

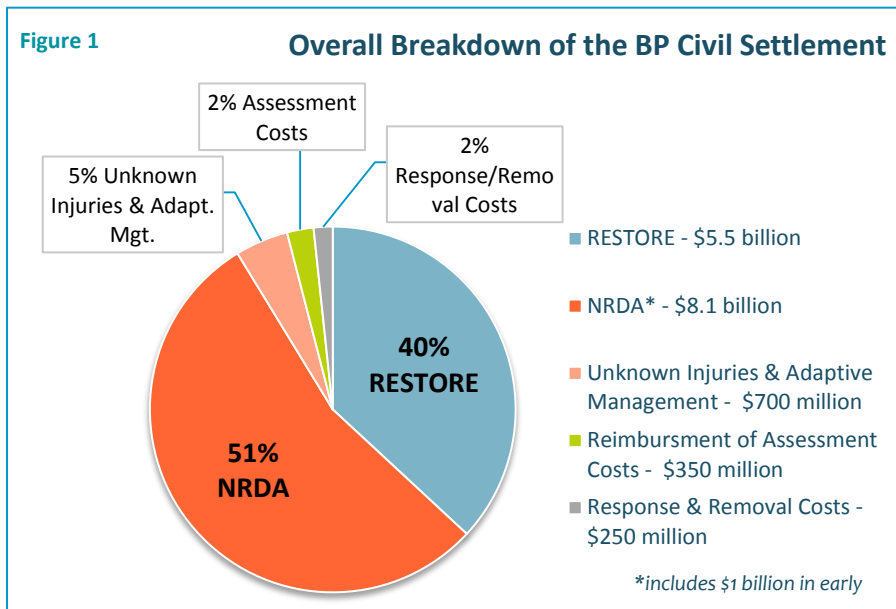


Ocean Conservancy's Analysis of the Settlement Agreement with BP

On October 5, 2015, the United States and the five Gulf states announced the full details of a \$20.8 billion settlement to resolve environmental and economic claims* against BP arising from the 2010 BP oil disaster. This consent decree provides further details for the agreement in principle that BP and the U.S. Department of Justice released in July.

The civil claims settlement includes the following components:

- \$8.1 billion for natural resource damages (NRD) (includes \$1 billion already allocated under an early restoration framework¹);
- Up to \$700 million additional payments for unknown conditions and adaptive management;
- \$5.5 billion for Clean Water Act (CWA) civil penalties (subject to the RESTORE Act);
- \$350 million to reimburse federal and state assessment costs, including \$37 million to establish and maintain a Gulf-wide environmental data management system; and
- \$250 million to reimburse response and removal costs.



*BP has reached agreements to resolve **economic damage claims** with Gulf States and local governments arising from this disaster. BP will pay the states and local governments a total of **\$5.9 billion** under these other agreements. **Those agreements are not subject to federal notice and comment requirements.**

This information represents Ocean Conservancy's best assessment of the terms of the settlement agreement based on the information provided in the consent decree and Draft Programmatic Damage Assessment and Restoration Plan (DARP)² made available for public review and comment on October 5, 2015.³ **The public comment period will close on December 4, 2015.**

Ocean Conservancy's assessment:

This settlement will provide greater certainty for restoration decision-makers and will allow planning to move forward toward ecosystemwide recovery and restoration. The settlement is an enormous opportunity for ecosystem restoration; that is why we must commit to decision-making processes grounded in science. We now have the opportunity to build a legacy for the Gulf by investing in long-term monitoring and research that will provide the tools by which we will be able to measure success.

¹ <http://www.gulfspillrestoration.noaa.gov/2011/04/trustees-announce-1-billion-for-gulf-coast-restoration-projects/>

² Programmatic Damage Assessment and Restoration Plan (PDARP) and Programmatic Environmental Impact Statement (PEIS) accessed at:

<http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan/> Ocean Conservancy is reviewing the DARP and will provide further information and analysis in the coming weeks.

