# Deepwater Horizon Natural Resource Damage Assessment

## Early Restoration

Early restoration provides an opportunity to implement restoration projects prior to the completion of the Natural Resource Damage Assessment (NRDA) process.

A NRDA is the process used by natural resource trustees to develop the public's claim for natural resource damages against the party or parties responsible for the spill. It also seeks compensation for the harm done to natural resources and those services they provide.

Typically in a NRDA, natural resource trustees develop a restoration plan(s) to compensate for the impacts following a damage assessment. Plans for early restoration projects, however, may be developed prior to the completion of the injury assessment to achieve restoration faster.

*Potential restoration type: planting*

NRDAs can be prolonged and complex, in some cases lasting many years. In the case of the *Deepwater Horizon* Oil Spill NRDA, early restoration is fundamental to beginning the restoration of natural resources and their services prior to the completion of the full injury assessment.

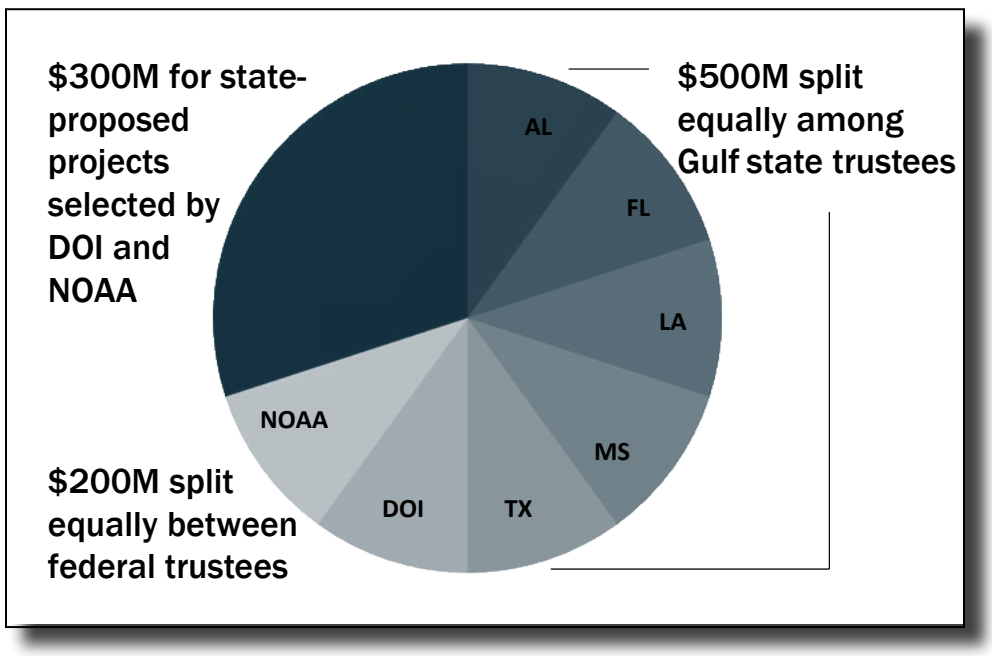
### Early Restoration for the *Deepwater Horizon* Spill

On April 21, 2011, the *Deepwater Horizon* NRDA Trustee Council announced an agreement under which BP committed to provide $1 billion toward implementation of early restoration projects.

This agreement is the largest of its kind ever reached. It represents an initial step toward fulfilling the responsible parties' obligation to fund the complete restoration of injured natural resources.

These funds are divided among the trustees:

- $500 million split equally among the Gulf state trustees (Louisiana, Mississippi, Alabama, Florida and Texas)
- $200 million split equally between the federal trustees (National Oceanic and Atmospheric Administration and the U.S. Department of the Interior)
- $300 million to fund additional state-proposed restoration projects to be selected by federal trustees




*Allocation of $1 billion early restoration agreement*

### Phase I Early Restoration Plan

Early restoration plans will be developed to begin restoration of the Gulf of Mexico to compensate for natural resource injuries, including the loss of human use of Gulf resources, from the spill.

