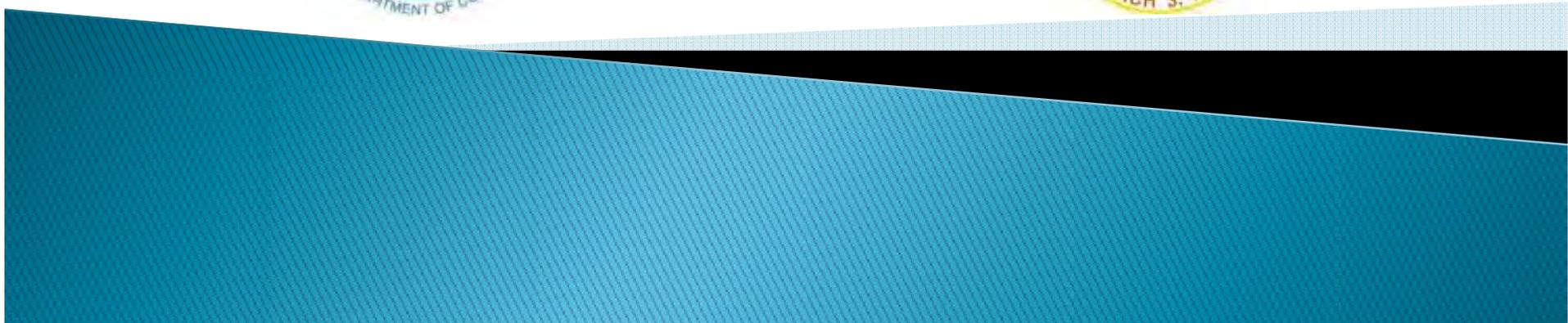




Natural Resource Damage Assessment and Restoration Overview



What Will Be Discussed

- Goal of NRDA
- NRDA Authorities
- General Steps in the NRDA Process
- Injuries and Restoration



Tragically, oil spills happen...



Goal of Natural Resource Damage Assessment Under OPA-90

- ▶ **Compensate the Public for injuries to natural resources and natural resource service losses**



NRDA is . . .

- ▶ A parallel process to spill response
- ▶ A structured process defined in regulations
- ▶ Focused on the restoration of injured natural resources
 - The Trustees consider restoration very early in the process
 - Coordination among co-trustees is fundamental to success



Primary Authorities



- ▶ **Oil Pollution Act (OPA)**
- ▶ **Comprehensive Environmental Response, Compensation and Liability Act (Superfund)**
- ▶ **Clean Water Act (CWA)**
- ▶ **National Marine Sanctuaries Act (NMSA)**
- ▶ **Park System Resources Protection Act (PSRPA)**

Natural Resource Trustees Can Include:

- ▶ State Governors
- ▶ Federal Tribes
- ▶ Secretaries of:
 - Agriculture
 - Commerce (NOAA)
 - Defense
 - Energy
 - Interior
- ▶ Foreign Governments (under OPA)