³ <http://www.justice.gov/enrd/deepwater-horizon>

\$8.8 billion for Natural Resource Damages

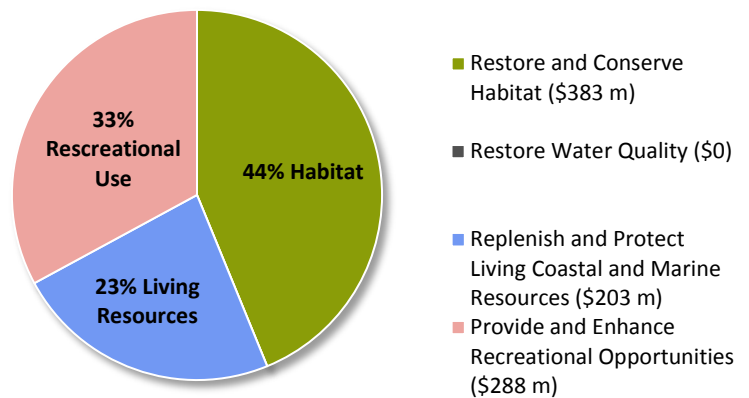
Beginning in 2017, BP will pay \$7.1 billion, plus any of the remaining \$1 billion and accrued interest not yet paid under the Early Restoration Framework,⁴ to the United States and the five Gulf states over 15 years for natural resource damages.

The settlement provides payments to the Gulf States to resolve natural resource damages and defines those allocations. Figure 2 shows the total NRD payments including the Early Restoration funds.

The settlement includes an agreement among the U.S. and the Gulf states **for allocating funds from the \$7.1 billion NRD payments**. Allocations will be directed at **restoration areas including “open ocean”, “region-wide”, and localized restoration in each of the five Gulf states**. \$1.24 billion is allocated to the “open ocean,” which is broadly defined as restoration of resources *primarily* in the ocean, but also includes administrative and preliminary planning across restoration areas. \$350 million is allocated to “region-wide” projects to benefit resources across the Gulf, but also includes funding for research, monitoring, oversight and planning.⁵

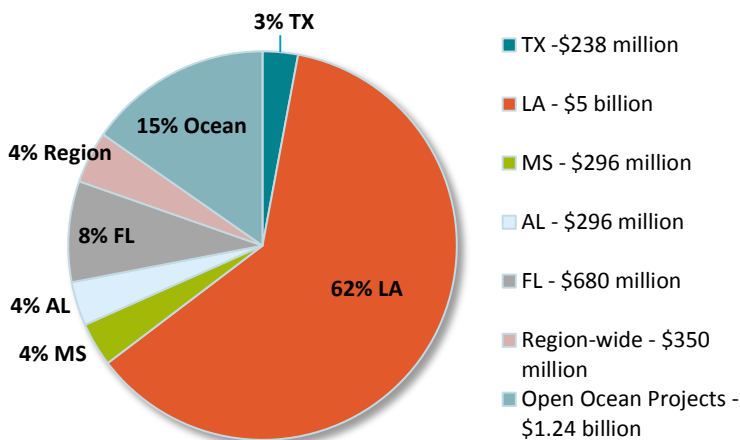
Figure 2

Early Restoration Thru Phase IV



To date, almost \$832 million has been allocated in four phases of Early Restoration. The remaining balance of \$168 million will be paid into the **NRD Fund**, established by the settlement.

Figure 3 NRDA Total per Settlement



The agreement includes up to **\$700 million** (from interest⁶ on the balance of the \$7.1 billion) in additional payments from BP **to cover any further natural resource damages that are unknown** at the time of the agreement, and to cover adaptive management or other NRD projects into the future. In addition to this interest payment, BP will pay the Trustees \$232 million at the end of the payment period.

Finally, BP will pay \$350 million to cover outstanding NRD assessment costs, including **\$37 million allocated to NOAA to establish and maintain a Gulf-wide environmental data management system**.

⁴ A \$1 billion agreement with BP in April 2011 allowed for restoration to begin before the damage assessment and restoration planning were complete. <http://www.gulfspillrestoration.noaa.gov/2011/04/trustees-announce-1-billion-for-gulf-coast-restoration-projects/>

⁵ Appendix 2-1. Consent Decree October 5, 2015. Emphasis added

⁶ Interest will accrue at a fixed rate on the unpaid balance of the civil penalty and natural resource damages payments, compounded annually and payable in years 15 (CWA) and 16 (NRD). According to Forbes, that rate should be around 0.75%.

Governance of the NRD payments

The Trustees have proposed a distributed structure to administer the NRD Funds. The Trustee Council’s function will primarily be to ensure coordination and efficiency with an overall responsibility for assuring that restoration is achieved with financial accountability. A **Trustee Implementation Group (TIG)** will be assigned for each restoration area, **creating eight (8) mini-Trustee Councils**. Both state and federal Trustees will serve on the Trustee Council and within respective TIGs. Each TIG will make all restoration decisions for the funding allocated to its restoration area on a consensus basis.



