

UNIVERSITY OF SOUTH FLORIDA

A Stakeholder Analysis of the BP Oil Spill and the Compensation Mechanisms Used to Minimize Damage

An Honors Thesis

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Abstract

The BP oil spill released 4.9 million barrels of oil into the Gulf of Mexico and caused a grave amount of damage to the surrounding areas both environmentally and economically. The states most impacted were Louisiana, Mississippi, Alabama, Texas, and Florida. The main stakeholders in relation to the spill were the environment, wildlife, fisherman, the oil industry, and tourist-driven businesses and communities. Directly following the spill, BP set up The Gulf Coast Claims Facility (GCCF) which was later deemed not independent and later replaced by a court supervised settlement program which took the subjectivity of the eligibility out of the equation. Three years after the oil spill, BP announces that the compensation fund was running low but they would continue to pay the settlements from their profits. Yet BP attempts to stem the flow of incoming claims using several methods, including suing the court appointed administrator and appealing claims. In January 2013, BP pleads guilty to 11 counts of felony manslaughter, one count of felony obstruction of Congress, and violations of the Clear Water and Migratory Bird Treaty Acts. BP was sentenced to pay \$4 billion in fines and penalties. The Deepwater Horizon Oil Spill has shown that the regulation for spill prevention and response are not sufficient. As the oil companies will act in the best interest of themselves, it is the duty of the government to set regulation in place in the interest of the health and safety of its citizens. The government needs to act to create tighter controls on oil companies to decrease the likelihood of a repeat occurrence.

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Overview of the BP Oil Spill

On April 20, 2010, the *Deepwater Horizon* oil rig exploded. While the fire on the platform was still being contained Transocean and BP were assessing their options. Transocean is the company that owned and staffed the *Deepwater Horizon* rig. BP is the company who leased and provided the supervisors aboard the rig, in addition to being 65% owner of the Macondo oil well. The Macondo well had been damaged in the explosion and was leaking oil into the Gulf of Mexico. The well contained over 110 million barrels of oil and was greater than 13,000 feet below sea level (Cleveland, 2010). The well discharged oil into the Gulf of Mexico for eighty-seven days until the attempt to cement the well shut was successful, but at that point the damage was already done. An estimated 4.9 million barrels of oil was released into the Gulf, contaminating the waters and surrounding shorelines (Federal On-Scene Coordinators, 2011).

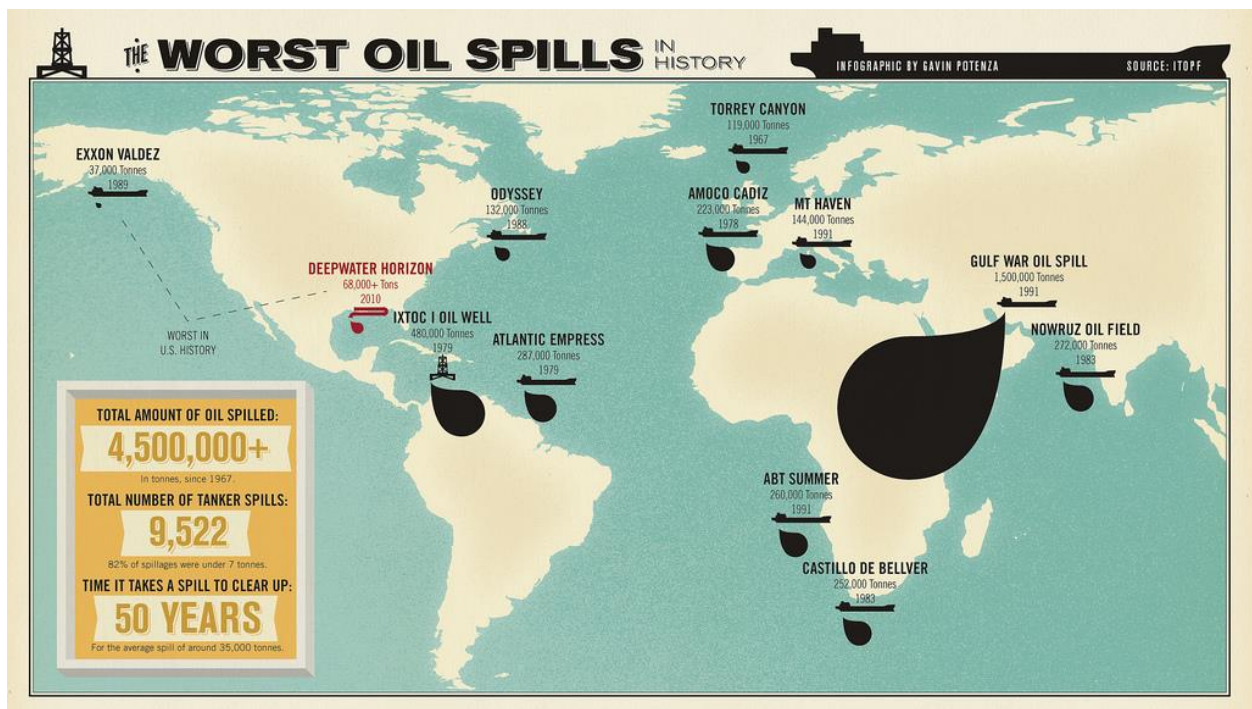
After the spill, a federal joint task force was assigned to determine the cause of the oil spill. They concluded that BP, Transocean and Halliburton, the contractor used to seal the damaged well, shared responsibility for the explosion and consequent damages, but that BP was "ultimately responsible".

BP has a history of misconduct. They have had 63 reported incidents of misconduct since 1995 (Sheppard, 2013). These prior health and safety violations resulted in an explosion in a Texas refinery in 2005 and a fire in an Ohio refinery in 2006. These instances killed 30 people and injured over 200 others. For three years, from 2007 to 2010, BP's healthy and safety violations made up 97% of the "egregious, willful" violations issued by the Occupational Safety and Health Administration (OSHA) (Thomas, Cloherty, & Ryan, 2010).

In April 2011, BP and Halliburton sued each other claiming that the other was responsible for the disaster, including the explosion and resulting leak. A federal judge ruled that Halliburton was not liable, leaving BP responsible for all claims. Similarly, in January 2012, it was ruled that Transocean was only liable for fines under the Clean Water Act and its share of punitive damages, not economic loss claims.

As displayed by Figure 1, The BP oil spill is not the largest spill by volume but it has had one of the worse impacts due to its location in the Gulf of Mexico near a number of major metropolitan areas. The stakeholders of the oil spill are widespread, varying from individuals and businesses to the environment and entire industries. BP Chief Executive, Tony Hayward, stated shortly after the spill that "we are taking full responsibility for the spill and we will clean it up and where people can present legitimate claims for damages we will honor them" (Cleveland, 2010).

Figure 1: Oil Spills by Size
(Potenza, 2010)



Stakeholder Theory

Stakeholder theory simply states that the stakeholders of a company are not just its direct owners but that stakeholders are any person, group or entity that a corporation has “benefited or burdened by its actions and those who benefit or burden the firm with their actions” (Steiner, 2012; Miles, 2012).

