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# **Deepwater Horizon Oil Spill: Gulf Coast Restoration Efforts**

## **In Brief**

The explosion of the *Deepwater Horizon* offshore drilling rig on April 20, 2010, which took place 41 miles southeast of the Louisiana coast, resulted in an unprecedented discharge of oil in U.S. waters. An estimated 171 million gallons (4.1 million barrels) of oil discharged into the Gulf of Mexico over 84 days, and a substantial portion remained, in some form, in the Gulf. The spill resulted in the oiling of more than 1,100 miles of shoreline and, among other things, caused significant short- and long-term damage to fish and wildlife species.

### **Oil Spill Restoration Processes**

In the wake of the oil spill, several settlement agreements established new processes, or worked within existing processes, to dedicate funding to mitigate and recover from damages associated with the *Deepwater Horizon* spill. These efforts have been in addition to preexisting, ongoing federal, state, local, and nongovernmental efforts to restore the Gulf of Mexico ecosystem.

The distribution and use of funds under three of the major processes is likely to have a major effect on restoration work in the Gulf: (1) civil damages paid by responsible parties under the Clean Water Act (CWA) to support efforts outlined under the Resources and Ecosystems, Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) Act of 2012 (Subtitle F of P.L. 112-141); (2) criminal penalties under the CWA paid by responsible parties to the National Fish and Wildlife Foundation (NFWF) and other entities, as required under relevant court settlements; and (3) Natural Resources Damages Assessment (also known as the NRDA process) under the Oil Pollution Act of 1990 (OPA; P.L. 101-380).

While funding available for some of these efforts was announced in 2013, other funding to settle outstanding claims against BP under CWA and NRDA was announced by the Department of Justice (DOJ) on July 2, 2015. Based on information in this announcement and previous settlements, the Congressional Research Service estimates that \$16.34 billion may go to ecosystem restoration and related projects in Gulf states under the RESTORE Act, NFWF, and NRDA (among other processes). The following sections describe the content and status of these initiatives as of mid-2015.

### **RESTORE Act**

The RESTORE Act establishes the Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council, among other things. Eighty percent of administrative and civil CWA penalties paid by responsible

parties in connection with the 2010 *Deepwater Horizon* oil spill are to be deposited in the fund and made available without further appropriation. The act divided funding into the following elements:

- 35% Direct Component, divided evenly among the five Gulf Coast states for ecosystem/economic projects and administered by the U.S. Treasury Department;
- 30% Comprehensive Plan Component, with projects to be selected by the Gulf Coast Ecosystem Restoration Council (composed of six federal members and five state representatives);
- 30% Spill Impact Component, distributed by the council based on a proportional formula to be used on specified activities (limited to 25% infrastructure);
- 2.5% Centers of Excellence Grants, divided evenly among the five states and administered by the U.S. Treasury Department;
- 2.5% National Oceanic and Atmospheric Administration (NOAA) Science Program, administered by NOAA and focused on science, research, and monitoring.

Approximately \$800 million currently is scheduled to be made available in the trust fund pursuant to the 2013 Transocean settlement. The July 2015 settlement announcement by DOJ stated that BP would pay \$5.5 billion to resolve CWA claims, 80% (\$4.4 billion) of which would be distributed according to the RESTORE Act. These funds would be in addition to the \$800 million for the Transocean settlement, for a total of \$5.2 billion. The status of each element is as follows:

- Direct Component and Centers of Excellence grants have been announced in Federal Funding Opportunities (FFOs) by the U.S. Treasury Department and are expected to be awarded on a rolling basis. The current round ends in July 2015;
- The Initial Comprehensive Plan was published in August 2013, and Comprehensive Plan proposals from council members for the Transocean funding were solicited in an FFO from August to December 2014; 50 proposals currently are under review. An initial funded priorities list is expected in late 2015;
- A regulation allowing for release of 5% of Spill Impact Component funds (for planning purposes) was published in December 2014. A regulation proposing the final spill impact formula (and thus allowing for the release of remaining funds) is expected in 2015;
- The NOAA Science Program released its first FFO in December 2014. In May 2015, it established 10 long-term research priorities and released its Science Plan.

## NFWF Restoration

Pursuant to criminal settlements with BP and Transocean, NFWF is expected to receive and distribute \$2.5 billion in its Gulf Environmental Benefit Fund over the 2013-2018 time period, with more than half the funding coming in the last two years of this period (an additional \$500 million in this settlement was designated for the National Academy of Sciences). Of this amount, Louisiana is expected to receive approximately \$1.27 billion and the other states are expected to receive a portion of the remaining \$1.27 billion. The funds are to be used for barrier island and river diversion projects in Louisiana and to remedy harm to natural resources in other states affected by the spill. NFWF will be working with state natural resources agencies, Fish and Wildlife Services, and NOAA to coordinate restoration activities. As of early 2015, NFWF had funded 51 projects worth approximately \$395 million.

## NRDA Process and Early Restoration

The OPA, which became law after the *Exxon Valdez* oil spill of 1989, allows state, federal, and tribal governments to act as “trustees” to recover damages to natural resources in the public trust from the parties responsible for an oil spill. Under the OPA, responsible parties are liable for damages to natural resources, the measure of which includes the following:

- the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources;
- the diminution in value of those natural resources pending restoration;
- the reasonable cost of assessing those damages.

The trustees’ work occurs in three steps: a pre-assessment phase, the restoration planning phase, and the restoration implementation phase. The *Deepwater Horizon* NRDA process is in the restoration planning phase, which includes assessment of injuries and development of an implementation plan.

On April 21, 2011, the trustees for the *Deepwater Horizon* oil spill announced an agreement with BP to provide \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. As of 2015, the trustees and BP had approved 54 projects (phases I–III) with an estimated cost of \$698 million and proposed ten additional projects (phase IV) with an estimated cost of \$134 million. Projects include efforts to restore public trust resources such as coastal and marine habitat, sea turtles, fish, and birds and to enhance related activities such as commercial fishing and recreation. The July 2015 DOJ announcement stated that BP will pay \$8.1 billion (including the \$1 billion in early restoration) to resolve all NRDA claims.

## Timeline of Spill Restoration Activities

**April 20, 2010:** *Deepwater Horizon* spill

**July 15, 2010:** Well capped

**September 2010:** Initial Oil Spill Commission Report (also known as the Mabus Report) published

**October 2010:** Gulf Coast Restoration Task Force established

**April 2011:** NRDA early restoration framework announced

**December 2011:** Task force strategy published

**April 2012:** Phase I NRDA early restoration projects finalized

**July 2012:** RESTORE Act becomes law

**December 2012:** Phase II NRDA early restoration projects finalized

**January 2013:** Criminal settlement/NFWF funds announced

**August 2013:** RESTORE Initial Comprehensive Plan finalized

**November 2013:** First NFWF projects announced

**August-December 2014:** RESTORE Comprehensive Plan solicitation

**October 2014:** Final rule for RESTORE Direct Component

**October 2014:** Phase III NRDA early restoration projects approved

**December 2014:** Initial spill impact regulation finalized

**May 2015:** Phase IV NRDA draft early restoration projects published for public comment

**July 2015:** DOJ announces \$18.732 billion settlement, including payments by BP to resolve CWA penalties and NRDA

## Additional Information

See CRS Report R43380, *Gulf Coast Restoration: RESTORE Act and Related Efforts*, by Charles V. Stern, Pervaze A. Sheikh, and Jonathan L. Ramseur, or CRS Report IN10217, *Deepwater Horizon Oil Spill: Clean Water Act Penalty Developments*, by Jonathan L. Ramseur.

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