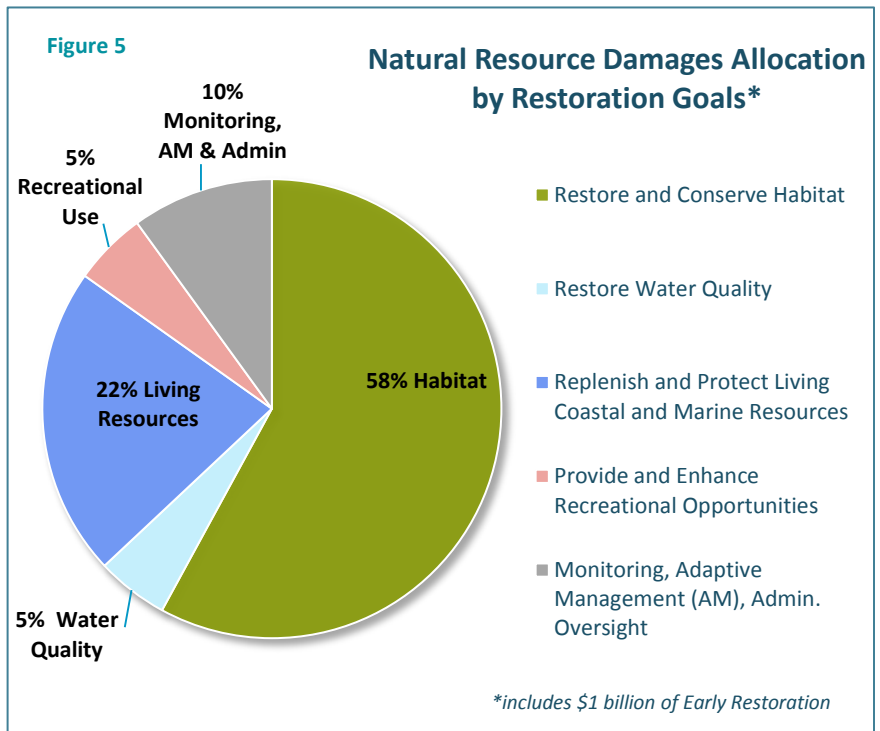
Figure 4

The federal Trustees will support administrative oversight for their work on all TIGs using the funds identified in the **Open Ocean TIG**. The Trustee Council will also establish procedures and practices needed to standardize some TIG activities. Each TIG will develop restoration plans which will require public review and comment.

The settlement outlines the amount of funding that will be dedicated to restoration types directed at one of the five goals (shown in Figure 5) within a restoration area. Restoration types are further defined in the DARP by specific resource and/or activity.

Not including monitoring, management and administration, recreational use projects or any of the Early Restoration projects, each restoration area will have the following amounts to dedicate to **ecological restoration** types.

Region-wide	\$213,700,000 million
Open Ocean	\$848,000,000 million
Alabama	\$93,500,000 million
Florida	\$442,500,000 million
Louisiana	\$4,300,000,000 billion
Mississippi	\$148,000,000 million
Texas	\$172,500,000 million



\$5.5 billion for Civil Penalty Payments – Clean Water Act

BP will pay the United States a civil penalty of **\$5.5 billion under the Clean Water Act (CWA)**, payable over 15 years, beginning in 2017.

Using the penalty total and the determination of amount of oil spilled (3.19 million barrels) the calculated **per barrel penalty is approximately \$1,724.**⁷

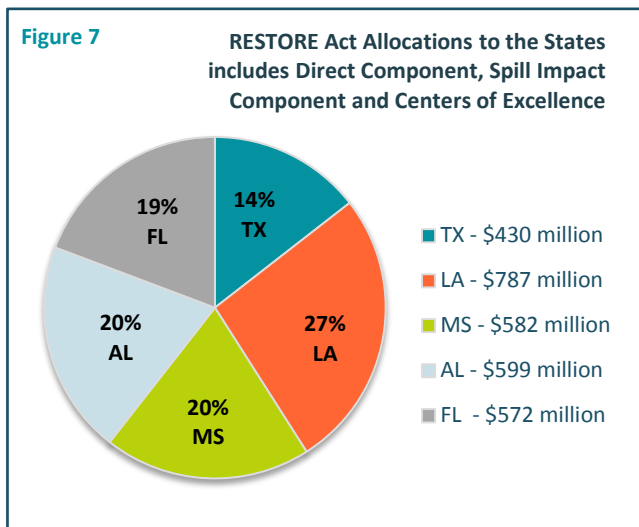
Twenty percent of the penalties will be paid into the Oil Spill Liability Trust Fund (OSLTF) to respond to future spill events. Eighty percent of these fines will be deposited into the Gulf Coast Restoration Trust Fund and allocated according to the **RESTORE Act**. Of this allocation, **\$1.32 billion will be allocated to the Gulf Coast Ecosystem Restoration Council (RESTORE Council) to be used to restore and protect the natural resources of the Gulf.** Prior to this settlement, the RESTORE Council published a Draft Funded Priorities List which should be finalized before the end of 2015. The RESTORE Council also will need to update its Comprehensive Plan by 2017.