The first stakeholders impacted by the Deepwater Horizon Oil Spill were the workmen on the rig itself. When the rig exploded 126 people were on the platform, only 115 were evacuated (Cleveland, 2010). After a three day search covering 5,200 miles, the Coast Guard called off the rescue operation stating that the period for “reasonable expectations of survival” had passed. Sadly, the 11 presumed dead members of the crew would not be the only ones impacted by this tragedy. Other major stakeholders include, the environment, the Gulf fishing industry, and tourist-dependent businesses and communities.

Figure 2: Stakeholders of the BP Oil Spill
(Brennan, 2013)



Environmental Impact

The environment is always a stakeholder in oil spills. The environmental impact of an oil spill on sea organisms and their ecosystems has been well-documented. The Oil Pollution Act of 1990 mandates that a Natural Resources Damage Assessment be compiled for each oil spill. The assessment allows restoration efforts to be completed in the areas of most need by measuring the impact in terms of fish killed and wetland destroyed. The report compiled for the BP oil spill states that approximately 1,100 miles of coastal wetland were victim to the effects of the spill (National Academy of Sciences, 2013). It was determined that areas where vegetation and root systems were eradicated by the spill, erosion will convert marshland into open water.

The U.S. Fish and Wildlife Service determined that 32 National Wildlife Refuges are at risk as a result of the oil spill, including Breton National Wildlife Refuge, the second oldest refuge in the country (Cleveland, 2010).

Oil can cause harm through physical contact, inhalation, and absorption. Ingestion of oil by marine animals has shown organ damage, ulceration, lowered immune systems, skin irritation, and changes in behavior. For three years, from 2010 through 2012, 817 bottlenose dolphin deaths were reported compared to a steady average of 100 deaths per year that was documented during the previous seven years, between 2002 and 2009 (National Academy of Sciences).

BP used a variety of known methods to minimize the amount of oil that would reach shore, including burning, skimming, and chemical dispersants. These methods were very effective in decreasing the volume of the oil by as much as 40%, but the long term effects of these techniques to the oceanic ecosystems remains unknown (National Academy of

Sciences). It is apparent that the effects of this spill will continue to be seen for years to come.

Economic Impact

The economic impact is still not fully known. Many different stakeholders were economically affected as a result of the spill, both directly and indirectly. Fisherman in the area, as well as hotels, restaurants, and other businesses tied to tourism, felt the most immediate effect. The commercial production of fish decreased by 20% due to fishery closures (National Academy of Sciences). In 2008, commercial fisherman in the Gulf harvested over 1 billion pounds of fish and shellfish (Cleveland, 2010). Now the safety of seafood harvested from the Gulf is in question leaving the livelihood of Gulf fisherman in a precarious situation.

With the heavy media coverage, including images of the ruined coastline and the frequency of tar balls appearing on shore, positive public perception and tourism in the Gulf of Mexico has declined. One year after the spill, rental reservations were still down by over 25% (Jones, 2011). Companies, especially those involving excursions into the water, such as scuba diving and sailing, are under constant question as to whether there is still oil in the water. Eilene Beard, a local business owner in Pensacola, FL, stated that people who call usually ask multiple times if she is sure that the water is safe. She believes that what is keeping tourists away is the constant uncertainty of the quality of the water (Jones, 2011).

Areas such as Fort Meyers, where tourism shouldn't have been impacted by the oil spill, as surface oil never appeared on their shores, also experienced a significant decrease in the amount of tourism due to negative public perception of tainted waters and shores. Although the area was not directly affected, BP paid \$500,000 to Lee County in order assist

with the cost of advertising. Lee County spent over \$1,250,000 in advertising to attempt to counteract the negative public opinion of the area without satisfactory success (Finn, 2013). Lee County Tourism Bureau Director, Tamara Pigott, stated that she didn't feel that the \$500,000 BP paid benefitted them as much as counties that were directly impacted by the spill and had that received more money. "Tourism doesn't happen on its own, it takes marketing dollars, particularly if you're battling an image crisis like the oil spill," New Orleans convention and visitor bureau spokeswoman Kelly Schultz said (Reuters, 2012). As of May 2013, BP has spent over \$150 million into promoting the Gulf areas in an attempt to bring tourism back to the region. It is expected that an additional \$30 million will be paid by the end of 2013 (Reuters, 2012).

Three years after the disaster, tourism seems to be making a comeback in the Gulf area. A study by Smith Travel Research, Inc., an international market analyst group, shows that occupancy in hotels within 10 miles of the Gulf was 11% higher in the first quarter of 2013 than in the first quarter of 2010, the period directly preceding the oil spill (Finn, 2013). According the Walton County Tourism Director, Jon Ervin, hotel room tax revenue has increased by 60% since 2010.

Compensation Mechanisms

Oil spill regulations are enforced by federal, state, and international parties. The responsibilities are divided into two different categories: 1) Response and cleanup and 2) prevention and preparedness. Responsibility for response and cleanup is determined by the location of the spill. If the spill occurred in a U.S. coastal area, the U.S. Coast Guard has jurisdiction, whereas if it occurred in an inland zone, the Environmental Protection Agency (EPA) has jurisdiction. Responsibility for prevention and preparedness is determined by the source of the oil spill, meaning vessel, facility, pipeline, etc.

The annual number and volume of oil spills has decreased over time from 1973 to 2009 (Ramseur, 2013). The Exxon Valdez spill in 1989 was a significant instigator of stronger legislation and public awareness. The resulting legislation was the Oil Pollution Act of 1990 which was passed by Congress. This law clarified and increased the authority that the federal government had over the prevention and response to oil spills.

BP Compensation Mechanisms

Victims of oil spills have few methods available to them for receiving monetary compensation. To recover from any financial losses sustained due to the BP oil spill in 2010 their options are 1) an individual law suit in civil court, 2) a class-action law suit in civil court, or 3) the court approved settlement.

After the disaster, BP was under a lot of pressure to create a solution that would satisfy the negatively impacted stakeholders in a timely manner. The Deepwater Horizon Oil Spill was highly publicized; not a day went by that a story didn't appear in the news about the catastrophe that had occurred off the shore in the Gulf of Mexico. BP was under

pressure from state and federal government as well as the general public to answer for the disaster. In response, BP created a compensation fund.

Previously, the Oil Pollution Act of 1990 had required that companies set aside a fund of \$1 billion from which the company would provide compensation to injured parties. Politicians knew that this sized fund would not appease the public given the current situation. Therefore, a \$20 billion fund was agreed upon for the Deepwater Horizon Oil Spill.

Initially, the Gulf Coast Claims Facility (GCCF) was formed by BP to process the flow of claims coming in. The GCCF was to be administrated by Kenneth Feinberg, who had been part of the 9/11 compensation fund, Aurora Victim Relief Fund, the Penn State Settlement in regards to the sexual abuse victims by the assistant football coach, and the One Fund for the victims of the Boston marathon bombing (Partlett & Weaver, 2011; Cohen, 2013). It was later deemed by a federal judge that Feinberg was not an objective administrator as his firm was being paid by BP. It was proven that both his firm and BP had made the terms of the compensation plan purposefully vague. In response, the GCCF was disbanded and replaced with a court supervised settlement agreement to be administrated by Patrick Juneau. The new agreement had detailed terms that removed the subjectivity of the eligibility of claimants and the corresponding compensation amount. Due to the lack of subjectivity, there have been allegations that claimants have abused the methods used in the settlement programs.

