



# Restoring the Gulf After *Deepwater Horizon*

**Kathryn Mengerink (slide credit: Jordan Diamond)**

Environmental Law Institute

*2014 Restore America's Estuaries · November 3, 2014*

# Four Years Ago



Photo: US Coast Guard/Marine Photobank



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# Response & Restoration

## PURPOSE

Restoring the Environment & Deterring Future Spills

Compensating People, Business & Government

U.S. Criminal Claims

U.S. Civil Claims

## PROCESS

### NRDA

Under the Oil Pollution Act, parties responsible for the spill are liable for injuries to natural resources, loss of use of those resources, and the costs of assessing the damage

### RESTORE Act

Specifies that 80% of Clean Water Act civil penalties go to a Restoration Trust Fund for economic and ecological restoration and recovery of the Gulf Coast region

### NFWF

Receives funds through two criminal plea agreements to remedy harm to natural resources harmed by Deepwater Horizon

### Economic & Medical Claims

Under the Oil Pollution Act and maritime law, responsible parties for the spill may be liable for economic losses and medical injuries

### U.S. Criminal & Civil Claims

Parties responsible for the spill may be liable for criminal and/or civil penalties under various laws. Some remedies are linked to the processes mentioned above.

## WHAT'S HAPPENED SO FAR?

Sept. 27, 2010  
Trustees issue notice of intent (NOI) to conduct restoration planning.

Feb. 17, 2011  
Trustees issue NOI to begin restoration scoping and a programmatic environmental impact statement (PEIS)

Apr. 20, 2011  
BP and trustees sign early restoration agreement

Dec. 14, 2011  
Trustees release Draft Phase I Early Restoration Plan and Environmental Assessment

Apr. 18, 2012  
Trustees release Final Phase I Early Restoration Plan and Environmental Assessment

Oct. 10, 2012  
Trustees release Draft Phase II Early Restoration Plan and Environmental Assessment

Dec. 21, 2012  
Trustees release Final Phase II Early Restoration Plan and Environmental Review

May 6, 2013  
Trustees announce intent to propose Phase III Early Restoration projects

June 4, 2013  
Trustees announce intent to prepare an early restoration PEIS

Dec. 6, 2013 – Feb. 19, 2014  
Trustees release Draft Phase III Early Restoration Plan and Draft Early Restoration PEIS, draft open for public comment for 75 days

June 29, 2012  
RESTORE Act passes as part of surface transportation, financial and other act (Ninth U.S.C. § 141)

July 6, 2012  
President Obama signs RESTORE Act into law

Jan. 29, 2013  
Gulf Coast Ecosystem Restoration Council releases Proposed Comprehensive Plan

May 23, 2013  
Restoration Council releases Draft Initial Comprehensive Plan and Programmatic Environmental Assessment (PEA) for its projects

Apr. 28, 2013  
Restoration Council approves Final Initial Comprehensive Plan and PEA

Sept. 6, 2013  
U.S. Treasury Department releases draft procedures for administering the RESTORE Act Restoration Trust Fund

# Where do things stand?

Aug. 23, 2010  
Gulf Coast Claims Facility (GCCF) opens to process spill-related claims from individuals and businesses

Mar. 2012  
BP and Plaintiffs' Steering Committee agree on key terms of economic, damages and medical benefits settlements

June 4, 2012  
Deepwater Horizon Claims Center opens

Nov. 8, 2012  
Court holds fairness hearing on the economic and medical settlements

Dec. 21, 2012  
Court approves economic damages settlement

Jan. 11, 2013  
Court approves medical benefits settlement

Feb. 11, 2014  
Appeals court dismisses all remaining appeals to the medical benefits settlement

Dec. 19, 2010  
U.S. files a complaint against various parties, including a claim for civil penalties under the Clean Water Act (CWA)

Feb. 17, 2012  
DOJ, Coast Guard, EPA, and MOEX announce partial civil settlement (court approved June 18, 2012)

Nov. 15, 2012  
DOJ and BP announce criminal settlement (court accepted Jan. 29, 2013)

Jan. 3, 2013  
DOJ and Transocean announce criminal settlement (court accepted Feb. 14, 2013) and partial civil settlement (court approved Feb. 19, 2013)

Feb. 25 – Apr. 17, 2013  
Phase I of the BP civil trial takes place in New Orleans, LA

Sept. 30 – Oct. 18, 2013  
Phase II of the BP civil trial takes place in New Orleans, LA

Jan. 20, 2015  
Phase III of the BP civil trial is set to begin in New Orleans, LA

# Response & Restoration

Natural  
Resource  
Damage  
Assessment

Oil  
Pollution Act

RESTORE  
Act

Clean  
Water Act civil penalties

NFWF

U.S. partial settlements  
with BP, Transocean

Other

Settlements,  
litigation, etc.



