Annual Appropriation from the Oil Spill Liability Trust Fund (OSLTF) for Response and Restoration:

NOAA currently is the only federal agency with oil spill preparedness, response and restoration responsibilities mandated under the Oil Pollution Act that does not receive a direct appropriation from the OSLTF Principle Fund. Accessing the OSLTF provides an appropriate revenue source for 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.

An annual appropriation to NOAA from the OSLTF is included in S. 684 "Oil Pollution Prevention and Response Act" introduced by Senator Cantwell. This language was also added to S. 1194 "USCG Reauthorization" during Committee markup. In addition, an annual appropriation to NOAA from the OSLTF has strong support from the US Coast Guard (who manages the OSLTF) and the American Petroleum Institute (who represents the oil companies that pay into the OSLTF). Both the USCG and API understand the importance of NOAA having the adequate capacity and capabilities for spill response.

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

Recommended Language:

Appropriations

For expenses necessary to carry out the National Oceanic and Atmospheric Administration's responsibilities under the Oil Pollution Act of 1990, $8,500,000 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 $25,000,000 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"

NOAA as Federal Lead on Interagency Coordinating Committee on Oil Pollution Research

In 1990, the *OPA* recognized the need for research by creating the Interagency Coordinating Committee on Oil Pollution Research to establish a coordinated effort among industry, universities, and agencies to address oil pollution research and development. OPA designated

the US Coast Guard the chair of this committee. NOAA is on the Committee. The comprehensive research and development envisioned by *OPA* has not been achieved mainly due to lack of funding. As a science agency, NOAA is well qualified to be lead federal agency for the Interagency Coordinating Committee. NOAA will bring a broad understanding of all aspects of oil spill research and development including recovery technologies, response strategies, effects on sensitive and highly valued resources, decision-making frameworks using risk assessment, optimizing recovery times, public outreach, economic effects, and restoration of environmental harm. Through our partnership with the Coastal Research Response Center (CRRC), NOAA also has experience in working collaboratively across the federal government to prioritize and coordinate oil spill response and restoration research and development that meets the needs of emergency responders.

Representative Woosley (D-CA) introduced H.R. 2693 "Federal Oil Pollution Act". The legislation designates NOAA as the lead federal agency of the Interagency Committee and authorizes $2M for research grants.

The US Coast Guard has indicated a willingness to remain the chair of the Interagency Committee. However, as a science agency, it makes sense for NOAA to lead this interagency committee, particularly with the growing need for research and development in the Arctic.

Direct Access to OSLTF Emergency Fund

For NOAA to receive funds under the National Response Plan once an event has occurred, USCG must request that NOAA be a part of the response and then USCG and NOAA must agree to a pollution response finance agreement. This relationship is laid out in the National Contingency Plan. Once this agreement is in place, the statement of work is usually broad and covers most costs incurred by NOAA; only large/unexpected expenses require an amendment to the agreement. Unfortunately, these agreements need to be drafted and approved right as the spill is happening and when efforts should be directed towards response activities. In addition, these agreements usually have a ceiling and when we get close to the ceiling we have to re-negotiate and raise the amount. This is not difficult, just time consuming for staff and takes resources away from the response.

NOAA should immediately partner in response when an event occurs and should also have immediate access to the emergency fund (or a set percentage of the emergency fund) according to our range of duties carried out in such an event. These would be any NOAA costs associated with response, biological and socioeconomic assessments, seafood testing, fishery surveys (both commercial and recreational), mapping, modeling, observations and infrastructure, and cooperative arrangements with universities and commercial and recreational fishermen and other experts.

Liability Cap

Consideration should be made to increasing the liability cap within the OSLTF to at least $5 billion. Without such an increase there will be serious impairment of the capacity of federal, state, and tribal natural resource damage trustees to assess the natural resource damages and restore, repair, or replace the resources lost, as well as to assure payment of damages to individuals for economic and related injury covered by the current statute.