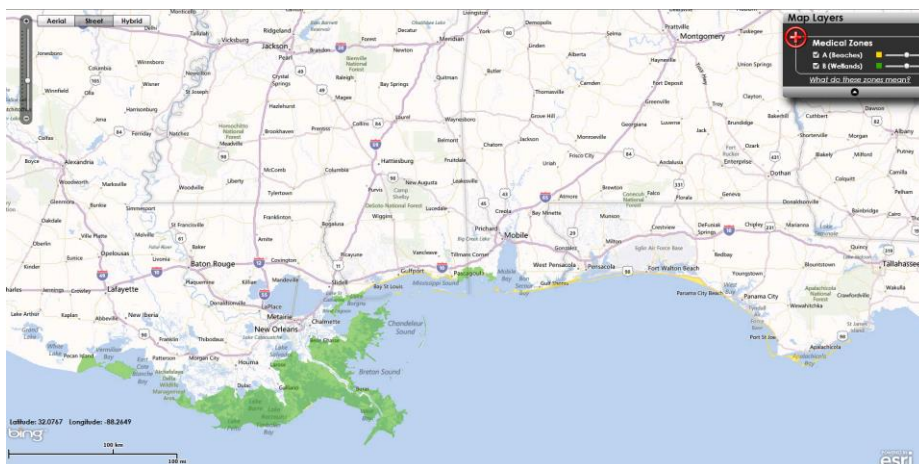
The court supervised settlement has multiple settlement programs including a Medical Benefits Class Action Settlement and an Economic and Property Damages Settlement (E&PD). The Medical Benefits Settlement is for either clean-up workers or

residents of beachfront areas and wetlands present during certain time periods in 2010 who reside in the United States as of April 16, 2012 (Deep Horizon Court-Supervised Settlement Program, 2012). As described on the official Deep Horizon Court-Supervised Settlement Program website, this settlement offers three main benefits:

- 1) A compensation program for specific physical conditions ([See Specified Physical Conditions](#));
- 2) A periodic medical consultation program; and/or
- 3) A provision of back end litigation option process for later-manifested physical conditions.

For eligibility a claimant must have been a clean-up worker between April 20, 2010 and April 16, 2012, resided in “Zone A” (See Figure 3) for at least 60 days between the dates of April 20, 2010 and September 30, 2010 and have a “specified physical condition” prior to the September date, or lastly resided in “Zone B” (See Figure 3) for 60 days between April, 20, 2010 and December 31, 2010.

Figure 3: Medical Geographic Zones
(Deep Horizon Court-Supervised Settlement Program, 2012)



Economic and Property Damages Settlement

As found on the official Deep Horizon Court-Supervised Settlement Program

website, the “Economic and Property Damages Settlement Agreement” was amended on April 18, 2012. It states that to be categorized within the E&PD Settlement Class, you must be a natural person or entity that is within the geographic zones (See Figure 4) and have a claim that meets one of the Damage Categories (See Figure 5).

Figure 4: Economic Loss Zones

(Deep Horizon Court-Supervised Settlement Program, 2012)

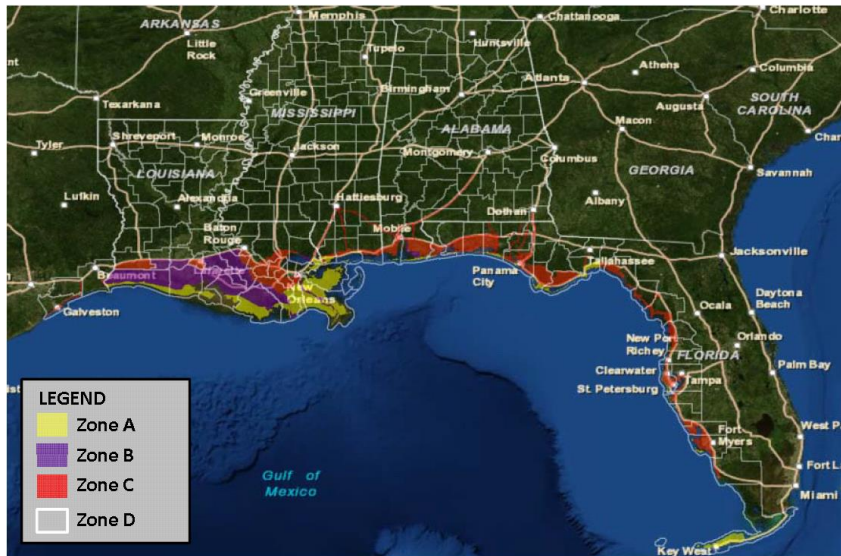


Figure 5: Summary of Damage Categories
 (Deep Horizon Court-Supervised Settlement Program, 2012)

Damage Category	Who's Eligible
SEAFOOD COMPENSATION PROGRAM	Commercial fisherman, seafood crew, or seafood vessel owner
ECONOMIC DAMAGE CATEGORY	Natural persons or entities who had a loss of income, earnings or profits
SUBSISTENCE DAMAGE CATEGORY	Natural persons who fish or hunt to harvest, catch, barter, consume or trade Gulf of Mexico natural resources
VoO CHARTER PAYMENT CATEGORY	Natural persons or entities who suffered damages and registered for BP's Vessels of Opportunity (VoO) program, executed a VoO Master Vessel Charter Agreement, and completed the initial VoO training program
VESSEL PHYSICAL DAMAGE CATEGORY	Natural persons or entities whose eligible vessel sustained physical damage
COASTAL REAL PROPERTY DAMAGE CATEGORY	Natural persons or entities whose coastal real property was damaged
WETLANDS REAL PROPERTY DAMAGE CATEGORY	Natural persons or entities whose wetland real property sustained physical damage
REAL PROPERTY SALES DAMAGE CATEGORY	Natural persons or entities who had a loss of income, earnings or profits due to an impact on real property sales
INDIVIDUALS/EMPLOYEES IN OTHERWISE EXCLUDED OIL AND GAS, GAMING, BANKING, INSURANCE, FUNDS, DEFENSE CONTRACTORS, DEVELOPERS INDUSTRIES, AND ANY ENTITY SELLING OR MARKETING BP-BRANDED FUEL	Individuals or employees in otherwise excluded oil and gas, gaming, banking, insurance, funds, defense contractors, developers industries, and any entity selling or marketing BP-branded fuel that had a loss of income, earnings or profits
INDIVIDUALS/EMPLOYEES IN SUPPORT SERVICES TO OIL AND GAS INDUSTRY	Individuals or employees in support services to oil and gas industry that had a loss of income, earnings or profits
BUSINESSES/EMPLOYERS IN OTHERWISE EXCLUDED GAMING, BANKING, INSURANCE, FUNDS, DEFENSE CONTRACTORS AND DEVELOPERS INDUSTRIES	Businesses or employers in otherwise excluded gaming, banking, insurance, funds, defense contractors and developers industries that had a loss of income, earnings or profits
BUSINESSES/EMPLOYERS IN SUPPORT SERVICES TO OIL AND GAS INDUSTRY	Businesses or employers in support services to oil and gas industry that had a loss of income, earnings or profits