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# NRDA

## Goal

- Restore natural resources to the condition they would have been in had the spill not occurred

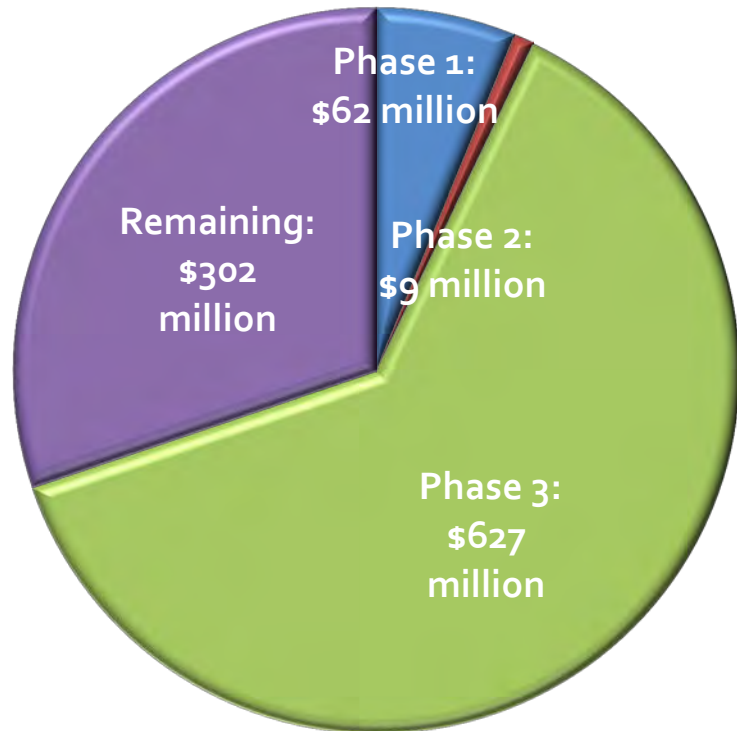
## Process



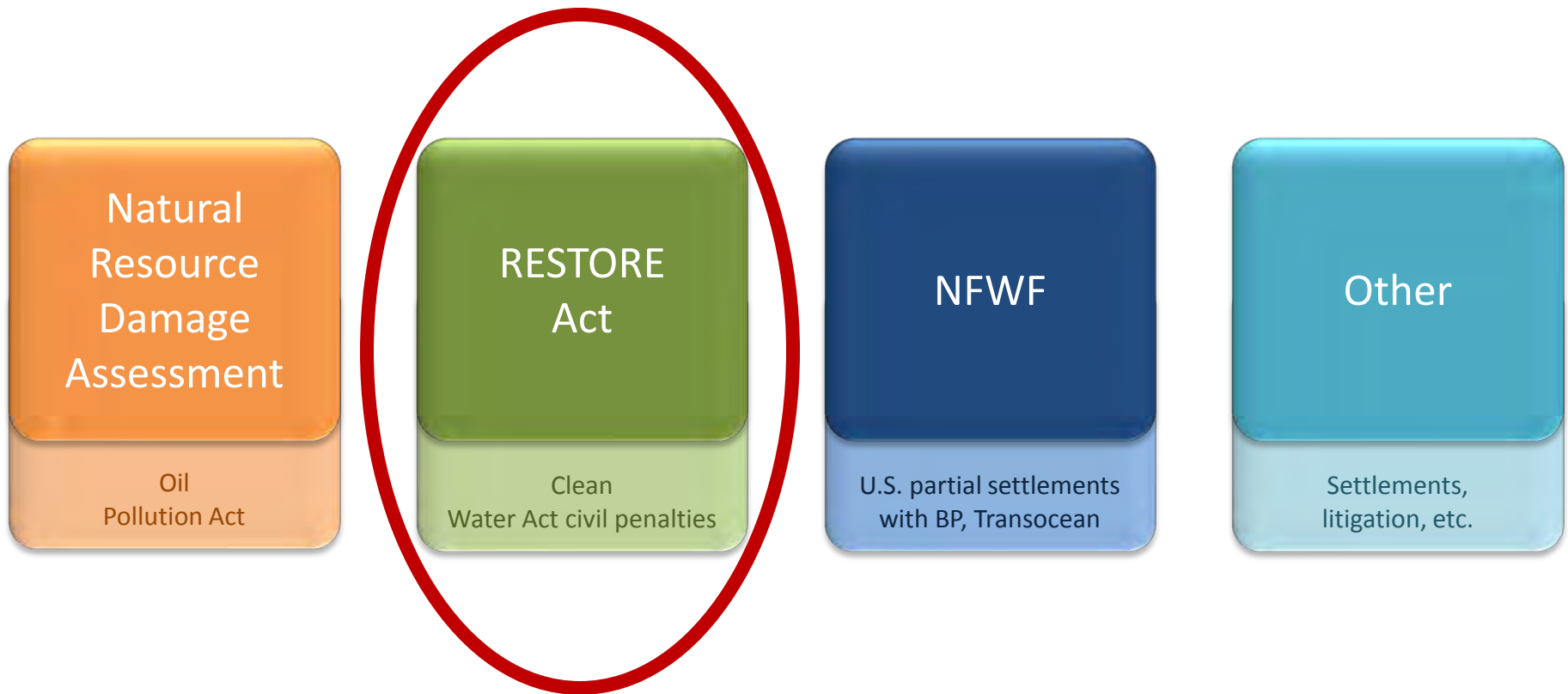
# What's happening?

