

Early Restoration in the Natural Resource Damage Assessment Process

In April 2011, the *Deepwater Horizon* trustees announced that BP had agreed to enter into a voluntary \$1 billion agreement to start some restoration projects before the full natural resource damage assessment (NRDA) is complete. This fact sheet provides an overview of what a NRDA is, how early restoration fits into that process, and what has happened with early restoration to date.

What is a Natural Resource Damage Assessment?

A natural resource damage assessment (NRDA) is the process that federal, state, and tribal governments use in their role as “trustees” to determine the injury that an oil spill has caused to natural resources, and to plan and implement an approach for restoring those resources. The goal is to return natural resources to the condition

they would have been in had the oil spill not occurred (called “baseline”). In a typical NRDA, the trustees assess injuries to natural resources and then come up with a restoration plan (or plans) to address these injuries. Only when the assessment is complete can the restoration projects be started.

What is Early Restoration?

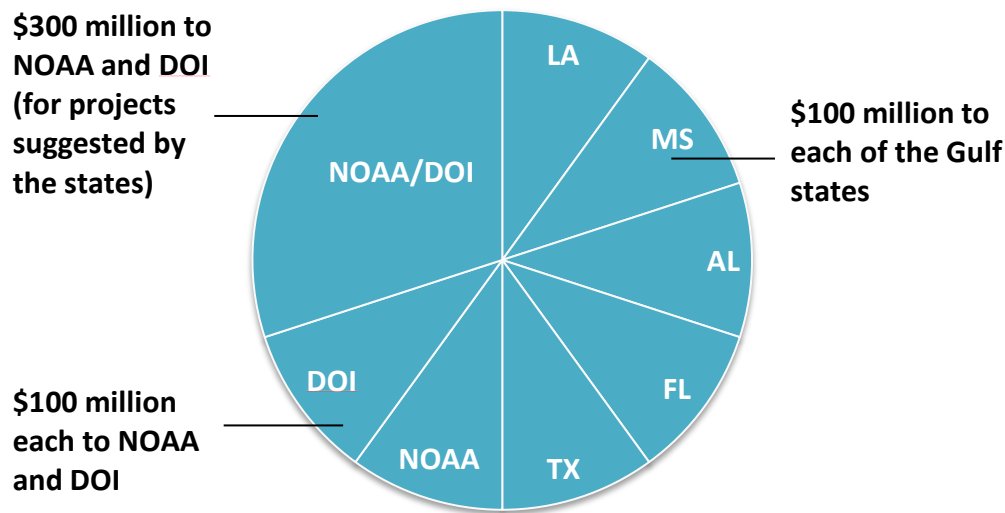
One of the challenges of a NRDA is that the assessment can take years to complete — especially in a case as complicated as *Deepwater Horizon*. In order to get started on restoration, BP and the trustees entered

into an early restoration agreement, where BP agreed to provide up to \$1 billion so that certain restoration projects could be started before the NRDA is complete.

<i>Deepwater Horizon</i> NRDA Trustees	
US Dept. of the Interior – US Fish and Wildlife Service (FWS); National Park Service; Bureau of Land Management	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
US Dept. of Commerce – National Oceanic and Atmospheric Administration (NOAA)	State of Mississippi – Dept. of Environmental Quality
US Dept. of Defense <i>Not currently on Trustee Council</i>	State of Alabama – Dept. of Conservation and Natural Resources; Geological Survey of Alabama
US Environmental Protection Agency <i>Designated as trustee by Exec. Order 13,626</i>	State of Florida – Dept. of Environmental Protection; Fish and Wildlife Conservation Commission
US Dept. of Agriculture <i>Designated as trustee by Exec. Order 13,626</i>	State of Texas – Parks and Wildlife Dept.; General Land Office; Commission on Environmental Quality

How is the Money Divided?

The trustees agreed to split the \$1 billion as follows:



Based on a chart from trustees' presentation at Early Restoration Meeting

How are Projects Chosen?

The process for selecting early restoration projects differs somewhat from the usual NRDA process.

As the trustees have noted, the first step in the process is identifying potential projects, which includes reviewing suggestions from the public.