Figure 6

RESTORE Act Allocations	Dollar Amount
Total Clean Water Act (CWA)	\$5.5 Billion
Oil Spill Liability Trust Fund (20% of total CWA)	\$1.1 billion
Total for RESTORE (80% of total CWA)	\$4.4 billion
RESTORE Bucket 1 (Direct Component)	\$1.54 billion
RESTORE Bucket 2 (Council Component)	\$1.32 billion
RESTORE Bucket 3 (Spill Impact Component)	\$1.32 billion
Centers of Excellence	\$110 million
NOAA RESTORE Act Science Program	\$110 million

The **National Oceanic and Atmospheric Administration’s (NOAA) Science Program**, established by Section 1604 of the RESTORE Act, **will receive \$110 million for research.**

The settlement determines the portion of the penalties directed to each Gulf state. The total amount includes allocations for three components of the RESTORE Act: 1) the Direct Component, 2) the Spill Impact Component and 3) the Centers of Excellence. Figure 4 shows how these funds are allocated to the states. Under the Direct Component each state will receive \$308 million.



The Spill Impact Component Allocation, according to the RESTORE Act, is to be calculated based on a complicated formula considering the portion of state shoreline oiled, the distance from the state to the Deepwater Horizon rig, and the state’s 2010 coastal population. In September 2015, the RESTORE Council published a proposed rule establishing the formula for allocating Spill Impact Component funds among the five States.⁸ Using the proposed allocations, Louisiana will receive the greatest amount at \$457 million, while Texas is allocated the least at \$100 million.

The Centers of Excellence in each state will each receive \$22 million.

More information about the state allocations can be found on the state specific pages below.

⁷ The maximum penalty for gross negligence or willful misconduct is \$4,300/barrel.

⁸ Gulf Coast Restoration Trust Fund, Notice of Proposed Rulemaking, 80 Fed. Reg. 58417,58419 (September 29, 2015).

TOTAL RESTORATION FUNDS TO THE STATE OF TEXAS: **\$871 million**

“After five years, I’m proud to announce that Texas, along with the other Gulf States, has reached an agreement in principle with BP to resolve all the states’ claims. This settlement will allow Texas to reinvest in the Gulf community and reinvigorate the economic and environmental health of the region,” said Texas Governor Greg Abbott.⁹

Breakdown of New Agreement in Principle:

The \$668 million agreement in principle includes:

- \$238 million for natural resource damages (includes \$59 million of previously allocated early restoration funds), to be paid over 15 years; and
- A minimum of approximately \$430 million in Clean Water Act penalties under the RESTORE Act, to be paid over 15 years.

Breakdown of Early Funding:

- \$59 million in Natural Resource Damage Assessment Early Restoration payments; and
- \$203 million in National Fish and Wildlife Foundation payments over a five-year period, of which \$56.5 million has been awarded.

Figure 8.1: NRD Allocation

Texas NRD Allocations	Dollar Amount
Texas Total	\$238 million
Early Restoration Phases I-IV	\$59 million
Balance Remaining	\$179 million

Figure 8.2: NRD Allocations by Restoration Goal (remaining balance)

Texas NRD Allocations by Restoration Goal	Dollar Amount
Restore and Conserve Habitat	\$100 million
Restore Water Quality	\$22.5 million
Replenish and Protect Living Coastal and Marine Resources	\$50 million
Provide and Enhance Recreational Opportunities	\$0
Monitoring, Adaptive Management, Administrative Oversight	\$6.5 million

Figure 9: Clean Water Act Allocation

Texas RESTORE Act Allocations Via Clean Water Act Payments	Dollar Amount
Texas Total (RESTORE pots 1, 3, and Centers of Excellence)	\$430 million
Centers of Excellence	\$22 million
Bucket 1 – Direct Component	\$308 million
Bucket 3 – Spill Impact Component	\$100 million

⁹ <http://gov.texas.gov/news/press-release/21153>

TOTAL RESTORATION FUNDS TO THE STATE OF LOUISIANA: \$7.1 billion

Louisiana Governor Bobby Jindal said, “This Agreement will not only restore the damage inflicted on our coastal resources by the Deepwater Horizon oil spill, it will also allow Louisiana to continue aggressively fighting coastal erosion.”

