



GULF COAST RESTORATION & RECOVERY 101

Basic policies, legal processes, and terms relevant to
the *Deepwater Horizon* disaster



MARCH 25, 2015

This resource guides readers through the key processes that have been initiated to help recover and restore the Gulf of Mexico following *Deepwater Horizon*. It includes:

- An overview of the major recovery processes and funding sources;
- Explanations of the origin, progress, and current status of each process; and
- Reference items, such as citations to crucial resources.

Deepwater Horizon Restoration & Recovery Processes

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Overview

There are multiple ongoing processes for helping the Gulf of Mexico and impacted communities recover from the injuries caused by the *Deepwater Horizon* disaster. These pages provide an overview of the major processes.

Economic Loss & Medical Injury Claims (p. 2)

Under the Oil Pollution Act (OPA) and other laws, individuals, businesses, and governments may be compensated for economic damages resulting from an oil spill. Individuals may be compensated for medical injuries under maritime law.

A federal trial court approved settlement agreements covering the majority of economic and medical claims in December 2012 and January 2013.

Under the Oil Pollution Act & Maritime Law

Natural Resource Damage Assessment (pp. 3-4)

Under the OPA and other laws, natural resource trustees can recover, among other things, the costs of restoring natural resources damaged by the spill. This includes compensating for the lost use of a natural resource from the time it was injured until it is restored.

The *Deepwater Horizon* natural resource damage assessment is ongoing.

Under the Oil Pollution Act

Discharge Penalties (pp. 5-6)

The parties responsible for the spill face civil, administrative, and/or criminal penalties for discharging oil in violation of the federal Clean Water Act (CWA).

The **RESTORE Act** diverts 80% of any CWA civil and administrative penalties related to the oil spill to Gulf ecological and economic recovery (including recovery unrelated to the spill).

Under the Clean Water Act

Settlement Funds (pp. 7-8)

MOEX has settled its civil liability for the oil spill; BP has settled its criminal liability; and Transocean has settled its CWA civil liability and its criminal liability.

These settlement agreements amount to \$5.49 billion, with funds going to a variety of sources to support restoration, research, and other activities.

Established by Settlement Agreements

Economic Loss & Medical Injury Claims

Economic Loss & Medical Injury

Individuals, businesses, and governments may be compensated for **economic damages** resulting from the oil spill by bringing a tort action or a claim under the Oil Pollution Act. Examples of damages that might be claimed include lost profits or earning capacity.

Under maritime law, individuals may be compensated for **medical injuries** caused by the oil spill or removal.

Settlements

In March 2012, BP and the Plaintiffs' Steering Committee agreed to resolve most economic loss and medical injury claims in two settlements:

Economic & Property Damages

This settlement generally includes (1) people who worked, lived, owned or leased property or worked on a vessel harbored in certain areas of the Gulf; and (2) entities that were doing business in certain areas of the Gulf.

It resolves certain economic loss and property damage claims for eligible individuals and businesses, including creating a seafood compensation fund. It also established a fund to promote tourism and the Gulf seafood industry. The trial court granted approval in December 2012.

Medical Benefits

The settlement includes clean-up workers and certain coastal and wetlands residents who meet the eligibility requirements in the settlement.

It creates a compensation program for certain physical conditions, a 21-year medical consultation program, a process for asserting claims for later-manifesting conditions, and a health outreach program. The court granted final approval in January 2013.

In September 2014, Halliburton announced it reached an agreement with the Plaintiffs' Steering Committee to resolve most of the individual and business claims against it for approximately \$1.1 billion. The agreement has not yet been approved by the court.

What happens to claims now?

If a claim is included in the economic and property damages settlement, it is handled through the court-supervised Deepwater Horizon Claims Center, which was established in June 2012.

If a claim is included in the medical settlement, it is handled by the Deepwater Horizon Medical Benefits Settlement Claims Administrator, Garretson Resolution Group.