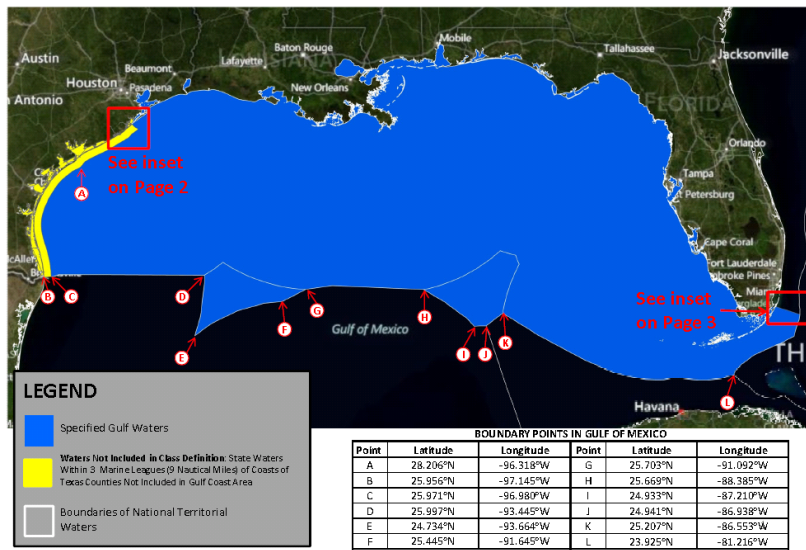
Either a natural person or an entity may file a claim from the E&PD Settlement. A natural person is defined as an individual who lived, worked, were offered and accepted work, owned or leased real or personal property located, owned or leased or worked on a vessel harbored or home ported in the eligible geographic zones listed below (See Figure 4) between April 20, 2012 and April 16, 2012 (Deep Horizon Court-Supervised Settlement Program, 2012).

Entities, for claim purposes, are all entities doing business or operating in the eligible geographic zones (See Figure 4) that sold products to consumers or other entities, regularly purchased seafood from specified gulf waters, are service businesses with one or more full-time employees, owned, operated, or leased a vessel that was home ported, landed seafood, or owned or leased real property in the Gulf Coast Area between April 20, 2010 and April 16, 2012 (Deep Horizon Court-Supervised Settlement Program, 2012).

The eligible geographic zones include:

- Louisiana,
- Mississippi,
- Alabama,
- Texas, the counties of Chambers, Galveston, Jefferson and Orange
- Florida, the counties of Bay, Calhoun, Charlotte, Citrus, Collier, Dixie, Escambia, Franklin, Gadsden, Gulf, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lee, Leon, Levy, Liberty, Manatee, Monroe, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Wakulla, Walton and Washington.

Figure 6: Eligible Geographic E&PD Settlement Zones
(Horizon Court-Supervised Settlement Program, 2012)



Non-eligible claimants include defense contractors or subcontractors, industries that fall under specific excluded North American Industry Classification System (NAICS) codes, any entity selling or marketing BP-branded fuel, government organizations, or any natural person or entity that has previously made a claim to the GCCF. Defense contractors and subcontractors are defined as firms which generate over 50% of their annual revenue

from contracts with the United States Department of Defense and individuals whose employers qualify as a defense contractor. The excluded NAICS codes fit under three categories: Oil & Gas Industry Exclusions, Industry Types Subject to Review by Claims Administrator for Potential Moratoria Losses, or Economic Loss and Property Class Definition Exclusions ([See Excluded Industry Chart](#)).

The base claim is determined by calculating the change in profit, excluding fixed costs. The list approved by BP for fixed and variable expenses can be seen in Figure 7. The allegations of abuse of the Economic and Property Damages program by claimants originate from the wording used in the settlement. The methods detailed within are to calculate the “economic loss” regardless of its connection to the negative effects of the BP oil spill .When calculating the exact amount owed to a claimant for damages, a Risk Transfer Premium (RTP) is added to the base amount. The RTP is the amount paid to a claimant above the cost of damages to compensate for potential future injuries, damages, or losses that may arise from or be related to the Deepwater Horizon Incident. The monetary amount of the RTP depends on multiple factors, including the base compensation amount, the economic zone, and the type of claim. See Figure 8 for a summary of the applicable RTPs.

Figure 7: Fixed and Variable Costs for Claim Purposes
 (Horizon Court-Supervised Settlement Program, 2012)

Fixed Costs

Advertising Expense	Fixed
Auto Expense	Fixed
Bank Charges	Fixed
Cleaning and Housekeeping Costs	Fixed
COGS - Fixed	Fixed
Computer and Internet Expenses	Fixed
Contract Services	Fixed
Dues and Subscriptions	Fixed
Fees	Fixed
Franchise Fees - Fixed	Fixed
Insurance	Fixed
Interest Expense	Fixed
Lease Expense	Fixed
Licenses And Taxes	Fixed
*Maintenance	Fixed
Misc Expense	Fixed
Overhead	Fixed
Postage	Fixed
Professional Services	Fixed
Property Taxes	Fixed
Renovation Expense	Fixed
Rental Expense	Fixed
Retirement Expense	Fixed
Security Services	Fixed
Storage Expense	Fixed
Supplies	Fixed
Unemployment Tax	Fixed
Uniforms	Fixed
Utilities	Fixed

Variable Costs

Bad Debt Expense	Variable
COGS - Variable	Variable
Commissions	Variable
Consumable Goods	Variable
Contract Labor	Variable
Credit Card Fees	Variable
Discounts & Rebates	Variable
Donations / Contributions	Variable
Drug Testing	Variable
Franchise Fees - Variable	Variable
Freight	Variable
Fuel Expense	Variable
Inventory Adjustment	Variable
*Repairs (excluding Maintenance)	Variable
Sales/Lodging Tax	Variable
Training & Education	Variable
Travel & Entertainment	Variable

Note: Payroll expenses (including Salaries and Wages, Employee Benefits, Overtime Wages, and, where applicable, 401K Payments, but excluding Owner/Officer Compensation) will be allocated between fixed and variable components based on the agreed-upon payroll methodology.

*If claimant's financial statements, books and/or records do not separately identify Maintenance costs and Repair costs, claimant shall allocate costs associated with Repairs and Maintenance 50% to Fixed Costs and 50% to Variable Costs.

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Figure 8: Risk Transfer Premium Rates
(Deep Horizon Court-Supervised Settlement Program, 2012)

CLAIM TYPE	RTP
Business Economic Loss Claims	<ul style="list-style-type: none"> Businesses satisfying the Tourism Definition and located in Zone A -- RTP is 2.50. Businesses satisfying the Tourism Definition and located in Zone B -- RTP is 2.00. Businesses satisfying the Tourism Definition and located in Zone C -- RTP is 2.00. Businesses satisfying the Tourism Definition and located in Zone D -- RTP is 1.25. <ul style="list-style-type: none"> Businesses satisfying the Charter Fishing Definition and located in Zone A, Zone B or Zone C -- RTP is 2.50. Businesses satisfying the Charter Fishing Definition and located in Zone D -- RTP is 1.25. <ul style="list-style-type: none"> Businesses satisfying the Primary Seafood Processor Definition in the Seafood Distribution Chain Definitions who process Shrimp/Crab/Oyster and are located in Zone A, Zone B, Zone C or Zone D -- RTP is 3.00. Businesses satisfying the Primary Seafood Processor Definition in the Seafood Distribution Chain Definitions who process Seafood other than Shrimp/Crab/Oyster and are located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25. <ul style="list-style-type: none"> Businesses satisfying the Landing Site or Commercial Wholesale or Retail Dealer A Definitions in the Seafood Distribution Chain Definitions and are located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25.

