

OIL SPILL ISSUES FACING GULF PORTS



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A sister rig, the Nautilus, being transported on a Heavy-Lift vessel



L and R, the Deepwater Horizon on location in better days





Taken shortly after the rig caught fire – the mast is still there





Support vessels using their fire fighting gear to cool the rig



From about 10 miles away – dawn of Day 1



Support vessels using their fire fighting gear to cool the rig – note the list developing





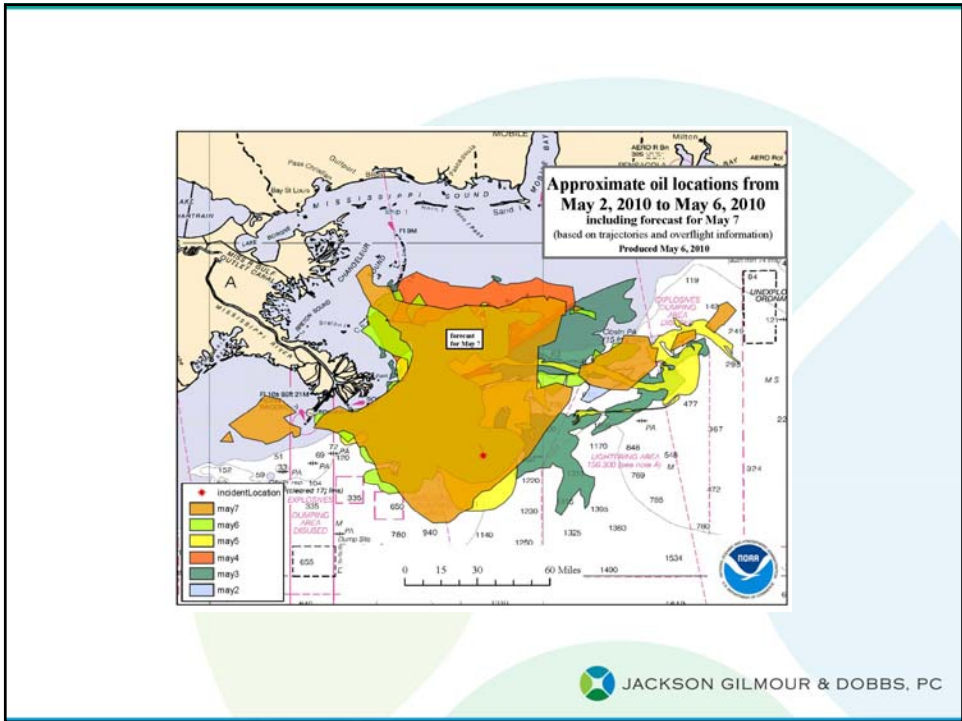
Early morning Day 2 – Note the hole burned through the aluminum helideck



Day 2, morning – settling quite low in the water now – fuel and oil slick forming



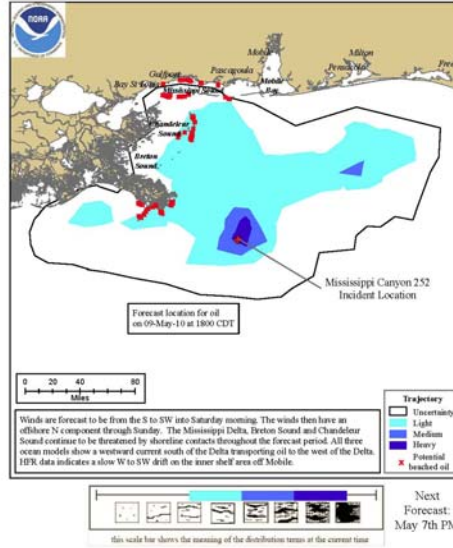




Trajectory Forecast Mississippi Canyon 252

NOAA/NOS/OR&R
Estimate for: 1800 CDT, Sunday, 5/09/10
Date Prepared: 2000 CDT, Thursday, 5/06/10

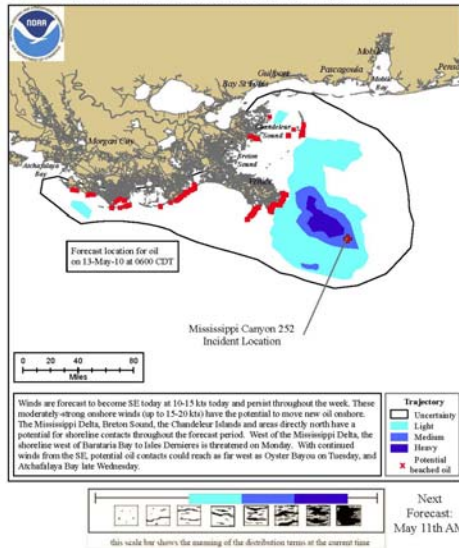
This forecast is based on the NWS spot forecast from Thursday, May 6 PM. Currents were obtained from the NOAA Gulf of Mexico, Texas A&M/TGL0, and NAVONRL models and HFR measurements. The model was initialized from satellite imagery analysis provided by NOAA/NESDIS obtained Thursday morning, and 3 Thursday overflights. The leading edge may contain turbidity that are not readily observable from the imagery (hence not included in the model initialization).



