Deepwater Horizon Oil Spill Lessons Learned Workshop: Nontraditional Response and Emergency Restoration Projects

Hosted by the Department of the Interior, Office of Environmental Policy and Compliance
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Executive Summary

On April 20, 2010, a devastating explosion claimed the lives of eleven men on the Deepwater Horizon Drill Rig. The rig was contracted to drill the Macondo well in Mississippi Canyon Block 252 in the Gulf of Mexico, about 41 miles off the coast of Louisiana. The Macondo well blowout resulted in an uncontrolled oil release that was the largest in the nation's history, spilling approximately 4.9 million barrels into the Gulf of Mexico until it was capped on July 15, 2010. The Deepwater Horizon (DWH) oil spread through the adjacent waters, shorelines and lands – areas where ecological health is critical to the economic wellbeing of its neighboring communities.

During the release and aftermath, uncertainty persisted over the amount, fate and impacts of the DWH oil. In the scramble to protect sensitive lands and resources from impacts of the oil spill, requests for "out-of-the-box" ideas to assist the response were coming from many different levels of government, stakeholders and the public. Trustee agencies were among those who developed and proposed innovative, nontraditional, ideas designed to prevent or mitigate these impacts. These proposals had not been implemented in previous spills and were not described in contingency plans associated with the spill. Some of these activities were developed by land managers and field staff based on their professional experience with the ecosystems they were working to protect. Examples included managing farmlands and wetlands to increase migratory bird habitat, collecting native seeds to re-vegetate wetland plants killed by the oil and providing protections for the Florida Manatee.

Trustee agencies were also among those that proposed actions requiring expedited implementation in order to effectively prevent or minimize the impacts of oil or tar-balls from coating, saturating or contacting soils, beaches, flora or fauna. The ability to do so met with mixed success, and most of the proposed actions were not implemented. By the time projects were submitted and evaluated for approval, many times they had become irrelevant. Either the threat of oiling or the window of opportunity for implementing the project had passed.

Because most of these nontraditional proposals were not implemented, the merits of many of the ideas remain largely unmeasured and the time-critical resources dedicated to these efforts could have been used more efficiently. For trustee agencies, the reason for this inefficiency seemed largely due to a lack of understanding of the appropriate approval or funding avenues. There was also perhaps a lack of full awareness of trustees' own authority to undertake actions on the behalf of natural resources and a lack of dedicated funding within trustee agencies to fund such actions. It was not immediately clear how and where to present the proposed actions – as response actions, emergency restoration projects or early (non-emergency) restoration projects.

This report takes a step to address these issues by providing resources for trustee agency responders to future spills, including:

- Examples of nontraditional response and restoration projects (see Appendix A)
- Definitions (and references) for key terminology that trustee agency responders should know (see Appendix B)
- A selection of authorities related to the roles and responsibilities of trustee agencies and funding of response, emergency and early restoration activities (see Appendix D)

The source of funding for a given project depends ultimately on its champion; it could be funded by the National Pollution Funds Center (NPFC) through the Oil Spill Liability Trust Fund (OSLTF) , by the Responsible Party or even directly by natural resource Trustees. As authorized by the Oil Pollution Act (OPA) and the National Contingency Plan (NCP), response activities must be proposed to and approved by the Federal On-Scene Coordinator (FOSC). Emergency and early restoration projects, while requiring different approval processes, fall under the trustee's own authority to compensate, restore, or repair oil caused injury. Early restoration projects are worked through the Natural Resource Damage Assessment (NRDA) Trustee Council approval process.

Many of the proposed nontraditional actions did not fit neatly into these categories. The criteria for classifying the project ideas and the process for channeling them through the appropriate approval process were not well understood by the Trustee agencies or the Unified Command (UC). For many of these ideas to be effective, approval and funding decisions had to be made in days. Instead, the process took weeks or months. Because of the lack of clarity on criteria and process, many of these ideas lingered as proposals well beyond their applicability to the oil spill response.

This report attempts to clarify these processes in the section "Nontraditional Response and Emergency Restoration: Decision-Making and Funding Processes." This report section provides explanations of the processes for proposing response, emergency restoration and early restoration projects. It also provides suggestions on how to expedite processes, where possible, and ensure that project proponents receive timely, properly documented responses.

There are still valuable lessons to be learned that can inform Trustee agencies on how to be more decisive and efficient in managing similar proposals during future spills. The experience also illuminated the potential for expanding and improving the toolbox of resource protection and mitigation countermeasures that could be made available to a response organization on a future oil spill. Regional Response Teams, Area Committees and other organizations with oil spill planning and preparedness responsibilities may find vetting and socializing nontraditional ideas as a way to normalize promising concepts, identify the criteria that would trigger applying them in an oil spill, and take them from "nontraditional" to "traditional."

This report lays out observations, lessons learned and recommendations relating to the proposal, approval and funding processes of the DWH nontraditional response and emergency restoration projects. In summary, to better implement nontraditional response and emergency restoration projects on future spills, trustee agencies should:

- Prepare for the Use of Nontraditional Projects
- Understand the Point of Entry for a Nontraditional Action Proposal
- Consult Early, Informally with NPFC to Facilitate Expedited Approval of Emergency Restoration
- Understand and Work Creatively within Incident-Specific Limitations
- Anticipate Political Involvement in a SONS
- Collaborate with Interagency Partners
- Understand the limitations of a NRDA Trustee Council

The details of observations, lessons learned and recommendations should provide context and understanding for trustee agency oil spill responders to anticipate how to approach the implementation of nontraditional projects on a future SONS as well as perhaps smaller spills. The report also points to planning and preparedness as key phases to improving the capability for trustee agencies to expand the toolbox of oil spill response and emergency restoration projects. It is the hope of the workshop participants that this report will serve as a reference to advance the understanding of future trustee agency oil spill responders.

Report outline

- Background: On how nontraditional actions became an issue during the Deepwater Horizon oil spill and the workshop that came together to address the related issues
- Processes: Explanations and diagrams of the three key processes through which nontraditional actions must be vetted
  - Response or Removal Actions
  - Emergency Restoration
  - Early Restoration
- Observations, Lessons Learned & Recommendations: Results of the workshop and recommendations to improve implementation of nontraditional actions and emergency restoration in future oil spills
- Appendix A – Examples of Nontraditional Project Proposals
- Appendix B – Definitions
- Appendix C – Workshop Attendees
- Appendix D – Relevant Authorities

Background

On April 20, 2010, a devastating explosion claimed the lives of eleven men on the Deepwater Horizon Drill Rig. The rig was contracted to drill the Macondo well in Mississippi Canyon Block 252 in the Gulf of Mexico, about 41 miles off the coast of Louisiana. The Macondo well blowout resulted in an uncontrolled oil release that was the largest in the nation's history, spilling approximately 4.9 million barrels into the Gulf of Mexico until it was capped on July 15, 2010. The Deepwater Horizon (DWH) oil spread through the adjacent waters, shorelines and lands – areas where ecological health is critical to the economic wellbeing of its neighboring communities.

During the release and aftermath, uncertainty persisted over the amount, fate and impacts of the DWH oil. In the scramble to protect sensitive lands and resources from impacts of the oil spill, requests for "out-of-the-box" ideas to assist the response were coming from many different levels of government, stakeholders and the public. Trustee agencies[1] were among those who developed and proposed innovative, nontraditional,[2] ideas designed to prevent or mitigate these impacts. These proposals had not been implemented in previous spills and were not described in contingency plans associated with the spill. Some of these activities were developed by land managers and field staff based on their professional experience with the ecosystems they were working to protect. Examples included managing farmlands and wetlands to increase migratory bird habitat, collecting native seeds to re-vegetate wetland plants killed by the oil and providing protections for the Florida Manatee. (See Appendix A for examples of these nontraditional projects.)

Trustee agencies were also among those that proposed actions requiring expedited implementation in order to effectively prevent or minimize the impacts of oil or tar-balls from coating, saturating or contacting soils, beaches, flora or fauna. The ability to do so met with mixed success, and most of the proposed actions were not implemented. By the time projects were submitted and evaluated for approval, many times they had become irrelevant. Either the threat of oiling or the window of opportunity for implementing the project had passed.

Problem Statement

Because most of these nontraditional proposals were not implemented, the merits of the ideas remain largely unmeasured and the time-critical resources dedicated to these efforts could have been used more efficiently. For trustee agencies, the reason for this inefficiency seemed largely due to a lack of understanding of the appropriate approval or funding avenues. There was also perhaps a lack of full awareness of trustees' own authority to undertake actions on the behalf of natural resources and a lack of dedicated funding within trustee agencies to fund such actions. It was not immediately clear how and

[1] The Oil Pollution Act, 33 U.S.C. §2706 (b-c) (1990), designates and describes the functions of a Trustee. A Trustee can be a Federal, State, Tribal or foreign government agency delegated to act on behalf of the public as trustees for natural resources under OPA. Trustees may assess damages to natural resources and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

[2] See definition in Appendix B

where to present the proposed actions – as response (or removal) actions, emergency restoration projects or early (non-emergency) restoration projects.[3]

The source of funding for a given project depends ultimately on its champion; it could be funded by the National Pollution Funds Center (NPFC) through the Oil Spill Liability Trust Fund (OSLTF) , by the Responsible Party or even directly by natural resource Trustees, although trustee agencies do not typically have such funding available.[4] As authorized by the Oil Pollution Act (OPA) and the National Contingency Plan (NCP),[5] response activities must be proposed to and approved by the FOSC.[6] Emergency and early restoration projects, while requiring different approval processes, fall under the trustee's own authority to compensate, restore, or repair oil caused injury.[7] Early restoration projects are worked through the Natural Resource Damage Assessment (NRDA)[8] Trustee Council approval process.

Many of the proposed nontraditional actions did not fit neatly into these categories. The criteria for classifying the project ideas and the process for channeling them through the appropriate approval process were not well understood by the Trustee agencies or the Unified Command (UC). For many of these ideas to be effective, approval and funding decisions had to be made in days. Instead, the process took weeks or months. In addition, full compliance with NEPA, ESA, NHPA, and other regulatory requirements had to be attained even on time-critical emergency restoration actions. Because of the lack of clarity on criteria and process, many of these ideas lingered as proposals well beyond their applicability to the oil spill response.

There are still valuable lessons to be learned that can inform Trustee agencies on how to be more decisive and efficient in managing similar proposals during future spills. The experience also illuminated the potential for expanding and improving the toolbox of resource protection and mitigation countermeasures that could be made available to a response organization on a future oil spill. Regional Response Teams, Area Committees and other organizations with oil spill planning and preparedness responsibilities may find vetting and socializing nontraditional ideas as a way to normalize promising concepts, identify the criteria that would trigger applying them in an oil spill, and take them from "nontraditional" to "traditional."[9]

Workshop and Report Purpose

In May, 2011, the Department of the Interior's Office of Environmental Policy and Compliance hosted a three-day workshop in Washington, DC with representatives of key federal interagency stakeholders that were involved in the response and related issues (for list of attendees, see Appendix B). The

[3] See definitions in Appendix B
[4] See definitions in Appendix B
[5] 40 C.F.R. 300
[6] 40 C.F.R. § 300.135; see definitions in Appendix B
[7] 43 C.F.R. § 11.21 (DOI regulations) and 15 C.F.R. § 990 (NOAA regulations) on Emergency Restoration
[8] See definition in Appendix B
[9] See definition in Appendix B

workshop executed a facilitated lessons learned process on the issues relating to nontraditional projects during the DWH oil spill response. This effort produced: 1) diagrams to outline the evaluation process for nontraditional projects by the response organization and NPFC during an incident; 2) discussions that provided guidance for Trustee agencies on the process of determining the criteria to classify nontraditional response actions and emergency restoration projects; 3) recommendations to expand the toolbox of response countermeasures to include nontraditional actions; and 4) examples of nontraditional projects from the DWH oil spill.

The purpose of this report is to capture the results of the workshop and propose recommendations for the consideration of Trustee agencies to internalize and take to the National Response Team, which is responsible for coordinating emergency preparedness and response to oil and hazardous substance pollution incidents under OPA and the NCP. During the DWH oil spill, nontraditional ideas were proposed to fill perceived gaps in the federal response under the uncertain threats of the largest oil spill in the history of the US. This report attempts to clarify the processes for Trustee Agencies to propose nontraditional projects to the FOSC of an oil spill for approval and funding.

The concepts of the proposals in the Deepwater Horizon oil spill may also be the basis for expanding the toolbox of response actions to protect sensitive natural resources[10] in future spills. Appendix A captures these ideas as examples to be used for consideration in planning and preparedness, or for future reference.

The workshop discussions were limited in scope and scale, to some degree. In scope, the workshop did not focus on proposed legislative or regulatory changes to OPA or the NCP. The workshop discussions focused on ideas to work within the existing legal and regulatory framework. In scale, the workshop participants recognized that many of the issues discussed related to the nature of the Deepwater Horizon oil spill as the first Spill of National Significance (SONS). Because of the size and complexity of the response organization, issues with the process may not apply to smaller spills. This report likely identifies recommendations that apply most specifically to large, complex spills.

Relevant Authorities

The legal and regulatory authorities with primary relevance to response activities to protect natural resources are the:

- Oil Pollution Act (OPA) 33 U.S.C. § 2701 et seq. (1990)
- Clean Water Act (CWA) 33 U.S.C. § 1251 et seq.
- National Oil and Hazardous Substances Pollution Contingency Plan (NCP) 40 C.F.R. Part 300
- Natural Resource Damage Assessments (NOAA) 15 C.F.R. Part 990
- Natural Resource Damage Assessment (DOI) 43 C.F.R. Part 11
- Oil Spill Liability Trust Fund ; Claims Procedures; 33 CFR Part 136

[10] See definition in Appendix B

These authorities define many of the key oil spill response terms used by trustees, Coast Guard Federal On-Scene Coordinators and the National Pollution Fund Center. Understanding these terms is important for trustee agencies to understand when trying to submit requests for specific activities from the Unified Command or FOSC.

The following authorities and policies also provide further direction for DOI Bureaus:

- Implementation of the National Environmental Policy Act (NEPA) of 1969 in the U.S. Department of the Interior 43 C.F.R. Part 46
- Department of the Interior, Department Manual Part 910, Chapter 4: National Oil and Hazardous Substances Contingency Plan, May 12, 1983
- Fish and Wildlife Service National Contingency Plan
- Director's Order #14: Resource Damage Assessment and Restoration September 28, 2004 (NPS)
- NPS Damage Assessment and Restoration Handbook December 2003
- Appendix D provides a more expansive interpretation of the relevant authorities relating to response activities to protect natural resources for reference purposes.

