

Cross-posted on [CPRBlog](#).

As already noted by [Rick](#) and [Megan](#), last week BP pleaded guilty to 14 criminal counts arising from the 2010 Deepwater Horizon blowout in the Gulf of Mexico. Megan provided a good basic overview of the terms of the agreement. [Here is the plea agreement](#) itself. The amount of money BP has agreed to pay, in criminal fines and additional payments, has been the focus of most of the news coverage so far. The terms of BP's probation have gotten less attention, but are well worth exploring.

Of course the amount of the fines and other payments matters. Never having had the experience of negotiating a plea agreement like this, I'm reluctant to speculate on whether the government could have gotten more out of BP. It's too early to evaluate whether the punishment fits the offense, since civil sanctions and natural resource damages remain to be determined. The plea agreement specifies that the payments it requires do not affect its liability for civil claims or natural resource damages.

I was struck by the scope of the fines for the environmental offenses relative to the others. BP agreed to pay the maximum possible fine for each of the 11 manslaughter counts and the obstruction of Congress count. Together, the agreed fine for those counts totals \$6 million, a tiny fraction of the total criminal fines. BP will pay another \$100 million for violating the Migratory Bird Treaty Act, and a whopping (at least relatively speaking) \$1.15 billion for violating the Clean Water Act.

The most interesting aspects of the agreement from my point of view, though, are the agreed-upon terms of probation. (If you're following along with the plea agreement, see Exhibit B.) Four aspects of the agreement are worth highlighting.

First, the agreement imposes a number of conditions on BP's deepwater drilling operations for the next 5 years. Some of the conditions are specific to BP's history and situation, but frankly many of them strike me as just common sense. For example, blowout preventers must have two shear rams, their maintenance and testing must be verified by a third party, their operators must be trained and have the necessary skills, and the company's oil spill response plan has to be revised to incorporate best industry practices in light of the 2010 experience. Those measures seem obvious enough, and cheap enough, that they ought to be required of all deepwater operations. Rather than highlighting DOJ's toughness with BP, those provisions highlight how little BOEMRE has done to toughen up drilling regulations in the wake of the Deepwater Horizon disaster.

Second, BP has agreed to pay hefty chunks of money outside the criminal fines. As with the

finances themselves, it's difficult to evaluate whether the amounts are sufficient or not, but the purposes for which the funds will be used are promising. Nearly \$2.4 billion (precisely \$2.394 billion — you do wonder where these numbers come from) will go to the National Fish and Wildlife Foundation “to remedy harm and eliminate or reduce the risk of future harm to Gulf Coast natural resources.” About half of that money is to be dedicated to projects in Louisiana, specifically to create or restore barrier islands and coastal habitat. Those are projects that might not be funded by a natural resource damages recovery, since the oil spill didn't destroy barrier islands. The loss of those islands over decades has, however, made the coast more vulnerable to oil spills and other disasters. This provision echoes the [RESTORE Act](#) passed this summer, which requires that 80% of any civil fines recovered under the CWA (potentially up to \$21 billion if BP is found by the courts to have been guilty) go to restoration efforts. Another \$350 million will be administered by the National Academy of Sciences “for the purposes of oil spill prevention and response in the Gulf of Mexico.” The money is to be expended over a 30-year term. It's not yet clear what exactly it will be used for, but the agreement sets out three general programmatic objectives: research and development, education and training, and environmental monitoring. That last one is particularly promising, since it's broadly agreed that monitoring tends to be tough to fund; indeed the lack of baseline monitoring before 2010 is one of the major challenges for documenting natural resource damages from the spill. Again this provision has a forerunner in the RESTORE Act, which would dedicate 5% of its funds to monitoring.

Third, in a provision somewhat reminiscent of an elementary school punishment, the agreement requires BP to create a public website explaining what it has learned from the Deepwater Horizon incident. Not to be too cynical, but as I write this I'm watching a television ad touting BP's commitment to the Gulf. I suspect the new website will be more marketing than mea culpa. The web site won't be a total puff job, though. It will also have to include some more objectively verifiable information that should help interested citizens track BP's performance. For example, BP must annually post progress reports on compliance with the probation order. If I were drafting this provision, I would have explicitly required that BP post the implementation plan it's going to have to produce within 60 days of the effective date of the order, and I would have wanted updates considerably more often than annually, but at best this provision might provide some real accountability. BP must also publicly reveal safety incidents, oil spills, and any regulatory violations that bring citations.

Finally, there's an interesting provision requiring that BP “collaborate with industry and academic efforts to develop discrete technologies to enhance operational safety with respect to deepwater drilling.” I'm sure there's a backstory to this provision. It doesn't mandate any

particular spending level, but it does require initiation of several pilot projects and although it's not altogether clear it looks like it requires that at least two of those projects be moved from the pilot to the implementation stage.