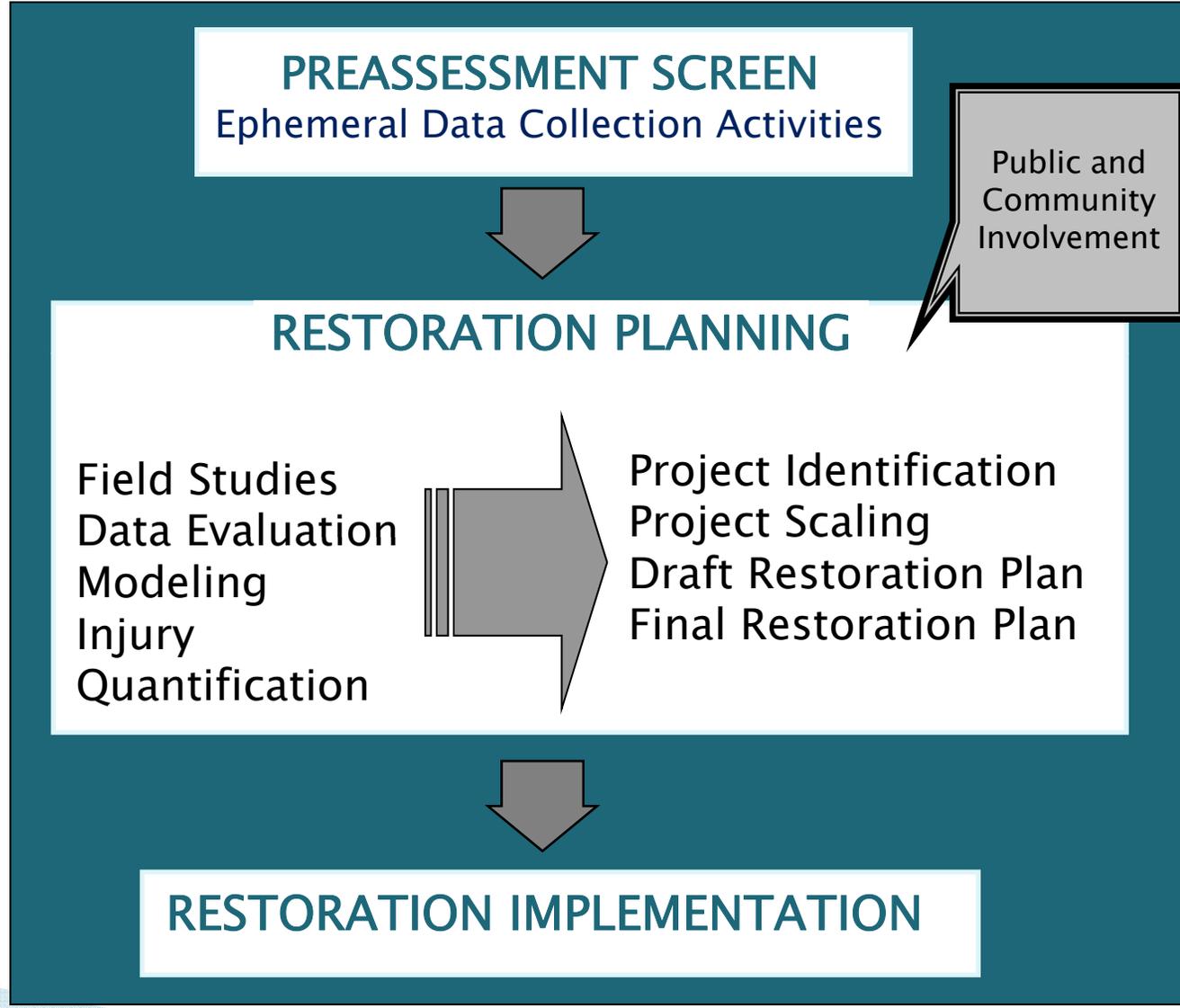


What Are Natural Resources?

- **Air**
 - **Water, including ground water**
 - **Soil, sediment, and ocean bottom**
 - **Biota (e.g., birds, fish, invertebrates)**
Examples: death; disease; organ/tissue injury; reduced reproduction; behavioral abnormalities
 - **Habitat**
marshes, mangroves, mudflats, vegetation
- 

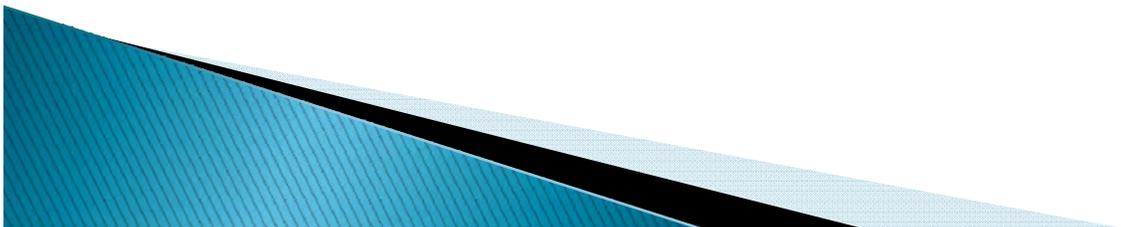
OPA NRDA Framework

Release
↓
Pathway
↓
Exposure
↓
Injury



Who Pays for Damage Assessment and Restoration?

- ▶ **Responsible Party (RP)**
- ▶ **Oil Spill Liability Trust Fund–
Administered by the US Coast Guard**
- ▶ **Agency Appropriated Funds often used initially until reimbursement from RP**



What is Restoration?

- ▶ Restore, replace, rehabilitate, or acquire the equivalent
- ▶ Returns injured natural resources to baseline – the condition they would have been in but for the release of oil
- ▶ Primary and Compensatory
- ▶ Requires Public involvement and approval



Summary

▶ NRDA is Restoration-Focused

- Restoration is considered early and throughout the process

▶ NRDA is a Cooperative Process

- Getting to restoration requires a common vision & coordination with:
 - Co-Trustees and the public
 - Moves more quickly if Responsible Party shares the same vision and works cooperatively with the Trustees

▶ NRDA is a Legal Process

- Trustees are required to demonstrate causality between the release & resource injury and lost use
- The polluter pays for assessment and restoration



DWH Trustee Council Membership

▶ Federal Trustees:

- U.S. DOC – NOAA
- U.S. DOI – FWS, NPS, BLM , BIA
- U.S. DOD – DoN

▶ State Trustees:

- Alabama (2)
- Florida (1)
- Louisiana (4)
- Mississippi (1)
- Texas (3)

▶ Trustee Council:

- Goal: Work cooperatively to determine the magnitude and extent of injury to natural resources in the GOM from the DWH spill and fully restore those injured resources



NRDA Activities for DWH

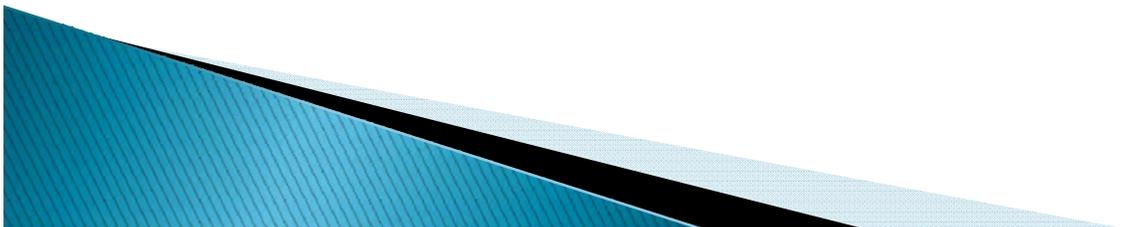
Pre-assessment Phase:

- ▶ Technical Working Groups (TWGs) composed of State and Federal natural resource trustees are working with the RP's consultant
- ▶ TWGs implementing baseline and post-impact field studies for multiple resource categories:
 - Water Column – fate and transport
 - Fisheries and Plankton
 - Submerged Aquatic Vegetation
 - Subtidal Habitats
 - Shallow and Deepwater Corals
 - Shoreline Habitats: Beaches, wetlands, mudflats
 - Birds
 - Marine Mammals and Turtles
 - Terrestrial Wildlife
 - Human Use: Fishing, hunting, and beach recreational closures