Processes: Response Actions, Emergency Restoration and Early Restoration

One of the central issues relating to the proposal of nontraditional ideas was that the processes to approve and fund actions to protect or restore natural resources were not well understood by trustee representatives who needed to find the right channel for a given project or UC personnel to receive them. The workshop participants discussed the three processes as "buckets" that the different project proposals might fall into and developed diagrams to try to clarify the access points for action proposals. These processes are:

1. Response or removal actions
2. Emergency restoration
3. Early restoration

The full NRDA restoration process that takes part through the Trustee Council was considered to be outside the scope of the workshop, as projects vetted through this process would receive the evaluation outlined in the NRDA regulations. The process diagrams are provided below for the reference of future responders.

Removal or Response Action Proposals

Oil spill response actions are informed by the specifics of a given spill, actions described in the Area Contingency Plan (ACP) associated with the spill, impacts identified by Shoreline Cleanup and Assessment Teams and unmet needs identified by the best professional judgment of responders. These

actions are initiated through the planning process outlined by the National Response System (NRS)[11] as required by the NCP (see NRS Planning Process flowcharts on pp.41-42). A removal action proposal is submitted with an ICS-213 form to the Planning Section in the process diagramed in Figure 1 (see pg. 12). The Planning Section evaluates the proposed action based on the criteria outlined by the NCP.[12] Further considerations include questions like:

1. Is the action described in the ACP?
2. Is it within the FOSC's discretion to direct the activity?
3. Does the FOSC need the action for the response?
4. Is the action feasible and likely to succeed?

If the answer to any of the above questions is not a simple "yes," an action proposal will likely be rejected without further advocacy. For a removal action not already planned for in an ACP, the burden of proof may lie with the natural trustee to convince the FOSC that the answer to the remaining three questions is "yes." If a trustee feels strongly that an action should take place to protect or mitigate harm to a natural resource, there are several avenues to request additional review:

1. Informal coordination with those evaluating the action proposal in the Planning Section, including the Environmental Unit lead and/or the NOAA Scientific Support Coordinator
2. Request review by the Regional Response Team, through:
    a. The FOSC
    b. The Planning Section
    c. One of the RRT member Agency representatives
3. Appeals directly to the FOSC

Once approved by the FOSC, the actions may be taken. If the actions are to be implemented by the trust agency, the action will also receive a PRFA authorizing the specific activities authorized for reimbursement and the funding limit. For more details on processes of the National Response System, please see the USCG Incident Management Handbook.[13]

Emergency Restoration

Emergency Restoration is an action that can be implemented under natural resource trustee authorities established in the NCP.[14] One of the primary issues with DWH nontraditional proposals was that they were not easily classified as either response/removal actions or emergency restoration projects. These projects may be submitted first to the FOSC to determine whether to implement as response activities and, if the FOSC rejects the proposal, then proceed to implement the projects as emergency restoration. What differentiates the "emergency" part of the emergency restoration from other restoration efforts,

[11] EPA overview of the NRS process: http://www.epa.gov/oem/content/nrs/snapshot.htm
[12] See Removal definition in Appendix B for a description of activities that are within the FOSC's discretion
[13] Link to the USCG IMH: www.uscg.mil/hq/nsfweb/docs/FinalIMH18AUG2006.pdf
[14] This authority is established in the NCP, 40 C.F.R. 300, Subpart G - Trustees for Natural Resources and explained in further detail in the DOI and NOAA Regulations (43 C.F.R. §11.21 and 15 C.F.R. § 990.26 respectively)

such as early restoration, isn't necessarily the timeframe from the date of the release – it's about the need and urgency for the action. The DOI NRDA Regulations define emergency as "any situation related to a discharge or release requiring immediate action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources, or a situation in which there is a similar need for emergency action."[15] The key elements to differentiating emergency restoration from non-emergency restoration are that there is (1) an emergent need for the action and (2) that it takes place during the response phase of the oil spill cleanup.

The DOI and DOC NRDA regulations explain the trustee authority for emergency restoration. Below are key excerpts from these regulations.

DOI Regulations (43 CFR §11.21):

> (b) Emergency Actions: If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the natural resource trustee determines is reasonably necessary, or if such actions are insufficient, the natural resource trustee should exercise any existing authority he may have to take on-site response actions. The natural resource trustee shall determine whether the potentially responsible party, if his identity is known, is taking or will take any response action. If no on-site response actions are taken, the natural resource trustee may undertake limited off-site restoration action consistent with its existing authority to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency or Indian tribe may assert trusteeship.
>
> (c) Limitations on emergency actions: The natural resource trustee may undertake only those actions necessary to abate the emergency situation, consistent with its existing authority. The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the natural resource trustee.

DOC NRDA Regulations (15 CFR § 990.26):

> (3) The action is feasible and likely to succeed;
>
> (4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and
>
> (5) The costs of the action are not unreasonable.

[15] 43 C.F.R. §11.21

(b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:

(1) The OSC's response is complete; or

(2) The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.

(c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in § 990.14(c) of this part.

(d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

There are five avenues to consider for approval and funding of nontraditional proposals that are not easily delineated as (or could be classified as both) response or emergency restoration (see Figure 2, p.13):

1. Unified Command (FOSC and NPFC) – the proposal may be first submitted as a response/removal action through the Unified Command via an ICS-213 form to the Planning Section as is described in the above section. When submitting a nontraditional response action proposal to the FOSC, the trustee should ensure that NPFC is also aware of the action proposal in case it is rejected by the FOSC and can be submitted as emergency restoration.[16] Ensuring that NPFC is aware of the proposal may expedite the approval process for reimbursement as emergency restoration once the FOCS's decision is made.
2. Reimbursement by NPFC – In order for a trustee agency action to receive compensation for emergency restoration costs from an oil spill, the trustee agency must first be able to show that the spill meets the Federal claims requirements defined by OPA.[17] The trustee agency must also provide the RP an opportunity to participate and fund the proposed actions. If the RP is not present or declines the opportunity to participate and/or fund emergency response actions, the costs for these activities can then be submitted for reimbursement by the OSLTF through the NPFC claims process.[18] NPFC may be informally copied and kept

[16] The FOSC makes decisions on proposed actions based on the needs of the spill. The NPFC advises the FOSC as to whether the proposal is an appropriate removal cost use of the OSLTF Emergency Fund.
[17] See federal claims process outlined in 33 USC § 2713 (OPA)
[18] See NPFC claims process outlined in "OSLTF Funding for Oil Spills," link: http://www.uscg.mil/npfc/docs/PDFs/OSLTF_Funding_for_Oil_Spills.pdf

aware of proposals that are submitted to the RP so that, in the event the RP rejects the proposal, formal submission to NPFC can be immediately initiated and potentially expedited.

3. Responsible Party – If a viable responsible party is involved in the response, it will have 90 days[19] to evaluate the proposal. This 90-day timeframe initially appears to be a potentially significant limiting factor to implementing an emergency restoration project effectively if time constraints are in play. If seasonal or other temporal issues could impact the natural resources that are the focus of the emergency restoration proposal, 90 days may be too long to wait for a decision to go forward. If the RP is participating and cooperative, an expedited review of the proposal could be negotiated and emergency restoration could be implemented immediately. If, however, the RP is participating and non-cooperative, allowing for the full 90 day review could render emergency restoration ineffective or less than optimally effective. Even if a RP appears to be initially supportive, the RP could later decide not to fund the project. If timeliness is a factor, a trustee should ensure that the NPFC is engaged in the project proposal and gage whether there would be support from NPFC for OSLTF reimbursement in the event that the RP were to reject the proposal.
4. NRDA Trustee Council – A trustee agency could propose emergency restoration actions to the NRDA Trustee Council. The Trustee Council may choose to initiate emergency restoration according the NOAA or DOI NRDA regulations.[20] The Trustee Council will vet project ideas and propose them to the responsible party. If the responsible party fails to satisfy the request within 90 days the Trustees may submit the proposed emergency restoration action to NPFC for consideration as claim against the OSLTF. Timing constraints may impact the ability to vet and approve emergency restoration projects through a Trustee Council. The larger the membership of a Trustee Council, the more difficult it may be to schedule ad hoc meetings for approval and the more diverse could be the perspectives of the membership. These and other factors could lead a Trustee Council to take as long or longer to reach decisions than a RP or FOSC. It is recommended that nontraditional proposals that could be classified as response or emergency restoration are submitted simultaneously to the Trustee Council, along with the RP, FOSC and NPFC. As is outlined in the NOAA Regulations, NRDA activities must be coordinated with the FOSC.[21]
5. Trustee Agency Funding – If a trustee agency undertakes emergency restoration under its own authority but the NPFC, RP and Trustee Council will not support its reimbursement, the trustee agency may have to find internal agency funding to implement emergency restoration. Costs for these actions could be recoverable later from the NPFC, voluntarily through the RP, or through the eventual settlement with the RP. However, under this

[19] The claims process is described in OPA (33 USC 2713); the NPFC also offers guidance, see "OSLTF Funding for Oil Spills: http://www.uscg.mil/npfc/docs/PDFs/OSLTF_Funding_for_Oil_Spills.pdf

[20] Public Notice requirements: OPA allows a claim to come in without public notice (33 USC § 2713); NOAA regulations require public notice afterwards (15 C.F.R. § 990.26) ; DOI regulations do not specify public notice requirements (43 C.F.R. §11.21)

[21] See 15 C.F.R. 990

scenario, the trustee will be providing this funding up front and risking that reimbursement could be less than full or may not come at all and that the final settlement could be years from being reached. Supplemental funding from Congress, if provided, could also be used to pay for actions such as emergency response. Such funding sources are uncertain and cannot be anticipated.

There are potential tradeoffs to the funding source of an emergency restoration project. For an emergency restoration project to be reimbursed by the OSLTF, it must strictly meet the criteria determined by the OPA claims regulations and NPFC policies. Funding and support provided by the RP could allow for greater flexibility if the RP is willing to try directly funding less conventional actions to mitigate injury to natural resources. Regardless of the source, the trustee representative should ensure that any decisions regarding funding are documented and signed by authorized officials and maintained for future reimbursement and audit purposes.

Early Restoration

If a restoration project does not meet the criteria earlier specified for removal or "emergency" restoration and requires funding from the OSLTF, it will be directed and vetted through the NRDA Trustee Council (see process in Figure 3, p. 15). Like emergency restoration, this process takes place under trustee authority, and is required to be coordinated with the FOSC in areas such as logistics, safety, and data collection to ensure that the NRDA process does not interfere with the response. Early restoration can be implemented prior to the completion of the NRDA settlement or full quantification of injury to natural resources, which is complex and can sometimes last many years. Unlike emergency restoration, injury does have to be determined, and the project must be scaled to the injury. (Early Restoration projects can be tied to an interim injury determination.) Early restoration must also follow the standard environmental compliance requirements, such as with NEPA and provisions for public notice prior to implementation.

To initiate early restoration, it must be shown that the injury from the spill is valued up to the cost of the early restoration proposal. This restoration can be funded at any point. Since it is being considered as part of the NRDA claim, credit towards the RP's liability may need to be considered. The NRDA process can be long and complex. For more information on NRDA and Restoration, please see the following sources:

- DWH Gulf Spill Early Restoration (NOAA)
- NOAA DARRP Program
- DOI Restoration Program
- FWS NRDA
- EPA NRDA

Conclusion

Common to any of the three processes is that, because the proposed nontraditional action is not commonly used for oil spill response, it is incumbent that the trustee proposing the action to make the case that the action fits the discretion of the approving entity (USCG or EPA FOSC and NPFC; RP; or approving officials within the Trustee agency or NRDA Trustee Council) to implement, that there is a need for the action, and that the action can be implemented with success.

