

**Department of the Interior - Office of the Secretary
Natural Resource Damage Assessment and Restoration Program**

**Natural Resource Damage Assessment and Restoration Advisory Committee
Summary of Second Committee Meeting**

March 2, 2006

The second meeting of the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Advisory Committee was convened at 8:50 AM in the Department of the Interior's South Building Auditorium, Washington, D.C. Mr. Frank DeLuise, the Committee Chair and Designated Federal Officer (DFO), welcomed the Committee members and expressed his expectation the Meeting would be enlightening and invigorating. He indicated the Committee is charged with generating consensus based recommendations on ways to achieve cost effective restoration, reduce unnecessary contention, increase certainty, and reduce litigation.

In accordance with the provisions of Public Law 92-463, the meeting activities were open to the public from 8:50 AM until adjournment.

Mr. DeLuise made two announcements on Committee membership. First, Cheryl Russell with the Boeing Company has informed the DFO she is unable to participate on the Committee. Next, the National Association of Attorneys General has petitioned the Department to add one state Attorney General to the Committee. The Association has nominated three individuals for consideration (the Attorneys General for Idaho, Montana, and Utah). The DFO will work with the Secretary of the Interior to appoint a new Committee member. The DFO stated he will ask the Committee members to recommend a subcommittee to which the new member will be assigned.

Mr. Wooley, the Committee Vice-Chair, asked the Committee and the Department of the Interior (DOI) staff providing support for Committee activities to introduce themselves by name, title, and affiliation. The members of the public then introduced themselves by name, title, and affiliation.

Committee members present:

Frank DeLuise
Charlie Wooley
John Carlucci
Roger Helm
John Bascietto
Alex Beehler
William Brighton
Patricia Montanio
Robert Ricker
Sharmian White

Lisa Gover
William Bresnick
Patricia Casano
Barbara Goldsmith
Barry Hartman
Thomas Jensen
J. Craig Potter
Michael Sraith
Ralph Stahl
Lynelle Hanson

Nancy King
Richard Seiler
Dale Young
Shannon Work

Stephen Kress
Jon Mueller
Stephen Polasky

Department of the Interior NRDAR Advisory Committee Staff Present:

Steve Glomb, Assistant Program Manger for Restoration
David Morrow, Assistant Program Manager for Operations
Bruce Nesslage, Restoration Fund Manager
Robin Burr, NRDAR Regional Coordinator (Philadelphia)
David Behler, Office Environmental Policy and Compliance

Committee Administrative Business

Amendment to Bylaws

Mr. John Carlucci offered an amendment to clarify the Committee's Bylaws regarding the work of the Subcommittees. Section VI of the Charter states:

“...any papers, data, or other information used by the subcommittee shall be given to the DFO as Committee Records, and shall be handled in accordance with Section V of these Bylaws.”

It was moved to amend the above by inserting “...to present or support its analysis or recommendations” after the word “subcommittee.”

Mr. Carlucci explained that any material used to support or inform a subcommittee shall be put in the Committee Records. Mr. Brighton recommended the word “their” in the amendment be replaced by “its.” The motion to amend Section VI the Bylaws and Operating Procedures of the NRDAR Advisory Committee was passed without objection to read:

“...any papers, data, or other information used by the subcommittee to present or support its analysis or recommendations shall be given to the DFO as Committee Records, and shall be handled in accordance with Section V of these Bylaws.”

Other Administrative Business

Ms. Barbara Goldsmith asked Mr. Carlucci for clarification on how Committee members communicate with each other or get input from a member's constituency or colleagues. Mr. Carlucci affirmed that Committee members can and should communicate as usual with each other or with their constituency or colleagues. He also provided the following general clarifications on Committee communication: there is no rule or guidance that prescribes how or how not to communicate; being a Committee member does not repeal the member's First Amendment rights; and members can still invoke a claim of “privileged communication.”

In regard to members communicating directly with the DFO on subcommittee issues, draft recommendations, or other draft material being used by the subcommittee, Mr. Carlucci advised no direct communication from subcommittees to the DFO. He recommended subcommittee material or other information to be used by the subcommittee to support its analysis or recommendations at a Committee meeting be sent to the staff of the NRDAR Program Office prior to the Committee meeting. He also noted that communications across subcommittees is allowed.

