While the risk to the Fund from the hurricanes cannot be gauged with any certainty, the NPFC is carefully monitoring the situation to ensure the long-term viability of the fund is not comprimsed.

T/S ATHOS I Spill in the Delaware River

The Fund played a pivotal role in the response to the T/S ATHOS I spill and continues to do so in respect to compensation for claimants.

Response

NPFC provided immediate resources from the Fund to enable the Federal On-Scene Coordinator to manage and oversee the response, including effective coordination with the affected state and local authorities. The Fund was also available to finance a major increase in federal activities when needed. That need arose in March 2005 when the responsible party, who had reportedly expended some $124 million for response, stopped responding (the vessel limit for the spill was $45.4 million). The Fund was immediately available to the Federal Coordinator to ensure a seamless transition of the response activities to direct federal control. Those response activities continued until early June 2005 when ongoing active cleanup of the Delaware River shoreline was completed. Maintenance and monitoring activities continued under the direction of Sector Delaware Bay until November 2005. In January 2006, Sector Delaware Bay signed off that clean up for all areas was complete.

The NPFC has made $51.5 million available from the Fund to the Federal On-Scene Coordinator for this effort. This entire amount has been obligated or expended.

The Coast Guard completed an investigation into the cause(s) of the marine casualty and the oil discharge. This report was issued in January of this year.

Claims

In March 2005, the responsible party announced it would not pay claims resulting from the ATHOS I spill. The NPFC accordingly advertised to the public that claims may be presented to the NPFC for payment from the Fund. As of April 19, 2006, NPFC has received 116 claims in connection with the incident totaling approximately $187 million, including claims received from the Salem Nuclear Power Plant totaling in excess of $57 million for loss of profits, and a Responsible Party claim for $124 million. We anticipate additional claims, estimated at more than $20 million, from refineries, port facilities, and port and harbor services impacted by the spill. Natural resource damage claims are roughly estimated at $10 million. While most claims have yet to be adjudicated, including adjudication of the responsible party's defense to liability, the total estimate to date of all known fund liabilities is approximately $268 million.

Conclusion

In conclusion, thank you again for the opportunity to testify before you today about the Fund, its continued viability and the critical functions it serves to help prevent and respond to oil spills to our nation's waters and compensate those who are injured by such spills. We will be happy to answer any questions you may have.

WRITTEN TESTIMONY OF
DAVID KENNEDY
DIRECTOR, OFFICE OF RESPONSE AND RESTORATION
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

OVERSIGHT HEARING ON
THE OIL POLLUTION ACT OF 1990

BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Thank you, Mr. Chairman and members of the Committee, for the opportunity to testify on the role of the National Oceanic and Atmospheric Administration (NOAA) in response, restoration, and research under the Oil Pollution Act of 1990 (33 U.S.C. 2701-2761; OPA). I am David Kennedy, Director of the Office of Response and Restoration within the National Oceanic and Atmospheric Administration.

OVERVIEW

The *Exxon Valdez* oil spill taught us a valuable lesson. Our Nation must be prepared to respond to major oil spills. Some time has passed since a domestic spill rivaled the *Exxon Valdez* in size. However, the near simultaneous *Athos I* (Delaware River) and *Selendang Ayu* (Unalaska Island) vessel spills in late 2004 and the magnitude of oil spilled after hurricanes Katrina and Rita last fall, serve as reminders that significant oil spills still happen. We must therefore continue to be prepared for when they do occur.

OPA created a comprehensive prevention, response, liability, and compensation regime to respond to these types of oil pollution incidents from both vessels and on-shore facilities. Under OPA, NOAA acts on behalf of the public as a natural resource trustee for coastal and marine resources regarding the discharge or threatened discharge of oil into the environment. These responsibilities include:

- Working through the National Response Team and the Regional Response Teams to ensure the most appropriate response and cleanup actions are taken to protect resources from further injury;
- Working with our co-trustees to assess and restore injured natural resources and the services they provide;
- Carrying out oil spill research and development under Title VII of OPA; and
- Participating on the Interagency Coordinating Committee on Oil Pollution Research, which coordinates research and development efforts among industry, universities, and others.

NOAA'S RESPONSE ROLE

When a spill occurs, a multi-agency interdisciplinary scientific response team provides and coordinates advice on response, cleanup, and natural resource issues. NOAA has Scientific Support Coordinators (SSCs) in U.S. Coast Guard (USCG) offices, to assist the USCG in its role as Federal On-Scene Coordinators when a spill occurs in the coastal zone. The SSC supports the Incident Command System, which is the organization that coordinates incident response among the several response agencies. SSCs lead a team of scientists who provide support in areas including pollutant fate and transport, resource identification and protection strategies, shoreline cleanup assessment, and natural resource trustee coordination. NOAA also provides weather forecasts and emergency survey and charting capabilities to assist response efforts.

