Accessing the Oil Spill Liability Trust Fund

Issue and/or Goal: To obtain $25-50M in annual appropriations from the Oil Spill Liability Trust Fund's Principle Fund to augment current base funding for NOAA's Office of Response and Restoration (OR&R) and other core oil spill response and restoration and programs.

Recommended Option: There is only one option presented: amending Section 1012(a)(5) of the Oil Pollution Act of 1990 to provide NOAA with a direct appropriation from the Oil Spill Liability Trust Fund (OSLTF) Principle Fund. Obtaining the same increases from the General Treasury could also be considered.

Overview and Discussion:

NOAA is the only federal agency with oil spill preparedness, response, and restoration responsibilities under the Oil Pollution Act (OPA) that does not receive a direct appropriation from the OSLTF Principle Fund. NOAA does receive funds from the OSLTF's Emergency Fund during a spill response, but does not receive an annual appropriation from the Principle Fund to maintain adequate capacity, develop tools and models, and conduct research and development. The Deepwater Horizon spill has clearly shown the gaps in NOAA's response capacity and scientific research due to lack of funding. Accessing the OSLTF provides an appropriate revenue source to augment NOAA's OPA-related activities because it fulfills the fundamental policy behind creating the Fund, i.e., that Federal agencies implementing OPA should be supported by the fund created by the Act.

Oil Spill Liability Trust Fund Annual Appropriations from Principe Fund ($K)

Agency	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
United States Coast Guard	$46,500	$46,035	$44,550	$45,000	$45,000
Environmental Protection Agency	$15,872	$15,330	$15,734	$17,056	$17,687
Dept of Interior (MMS)	$7,006	$6,903	$6,903	$12,526	$4,553
Dept of Transportation	$14,880	14,850	6,827	$26,810	$25,074
Dept of Treasury	$51	$70	$50	$21	$26
Prince William Sound Oil Spill Recovery Institute	$863	$851	$840	$1,095	$1,051
Denali Commission	$4,252	$4,227	$4,201	$5,831	4,227
TOTAL	**$89,424**	**$88,266**	**$79,105**	**$108,339**	**$97,618**

The Administration has been clear that those posing the risk or doing the harm should pay for costs associated with oil spills. The OSTLF is funded by industry through a per-barrel tax. The revenue is generated from an 8-cent-per-barrel tax on oil through 2016 and 9-cent-per-barrel tax in 2017. The fund balance is approximately $1.5B, and has no ceiling. The U.S. Coast Guard (which administers the OSLTF) and the American Petroleum Institute (which represents the oil companies that pay into the fund) have strongly supported NOAA access to the Principle Fund. The USCG and API both understand that the scientific support provided by NOAA improves decision making during a response, reduces the overall costs of the response, and protects the Fund itself and coastal communities, economies, and ecosystems. Appropriating OSTLF funds to NOAA is a classic "ounce of prevention" strategy and a fiscally responsible approach to reducing risk.

The President can request and the Congress can appropriate to NOAA from the Fund without a change in law. NOAA General Council has concluded that OPA provides NOAA the authority to receive a direct appropriation from the OSLTF. Several members of Congress have sought to clarify and codify this authority by granting NOAA this authority. See for example S. 684, the *Oil Pollution Prevention and Response Act*, introduced by Senator Cantwell. This same language was also added to S. 1194, *USCG Reauthorization*, during Committee markup.

NOAA has requested an appropriation from the OSLTF in past year's budget submissions. This has been denied by OMB because of the budget rules regarding ceilings, caps, and "online" trust funds. Money from the OSLTF is "scored" against the budget ceiling. These fiscal mechanisms work against using Trust Fund resources for the purposes they were created. This has resulted in NOAA having an important responsibility and role to bring the best science to the table, but without the resources to fulfill its duties.

Strong support by the USCG, API, and Congress, along with a renewed interest in oil spill response and restoration due to the Deepwater Horizon spill, provides an excellent opportunity to push for an annual appropriation to NOAA from the OSLTF.

Legislative Drafting:
Language below would provide the funds necessary to ensure that NOAA is adequately prepared for response and restoration events.

Recommended Language:

Appropriations Report Language
For expenses necessary to carry out the National Oceanic and Atmospheric Administration's responsibilities under the Oil Pollution Act of 1990, $XXXXXX shall be derived by transfer from the Oil Spill Liability Trust Fund, to remain available until expended, in addition to funding provided in NOAA's ORF appropriation.

Authorization
Section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) is amended—
(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and
(2) by inserting after subparagraph (A) the following:
"(B) not more than $XX,000,000 for each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, preparedness, response, restoration, and damage assessment capabilities of the National Oceanic and Atmospheric Administration;"

Talking Points:

- The OSLTF was created not only to provide resources when there is a spill and an emergency response, it was created to support prevention and preparedness to reduce the risk of spills and reduce the impacts when a spill occurs.
- We must get past the budgetary games of ceilings and caps. We must use the Fund for the purposes it was intended instead of as an asset to offset other spending.
- The Administration has been clear that those posing the risk should pay. Those posing the risk pay into the OSLTF. They are paying. We need to invest those payments into the kind of ounce-of-prevention, science-based programs that protect people, property, the environment and even the long-term viability of the Fund itself.
- As Scientific Support Coordinator for marine spills, NOAA is providing more operational support to the USCG than any other agency. Yet NOAA is the only major agency to not receive an annual appropriation from the OSLTF.
- NOAA's Office of Response and Restoration (OR&R) does not have adequate response capability. Every Scientific Support Coordinator across the country is working on the Deepwater Horizon spill, and OR&R has had to hire former employees out of retirement and solicit volunteers from within NOAA to maintain the response. The Deepwater event has stretched capabilities to the maximum making it difficult to provide optimal services and leaving no resources available to respond to other spill events.
- More importantly, the lack of modest investments on the front end has left NOAA and its partners unable to conduct research, innovation, and implementation of new technologies. For example, NOAA's Environmental Response Management Application (ERMA) is being heralded as the "go to" tool for Deepwater. Yet NOAA has been unable to provide this service nationally due to ongoing fiscal shortfalls. Also, more than half of the Environmental Sensitivity Index (ESI) maps are greater than 10 years old.

Withheld: Exemption (b)(5)