

NATURAL RESOURCES DAMAGE ASSESSMENT AND RESTORATION OVERVIEW

Sources: <https://www.doi.gov/restoration>

https://www.doi.gov/sites/doi.gov/files/migrated/restoration/statetrustees/upload/DOI-Tennessee_NRDAR-MOA_2011-09-14.pdf

NRDAR OVERVIEW

- Goal: to compensate the public for losses in trust resource services resulting from injury as a result of discharge of oil or release of hazardous substance
 - Compensation must restore, replace or acquire the equivalent of lost resources/resource services
 - Compensation is measured as damages, calculated as projects or dollars
- NRDAR is a legal process, and the trustees must demonstrate causality between the release and the injury



NRDAR CONTINUED

- NRDAR requires coordination with responsible parties, co-trustees, and the public
 - Responsible party must pay for reasonable costs of assessment and restoration
- NRDARs often performed at sites undergoing Remedial Action
 - Both actions under CERCLA
 - Remedial Actions focused on current and future risk to human health and environment
 - NRDARs focused on returning natural resources to their pre-release condition



NRDAR PHASES OVERVIEW

- Pre-Assessment Phase
 - Notifications of trustees
 - Preliminary data collection and sampling
 - Determining of successful damage claim
- Assessment Planning and Implementation
 - Trustees decide on assessment procedures to be used
 - Assessment plan is written
 - Injury Quantification & Damage Determination
- Post Assessment/Restoration
 - Activities include: report of assessment, restoration plan, demand for total damages, settlement, restoration implementation



NRDAR LAWS AND REGULATIONS

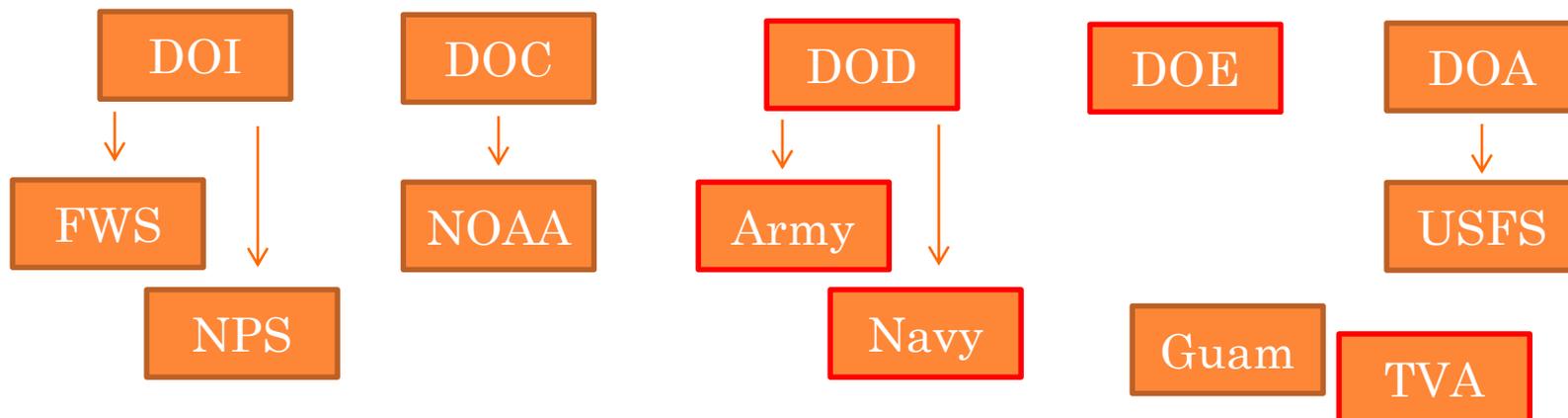
Three laws and their associated regulations provide the legal foundation for the NRDAR:

- Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
 - Section 106 authorizes the President to clean up hazardous substances or obtain cleanup by a responsible party
 - Allows trustees to assess and recover damages
 - Provides authorization to appropriate receipts from responsible parties
- Oil Pollution Act of 1990 (OPA)
 - Authorizes trustees to present claim and recover damages for injury to natural resource from oil discharge
- Federal Water Pollution Control Act or Clean Water Act (CWA)
 - Authorizes trustees to assess and recover damages for discharge of oil into water



TRUSTEES

- Trustees collect damages for injuries to resources and resource services
- What is a trustee?
 - Official Federal or state government, Indian Tribe, foreign government, designated under USC 2706(b) of OPA or 107(f)(2)(B) or 126(d) of CERCLA that may prosecute claims for damages
 - Local governments cannot be a trustee



CO-TRUSTEES

- When natural resources are shared, agencies may act as co-trustees (or a trustee council) for a natural resource damage claim and for restoration.
 - US DOI Fish and Wildlife Representative:
 - Steve Alexandar
 - Office located in Cookeville, TN
 - DOE Environmental Representative:
 - David Adler
 - Tennessee Valley Authority Representative:
 - Hill Henry
 - TDEC Trustee Council Representative:
 - Debbie Duren
 - Tennessee Governor delegates responsibility to TDEC



DECISIONS OF TRUSTEE COUNCIL

- All decisions by the Trustee Council are by consensus
 - Reached when all trustee council members agree or do not object to proposed recommendation or action
 - If consensus cannot be achieved, each trustee may take individual actions
- All communications and work products related to assessment and recovery of damages for injury to natural resources are treated as privileged attorney-client communication



ACCOUNTABILITY

- The trustee council is bound by a legal agreement
 - Does not function like a governing board
 - Trustees work collaboratively
- Public Participation Requirements
 - Required as part of the law
 - Once there is agreement that assessment of area is complete, a draft restoration plan is issued for public comment period
 - Trustees must review the public responses and have the opportunity to consider
 - The final draft will have responses to public comments

