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Deepwater Horizon Oil Spill

John C. Cruden
President



What Happened?

- April 20- DH drilling rig explodes
- April 22- DH sinks and well begins leaking oil
- April 22-July 15:
 - Daily press coverage
 - 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

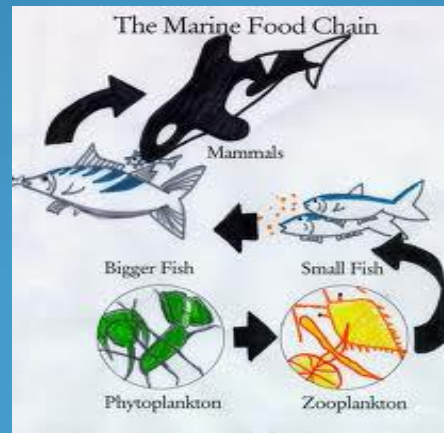
Florida

DH Cumulative Oil Spill Footprint



Current Status

- Leak stopped on July 15, 2010
- Largest marine oil spill in history
- Approximately 4.9 million barrels over 87 days
- Natural Resource Damage Assessment continues
- Litigation very active



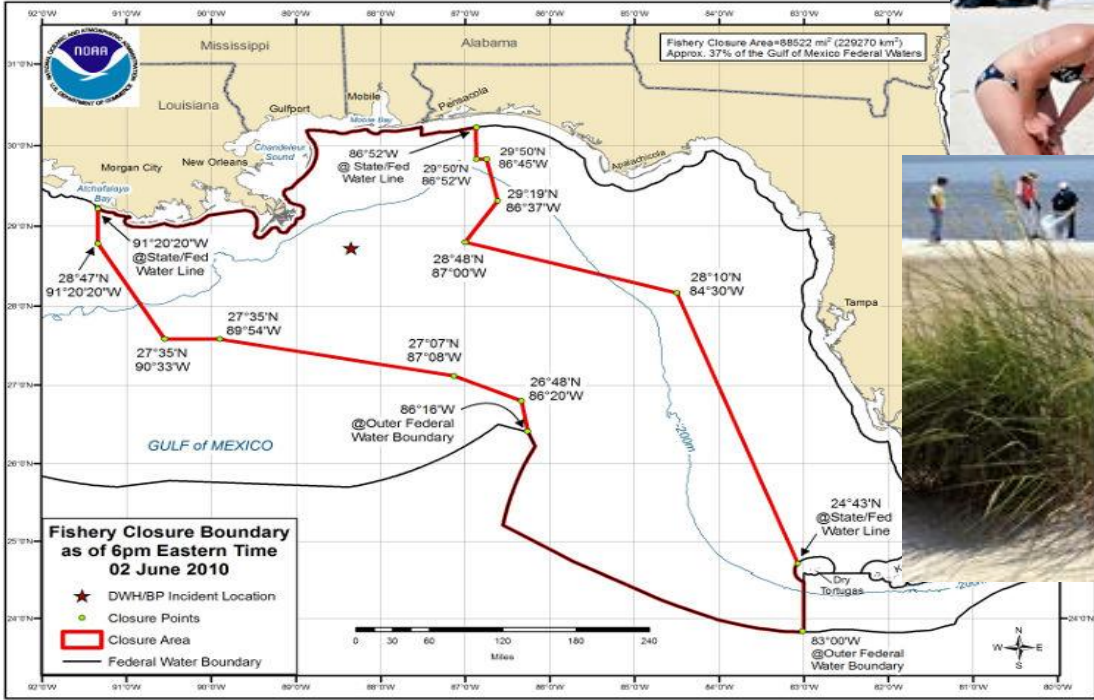
Damages/Consequences

- Environmental



Damages/Consequences

- Economic



Legal Remedies

- **Oil Pollution Act of 1990 (OPA)**
 - Established Oil Spill Liability Trust Fund (OSLTF)
 - Responsible Parties (RP) must pay
 - BP- owner/operator of well and holder of lease
 - Transocean- owner of Deepwater Horizon
 - Anadarko and MOEX?
 - 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

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

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
 - Louisiana State Statute

Overview: Major Sources of Activity

- **Filed Civil Actions**
 - *United States v. BP et al.*
 - Louisiana & Alabama civil actions filed
 - The MDL (consolidated litigation)
- **Other federal activities**
 - Marine Board of Investigation (“JIT”)
 - Natural Resources Damage Assessment
 - Gulf Coast Ecosystem Restoration Task Force
- **Other private-party activities: Gulf Coast Claims Facility**

Filing Claims under OPA

- **Must file a claim with the RP before suing in court or presenting a claim to the Oil 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