Figure 1: Response/Removal Project Proposal Process

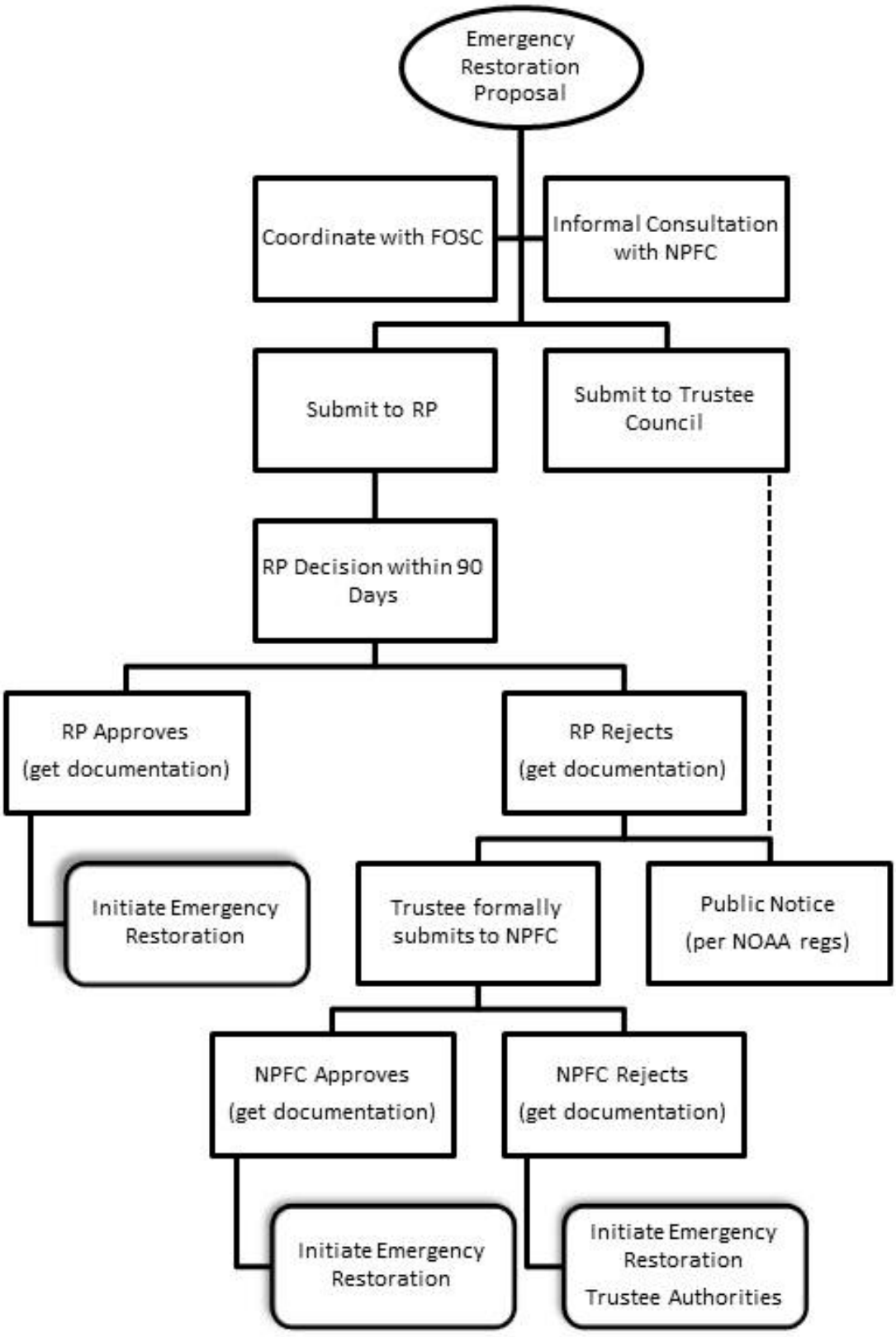

Figure 2: Emergency Restoration Project Proposal Process

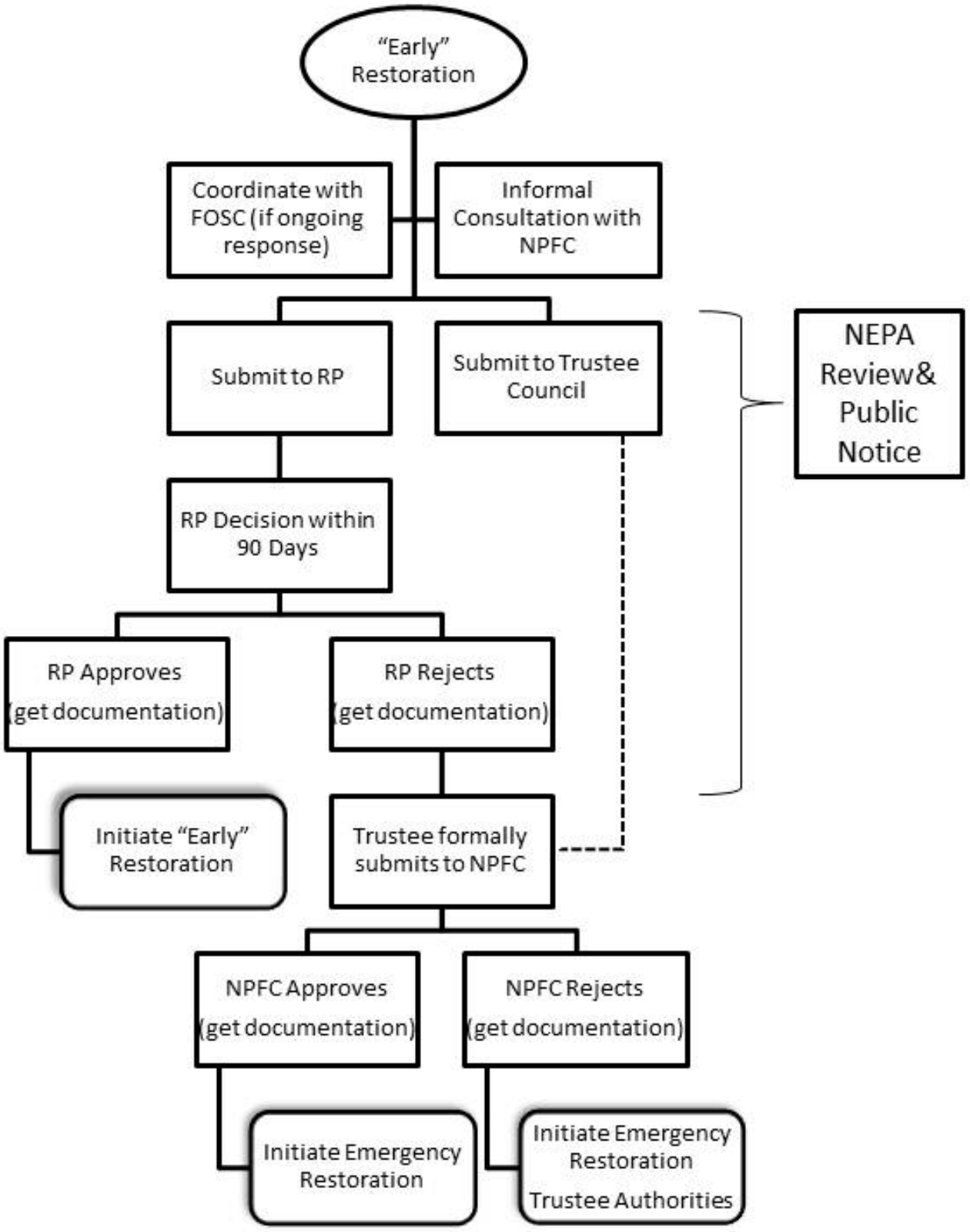

Figure 3: Early Restoration Project Proposal Process

Observations, Lessons Learned & Recommendations

This section describes the observations, lessons learned and recommendations generated at the workshop.

Prepare for the Use of Nontraditional Response Projects

Nontraditional Response actions, by their nature, are not well understood. It takes additional time and effort on the part of Trustee Agencies to convey the necessity, value and documented ability to implement successfully a given NTR project. Many of the DWH "nontraditional" projects were proposed as concepts, without specific work plans or budgets. If projects are not understood by the FOSC at the time of the spill, s/he is unlikely to determine that action is appropriate for response. However, the FOSC also did not provide guidance explaining the level of detail preferred for DWH action proposals or explain the criteria by which they would be evaluated.

NTR Projects are not currently addressed in ACPs. Trustee Agencies should be prepared to socialize, justify and explain the merits of NTR Projects during response. However, the UC is a difficult place to advance innovative ideas and technologies. The UC will be better served by laying the groundwork in ACPs for NTR Projects by establishing nontraditional response and countermeasure action proposal ideas, and decision-making processes and criteria in advance of an incident.

Recommendations:

There is a responsibility on the part of both the Trustee Agency and the FOSC to ensure that action proposals are communicated in a predictable, transparent and mutually understood manner. Trustee Agencies should ensure that action proposals are provided that meet the FOSCs expectation for detailed work plans and budgets and that "nontraditional" proposals include the examples, available reports and science that support a proposed activity's efficacy. The FOSC should ensure that the expectations and evaluation criteria for action proposals are made available to Trustee Agencies, including the level of detail needed in work plans and budgets as well as documentation needed to show the efficacy of proposed management strategies. Because this is a difficult task to perform by an FOSC in the heat of an incident, USCG and EPA should work with Trustee Agencies to develop guidance or policy that will ensure that a predictable, transparent and mutually understood process will exist for "nontraditional" proposals.

Document the use of, collect and make available to the response community the results of NTR and emergency restoration projects that have been implemented. Socialize these ideas at RRT and AC meetings so that they become more "traditional" across the response community. Conceptualize how to incorporate new ideas into response community.

- Review results, determine success, and incorporate NTR project ideas and general ideas that have been implemented into ACPs. Appendix A provides a list of DWH NTR Project proposals as a start to this effort

- Include general ideas of how to address sensitive species and habitats, as well as references, resources and local/regional contacts and organizations that can be helpful
- Develop guidance and training for Trustee agency responders on PRFAs and emergency restoration
- Develop exercise injects for SONS, such as an example where a Trustee proposes a NTR action that shifts to emergency restoration
- Develop pre-approvals for proven NTR concepts

Joint Assessment Teams may be an effective model from NRDA for resolving NTR prior to a spill. This would include involvement from NRDA and industry representatives, which could strengthen NTR action proposals prior to their being used in the field. Federal, tribal and state trustees can work with industry representatives to work out issues and processes. Further detail on the NOAA Cooperative Assessment Process and Joint Assessment Teams can be found at: http://darrp.noaa.gov/partner/cap/relate.html.

Adaptive management[22] is a resource management strategy tailored to address the types of environmental uncertainty that Trustee agencies may face during an oil spill response. The adaptive management approach should be socialized at the RRT and Area Committee levels to the response community and potential on-scene coordinators to facilitate better understanding of the merits of the adaptive management approach in the face of uncertainty. DOI has incorporated the use of Adaptive Management at the policy level,[23] and has developed technical guidance that can support its use in project proposals such as for Emergency or Early Restoration.[24]

Understand the Point of Entry for a Nontraditional Response Action Proposal

In at least one case, an Agency proposing a NTR project was negotiating with only the RP. It wasn't clear to the Agency who the appropriate contact was to initiate discussions regarding the project proposal. The end result was that the proposal was delayed through the discussions and didn't reach the right contacts at Unified Command to receive a proper hearing. The full Planning Team needs to see a given project.

ICS processes and structure often seemed to work well. But when a UC reaches a certain size, such as in the DWH oil spill, it seems to become difficult to navigate. This makes it all the more important to ensure that, when project proposals are ready for implementation, official processes are followed and requests are documented. In this case, the use of the ICS 213 Action Request Form would ensure that documentation of the request is submitted to the UC and that the proposing agency has a copy.

[22] See definition in Appendix B
[23] Link to DOI Adaptive Management policy, 522 DM 1: http://www.doi.gov/initiatives/AdaptiveManagement/documents/DOImanual3786.pdf
[24] DOI Adaptive Management Applications Guide and Technical Guide: http://www.doi.gov/ppa/Adaptive-Management.cfm

Recommendations:

The Trustee agency must ensure that the full planning team, including USCG and Trustees, are present when proposing removal projects. Guidance and training is needed to be shared amongst Trustees regarding the process of an Emergency Restoration demand (or claim) to the RP and/or OSLTF. This should go through the Trustee Council or an Individual trustee, not the FOSC, except to coordinate with the response on timing, logistics or other criteria to ensure the response is unimpeded.

More specifically, the trustee agency must ensure that all requests are made using the 213 resource request form. The request should be developed in of the appropriate format, such as a PRFA, procurement request, Military Interdepartmental Procurement Request (MIPR), or RP-funded project proposal, and officially submitted through the IC process. An action proposal proponent should ensure that the Planning Section analyses the criteria (see questions on p.5) and provides a decision to the proponent. Time constraints should be made clear in the 213 presenting the action proposal. The Planning Section should be able to report on the status and progress of an action proposal.

Trustee agencies must also ensure that current ICS training is provided for all trustee agency participants in a response and NRDA so they understand the response structure and where to communicate and participate.

Consult Early, Informally with NPFC to Facilitate Expedited Approval of Emergency Restoration

The emergency restoration 90 day clock for RP review, established by OPA, seems like a major impediment to implementing timely nontraditional response actions and emergency restoration projects. But prior to DWH, perhaps only two emergency restoration claims had been funded in the past 20 years. It's not clear whether there has been little need for these actions, or whether emergency restoration is seldom used because of a lack of understanding in how to initiate or some other impediment to implementing them. In the DWH, there were delays noted in the proposal process for projects such as the Kemp's Ridley sea turtle emergency restoration project. While the 90 day rule hasn't been documented as the impediment to implementing emergency restoration, delays should be tracked in the future incidents to help determine whether adjustments may be necessary.

Regardless, states and/or federal Trustee agencies should engage with NPFC simultaneously when proposing a nontraditional project to ensure that action proposal reviews can be expedited once a RP approves or rejects the proposal.

Recommendations:

Pursue alternatives simultaneously – If the proposal is viewed as important, the agencies should develop and submit alternative proposals through the appropriate avenues (i.e., Plan B – as emergency restoration and Plan C – as normal restoration). However, a project proposal must be a proven, pre-

established concept – it cannot be a moving target. Project proposals submitted through different funding avenues must meet the criteria of those funding avenues.

Be formal with RP – Ensure the project is formally presented to the RP and include representatives of the FOSC. Document the presentation to the RP, requesting formal RP acknowledgement and pre-establish a template for such projects in written format. Copy NPFC on proposals and communication with the RP, especially if there is anticipation of a projects rejection by the RP

Be consistent – The same project and details that are formally presented to the RP should be presented informally for consultation with NPFC. If a proposal rejected by the RP and subsequently improved or changed, NPFC must be shown that these improvements or changes have also been rejected by the RP prior to NPFC being willing to evaluate the proposal for funding.

Test the waters – NPFC can't pre-adjudicate a claim, but it can provide informal advice and expressed willingness to work closely with Trustee Agencies in advising on nontraditional project proposals. At least four of the projects proposed during DWH could have benefited by simultaneous engagement with NPFC to ensure funding criteria were met.

Develop Interagency Agreement for Pre-Assessment Work between Trustee Agencies and NPFC (only) for pre-assessment work. In this agreement, NPFC will commit to timely funding of pre-assessment work if the RP doesn't commit to it.

Understand and Work Creatively within Incident-Specific Limitations

During the response to DWH, proposed NTR actions that should have been evaluated and funded by the UC were being funded independent of the response organization by the RP. The financial capability of the RP allowed them lean forward to immediately fund projects that would otherwise have been evaluated by the UC and FOSC. While this expedited the implementation of the projects that were funded in this manner, it also skewed the expectations for what kinds of actions can be funded under OPA/NCP.[25] Because these projects were funded by the RP, the perception was that the projects were funded by the response as a whole, but the projects directly funded by the RP were not required to be filtered by the OPA/NCP criteria. The funding and implementation of these actions were also not always coordinated with the UC. This confused the process for Trustee Agencies to understand where appropriate entry points were to propose actions, such as nontraditional response or emergency restoration projects.

In the event of a different SONS featuring an insolvent or no RP, the scenario would be very different. Quick decisions would need to be made early on to focus on what effective actions would be required and how to go about them. If a response was taking place under the authorities of the Stafford Act, funding constraints would be much different. Funding for Trustee Agencies to assist with a response could be limited. Response on federal lands would not be reimbursed without a PRFA and response

[25] See footnote 26 for an example of this

funding could have additional constraints, such as not covering base salaries of Trustee Agency responders.

Recommendation:

Responders and resource managers working for Trustee agencies and under the FOSC must use their best professional judgment to balance the demands of serving the FOSC under the command-and-control structure of ICS and working under their own Agency mission, priorities and leadership. The best way to do so is for each individual to understand the capabilities and limitations of each organization, the relationship and bureaucratic processes between them during the incident response and understanding her/his own roles and responsibilities. Active study of ICS, OPA, NCP and participation in oil spill preparedness exercises and planning meetings, such as Regional Response Team, Area Committee or Sub-Area Committee meetings, will greatly strengthen an individual's knowledge and understanding of how to work creatively within the limitations of a Unified Command. Trustee agencies must ensure that enough individuals are tasked and provided management support to undertake these responsibilities and provide the kind of leadership and technical assistance to guide necessary proposals, such as NTR actions to protect natural resources.

Anticipate Political Involvement in a SONS

Because of the high-profile and national attention on the spill, political involvement was enhanced at the Federal, state, local and tribal government level in response. This will likely be true of any SONS. In the case of the DWH, this complicated the process for NTR projects to be considered in at least two ways:

- Pressure by political leaders to develop "out-of-the-box solutions" for projected, yet-to-be realized impacts led to many creative ideas, which had the counter-productive effect of diluting the pool of viable projects with non-viable projects (such as Louisiana's offshore barrier berms[26]); and
- The decision-making processes of the Incident Command System were rendered less linear, as political players utilized chain-of-command decision-making processes that existed outside the Incident Command System rather than those inside the Unified Command.

The strength of political arguments can sway the direction of funding projects. This may have been best exemplified through the implementation of the sand berm projects in Louisiana, a concept first rejected by the Unified Command, but implemented after repeated pressure by the State of Louisiana. This kind of external influence puts the pressure on an FOSC to push back against the will and influence of a state governor or agency head.

