

Department of the Interior Departmental Manual

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Part 521: Natural Resource Damage Assessment and Restoration
Chapter 2: Responsibilities

Originating Office: Office of the Assistant Secretary - Policy, Management and Budget

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2.1 **Purpose.** This chapter identifies the responsibilities of the Departmental officials who carry out NRDAR activities.

2.2 Responsibilities.

A. Assistant Secretaries.

(1) Ensure that bureaus and offices under their jurisdictions implement NRDAR activities in compliance with this Part; and

(2) Provide NRDAR Program representation and advocacy to elected officials, Federal and State agencies, Tribal governments, other public and private organizations, and the general public.

B. Assistant Secretary - Policy, Management and Budget (AS/PMB). In addition to the responsibilities identified in section 2.2A of this Part, the AS/PMB:

(1) Manages Department-wide NRDAR activities through the Deputy Assistant Secretaries Group, the Executive Board (as defined in section 2.2H of this Part), and the NRDAR Program Manager; and

(2) Provides economic expertise for policy and regulation development and develops economic guidance for preparing natural resource damage claims.

C. NRDAR Program Manager. The Program Manager reports to the Deputy Assistant Secretary - Policy and International Affairs under the AS/PMB. The Program Manager provides leadership for Departmental Program Management and serves as the Department's principal contact for NRDAR issues. The Program Manager seeks advice and approval of the Executive Board on program management issues and oversees the functions of the Work Group. The specific responsibilities of the Program Manager include the following:

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- (1) Identifying and prioritizing Department-wide NRDAR program needs and developing policy and guidance for approval by the Executive Board;
- (2) Developing and managing the Department's NRDAR Fund budget, managing financial operations, ensuring fiscal accountability, and producing financial reports;
- (3) Chairing the Work Group (as defined in section 2.2I of this Part) and serving as a non-voting member of the Executive Board; calling meetings of both the Work Group and the Executive Board, and recommending funding priorities for NRDAR cases for approval by the Executive Board;
- (4) Evaluating the performance of Department-wide NRDAR activities including restoration of injured resources;
- (5) Coordinating the development and promulgation of the Department's NRDAR regulations;
- (6) Developing and maintaining the Department-wide NRDAR databases and information management systems;
- (7) Providing periodic reports detailing the status and accomplishments of the NRDAR Program to the Executive Board;
- (8) Ensuring consistency in implementation of NRDAR policies among Departmental bureaus and offices;
- (9) Providing NRDAR Program representation and advocacy to elected officials, Federal and State agencies, Tribal governments, other public and private organizations, and the general public;
- (10) Identifying and developing NRDAR training opportunities;
- (11) Identifying other NRDAR program needs and bringing these needs to the attention of appropriate Departmental officials;
- (12) Providing input to the supervisors of Work Group members, support unit personnel, and other personnel funded by NRDAR program management funds for establishing standards and evaluating work performance pertaining to responsibilities in NRDAR program management;
- (13) Supervising the staff of the Program Manager; and
- (14) Managing the dispute resolution process pursuant to section 2.4 of this Part.

D. Director, Office of Environmental Policy and Compliance (OEPC).

- (1) Represents OEPC on the Executive Board;
- (2) Provides members to the Work Group to support Departmental Program Management as described in section 2.2I of this Part;
- (3) Develops and maintains the CERCLA NRDA regulations; and monitors developments in NRDAR law and practice that may affect these regulations;
- (4) Provides for office participation in Departmental NRDAR case reviews; and
- (5) Provides and supervises the NRDAR Regional Coordinators, who provide staff support to the NRDAR Program Manager, coordination prior to designation of an Authorized Official (AO), and program advocacy. The Regional Coordinators focus on improving the overall efficiency of the program and linkages with headquarters among bureaus and other agencies, rather than on routine case management tasks.
 - (a) Staff support to the Program Manager consists of the following:
 - (i) Participation in policy/guidance development and on other task groups as requested;
 - (ii) Raising policy issues to the Work Group;
 - (iii) Helping assure consistent administration of Program policy;
 - (iv) Participation in case reviews for appropriate regions;
 - (v) Providing input to the NRDAR database;
 - (vi) Reviewing NRDAR case decision documents at major milestones for policy consistency;
 - (vii) Reviewing funding proposals to the Departmental NRDAR Fund; and
 - (viii) Participation in dispute resolution at the field, regional or staff level, at the request of the Program Manager or an AO.
 - (b) Regional NRDAR coordination prior to designation of an AO consists of the following:

- (i) Ensuring that all bureaus/offices are given the opportunity to participate in NRDAR actions;
 - (ii) Coordination of Departmental decision whether or not to participate in a NRDAR action;
 - (iii) Coordination of AO designation;
 - (iv) Providing early coordination to ensure that the Department's NRDAR activities are coordinated with response activities prior to designation of an AO; and
 - (v) Coordination of development of NRDAR Initiation Requests/Funding agreements with RPs/PRPs or the Oil Spill Liability Trust Fund and may serve, if requested, as lead representative for the Department pursuant to section 2.3C of this Part.
- (c) Program advocacy consists of participation in outreach/inreach to Departmental bureaus/offices, State, Federal and Tribal trustees and the public.

E. Solicitor. The Solicitor provides legal support to, and represents the interests of the Department on all matters of law regarding the Department's NRDAR activities. Specific responsibilities include the following:

- (1) Provides a representative to the Executive Board;
- (2) Designates representatives to provide legal support to the Work Group;
- (3) Provides legal counsel to the NRDAR Program Manager, Work Group, and Executive Board, as needed;
- (4) Consults with the AO on case management strategy, obtains AO concurrence on activities with fiscal impact and on settlement positions, and provides legal counsel to the AO;
- (5) Represents the Department's legal position on NRDAR program and case matters to the Department of Justice, other Federal and State agencies, Tribal governments, and RPs/PRPs; and
- (6) Provides for office participation in Departmental NRDAR case reviews.

F. Deputy Assistant Secretaries Advisory Group on Environmental Policy and Compliance (DAS). The DAS considers and resolves NRDAR program and policy issues raised by the Executive Board pursuant to the dispute resolution process in section 2.4 of this Part.

G. Bureau Heads.

- (1) Provide a representative for their bureau on the Executive Board as described in section 2.2H of this Part;
- (2) Provide members to the Work Group to support Departmental Program Management as described in section 2.2I of this Part;
- (3) Support NRDAR activities as requested by the Program Manager;
- (4) Conduct NRDAR activities for resources within their jurisdiction, management responsibility, or areas of special expertise, in consultation and coordination with other bureaus and offices, consisting of the following:
 - (a) Participating in policy/guidance development and on other task groups as requested;
 - (b) Raising policy issues to the Work Group;
 - (c) Ensuring consistent administration of Program policy;
 - (d) Participating in case reviews for appropriate regions;
 - (e) Providing input to NRDAR database;
 - (f) Reviewing NRDAR case decision documents at major milestones;
 - (g) Review funding proposals;
 - (h) Participating in dispute resolution; and
 - (i) Participating in outreach/inreach to Departmental bureaus/offices, State, Federal and Tribal trustees and the public.
- (5) Notify the appropriate NRDAR Regional Coordinator, prior to the designation of an AO pursuant to section 2.2J of this Part, when any natural resources may be threatened or injured and natural resource damage assessment activities may be appropriate;
- (6) May serve, if requested, as lead representative for the Department pursuant to section 2.3C of this Part;
- (7) Work cooperatively with other affected bureaus and NRDAR Regional Coordinators in selecting the Department's AO pursuant to section 2.2J of this Part;

(8) Work cooperatively and in consultation with other Federal and State agencies, and Tribal governments affected by discharges or releases;

(9) Serve as the AO when so designated (as described in section 2.2J of this Part), or support the designated AO;

(10) Provide recommendations on matters within their jurisdictions or areas of expertise in the development of a unified Departmental position relative to a natural resource damage assessment for a specific site or incident;

(11) Coordinate during the conduct of NRDAR activities with response agencies in accordance with the provisions of the NCP throughout the response planning and implementation process. Work closely with response agencies, and as appropriate with RPs/PRPs, to promote incorporation of actions to protect and restore natural resources; and

(11) Provide for bureau participation in Departmental NRDAR case reviews.

