

Deepwater Horizon Oil Spill
In the Wake of Disaster

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What Happened?

- April 20- DH drilling rig explodes
- April 22- DH sinks and well begins leaking oil
- April 22-July 15:
 - Well leaks average 53,000 barrels oil per day
 - Fishing waters closed
 - Beaches closed



Efforts to Contain the Oil



- Containment Booms

- Controlled Burning

- Chemical Dispersants-
on surface and at wellhead

- Skimmers

Directly Affected States



Texas

Louisiana

Mississippi

Alabama

Florida

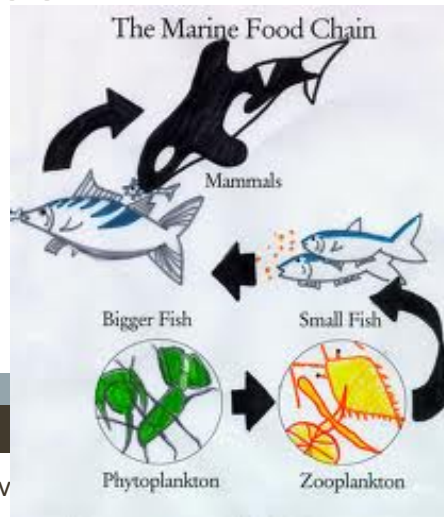


DH Cumulative Oil Spill Footprint



Current Status

- Leak stopped on July 15
- Largest marine oil spill in history
- 4.9 million barrels over 87 days
- Cleanup continues
- Assessment continues
- Litigation continues



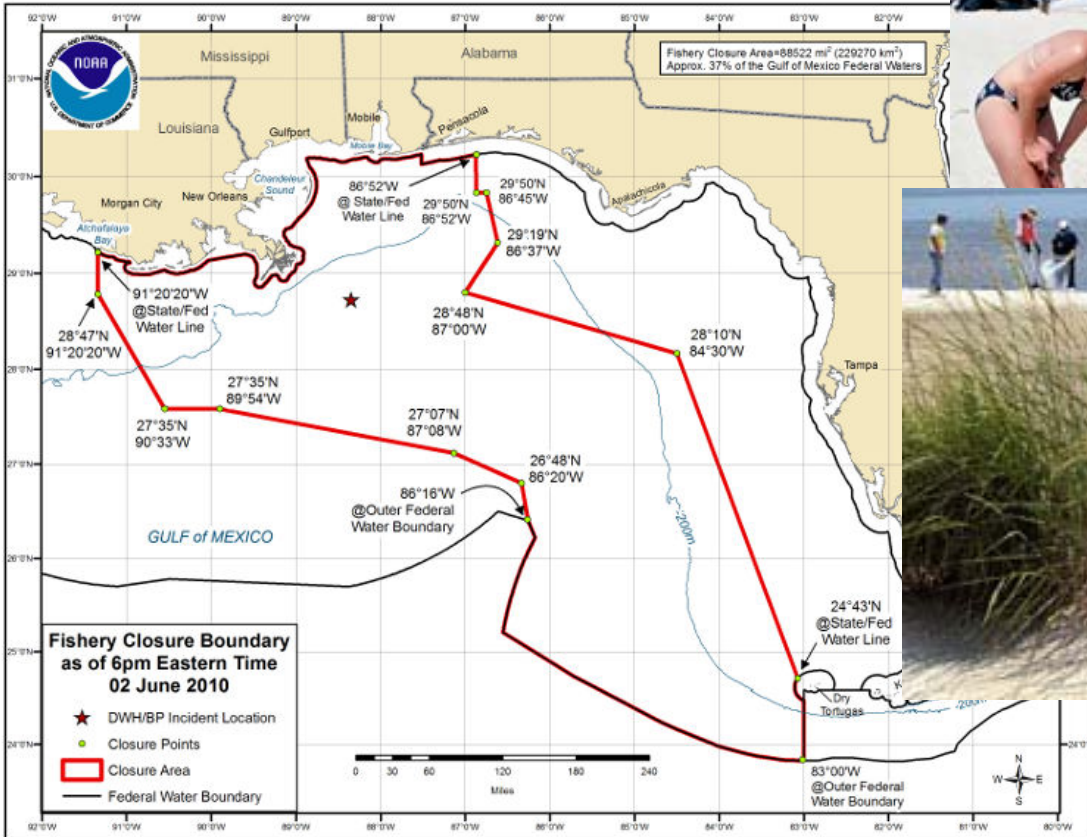
Damages/Consequences

- Environmental



Damages/Consequences

Economic



Damages/Consequences

■ Personal



Legal Remedies

■ Oil Pollution Act of 1990 (OPA)