“This Agreement in Principle combined with prior Deepwater Horizon related settlements translates into approximately \$8.7 billion for coastal restoration. These funds will allow the State to move forward with identifying and implementing projects that will restore our unique and incredibly productive ecosystem,” said Kyle Graham, executive director of the Louisiana Coastal Protection and Restoration Authority and Louisiana’s lead natural resource Trustee.¹⁰

Breakdown of New Agreement in Principle:

The more than \$5.8 billion agreement in principle includes:

- \$5 billion for natural resource damages (includes \$368 million of previously allocated early restoration funds), to be paid over 15 years; and
- A minimum of approximately \$787 million in Clean Water Act penalties under the RESTORE Act, to be paid over 15 years.

Breakdown of Early Funding:

- \$368 million in Natural Resource Damage Assessment Early Restoration payments; and
- \$1.272 billion in National Fish and Wildlife Foundation payments over a five-year period, of which \$221.2 million has been awarded.

Figure 10.1: NRD Allocation

Louisiana NRD Allocations	Dollar Amount
Louisiana Total	\$5 billion
Early Restoration Phases I-IV	\$368 million
Approximate Balance Remaining	\$4.6 billion

Figure 10.2: NRD Allocations by Restoration Goal (remaining balance)

Louisiana NRD Allocations by Restoration Goal	Dollar Amount
Restore and Conserve Habitat	\$4 billion
Restore Water Quality	\$20 million
Replenish and Protect Living Coastal and Marine Resources	\$256.5 million
Provide and Enhance Recreational Opportunities	\$38 million
Monitoring, Adaptive Management, Administrative Oversight	\$258 million

Figure 11: Clean Water Act Allocation

Louisiana RESTORE Act Allocations Via Clean Water Act Payments	Dollar Amount
Louisiana Total (RESTORE 1, 3, and Centers of Excellence)	\$787 million
Centers of Excellence	\$22 million
Bucket 1 – Direct Component	\$308 million
30% Coastal Parishes	\$92 million
70% State	\$215 million
Bucket 3 - Spill Impact Component	\$457 million

¹⁰ <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=5018>

TOTAL RESTORATION FUNDS TO THE STATE OF MISSISSIPPI: **\$1.2 billion**

“Mississippi suffered tragic losses as a result of the BP oil spill. Eleven men died, including four Mississippians.” Gov. Phil Bryant said. “For months, we battled to protect our shorelines and the unique ecosystems and natural resources of our beautiful Gulf Coast from millions of gallons of oil and chemicals... Today is a victory for Mississippi and a victory for a treasured way of life on the Gulf Coast,” Governor Phil Bryant said.¹¹

Breakdown of New Agreement in Principle

The \$878 million agreement in principle includes:

- \$296 million for natural resource damages (includes \$112.5 million of previously allocated early restoration funds), to be paid over 15 years; and
- A minimum of approximately \$582 million in Clean Water Act penalties under the RESTORE Act, to be paid over 15 years.

Breakdown of \$539 Million in Early Funding

- \$112.5 million in Natural Resource Damage Assessment Early Restoration payments; and
- \$356 million in National Fish and Wildlife Foundation payments over a five-year period, of which \$40 million has been awarded.

Figure 12.1: NRD Allocation

Mississippi NRD Allocations	Dollar Amount
Mississippi Total	\$296 million
Early Restoration Phases I-IV	\$112.5 million
Balance Remaining	\$183 million

Figure 12.2: NRD Allocations by Restoration Goal (remaining balance)

Mississippi NRD Allocations by Restoration Goal	Dollar Amount
Restore and Conserve Habitat	\$60.5 million
Restore Water Quality	\$27.5 million
Replenish and Protect Living Coastal and Marine Resources	\$60 million
Provide and Enhance Recreational Opportunities	\$5 million
Monitoring, Adaptive Management, Administrative Oversight	\$30 million

Figure 13: Clean Water Act Allocation

Mississippi RESTORE Act Allocations Via Clean Water Act Payments	Dollar Amount
Mississippi Total (RESTORE 1, 3, and Centers of Excellence)	\$582 million
Centers of Excellence	\$22 million
Bucket 1 – Direct Component	\$308 million
Bucket 3 – Spill Impact Component	\$252 million

¹¹ <http://www.governorbryant.com/mississippi-reaches-landmark-agreement-in-bp-oil-spill-disaster-case/>
<http://www.restore.ms/mdeq-response-to-settlement/>

TOTAL RESTORATION FUNDS TO THE STATE OF ALABAMA: **\$1.25 billion**

“The BP Deepwater Horizon oil spill was the worst environmental disaster in United States history, and the impact to the Alabama Gulf Coast was detrimental” Governor Robert Bentley said.