Filed Civil Claims in U.S. v. BP, et al.,

- **Two claims:**

- Civil Penalties under the Clean Water Act
- Declaratory Judgment for liability under the Oil Pollution Act

- **Five Corporate Defendants**

- BP (subsidiary only) -lessee, owner, operator of well & vessel
- Two Anadarko Defendants - co-lessees, co-owners of well
- MOEX -co-lessees, co-owners of well
- Transocean Entities -owners and operators of vessel
- Lloyd's -insurer of vessel

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 ongoing

MDL- Government Actions

- Louisiana filed civil penalty action in March 3, 2011
- Alabama filed suit in August 12, 2010, Amended April 5, 2011
 - Common law and OPA causes of action
 - Amend to include state enforcement claims
- United States filed suit in December 2010
 - Declaratory judgment on liability and civil penalties

The MDL

- **MDL includes:**
 - Admiralty Limitation Action (trial set for February 27, 2012)
 - Numerous PI plaintiffs (Bundle A)
 - >120,000 private-party claimants seeking economic losses (Bundle B₁)
 - PI/Medical monitoring cases against Responder Defendants (Bundle B₃ & 4)
 - Citizen Groups for injunctive relief (Bundle D₁)
 - Local Government claims (Bundle C)
 - Alabama and Louisiana under OPA, State civil penalties, and Tort.
 - *US v. BP* is consolidated in the MDL in E.D. La.
 - United States as defendant
- **Court has issued many Procedural Orders**

Possible MDL Overall Schedule

- July – Aug 2011: Depositions for Phase I
- Summer 2011: Motions to dismiss rulings
- August 2011: Expert reports due on Phase I
- Fall 2011: Beginning discovery on Phase II
- Winter 2012: Experts on Phase II
- Feb. 27, 2012: Trial on Phase I begin
2012: Trial of phase II begins
- Spring-Fall 2012: Discovery on Phase III

Phase I: Status of Pre-Trial work

- Over 200 Depositions by the end of the Year
- Defendants have produced several million pages & the US has commenced document production.
- Written discovery underway
- Initial Expert Reports submitted August 15

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 resources.” *Id.* 2706(d)(1)(A)

Natural Resource Damages

- 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
- Early Restoration Settlement in 2011

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



Restoration Commissions/Reports

- Mabus Report
 - Calls for restoration task force and sharing civil penalties with the affected Gulf states (penalties would otherwise go to OSTLF)
- Gulf Coast Ecosystem Restoration Task Force
 - Chaired by EPA Administrator Lisa Jackson
- National Commission on the 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 DWH explosion
 - Develops options for avoiding future spills

Natural Resource Damages

- **OPA Regulations**

- Published by NOAA. 15 CFR Part 980.
- Regulations divide Natural Resources Damage Assessment (NRDA) process into three phases:
 - **Preassessment.** Trustees evaluate injury and determine whether they have the authority to proceed.
 - **Assessment and Restoration Planning.** Trustees evaluate and quantify potential injuries and use that information to determine the appropriate type and scale of restoration actions, using economic analysis.
 - **Restoration Implementation.** Trustees implement restoration, including monitoring and corrective actions.

- **Role of Trustees**

- Assess injury and determine damages for claim against responsible party.
- Recover compensation for interim losses of natural resources and services.
- Use recovered money for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources or services. (OPA prohibits double recovery by trustees for the same injury.)
- Return injured natural resources and services to the pre-incident condition.

- **Trustee Council**

- For BP Spill: Federal Trustees are DOI, NOAA, and DOD . State Trustees include AL, FL, LA, MS and TX.
- DOI is the Federal Lead Administrative Trustee under OPA.
- NOAA is the lead for coordinating the NRDA Technical and the PEIS Work Groups.
- Goal is to enter Trustee MOU to share jurisdiction and work cooperatively.

- **Studies**

- Trustees have established 14 Technical Working Groups (e.g., birds, shoreline, mammals and turtles, etc.) to coordinate injury assessment activities at this time.
- Sample collection includes water, sediment and tissues for chemical analyses.

Exxon Valdez NRD Case Study (pre-OPA)

- March 24, 1989 tanker spill of 10.8 million gallons.
- Harm: **1,200 miles of coastline oiled**; 100,000-250,000 seabirds, 2,800 sea otters, 247 bald eagles and billions of salmon and herring eggs **killed**.
- Response costs: **over \$2 billion**.
- Settlement of Restoration Claims (mostly NRDAR) \$1.02 billion.
- Intense response (cleanup) efforts lasted 6 months; additional clean up continued for three summers (through 1992).
- Effects were long term; some habitats may take up to 30 years to recover.