NOAA's response to each incident is dependent upon the spill's characteristics. Scientific coordination is critical. Using experience, expertise, and state-of-the-art technology, NOAA forecasts the movement and behavior of spilled oil, evaluates the risk to resources, and recommends protection priorities and appropriate cleanup actions.

Effective spill response depends on effective planning and preparation. NOAA promotes preparedness by working closely with Regional Response Teams to develop policies on dispersant use, best cleanup practices, communications, and response organization. In addition, NOAA enhances the state of readiness by developing better response tools including trajectory models, fate models, and integration of improved weather data and data from ocean observing systems into spill trajectory forecasts.

NOAA'S DAMAGE ASSESSMENT AND RESTORATION ROLE

Regulations promulgated by NOAA under OPA provide a framework for conducting natural resource damage assessments. NOAA scientists and economists work with other trustees and responsible parties to ensure that coastal and marine resources injured by oil spills are restored.

NOAA experts follow the practical guidance provided by the regulations for conducting natural resource damage assessments. The regulations describe these steps:

1) Preassessment – Trustees evaluate data on impacts to natural resources to determine whether natural resources and their associated services have been injured;

2) Restoration Planning – Trustees quantify injuries to natural resources and their services and use that information to determine the type and scale of restoration activities that fully compensate the public for the injures; and

3) Restoration Implementation – Trustees, often working with those responsible for the release, implement restoration actions.

Cooperative Assessments
NOAA has long been interested in promoting cost effective and efficient natural resource damage assessments. One approach is a cooperative assessment process where trustees work with responsible parties to design and implement appropriate assessment efforts, thereby avoiding duplicative, often competing studies, and reducing costs and the risk of litigation. Cooperative assessments expedite restoration, encourage innovative approaches, strengthen partnerships, and provide meaningful public involvement. Cooperative assessments also offer industry the opportunity to play a greater role and have some control over the timing of restoration actions, without undermining the natural resource trustee responsibilities.

One example of a cooperative assessment occurred at Chalk Point, Maryland. In April 2000, a Potomac Electric Power Company (PEPCO) oil pipeline ruptured beneath a marsh on a Maryland tributary. Roughly 140,000 gallons of heavy fuel oil flowed over the marsh and down the Patuxent River, oiling about 40 miles of environmentally sensitive creeks and shoreline. Working together, NOAA, the U.S. Fish and Wildlife Service (USFWS), the State of Maryland, and PEPCO assessed the injured natural resources. In this case, the cooperative assessment approach resolved PEPCO's liability, yielded restoration projects that met both natural resource and community concerns, and fostered greater trust among the agencies, PEPCO, and the community.

Based on NOAA's successful experiences in cooperative assessments, NOAA is promoting this approach through national and regional dialogues. Over the last five years, NOAA has carried out a number of cooperative damage assessments, resulting in restoration that has contributed to the program total of over 4000 acres of coastal and marine habitat protected or restored under NOAA's damage assessment and restoration activities.

NOAA'S RESEARCH ROLE

OPA also addresses the need for research. Even though the number of large spills from vessels has decreased over the last decade, the total number of vessel spills has not changed significantly. The ability to mitigate the effects of oil spills on these coastal and marine resources is dependent upon the availability of relevant, strong scientific data needed to make decisions regarding response and restoration options.

Response
NOAA has been a leader for many years in on-the-ground research in spill response. We work with other federal agencies, states, industry and academia to develop methods for improving efficiency and minimizing environmental impact, lessening the time between cleanup and environmental recovery. As part of this coordination, we participate on the Interagency Coordinating Committee on Oil Pollution Research, which was established by OPA to coordinate efforts to address oil pollution research and technology development. Another example of coordination is NOAA's partnership with the Coastal Response Research Center at the University of New Hampshire, created in 2004. This

partnership combines the strength of two entities – NOAA's spill response and spill responders and the University of New Hampshire's research abilities and academic affiliations. Two current subjects being researched are:

- Transport and fate of submerged oil; and
- Transport of oil in ice-infested waters

Assessment and Restoration

NOAA also undertakes a variety of activities designed to develop and strengthen techniques and methods for natural resource damage assessment and restoration. These activities allow NOAA to improve our ability to assess the impact of oil on natural resources and increase timeliness and effectiveness of efforts to restore our trust resources. A few examples of on-going activities include:

- Evaluation of the toxicity of oil components to larval fish;
- Relative productivity of different habitat types;
- Economic value of coral habitats; and
- Innovations in using new remote sensing technologies to produce high resolution maps showing oil exposure and impacts to shoreline habitats and sensitive natural resources.