Ms. Goldsmith recommended that subcommittees be given due dates for their submission to the NRDAR Program Office of presentation materials used to support their analysis or recommendations prior to Committee meetings. Mr. DeLuise asked that meeting and support material be sent to the NRDAR Program Office 14 days prior to the next Committee meeting.

Mr. Carlucci concluded the session by noting that non-government Committee members are not subject to the ethical conduct or financial gain rules that apply to government members. He recommended that the non-government members neither gain financially nor charge their constituents for their Committee service. He advised members to refrain from representing a specific client, but be open to communication with all individuals from the community they represent as well as with other interested individuals.

Subcommittee Reports and Discussion

Vice-Chair Wooley requested the Committee to listen carefully and provide feedback on the subcommittees' presentations. Those presentations cover their scope of work, analysis undertaken to date, and their estimates of the time, resources, or information needed by each subcommittee to provide DOI the consensus-based advice and recommendations on the assigned questions. The Committee agreed that subcommittee material submitted or presented to the Committee needs to be clearly attributed and dated.

Subcommittee 1

Assigned Questions: What are the best available procedures for quantifying natural resource injury on a population, habitat or ecosystem level? What guidance is appropriate for the utilization of these procedures?

Mr. Stahl presented the subcommittee's work and initial findings, and identified data needs and next steps to develop its recommendations regarding the assigned questions. Subcommittee members Clements and Landis were not present for the March 2 Committee meeting.

The subcommittee experienced some confusion, questions, and problems with the phrasing of their first question, specifically the terms "population, habitat, and ecosystem level." The subcommittee noted that for purposes of injury determination, the complexity of biological scale should be evaluated. The complexity of biological scale increases as one goes from an individual(s) to population, community, and ecosystem. They noted that "habitat" is not generally recognized in the biological scientific literature as a level of biological scale, and

indicated that the existing DOI NRDA regulations do not adequately define these terms. They recommended the Committee consider rephrasing the first part of their question to be, "At what level(s) of biological scale should/could injury determination be conducted?"

The subcommittee report focused on issues, suggestions, and needs related to what scale and procedures are best used for injury determination/assessment. Mr. Stahl indicated that injury assessments are rarely conducted at the population level or higher biological scale. He suggested that DOI consider collecting data from completed cases to determine the biological scales used in NRDA cases and to ascertain, if possible, the reason for their use, the procedures used, and the outcomes.

Mr. DeLuise indicated that neither the NRDA Program Management staff nor the Committee had sufficient time or resources to conduct such a monumental study. He instead noted that the Committee should talk to interested parties to get more information and thoughts. Questions arose over how needed information could be obtained. A sampling of case studies was suggested to develop information/data to validate the subcommittee's essential assumptions.

Mr. DeLuise noted that extracting information from some specific cases would be problematic; some case managers fear such scrutiny but some others may be amenable to providing case team presentations for cases that have been settled.

Mr. Stahl reported the subcommittee had discussed and identified factors that influence the scale and procedures used for injury determination/assessment. There is a need to balance practicality (time, money, and human resources) with a scientifically defensible, credible assessment of injury and service loss. Higher scale assessments may result in "noisy data" that produce less clear, definitive results (i.e., uncertainty) on which to estimate injury and subsequent service losses. The subcommittee is interested in determining what steps an assessment would follow according to different levels of biological scale. To assist understanding of which procedure may be more or less useful in a particular situation, the subcommittee drafted a matrix table (a draft of which was distributed to the Committee). The table can be used to examine the strength, weaknesses, and measures associated with ecological assessment at the various levels of biological scale. The subcommittee will revise the table to add a column to record issues associated with doing NRDA injury assessments at each level of biological scale.

The subcommittee expressed a desire to examine how to address uncertainty in the context of injury assessment. Addressing uncertainty will require a balance between private interests, protection of the public interest, and the desire to streamline NRDA studies and settlement timelines. The subcommittee believes there is merit to explore whether the ecological risk assessment (ERA) process used for remediation planning can be modified to accommodate some NRDA data needs. The ERA process may be able to be used to help determine an injured resource's service losses in terms of a range rather than a single value. To assist this exploration, an ecological risk assessment practitioner may be invited to deliver a presentation to the subcommittee.

The subcommittee identified the following items they need for completing their analysis and report:

1. The anticipated calendar of Committee meetings or products in 2006 and 2007;
2. Committee feedback on the proposed revision of the subcommittee's question; and
3. Data collected from completed NRDAR cases to determine the biological scales used and to ascertain, if possible, the reason for use, the procedures used, and the outcome.