## Early restoration

- Idea behind early restoration is to start before NRDA is completed
- \$1 billion committed; BP receives “NRD offsets”
- Phase I-III projects approved (~\$700 million)



# Response & Restoration

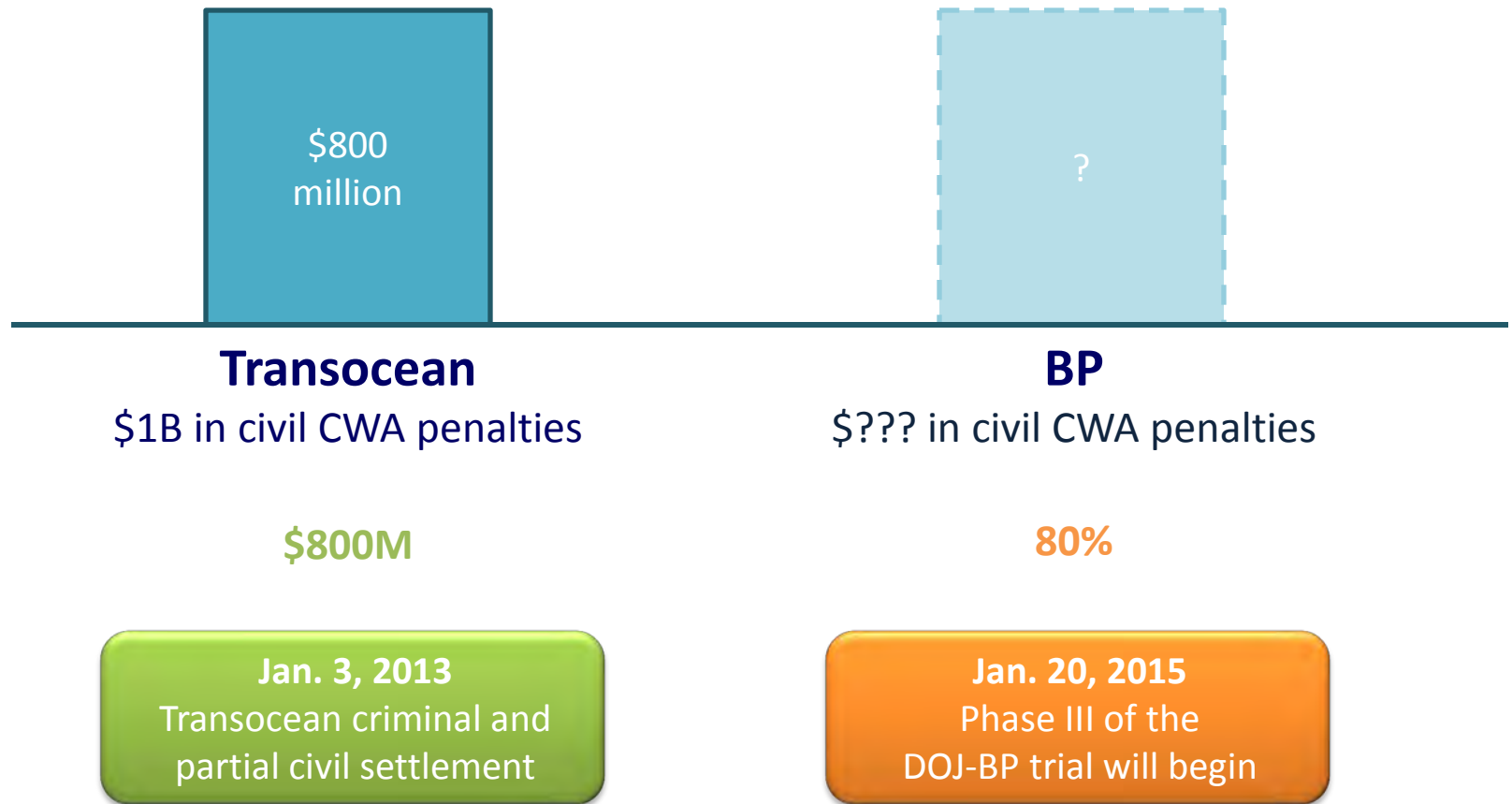




# Clean Water Act civil penalties

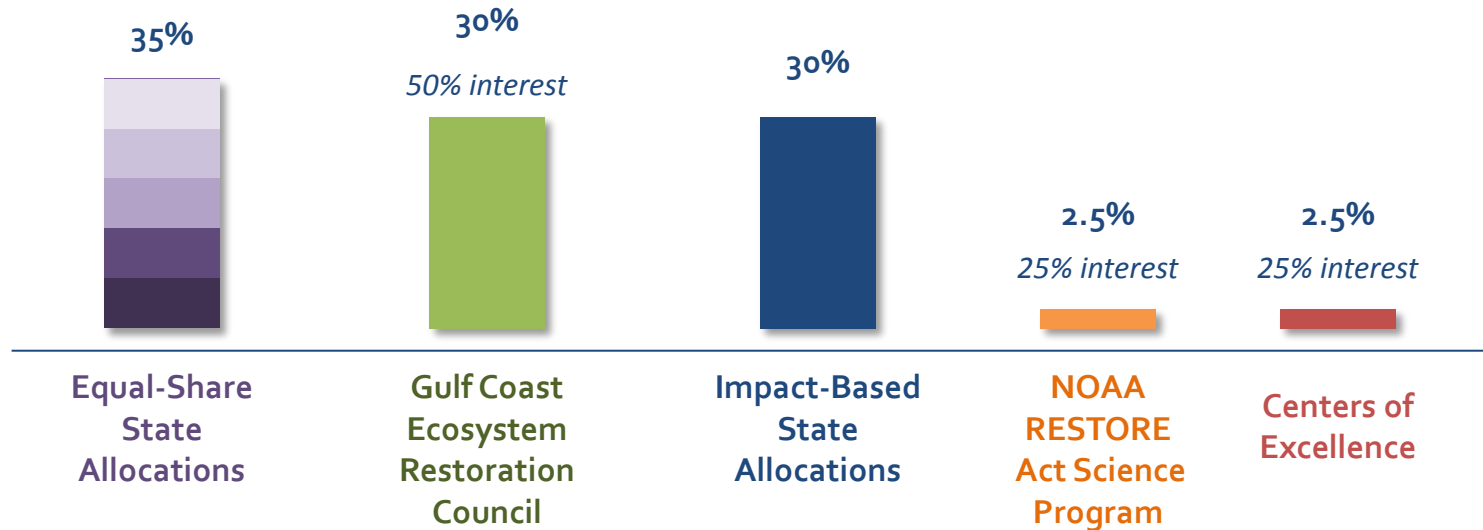
Standard maximum penalty:	Maximum penalty if there was gross negligence or willful misconduct:
<p data-bbox="193 656 888 771"><math>\\$37,500 \text{ per day} \times 87 \text{ spill days} = \\$3.3 \text{ million}</math></p> <p data-bbox="521 842 579 885">OR</p> <p data-bbox="173 899 908 1013"><math>\\$1,100 \text{ per barrel} \times 4.1 \text{ million barrels} = \\$4.5 \text{ billion}</math></p>	<p data-bbox="985 656 1680 771"><math>\\$140,000 \text{ per day} \times 87 \text{ spill days} = \\$12 \text{ million}</math></p> <p data-bbox="1294 842 1352 885">OR</p> <p data-bbox="985 899 1680 1013"><math>\\$4,300 \text{ per barrel} \times 4.1 \text{ million barrels} = \\$17.6 \text{ billion}</math></p>