CLAIM TYPE	RTP
	<ul style="list-style-type: none"> Businesses satisfying the Commercial Wholesale or Retail Dealer B, Secondary Seafood Processor, Seafood Wholesaler or Distributor, or Seafood Retailer Definitions in the Seafood Distribution Chain Definitions and are located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25. Non-Tourism and Non-Seafood Businesses located in Zone A -- RTP is 1.50. Non-Tourism and Non-Seafood Businesses located in Zone B -- RTP is 1.25. Non-Tourism and Non-Seafood Businesses located in Zone C -- RTP is 0.25. Non-Tourism and Non-Seafood Businesses located in Zone D -- RTP is 0.25.
Start-up Business Gains	RTPs are the same as for Business Economic Loss Claims.
Failed Business Claims	No RTP.
Failed Start-up Business Gains	No RTP.
Multi-Facility Business	The RTP is determined per Business Economic Loss Claims as applied through the Compensation for Multi-Facility Businesses framework.
Individual Economic Loss Claims	
Category I, II & III Claimants	<p>The presumption is that the RTP shall be determined by the industry of the Individual's employer and the Zone in which the Individual's employer is located. However, a Claimant may establish an alternative Zone to be used for the RTP by demonstrating that primary employment activities and responsibilities were performed in a location different from the employer's business address and the claimed DWH spill-related economic loss occurred in that location.</p> <ul style="list-style-type: none"> Employed by business satisfying the Tourism Definition and located in Zone A -- RTP is 2.50. Employed by business satisfying the Tourism Definition and located in Zone B -- RTP is 2.00.

CLAIM TYPE	RTP
	<ul style="list-style-type: none"> Employed by business satisfying the Tourism Definition and located in Zone C -- RTP is 2.00. Employed by business satisfying the Tourism Definition and located in Zone D -- RTP is 1.25. <ul style="list-style-type: none"> Employed by business satisfying the Charter Fishing Definition and located in Zone A, Zone B or Zone C -- RTP is 2.50. Employed by business satisfying the Charter Fishing Definition and located in Zone D -- RTP is 1.25. <ul style="list-style-type: none"> Employed by business satisfying the Primary Seafood Processor Definition in the Seafood Distribution Chain Definitions who processes Shrimp/Crab/Oyster and is located in Zone A, Zone B, Zone C or Zone D -- RTP is 3.00. Employed by business satisfying the Primary Seafood Processor Definition in the Seafood Distribution Chain Definitions who processes Seafood other than Shrimp/Crab/Oyster and is located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25. <ul style="list-style-type: none"> Employed by business satisfying the Landing Site or Commercial Wholesale or Retail Dealer A Definitions in the Seafood Distribution Chain Definitions and is located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25. <ul style="list-style-type: none"> Employed by business satisfying the Commercial Wholesale or Retail Dealer B, Secondary Seafood Processor, Seafood Wholesaler or Distributor, or Seafood Retailer Definitions in the Seafood Distribution Chain Definitions and is located in Zone A, Zone B, Zone C or Zone D -- RTP is 2.25. <ul style="list-style-type: none"> Employed by Non-Tourism and Non-Seafood Business in Zone A -- RTP is 1.50. Employed by Non-Tourism and Non-Seafood Business in Zone B -- RTP is 1.25. Employed by Non-Tourism and Non-Seafood Business in Zone C -- RTP is 0.25. Employed by Non-Tourism and Non-Seafood Business in Zone D -- RTP is 0.25.

CLAIM TYPE	RTP
Category IV Claimants	Only Claimants who, in 2011, (1) continued to be employed in a position the same as, or similar to, the Claiming Job , and (2) still lived within 60 miles of their place of employment, receive an RTP of 1.
Individual Periodic Vendors	RTP is 1.
Festival Vendors	<ul style="list-style-type: none"> For Festival Vendor with documentation establishing loss of earnings from festivals -- RTP is 1. For Festival Vendor without sufficient documentation of earnings from festival sales who relies on Festival Coordinator Sworn Statements -- No RTP.
Seafood Program Claims	RTPs in respect of Seafood Program Claims are set forth elsewhere in the Settlement Agreement.
Subsistence Gains	RTP is 2.25.
VoD Charter Payment	No RTP.
Vessel Physical Damage	No RTP.
Coastal Real Property Claims	An RTP of 2.50 is applied to the Coastal Real Property Compensation Amount . No RTP for physical damage compensation.
Wetlands Real Property Claims	An RTP of 2.50 is applied to the Wetlands Real Property Compensation Amount . No RTP for physical damage compensation.
Real Property Sales	No RTP.

BP will also provide reasonable compensation for administrative costs, accounting fees, and other out of pocket fees that arise in direct relation to the settlement program (See Figure 9). Both individual claimants and business claimants are reimbursed based on the actual accounting fees incurred. Individuals with claims under \$10,000 may only receive up to \$200 in reimbursements while businesses with claims under \$50,000 may only receive up to \$1,000. For claims above the mentioned threshold no more than 2% of the base claim may be reimbursed for accounting fees (Deep Horizon Court-Supervised Settlement Program, 2012).

Figure 9: Administrative and Accounting Fee Reimbursement
(Deep Horizon Court-Supervised Settlement Program, 2012)

All reasonable and necessary hours will be reimbursed up to the following standard hourly rates. Review and supervision hours may not exceed 25% of total time spent.

	Individual Claim	Business Claim
Preparation	\$85	\$110
Supervision & Review	\$130	\$160

What the court-supervised settlement doesn't include in the compensation amount is the percentage that goes to the parties working on the claim, such as the accounting firm that prepares the eligible loss amount and the law firm that files and goes through the appeal process. These firms work on a contingency fee, meaning they only receive payment if and when the claimant does. The law firms handling the settlement can receive up to 25% of the total claim in legal fees (Cohen, 2013).

On Tuesday July 30, 2013, BP admitted that the Deepwater Horizon Oil Spill Trust fund had almost run out of money. BP has increased its estimate on the amount of cash needed to compensate individuals and businesses from \$8.2 billion to \$9.6 billion. That means, as of July 30, 2013, only \$300 million remains in the fund (Channel News Asia, 2013). BP intends to pay the remaining claims from income made in the third quarter of fiscal year 2013.

Corporate Responsibility

Corporate Social Responsibility (CSR) is the concept of corporate self-regulation to ensure compliance with the law and ethical standards. Many oil corporations have worked CSR values into their companies' core values, including Chevron, Marathon, and Indian Oil, but it is not mandatory (Chevron Corporation, 2013; Marathon Oil Corporation, 2013; Indian Oil Corporation Ltd., 2013). In a utopian world, corporations would hold themselves responsible, but at present it's the duty of the government and legal system to ensure prevention mechanisms are in place and that injured parties are compensated.

The real question is whether or not BP can ever really be made to pay for all of the damage caused by their negligence in the Gulf. According to the International Tanker Owners Pollution Federation Limited (ITOPF), there is no simple answer when it comes to the cost of oil spills since it varies from one incident to the next and depends on the number of interrelated factors such as the type of oil, the location of the spill, and the attributes of the disturbed area, as well as the quality of the contingency plan and actual response of management. The most expensive oil spill in history pre 2010 is the Exxon Valdez spill which occurred in Alaska in 1989. The total cost including fines, penalties, and claim settlements was estimated at \$7 billion. A significant portion of that, \$2.5 billion, was attributed to cleanup costs alone.