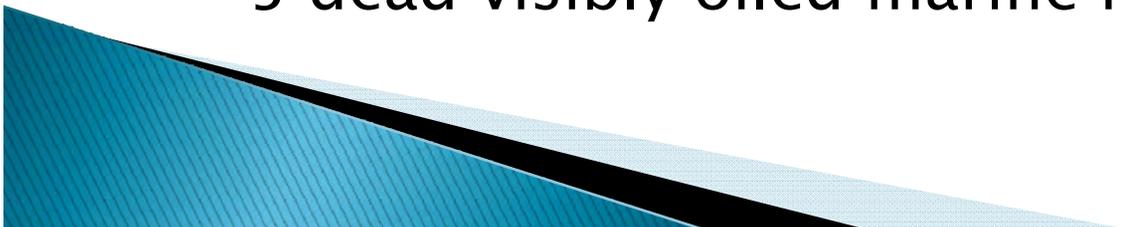
NRDA by the Numbers (as of mid-Sept - I)

- ▶ 295 NOAA staff and 475 NOAA contractors working on the NRDA
- ▶ Nearly 24,000 environmental samples collected for analysis
 - Almost 6,500 samples analyzed with over 85% through third part validation



NRDA by the Numbers (as of mid-Sept – II)

- ▶ About 2000 linear miles of shoreline have been surveyed by NRDA teams
 - With oil documented on >950 miles of shoreline
- ▶ NRDA and Response teams have captured:
 - >1900 live oiled birds
 - 1850 dead visibly oiled birds
 - 450 live oiled sea turtles
 - 17 dead visibly oiled sea turtles
 - 5 dead visibly oiled marine mammals



Notice of Intent to Conduct Restoration Planning

- ▶ Released Sept. 29, 2010
- ▶ Invited 8 Responsible Parties to participate in the NRDA
- ▶ Formally moves the process from the Pre-Assessment Phase into the Restoration Planning Phase



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
Suite 4470
501 West Ocean Boulevard
Long Beach, CA 90802

September 27, 2010

Brian D. Israel
Arnold & Porter LLP
555 12th Street, NW
Washington, D.C. 20004-1206
On behalf of:
BP Exploration & Production, Inc.

James J. Dragna
Bingham McCutchen
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071-3106
On behalf of:
Anadarko Petroleum Corp.
Anadarko E&P Company, LP
MOEX Offshore 2007 LLC

Kerry J. Miller
Fritel LLC
1100 Poydras Street, Suite 3700
New Orleans, LA 70163
On behalf of:
Transocean Holdings LLC
Transocean Deepwater Inc.
Transocean Offshore Deepwater Drilling Inc.
Triton Asset Leasing GmbH

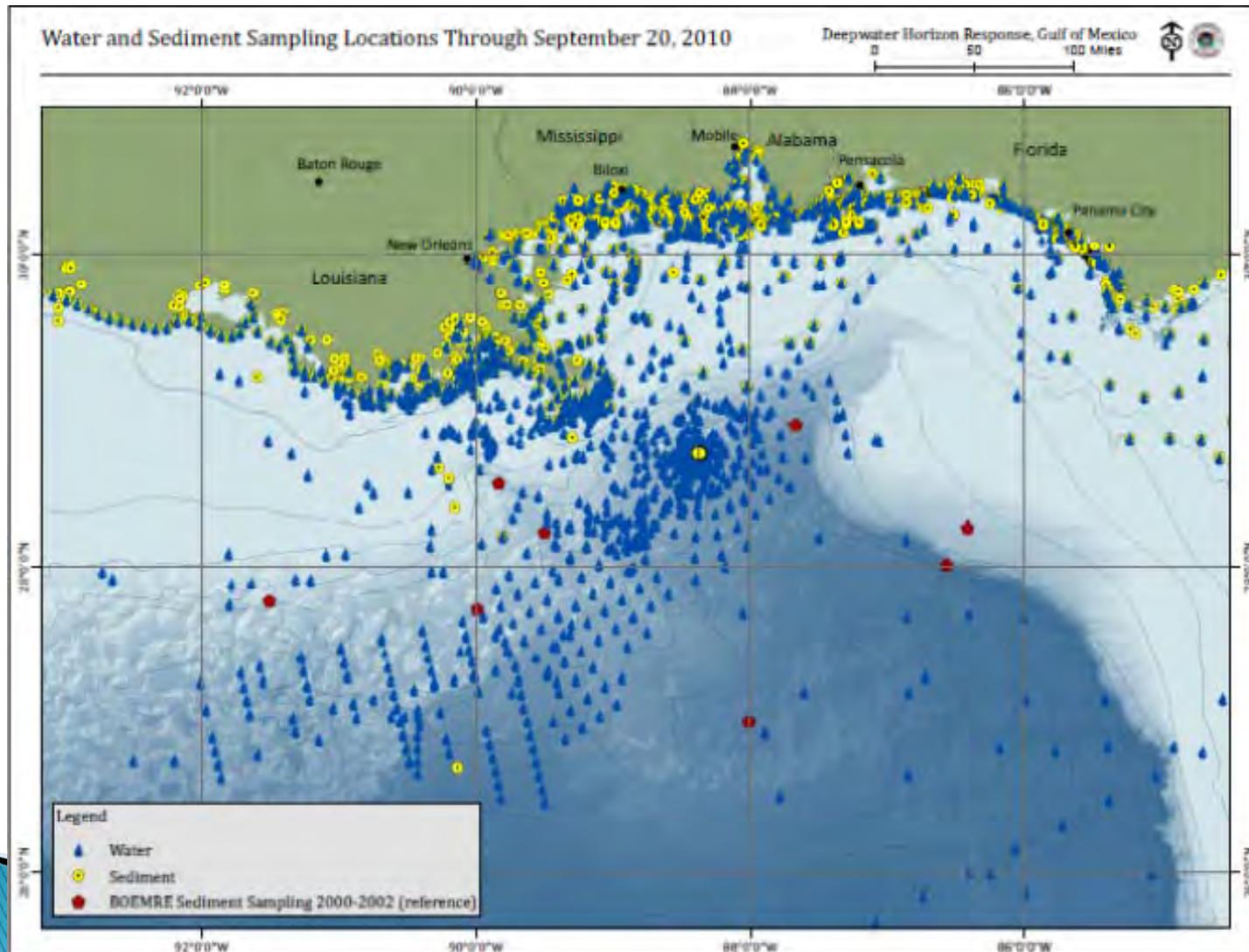
Re: Notice of Intent to Conduct Restoration Planning for the Deepwater Horizon Oil Spill and Invitation to Participate in Natural Resource Damage Assessment.