To be considered, projects must satisfy the criteria set out in the early restoration agreement, which require projects to:

- Restore or replace “natural resources or services injured as a result of the [spill] or response... or compensat[e] for interim losses”;
- Address at least one of the “injuries to natural resources or services associated with the [spill]”;

- Try to restore natural resources or services “of the same type, quality, and of comparable ecological and/or human use value” injured by the spill;
- Not be inconsistent “with the anticipated long-term restoration needs and anticipated final restoration plan;” and
- Be “feasible and cost-effective.”

Once potential projects have been identified, the majority of the trustees must agree on which projects to select. Then negotiations with BP begin. BP must agree on the funding, as well as to the amount of “NRD Offsets” (see next section) before a project can move forward. After these negotiations are complete, projects are released to the public for review and comment. They are then finalized and implemented.

What are NRD Offsets?

NRD Offsets are the credits BP receives for early restoration projects. These credits will be subtracted from BP's total liability for natural resource damages when the NRDA is complete. BP will receive the NRD Offsets even if the early restoration project does

not produce the expected benefits. The amount of and the method for calculating the NRD Offsets for an early restoration project cannot be used as precedent for determining offsets for another project.



What has happened so far?

The trustees have finalized three rounds of early restoration projects, worth about \$700 million, and announced a fourth round. The first round included eight projects, costing an estimated \$62 million. These projects are located in Louisiana, Mississippi, Alabama, and Florida.

The second round of projects included just two projects. They are located in Florida, Alabama, and Mississippi. The estimated cost of these projects is \$9 million.

Projects Funded under Phase I of Early Restoration and Estimated Costs

- Lake Hermitage Marsh Creation (Louisiana) (\$14.4 million)
- Louisiana Oyster Cultch Project (\$15.6 million)
- Mississippi Oyster Cultch Restoration (\$11 million)
- Mississippi Artificial Reef Habitat (\$2.6 million)
- Marsh Island (Portersville Bay, AL) Marsh Creation (\$11.3 million)
- Alabama Dune Restoration Cooperative Project (\$1.48 million)
- Florida Boat Ramp Enhancement and Construction Project (\$5.07 million)
- Florida (Pensacola Beach) Dune Restoration (\$644,487)

Projects Funded under Phase II of Early Restoration and Estimated Costs

- Enhanced Management of Avian Breeding Habitat Injured by Response in the Florida Panhandle, Alabama, and Mississippi (\$4.66 million)
- Improving Habitat Injured by Spill Response: Restoring the Night Sky (Florida, Alabama) (\$4.32 million)



The third round of projects included 44 projects, costing an estimated \$627 million. Along with the projects, the trustees released a programmatic early restoration plan and programmatic environmental impact statement (“Final Phase III Projects and Programmatic ERP/PEIS”).

In addition to including the Phase III projects, the Final Phase III Projects and Programmatic ERP/PEIS is intended to guide the further selection of early restoration projects by, among other things, identifying potential types of projects (for example, restoring oysters or conserving habitat) and evaluating their environmental impacts.

The Final Phase III Projects and Programmatic ERP/PEIS was released in June 2014 and, in October 2014, the trustees released the record of decision (“ROD”).

For more information on the Final Phase III Projects and Programmatic ERP/PEIS and the ROD, and for a list of projects, visit www.gulfspillrestoration.noaa.gov/restoration/early-restoration/phase-iii.

In April 2015, the trustees announced an “agreement in principle” for a fourth round of early restoration projects, which includes 10 projects worth approximately \$134 million.

What about the rest of the NRDA – beyond early restoration?

The trustees are still in the process of assessing the full extent of injuries to natural resources and developing an overall restoration plan. As noted above, this could take several more years to complete.

As a part of this process, and at the same time that early restoration is occurring, the

trustees are completing a programmatic environmental impact statement (PEIS) for the full restoration process (that is, it’s not just focused on early restoration). The trustees held PEIS scoping meetings in Spring 2011. It is unknown when the draft PEIS will be published and be open for public comment.



Credit: Eileen Romero/Marine Photobank