The International Tanker Owners Pollution Federation Limited states that "The tendency to react to political, media and public perceptions and pressures, rather than basing decisions on technical realities, is a special problem that can also escalate the cost of any incident beyond what would be considered 'reasonable' under the international compensation conventions." (ITOPF)

BP's Responsibility

BP estimates the total bill for the disaster, including clean-up and fines will total \$42.4 billion. Yet the question that remains is whether the government and legal system are properly holding large corporations accountable when less than three years after causing an environmental and economic disaster they continue to earn billions in profit. Large companies, such as BP, can easily write off the irreparable environmental harm as a cost of doing business.

As you can see in in Figure 11, BP stock prices decreased directly following the spill but within a couple months the prices rose once again. Although the prices are not where they were pre-spill it is not unreasonable to say that the stock will recover its original value within the next couple years.

Figure 10: BP Stock Prices

Google Finance: BP Stock Prices
(Google, 2013)



Yahoo Finance: BP Stock Prices
(Yahoo, 2013)



Criminal Charges

The events that occurred in the Gulf in 2010 can put BP in 2 legal arenas – civil court and criminal court. On January 29, 2013, BP’s criminal plea agreement for its illegal conduct leading to and following the 2010 Deepwater Horizon Oil Spill was accepted. BP is pleading guilty to 11 counts of felony manslaughter, one count of felony obstruction of Congress, and violations of the Clear Water and Migratory Bird Treaty Acts. BP was sentenced to pay \$4 billion in criminal fines and penalties (The United States Department of Justice, 2013a). BP took the plea agreement to avoid a long and expensive trial that would increase the negative public perception and could have resulted in higher penalties.

As part of the plea agreement, BP was sentenced to five years of probation, which is the maximum term permitted for negligence by law. The terms of probation require BP to provide detailed drilling safeguards, monitors, and other conditions. The company is required to maintain a process safety and risk management monitor and engage an independent auditor to oversee the quality of the new controls. Additionally, they will have ethics monitors to improve its code of conduct to “ensure BP’s future candor with the U.S. Government” (The United States Department of Justice, 2013a).

In regard to the counts of manslaughter, BP admitted that the negligence of two onboard well site leaders, Robert M. Kaluza and Donald J. Vidrine , the highest ranking supervisors on the *Deepwater Horizon* rig, led to the deaths of 11 of the rig workers and the occurrence of the oil spill. It is documented that the two well site leaders observed warning signs that the Macondo Well was not secured properly and that oil and gas was leaking from the well. For some reason the leaders chose not to take action.

Kaluza and Vidrine were charged with 11 felony counts of seaman's manslaughter, 11 felony counts of involuntary manslaughter, and one violation of the Clean Water Act. Their trial is set for January 13, 2014. If convicted, Kaluza and Vidrine each face a maximum penalty of 10 years in prison for each count of seaman's manslaughter, eight years for each count of involuntary manslaughter, and up to a year in prison for violation of the Clean Water Act. If BP had a corporate culture that included corporate social responsibility in training and education to create the mindset of safety before profit these two men may not be facing life in prison.

David I. Rainey, the Deputy Incident Commander and BP's second highest ranking representative at Unified Command during the spill response, was acknowledged as the BP representative who was misleading Congress on the amount of oil spilling into the Gulf. He was manipulating internal estimates, withholding documents and providing false information in response to the U.S. House of Representatives' request for flow-rate information (The United States Department of Justice, 2013a). Rainey was later separately charged with obstruction of Congress for making false statements to law enforcement officials. His trial is set for March 10, 2014. If convicted, Rainey faces a maximum of five years in prison for each count (Huffington Post, 2013a).

Other parties are also facing criminal charges, such as Transocean and Halliburton. On February 14, 2013, Transocean Deepwater, Inc.'s plea agreement was accepted for one count violation of the Clean Water Act and sentenced to pay \$400 million in criminal fines and penalties with five year probation. Transocean admits that its crew members aboard the *Deepwater Horizon*, acting at the direction of BP's well site leader, were negligent in

their failure to investigate the indications that the Macondo Well was not properly sealed (The United States Department of Justice, 2013b).

In accordance with the sentences, \$2.4 billion from BP and \$150 million from Transocean will be used for acquiring, restoring, preserving and conserving the marine and coastal environments, ecosystems, and bird and wildlife habitats with focus on the barrier island restoration and river diversion off the coast of Louisiana. A further \$350 million from BP and \$150 million from Transocean will be put towards the improvement of oil spill prevention and response efforts through research, development, education, and training (The United States Department of Justice, 2013a, 2013b).

Criminal charges have also been filed against former engineer, Kurt Mix, for destroying evidence in the form of over 200 text messages and 35 voicemails after being told to gather all electronic files related to the disaster to be handed to the BP attorneys. These messages contain information indicating that the reported amount of oil spilled into the Gulf was grossly underestimated and that efforts made by BP to cap the spill were doomed to fail due to the higher than expected flow rate. His trial is to be held on December 2, 2013. He faces a maximum penalty of 20 years of jail time and a fine up to \$250,000 for each count (Huffington Post, 2013b).

Mix had been assigned to estimate the size of the spill. In the course of the investigation a real time flow rate analysis, that contradicted the statements made by BP, was compiled. The operation to plug the broken well by pumping heavy drilling fluid into the well from the surface was named "Top Kill". It was concluded by Mix and the other engineers that Top Kill would only be effective if the flow rate was below 15,000 barrels of oil per day. The FBI recovered a message sent from Mix to his supervisor stating that the

Macondo Well had "Too much flowrate -- over 15,000 and too large an orifice" for Top Kill to be effective (Frieden, 2012). This directly contradicts the public statements that BP was making both on the volume of oil and their efforts to stop the flow. BP had originally stated the flow to be 5,000 barrels a day. The day after Mix's message was sent, the government increased the estimated rate to 12,000 barrels a day, far less than what they had discovered it to be (Frieden, 2012). An early estimation made by Mix was discovered stating that the spill would range from 64,000 to 138,000 barrels per day. The official number concluded by The National Oceanic and Atmospheric Administration was 59,200 barrels a day (Frieden, 2012).

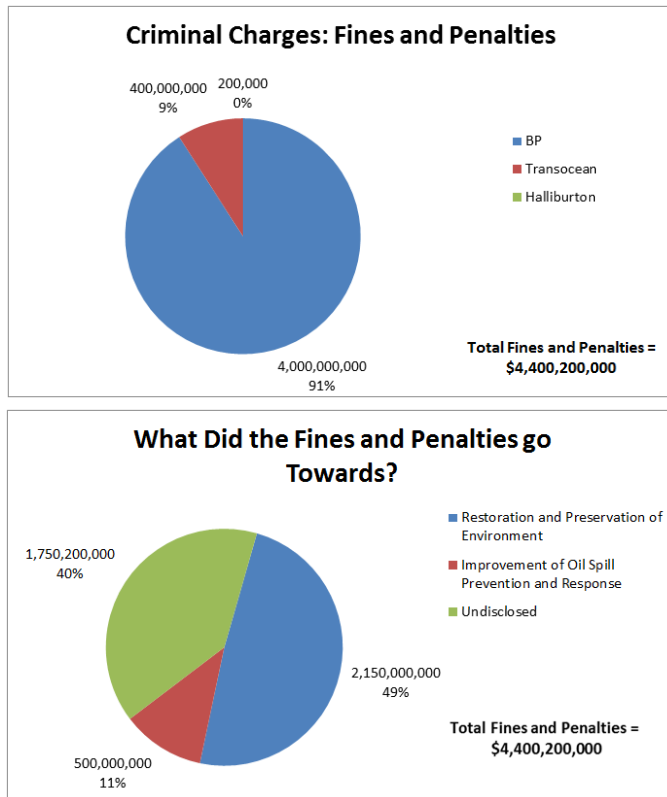
Figure 11: A Brief Summary of the BP Oil Spill Effects
(Jacobson, 2013)



Halliburton, a multinational corporation that is the world’s second largest oilfield services companies, plead guilty to destroying evidence. Halliburton was the company contracted to seal the ruptured oil well in the Gulf of Mexico. The company will pay a maximum \$200,000 statutory fine (Reuters, 2013).