The Committee then discussed and made suggestions addressing the subcommittee's request to collect case specific data and the proposed revision of their assigned questions. The discussion on data collection identified the need by all subcommittees for additional information but noted that a large-scale case-specific data collection of just the DOI files would be administratively and procedurally difficult to accomplish. Moreover, the time to accomplish any case-specific data request and review would exceed the Committee's remaining statutory time. The Committee agreed to the following:

1. each subcommittee should identify data needs and coordinate development of one set of issues or questions for a one-time data call;
2. subcommittees should focus on issues or questions appropriate for a survey approach instead of conducting a comprehensive quantitative analysis; and,
3. each subcommittee will conduct its own survey by asking their associates, staff, and contacts in other industries, agencies, or the public who are engaged in or familiar with NRDAR.

Mr. Beehler indicated he would investigate if DOD's recently conducted integrated assessment plans for endangered species could provide information on the use and value of different bio-scales for making injury determination. Ms. Casano observed that problem formulation for a case, especially a large case, needs to include a discussion on goals of restoration as a means to identify the appropriated bio-scale for injury determination.

On the issue of rephrasing Question 1, Messrs. Carlucci and Brighton recommended keeping "habitat" in the analysis of procedures and guidance for injury determination, because habitat is referenced in the current regulation and is commonly used in many case evaluations. There is a need to analyze if and how habitat affects population bio-scales. The emphasis of any habitat analysis is, however, to determine the capability of using habitat scale analysis to measure or detect adverse impacts or injury.

Vice Chair Wooley concluded the discussions on Subcommittee 1's presentation by asking Mr. Helm to present by the end of the day's discussion what he recommends for the rephrasing of Question 1.

Subcommittee 2

Assigned Question: Should DOI's Regulations provide additional guidance for determining whether direct restoration, rehabilitation, replacement, or acquisition of equivalent resources is the best strategy for addressing natural resource injuries?

Mr. Brighton gave the subcommittee's presentation. He began by noting the DOI NRDAR regulations (43 CFR 11) allow for "restoration" to return resources to "baseline" conditions, to replace injured resources, or to acquire equivalent resources "that provide the same or substantially similar services." He listed the ten factors from the regulations used to select from among restoration, replacement, or acquisition alternatives. He highlighted that the regulations deliberately provide no preference for one strategy over another (e.g., in-kind versus out-of-kind).

The subcommittee proposed to examine a) background information on the origin and interpretation of DOI's existing ten selection factors; b) the selection criteria used in National Oceanic and Atmospheric Administration's NRDA rule under the Oil Pollution Act (15 CFR 990) and; c) relevant guidance from the Departments of Defense and Energy. The subcommittee would also like to conduct some form of survey or other systematic outreach to NRDAR practitioners who are not part of the Committee in order to gather more insights and pertinent case experiences.

To further this examination, the subcommittee requested DOI provide NRDAR reference material on the DOI NRDAR Program web site, such as the DOI regulations, the series of Federal Register Notices issued by DOI during the promulgation of the regulations, and any other relevant DOI guidance documents. The subcommittee recommended that a State government representative be added to the subcommittee, as none of the current subcommittee members feel qualified to represent such a viewpoint.

The subcommittee would like to determine whether the existing DOI factors and procedures impede, constrain, or prevent the selection of desirable restoration projects. The subcommittee would also like to examine whether the restoration selection process and overall restoration success could be improved through the development of either more definitive guidance, changes in the DOI regulations, or guidance or policy to foster an earlier focus on restoration.

Their proposed inquiries include the following:

1. Are DOI's ten selection factors (43 CFR 11.82(d)) the right ones?
2. Should there be tiers, i.e., a set of mandatory threshold criteria plus discretionary factors?
3. Should there be preferences such as on-site over off-site alternatives?
4. Should a "grossly disproportionate to value" limitation be included?
5. Is additional guidance needed on when it is appropriate to provide compensatory services that do not improve or protect the natural environment (e.g., building facilities such as boat ramps or a visitor center or using artificial measures to provide

- recreational opportunities such as stocking non-native fish species), and what types of compensatory projects are allowed?
6. How should pre-existing regional restoration plans be considered?
 7. Should the DOI NRDAR rule be revised to facilitate integration of restoration planning with remedial or clean-up decision making?
 8. Should NRD assessments include an early screening step to identify potential restoration opportunities?