The plans will outline projects agreed to by the trustees and BP to be presented for public input. They will be finalized to ultimately form a Final Early Restoration Plan.

The first of these plans, the Phase I Early Restoration Plan and Environmental Assessment (ERP/EA) includes these projects below, two each in Alabama, Florida, Louisiana and Mississippi.

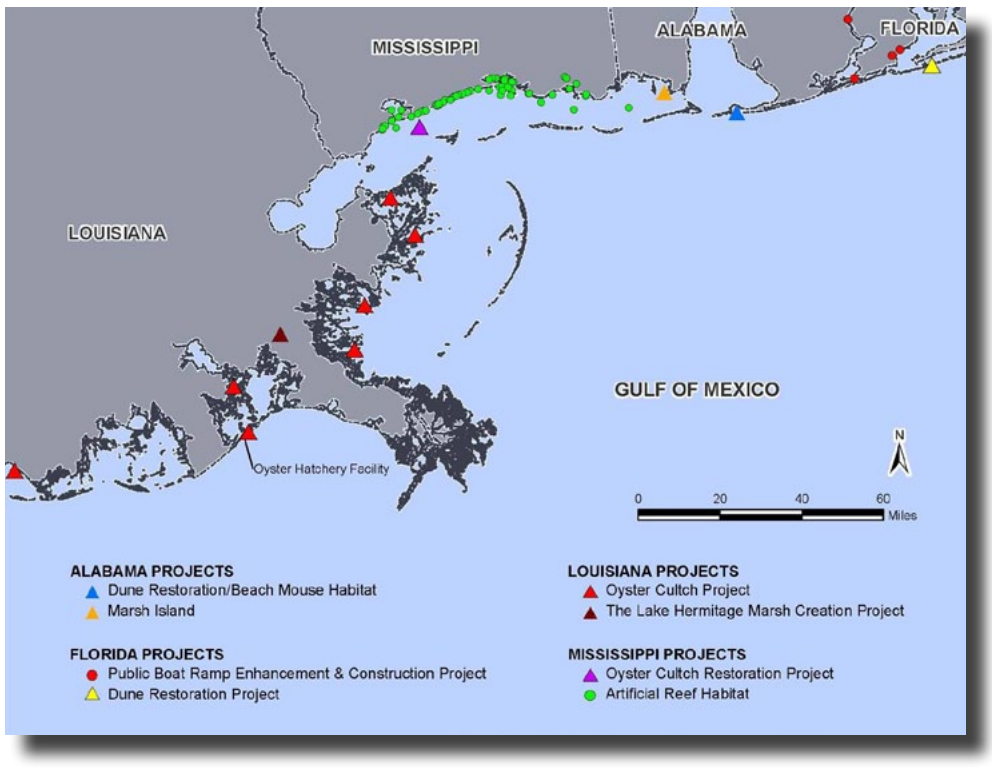
The projects are intended to provide services that will benefit impacted marshes, coastal dune habitats, nearshore sediments, oysters and human uses (such as beach-going and fishing).

| Project Title | Estimated Cost* |
|---|---|
| Lake Hermitage Marsh Creation (Louisiana) | $14,400,000 |
| Louisiana Oyster Cultch Project | $15,582,600 |
| Mississippi Oyster Cultch Restoration | $11,000,000 |
| Mississippi Artificial Reef Habitat | $2,600,000 |
| Marsh Island (Portersville Bay, AL) Marsh Creation | $11,280,000 |
| Alabama Dune Restoration Cooperative Project | $1,480,000 |
| Florida Boat Ramp Enhancement Construction | $5,067,255 |
| Florida (Pensacola Beach) Dune Restoration | $644,487 |
| Total Estimated Cost for Phase I Projects | $62,054,342 |

**Actual costs may differ depending on future contingencies, but will not exceed the amount shown without further agreement between the trustees and BP.*

While there were no Texas-based projects proposed for the Phase I ERP/EA, trustees for that state expect to propose several projects in the next phase of early restoration.