In the course of the criminal lawsuit against Halliburton, it was revealed that the company recommended that BP use 21 centralizers, metal collars that can improve the quality and effectiveness of the cement cap, yet BP decided to only use six (Reuters, 2013). Halliburton ordered workers to destroy computer simulations showing the difference between using 21 and six centralizers. Recovery efforts were unsuccessful.

Figure 12: Criminal Charges: Fines and Penalties
(Brennan, 2013)



BP's Response

BP stated in its press release directly following the oil spill that the company was taking responsibility for the spill and its consequent damages. Yet now that they are out of the limelight, they are trying to minimize their obligations. BP engaged in a civil trial to apportion blame and the consequent damages for the spill to both Halliburton and Transocean. BP was found solely responsible for the compensation of individuals and entities impacted by the spill. BP is doing everything they can to stem the flow of money to legitimate claimants and get a monetary return via excessive appeals of claims and lawsuits against the court-approved settlement and the EPA.

In practice, almost all business economic loss claims go through the appeal process (Goldsmith & Kent, 2013). The disputes leading to appeal are often over the allocation of amounts as small as \$100 in regard to multi-million dollar claims. Their agenda is to force claimants to settle for significantly less than the court-supervised settlement determined in order to avoid the lengthy and drawn-out process of appeals. BP decided to handle the compensation of victims outside of the courtroom by agreeing to the court-supervised settlement but it seems they are determined to minimize their financial responsibility using the very courts they were determined to avoid.

BP is using a legal strategy in order to prevent the rightful payment of legitimate claims. BP has made efforts to limit the payment of claims starting mid-July 2013 in response to the fact that the fund set up in 2010 will not cover all the claims continuing to be made. The company had requested a freeze on payments while former FBI director, Louis Freeh, investigates claims of misconduct within the Court Supervised Settlement Program. This request was denied the week of July 22, 2013 by U.S. District Judge Carl

Barbier in New Orleans. BP had previously stated that court appointed claims administrator, Patrick Juneau, had “misinterpreted the settlement which the company alleged has led to unreasonable payments” (Daugherty, 2013). BP has a fiduciary duty to its stockholders to maximize profits yet to achieve its goal by short changing the negatively impacted stakeholders is immoral and unethical. BP agreed to the court supervised settlement and is currently trying to revise the terms of the agreement.

In March 2013, BP went to such measures as suing Patrick Juneau to limit the claims coming through. Judge Barbier turned down an issuance of an emergency stop to the payments of claims Juneau was paying out allegedly “absurd” amounts based on inflated or fictitious claims. BP claimed that methods used by Juneau gave him freedom to increase payouts and make payments for damages that never existed. Juneau’s lawyers were requesting immunity from being sued on the principle of encouraging “principled and fearless decision making” without fear of repercussions from disgruntled litigants (Stempel, 2013). Court appointed administrators should have the right to perform their duty without the risk of legal action. Otherwise they cannot perform their duty as a non-biased participant. Regardless of the possibility of immunity, Juneau’s lawyers state that “Mr. Juneau, as the claims administrator and trustee, performed and continues to perform his official functions exactly as outlined in the settlement agreement” (Stempel, 2013).

BP’s intimidation tactics were negated when Judge Barbier rejected BP’s request stating that “he saw no reason to change his March 5 ruling on the same matter and issue a preliminary injunction that would block Juneau from making payments to businesses” (USA

Today, 2013). Barbier also dismissed the lawsuit BP had filed against Juneau for decisions made in January that BP believes made the company at risk to fraudulent claims.

BP lawyer, Rick Godfrey, stated that “We think it rewrites the contract. We think it rewards people who have no losses.” Juneau’s lawyer, Rick Stanley, defends that “He did not participate in the negotiation of it. He really has no position about the wisdom of the settlement agreement or how it came to be. He just wants to do his job as claims administrator” (USA Today, 2013).

Although it was decided that Juneau has been, and continues to, work by the court appointed rules and has not knowingly paid out any fraudulent claims, BP won a partial victory in their pursuit to stop false claims when the courts ruled that “the district court had no authority to approve the settlement of a class that included members that had not sustained losses at all, or had sustained losses unrelated to the oil spill” (Krauss, 2013). The ruling means that if BP can prove that a claimant was not impacted by the oil spill, they will not have to pay the compensation amount determined through the court appointed methods. BP has also made allegations that private contractors working for the claims office have been intentionally wasting money and that there are insufficient antifraud controls (Krauss, 2013).

In addition, BP is also suing the Environmental Protection Agency (EPA) for a temporary ban they placed on BP from gaining new U.S. leases or government contracts that was effective November 2012. The EPA stated the reason of the suspension is the “seriously improper conduct” on BP’s part in the preventing and consequent repair after the spill as well as BP’s attempt to conceal the extent and amount of the spill (Sheppard,

2013). The EPA has set the end point of the ban to be when the company shows it is "meeting federal business standards." BP argues that the suspension was "punitive, arbitrary, capricious, and an abuse of EPA's discretion" and asks the ban be annulled (Sheppard, 2013).

A punishment such as this is rarely seen against companies as large as BP. The actions of the EPA in stopping BP from gaining further U.S. leases or government contracts until they meet the standards could be a step closer to properly holding oil giants responsible for their actions. While not a permanent ban, is it in effect until BP can demonstrate that if an occurrence similar to the Deepwater Horizon Oil Spill happens in the future, they will be properly prepared to handle the situation to minimize the damages.

For the two and a half years after the spill and before the ban, BP had obtained 23 new government fuel contracts (Sheppard, 2013). The delay in imposing the ban is unacceptable. The ban should have taken effect directly after the spill. BP is not fit under industry standards now and they weren't two years before the ban when the oil spill occurred. The EPA didn't act sooner due to the infrequency of such high consequences being the norm.

BP CEO, Bob Dudley, told The Telegraph that the ban was not "causing distress in any way" to the company (Sheppard, 2013). Dudley went on to say that "We have the largest acreage position in Gulf of Mexico, more than 700 blocks ... that's plenty, we have a lot," Dudley said. "We have been debarred from supplying fuel to the U.S. military going forward, but quite frankly we have a very big business in the U.S. and this is not distracting us from what we do" (Sheppard, 2013). This is further proof that the company itself

believes that the legal system is not effectively deterring them from following the same destructive business processes that led to the spill in the Gulf.

BP's legal team expresses they are protected from further governmental actions, such as the temporary ban instigated by the EPA, as they have already plead guilty to criminal charges on their negligence and obstruction of Congress. This argument is insubstantial as agreeing to misconduct in the past doesn't entitle companies to not be up to standards in the present. The ban will be lifted at the point that BP has demonstrated that they meet federal standards.