[26] For more details on Louisiana's offshore barrier berms projects, see the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling staff paper "The Story of the Louisiana Berms Project" at: http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Berms%20Working%20Paper.pdf

Recommendations:

In a SONS, highly experienced, knowledgeable and well-placed individuals should be staffed as Liaisons in the Liaison Unit. These individuals should be in a position to communicate effectively with the Unified Command and top political leaders alike. These Liaisons can provide on-the-job training for political leadership during the incident as to how to work effectively with the existing Unified Command organization. Explaining the decision-making and funding processes and necessary removal action criteria for NTR projects to political leadership can orient top-level state and federal agency requests to be more direct and productive.

Communicate the standard processes of OPA/NCP response organizations and processes and provide training prior to incidents, early in administration and leadership changes. External processes will inevitably influence and impact the Unified Command in a SONS. Training political leadership on ICS and OPA/NCP organizations, processes and funding provide opportunities for such leaders to better integrate their positions and interests.

Collaborate with Interagency Partners

The capabilities of some federal agencies, such as USDA Natural Resources Conservation Service (NRCS), were not well understood throughout the Unified Command, Department of the Interior or other federal agencies. One of the major resource concerns of the DWH oil spill was the threats to migratory birds returning to oiled wetlands, beaches and Gulf waters in the fall. With programs in control of well positioned conservation easements and the capacity and mechanisms to rapidly enroll new acres of land through existing programs in partnerships with local farmers and landowners, NRCS was able to manage a vast area of land that could be flooded to provide habitat and forage for the fall bird migration.[27] However, NRCS struggled to navigate the legal and organizational constraints of the DWH response when attempting to propose these habitat enhancements by flooding projects. Questions arose as to the roles and responsibilities of USDA and NRCS as trustees and led to a protracted struggle to implement and reimburse USDA's funding of the projects. USDA felt there was a lack of coordination between DOI and NRCS on the flooding projects and that, with closer coordination, FWS and DOI could have better reinforced the merits of these projects to facilitate quicker approval and reimbursement by the FOSC.

USDA also felt its capability to augment FWS resource protection for migratory birds through the USDA Animal and Plant Health Inspection Service (APHIS) Wildlife Services program was underutilized. The mission of USDA APHIS Wildlife Services is to provide Federal leadership and expertise to resolve wildlife conflicts to allow people and wildlife to coexist. WS conducts program delivery, research, and other

[27] For more information on this NTR Project, see example #14, Migratory Bird Habitat Initiative, in Appendix A

activities through its Regional and State Offices, the National Wildlife Research Center and its Field Stations, as well as through its National Programs.[28]

Recommendations:

As a trustee, USDA may find it beneficial to provide guidance that communicates the roles, responsibilities, authorities, jurisdictions and capabilities of its various bureaus to other trustees during response, as well as to its RRT representatives (generally the US Forest Service) and the response community as a whole through planning and preparedness with RRTs and Area Committees. USDA may also find benefit in providing more specific legal or policy clarification of its roles, responsibilities and trusteeship over conservation easements controlled by NRCS to facilitate establishment of its place in any future Trustee Council where NTR response and emergency restoration projects could be implemented to protect and/or mitigate damages to natural resource damages under NRCS conservation program easements.

Trustee coordination needs to take place outside response. Interagency Agreements or Memorandums of Understanding should be developed between USDA and DOI or other federal agencies to ensure that USDA capabilities are best utilized during an incident.

Resource Trustees can be tapped to lead NTR projects on a cooperative basis with other agencies, such as USDA NRCS. This option should be considered for when agencies find a mutually beneficial cause, such as with the habitat enhancement flooding projects.

Understand the limitations of a NRDA Trustee Council

The vetting process of the trustee council, which required approval by each state and federal member, made the projects that were submitted stronger by being a thorough, rigorous process. The goal was to generate buy-in and cooperation by the Trustee Council and led to the best projects being put forward by trustees for proposal to the RP and the FOSC. However, this was a much slower process that was not timely in implementing emergency or early restoration projects.

In the case of the DWH oil spill, the Trustee Council was a very large body consisting of numerous state and federal agencies. The number of trustees involved makes it unlikely to be representative of other non-SONS Trustee Councils. This also makes it hard to take away lessons learned that will likely apply to non-SONS Trustee Councils.

Recommendations:

The workshop participants noted that an area for further research lay in the sometimes unclear area of Trustee ownership and jurisdiction, and the associated trustee responsibilities with non-fee simple ownership over lands. Examples include easements, ownership rights, non-congressional land

[28] For more information on APHIS Wildlife Services and the National Wildlife Research Center, see: http://www.aphis.usda.gov/wildlife_damage/

designations and overlapping jurisdictional boundaries. This appears to be a persistent question that could impact the NRDA process in future spills.

Appendix A: Examples of Nontraditional Projects

The following examples represent a sample of the nontraditional projects that were proposed during the DWH oil spill. Most of the projects were not implemented. Those that were known to be implemented mention so in the project description.

The projects listed as examples are not hereby endorsed for use in future oil spills but rather as examples for reference for in planning, preparedness and response to future oil spills. The projects listed have been transcribed and sometimes shortened from various formats, with an effort to generally preserve the original language. There were a number of other projects proposed for emergency response and early restoration. Those listed below represent the examples for which the workgroup was able to find copies.

For more information on Emergency Response and Early Restoration, see the following links:

- DOI Emergency and Early Restoration: http://www.doi.gov/deepwaterhorizon/index.cfm
- NOAA Early Restoration: http://www.gulfspillrestoration.noaa.gov/
- BP Emergency Restoration: http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/restoring-the-environment/emergency-restoration-projects.html
- BP Early Restoration: http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/restoring-the-environment/early-restoration-projects.html

Habitat Enhancement and Emergency Restoration Project Proposals

1. **Project Name and State Located: Aransas NWR, Texas – Myrtle Foester Whitmire Unit**

   Agency: U.S. Fish and Wildlife Service

   Description: The Myrtle Foester Whitmire tract of the Aransas National Wildlife Refuge consists of 3,440 acres and is located on the Indianola Peninsula slightly inland from Matagorda Bay. The wetland management of the Whitmire tract is dependent upon precipitation although, irrigation water is available at a cost of $45 per acre foot. The purchase of water from GBRA will allow the inundation of ten units over the winter and spring months. This additional water will allow the Whitmire to serve as host to a large number of waterfowl, shorebirds and wading birds which would otherwise feed and loaf along adjacent bays which may be contaminated by oil.

   Cost: $160,000

   Resources Benefited: Shorebirds, waterfowl, and wading birds

   Relevance to Injury: This project will increase carrying capacity for wetland dependent species of shorebirds, wading birds, rails, gallinules, and waterfowl. Since these units are adjacent to intertidal marsh habitat, the moist soil units benefit birds in both fresh and saline habitats.

2. **Project Name and State Located: Big Boggy NWR Water Purchase, Texas**

Agency: U.S. Fish and Wildlife Service

Description: Big Boggy NWR has 450 acres of moist soil units which can be flooded utilizing purchased water from the Gulf Coast Water Authority. The refuge could flood all wetlands on the refuge ensuring maximum wetland habitat for the fall/winter with available funds.

Cost: $7,000

Resources Benefited: Shorebirds, waterfowl, and wading birds

Relevance to Injury: This project will increase carrying capacity for wetland dependent species of shorebirds, wading birds, rails, gallinules, and waterfowl. Since these units are adjacent to intertidal marsh habitat, the moist soil units benefit birds in both fresh and saline habitats.

3. Project Name and State Located: Big Lake National Wildlife Refuge Waterfowl and Shorebird Enhancement, Arkansas

Agency: U.S. Fish and Wildlife Service

Description: This project will increase shallow water habitat and enhance forage availability at Big Lake NWR, with the potential to "shortstop" shorebirds and waterfowl.

Cost: $280,500

Resources Benefited: Shorebirds, Waterfowl (northern pintail, canvasback, blue-winged teal, northern shoveler, redhead, American coot)

Relevance to Injury: Refuge has the potential to hold and overwinter large numbers of migratory birds. This project will enable the lake to reach its full migratory bird potential by a drawdown of water to create 2,600 acres of shorebird habitat and shallow water flooding of 5,838 additional acres. These activities may short stop and benefit hundreds of thousands of additional waterfowl, shorebirds and other migratory bird.

4. Project Name and State Located: Mississippi Alluvial Valley Wildlife Management Areas Shorebird Habitat Restoration, Mississippi

Agency: Mississippi Department of Wildlife, Fisheries and Parks

Description: Implement activities such as disking nuisance vegetation to create mudflat and pumping to create and maintain shallow water habitat for shorebirds and waterfowl. Four projects totaling 1,220 acres would be implemented:

- Mahannah WMA -730 acres ($105,000)
- Howard Miller WMA – 160 acres ($36,400)
- Muscadine Farms WMA – 300 acres ($24,500)
- O'Keefe'Keefe WMA – 30 acres ($4,200)
- Total acres – 1,220

Cost: $169,850

Resources Benefited: Waterfowl, shorebirds, wading birds

Relevance to Injury: This project will provide dependable, early season flooding to increase habitat for shorebirds, waterfowl and wading birds.

5. Project Name and State Located: White Lake Conservation Area Wetlands Creation and Enhancement, Louisiana

Agency: Ducks Unlimited

Description: Creation of 900 acres of shallow water habitat for waterfowl, shorebirds and wading birds.

Cost: $500,000

Resources Benefited: Waterfowl, shorebirds, wading birds; future site for whooping crane releases.

Relevance to Injury: This project will provide shallow water habitat that otherwise will not be available to benefit shorebirds, waterfowl band wading birds.

6. Project Name and State Located: San Bernard NWR Pentagon and Wolfweed Marsh, Texas

Agency: U.S. Fish and Wildlife Service

Description: San Bernard NWR – Water management on 1,040 acres of moist soil units. Includes fuel costs, reshaping some existing levees on several impoundments in Pentagon Marsh and Wolfweed Marsh .

Cost: $21,000

Resources Benefited: Shorebirds, waterfowl, and wading birds

Relevance to Injury: This project will increase carrying capacity for wetland dependent species of shorebirds, wading birds, rails, gallinules, and waterfowl. Since these units are adjacent to intertidal marsh habitat, the moist soil units benefit birds in both fresh and saline habitats.

7. Project Name and State Located: Texas Prairie Wetlands Project (TPWP)

Agency: Ducks Unlimited, USFWS, Texas Parks and Wildlife, NRCS

Description: TPWP is a cost-share program administered by DU to assist private landowners with wetland restoration and enhancement on private lands within a 28-county focus area along the entire Texas Coast. The primary goal of the TPWP is to restore, enhance, and protect shallow, seasonally flooded wetland habitat to provide critical staging and wintering habitat for thousands of waterfowl, shorebirds, wading birds and other wetland-dependent species. This funding request would provide funding for about 700 acres of shallow water wetland restoration and enhancement

projects. The restoration and enhancement of additional shallow water basins will cost about $350 per acre. TPWP has an active list of landowners with projects waiting on cost-share funding. Projects are shovel-ready as per COE Nationwide Permit 27. TPWP can deliver projects within its existing network to provide immediate benefits to bird species at risk from the oil spill.

Cost: $250,000

Resources Benefited: Waterfowl, shorebirds, and wading birds, wetland dependent species.

Relevance to Injury: Species at risk will benefit by increased survival during migration and over the winter season. By increasing carrying capacity of the environment, individuals of wetland dependent species will have more opportunity to maintain and improve body conditions. The increased survival of these individuals will offset losses of same species in the area affected by the spill.

Additional Information or Issues: This request will leverage the network that exists with landowners and other agencies across 28-counities in Texas. It will be managed by DU staff.

Species and Habitat Protection Projects

8. Project Name and State Located: Perdido Key Beach Mouse Capture and Captive Holding, Florida

Agency: U.S. Fish and Wildlife Service

Description: As a hedge against extinction, capture a small number of Perdido Key beach mice and transport them to zoos in Florida with a demonstrated ability to maintain them. This project would last as long as the threats associated with the oil and human response exists and would not negate the importance of maintaining the beach mice in the wild.

Cost: $95,000

Resources Benefited: Perdido Key Beach Mouse

Relevance to Injury: This project will protect a number of Federally endangered mice in a safe facility as a hedge against potential extinction as a result of the Deepwater Horizon spill or beach activities related to the spill.

9. Project Name: Increased Monitoring, Identification, Rescue, and Rehabilitation Capabilities for the Florida Manatee.

Project Location: Florida

Lead Agency: DOI - USFWS

Project Description: The purpose of this project is to increase the capacity for critical care at SeaWorld for the Florida manatee (*Trichechus manatus latirostris*) ranging from Florida to Texas.

There are only three critical care facilities for manatees that have the capability to provide the level of care required to treat injured and sick animals. Critical care capacity for manatees is severely limited due to: space limitations at facilities, the availability of veterinarians trained specifically in manatee medicine and the availability of animal care staff trained in manatee husbandry. All facilities are currently at capacity due to the harsh winter experienced in Jan-March of 2010, therefore; an increase in the number of medical case due to the oil spill will result in insufficient critical care capacity. This project proposes to increase capacity at a current critical care facility. Phase 1 (below) will create capacity temporarily as plans and work are implemented for the full project (Phase 2). Phase 1 cannot move forward without Phase 2, as Phase 1 alone would compromise the current and established SeaWorld facilities.

Relevance to Injury: Manatees are migrating westward into areas of the Gulf affected by the oil spill. If they enter areas affected by oil, their response from exposure could be acute or chronic. This project establishes increased capacity at a current critical care facility in order to accept and medically treat animals potentially debilitated by oil.

Explain why this project or action is immediately necessary to protect or reduce injury to natural resources: This action requires prompt approval as it will take several months to construct the critical care space that may be needed immediately.

10. Project Name: Kemp's Ridley Sea Turtle Emergency Restoration Plan (THIS PROJECT WAS IMPLEMENTED)

Project Location: Padre Island National Seashore (PINS); Brazoria National Wildlife Refuge; Texas

States Affected: Texas

Lead Agency: NPS, FWS, Texas A&M University, Texas Parks and Wildlife Department

Project Description: The proposed emergency project will include the construction and operation of a protective corral. With the funding provided under the Plan, NPS will use seasonal staff and purchase materials to construct and operate a corral at the 30 mile mark on PINS during the 2011 nesting season. Nesting operations include nest detection and relocation to corrals, corral monitoring, removing vegetation from corrals, setting and maintaining traps for ghost crabs, re-grading sand to keep eggs covered, watering the corrals, monitoring of egg hatchling, and release of hatchlings… This addition is expected to enhance the survivability of hatchlings in the 2011 nesting season.