If an individual lawsuit is not included in the settlements (either because the claim was excluded or because the claimant opted out), it remains in the ongoing multidistrict litigation being tried in federal court in New Orleans.

This resource is only intended to provide a brief overview of the settlements. More information about the settlements, including eligibility and deadlines for filing claims, can be found at www.deepwaterhorizonsettlements.com

Natural Resource Damage Assessment

What is NRDA?

Required by the federal Oil Pollution Act (OPA) and other laws, a natural resource damage assessment (NRDA) is the process that governments use to **determine the injuries to natural resources** caused by an oil spill, and to plan and implement an approach for restoring those resources. The goal is to restore natural resources to the condition they would have been in if the oil spill never occurred. The costs of the assessment and restoration are borne by the parties responsible for the spill.

What sorts of damages are covered?

The term “natural resource damages” (NRDs) covers several types of damages, such as damages for injuries to **natural resources**, the **loss of use** of those resources (for example, the inability to use the beach for recreation), and the costs of assessing damages.

The trustees can only use the compensation they receive to recover the natural resources damaged by the spill (including their loss of use), and to reimburse the costs of conducting the assessment. The compensation cannot be used for any other purpose.

What is restoration? When is it *early* or *emergency* restoration?

NRDA is the primary mechanism for governments to obtain compensation from responsible parties for an oil spill's injuries to natural resources. The Deepwater Horizon NRDA has been underway since 2010.

NRDA is a remedial process, not a punitive one.

Responsible parties are only required to fix what was injured by the spill, no more. Other laws and processes have a punitive purpose, such as the Clean Water Act (see pp. 5-6).

EARLY RESTORATION

Funding: On April 21, 2011, the NRDA trustees announced that BP had agreed to provide **\$1 billion** in funding for early restoration projects.

Planning: The trustees have finalized three rounds of early restoration projects: a first round worth about \$62 million, a second worth roughly \$9 million, and a third worth approximately \$627 million.

► **RESTORATION** refers to actions to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services injured by an oil spill.

► **EMERGENCY RESTORATION** refers to actions that are necessary to avoid irreversible losses to, or lessen continuing dangers to, natural resources. It occurs before the damage assessment is complete.

► **EARLY RESTORATION** refers not to a different *type* of restoration, but rather to its *timing*. Because NRDA's can take years to complete, early restoration agreements allow parties to get started on mutually agreed-upon restoration projects before the assessment process has been completed.

The Deepwater Horizon early restoration agreement includes criteria for choosing projects and describes how the funding BP provides at this stage will be offset against its ultimate liability.

15 C.F.R.
§ 990.30

15 C.F.R.
§ 990.26

*not defined
in statute
or
regulations*



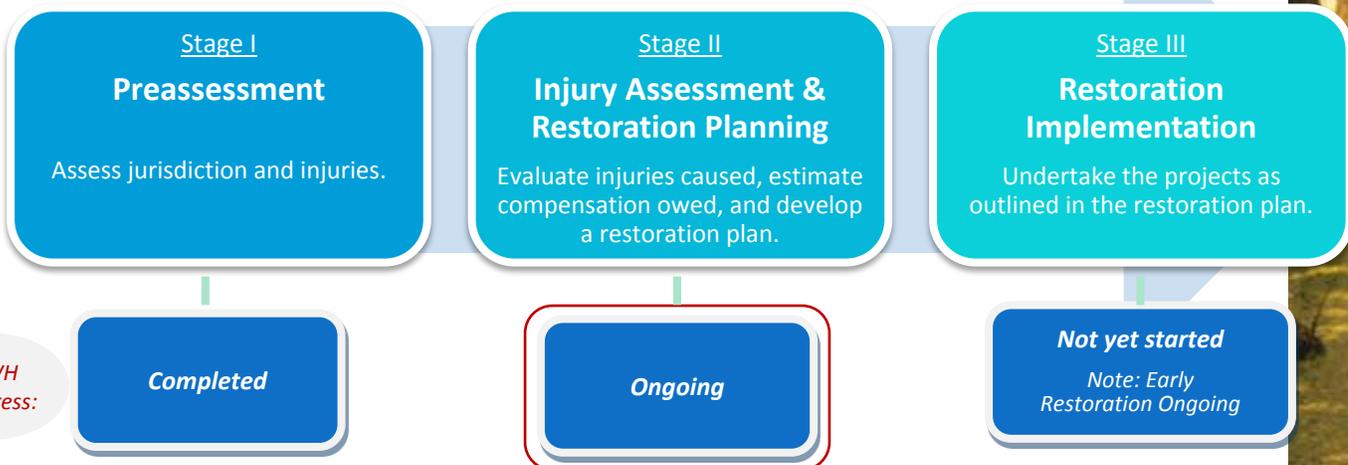
Who is involved in the NRDA process?

