

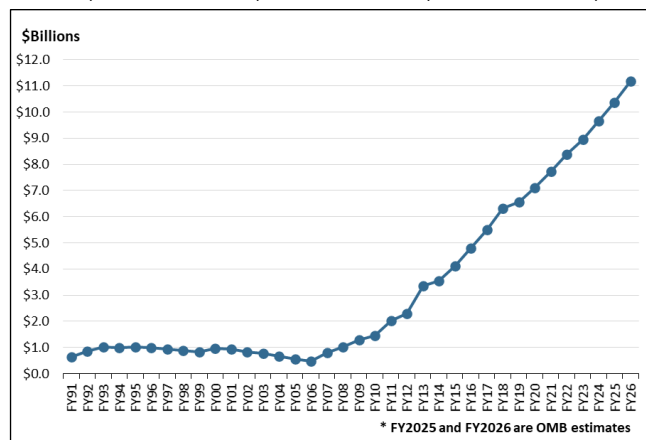
June 30, 2025

The Oil Spill Liability Trust Fund Tax: Background and Selected Issues

The Oil Spill Liability Trust Fund (OSLTF) provides an immediate source of funds for federal responses to oil spills and compensation for certain damages. Historically, the OSLTF has been financed primarily by a per-barrel excise tax on domestic crude oil and imported petroleum products. The tax is scheduled to expire December 31, 2025.

As illustrated in **Figure 1**, the fund's annual balance increased from a low of \$485 million in FY2006 to \$9.6 billion at the end of FY2024. This increase came largely through the accrual of receipts from the excise tax, which had expired in 1994 and was reinstated in 2006. Considering the size of the OSLTF balance, some may argue that it is unnecessary to extend the excise tax beyond 2025. Others may argue that a high-volume oil spill could threaten the viability of the fund, even at its current levels, or that the funds from the excise tax could be used for other priorities. This In Focus provides background on the OSLTF and the tax and discusses issues regarding its reinstatement, as well as a specific concern about its scope.

Figure 1. OSLTF Year-End Unappropriated Balances
Actual (FY1991-FY2024) and Estimated (FY2025-FY2026)



Source: Prepared by CRS; data from Office of Management and Budget, annual *Budget of the United States Government*, Appendices. The above values are not adjusted for inflation.

OSLTF Background and Overview

The 1989 *Exxon Valdez* oil tanker spill, which released approximately 11 million gallons of oil into Prince William Sound in Alaska, raised questions regarding oil spill policy, including oil spill response, liability, and compensation. The Oil Pollution Act of 1990 (OPA; P.L. 101-380) established a new federal oil spill liability framework, replaced existing federal liability frameworks, and amended the Clean Water Act (CWA) oil spill response authorities.

In addition, OPA transferred monies into the OSLTF from liability funds in effect at that time.

Under OPA, parties responsible for an oil spill may be liable for cleanup costs, natural resource damages, and specific economic damages, including personal property damage and lost profits or earning capacity. OPA provides (1) limited defenses from liability—act of God, act of war, and act or omission of certain third parties—and (2) conditional liability limits (i.e., caps) for cleanup costs and other eligible damages.

The Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509) established the OSLTF. This act also established an excise tax on domestic crude oil, imported crude oil, and petroleum products (e.g., gasoline) to support the fund. Subsequent laws authorized the OSLTF taxing authority, appropriations from the fund, and eligible uses for the fund. The tax first took effect at 5 cents per barrel on January 1, 1990. The tax expired on December 31, 1994. The Energy Policy Act of 2005 (P.L. 109-58) reinstated the tax, which went into effect in 2006. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) increased the tax rate to 8 cents per barrel through December 31, 2016, and to 9 cents per barrel starting in 2017. The tax expired on December 31, 2018. The Further Consolidated Appropriations Act, 2020 (P.L. 116-94) reinstated the tax (at 9 cents), which went into effect January 1, 2020. The Consolidated Appropriations Act, 2021 (P.L. 116-260) extended the tax through December 31, 2025.

The OSLTF provides both permanent (i.e., mandatory) and discretionary appropriations. OPA Section 6002 provides the authority for the permanent appropriations, which are limited to a maximum of \$150 million annually. Permanent appropriations from the OSLTF provide an immediate funding source to pay for federal response actions, eligible claims submitted by affected parties, and natural resource damages. OPA Section 1012 authorizes discretionary appropriations from the OSLTF for a range of oil-spill-related activities. These appropriations are subject to the annual appropriations process.

OPA authorizes the federal government to recover costs, including response costs and damage claims, made from the OSLTF through the enforcement of liability against responsible parties. Recovered funds are to be deposited back into the trust fund. The U.S. Coast Guard administers the OSLTF through its National Pollution Funds Center.

The responsible parties may also perform and pay for response actions with their own monies, subject to direction from the federal government's on-scene coordinator. If a

responsible party's payments were to exceed its OPA liability limit, the party may seek reimbursement from the OSLTF for the difference.