Estimated Project Cost: $33,500

Project Description: The project would expand upon current nest detection efforts taking place on the upper Texas coast … and Brazoria National Wildlife Refuge for the 2011 nesting season. Specific conservation practices will include patrolling beaches on foot or on ATV/UTV to locate nests, safeguarding of nesting turtles, excavation and protection of nests, and transport of eggs to the existing egg incubation facility located at PINS headquarters. Expansion of these efforts on the upper

Texas coast will 1) result in a 30% increase in TAMU Galveston-led patrol activities relative to the 2010 nesting season, as sufficient resources will, in addition to the already funded morning patrols, also be available to perform afternoon surveys form the East end of Galveston Island to Surfside during the peak nesting month of May; and 2) allow Brazoria NWR staff to devote staff to full-time instead of part-time patrol activities within refuge boundaries.

These projects would help prevent mortality to the population through detection and protection of nesting turtles and nests on Gulf of Mexico beaches, and by enhancing survivability of hatchlings.

Estimated Project Cost: $99,000

Resources Benefited: Kemp's Ridley sea turtle

Relevance to Injury: More Kemp's Ridley sea turtles were documented oiled as a result of the DWH spill than any other sea turtle species. This project will help reduce mortality to the population through detection and protection of nesting turtles and nests on Gulf of Mexico beaches, and by enhancing the survivability of hatchlings. The spill location overlaps with the known distribution of important Kemp's Ridley foraging and migratory habitat. Many of the adult females that were equipped with satellite tags after nesting in Texas and Mexico during 2010 moved to the vicinity of the spill and may have been exposed to oil in the marine environment. Since Kemp's Ridley turtles nest an average of every other year, most of the females that nested in 2010 should nest again in 2012. Those that did not nest during 2010, and may have been exposed to DWH oil while foraging or swimming in water near the spill, would be expected to nest during 2011.

11. Project Name: Prevention of Propeller Scarring and Response Vessel Impacts to SAV Beds.

Project Location: Locations throughout the Gulf of Mexico coastal and estuarine waters where SAV beds have sustained injuries

States Impacted: Louisiana, Mississippi, Alabama, and Florida

Lead Agency: NOAA (Lead), NPS, USFWS, and State Agencies

Project Description: There are an increasing number of observations of damage to seagrass and SAV beds by motorized vessels either engaged in booming operations or recreational activities (attempting to avoid boomed areas). This project will provide immediate response and protection of SAV habitat from vessels scarring beds during booming and other oil impact prevention activities. Prevention methods will include, but are not limited to: placement of notification and warning signs at margins of SAV beds with emphasis on highly utilized navigation corridors, placement of fill into propeller scars to restore grade, installation of seagrass planting units, and placement of bird stakes into injured areas.

Requirements are two-fold:

Record, document, and measure vessel impacts to SAV beds. Initial work should include the following:

Construct a GIS to include map layers (shape files) of known SAV beds, booming strategies, and depth contours with emphasis on 3 and 6' depths.

Overlay the shape files analyze and prioritize for emergency response needs.

Design and implement emergency response plan response characteristics and features of the SAV habitat.

Design and implement response monitoring plan.

Determine pros/cons of signs vs. buoys.

Buoys are better at resisting hurricanes while signs are more utilized by boaters. A combination of the two would be best with signs at strategic channels that are highly used by boaters and buoys at 100 - 300 yard intervals along the outer edges of the SAV beds. Place non-regulatory signs and buoys to notify mariners of sensitive shallow water SAV beds.

There are numerous successful examples from the State of Florida where signs and outreach have prevented ongoing injuries to seagrass beds. For example, Lignumvitae Key State Botanical Site (Islamorada Florida) experienced a 45% reduction in reported groundings after signs were placed at the 3' depth contour around seagrass flats. "Numerous pole and troll" areas allow for recreational use of shallow water vessels with a reduction in impacts to seagrasses.

Estimated Project Cost: The duration of this response project is based on the duration of response crew (booming, cleanup, etc.) activities including work related to oiling as well as the demobilization activities. Projected cost based on approximately 30-45 days of active response activities is approximately $120,000. This should allow for the protection of approximately 80 miles of shoreline of SAV beds.

12. Project Name: Plant Material Collection and Storage, Gulf Coast

Project Location: All vegetated affected and potentially affected areas on state and federal lands

States Impacted: All Gulf coast states

Lead Agency (and supporting agencies as appropriate): DOI – NPS

Project Description: This project involves a centrally coordinated approach to collecting and maintaining viability, for three years, of plant materials (e.g. seeds, cuttings, etc.) for vegetation that either has been oiled or could be oiled by the Deepwater Horizon spill. It pertains to all five states on the Gulf coast and to three DOI bureaus (BLM, FWS, NPS). This project is considered a "response" project in that it removes and protects these resources from injury from oiling. As such, it does not include large-scale propagation or distribution of plants for planting (the only exception

being small-scale propagation for the purposes of maintaining plant material viability), although that is the obvious next project after this one.

This project includes the collection and storage of threatened, rare, and endangered plant species as appropriate. All plant material collections would occur in 2010 as is possible and through 2011 as needed.

In order to streamline this effort and maximize efficiencies and minimize costs, the National Park Service' Denver Service Center (DSC) will manage this project. The DSC will use its project management and contracting expertise along with its technical capabilities and existing contractual agreements to produce coastal and island plant materials stockpiles. DSC will coordinate the production of these materials in close partnership with the Natural Resources Conservation Service (NRCS) Plant Material Centers, taking advantage of DSC's existing revegetation indefinite-delivery-indefinite-quantity contracts (IDIQ). Other DSC responsibilities will include establishing and maintaining communication with all federal and state Points of Contact, and to determine parameters of existing agreements with these entities and if needed, negotiate new agreements to accomplish the project goals as efficiently as possible.

Once the project begins, DSC will prepare a 5-15 pg. "Plant Material Collection and Storage Plan" for all stakeholders, partners, and participants to refer to and to understand the process. This will explain the approach, methodology, roles and responsibilities of all participants, points of contact for the project, contracting procedures, etc.

Estimated Project Cost: Project costs are for state (LA, MS, AL, FL; TX not included), BLM, FWS, and NPS collection and storage efforts (includes NRCS costs) and for DSC project oversight (including preparation of the Plant Material Collection and Storage Plan). The total project cost is $2,628,000.

13. Project Name: Weeks Bay Swift Tract Protection

Project Location: Baldwin County, Alabama

States Impacted: Alabama

Lead Agency: Alabama Department of Conservation and Natural Resources, State Lands Division, Coastal Section, Weeks Bay National Estuarine Research Reserve

Project Description: Install a temporary bagged oyster shell breakwater in combination with absorbent boom and oil dams offshore of sensitive habitats along bayside of Swift Tract property. This breakwater and associated absorbent boom would reinforce and provide a second layer of defense to the existing boom located at the mouths of 3 tidal creeks which open into Mobile Bay along the Swift Tract, providing increased protection for this sensitive area. This temporary bagged oyster shell would be utilized to construct a breakwater along approximately 22,300' of pristine State-owned shoreline along Bon Secour Bay. This breakwater would be approximately 3' in height and place approximately 2' of water, 100-150' offshore. The breakwater would be constructed in 200-400' section s with 20' gap between sections. Absorbent boom would then be anchored

between the breakwater and the shoreline. By utilizing the breakwater to decrease wave energy, the absorbent boom will be much more effective in stopping oil from reaching sensitive habitat. Additionally, by utilizing natural materials for breakwater construction, removal of the structure will not be required, reducing cost. Over 1-2 years, the natural bagging material will biodegrade and the oyster shell will be redistributed by normal wave energy. Finally, monitoring is needed to provide baseline and pre-impact data, follow installation and integrity of breakwater, monitor presence or absence of oil, document placement and integrity of absorbent boom, and observe ongoing effect of environmental conditions on the status of oyster shell breakwater.

Resources Benefited: Essential fish habitat, palustrine forested wetlands, freshwater and estuarine emergent marsh, estuarine beaches, scrub/shrub bottomland, priority bird habitat for both migratory and nesting birds, endangered, threatened and imperiled taxa of high priority conservation concern.

Relevance to Injury: This project will protect an undeveloped reach of shoreline from oil landfall. Since the shoreline remains one of the few un-bulkheaded on the eastern side of Mobile Bay protection from oil contamination will facilitate the recovery of a variety of habitats, ecotones, and species of economic and environmental importance as noted above. Project will provide safe refuge for sensitive species from nearby oil impacted habitats.

Estimated Project Cost: $1,452,000

14. Project Name: Migratory Bird Habitat Initiative
(THIS PROJECT WAS IMPLEMENTED)

Project Location: Gulf Coast areas in the migratory bird Mississippi Flyway

States Impacted: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri and Texas

Lead Agency: USDA NRCS

Project Description: In late spring 2010, the Gulf Coast faced an environmental disaster of epic proportions—the Deepwater Horizon oil spill. Projections of wide-spread habitat destruction prompted the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) to develop the Migratory Bird Habitat Initiative (MBHI) to reduce the potential impact on migratory birds traveling towards oil-impacted areas.

NRCS committed $40 million to assist agricultural producers improve habitat resources in the Gulf Region. Because of that commitment and the fast action of NRCS staff and partners, farmers and producers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri and Texas were able to improve habitat and supplement food and nesting resources on over 471,000 acres of private lands by the fall migration.

Although the Migratory Bird Habitat Initiative was created in response to an oil spill, it demonstrated the potential for agricultural lands to remain productive and provide much needed

habitat for wildlife. Because of its success along the Gulf Coast, the program was expanded in 2011 to focus on the Northern Plains portion of the Central Flyway.

More detailed information on the project can be found at: http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/initiatives/?cid=steldevb1027669#Publications

Estimated Project Cost: $40,000,000

Other Projects

15. Project Name: Canal Backfilling at Jean Lafitte National Historical Park and Preserve – Restore Oil and Gas Canals to Natural Wetland Landscape

Project Location: Jean Lafitte National Historical Park and Preserve, Barataria Preserve Unit, Jefferson Parish

State Affected: Louisiana, Barataria Basin

Lead Agency: DOI-NPS; USFWS; NOAA-NMFS; EPA

Description: Restore wetlands lost to previous oil and gas activity, strengthening the resiliency of the Barataria ecosystem impacted by oil. Wetlands were lost and hydrology disrupted by canal dredging and placement of spoil on the banks. Sixteen and a half miles of abandoned canals and active and abandoned pipeline canals will be restored through spoilbank removal and partial backfilling, creating soil platforms for marsh re-colonization on the former spoilbanks as well as emergent marsh and shallow water habitat in place of the former canals.

This would be a continuation of a project begun in June 2010. NPS began reclaiming canals dredged for oil and gas exploration, pipelines, and development before establishment of Jean Lafitte National Historical Park and Preserve's Barataria Preserve Unit. Spoilbanks, the linear piles of soil created as the canals were dredged, are barriers to sheet-flow, nutrients and aquatic species. The canals amplify tidal volumes, becoming conduits for saltwater intrusion and the potential movement of oil. Together, the canals and their spoilbanks stress about 23,000 acres of estuarine intermediate brackish to freshwater wetlands at the Preserve.

Canals are one of the major causes of wetland loss in coastal Louisiana. Canal backfilling is a tested and proven method of wetland restoration. (Restoration Success of Backfilling Canals in Coastal Louisiana. Reclamation Ecology, Baustian, JJ, and R.E. Turner 2006, Vol. 14, No. 4, pp 636-644.) Healthy wetlands provide a host of benefits: habitat for fish, amphibians, reptiles, resident and migratory birds, mammals and the larval stages of estuarine organisms important to Gulf fisheries. Wetlands filter run-off and reduce sensitivity to climate change through accretion, keeping pace with sea level rise. The Preserve's wetlands directly buffer more than 20 miles of the Greater New Orleans federal levee system, providing additional protection from storm surge.

The Preserve's wetlands include globally rare floating estuarine freshwater marsh, tidal baldcypress swamp forest, bottomland hardwoods on natural levees, and submerged aquatic vegetation. Benefits will extend beyond the Preserve boundary to areas down estuary.

The project will improve hydrology, restore marsh, swamp and habitat for aquatic species, including some of commercial importance, and enhance visitor experience. It will result in the removal of habitat for invasive species (spoilbanks), reduce the effects of saltwater intrusion, and increase the resiliency of Preserve ecosystems to impacts from climate change. Funding for reclamation of 3.5 miles is in place and the park is seeking funding for the remaining 16.5 miles. Because canal segments to be reclaimed are linear, the project is scalable and benefits will accrue at lower funding levels.

The project is in the middle Barataria Basin, twelve miles from the closest oiling to date. The project would reduce tidal prism and partially block canals penetrating interior marsh. The openings to canals will be partially plugged, restoring historic tidal prism. The reduced tidal openings into interior marsh will facilitate preventive measures should oil threaten this part of the estuary.

Estimated Project Cost: $7,500,000 is the maximum estimate for all 16.5 miles remaining under the permit, but incremental benefits would be realized by constructing smaller segments; the project is scalable. Estimated Costs are based upon costs per linear foot of 2010 contracts in place, with the addition of open plugs.

16. Project Name: Comprehensive Barrier Island Restoration

Project Location: Hancock, Harrison and Jackson Counties, Mississippi States impacted: Mississippi

Federal Agencies: US Army Corps of Engineers (Mobile District), NPS, USFWS, USEPA, NOAA/NMFS, State of Mississippi

Project Description: The Comprehensive Restoration of the Mississippi barrier islands (Petit Bois, Horn, East and West Ship, and Cat Islands) is part of the Mississippi Coastal Improvements Program which was initiated following Hurricane Katrina in 2005. The Comprehensive Program (the Plan) includes a number of interrelated elements to reduce the risk from hurricane and storm damage, address shoreline erosion, preserve fish and wildlife, and address issues related to saltwater intrusion.

The Plan and Integrated Programmatic Environmental Impact Statement was provided to the Congress in January 2010. The comprehensive restoration of the barrier islands and the ecosystem restoration components of the Plan were authorized by P.L. 111-32 on 24 June 2009 and $439M were appropriated for construction.

The comprehensive barrier island restoration plan includes the placement of approximately 24 million cubic yards of sand into the sediment budget of the barrier islands. Specifically, approximately 13 – 17 million cubic yards will be utilized to close the breach (Camille Cut) between

East and West Ship Islands. The closure will be approximately 1000 feet wide and between 5 – 7 feet above MSL. A sub-element of the Ship Island restoration, the West Ship Island North Shore Restoration, has been designed to coincide with the widening of the Gulfport Harbor Federal navigation project. Between 5 – 9 million cubic yards (yardage dependent upon required quantity at Ship Island) will be placed in shallow, littoral zone feeder sites to the east of East Ship Islands and Petit Bois Islands. Approximately 2 million cubic yards will be utilized to restore the beach and dune habitat of the eastern portion of Cat Island. Sand to facilitate the restoration will be borrowed from a number of areas within the Mississippi Sound and nearshore Gulf of Mexico. Detailed geophysical and geotechnical analyses began in March and will be completed the end of June. Significant sources of suitable sand are being found within the waters of the State of Mississippi.