The *Deepwater Horizon* NRDA is being led by a council of federal and state trustees who oversee the process.

Deepwater Horizon Federal & State NRDA Lead Trustees	
<i>U.S. Dept. of Commerce</i>	National Oceanic & Atmospheric Administration
<i>U.S. Dept. of the Interior</i>	U.S. Fish & Wildlife Service
<i>U.S. Dept. of Defense</i>	Not currently on Trustee Council
<i>U.S. Dept. of Agriculture</i>	Designated as trustee by Exec. Order 13,626
<i>U.S. Environmental Protection Agency</i>	Designated as trustee by Exec. Order 13,626
<i>State of Alabama</i>	Dept. of Conservation & Natural Resources
<i>State of Florida</i>	Dept. of Environmental Protection
<i>State of Louisiana</i>	Coastal Protection & Restoration Authority
<i>State of Mississippi</i>	Dept. of Environmental Quality
<i>State of Texas</i>	Parks and Wildlife Dept.

What are the stages of a NRDA?

NRDA is divided into three stages: **(I) Preassessment**, **(II) Injury Assessment & Restoration Planning**, and **(III) Restoration Implementation**.



Where are we now in the NRDA Process?

The assessment is ongoing and could take several more years to complete. In Spring 2011, the NRDA trustees conducted scoping for a **Programmatic Environmental Impact Statement (PEIS)** for the assessment and restoration process. An Environmental Impact Statement is a document agencies are required to prepare under the federal National Environmental Policy Act before they undertake any major projects significantly affecting the environment. The PEIS is intended to guide the development of the final restoration plan. The trustees have not yet released the draft PEIS.

You can get NRDA information and documents at www.gulfspillrestoration.noaa.gov

Clean Water Act and the RESTORE Act

Clean Water Act

The Clean Water Act (CWA) is the nation's principal water-quality statute. It regulates the discharge of pollutants into U.S. navigable waters, including ocean waters out to 200 nautical miles from shore.

Section 311 of the CWA specifically prohibits discharges of oil into navigable waters or onto shorelines in amounts that may be harmful to the public or natural resources (like fish or wildlife). In cases involving oil spills, the CWA allows the United States to recover **civil, administrative, and/or criminal penalties** from violators.

Civil Penalties

The CWA allows the United States to file suit to recover civil penalties from the owner, operator, and/or entity in charge of a facility from which oil was discharged.

The Clean Water Act prohibits discharges of oil into U.S. ocean waters and penalizes violators with civil, administrative, and/or criminal penalties. The RESTORE Act directs 80% of CWA civil and administrative penalties collected in connection with Deepwater Horizon to Gulf recovery.



In December 2010, the United States filed suit in federal court seeking CWA civil penalties. The third phase of the trial ended in February 2015.

How Much Money Could Be Recovered?

The amount of civil penalties collected will depend on a number of factors. These include whether the parties responsible for the spill acted with gross negligence or willful misconduct, the amount of oil discharged into the water, and other factual findings about the spill. The parties may also settle on a penalty amount.