— Established Oil Spill Liability Trust Fund (OSLTF)

■ \$1 billion per incident

— Responsible Parties (RP) must pay

■ BP- owner/operator of well and holder of lease

■ Transocean- owner of Deepwater Horizon

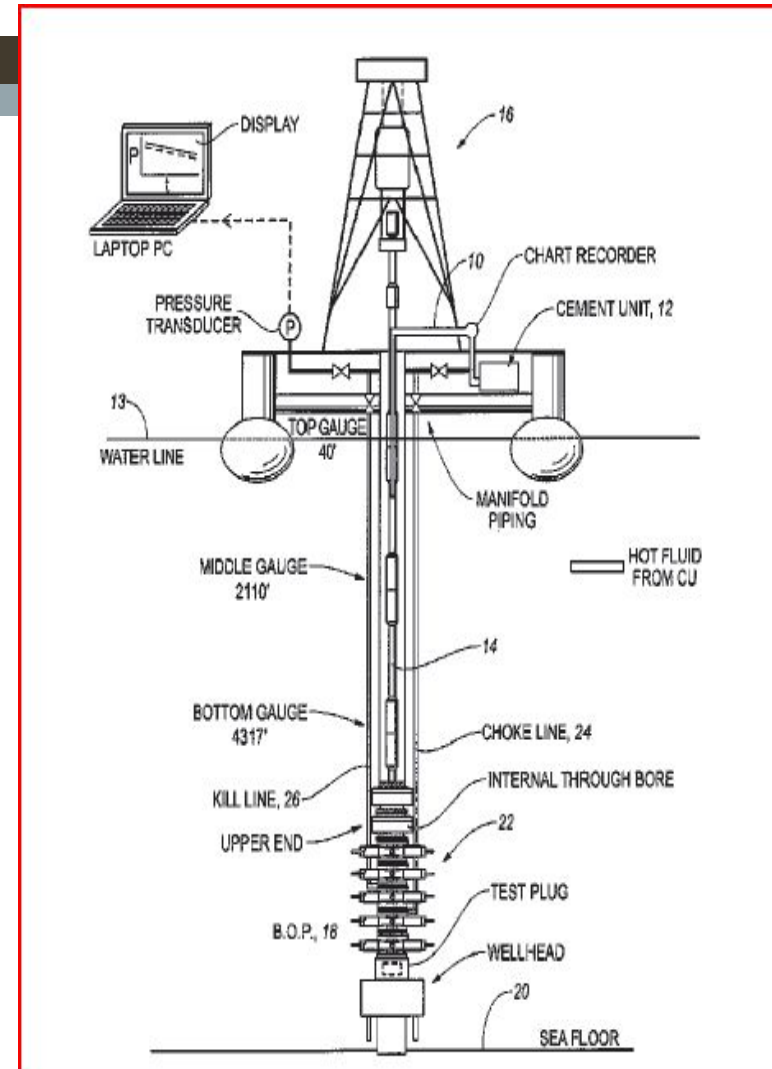
— Liability capped at \$75 million except for gross negligence/willful misconduct or violation of regulations

■ Oct. 18, 2010- BP waived liability cap in federal court



Other Potential Responsible Parties

- Halliburton
 - involved in cementing operations
- Cameron International
 - manufacturer of BOP
- Anadarko Petroleum Corp.
 - 25% interest in well
- Mitsui Oil Exploration Co.
 - 10% interest in well
- M-I, LLC
 - supplied drilling fluid for cementing



Types of Recovery Available under OPA

- Removal Costs
- Natural Resource Damages
 - State and federal trustees only
- Real or Personal Property Damages
- Profits and Earning Capacity
- Revenues and Public Services
 - State and federal trustees only



Natural Resource Damages



Under OPA, state and federal trustees may recover for “injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage.” 33 U.S.C. § 2702(b)(2)(A).

