



PARTICIPATING IN NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION *ENHANCED*



As Gulf Coast residents have witnessed, the BP Deepwater Horizon oil spill has harmed the Gulf's air, water, sediment, wildlife, and habitats such as estuaries, reefs, wetlands, and shorelines. Restoration of these natural resources is important to Gulf families, the region's economy, and the environment. It is also a legal requirement under the Oil Pollution Act (OPA) and other state and federal laws.

Through a government process called Natural Resource Damage Assessment (NRDA), citizens can become involved in restoration. Although NRDA is a legal process that does not usually involve much public input, you have the right to participate at certain stages, and the size and complexity of the Gulf spill may create new opportunities for public involvement. This fact sheet describes the basic process that all NRDA must follow, and answers important questions that community members may have about NRDA and their ability to participate.

What is NRDA, and why does it matter to the Gulf?

NRDA is the process that the federal and state governments use to determine the injury to natural resources caused by the spill and to plan an approach to restore natural resources. Restoration can help important natural resources recover from the spill, and citizen involvement can ensure that important fisheries and other habitats are restored in a way that will help local communities. NRDA has already started in the Gulf.

Natural Resource Damage (NRD) compensation covers both assessment and restoration costs

BP and other parties responsible for the oil spill are legally obligated to compensate the government for the many costs that the spill generates. These include the cost of replacing or restoring the services that natural resources provide (like fish habitat), the lost use caused by damage to natural resources (like recreation), the lost value of the resources (if or until they are recovered), and the cost of assessing the injuries. Predicting these costs is complicated, and NRDA is the legal mechanism to ensure that the cost estimates are fair and accurate.

NRD compensation goes to governments

Only federal, state, and tribal governments that are designated as "trustees" for the spill can collect NRD compensation. Governments must use this compensation to restore only the resources that were harmed by the spill (not unrelated restoration), and to cover the costs of assessing the harm. NRD compensation is not punitive; responsible parties are only required to fix what was injured by the spill, no more. NRD compensation is also not a mechanism by which individuals can get money for injury to their property or livelihood.

Who is involved in NRDA on the Gulf Coast?

The NRDA process primarily involves federal and state governments and the parties responsible for the injuries. Non-governmental organizations, citizens, and other stakeholders also can contribute at certain points in the process.

As “trustees” for the public, governments guide assessment and restoration on behalf of the public

Federal and state agencies across the Gulf are leading the NRDA process as “trustees.” The Department of the Interior (DOI) is the lead federal trustee for the entire NRDA process, and the National Oceanic and Atmospheric Administration (NOAA) is playing a central role in implementing NRDA. To assess the spill’s impacts, trustees determine pre-spill conditions, assess the extent of the spill, and plan for restoration. All of these activities support the trustees’ legal case to obtain compensation from BP and other responsible



Photo credit: Chesapeake Bay Program

parties. The trustees currently participating in the Gulf NRDA process are listed in Table 1.

To better assess the spill’s impacts, the trustees have formed thirteen **Technical Working Groups**, including groups studying birds, sea turtles, corals and marine mammals, human use of impacted natural resources, and cultural sites, among other resources. Each group, composed primarily of scientists, is assessing injuries and monitoring impacts. The information they collect from field sampling and surveys helps determine the amount of compensation and the best steps for restoration.

To coordinate the restoration process, President Obama also created a new **Gulf Coast Ecosystem Restoration Task Force**, made up of state and federal officials and led by the U.S. Environmental Protection Agency. This Task Force is separate from the NRDA process, but its work may overlap with NRD restoration

Table 1: NRDA Trustees for the BP Deepwater Horizon Oil Spill

	Lead Trustee Agency	Additional Trustee Agencies
US Dept. of Interior*	US Fish and Wildlife Service	National Parks Service
US Dept. of Commerce	National Oceanic and Atmospheric Administration	
US Dept. of Defense	Army Corps of Engineers	
State of Louisiana	Coastal Protection and Restoration Authority	Oil Spill Coordinator’s Office; Dept of Environmental Quality; Dept of Wildlife and Fisheries; Dept of Natural Resources
State of Mississippi	Dept of Environmental Quality	
State of Alabama	Dept of Conservation and Natural Resources	Geological Survey of Alabama
State of Florida	Dept of Environmental Protection	
State of Texas	Parks and Wildlife Dept	General Land Office; Commission on Environmental Quality

*lead federal administrative trustee

planning and implementation. The Task Force was established in recognition that Gulf recovery requires a comprehensive approach – much more than just cleaning up and restoring the resources damaged by the oil spill. The Task Force is developing a recovery strategy that will be completed in October 2011, and will be holding public meetings in the region as this strategy is drafted.

The responsible parties pay for natural resource harms and participate in the assessment process

BP and other potential responsible parties must pay for the injury caused to natural resources by the oil spill. The law requires trustees to invite the responsible parties to participate in the assessment process. BP is working with the trustees and within the Technical Working Groups to collect data. The responsible parties collect data as well, but analysis of these data is done separately. It is hoped that cooperation will minimize disagreements over data collection later in the legal process when determining the cost of restoration or the actions needed to compensate or recover from the injury.

Communities can provide information and guidance on how best to restore the region

You can improve the NRDA process by providing information about your observations of spill impacts, commenting on environmental impact assessments and restoration plans, and sitting on advisory bodies if they are formed. These opportunities are described below.

Where are they now in the NRDA process, and how can we participate?