The interrelationship between restoration and remedial or clean-up activities for a site is found in the current DOI and EPA hazardous substances regulations that require restoration plans to consider the results of any actual or planned response actions, including the potential for additional injury from the proposed actions.

During the ensuing full Committee discussion, Mr. Stahl supported the idea of looking at restoration projects early in the process and noted that this could be broadened to look at the option of expanding existing restoration projects done by other Responsible Parties (RPs). Ms. Goldsmith recommended the subcommittee look at DOI's Cooperative Conservation initiative and reach out to involve local interests in restoration projects as part of that initiative. The Committee emphasized considering the need for and the effect of getting local input as part of early restoration planning.

Ms. Hanson cautioned that any new regulation or guidance regarding local input to early restoration planning activities may possibly be perceived by the local public as a constraint on input since the public sees no input constraints in the current regulations. Mr. Work made the point that when restoration activities involve tribal lands, then tribal input is required. He noted that tribal input, based on Indian sovereignty, is qualitatively different than local input, and is more than just local input from the general public, recognizing the Indian sovereignty. Vice Chair Wooley concluded the discussion by reiterating the need for the subcommittee to factor local input into early restoration planning.

Additional Committee Administrative Business

Committee Travel Reimbursement

Bruce Nesslage, DOI Restoration Program Fund Manager, provided Committee members with materials to use for requesting reimbursement of their travel expenses for the March 2 meeting. He noted the reimbursement of members' travel expenses (e.g., lodging and per diem) will be in accord with the allowances established by the General Services Administration for Federal travelers.

Committee Meeting Schedule

Mr. DeLuise led a discussion on setting the location and date of future Committee meetings and establishing a timeline for subcommittees' reports, acknowledging the need for members to collaborate to enable everyone to effectively plan their activities. Future meetings of the subcommittees and Committee may need to involve multiple days in order to have enough

time to accomplish the work of the subcommittees and to prepare the Committee's report. He asked the Committee to be prepared by the close of the March 2 meeting to discuss and agree on specific Committee deadlines and meeting dates, and noted that upcoming Federal holidays and summer vacations should be considered. He further noted the current Committee Charter expires on May 24, 2007, which is two years from the date the Charter was filed, unless, prior to that time, the Charter is renewed for subsequent two years in accordance with section 14(b)(2) of the Federal Advisory Committee Act.

Subcommittee 3

Assigned Questions: Should DOI revise the CERCLA NRD Regulations to encourage compensating for interim losses with additional restoration projects (in lieu of monetary damages)? How should project-based interim loss compensation claims be calculated?

Mr. Jon Mueller gave the subcommittee's presentation. The subcommittee identified several primary and secondary issues that stem from its assigned questions. He noted the subcommittee formulated the issues assuming the assigned questions had the following objectives:

1. harmonize, where appropriate, the approach to interim losses in the CERCLA and OPA NRD regulations in order to avoid confusion;
2. clarify the identification and measurement of losses in the CERCLA NRDA regulations in order to avoid confusion and unnecessary contention; and
3. provide flexibility for utilizing cost-effective alternatives to compensate for natural resource losses in order to encourage negotiated settlements.

The subcommittee favors allowing a measure of practitioner flexibility and encourages the use of negotiations for resolving case specific issues. The subcommittee developed a draft "side by side" comparison table showing how the CERCLA and OPA NRD regulations treat the concept of interim loss, and intends to consider the statutory provisions and restrictions that govern the respective regulations.

To perform its analysis, the subcommittee would like to examine case specific examples of interim loss decisions; contact professional resource economists to collect various interim loss calculations methodologies; and gather input from other "interim loss" experts and practitioners regarding the respective NRD regulations on an "as-needed" basis.

The subcommittee expects to be able to provide a full report by August 1, 2006.

The remarks of the Committee on the subcommittee report included the following observations: 1) there is an interconnection between subcommittee questions 1 and 3 in that the method used to assess natural resource injuries is also germane to the calculation of interim losses, such that subcommittees 1 and 3 should coordinate their work to avoid unnecessary overlap; and 2) because the method selected to determine interim loss currently

depends on whether the case strategy is one of litigation or negotiated settlement, then perhaps there is a need for revising the CERCLA NRD regulations.