EXAMPLES OF RESPONSE, RESTORATION, AND RESEARCH AT WORK

M/T Athos I

On November 26, 2004, the *M/T Athos I*, a 750-foot tanker, hit several submerged objects in the Delaware River near Philadelphia, PA, spilling approximately 265,000 gallons of heavy oil. In addition to surface and shoreline oiling, a portion of the oil migrated below the water surface, complicating response and assessment efforts.

NOAA responded to this incident in several ways as mandated under OPA. The SSC led the Unified Command's Environmental Unit, which coordinated the environmental aspects of the spill. Through the SSC, NOAA provided its traditional support: oil trajectory analysis, weather forecasts, identification of sensitive resources at risk, coordination of shoreline impact assessment, recommendations on environmentally appropriate cleanup techniques, seafood safety consultation, risk communication and public outreach. The NOAA Navigation Response Team conducted emergency NOAA navigational surveys to locate the objects responsible for the incident and to identify potential sunken oil collection points. NOAA also led state and federal trustees in efforts to initiate natural resource damage assessment.

The USCG suspended vessel traffic through this major U.S. commercial and industrial hub, and the Salem Nuclear Power Plant shut down two reactors as a precaution to prevent possible oil-fouled water intakes. The detection of submerged oil was a critical economic issue in this case, essential to the reopening of the port and the reactivation of the power plant. To address this issue, NOAA led a special task force for developing detection and mitigation methods. NOAA's efforts aided in the rapid return of normal vessel traffic and helped a significant regional power supplier to come back on line.

NOAA conducted shoreline and aerial surveys and helped prepare a comprehensive map of shoreline contamination. NOAA also worked with the USCG and State of Alaska to monitor cleanup operations and determine the potential trade-offs in using one cleanup technique versus another.

The Port of Dutch Harbor on Unalaska Island is the largest fishing port in the United States and the largest Alaskan native subsistence community in the Aleutians. NOAA worked with the local community to address subsistence and seafood safety concerns. Any real or perceived contamination of fisheries products with oil could disrupt both the local community and worldwide markets. With a combination of trajectory analysis and experience from other large spills, NOAA was able to provide valuable assistance to the Seafood Safety Task Force.

NOAA continues to work with the other natural resource trustees (USFWS and the State of Alaska) and the responsible party to conduct a natural resource damage assessment. The parties are assessing injury to natural resources and beginning to evaluate restoration alternatives. Public meetings already have been held to solicit local input on potential restoration alternatives, and NOAA is committed to providing the public with up to date information and meaningful opportunities for review and comment during the damage assessment and restoration planning process.

Hurricane Aftermath

The magnitude of the impacts to the environment in the aftermath of Hurricanes Katrina and Rita is unprecedented. Over 9 million gallons of oil were released and thousands of vessels, mostly in ports and inland waterways, were sunk or stranded. The number of incidents, magnitude of the spills, and devastated regional infrastructure made for an extraordinary emergency.

NOAA was one of the first federal agencies to respond on-scene, staffing multiple command posts, providing the USCG, the Environmental Protection Agency, and states with critical scientific information to support clean up and recovery. This included the assessment, prioritization, and mitigation of over 1000 hazardous materials releases. NOAA provided essential information, graphically documenting pollution cases, waterway closures, New Orleans flood levels, and locations of sunken and stranded vessels.

NOAA staff collected data at the larger spill sites for damage assessment and restoration purposes. This work was accomplished by dedicated NOAA scientists with unique skills and experience, working in areas with little or no infrastructure. Assessment work continues at the largest oil spills in order to address injuries to natural resources.

The actions of NOAA resulted in a more effective and efficient clean up, thereby mitigating environmental impacts. NOAA identified hundreds of pollution incidents. Through careful monitoring and coordination, clean up was conducted effectively, enhancing the potential for environmental recovery and restoration.

CONCLUSION

Thank you for the opportunity to talk about NOAA's important role under OPA. NOAA's expertise is critical to prevent further harm, restore adverse effects on natural resources, aid planning and response decision-making, and document damages associated with oil spills. I look forward to any questions that you may have.

○