So far, the court has determined that the oil spill was the result of BP's "gross negligence" and "willful misconduct" (note that BP is appealing this decision). The court has also ruled that "3.19 million barrels of oil discharged into the Gulf of Mexico" (note that BP and the federal government are appealing this decision). The maximum CWA civil penalty that BP faces is therefore \$13.7 billion (see below). It is important to keep in mind that the court must also consider certain factors set out in the CWA when determining penalty amounts. The court has yet to rule on those factors.

MOEX and Transocean have settled their CWA civil liability (see pp. 7-8 for more information).

Standard maximum penalty:	Maximum penalty if there was gross negligence or willful misconduct:
$\$1,100 \text{ per barrel} \times 3.19 \text{ million barrels} = \3.5 billion	$\$4,300 \text{ per barrel} \times 3.19 \text{ million barrels} = \13.7 billion

Where Do Recovered Civil Penalties Go?

In the usual circumstance, recovered penalties are paid into the **Oil Spill Liability Trust Fund (OSLTF)**. In the OSLTF, the funds are used to, among other things, respond to future spill events.

In the case of *Deepwater Horizon*, however, only 20% of CWA civil penalties will go to the OSLTF. The remainder will flow through processes created by special legislation called the RESTORE Act.

CWA penalties are punitive.

Unlike NRDs, CWA penalties are punitive. The penalties are also intended to give potential violators an incentive to comply with the law and to prevent oil spills from occurring.

What is the RESTORE Act?

On July 6, 2012, a week after Congress passed the RESTORE Act, President Obama signed it into law. The Act requires **80% of any civil and administrative penalties** paid by parties responsible for the BP oil spill to go to a new Restoration Trust Fund, with the large majority of that money being used for environmental and economic recovery of the Gulf coast. Some of this money will go directly to the Gulf states (either to the state government or to local governments, depending on the state).

"RESTORE Act" is short for *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act*

What will the RESTORE Act do?

The Restoration Trust Fund will support five processes to help the Gulf of Mexico recover from the impacts of *Deepwater Horizon* as well as decades of development. The funds will:



State RESTORE Act funds can be used for a variety of purposes, including:

- Protecting and restoring natural resources
- Infrastructure
- Flood protection
- Promotion of Gulf seafood
- Promotion of Gulf tourism
- Improvements to state parks affected by the spill
- Job creation

Importantly, these funds are not limited to fixing harm caused by the oil spill.

You can get RESTORE Act information and documents at www.restorethegulf.gov

Civil & Criminal Settlement Funds

Civil and Criminal Penalties

Some parties responsible for the spill have settled all or part of their civil and criminal liability through agreements with the federal government. Those agreements direct money to various institutions and processes designed to assist with Gulf recovery.

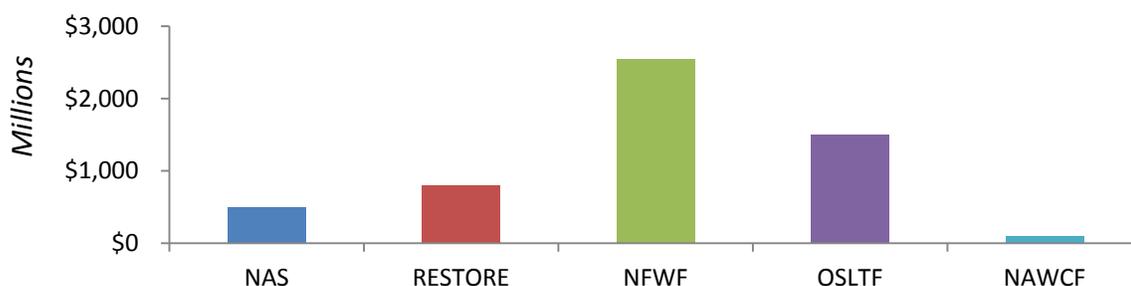
What settlements have been reached so far?