H. Executive Board. The Executive Board resolves policy and budget allocation issues, reviews recommendations forwarded to it by the NRDAR Program Manager for concurrence, and provides accountability within each bureau for the Departmental NRDAR program. The Executive Board is composed of a representative (at the Assistant Director level) from the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, the U.S. Fish and Wildlife Service, National Park Service, Director of the Office of Environmental Policy and Compliance, the Office of the Solicitor, and the NRDAR Program Manager. The Executive Board:

(1) Approves the allocation of funds, and oversees fiscal accountability of Departmental resources, for the NRDAR Program;

(2) Establishes policy direction by:

(a) considering and resolving NRDAR program and policy issues raised by the Program Manager;

(b) overseeing the performance of Department-wide NRDAR activities;

(3) Resolves disputes pursuant to section 2.4 of this Part;

(4) Assists the NRDAR Program Manager in providing NRDAR Program representation and advocacy to elected officials, Federal and State agencies, Tribal governments, private organizations, and the public;

(5) Assists the NRDAR Program Manager in addressing NRDAR Program funding and staffing needs through their respective bureaus and offices; and

(6) Provides input to the Deputy Assistant Secretary - Policy and International Affairs for the performance evaluation of the Program Manager.

I. Work Group. The Work Group provides the primary technical staff support to the Program Manager in accomplishing Departmental NRDAR Program goals. The Work Group is comprised of representatives from the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, National Park Service, and the Office of Environmental Policy and Compliance. The Office of the Solicitor provides legal support to the Work Group. The Work Group is responsible for:

- (1) Developing funding allocation recommendations;
- (2) Developing and recommending NRDAR policy, guidance and procedures;
- (3) Producing draft work products as directed by the Program Manager;
- (4) Assisting in overseeing performance of Department-wide NRDAR activities;
- (5) Assisting in development and oversight of the Department-wide NRDAR databases and information management systems;
- (6) Providing the primary staff support for resolving disputes pursuant to section 2.4 of this Part;
- (7) Assisting the Program Manager in providing NRDAR Program representation and advocacy to elected officials, Federal and State agencies, Tribal governments, private organizations, and the public;
- (8) Assisting the Program Manager in addressing NRDAR Program funding and staffing needs through their respective bureaus and offices;
- (9) Informing their bureaus and offices of Departmental NRDAR Program issues;
and
- (10) Assisting in NRDAR Program training and education within bureaus, offices and Department-wide.

J. Authorized Official.

(1) "Authorized Official" or "AO" is the Departmental official delegated the authority to act on behalf of the Secretary to conduct a natural resource damage assessment, restoration planning and implementation.

(2) For purposes of section 2.2J of this Part, coordination is defined as ensuring that all parties with an interest are informed and notified in a timely manner and provided the opportunity for involvement and response; consultation is defined as seeking comments and advice, considering views, but concurrence is not required; and concurrence is defined as providing documents for agreement and signature, without which action cannot take place, as defined in Chapter 3 of this Part.

(3) Responsibilities.

(a) Develops unified Departmental positions on specific NRDAR activities:

(i) Consults with, coordinates with, and obtains the concurrence of bureaus with trustee responsibilities involved in the assessment;

(ii) Consults with SOL on legal viability of case management strategy; obtains SOL concurrence on the preassessment screen, Notice of Intent (NOI) to perform assessment, assessment plan, preliminary estimate of damages, demand for damages, draft restoration plan, restoration plan, restoration implementation plan, report of assessment, and development of settlement positions and any site-specific agreements with RPs/PRPs and/or other trustees relating to the NRDAR process;

(iii) Coordinates with technical resource bureaus;

(iv) Coordinates with NRDAR Regional Coordinators for their policy review responsibilities.