# 80% through the RESTORE Act

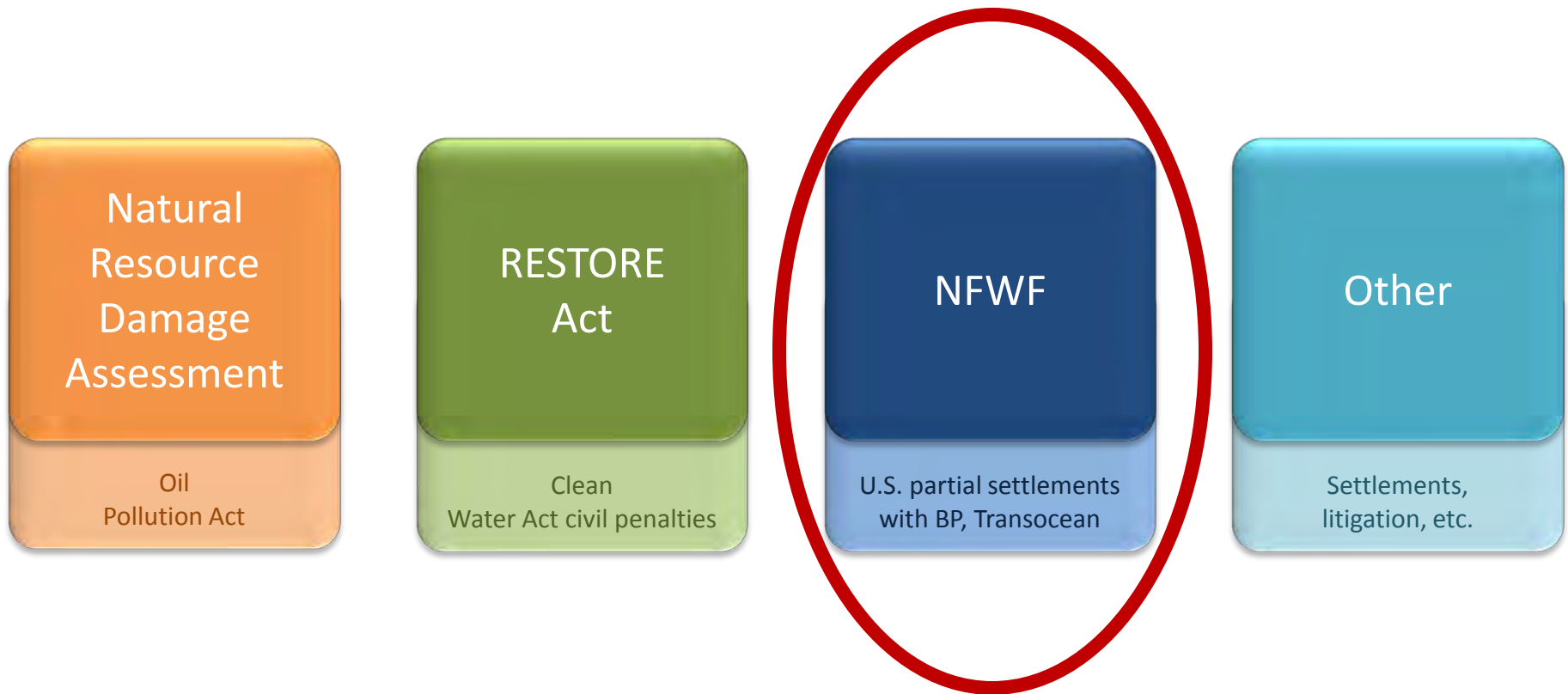


# What's happening?

- 80% of the CWA civil penalties stemming from this disaster supports five processes to help the Gulf recover ecologically and economically **from *Deepwater Horizon* and decades of development.**



# Response & Restoration



# NFWF

## BP

\$2.744 B for  
other criminal  
recoveries

\$350 M – National  
Academy of Sciences

\$2.394 B – NFWF

## Transocean

\$300 million in other  
criminal recoveries

\$150 M – National  
Academy of Sciences

\$150 M – NFWF

= \$2.544 B



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Other

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litigation, etc.

# What else is ongoing?

National  
Academy of  
Sciences

U.S. partial settlements  
with BP, Transocean

North  
American  
Wetlands  
Conservation  
Fund

U.S. partial settlements  
with BP

Gulf of Mexico  
Research  
Initiative

BP commitment (affirmed  
in settlement)

# Need for Coordination







**Thank you!**

**Kathryn Mengerink**

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# Transocean Criminal Settlement