The NRDA process is divided into three stages: 1) Preassessment, 2) Injury Assessment and Restoration Planning, and 3) Restoration Implementation. Community members can provide critical input at each of these stages.

Is there a limit on company liability?

According to the federal law, the Oil Pollution Act, the amount that each responsible company owes is typically capped at \$75 million for harm to offshore resources. However, the cap may not apply in this case because the legal conditions for a cap are not met and/or because the responsible parties may agree to go above the limit. BP has already allocated \$20 billion to pay for the injury caused to individuals and natural resources, and has said that it will pay “all legitimate claims,” even beyond this amount. Whether the damages it owes for natural resources will be capped or limited is still unclear, and will be determined either through an agreement between BP and the trustees or in court. Also, BP and other responsible parties will likely be required to pay other costs and fines, including per-barrel fines under another law, the Clean Water Act.

1. The Preassessment phase is complete

Trustees, working with BP, have now completed the preassessment phase. The work involved collection of data about impacts, a determination that there was injury from the spill, and a conclusion that restoration could address at least some of these injuries.

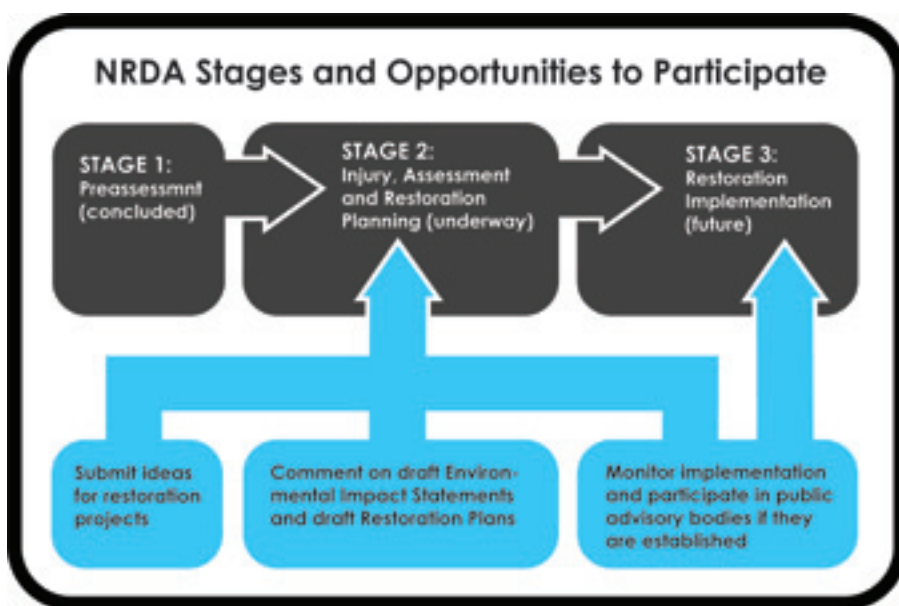
2. The Injury Assessment, Damage Assessment and Restoration Planning phase is underway

The trustees are currently evaluating the injuries, estimating the compensation owed as a result of these injuries, and planning for restoration.

Injury Assessment and Damage Quantification:

To assess the extent of the damage, the trustees use data collected from the affected sites to establish pre-spill baseline conditions and injury. Once injury is determined, the trustees calculate compensation owed, either in terms of money needed to restore the resource or in terms of resource services that the responsible parties must replace in-kind. Members of the public can communicate their observations of spill impacts to inform the assessment process.

Restoration Planning and Environmental Impact Assessment: After assembling a range of restoration project options, the trustees evaluate the alternatives and choose one as the basis of the Restoration Plan. An Environmental Impact Statement (EIS) must also be prepared. Drafts of both must be circulated for public comment. As a member of the public, you may be able to submit your observations of spill impacts to NRDA scientists, although this is not a legal requirement of the NRDA process. Through more formal channels, you can:



3. The Restoration Implementation phase has not started yet

After the restoration plans are completed, the Final Restoration Plan will be presented to the responsible parties, who may either implement the plan or fund the trustees' costs of implementing the plan. Implementation occurs over many years. As a member of the public, you can:

- **suggest** and submit ideas for restoration projects.
 - the webportal for restoration project submission is at <http://www.gulfspillrestoration.noaa.gov/restoration/>
 - the first public meetings for the EIS will begin on March 16th and continue thru March 31st. A schedule of meetings is also at <http://www.gulfspillrestoration.noaa.gov/restoration/>.
- **comment** on Draft Environmental Impact Statements and Restoration Plans. The final plans must respond to comments and new information provided.
- **provide feedback and suggestions** in person at meetings hosted by the trustees.
- **participate** in any public technical panels or advisory bodies that are formed to guide restoration planning. Although not a legal requirement, such entities have been formed in some past cases when the affected parties and local leaders demanded formal participation.

- **participate** in any technical panels or advisory bodies that are formed to monitor restoration implementation. Again, these are not required but have existed in other cases.
- **help implement or monitor** the effectiveness of restoration projects. While participation at this stage is not required, it has occurred in other cases.

A separate fact sheet presents examples of different ways in which the public has become involved in past NRDA's. You can find more information on national efforts to restore natural resources harmed by the BP Deepwater Horizon oil spill through the following contacts:

Contact	Website
NOAA and DOI	www.restorethegulf.gov (to submit restoration projects, go to www.gulfspillrestoration.noaa.gov/restoration/)
Gulf Coast Ecosystem Restoration Task Force	www.restorethegulf.gov/task-force/