The measure of natural resource damages is “the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resource.” *Id.* § 2706(d)(1)(A)

Natural Resource Damage Assessment

- Trustees are responsible for developing restoration plan pursuant to OPA's implementing regulations, 15 C.F.R. Part 990
- Trustee Council
 - Federal Trustees
 - Dept. of the Interior (Fish & Wildlife Service, Nat'l Park Service, Bureau of Land Management and Bureau of Indian Affairs),
 - NOAA
 - Dept. of Defense
 - State Trustees for AL, LA, TX, MS, FL



Filing Claims under OPA

- **Must file a claim with the RP before suing in court or presenting a claim to the Fund for damages**
- **If claim is denied or not settled by the RP within 90 days, party can sue or file claims against the Fund**



Gulf Coast Claims Facility

- BP agreed to place in escrow \$20 billion to fund an “independent” claims process
- Administered by Ken Feinberg



Types of Claims

- Emergency Claims covering six-months of loss were available from August 23 to November 23, 2010
- Now available:
 - **Final Claim**- one-time, lump sum payment for all past, present and future damages
 - **Interim Claim**- made quarterly for past damages
 - **Quick Pay Option**- one-time quick final payment of \$5,000 for individuals and \$25,000 for businesses who already qualified for emergency or interim payments



Legal Remedies

- **Clean Water Act (CWA)**
 - Civil penalties for oil spills
 - \$1,100 to \$4,300 per barrel
 - Paid to Oil Spill Liability Trust Fund
 - Criminal liability?
 - Federal/state jurisdiction
 - Alabama Water Pollution Control Act (AWPCA)
 - Penalties up to \$25,000 per day of violation



What's Happening Now?

NRDA Process

Multidistrict Litigation Process

GCCF Process



NRDA Process

- Trustee Council meeting monthly to develop restoration plan
- Technical Working Groups (TWGs) continue to assess the injuries
- Programmatic Environmental Impact Statement being developed for implementation of restoration projects



Multidistrict Litigation (“MDL”)

- Over 350 lawsuits against BP and other responsible parties
- Cases consolidated in New Orleans under Judge Carl Barbier
- PSC coordinates for all plaintiffs



MDL Claims

- OPA Claims
- Common Law Claims
 - Negligence/Wantonness
 - Nuisance
 - Trespass
 - Strict Liability
 - Products Liability
- State Statutes/State OPAs



MDL Status

- Claims are grouped into 4 “pleading bundles”
 - Personal injury and death
 - Private individuals and business loss claims
 - Public damage claims
 - Injunctive and regulatory claims
- Master complaints and responses have been filed
- Depositions in February and March
- Test trial for OPA claims set for June, 2011.



MDL- Government Actions

- Alabama filed suit in August
 - Common law and OPA causes of action
 - Amend to include state enforcement claims
- United States filed suit in December
 - Declaratory judgment on liability and civil penalties
- Louisiana filed civil penalty action in March
- Government coordinating counsel appointed



GCCF Process

- GCCF has paid out \$3.6 billion to 175,000 claimants
- Paid 1.8% final claimants
- Paid 5.5% interim claimants
- Paid 97% quick pay claimants
- Requires claimants to sign liability release for final and quick pay claims
- Criticized for slow, inconsistent payments and lack of transparency



Criticism of GCCF

- Shilling for BP while claiming “independence”
- Misleading public re process and standards
- Manipulating claimants toward releases
- No accountability to any authority



Restoration Commissions/Reports

- Mabus Report
 - Calls for restoration task force and sharing civil penalties
- Gulf Coast Ecosystem Restoration Task Force
 - Chaired by EPA Administrator Lisa Jackson
- National Commission on BP Deepwater Horizon Oil Spill and Offshore Drilling
 - Chaired by former EPA Administrator William K. Reilly
 - Issued Report in January
 - Examines root causes of the DH explosion
 - Develops options for avoiding future spills



Resolution?

- NRDA Claims/Projects
- CWA Civil Penalty Legislation
 - Redirect CWA civil penalty money
 - Specify fair allocation among states
 - Clarify environmental v. economic recovery purposes
- Litigation



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