Dear Counsel:

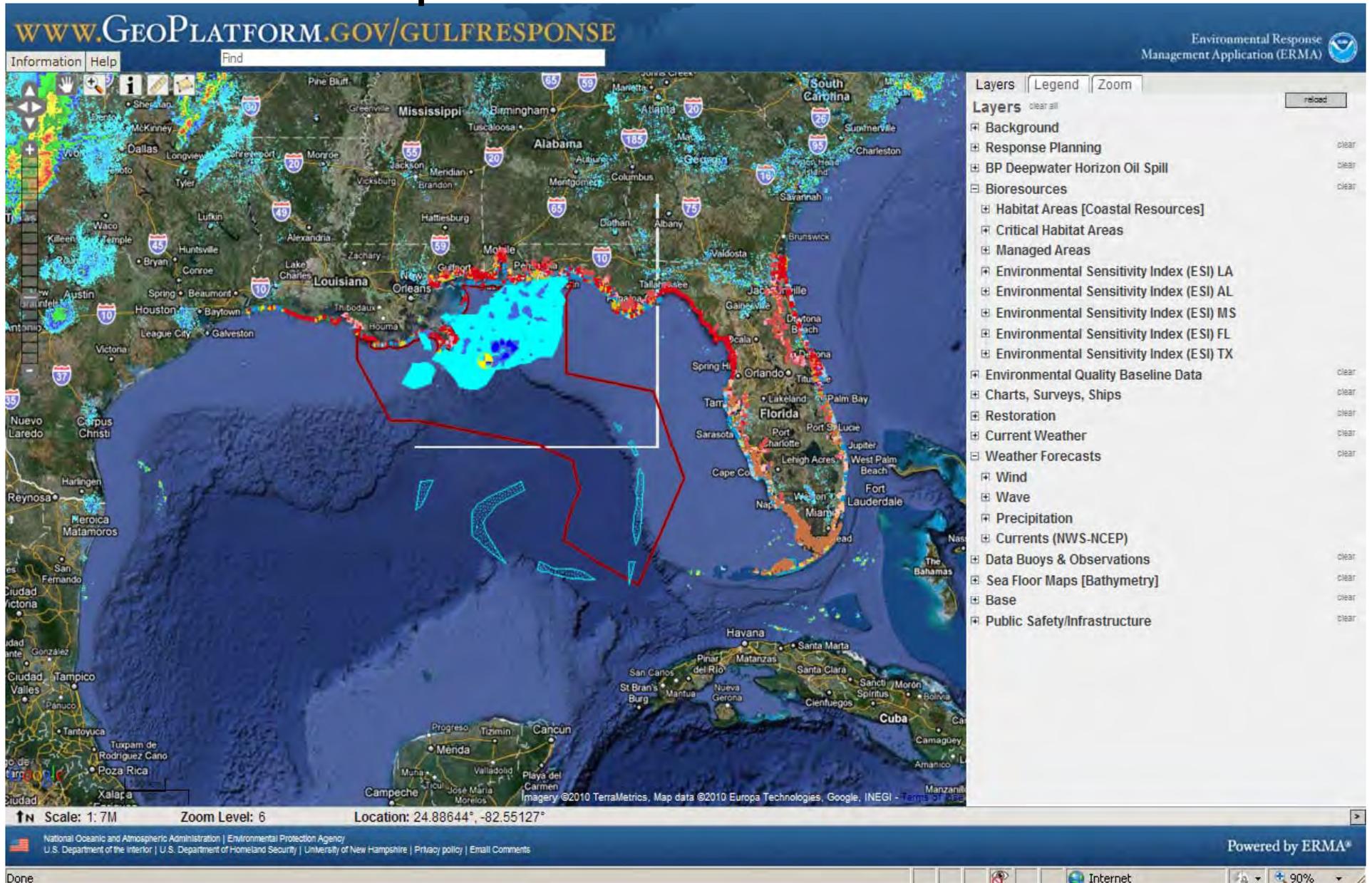
I am writing on behalf of state and federal agencies charged with public trust responsibilities for natural resources injured and threatened by the above-referenced oil spill.

On or about April 20, 2010, the mobile offshore drilling unit Deepwater Horizon experienced an explosion and subsequently sank, resulting in discharges of oil and other substances into the Gulf

Water and Sediment Samples Collected through mid-Sept



GeoPlatform.Gov – Monitoring Oil Spill Response and Restoration

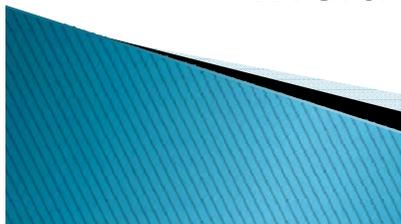


Secretary Mabus' Findings

America's Gulf Coast

A Long-Term Recovery Plan for the Area

- ▶ Recommends that Congress
 - Establish dedicated funds (CWA, Coastal Impact Assistance Program (CIAP)) for restoration
 - Create a Gulf Coast Recovery Council to manage the proposed recovery fund(s)
- ▶ Establishes a task force to get started now!
- ▶ Urges that we
 - Focus on economic recovery
 - Pay special attention to long-term health issues, and
 - Include non-profits