Restoration of the Mississippi barrier island system would provide significant system-wide ecosystem benefits as well as economic benefits associated with damages and economic losses avoided and regional economic benefits. Most notably the restoration of the islands would help maintain and sustain the fragile Mississippi Sound ecosystem with its economic, recreational, environmental, and aesthetic benefit and provide for additional nesting habitat for threatened and endangered sea turtles and over wintering critical habitat for the piping plover. A functional habitat index evaluation of just the direct placement of sand in Camille Cut with the associated dune habit restoration would increase that habitat value of Ship Island to approximately 500 habitat units vs. the 96 units provided currently by Ship Island. With the continued erosion of this island, the habitat value will only decline in the future without intervention. No environmental benefits have been calculated relative to the maintenance of the Mississippi Sound but a rough estimate of the fishery losses avoided by restoration of the island is over $43 million in average annual benefits.

While not specifically designed to contain and/or prevent oil from impacting the shoreline the project is critical to the restoration of the ecosystem of coastal Mississippi.

Estimated Project Cost: $492,278,000

17. Project Name: Colonial Shorebird Nesting Site

Project Location: Grand Isle, Louisiana

States Impacted: Louisiana

Lead Agency: U.S. Environmental Protection Agency

Project Description: This project would establish colonial shorebird nesting/foraging habitat on Grand Isle, Louisiana. Target nesting species include Least Terns, Gull-billed Terns, Black Skimmers, Black-necked Stilts, Wilson's Plovers, and possibly Sandwich Terns and Royal Terns. The project entails the placement of shell on an approximately 20-acre site on the back side of Grand Isle, which would be fenced to control predators such as coyotes, raccoons, dogs, and cats. These bird species nest on shell-covered sites along the beaches of Grand Isle. Those beaches have been impacted greatly by oil that has washed up on Grande Isle.

This project would help address both near-term oil-spill impacts on avian habitat as well as long-term habitat declines associated with ongoing loss of wetlands, ridges and particularly barrier islands in coastal Louisiana. It provides additional shorebird habitat in a critical geographic location, which has been directly impacted by oil spilled from the BP Deepwater Horizon well. The Grand Isle colonial shorebird nesting project would provide habitat for bird species directly threatened by the spill. By creating new habitat areas on the back side of the island, bird mortality will decline as they can move from oiled habitat and nesting sites on the Gulf side of Grand Isle to clean sites on the back of the Island.

Many species of shorebirds utilize Grand Isle's habitats both for nesting and foraging. During winter and migration seasons, thousands of shorebirds of many species have been observed using Grand Isle and the adjacent FiFi Island as foraging places, including Piping Plover (endangered), Red Knots, Western Sandpipers, Short-billed Dowitchers, Snowy Plovers, Wilson's Plover, Sanderlings, Dunlins, Willets, etc. During the spring/summer breeding season, Least Terns, Gull-billed Terns, Black-necked Stilts, Willets, Wilson's Plovers and others have routinely utilized different habitats on the island to nest and raise young.

The Barataria-Terrebonne National Estuary (BTNEP) program developed this proposed project. BTNEP could implement this project, and would routinely monitor the site to improve understanding of nesting substrate selection, numbers/species of nesting birds, and determining nesting/rearing success of select species.

Estimated Project Cost: $350,000. Costs were determined on rough calculations for different substrate, elevation (are amount of substrate needed), transportation of that material to the site, costs for spreading material, fencing to deter predators, observation platform, and signage.

18. Project Name: Mobilize NRCS Plant Materials Centers to prepare for large-scale coastal restoration needs

Project Location: Plant Materials Centers along the Gulf coast as well as throughout the Southeast U.S. and adjacent regions as required

States Impacted: TX, LA, MS, AL, FL

Lead Agency: NRCS

Project Description : The potential loss of coastal vegetation as a result of oil contamination will have a detrimental effect on many aspects of the Gulf coastline, including the recovery of the area's fishing industry as well as future protection from storms. Marshland in the Gulf is a delicate ecosystem and is highly sensitive to major disturbances such as oil contamination. The effect of the oil spill on marsh vegetation may not be known for 6-12 months, but resource management and scientific agencies anticipate a need within the next year for significant restoration and revegetation projects along the Gulf coast. Plant varieties appropriate for marsh restoration will serve a central

role in this restoration effort. Ensuring sufficient supply of these plants for federal, state, and private restoration projects is a challenge that can be addressed now.

NRCS Plant Materials Centers (PMCs) have worked with commercial nursery growers for many decades to ensure adequate supplies of materials for conservation plantings. An increase in the supply of marsh grasses and other vegetation needed for Gulf restoration at a significant scale by commercial growers will require foundation (starter) plant materials; commercial growers largely do not have these starter materials on hand to begin production. This project proposal will increase the capacity of PMCs to produce foundation plant materials as well as to work closely with private industry to expand their capacity so that commercial growers are prepared to grow out the tens of millions of plants required for large-scale replanting efforts.

Many of the plant species found in the coastal marsh are tolerant of some exposure to oil contamination. Excessive contamination though can lead to complete dieback of the marsh grasses. Dieback of the vegetation can lead to erosion of the organic substrate found in many of the Gulf marshes, leading to a condition where restoration of the marsh is not possible or is very costly. Loss of marshland eliminates critical juvenile rearing habitat for many of the aquatic species in the Gulf. Loss of marshland also reduces the protection provided to the main coastline during storm events – potentially resulting in loss of property or lives.

In areas of dieback where there is little chance of natural recovery, there is likely to be a limited window of time when planting conditions are acceptable (e.g., contamination has decreased and proper time of the year), and before the sediment of the marsh erodes. The production of plant materials for restoration efforts must precede this anticipated window of time if damaged marshes are to be returned to a more

Estimated Project Cost: The total cost of this proposal to accelerate plant production and outreach for the next 12 months is $500,000. Twelve months is the minimum duration for this project due to the seasonal nature required for producing plants.

19. Project Name: Barrier Island Protection Plan for Dauphin Island, Alabama

Location: Dauphin Island, Alabama

States Impacted: Alabama

Lead Agency: Town of Dauphin Island, Alabama

Project Description: Approximately 5 million cubic yards of sand material will be dredged from an identified borrow area. This dredged sand will be placed in three sections along the southern shoreline of Dauphin Island, Alabama to create a protective barrier berm (dune and beach) system designed to prevent storm surge with oil from overwashing onto and across the island during tropical storms and hurricanes.

Construction of this project will reduce the risk of oily water overwashing in a hurricane or tropical storm from over 33% (i.e. more likely than a 1 in 3 chance) to less than 7%. Overwashing means oil from the spill will likely be left on the upland areas of Dauphin Island including under homes and oil will move directly across the island into Mississippi Sound.

Estimated Project Cost: none provided

Appendix B: Definitions

During the DWH oil spill, one of the main issues relating to nontraditional proposals was that many of the individuals drafting and proposing project ideas, some whom were new to oil spill response, were not familiar with the criteria on which the projects would be evaluated. These criteria were based in the authorities and policy interpretation of the FOSC. The following definitions are offered to clarify some of the terms and criteria based in the authorities that relate to natural resource trustees and oil spills.

Adaptive Management – Adaptive Management is a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a 'trial and error' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals; increases scientific knowledge; and reduces tensions among stakeholders.

Cultural Resources and Historic Properties – Trustees may have authorities with provisions specific to their agency responsibilities to collect damages to certain cultural resources, such as archeological resources, cultural landscapes, structures, museum objects, ethnographic resources, submerged resources or historic properties. Historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register"; such term includes artifacts, records, and remains which are related to such district, site, building, structure, or object. NOAA and NPS are federal trustees that are delegated authorities to provide protections for cultural resources and historic properties. Under OPA and the NCP, certain resources may be described as real or personal property that receives consideration by an FOSC to take removal actions and enables trustees to recover damages for restoration purposes. Certain federal agencies, such as NPS and NOAA, and State agencies are delegated special authorities to protect cultural and historic properties. Tribal governments have rights as sovereign nations and under specific treaties to ensure that tribal lands, resources and traditional uses are protected.

Early restoration – Early restoration is an action taken by the NRDA Trustee Council to implement restoration projects prior to the completion of the NRDA restoration planning process. Early restoration projects are fully incorporated into the NRDA process. Costs that a Responsible Party (RP) puts towards early restoration projects are often considered in the final settlement for damages to natural resources.

Emergency restoration – Emergency restoration is defined in the NOAA NRDA Regulations. As can be seen in the language of the regulation, the "emergency" aspect of the action refers to the urgency and need for restoration, it is not just temporal. Costs towards emergency restoration projects are recovered as removal costs and not considered as part of the settlement for damages to natural resources. Emergency restoration is taken to mitigate injury to natural resources that would otherwise result in greater impacts. The NOAA regulations state that "Trustees may take emergency restoration action

before completing the (restoration planning) process established (in the regulations).” Emergency restoration must meet the following criteria:

- The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;
- The action will not be undertaken by the lead response agency;
- The action is feasible and likely to succeed;
- Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and
- The costs of the action are not unreasonable.
- (b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:
- The OSC's response is complete; or
- The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.
- (c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in § 990.14(c) of this part.
- (d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

Federal On-Scene Coordinator (FOSC) – The FOSC is the federal official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP.

Natural Resources – OPA defines natural resources as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States ... any State or local government or Indian [T]ribe, or any foreign government." Federal natural resources include the "resources of the exclusive economic zone."

Natural Resource Damage Assessment (NRDA) – NRDA is the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured natural resources and services back to baseline and make the environment and public whole for interim losses. This process is defined in the National Contingency Plan and NOAA regulations.

National Pollution Fund Center (NPFC) – The U.S. Coast Guard's National Pollution Funds Center (NPFC) provides funding for quick response, compensates claimants for cleanup costs and damages, and takes action to recover costs from responsible parties. A core mission of the NPFC is to administer the disbursement and ensure proper use of the Emergency Fund, 24 hours a day, every day, so that the FOSC can immediately respond to a discharge or monitor prompt and effective cleanup activities by the responsible party (RP).

Oil Spill Liability Trust Fund (OSLTF) – The OSLTF has two major components: (1) the Emergency Fund can be used by FOSCs to cover expenses associated with mitigating the threat of an oil spill, as well as the costs of oil spill containment, countermeasures, cleanup, and disposal activities; (2) the Principal Fund pays damage claims and provides funding for certain federal agency programs.

Removal – "Remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches; "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Response – "Response" is a term used to characterize activities taken under the direction of the FOSC during an oil spill. "Response" activities are often associated as being approved by the FOSC and/or funded by the OSLTF Emergency Fund. These activities are to, "immediately respond to a discharge or monitor prompt and effective cleanup activities by the responsible party (RP). The Emergency Fund can be used by FOSCs to cover expenses associated with mitigating the threat of an oil spill, as well as the costs of oil spill containment, countermeasures, cleanup, and disposal activities." "Response" activities are distinct and reimbursed to trustee agencies separately from NRDA activities through the OSLTF.

Traditional and Nontraditional Proposals – Oil spill response activities undertaken by an FOSC are not scientific experiments. NRDA regulations state that emergency restoration must be "feasible and likely to succeed." An FOSC will, however, use the best available science to inform response to the threats and impacts of oil on trust natural resources. Response actions, along with other foci, focus on protecting natural resources from the impacts of oil, or preventing and reducing continuing injury to those resources. "Traditional" projects are pre-identified countermeasures in existing plans, like Area Contingency Plans or Regional Contingency Plans. "Nontraditional" projects have not been planned for - they are likely to be considered innovative concepts that are untested or untried in a previous oil spill response. However, the tradeoffs to implementing these activities are understood. The feasibility and success of these project ideas can be predicted with best available science. Understanding and communicating the tradeoffs, and explaining the rationale for feasibility and success, is critical for a Trustee agency when proposing a nontraditional activity to an FOSC's to fund and implement.

Trustee – The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to act on behalf of the public as trustees for natural resources and for the designation of Indian tribe and foreign officials to act

as trustees for natural resources on behalf of, respectively, the tribe or its members and the foreign government. The National Contingency Plan (NCP) (40 CFR § 300.600) outlines the designations of federal officials who are to act on behalf of the public as trustees for natural resources.

Trustee agency representative – A Trustee agency representative stands in for the interests of the trustee agency in a Unified or Incident Command organization. This position is directly linked to the Incident Command Section of the response organization, either through the Liaison Officer position or directly to the Incident Commander. In certain circumstances, the trustee agency representative may be brought directly into the Unified Command as an Incident Commander, a decision made by the FOSC.

Appendix C: List of Workshop Attendees

Name	Organization
Al Sedick	DOI Bureau of Indian Affairs
Amber Van Alstine	SRA (contract support)
Biff Holz	Facilitator (contract support)
Bill Grawe	National Pollution Fund Center
Blake Velde	US Dept. of Agriculture
Dan Odess	DOI National Park Service
David Behler	DOI Office of Environmental Policy and Compliance
Debby Davore	DOI Fish and Wildlife Service
Jim Haas	DOI National Park Service
Jim Hoff	National Pollution Fund Center
Kate Clark	National Oceanographic and Atmospheric Administration
Ken Carleton	Mississippi Choctaw
Lindy Nelson	DOI Office of Environmental Policy and Compliance
Lt. Cdr. Meridena Kauffman	US Coast Guard Federal On-Scene Coordinator
Mark Van Mouwerik	Trustee Council
Philip Barbour	USDA Natural Resources Conservation Service
Rick Dawson	DOI Restoration Program
Shoshana Risman	SRA (support)
Steve Spencer	DOI Office of Environmental Policy and Compliance
Tim Eastman	National Pollution Fund Center
Vanessa Young	DOI Office of Environmental Policy and Compliance (support)
Willie Taylor	DOI Office of Environmental Policy and Compliance
Woody Woodrow	DOI Fish and Wildlife Service

Appendix D: Table of Authorities

Oil Pollution Act
33 U.S.C. § 2701 et seq. (1990)

§2702 Elements of Liability

Abstract: Responsible party is liable for certain removal[29] costs and damages

(b) (2) Damages

The damages referred to in subsection (a) of Section 2702 are:

(A) Natural resources
Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) Real or personal property
Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) Subsistence use
Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) Revenues
Damages equal to the 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, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) Profits and earning capacity
Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(omitted section (F))

[29] "remove" or "removal" (as defined in §2702) means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

§2706 Natural Resources

Abstract: Federal trustees are required to develop and implement a Plan

> (c) (1) (C) [Federal trustees] shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

Abstract: Public notice and comment required for Plans

> (c) (5) Plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

§2712 Uses of [Oil Spill Liability Trust] Fund

Abstract: Allows trustees to recover certain costs

> The Fund shall be available to the President for—
>
> (a)(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions . . . for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan.

