FEDERAL EMERGENCY RESPONSE FRAMEWORK FOR OIL SPILLS: STAFFORD ACT AND OIL POLLUTION ACT

When a marine oil spill occurs, the location, amount of oil spilled, and cause of the spill can impact the logistics of the response. Federal response efforts are guided by two federal laws – the Stafford Act of 1988 and the Oil Pollution Act of 1990. Although these two laws are interrelated, the scope and purposes are quite different.

STAFFORD ACT OF 1988

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 was intended to establish an orderly means of providing federal natural disaster assistance to state and local governments.[1] The Stafford Act authorizes the delivery of federal aid to communities and individuals during declared major disasters or emergencies, such as hurricanes or terrorist attacks. A major disaster can be characterized as any natural catastrophe or — regardless of cause — any fire, flood, or explosion that produces severe damage in the United States. An emergency is defined as an instance where state, local, and non-governmental disaster relief efforts require federal assistance to alleviate damage, loss, hardship, or suffering.[1] The President may declare a major disaster or emergency when not enough state or local resources are available.[2]

Three types of assistance are authorized by the Stafford Act:

- **Individual assistance** — Provides immediate direct and financial assistance to individuals for housing and other disaster-related needs.
- **Public assistance** — Provides assistance to state and local governments and certain private nonprofit organizations for emergency work and for repair or replacement of disaster-damaged facilities.
- **Hazard mitigation** — Provides grants to state and local governments for actions taken to prevent or reduce long-term risk to life and property from natural hazards.[1]

When a major disaster or emergency is declared, the National Response Framework will likely be activated.

Some Gulf beaches required extensive cleanup after the Deepwater Horizon oil spill. Federal laws clarify how response efforts work and who pays for them. (Louisiana Sea Grant)

The National Response Framework outlines planning assumptions, policies, concept of operations, and organizational structures. It also describes resources federal agencies can use to support initial emergency lifesaving functions if state and local government response capabilities are overwhelmed.[1] The involvement of the Federal Emergency Management Agency (FEMA), the agency that administers disaster relief, depends on the scope and cost of the disaster and whether federal employees must be reassigned to manage it.[2]

OIL POLLUTION ACT OF 1990

Federal response to oil spills dates back to 1924, when the first Oil Pollution Act (OPA) was established. OPA '24 was amended by the Clean Water Act, which was the primary federal statute governing oil spills prior to OPA '90. OPA '90 expanded the existing Clean Water Act. It created new requirements regarding oil spill prevention and response. [3]

OPA strengthens the federal government's ability to prevent oil spills, ensures that oil is cleaned up, and restores any natural resources impacted by a spill.[2] It requires shippers, offshore producers, storage facilities, and the federal government to develop oil discharge response plans for local areas.[4,5] OPA significantly increases the range of covered damages and assigns liability to a responsible party for all cleanup costs.[3] The federal government ensures responsible parties restore the environment and pay the public for its losses, overseeing a spill's compensation until natural resources fully recover.[2]

Responsible parties are liable for removal costs and damages that result from the incident and a range of other costs, including

- injuries to natural resources,
- loss of real personal property,
- loss of subsistence use of natural resources,
- lost government revenues resulting from destruction of property or natural resource injury, and
- lost profits and earnings resulting from property loss or natural resource injury, and costs of providing extra public services during or after spill response.[3]

OIL SPILL LIABILITY TRUST FUND

If the responsible party is unable or unwilling to pay, the Oil Spill Liability Trust Fund (OSLTF) pays for removal cost, natural resource damages, and other economic and property damages. The OSLTF is funded by environmental taxes on petroleum, penalties for discharges of petroleum in violation of the Clean Water Act, and funds recovered by the OSLTF from responsible parties. It contains a maximum limit of one billion dollars per incident, with a sub-limitation of 500 million dollars for natural resource damage assessments and claims associated with an incident.[3,6]

Costs include any actions necessary to mitigate injury to public health or welfare. OPA sets responsible party liability limits in place that differ based on the source of the spill. Some spills may incur a simple dollar amount cap, while others have unlimited liability for cleanup costs with limits on other damages.[3,6]

When a spill happens during a coastal storm, oil spill response falls within the larger storm response. The National Contingency Plan, the federal plan for responding to hazardous material releases, could be used under the National Response Framework to address an oil or chemical spill during a storm. The liability of responsible parties remains the same.

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SUGGESTED CITATION

Wilson, M., Hale, C., Maung-Douglass, E., Sempier, S., Skelton, T., and Swann, L. (2018). Federal emergency response framework for oil spills: Stafford Act and Oil Pollution Act. GOMSG-G-18-009.

ACKNOWLEDGMENT

Special thanks to the many external reviewers who contributed to the betterment of this oil spill science outreach publication.

gulfseagrant.org/oilspilloutreach

This work was made possible in part by a grant from the Gulf of Mexico Research Initiative, and in part by the Sea Grant programs of Texas, Louisiana, Florida, and Mississippi-Alabama. The statements, findings, conclusions, and recommendations do not necessarily reflect the views of these organizations. GOMSG-G-18-009