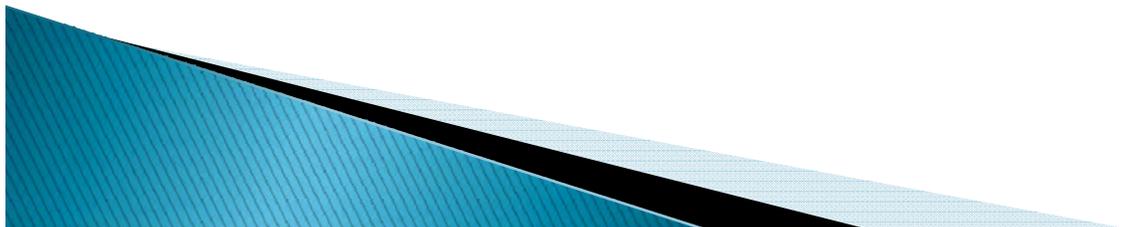
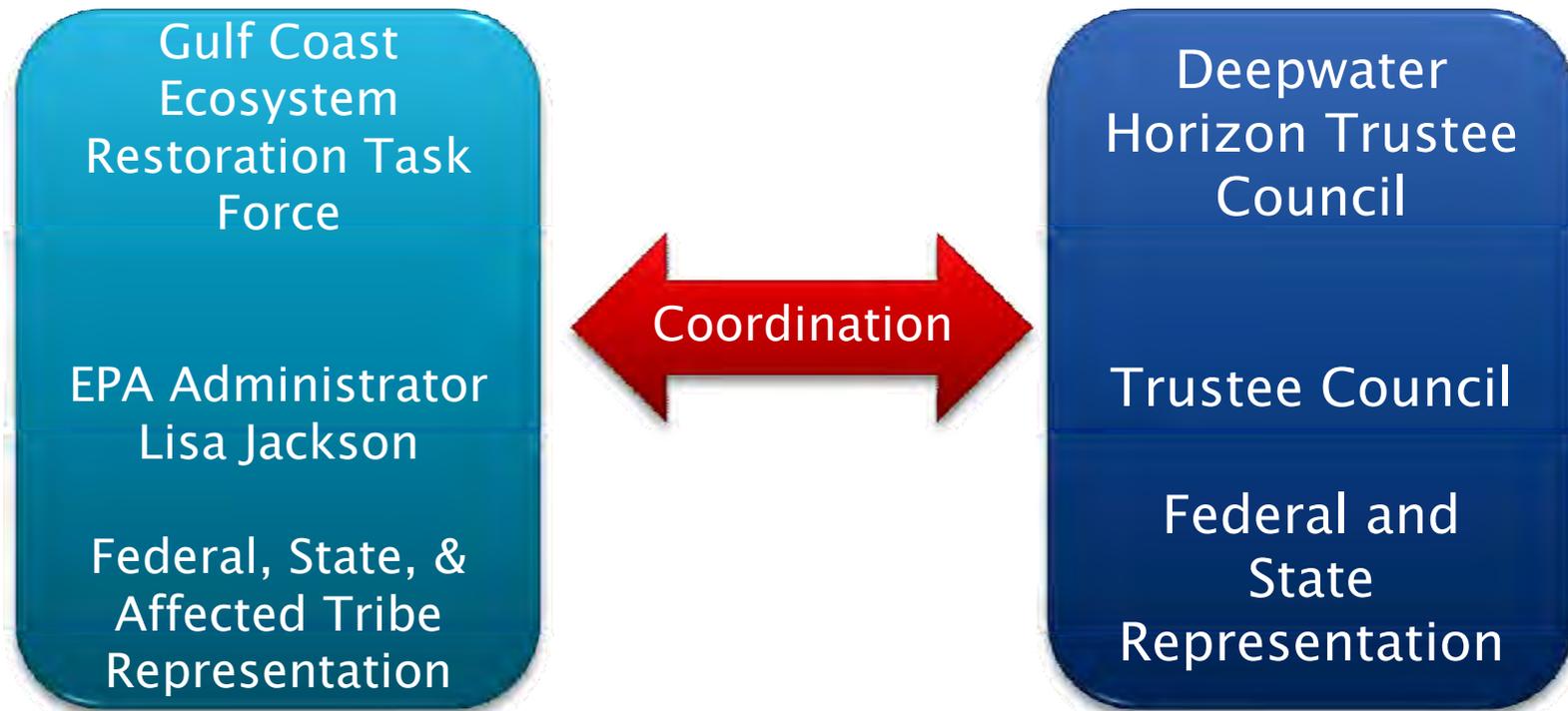


Secretary Mabus' Task Force

- ▶ A lean federal-state **Gulf Coast Ecosystem Restoration Task Force** should immediately be established to
 - Support the Natural Resource Damage Assessment (NRDA) process and
 - Coordinate non-NRDA ecosystem funds, programs, and projects.
 - While the Task Force would not direct the actions of other federal agencies, it would serve in a critical advisory capacity to ensure that Gulf restoration efforts are coordinated, collaborative, and effective.



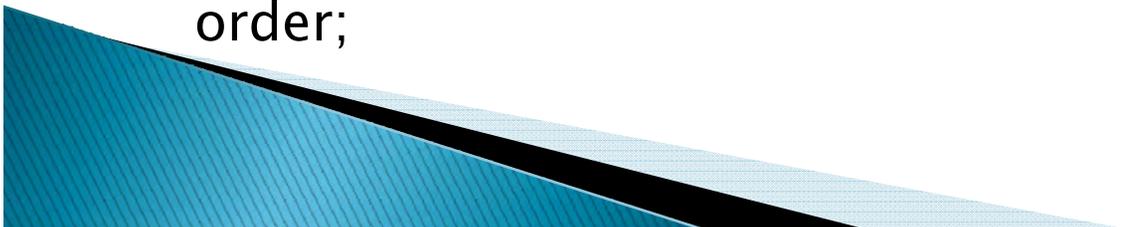
Task Force – NRDA Relationship



From the Oct. 5th Executive Order

The Task Force shall be an advisory body to:

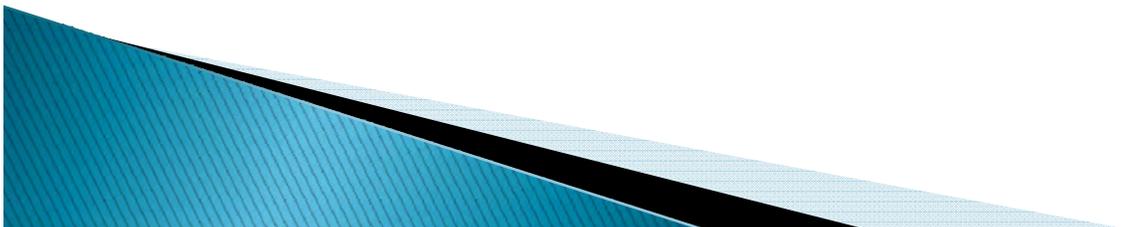
- ▶ Coordinate intergovernmental efforts to improve efficiency and effectiveness in the implementation of Gulf Coast ecosystem restoration actions;
- ▶ Support the Natural Resource Damage Assessment process by referring potential ecosystem restoration actions to the Natural Resource Damage Assessment Trustee Council for consideration and facilitating coordination among the relevant departments, agencies, and offices, as appropriate, subject to the independent statutory responsibilities of the trustees;
- ▶ Present to the President a Gulf of Mexico Regional Ecosystem Restoration Strategy (Strategy) as provided in section 4 of this order;



From the Oct. 5th Executive Order (II)

The Task Force shall be an advisory body to:

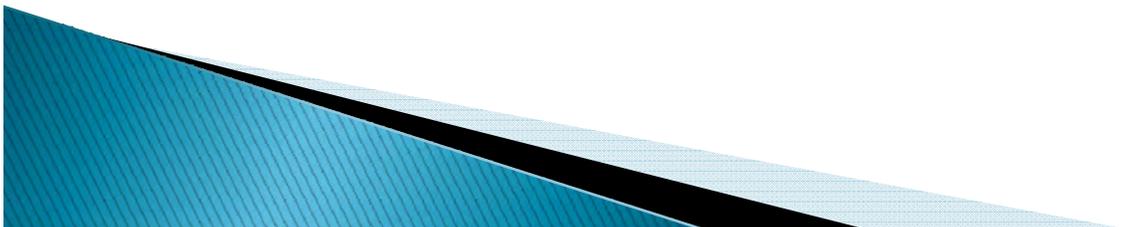
- ▶ Engage local stakeholders, communities, the public, and other officials throughout the Gulf Coast region to ensure that they have an opportunity to share their needs and viewpoints to inform the work of the Task Force, including the development of the Strategy;
- ▶ Provide leadership and coordination of research needs in support of ecosystem restoration planning and decision making in the Gulf Coast region, and work with existing Federal and State advisory committees, as appropriate, to facilitate consideration of relevant scientific and technical knowledge;



From the Oct. 5th Executive Order (III)

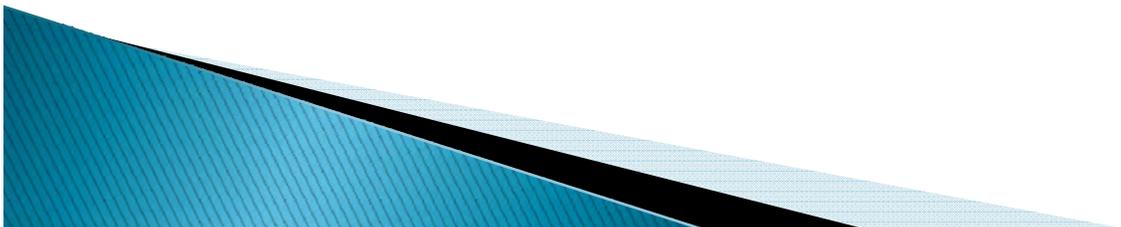
The Task Force shall be an advisory body to:

- ▶ Prepare a biennial update for the President on progress toward the goals of Gulf Coast ecosystem restoration, as outlined in the Strategy;
- ▶ Communicate with affected tribes in a manner consistent with Executive Order 13175 of November 6, 2000, on consultation and coordination with Indian tribal governments; and
- ▶ Coordinate with relevant executive departments, agencies, and offices on ways to encourage health and economic benefits associated with proposed ecosystem restoration actions.



GOM Regional Ecosystem Restoration Strategy

- ▶ Within 1 year of the date of this order, the Task Force shall prepare a Strategy that proposes a Gulf Coast ecosystem restoration agenda, including:
 - Goals for ecosystem restoration;
 - Development of a set of performance indicators to track progress; and
 - Means of coordinating intergovernmental restoration efforts guided by shared priorities.



GOM Regional Ecosystem Restoration Strategy (II)

In developing this strategy, the Task Force Shall:

- ▶ Define ecosystem restoration goals and describe milestones for making progress toward attainment of those goals;
- ▶ Consider existing research and ecosystem restoration planning efforts in the region, including initiatives undertaken by the National Ocean Council and the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Gulf Hypoxia Task Force), in order to identify planning and restoration needs and ways under existing authorities to address those needs;