Trajectory Forecast Mississippi Canyon 252

NOAA/NOS/OR&R
Estimate for: 0600 CDT, Thursday, 5/13/10
Date Prepared: 1300 CDT, Monday, 5/10/10

This forecast is based on the NWS spot forecast from Monday, May 10 AM. Currents were obtained from the NOAA Gulf of Mexico, West Florida Shelf/USE, Texas A&M/TGL0, and NAVONRL models and HFR measurements. The model was initialized from Monday morning satellite imagery and analysis provided by NOAA/NESDIS and overflight observations. The leading edge may contain turbidity that are not readily observable from the imagery (hence not included in the model initialization). Oil may be inlets could be brought into shore by local tidal currents.



SPILL/RESPONSE TO DATE

- Estimates to date -- 210,000 gallons or 5,000 barrels of crude a day into the Gulf.
- Over 3.5 million gallons to date.
- All efforts to date to stop the leak have failed.
- Massive containment effort involving over 10,000 people.
- Oil is washing ashore along the Mississippi delta.
- Tar balls reported on Alabama coast.

FEDERAL OIL POLLUTION ACT

Oil Pollution Act of 1990:

- Response to Exxon Valdez
- Covers oil spills in navigable waters
- Strict liability applies
- “Responsible Parties” are liable for all “Removal Costs” and “Damages”
- Fund for cleanup and third party claims
- Damages cap

BASES OF STRICT LIABILITY

“Responsible Party”

- Vessels – owner, operator and charter
- Offshore Facility – lessee, permittee or holder of the easement or other right to drill

BP and other oil companies that leased the sea floor from the United States and possibly the companies that owned and operated the rig will be considered Responsible Parties.

CLEANUP COSTS AND DAMAGES UNDER OPA

Damages and Removal Costs are recoverable from the Responsible Parties and the Oil Spill Liability Trust Fund (\$1.5 billion) by:

- Federal and State governments
- Local governments and
- Private parties

CLEANUP COSTS AVAILABLE UNDER OPA CON'T

“Removal Costs” include the costs of containment and removal of oil from the water and shoreline or other actions necessary to minimize or mitigate damage to the public health or welfare, including fish, shellfish, wildlife, and public and private property, shorelines and beaches incurred by the United States, a State or Indian tribe, or any other person (if consistent with the NCP).

For vessels carrying oil as cargo, and facilities (rigs) on the outer continental shelf, liability to the federal government or a State for removal costs is unlimited.

OTHER DAMAGES AVAILABLE UNDER OPA

- Natural Resources Damages
- Property Damages
- Lost Governmental Revenues
- Costs of Additional Public Services
- Lost Profits and Earning Capacity
- Subsistence Use Damages

NATURAL RESOURCE DAMAGES

Include the costs of:

- Assessing an area's natural resource damages,
- Restoring the natural resources, and
- Compensating the public for the lost use of the affected resources.

Only available to federal and state trustees.

PROPERTY DAMAGES

- Injury to or economic loss resulting from destruction of real property (land or buildings) or other personal property.
- Does not include personal injury.
- Can be claimed by private or public entity that owns or leases property.

LOST GOVERNMENTAL REVENUES

- Net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources.
- Can be claimed by federal, state or local governmental entity.

COST OF ADDITIONAL PUBLIC SERVICES

- Net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil or directly attributable to response to the oil spill incident.
- Can be claimed by state or local governments.

LOST PROFITS AND EARNING CAPACITY

- Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of property or natural resources.
- Can be claimed by public or private entities.

SUBSISTENCE USE DAMAGES

- Damages for the loss of subsistence use of natural resources (fish, shellfish, etc.) depended on for subsistence use purposes.

CLAIMS PROCEDURE

- Claims are made to the Responsible Party.
- If they are denied or not paid, they are made to the Oil Spill Liability Trust Fund.
- A claim can not be paid during the pendency of litigation.
- Limits on the Oil Spill Liability Trust Fund may limit payments.

DAMAGES CAP

Responsible Parties' total liability for damages under OPA is capped at:

- Up to \$16-22 million for vessels;
- Up to \$75 million for offshore facility.

The cap does not apply if there was gross negligence or violation of federal safety, construction or operating regulations.

For vessels carrying oil as cargo, and facilities (rigs) on the outer continental shelf, liability to the federal government or a State for removal costs is unlimited.

FEDERAL PREEMPTION AND SAVINGS CLAUSE

Federal preemption of State laws is a concern; however, OPA contains strong savings clauses that provide:

33 USC § 2718. Relationship to other law

(a) Preservation of State authorities; Nothing in this Act or the Act of March 3, 1851 shall—

- (1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—
 - (A) the discharge of oil or other pollution by oil within such State; or
 - (B) any removal activities in connection with such a discharge; or
- (2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.

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SAVINGS CLAUSE CON'T

(c) Additional requirements and liabilities; penalties Nothing in this Act, the Act of March 3, 1851 (46 U.S.C. 183 et seq.),^[1] or section 9509 of title 26, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

- (1) to impose additional liability or additional requirements; or
- (2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law; relating to the discharge, or substantial threat of a discharge, of oil.

OTHER AVAILABLE THEORIES OF RECOVERY

- Public Trust
- State Oil Pollution Statutes
- Negligence, Trespass and Private Nuisance
- Gross Negligence and Per Se Violations
- Strict Liability for Intentional Discharges
- Purpresture
- Common Law Obstruction of Navigation
- Public Nuisance: Imminent Danger to the Environment