

## Avvo Q&A: Legal Impact of the Gulf Coast Oil Spill

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As massive efforts are underway along the Gulf Coast to stop the oil spill, we've already seen the next phase of this "environmental catastrophe" start to play out in the courtroom.

To get a better understanding of the legal road ahead, and what landowners, fisherman and coastal businesses can do, we asked Seattle Maritime Lawyer,

[Katie Matison](#) for her insight and advice.

**Avvo: Do landowners, fishermen or businesses along the Gulf Coast that have been affected by the oil spill have any legal remedies to cover their losses of business income?**

**Ms. Matison:** The Gulf of Mexico oil spill originating from the explosion and sinking of the Deepwater Horizon rig on April 20, 2010 has resulted in unprecedented devastation of state coast lines, natural resources, wildlife preserves, delicate marshlands and destruction of fishing grounds. Tourism along certain regions of the Gulf Coast has been in sharp decline. Many fishermen claim that the fish and oysters in the region have been destroyed and they are unable to earn income.

According to news sources, more than 130 lawsuits have been filed in both state and federal courts in the five states bordering the Gulf of Mexico by fisherman, property owners and coastal businesses suffering the impact of the Gulf Coast oil spill. As an example, Billy's Seafood, Inc. filed a class action consisting of all seafood processors who derive income and profits from the natural resources of the Gulf of Mexico, in the federal court for the Southern District of Alabama against all parties involved. Other suits across the 5-state gulf region include class actions by the tourist industry, restaurants, and property owners all seeking reimbursement for business losses and property damage. The primary defendants in these lawsuits are BP, the lessor of the Deepwater Horizon, Transocean, the rig operator, Halliburton, the oil services company and Cameron, Inc., manufacturer of the blow-out preventer.

The chairman of BP America recently testified before the United States Senate that BP has paid more than \$15 million in claims to shrimpers and commercial fishermen to date as a result of the devastating oil

spill. In addition, some fishermen and boat owners in the region have been hired to assist in the cleanup operation by oil removal businesses to supplement their income.

**Avvo: Recently, Transocean filed a petition in United States District Court in Houston to limit its liability. What does this mean?**

**Ms. Matison**: The Deepwater Horizon oil rig is considered a vessel under federal maritime law. The Limitation of Shipowners Liability Act (“Limitation Act”) was passed in 1851. The Limitation Act is a special procedure under maritime law that gives a shipowner or certain operators the right to seek to limit all liability for a marine casualty, such as the Gulf oil spill, to the value of the Deepwater Horizon after the explosion and all post casualty pending freight.

Transocean filed a petition for limitation in Houston federal court on May 14. Transocean claims that the post casualty value of the Deepwater Horizon and pending freight after the explosion as well the enhancement is \$26,764,083 million. In other words, Transocean seeks to create a limitation fund in the amount of \$26,764,083 to satisfy **all claims** filed against it arising out of the Gulf oil spill. Alternatively, Transocean seeks complete exoneration from liability.

Limitation is rarely granted. Transocean will only be able to limit its liability if it is found to be without negligence or liability (called “privity or knowledge”) for the cause of the marine casualty. If Transocean is found to have violated a safety statute or to have been negligent resulting in the oil spill, Transocean will be prohibited from limiting liability to pay all claims only from the limitation fund. Transocean is reported to have received approximately \$400 million in insurance proceeds from its own insurer which will not be included in the limitation fund.

After Transocean filed its complaint and its petition for limitation, the court filed an injunction to prevent other lawsuits against Transocean from proceeding in any other court. The effect of this is that lawsuits filed in other states are stayed. The court’s injunction forces all parties with claims against Transocean to file a claim in the Houston limitation action within the time set by the federal court. Transocean’s May 13 press release advised that it filed the limitation action “to initiate an orderly process for these lawsuits and claims before a single, impartial federal judge.”

Similar petitions for limitation have been filed by vessel owners for many major marine casualties in the past. For example, the owners of the Titanic, the Morro Castle and the 2003 Staten Island ferry, the Andrew J. Barberi, collision several years ago have all filed limitation actions.

**Avvo: How is BP attempting to consolidate all lawsuits arising out of the oil spill?**

**Ms. Matison:** BP's lawyer filed a motion with the U.S. Judicial Panel on Multi-District Litigation (the "Multi-District Panel") on May 10, seeking to consolidate all lawsuits currently pending in the five states bordering the Gulf of Mexico in a single federal court in Houston, Texas. BP's motion argues that the Southern District of Texas, Houston is the "appropriate forum for all related cases because all of BP's headquarters, key witnesses and documents are located in Houston and the majority of lawsuits as of May 10 have been filed in Houston.

The Multi-District Panel is currently scheduled to convene on July 29 in Idaho for the purpose of hearing oral arguments by BP claiming that all of the lawsuits should be consolidated in one court. If the Multi-District Panel grants BP's motion, all lawsuits and plaintiffs will be compelled to proceed in one court. This would mean that all lawsuits against BP, even if pending in other states, would be heard in one single federal court.

BP has filed motions for a three month stay of the lawsuits filed against the company in the five-state Gulf Coast region while awaiting a decision by the Multi-District panel. In the Billy's Seafood, Inc. class action lawsuit, an Alabama federal judge refused to grant BP a three month stay.

**Avvo: Are there any federal or state statutes protecting the environment, natural resources and wildlife that are triggered by this type of disaster?**

**Ms. Matison:** After the Exxon Valdez disaster, Congress enacted the Oil Pollution Act of 1990 ("OPA, 90"). This federal statute imposes liability on the responsible parties liable for an oil spill or oil discharge in navigable waters to pay for removal costs and remediation of the environment and natural resources. The cleanup is conducted under the aegis of the United States Coast Guard for tidal waters. The Environmental Protection Agency ("EPA") jurisdiction extends over contamination of land and the inland waters.

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") is a federal statute that addresses releases of contaminants and hazardous substances including oil that result in damage to land, natural resources and the environment or pose a threat to human health. The EPA has authority to respond to removal of contaminants and assess damages.

**Avvo: In the aftermath of a crisis, unfortunately, we usually see people or companies that try to scam the vulnerable victims. The SEC recently warned of scams promising financial gains from**

**investments in companies that claim to be involved in the oil spill cleanup. How can people best protect themselves from these scams?**

**Ms. Matison:** Oil removal contractors are generally well established businesses with specialized expertise and equipment. These businesses routinely respond to hazardous cleanups. Therefore, it is highly unlikely that any company would need investment capital from the public. When approached concerning investment in a company engaged in the oil spill cleanup, it is advisable to check with the state Attorney General, the Better Business Bureau, or with an attorney before investing any funds or savings in an unknown business venture.

*This interview appeared in [Naked Law](#), an AVVO.com law news website.*

*Photo: CNN.com*