Abstract: Under certain situations (aka "emergency restoration"), trustees can recover certain costs even if there is no Plan

> (j) (2) Paragraph (1) [requiring that the Fund only be spent when there is a §2706 Plan] shall not apply in a situation requiring action to avoid irreversible loss of natural resources **or** to prevent or reduce any continuing danger to natural resources **or** similar need for emergency action. (emphasis added)

§2713 Claims Procedure

Abstract: Federal trustee must present claims to the responsible party before claims to the Fund

(a) Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714 (a) of this title.

[omitted (b)]

Abstract: 90 day presentment requirement

(c) Election

> If a claim is presented in accordance with subsection (a) of this section and:

(1) each person to whom the claim is presented denies all liability for the claim, or
(2) the claim is not settled by any person by payment within 90 days after the date upon which

(A) the claim was presented, or
(B) advertising was begun pursuant to section 2714 (b) of this title, whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

National Resource Damage Assessments (NOAA)
15 C.F.R. Part 990

§ 990.26 Emergency Restoration[30]

Abstract: Trustees may engage in emergency restoration before completing planning process

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:
   i. The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;
   ii. The action will not be undertaken by the lead response agency;
   iii. The action is feasible and likely to succeed;
   iv. Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and
   v. The costs of the action are not unreasonable.

Abstract: Coordination with response actions

(b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:
   (1) The OSC's response is complete; or
   (2) The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.

Abstract: Notice to Responsible Parties

(c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in Sec. 990.14(c) [Coordination with Responsible Party] of this part.

Abstract: Public Notice Requirement

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[30] According to § 990.30, *Restoration* means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:
(a) *Primary restoration,* which is any action, including natural recovery, that returns injured natural resources and services to baseline; and
(b) *Compensatory restoration,* which is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

(d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

National Resource Damage Assessment (DOI)
43 C.F.R. Part 11

§ 11.21 Emergency Restoration[31]

(a) Reporting requirements and definition.

1) In the event of a natural resource emergency, the natural resource trustee shall contact the National Response Center (800/424-8802) to report the actual or threatened discharge or release and to request that an immediate response action be taken.

Abstract: Definition of "emergency"

2) An emergency is any situation related to a discharge or release requiring immediate action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources, or a situation in which there is a similar need for emergency action.

Abstract: Trustees may engage in emergency restoration before completing planning process

(b) Emergency actions.

If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the natural resource trustee determines is reasonably necessary, or if such actions are insufficient, the natural resource trustee should exercise any existing authority he may have to take on-site response actions. The natural resource trustee shall determine whether the potentially responsible party, if his identity is known, is taking or will take any response action. If no on-site response actions are taken, the natural resource trustee may undertake limited off-site restoration action consistent with its existing authority to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency or Indian tribe may assert trusteeship.

(c) Limitations on emergency actions.

The natural resource trustee may undertake only those actions necessary to abate the emergency situation, consistent with its existing authority. The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the natural resource trustee.

[31] As defined in § 11.14 (ll), Restoration or rehabilitation means actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided, when such actions are in addition to response actions completed or anticipated, and when such actions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

National Oil and Hazardous Substances Pollution Contingency Plan
40 C.F.R. Part 300

§ 300.105 General Organization Concepts

(a) Federal agencies should:

(1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;

(2) Coordinate their planning, preparedness, and response activities with one another;

(3) Coordinate their planning, preparedness, and response activities with affected states, local governments, and private entities; and

(4) Make available those facilities or resources that may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The NRT, responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (RRTs). NRT membership consists of representatives from the agencies specified in §300.175(b) [*§300.175(b) refers to additional responsibilities and assistance of federal agencie*s].

(2) RRTs, responsible for regional planning and preparedness activities before response actions, and for providing advice and support to the OSC or RPM when activated during a response. RRT membership consists of designated representatives from each federal agency participating in the NRT together with state and (as agreed upon by the states) local government representatives.

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in §300.135.

(4) Area Committees, responsible for developing, under direction of the OSC, ACPs for each area designated by the President. Responsibilities of Area Committees are described in §300.205(c).

(d) The basic framework for the response management structure is a system (e.g., a unified command system) that brings together the functions of the Federal Government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(e)

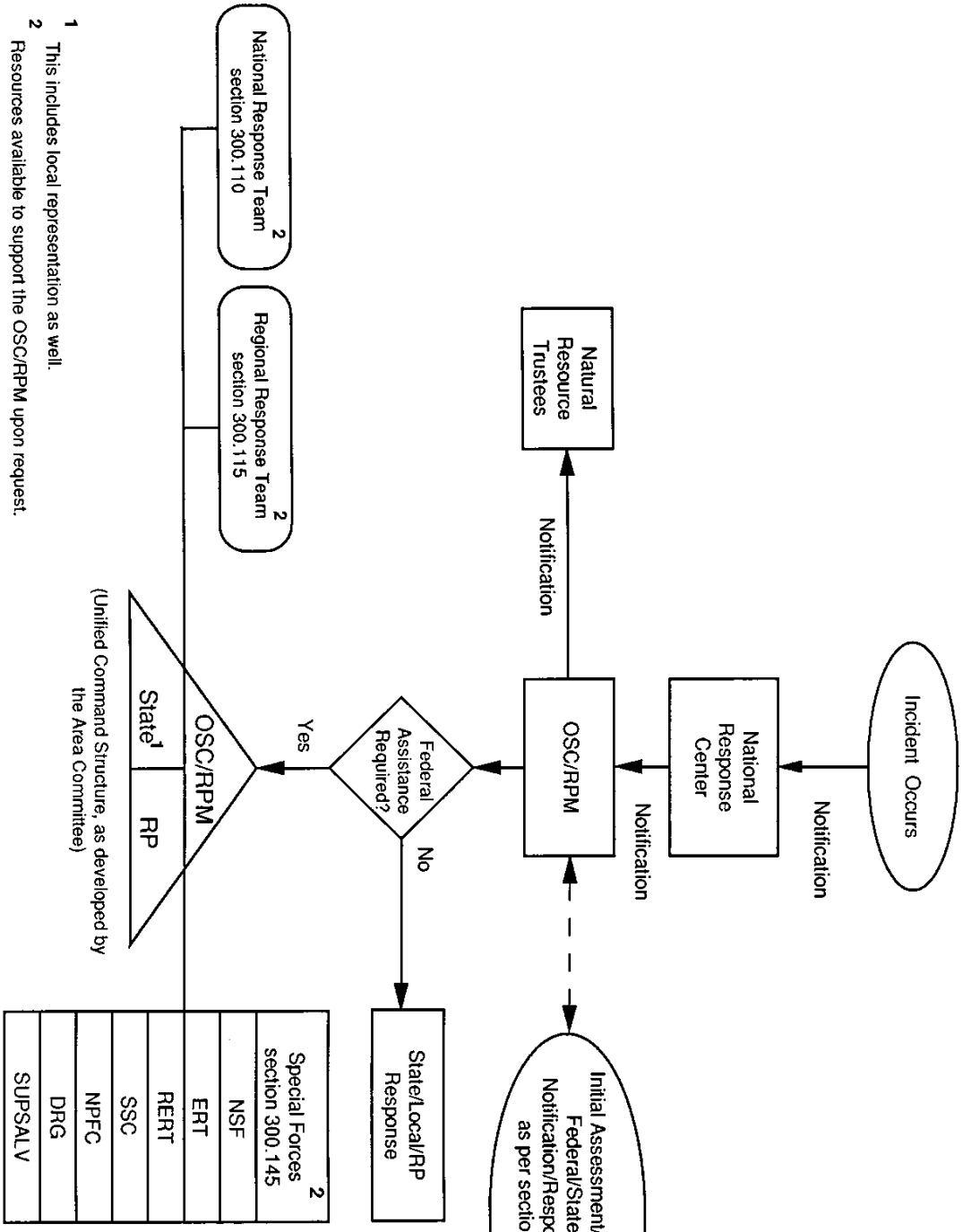
(1) The organizational concepts of the national response system are depicted in the following Figures 1a and 1b: [see below]

(2) The standard federal regional boundaries (which are also the geographic areas of responsibility for the RRTs) [omitted]

(3) The USCG District boundaries are shown in the following Figure 3: [omitted]

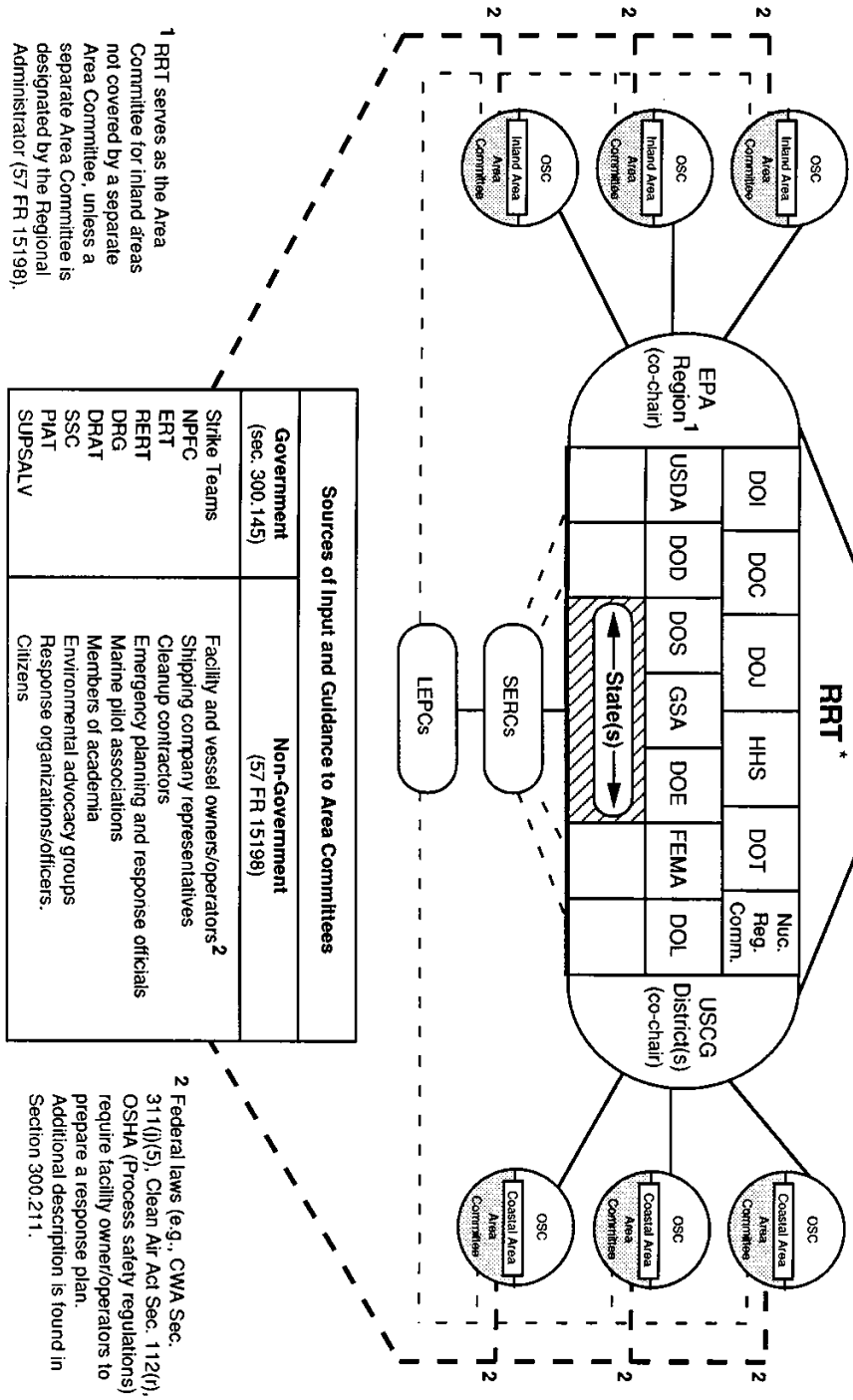
Figure 1a

National Response System Concepts: Response



[1] This includes local representation as well.
[2] Resources available to support the OSC/RPM upon request.

Figure 1b



Sources of Input and Guidance to Area Committees	
Government (sec. 300.145)	**Non-Government** (57 FR 15198)
Strike Teams NPFC ERT RERT DRG DRAT SSC PIAT SUPSALV	Facility and vessel owners/operators[2] Shipping company representatives Cleanup contractors Emergency planning and response officials Marine pilot associations Members of academia Environmental advocacy groups Response organizations/officers. Citizens

[1] RRT serves as the Area Committee for inland areas not covered by a separate Area Committee, unless a separate Area Committee is designated by the Regional Administrator (57 FR 15198).

[2] Federal laws (e.g., CWA Sec. 311(j)(5), Clean Air Act Sec. 112(r), OSHA (Process safety regulations) require facility owner/operators to prepare a response plan. Additional description is found in Section 300.211.

§ 300.120 On-scene coordinators and remedial project managers: general responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be predesignated by the regional or district head of the lead agency. EPA and the USCG shall predesignate OSCs for all areas in each region, except as provided in paragraphs (c) and (d) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (c) and (d) of this section.

> (1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide predesignated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with Department of Transportation (DOT)/EPA Instrument of Redelegation (May 27, 1988) except as provided by paragraph (b) of this section. The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or state lead can occur.
>
> (2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for federally funded remedial actions, except in the case of state-lead federally funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the coastal zone, even where removals are initiated by the USCG, except as provided in paragraph (b) of this section.

(b) In general, USCG Captains of the Port (COTP) shall serve as the designated OSCs for areas in the coastal zone for which an ACP is required under CWA section 311(j) and EPA Regional Administrators shall designate OSCs for areas in the inland zone for which an ACP is required under CWA section 311(j).

(c) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat-chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other federal agency:

> (1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and
>
> (2) In the case of a federal agency other than EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(d) DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions or weapons and munitions under the jurisdiction, custody, or control of DOD.

(e) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. ACPs shall, as appropriate, be accomplished in cooperation with the RRT, and designated state and local representatives. In contingency planning and removal, the OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

(f) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a federal agency. The RPM's responsibilities include:

(1) Fund-financed response: The RPM coordinates, directs, and reviews the work of EPA, states and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in §300.430 [§300.430 refers to remedial investigation/feasibility study and selection of remedy], and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead non-Fund-financed response: The RPM coordinates, directs, and reviews the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in §300.430, and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other federal agencies and the state. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(g)

(1) Where a support agency has been identified through a cooperative agreement, Superfund Memorandum of Agreement (SMOA), or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(h)

(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under the NCP, to the extent practicable.

§ 300.130 Determinations to initiate response and special conditions.

(a) In accordance with CWA and CERCLA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare of the United States is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil or CWA hazardous substance is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States; or

(c) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that any hazardous substance is released or there is a threat of such a release into the environment, or there is a release or threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare of the United States.