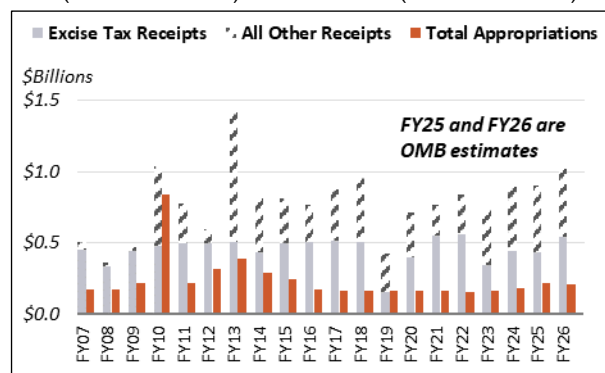
Since its inception, a statutory provision has limited OSLTF expenditures that could be used for any individual incident. Congress set this limit so that any one individual spill would not deplete the fund. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263) increased the per-incident cap to \$1.5 billion and natural resource damage awards to \$750 million. The OPA originally set the per-incident cap at \$1 billion. Within this original \$1 billion limit, natural resource damage awards could not exceed \$500 million.

OSLTF Balance, Receipts, and Spending

The balance of the OSLTF is subject to a range of factors. In particular, the OSLTF fund balance would depend on multiple oil spill-related factors, including (1) the number, magnitude, and impacts of future spills and (2) the financial viability of the responsible parties and whether they would retain their OPA liability limits. A future high-volume spill could have costs with the potential to exceed the \$1.5 billion per-incident cap. As one point of reference, the 2010 *Deepwater Horizon* incident released more than 100 million gallons of oil. Payments from British Petroleum (BP) and other responsible parties associated with the 2010 incident tallied approximately \$67 billion (in 2018 dollars). These costs did not affect the per-incident cap, because BP and other parties paid them directly to cover response costs or to compensate persons affected by the spill. A comparable oil spill involving different parties could have different effects.

In addition to oil spill-related factors, the OSLTF balance is affected by the combination of its outgoing appropriations and incoming receipts, which include the excise tax receipts, fines and penalties, cost recoveries, and interest. **Figure 2** illustrates excise tax receipts, other fund receipts, and fund appropriations from FY2007 through FY2024, as well as Office of Management and Budget estimates for FY2025 and FY2026. Appropriations presented include the combined total of permanent and discretionary appropriations from the fund. The increased appropriations in FY2010 were related to the *Deepwater Horizon* incident.

Figure 2. OSLTF Fund Receipts and Appropriations
Actual (FY2007-FY2024) and estimated (FY2025-FY2026)



Source: Prepared by CRS; data from Office of Management and Budget, annual *Budget of the United States Government*, Appendices. The above values are not adjusted for inflation.

The future balance between receipts and appropriations is uncertain, primarily due to uncertainties involving the frequency and magnitude of oil spills. Some factors indicate that “other receipts” may continue at recent levels. For example, pursuant to a CWA civil penalty settlement involving the *Deepwater Horizon* spill, the fund is scheduled to receive annual receipts of \$76 million through 2031. In addition, the interest earned in recent years (e.g., \$362 million in FY2024) from the OSLTF has exceeded recent appropriations from the fund. OMB estimates that interest earnings will continue at similar levels in FY2025 and FY2026.

The options available to address funding levels in the OSLTF depend upon on the overall objective policymakers have for the fund. For example, one objective may be to have a fund that can provide full restoration and timely compensation (i.e., without going through the court system) for the impacts from a catastrophic spill, without directly burdening the general taxpayers. Another objective may be to maintain funding levels sufficient to address all but the most extreme scenarios. Catastrophic spills in U.S. waters have historically been rare. Some may argue that establishing a federal fund that can withstand a catastrophic event would impose near-term costs and would not yield sufficient benefits to justify its creation.

In the 118th Congress, some Members introduced legislation (e.g., H.R. 8554, S. 4406) that would have extended the per-barrel tax without an expiration date and increased the tax rate to 10 cents. To date, Members in the 119th Congress have not introduced similar legislation.

Scope of Tax and Response Authority

The term *oil* has different meanings in different legal or statutory contexts. In the context of OPA and oil spill response authority and funding, *oil* is defined broadly to include “oil of any kind or in any form.” By contrast, the OSLTF excise tax applies more narrowly to “crude oil” as defined in the Internal Revenue Code. In 2011, the Internal Revenue Service (IRS) concluded that oil-sands-derived crude oils are not subject to the excise tax. The different definitions of *oil* in two distinct but related contexts may create situations in which expenditures from the OSLTF are used to address discharges of oil that were not subject to the excise tax supporting the cleanup fund. Such a situation would not substantially impact the OSLTF unless the federal government were unable to recover the trust fund’s costs from a responsible party (or parties). Regardless, the different definitions may raise a number of concerns, including fairness and fund sufficiency, given that certain types of crude oil are not subject to the tax.

In the 119th Congress, some Members have introduced bills that would amend the tax code to include oil-sands-derived crude oil within the scope of the per-barrel tax (e.g., H.R. 383, H.R. 2224, and S. 1026).

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IF13049

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