Subcommittee 4

Assigned Question: What additional measures should DOI consider to expedite planning and implementation of restoration projects and to ensure effective and efficient restoration after awards or settlements are secured?

Mr. Tom Jensen gave the subcommittee presentation. The subcommittee identified four broad but interrelated categories of measures to examine that could expedite planning and implementation of restoration projects and promote effective and efficient restoration actions:

1. Measures to promote the use of consensus-building; resources by all parties affected by an incident that causes natural resource damage, including cooperative assessments; dispute resolution; NEPA integration to eliminate redundancy, excess paperwork, or sequential decision-making (or use of NEPA's categorical exclusion procedures to support or identify restoration opportunities); and participation funding from DOI and responsible parties;
2. Measures to encourage coordination and cooperation between government agencies who are responsible for clean-up and the trustees (but not challenge or alter the existing authorities of government agencies), including involvement of trustees in clean-up deliberations; removal of unnecessary institutional barriers to working with response and; consideration of other agencies' approaches to working with EPA;
3. Measures to encourage full and constructive participation by responsible parties with clean-up agencies, restoration agencies, and trustees to engage trustees sooner and limit need for litigation; DOI incentives to responsible parties to promote constructive engagement; tolling arrangements and other procedures; how the U.S. Executive branch could identify an integrated goal for remediation and restoration without diminishing the existing authority or role of a Department, Agency, or Trustee Council and; identify a portfolio of categories or locations of restoration opportunities;
4. Measures to encourage flexibility and creativity in the design of settlements with a shift in focus from recovering funds to restoration implementation, including flexible approaches to the settlement process and the subsequent form of settlement; development of restoration metrics as a form of "currency"; enable restoration that can provide offsetting compensation when a clean-up is not completed; recognize that responsible parties have different capacities or interest to engage in restoration discussion or implementation; and raise the current \$100,000 cap on administrative settlements, without invoking judicial review, for those settlements that involve fair and effective stakeholder engagement.

The subcommittee expressed its interest in gaining access to a diverse set of case studies of "successful" and "unsuccessful" NRD settlements, but decided it should first ask the Committee for recommendations for obtaining case studies or conducting outreach to others with relevant experience.

The subcommittee raised the importance of considering how technological changes (i.e., nanotechnologies) may generate new natural resources damages in the future. Mr. Jensen noted that it would be beneficial for the Committee to discuss what awaits “over the horizon” in terms of the growing dimensions of global trade and the related dispersion and disposal of contaminants, and changes in environmental and natural resources remediation and restoration science and program priorities.

The Committee’s discussion of the subcommittee’s report focused on the following three themes:

- guidance on post restoration activities not listed for subcommittee consideration;
- where restoration planning should begin in the CERCLA NRDAR process; and
- how to focus this subcommittee’s scope consonant with other subcommittees’ scope and subsequent reports.

One restoration problem is how to implement restoration when adequate funds are not recovered in settlement. While it was noted that it may be best to focus on restoration early in the NRDAR process, experience indicates that some RPs are inclined to seek quick cash settlements. Mr. Seiler said in those cases, the cash settlements should reflect the estimated costs of actual restoration projects. But many times, the settlements occur too quickly, before analysis of restoration options can be conducted. There may be a need to develop settlement “cash-out” guidance, and identification of methods to measure success and effects of implemented restoration projects. Mr. Smith observed that the subcommittee’s analysis and recommendations generated from following the four pronged framework laid out above should lessen the need for issuing any settlement “cash-out” guidance. Mr. Carlucci later noted the use of regional restoration plans should inform practitioners and lessen the instances of inadequate “cash-out” settlements.

The Committee generally agreed that restoration planning should start early in the NRDAR process (e.g., at the point when the Pre-assessment Screen or an early/initial Preliminary Estimate of Damages is derived). Ms. Casano suggested restoration planning be part of the assessment process, but acknowledged that such planning for CERCLA cases would be likely be addressed by the recommendations from Subcommittees 1 and 2 since they will be studying natural resources injury and damage determination issues. Mr. Carlucci urged the subcommittee to examine where and how restoration can be considered upfront in the NRDAR process, recommending some preliminary scoping of restoration options occur before injury and damage determinations are completed.