DARRF Interest Bearing

Fully compensating the public for injuries to natural resources and services is the principal mission of NOAA's Damage Assessment, Remediation, and Restoration Program (DARRP), as mandated by OPA 90. Upon formal settlement, and before the habitat can be restored, rehabilitated, or acquired, the settlement monies are generally placed in one of three types of accounts:

1. NOAA's Damage Assessment, Remediation, and Restoration Program (DARRP) Fund;
2. Department of the Interior's (DOI) Natural Resource Damage Assessment and Restoration (NRDAR) Fund; and
3. Court Registry Account

Both the DOI NRDAR Fund and Court Registry Account are interest bearing; however, the DARRF is not. This is a significant issue because the DOI and Court Registry Accounts are not always appropriate depositories for funds. When they are not an appropriate depository, the DARRP Program and our cooperating agencies (State government and Tribes) are immediately at risk of not fully compensating the public.[1] Bringing the NOAA DARRP Fund and accounting rules into alignment with the DOI NRDAR and Court Registry Account to ensure public interest is made whole.

Recommended Language:

Investment – Amounts deposited into the Damage Assessment and Restoration Revolving Fund of the National Oceanic and Atmospheric Administration referred to in title I of Public Law 101-515 under the heading "National Oceanic and Atmospheric Administration" (33 U.S.C. 2706 note) shall be invested by the Secretary of the Treasury in interest bearing obligations of the United States to the extent the amounts are not required to meet current withdrawals.

Interest – Interest earned on any investment under subsection (a) shall –

(1) *be deposited into the Damage Assessment and Restoration Revolving Fund; and*

(2) *remain available until expended.*

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[1] Risk is presented primarily through an inflationary devaluation of settlement money if project implementation is delayed for any number of reasons, including but not limited to: catastrophic events (*e.g.*, Hurricanes Katrina and Rita), project infeasibility, and a lack of suitable projects proposed (*e.g.*, urban or industrial settings where projects are scarce). That is, if a $3 million settlement occurred in 2008, but a project is not implemented until 2011 and the settlement was deposited in NOAA's non-interest-bearing DARRF, the balance remains level. However, the cost to implement the project will increase over a period of three years. If NOAA is granted the authority to invest settlement money in Department of Treasury interest-bearing accounts (interest is accrued via Treasury bill investments), the original settlement balance will likely grow at a rate of 2.75% as historically accrued on the DOI NRDAR Funds.

Current Relevant Legislation

Legislation in the 111th Congress			
Bill	**Sponsors**	**Description**	**Status**
H.R. 2693 "Federal Oil Pollution Act"	Woosley, Baird	Designates NOAA as lead for Federal Oil Pollution Research Committee. Authorizes $2M to NOAA for an external grant program.	Energy and Environment Subcommittee markeup on 6/16/09
S. 684 "Oil Pollution Prevention and Response Act"	Cantwell, Kerry	Designates NOAA as lead for Federal Oil Pollution Research Committee. Authorizes $2M for external grant program. Authorizes $15M from OSLTF for response and damage assessment. Makes DARRF interest bearing. Authorizes $700K for Safe Seas in Puget Sound.	In Senate Commerce Committee- parts moved into S.1194
S. 1194 "USCG Reauthorization"	Cantwell, Snowe, Rockefeller, Hutchinson	Original bill had no reference to OR&R. During Committee markup, parts of S684 were moved into this bill, including authorization of $700K for Safe Seas, authorization of $15M from OSLTF. However, it does not include DARRF interest bearing.	Senate Commerce Committee marked up bill in July
S.1564 "Arctic Oil Spill Research and Prevention Act of 2009"	Begich	Directs NOAA to conduct research on oil spill prevention, response and recovery in Arctic waters. Authorizes NOAA $2M from OSLTF for research and development. Authorizes $15M to NOAA to carryout this act (this money most likely for hydrographic surveys)	In Senate Commerce Committee - no movement