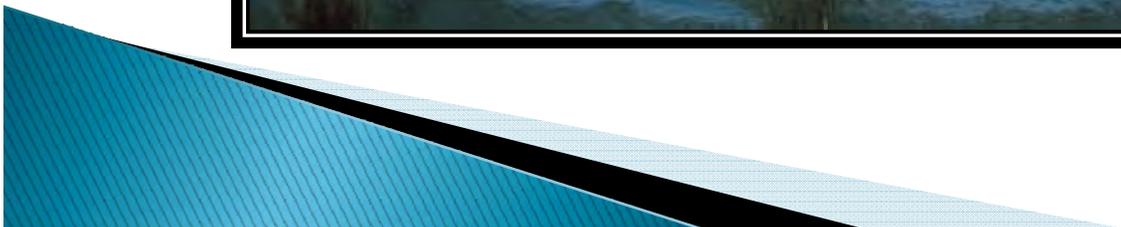


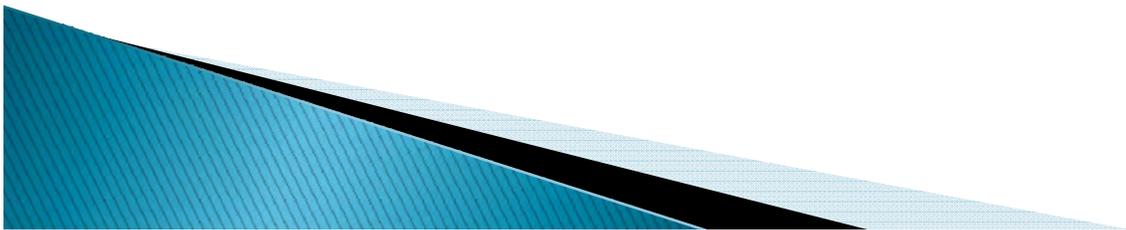
GOM Regional Ecosystem Restoration Strategy (III)

- ▶ Identify major policy areas where coordinated intergovernmental action is necessary;
- ▶ Propose new programs or actions to implement elements of the Strategy where existing authorities are not sufficient;
- ▶ Identify monitoring, research, and scientific assessments needed to support decision making for ecosystem restoration efforts and evaluate existing monitoring programs and gaps in current data collection; and



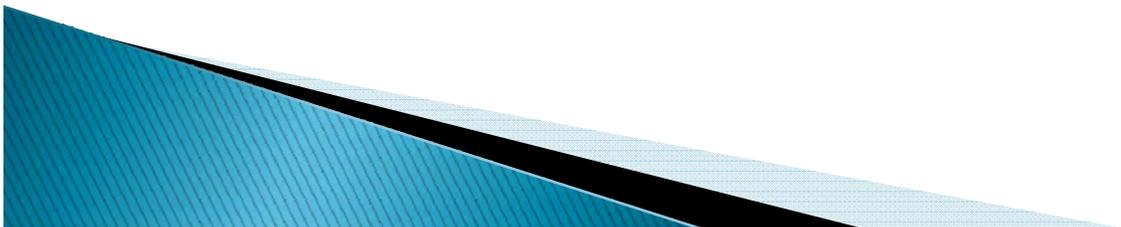
Questions?





OPA Cost Recovery

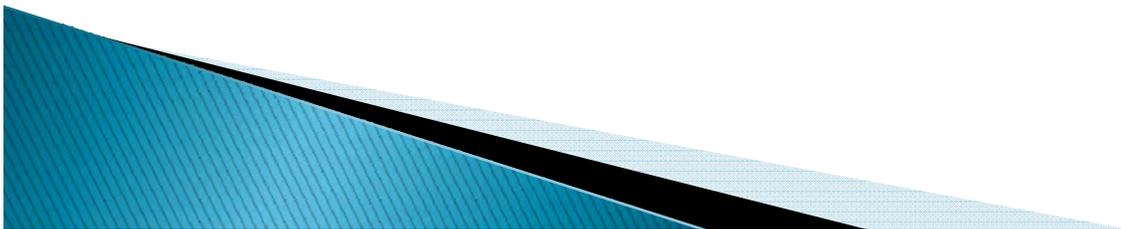
- ▶ **Removal costs:** Government entities can recover removal costs for containment and removal of oil – or to fund other actions needed to minimize the spill’s impacts.
- ▶ **Natural resource damage claims:** These legal claims serve to compensate the public for residual injuries to natural resources and the services they provide. Federal, state, tribal trustees act on behalf of the public to recover damages for injured natural resources and lost use of natural resources to restore resources to baseline conditions.