“We look forward to working with Alabama’s coastal communities to identify, develop and implement appropriate projects to restore our resources and the services they provide,” Department of Conservation and Natural Resources Commissioner Gunter Guy said.¹²

Breakdown of New Agreement in Principle:

The \$895 billion agreement in principle includes:

- \$296 million for natural resource damages (includes \$117 million of previously allocated early restoration funds), to be paid over 15 years; and
- A minimum of approximately \$599 million in Clean Water Act penalties under the RESTORE Act, to be paid over 15 years.

Breakdown of Early Funding:

- \$117 million in Natural Resource Damage Assessment Early Restoration payments; and
- \$356 million in National Fish and Wildlife Foundation payments over a five-year period, of which \$22.8 million has been awarded.

Figure 14.1: NRD Allocation

Alabama NRD Allocations	Dollar Amount
Alabama Total	\$296 million
Early Restoration Phases I-IV	\$117 million
Balance Remaining	\$178.5 million

Figure 14.2: NRD Allocations by Restoration Goal (remaining balance)

Alabama NRD Allocations by Restoration Goal	Dollar Amount
Restore and Conserve Habitat	\$68 million
Restore Water Quality	\$5 million
Replenish and Protect Living Coastal and Marine Resources	\$50.5 million
Provide and Enhance Recreational Opportunities	\$25 million
Monitoring, Adaptive Management, Administrative Oversight	\$30 million

Figure 3: Clean Water Act Allocation

Alabama RESTORE Act Allocations Via Clean Water Act Payments	Dollar Amount
Alabama Total (RESTORE 1, 3, and Centers of Excellence)	\$599 million
Centers of Excellence	\$22 million
Bucket 1 – Direct Component	\$308 million
Bucket 3 – Spill Impact Component	\$269 million

¹² <http://governor.alabama.gov/newsroom/2015/07/governor-bentley-attorney-general-strange-announce-landmark-agreement-bp-oil-spill-case/>

TOTAL RESTORATION FUNDS TO THE STATE OF FLORIDA: **\$1.6 billion**

"This agreement will help Florida implement key projects and invest in environmental priorities to keep our state beautiful," Governor Rick Scott said in a release.¹³

Breakdown of New Agreement in Principle:

The \$1.25 billion agreement in principle includes:

- \$680 million for natural resource damages (includes previously allocated early restoration funds), to be paid over 15 years; and
- A minimum of approximately \$572 million in Clean Water Act penalties under the RESTORE Act, to be paid over 17 years.

Breakdown of Early Funding:

- Approximately \$144 million in Natural Resource Damage Assessment Early Restoration payments; and
- \$356 million in National Fish and Wildlife Foundation payments over a five-year period, of which \$54.5 million has been awarded.

Figure 16.1: NRD Allocation

Florida NRD Allocations	Dollar Amount
Florida Total	\$680 million
Early Restoration Phases I-IV	\$144 million
Balance Remaining	\$536 million

Figure 16.2: NRD Allocations by Restoration Goal (remaining balance)

Florida NRD Allocations by Restoration Goal	Dollar Amount
Restore and Conserve Habitat	\$22.5 million
Restore Water Quality	\$335 million
Replenish and Protect Living Coastal and Marine Resources	\$85 million
Provide and Enhance Recreational Opportunities	\$63 million
Monitoring, Adaptive Management, Administrative Oversight	\$30 million

Figure 17: Clean Water Act Allocation

Florida RESTORE Act Allocations Via Clean Water Act Payments	Dollar Amount
Florida Total (RESTORE 1, 3, and Centers of Excellence)	\$572 million
Centers of Excellence	\$22 million
Bucket 1 – Direct Component	\$308 million
75% to most impacted Counties	\$231 million
25% to other Counties	\$77 million
Bucket 3 - Spill Impact Component	\$242 million

¹³ <http://www.orlandosentinel.com/news/politics/os-bp-oil-spill-settlement-florida-20150702-story.html>