One way to advance restoration planning sooner in the CERCLA process is for the natural resources trustees to take opportunities to advise the response agency of the trustees’ issues and needs. Mr. Jensen stated the decision or direction on when to start restoration planning should not be a separate question but comes from the subcommittee’s work to answer their four categories of measures. Mr. Potter indicated that restoration options should focus on how to return injured resources to baseline conditions, pointing out that quantification of injury for primary and compensatory restoration is a major challenge. Ms. Casano noted that restoration should be an initial focus on oil spill cases but that CERCLA cases tended to

be much more complex. She asked what metrics can be developed to measure the success of restoration projects.

The Committee then discussed the scope and applicability of the issues presented by Subcommittee 4 and explored how the subcommittees should focus their investigations and subsequent reports. Ms. Goldsmith expressed the view that the subcommittee should concentrate on fewer issues, noting the subcommittee's approach included questions at a site-specific level and others at a macro level, making the scope too broad. She recommended that the subcommittee examine outputs from the 2005 Cooperative Conservation Conference held in St. Louis and the resulting follow-up efforts at DOI to advance local outreach efforts.

Several committee members noted how Question 4 focuses more on the process of conducting NRDAR and not on the regulatory/scientific issues featured by the other three questions. The Committee members did not recommend cutting any of the issues identified by any of the subcommittees, but did recommend the subcommittee discuss and agree on which issues they are to address, as well as what process they are to use before undertaking other subcommittee activity.

Mr. DeLuise reminded the Committee that it should limit its scope to administrative and regulatory changes that DOI can make. He cautioned against focusing on coordination and integration issues between DOI and EPA. He noted that EPA and DOI have some agreements involving the transfer of funds to help support their interaction, and that more of this could be done. He advised the subcommittee to narrow its expansive scope to DOI issues and identify coordination/integration issue as an area to be improved, noting that EPA's work is outside the scope of the Committee.

Mr. Jensen responded that the subcommittee does not intend to attack or challenge EPA, but that it would be disingenuous to pretend that EPA does not play a large role, noting that the subcommittee should raise principles and issues, and identify problems and contribute to their solution, adding that the Secretary of the Interior needs to know and hear of such things.

Mr. Brighton pointed out that the Committee can issue recommendations for organizational and regulatory changes and that both organizations and regulations do complicate the issue of coordination and integration. Mr. Bresnick asked that the subcommittee look at ways to improve the DOI-EPA interface. Mr. Carlucci indicated the term "integration" refers to integrating DOI and EPA processes and information flows, not integrating the two agencies' structures. Ms. Goldsmith agreed that the scope should be narrowed to DOI administrative and regulatory bounds but suggested that a sidebar set of discussions be arranged to deal with serious issues that lie beyond that scope.

Ms. Casano advised the members the EPA Science Advisory Board's "decision tools" subcommittee recently held a workshop February 7-8, 2005 on the merits / needs / utility of conducting ecological risk assessments at higher biological scales (see the [EPA Ecological Risk Board](#) website).

Mr. DeLuise stated that some of the subcommittees may be overreaching the Committee's Charter in regard to a) using Department resources (i.e., bureaus' staff) for the conduct of case surveys, and b) the Department's authorities and the Committee's ability to investigate and report on the integration of NRDAR activities with response /remediation activities. He noted DOI has no authority in CERLCA response/remediation, beyond that conducted on DOI lands, and that the principle federal agency with this authority (i.e., EPA) is not on the Committee. Mr. DeLuise indicated that the Committee could give not only recommendations but also its observations of problems and issues that the Secretary of the Interior needs to consider.

Public Input

During the public input portion of the agenda Vice-Chair Wooley invited members of the public in attendance to provide input or make a presentation. Only one individual responded. Mr. Ken Frank (Chevron) commended the formation of the Committee and its collective knowledge, and encouraged the Committee to push for solutions to the issues. He noted the fundamental barriers to achieving cooperative NRDAR solutions are the determination of the following: injury, the pathway to the release, and how injury equates to the reduction of ecological services. He concluded by expressing the need for the Department, through the work of the Committee, to provide ways to address these issues.

Finalize Subcommittee Scopes and Workplans

The Committee had further discussion on the information needs identified by each subcommittee and related data collection issues. The idea was raised to develop a one-time web survey that incorporated all subcommittees' information needs if such an approach could comply with Committee's bylaws and procedures and the FACA provisions and be done within the Committee's timeline. Mr. DeLuise again emphasized that the Committee must adhere to the FACA provisions. Otherwise, failure to do so could be used to invalidate the Committee's work. Suggestions to have either a separate data subcommittee or a consolidated survey were dropped. Instead, the Committee agreed that each subcommittee should identify their needs and proposed contacts and share the needs and contacts with the other subcommittees. Then, each subcommittee would independently conduct its own data collection.