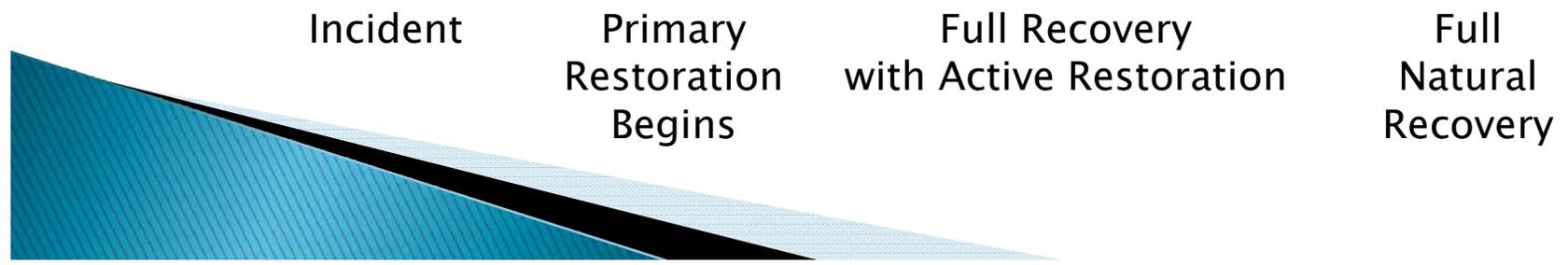
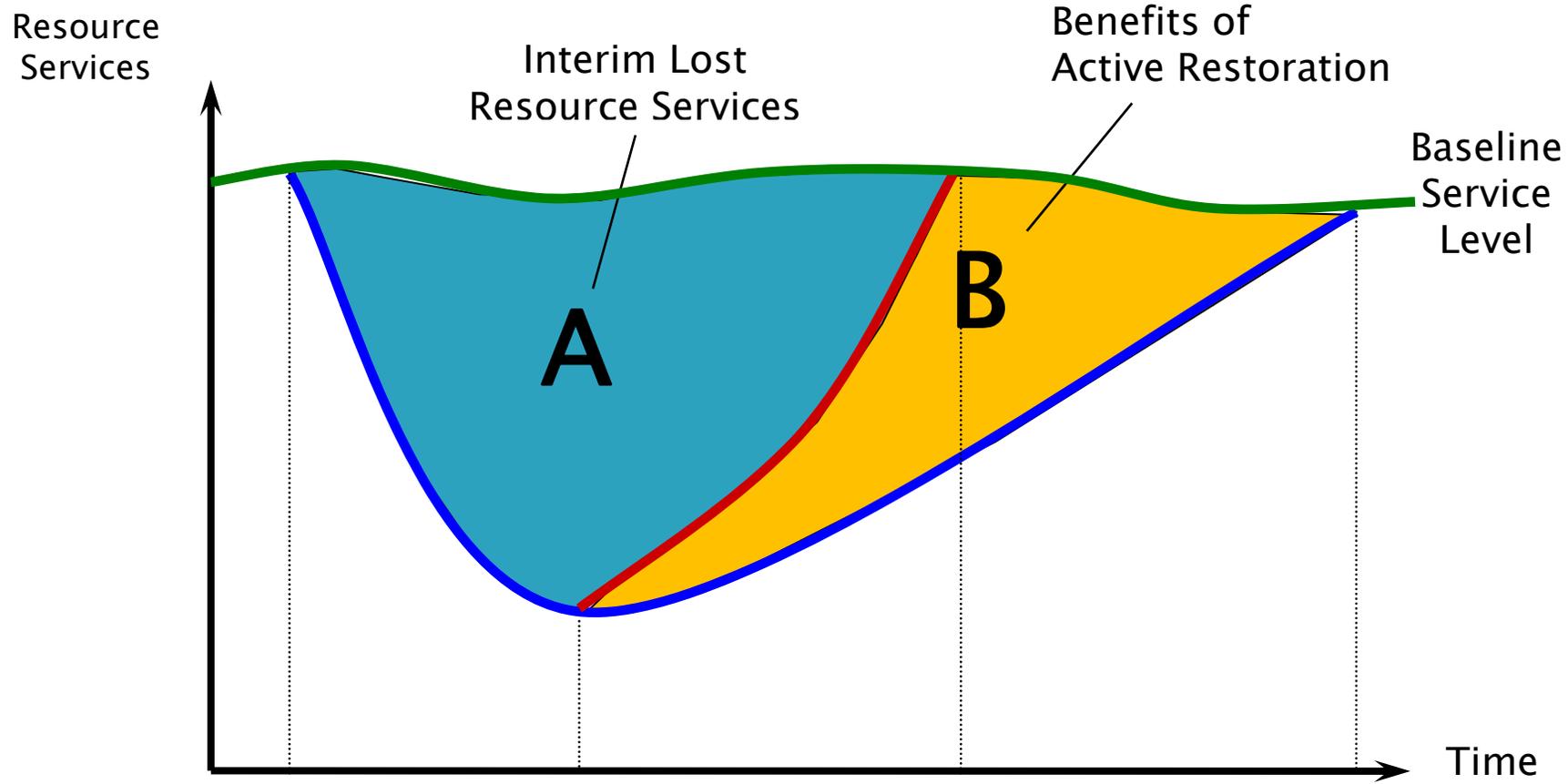
Definition of Injury Under OPA-90

15 CFR §990.30

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates the terms “destruction,” “loss,” and “loss of use” as provided in OPA.

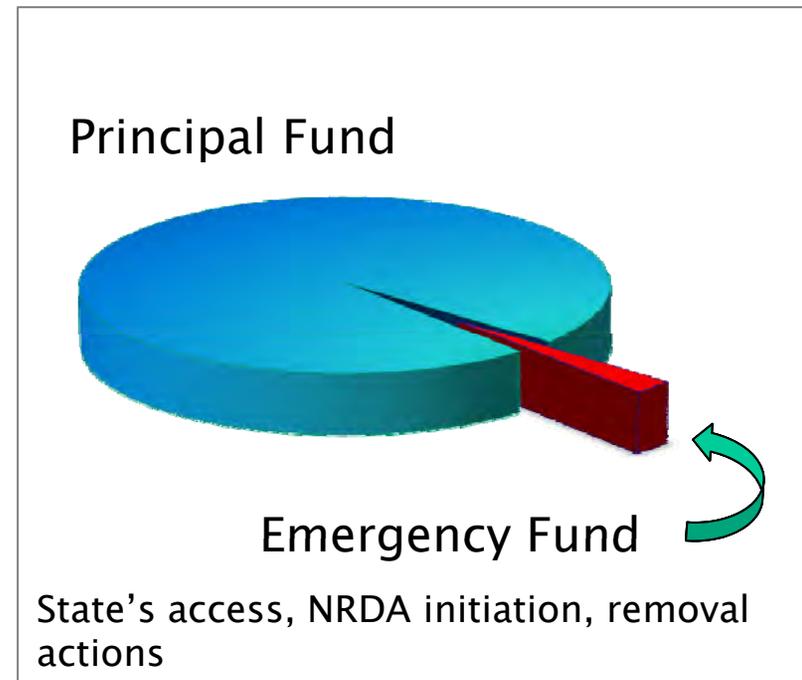


Graphical Depiction of Interim Losses



Oil Spill Liability Trust Fund

- ▶ Administered by National Pollution Fund Center (NPFC), USCG
- ▶ Two Funds
 - Emergency Fund – 50M
 - Principal Fund
- ▶ Energy Policy Act 2008
 - Removed the ceiling for OSLTF
 - Increased tax from 5 cents to 8 cents per barrel through 2016 and 9 cents in 2017.
 - Barrel tax sunsets 12/31/2017.



Principal Fund

Inputs: Tax collections, recoveries, fines, penalties, interest

Outflows: Appropriations by Congress, claims