The Phase I ERP/EA, available online and at repositories throughout the Gulf region, describes the projects listed here in detail. See **www.gulfspillrestoration.noaa.gov/early-restoration**.



## Early Restoration Project Selection Criteria

The trustees are evaluating a broad suite of early restoration projects based on criteria included in the Oil Pollution Act of 1990 (OPA) regulations, the agreement with BP, and additional factors that are otherwise key components in planning or implementing restoration projects.

## Oil Pollution Act of 1990

The OPA regulations (15 C.F.R. § 990.54c ) require the trustees to evaluate proposed restoration alternatives based on, at a minimum:

- The cost to carry out the alternative;
- The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses (the ability of the restoration project to provide comparable resources and services, that is, the nexus between the project and the injury, is an important consideration in the project selection process);
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or service; and
- The effect of each alternative on public health and safety.

Under OPA regulations, if the trustees conclude that two or more alternatives are equally preferable, the most cost-effective alternative must be chosen.

## April 2011 Early Restoration Agreement

The April 2011 early restoration agreement states that the trustees shall select projects for early restoration that meet all of the following criteria:

- Contribute to making the environment and the public whole by restoring, rehabilitating, replacing or acquiring the equivalent of natural resources or services injured as a result of the *Deepwater Horizon* oil spill or response, or compensating for interim losses resulting from the incident;
- Address one or more specific injuries to natural resources or services associated with the incident;
- Seek to restore natural resources, habitats or natural resource services of the same type, quality and of comparable ecological and/or human-use value to compensate for identified resource and service losses resulting from the incident;
- Are not inconsistent with the anticipated long-term restoration needs and anticipated final restoration plan; and
- Are feasible and cost-effective.

*Mindful of the need to restore the Gulf's resources as soon as possible, the trustees are taking decisive strides to identify restoration projects that will begin to address the impacts of the* Deepwater Horizon *oil spill in the near future.*

## Additional Considerations

Trustees also took into account several practical considerations that, while not legally mandated, are nonetheless useful and permissible to help screen the large number of potentially qualifying projects. None of these practical considerations was used as a "litmus test." Rather, they were used as flexible, discretionary factors to supplement the decision criteria described above. For example, trustees:

- Took into account how quickly a given project is likely to begin producing environmental benefits;
- Sought a diverse set of projects providing benefits to a broad array of potentially injured resources;
- Focused on types of projects with which they have significant experience, allowing them to predict costs and likely success with a relatively high degree of confidence and making it easier to reach agreement with BP on the offsets attributed to each project, as required by the April 2011 agreement; and
- Gave preference to projects that were closer to being ready to implement.

## A Shared Goal: Starting Recovery Quickly

All of these discretionary factors are consistent with a key objective for pursuing early restoration: to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still under way.

In addition, the OPA regulations include specific guidance on the utilization of existing restoration projects and regional restoration plans (e.g., Louisiana Regional Restoration Plan) to address natural resource injuries when appropriate.

Projects already developed under such plans — with engineering designs, cost analyses, partner coordination, and permit and National Environmental Policy Act requirements satisfied — could be implemented quickly and are good candidates for consideration in the early restoration process.

## Public Involvement

In addition to soliciting project ideas from the public, the trustees also listened to public input on the initial round of early restoration projects set forth in the Phase I ERP/EA.

The public was encouraged to review and comment on the proposed plan beginning Dec. 15, 2011, and ending Feb. 14, 2012. Comments were accepted online, in writing and verbally at public meetings held throughout the Gulf and in Washington, DC, in January and February 2012. More than 750 people attended the 12 meetings.

More than 500 people commented at the meetings, online and via mail. The trustees considered all comments received before completing and publishing the Phase I *Final* Early Restoration Plan and Environmental Assessment. Additional rounds of early restoration are expected, and the public will be invited to review and comment on future plans.

*Trustees listen as a citizen comments at a public meeting*