Action Needed

One positive aspect that will come out of this oil spill is the spotlight on the need for new and improved prevention and response plans. There are glaringly obvious problems in the BP response plan that was created for the Gulf of Mexico. The most noticeable is the portion where it explains the possible impact on local wildlife that lists sea lions, seals, sea otters, and walruses, none of which are actually found in the Gulf of Mexico. The 583-page plan was approved in 2009 by the Minerals Management Service (MMS), who is responsible for overseeing offshore drilling. There are multiple issues with this document, including their “Worst Case Discharge” section that uses an unrealistically optimistic scenario for maximum spill size and the inclusion of an equation for estimating the size of a spill that underestimates the thickness of oil (Achenbach, 2010; Sheppard, 2010). Response plans are used when the prevention mechanisms have failed. Proper construction of these plans allows companies to minimize the damage to the environment, wildlife, and surrounding areas that the oil spill will cause.

There is now much heavier scrutiny on oil companies, organizations that collaborate with oil companies to create the prevention and response plans, and organizations that approve such plans. The commission issued to investigate the Minerals Management Service (MMS) by President Obama after the spill said the following “M.M.S. became an agency systematically lacking the resources, technical training or experience in petroleum engineering that is absolutely critical to ensuring that offshore drilling is being conducted in a safe and responsible manner” as well as “For a regulatory agency to fall so short of its essential safety mission is inexcusable” (Broder & Krauss, 2011).

One year after the BP oil spill, the Minerals Management Service was renamed and given a new director. The organization now known as the Bureau of Ocean Energy Management, Regulation and Enforcement, supposedly increased regulations but there are criticisms that the changes were only superficial and the organization itself is too close to the people it is supposed to regulate to remain independent. Both Ken Salazar, the interior secretary, and Michael Bromwich, the new director, admit that “we know we have more to do” (Broder & Krauss, 2011).

There has been readjustment to previous norms on the adequate consequences for a lack or weakness in preventing such spills. These increased consequences come from the heightened awareness of the general public on issues of prevention and response in relation to oil spills and the new standards being set in the sentencing of BP and other associated parties.

BP has not adequately paid for the damage caused in the Gulf of Mexico and surrounding areas. BP has done a lousy job of taking responsibility for their actions. First they created a cover up for the extent of the environmental damage and only came forward when it was discovered in the process of the subsequent investigation. Large companies such as BP act as if they are immune or above the law and our current regulatory system enable them to do so. As you can see in Figure 14, the \$4 billion in penalties and fines for their criminal actions is hardly a dent in their revenues when you consider their annual profit in 2012 was over \$11.8 billion after they deducted the amount spent on relief efforts (BP p.l.c., 2013). Only a single BP executive is facing criminal charges where jail time is a possibility.

Figure 13: Income Statement
(BP p.l.c., 2013b)

Financial review

Selected financial information*

	\$ million				
	2012	2011	2010	2009	2008
Income statement data					
Sales and other operating revenues	375,580	375,517	297,107	239,272	361,143
Underlying replacement cost profit (loss) before interest and tax ^b					
By business					
Upstream	19,419	25,225	25,073	19,668	37,318
Downstream	6,447	6,013	4,883	3,607	3,318
TNK-BP ^c	3,127	4,134	2,617	1,948	2,262
Other businesses and corporate	(1,997)	(1,656)	(1,316)	(1,833)	(590)
Consolidation adjustment – unrealized profit in inventory	(576)	(113)	447	(717)	466
	26,420	33,603	31,704	22,673	42,774
Net favourable (unfavourable) impact of non-operating items and fair value accounting effects ^b					
By business					
Upstream	3,055	1,141	3,196	3,184	(1,272)
Downstream	(3,601)	(539)	672	(2,864)	858
TNK-BP	246	–	–	–	–
Other businesses and corporate	(798)	(822)	(200)	(489)	(633)
Gulf of Mexico oil spill response ^d	(4,995)	3,800	(40,858)	–	–
	(6,093)	3,580	(37,190)	(169)	(1,047)
Replacement cost profit (loss) before interest and tax ^b					
By business					
Upstream	22,474	26,366	28,269	22,852	36,046
Downstream	2,846	5,474	5,555	743	4,176
TNK-BP ^c	3,373	4,134	2,617	1,948	2,262
Other businesses and corporate	(2,795)	(2,478)	(1,516)	(2,322)	(1,223)
Gulf of Mexico oil spill response ^d	(4,995)	3,800	(40,858)	–	–
Consolidation adjustment – unrealized profit in inventory	(576)	(113)	447	(717)	466
Replacement cost profit (loss) before interest and taxation ^b	20,327	37,183	(5,486)	22,504	41,727
Inventory holding gains (losses) ^e	(594)	2,634	1,784	3,922	(6,488)
Profit (loss) before interest and taxation	19,733	39,817	(3,702)	26,426	35,239
Finance costs and net finance expense/income relating to pensions and other post-retirement benefits	(924)	(983)	(1,123)	(1,302)	(956)
Taxation	(6,993)	(12,737)	1,501	(8,365)	(12,617)
Profit (loss) for the year	11,816	26,097	(3,324)	16,759	21,666

When the company responsible for a disaster that killed 11 people, countless marine life, and forever changed the makeup of the ecosystem is only facing fines and a possibility of one executive in prison it sends a message to others in the industry that these consequences are a cost of doing business. BP has acted solely as a profit driven corporation with bare minimum regard for its environmental and social impact. They have done less than or only as far as they are required to go to satisfy regulations. This implies the government needs to act to create tighter controls on oil companies to decrease the likelihood of a repeat occurrence.

The European Union (EU) has taken steps to reform their safety rules for offshore oil and natural gas excursions. The European Parliament passed legislation that demands that oil and gas companies submit their emergency response plans and special hazard reports for approval before an offshore operation is permitted to begin. In addition, the companies must submit proof of their ability to cover potential liability to the environment and economy of the area within 230 miles of their sites (Stearns, 2013).

Unlike the EU, the US has made no similar legislative moves to improve safety in the oil industry despite the increase in scrutiny. The National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling recommended a number of safety improvements. A few of The Commission's recommends are listed below:

- an unlimited liability for spills as a deterrent against risky behavior,
- using 80% of the fines from the oil spill towards restoration efforts,
- increasing the role of scientific experts in the U.S. Coast Guard and National Oceanic and Atmospheric Administration in the decision-making process of where new oil drilling can occur,
- require the federal government to develop worst-case scenario models for oil companies to use when making their own oil spill response plans,
- invest funds into the research and development for spill cleanups,
- and new standards for blowout preventers, well design, and cementing practices.

The \$500 million from fines and penalties from BP and Transocean to go towards the improvement of oil spill prevention and response efforts through research,

development, education, and training is a good start to the reform necessary to prevent an environmental disaster such as the BP spill. If the government and oil companies refuse to use their funds to continue the effort to protect our environment than nothing will have been learned from this tragedy.

Large corporations, such as BP, have entire legal teams whose main focus is to look for exceptions in laws to minimize the financial impact to the company. The laws and policies surrounding the liability of large corporations for actions that have negative impacts on society and individuals needs to be revised to prevent the use of loopholes to diminish responsibility regardless of political clout.

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