To date, the following settlements have been reached:

- **MOEX** – in February 2012 the federal government reached an agreement with MOEX to settle certain civil claims for \$90 million, including \$70 million in civil penalties that were split among the federal and state governments, and \$20 million in supplemental environmental projects.
- **BP** – in November 2012 the federal government reached an agreement with BP to resolve criminal charges against the company for \$4 billion.
- **Transocean** – in January 2013 the federal government reached an agreement with Transocean to resolve criminal charges against the company for \$400 million, and to resolve Clean Water Act civil penalties for \$1 billion.

Where has the settlement money gone?

So far, the settlement monies have been directed to five main recipients:



National Academy of Sciences (NAS)

What is it? The NAS is a private, non-profit institution created by Congress in 1863 “to provid[e] independent advice to the government on matters related to science and technology.”

What money has been obligated? NAS will receive a total of \$500 million over five years. This includes recoveries to be paid by BP (\$350 million) and Transocean (\$150 million) under their respective criminal plea agreements.

What will the money be used for? NAS will administer a 30-year “program focused on human health and environmental protection[,] including issues relating to offshore oil drilling” and the production and transportation of hydrocarbons in the Gulf and the outer continental shelf.

RESTORE Act - Restoration Trust Fund

What is it? As noted above, the RESTORE Act directs 80% of all CWA civil and administrative penalties related to *Deepwater Horizon* to regional recovery.

What money has been obligated? The only funds obligated so far are 80% of the funds from the Transocean civil settlement (\$800 million).

What will the money be used for? Funds in the Restoration Trust Fund will be distributed to five different Gulf restoration and research processes (see p.6).

National Fish and Wildlife Foundation (NFWF)

What is it? NFWF is a non-profit organization created by Congress in 1984 “to protect and restore fish and wildlife and their habitats.” The organization funds a wide variety of conservation projects across the country.

What money has been obligated? NFWF will receive a total of \$2.544 billion over five years. This includes recoveries to be paid by BP (\$2.394 billion) and Transocean (\$150 million) under their respective criminal plea agreements.

What will the money be used for? NFWF is to use half of the money for barrier island and river diversion projects in Louisiana. It will use the other half of the money for projects in Alabama (28%), Florida (28%), Mississippi (28%), and Texas (16%) that “remedy harm” to resources injured by the *Deepwater Horizon* oil spill.

Oil Spill Liability Trust Fund (OSLTF)

What is it? The OSLTF is an account created by Congress to hold, among other things, certain payments, penalties, and taxes paid by oil companies.

What money has been obligated? The OSLTF will receive a total of \$1.495 billion over five years. This includes: (1) \$1.15 billion for CWA criminal penalties from BP; (2) \$100 million for CWA criminal penalties from Transocean; (3) \$200 million for CWA civil penalties from Transocean; and (4) \$45 million for CWA civil penalties from MOEX.

What will the money be used for? Funds in the OSLTF are used to, among other things, help cover costs of future spills.

North American Wetlands Conservation Fund (NAWCF)

What is it? The NAWCF provides funding for wetlands conservation projects. Funding comes from, among other sources, fines for violating the Migratory Bird Treaty Act.

What money has been obligated? The NAWCF will receive a total of \$100 million over five years. This money represents the criminal fine that BP agreed to pay for one misdemeanor count of violating the Migratory Bird Treaty Act.

What will the money be used for? The money will be used to fund projects to restore and conserve wetlands in the Gulf, or that would “benefit migratory bird species and other wildlife and habitat affected by” the *Deepwater Horizon* oil spill.



DISCLAIMER

This overview is prepared for informational purposes only.
It is not prepared for litigation and is not legal advice.
Individuals with pending or potential claims should consult
with their own attorney. The information in this
overview is current as of March 2015.