(b) Ensures notification of all Departmental entities and assembles representatives from appropriate bureaus and offices to conduct the natural resource damage assessment;

(c) Prepares, as appropriate, preassessment screen, assessment plan, report of assessment, and/or draft and final restoration planning and implementation documents in conjunction with, and with the concurrence of, all affected bureaus and SOL;

(d) Provides copies of the documents in 2.2J(3)(c) of this Part, prior to signature, to the NRDAR Regional Coordinators for policy consistency review, but not for concurrence;

(e) Assures that assessment plan activities are implemented, manages the Departmental assessment team, and reports on progress, including participation in Departmental NRDAR case reviews;

(f) Represents the Department in its interactions with other organizations, trustee and response agencies outside the Department, trustee councils, RPs/PRPs, and the public;

(g) Enters into case-specific agreements relating to the NRDAR process, with concurrence of all affected bureaus and SOL;

(h) Develops and maintains the administrative record of the Department's NRDAR activities, including tracking, indexing, and archiving all documents. Ensures confidentiality of data and documents as necessary;

(i) Ensures compliance with all applicable provisions of law, regulation, and policy, including the National Environmental Policy Act (NEPA);

(j) Ensures sound financial management, including seeking funds, assuring accountability, tracking costs, processing billings, reporting disbursements and expenditures of all funds used to determine injury, assess damages, and plan and implement restoration, and participating in audits;

(k) Ensures that assessment activities and restoration planning are coordinated with, and, to the extent practical, integrated with response actions;

(l) Ensures that selected restoration activities are implemented, prepares reports on progress of restoration, and reports on and certifies completion of restoration actions;

(m) Serves as the Lead Authorized Official (LAO) or Lead Administrative Trustee (LAT), when the Department is designated LAO or LAT by action of multiple involved trustees (pursuant to 43 CFR 11.14.w or 15 CFR 990.30); and

(n) Resolves issues among involved Departmental bureaus and offices, or elevates unresolved issues through the dispute resolution procedure set forth in section 2.4 of this Part, in a timely fashion.

(4) Designation of Authorized Official.

(a) The NRDAR Regional Coordinator will make contact with or convene a meeting of the potentially affected Bureaus, for a specific site or incident where injury to natural resources under their jurisdiction or management has, or may have, occurred, and facilitate selection of an AO.

(b) The affected bureaus will select an AO by consensus. Such designation shall be accomplished prior to preparation of a preassessment screen.

(c) A designation of AO memorandum will be prepared by the NRDAR Regional Coordinator, signed by the affected bureau Heads or their designees, and transmitted to the designated AO.

(d) Designation should be based on, but not limited to, the nature and location of affected resources, and administrative capabilities.

(e) Should consensus not be reached, the NRDAR Regional Coordinator shall continue in a coordination role and ensure that outstanding issues regarding the designation of the AO will be settled using the dispute resolution procedures described in section 2.4 of this Part.

(f) Such designation may be modified by consensus of the affected bureaus through preparation of a designation of AO memorandum.

2.3 Time-Critical NRDAR Activities.

A. Time-critical NRDAR activities include: emergency restoration as defined in the CERCLA and OPA regulations; NRDA initiation associated with emergency or time-critical response activities; and coordination of NRDAR activities with response agencies and other parties in the course of an emergency or time-critical response.

B. Whenever time-critical NRDAR activities are necessary, the first Departmental official on scene will take the necessary actions, including:

(1) Ensuring that the NRDAR Regional Coordinator notifies and, as necessary, convenes potentially affected bureaus and SOL;

(2) Coordinating and representing the Department's NRDAR interests to other trustees, response agencies and other parties involved in the response (40 CFR 300.615), including coordination with the lead Departmental response official; and

(3) Ensuring collection of samples and information that may be necessary for NRDAR activities.

C. Whenever time-critical NRDAR activities are necessary, the affected bureaus will designate a lead representative who will coordinate and make a request for funds for NRDA initiation.

D. Departmental officials acting in time-critical NRDAR activities in accordance with section 2.3B of this Part will act in that capacity no longer than 10 days, pending designation of an AO as outlined in section 2.2J(4) of this Part, unless an extension is agreed to among the affected bureaus.

2.4 Dispute Resolution.

A. If a dispute cannot be resolved at the field, regional, or staff level, the AO, an affected bureau Director, SOL or OEPC will promptly elevate the issue to its Executive Board member, who will then refer it to the Program Manager. The Program Manager will convene the Work Group to provide review, analysis, options and a recommended resolution of the issue.

B. The Program Manager will make a recommendation to the Executive Board for action.

C. If the Executive Board cannot resolve the dispute, the issue will be elevated to the DAS Group (see section 2.2f of this Part) for a final decision.