The Committee gave each subcommittee the opportunity to ask for clarification on the issues they should be addressing. Mr. Helm presented, and the Committee agreed to, the following rewording of Question 1:

“What are the practical steps to determine injury and damage to habitat at the various levels of biological scale (i.e., individual to ecosystem)?”

To address Subcommittee 2's request for a member from State government, the Committee agreed that if the proposed addition to the Committee of a representative from the National Association of Attorneys General was allowed, the individual would be assigned to Subcommittee 2. Mr. Work, member of Subcommittee 2, made the point that the two

subcommittees which don't have a tribal member should contact and involve a tribal representative in their deliberations. Subcommittee 3 had 10 questions. Subcommittee 4 stated it heard the Committee's direction to address all their issues but to plan their work to ensure they do not get bogged down.

Ms. Goldsmith presented several overarching questions she recommended be considered by the Committee and each subcommittee.

- Do the 4 questions encompass all of the key considerations needed to provide advice to the Secretary concerning the NRDAR Program and related issues?
- Do the regulations serve us (the Department, stakeholders, etc.?) well, and if not, what are the options? What are the strengths and weaknesses of DOI's NRDA regulations?
- Can the Department do more to facilitate a more consistent national program?
- How can the Department encourage measurement of "restoration success," and convey that news to the public? Is the Department being as aggressive as it can be?
- How successful has the US DOI NRDAR Program been and are there other, more effective mechanisms for achieving restoration of natural resources?
- Should DOI articulate restoration as an overarching goal? What are the barriers to doing this?

The Committee discussed the formatting of the subcommittee and Committee reports. The subcommittee reports should have two parts, analysis and recommendations, and provide in the recommendations the full range of views discussed, with an indication of whether the subcommittee reached consensus and where there were both majority and minority views. The Committee will then work to reach consensus. Subcommittee 1 volunteered to produce an outline of the general format for the subcommittee reports before the next scheduled Committee meeting. Lastly, the Committee agreed that the reports should use fonts that are 13 point or larger.

In a subsequent April 13, 2006, email to the Committee, Mr. DeLuise reminded members to keep in mind that although consensus at the full Committee level remains an objective, subcommittee reports should focus on vetting all sides of an issue and should be structured as options or papers that analyze a variety of views. The Committee will then be able to closely examine and deliberate the issues. This will ensure that all committee members can weigh in on all issues.

Committee Schedule

The Committee discussed the number and schedule of future Committee meetings needed to adhere to the current Charter's termination date of May 24, 2007. The discussion identified the need for subcommittee products to be available three weeks prior to any Committee meeting to allow sufficient time for issuance of the Federal Register Notice announcement of the meeting. That lead time is also necessary so subcommittee materials can be posted on the Program's web page, and give participants time to prepare for the next Committee meeting.

The Committee mapped out the following timeline:

- Subcommittees will produce a written draft summary of what they propose to present no less than three weeks before the next Committee meeting. (The three week lead time is needed to ensure materials are available on the website when the meeting notice is published in the Federal Register 15 days prior to the meeting.)
- The next Committee meeting will be held in June/July 2006 at a location in the Western U.S. At that meeting, the Committee will discuss, provide feedback on the presentations, and give guidance to the subcommittees on issues that should be further developed.
- The Committee will meet again in October 2006. The subcommittees will present analysis and outline options being considered for development of recommendations.
- Both of the preceding meetings should be held over at least a two-day period.
- Subcommittees' final recommendations need to be drafted by early December 2006 and submitted to the full Committee.
- The Committee would then meet in January 2007 to designate a special subcommittee to distill the four subcommittees' final recommendations into a draft final report which will distinguish recommendations that were reached through consensus from those that were not.


Mr. DeLuise stated that DOI will initiate the coordination and scheduling of these meetings. He also noted that this proposed schedule will provide the time, if needed, to extend the Committee's Charter.

Adjournment

Vice-Chair Wooley asked for a motion to adjourn. It was so moved and seconded. The meeting was adjourned at 4:30 PM.

DFO Certification

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.


 Frank DeLuise
 Committee Chair and Designated Federal Officer
 NRDAR Federal Advisory Committee

May 24, 2006