(d) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA [*section 311 pertains to Oil and Hazardous Substance Liability*] or section 106 of CERCLA [*section 106 pertains to Abatement Action*] as appropriate, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines:

(1) That there may be an imminent and substantial threat to the public health or welfare of the United States or the environment of the United States, including fish, shellfish, and wildlife,

public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a CWA hazardous substance from any vessel or offshore or onshore facility into or upon the navigable waters of the United States; or

(2) [omitted, (2) refers to release of CERCLA hazardous substance from a facility]

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) [omitted, (f) relates to removal actions involving radioactive materials.]

(g) [omitted, (g) relates to removal actions involving nuclear weapons.]

(h) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(i) In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§300.120 [*General Responsibilities*] and 300.125 [*Notification and Communications*], shall direct response efforts and coordinate all other efforts at the scene of a discharge or release. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

Abstract: OSC/RPM data collection requirements.
(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in §300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in §300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs/RPMs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established. The basic framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(e) The OSC/RPM should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported releases.

(g) The OSC/RPM should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h)[omitted, (h) requires notification where public health emergency exists.]

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)

> (1) The OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases.
>
> (2) The OSC or RPM shall coordinate all response activities with the affected natural resource trustees and, for discharges of oil, the OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(k) Where the OSC/RPM becomes aware that a discharge or release may affect any endangered or threatened species or their habitat, the OSC/RPM shall consult with the Department of Interior (DOI), or the Department of Commerce (DOC) (NOAA) and, if appropriate, the cognizant federal land managing agency.

(l) [omitted, section addresses worker health and safety concerns at response scene.]

(m) [omitted, section requires OSC to submit pollution reports.]

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of §300.155 of this part [*§300.155 discusses Public Information and community relations*].

§ 300.170 Federal Agency Participation.

Federal agencies listed in §300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs and ACPs, described in §300.210, provide for agencies to coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise, as described in §300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, federal agencies should:

> (1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs/RPMs.
>
> (2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs.
>
> (3) Inform the NRT, RRTs, and Area Committees, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) [omitted, applies to Hazardous Substances only]

(d) All federal agencies are encouraged to report releases of pollutants or contaminants and must report discharges of oil, as required in 40 CFR part 110 [*Discharge of Oil*], from facilities or vessels under their jurisdiction or control to the NRC.

§ 300.175 Federal agencies: additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various federal agencies may be called upon to provide assistance in their respective areas of expertise, as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The federal agencies include:

(1) USCG, as provided in 14 U.S.C. 1–3, is an agency in DOT, except when operating as an agency in the United States Navy (USN) in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone, as described in §300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(2) EPA chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for all inland areas for which an ACP is required under CWA section 311(j) and for discharges and releases occurring in the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on human health and ecological effects of oil discharges or releases of hazardous substances, pollutants, or contaminants; ecological and human health risk assessment methods; and environmental pollution control techniques. Access to EPA's scientific expertise can be facilitated through the EPA representative to the Research and Development Committee of the National Response Team; the EPA Office of Research and Development's Superfund Technical Liaisons or Regional Scientists located in EPA Regional offices; or through EPA's Office of Science Planning and Regulatory Evaluation. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(3) FEMA [text omitted]

(4) DOD [text omitted]

(i) The United States Army Corps of Engineers [text omitted]

(ii) The U.S. Navy Supervisor of Salvage (SUPSALV) [text omitted]

(5) DOE [text omitted]

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural

resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of national forests and national grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage, and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation who are knowledgeable in soil, agronomy, engineering, and biology. These personnel can help to predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent the spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other federal and state agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil and hazardous substances and associated clean-up and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary ecosystems; provides information on actual and predicted meteorological,

hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes.

(8) HHS [text omitted]

(9) DOI may be contacted through Regional Environmental Officers (REOs), who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(i) United States Fish and Wildlife Service (USFWS) and other Bureaus: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; and effects on natural resources.

(ii) The National Biological Survey performs research in support of biological resource management; inventories, monitors, and reports on the status and trends in the Nation's biotic resources; and transfers the information gained in research and monitoring to resource managers and others concerned with the care, use, and conservation of the Nation's natural resources. The National Biological Survey has laboratory/research facilities.

(iii) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(iv) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(v) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.

(vi) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vii) Office of Surface Mining: Coal mine wastes and land reclamation.

(viii) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(ix) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(x) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(xi) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) [text omitted]

(11) The Department of Labor (DOL) [text omitted]

(12) DOT [text omitted]

(13) The Department of State (DOS) [text omitted]

(14) The Nuclear Regulatory Commission [text omitted]

(15) The General Services Administration (GSA) [text omitted]

§ 300.180 State and local participation in response.

(a) Each state governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state governor is also requested to designate a lead state agency that will direct state-lead response operations. This agency is responsible for designating the lead state response official for federal and/or state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate local and state officials (including Indian tribes) will participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under CERCLA or the CWA, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) States are encouraged to enter into cooperative agreements pursuant to sections 104 (c)(3) and (d) of CERCLA to enable them to undertake actions authorized under subpart E of the NCP. Requirements for entering into these agreements are included in subpart F of the NCP. A state agency that acts

pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(f) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

§ 300.210 Federal contingency plans.

There are three levels of contingency plans under the national response system: The National Contingency Plan, RCPs, and ACPs. These plans are available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(c) Area Contingency Plans.

[Sections (1), (2) and (3) omitted]

(4)

(i) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:

(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include,

but are not limited to, any seasonal or historical use, as well as all critical, special, significant, or otherwise designated protected areas.

(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (e)(4)(iii).

(C) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to: Disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(D) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (c)(4)(ii)(B) and (C) of this section and subpart J requirements, and must have the concurrence of the natural resource trustees.

(E) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include “set-aside” or “control” areas, where no mitigative actions are taken.

(F) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations.

(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, and release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(H) Identify and secure the means for providing, if needed, the minimum required OSHA and EPA training for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities, and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare of the United States or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority. (emphasis added)

(d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a discharge; and

(iii) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in §300.322(b) [*Response to substantial threats to public health or welfare of the United States*] of this part. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(e) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate

removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC. When circumstances permit, the OSC shall share the use of non-monetary response resources (i.e. , personnel and equipment) with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage assessment for injuries to natural resources.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare of the United States or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of this part to restrain the spread of the oil and mitigate its effects. The ACP prepared under §300.210(c) should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC. ACP guidelines should address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation, temporary storage, and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses; and procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials. The ACPs may identify a hierarchy of preferences for disposal alternatives, with recycling (reprocessing) being the most preferred, and other alternatives preferred based on priorities for health or the environment.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR part 136.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) OSCs shall submit OSC reports to the NRT or RRT, only if requested, as provided by §300.165 [*OCS reports*].

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to trustees of the affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.317 National response priorities.

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as

soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

§ 300.335 Funding.

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. [emphasis added] Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR part 136 [*Oil Spill Liability Trust Fund*]. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Where the OSC requests assistance from a federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR part 136. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

(c) Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR part 136.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency if it is a responsible party.

(f) The following agencies have funds available for certain discharge removal actions:

(1) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) USN may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR part 136 states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

§ 300.600 Designation of federal trustees.

(a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States (including the resources of the exclusive economic zone).

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources, including their supporting ecosystems. They are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems, as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) Secretary of Commerce. The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC and for natural resources managed or controlled by other federal agencies and that are found in, under, or using waters navigable by deep draft vessels, tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf. However, before the Secretary takes an action with respect to an affected resource under the management or control of another federal agency, he shall, whenever practicable, seek to obtain the concurrence of that other federal agency. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: marine fishery resources; anadromous fish; endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) Secretary of the Interior. The Secretary of the Interior shall act as trustee for natural resources managed or controlled by the DOI. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: migratory birds; anadromous fish; endangered species and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) Secretary for the land managing agency. For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) Head of authorized agencies. For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the federal agency or agencies authorized to manage or control those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources, including their supporting ecosystems, within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of subpart G of this part, the definition of the term state does not include Indian tribes. The governor of a state is encouraged to designate a state lead trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the state lead trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

§ 300.610 Indian tribes.

The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in §300.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources, including their supporting ecosystems, belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems as a result of a release of a hazardous substance.

§ 300.612 Foreign trustees.

Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs/RPMs of discharges or releases.

(c)

(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 107(f) of CERCLA, or section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(i) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(ii) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;

(iii) Carry out damage assessments; or

(iv) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11 [*Natural Resource Damage Assessments (DOI)*].

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(i) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(ii) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)

(i) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Plan Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(ii) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any

interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(iii) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participating in negotiations between the United States and potentially responsible parties to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Requiring, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(4) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil or hazardous substances from a contaminated medium pursuant to section 104 of CERCLA or section 311 of CWA.

Appendix E: § 5.5.5 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs of discharges.

(c)

(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(A) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(B) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(C) Carry out damage assessments; or

(D) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(A) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(B) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)

(A) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(B) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment

activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(C) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee also is responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil from a contaminated medium pursuant to section 311 of CWA.

Appendix E: § 5.6.1 Oil Spill Liability Trust Fund - Funding.

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(c) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency if it is a responsible party.

(d) The following agencies have funds available for certain discharge removal actions:

(1) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy (USN) may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M, states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

Clean Water Act
33 U.S.C. § 1251 et. seq.

§ 1321 (f) (4) Liability for actual costs of removal

The costs of removal[32] of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

§ 1321 (s) Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund established under section 9509 of title 26 shall be available to carry out subsections (b), (c), (d), (j), and (l) of this section as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.

[32] "remove" or "removal" refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Implementation of the National Environmental Policy Act (NEPA) of 1969 in the U.S. Department of the Interior 43 C.F.R. Part 46

§ 46.150 Emergency responses.

This section applies only if the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part.

(a) The Responsible Official may take those actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical.

(b) The Responsible Official shall document in writing the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of the Responsible Official.

(c) If the Responsible Official determines that proposed actions taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an environmental assessment and a finding of no significant impact prepared in accordance with this part, unless categorically excluded (see subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact, the Responsible Official shall consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance. The Assistant Secretary, Policy Management and Budget or his/her designee may grant an alternative arrangement. Any alternative arrangement must be documented. Consultation with the Department must be coordinated through the appropriate bureau headquarters.

(d) The Department shall consult with CEQ about alternative arrangements as soon as possible if the Responsible Official determines that proposed actions, taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are likely to have significant environmental impacts. The Responsible Official shall consult with appropriate bureau headquarters and the Department, about alternative arrangements as soon as the Responsible Official determines that the proposed action is likely to have a significant environmental effect. Such alternative arrangements will apply only to the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this part.

Director's Order (DO) #14: Resource Damage Assessment and Restoration September 28, 2004

Abstract: NPS as a trustee
NPS is authorized[33] to act as a trustee for natural resources injured as a result of releases of hazardous substances or discharges, or threats of discharge of oil affecting the national park system. The Secretary's authority as trustee under these three statutes covers natural and cultural resources and resource services belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Department of the Interior. (DO, pg. 2) This authority may be a shared authority. (DO, pg. 2) Trusteeship for some resources may overlap with other DOI bureaus, other federal agencies, and states or federally recognized tribes. (DO, pg. 2)

Under the Park System Resource Protection Act (PSRPA), NPS has its separate authority to collect damages for injury to park resources, which is *not restricted to injury to natural resources* caused by oil spills or hazardous substance releases. It allows the NPS to seek recovery of damages for injury to *any park system resource* resulting from *any incident* caused by a person or instrumentality. (DO, pg. 2) This law allows the NPS to recover its costs for actions taken in responding to incidents that cause injury to park system resources, and actions taken to abate or minimize the imminent risk of injury to park system resources caused by the incident. (DO, pg. 2)

Abstract: Restoration Defined
Section 4.2 defines Restoration as the return of affected resources and services to baseline conditions. Restoration actions can include replacement and the acquisition of the equivalent resources or resource services that were either lost or diminished.

Abstract: Emergency Restoration
7.0 REQUIREMENTS AND INSTRUCTIONS

7.1 Preventing and Minimizing Injury and the Threat of Injury, to Park Resources

7.1.1 When feasible and appropriate, the superintendent should use internal ONPS funds and/or emergency funds to take response and/or emergency restoration actions when an incident occurs which either injures or threatens to injure park system resources, in order to prevent or minimize the injury, or threat of injury.

[33] See, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended, 42 U.S.C. §§ 9601 et seq; Oil Pollution Act (OPA), 33 U.S.C. §§ 2701-2761; Federal Water Pollution Control Act or Clean Water Act (CWA), 32 U.S.C. §§ 1251-1387.

NPS Damage Assessment and Restoration Handbook
December 2003

The Park System Resource Protection Act (PSRPA) is a broad, strict liability statute which allows the Secretary of the Interior (Secretary) to recover the costs of restoring, replacing, or acquiring equivalent resources and monitoring and studying for loss or injury to all living and non-living National Park System resources.

Response Actions[34]

Response actions are the steps by park staff to prevent, abate, or minimize an injury (or imminent risk of injury) to park resources. (Handbook, pg. 11) The most common activities qualifying as response actions are:

- Actions to protect public health and safety;
- Actions to prevent or minimize the destruction, loss of, or injury to Park System resources;
- Actions to abate or minimize the imminent risk of the destruction, loss of, or injury to Park System resources;
- Actions to monitor the ongoing effects of incidents causing injury.

Park Staff use two principles to guide the decision of whether to address an injury immediately or wait until the restoration stage. (Handbook, pg. 12)

Natural Resource Trustee

If an incident involves multiple Federal, state, or tribal agencies, a trustee council may be formed to manage and oversee a joint damage assessment and restoration[35] process under OPA or CERCLA. The natural resources trustees may form a council for either a portion of or the entire damage assessment and restoration effort. (Handbook, pg. 20)

Typical functions of trustee councils include:

- Developing an injury assessment and restoration determination framework;
- Conducting or overseeing scientific and technical studies, sampling, and other matters related to the injury assessment and restoration determination for trust resources that may have been lost, injured, or destroyed;
- Seeking compensation from responsible parties for the costs of planning and implementing the assessment;

(See pg. 20 of Handbook for a complete list.)

[34] Many response action steps taken by park staff might be considered "emergency restoration" measures under CERCLA and OPA.

[35] Restoration is the return of affected resources and services to baseline conditions. Park System Resource Protection Act includes in this concept, measures taken "to restore, replace, or acquire the equivalent of" injured resources. Replacement and acquisition of the equivalent are taken to mean the replacement of injured resources with other resources that are capable of providing comparable services.

Trustee Council membership may be formed at a high level or at a field staff level, including technical subgroups. (Handbook, pg. 21)

Department of the Interior, Department Manual
Part 910, Chapter 4: National Oil and Hazardous Substances Contingency Plan
May 12, 1983

4.3 (C) Response Operations

[**National Contingency Plan covers two types of response operations including emergency and immediate operations**]

(1) Removal actions involve emergency, immediate, and some planned (within six months) containment and cleanup operations and apply to both oil and hazardous substance incidents (Subparts E and F, NCP).
(2) [omitted, regarding remedial actions]