



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

IN REPLY REFER TO

DIRECTOR'S ORDER NO. 177

Subject: Natural Resource Damage Assessment and Restoration - Delegation of Authority and Guidelines for Preparing Fund Requests and Recordkeeping

**Sec. 1 What is the purpose of this Order?** This Order delegates authorities and responsibilities for Natural Resource Damage Assessment and Restoration (NRDAR) activities. It also provides guidelines for preparing NRDAR fund requests and recordkeeping.

**Sec. 2 To whom does this Order apply?** This Order applies to all Service Regions and the California/Nevada Operations Office (CNO).

**Sec. 3 Does this Order supersede other directives?** This Order supersedes all prior delegations of authority for NRDAR including Director's Order 104, October 21, 1998, as amended.

**Sec. 4 What is the authority for this delegation?** Paragraph 6.3B, 207 DM 6, delegates to Bureau Directors the authority to act on behalf of the Secretary as the Authorized Official in conducting NRDAR activities.

**Sec. 5 What authority is delegated?** This Order delegates Regional Directors and the CNO Manager the authority and responsibility to conduct NRDAR activities that have been delegated to the Director by the Secretary. Regional Directors/CNO Manager will act as Authorized Officials (AOs) when so designated under the provisions of 521 DM 2.2J. This delegation includes the authority to concur with the designation of AOs as well as other NRDAR matters, including situations involving multiple bureaus. To align fund authority with case management authority, AOs also have authority to directly request release of funds with the exceptions listed in Section 7, below.

**Sec. 6 Can this authority be redelegated?** No. 207 DM 6 prohibits the redelegation of this authority below Regional Directors/CNO Manager.

**Sec. 7 Are there exceptions to this authority?** Authority to request Departmental allocations for assessment work through the NRDAR proposal process (annual allocation and emergency requests) and authority to request advance assessment funding are not delegated. The Department requires that these be submitted through the Bureau Work Group member. The Division of Environmental Quality (DEQ) will continue to coordinate these requests for the Service.

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**Sec. 8 What happens when multiple Service Regions are involved?** When multiple Service Regions are involved, the affected Regional Directors will agree among themselves on which Regional Director will assume the lead. If the site involves California and/or Nevada and another State, the CNO Manager and the affected Regional Director(s) will agree among themselves on who will assume the lead. The lead (Regional Director or CNO Manager) must notify the Chief, Division of Environmental Quality as to who has lead responsibility for the project. If the Regional Directors/CNO Manager cannot agree, the Director will appoint a lead.

**Sec. 9 What are the responsibilities of Authorized Officials?** 521 DM 2.2J describes the authorities and responsibilities of the AO. Exhibit 1 provides standards and documentation that AOs must meet before requesting NRDAR funds to assure funds are spent as legally required and are managed consistently throughout the Service. Exhibit 2 summarizes the documents required for the different types of NRDAR funding requests. To facilitate preparation of funding requests, Exhibit 3 is a series of checklists of required information and documents for each type of NRDAR funding request. In addition, the Program Manager of the NRDAR Program may issue further guidance, as appropriate.

a. Authorized Officials are responsible for preparing funding requests authorizing release of returned Service assessment funds and restoration funds from the Departmental NRDAR Fund. If there are requirements for concurrence, notification, or reporting, the AO should assure these are met prior to requesting release of funds.

b. Before requesting the release of recovered assessment or restoration funds from the NRDAR Fund, the AO must ensure that the plan for spending those funds is consistent with:

(1) The settlement agreement; e.g., consent decree or administrative order, communications from the party providing the funds, or similar documents.

(2) Any pertinent Memorandum of Understanding or Agreement with other trustees or with other parties.

(3) Trustee council resolutions, if applicable.

(4) Departmental and Service NRDAR policies.

(5) Any applicable laws, regulations and policies; e.g., National Environmental Policy Act (NEPA), permitting, etc.

c. Authorized Officials must ensure that NRDAR funds are spent as intended and as required by law. Funds being used for restoration must also be consistent with a publicly reviewed restoration plan. Funds used for damage assessment in excess of \$100,000 must be consistent with a publicly reviewed assessment plan, except where funds are being used to develop a settlement position or for ephemeral data collection.

d. When the Service is not the AO for the Department, the Regional Director/CNO Manager still needs to approve release of funds to the appropriate Service office to provide oversight and accountability. The process is the same as when the Service is the AO.

**Sec. 10 What are the documentation requirements?** Regional/CNO offices must maintain a complete record of documents supporting the use and management of funds received. At a minimum, this includes the documents listed below. Regional/CNO offices must provide copies of the following documents to the DEQ as promptly as they become available or, at the latest, when funds are requested. The NRDAR Fund Manager may require copies of some of these documents when the funds are requested. Documents provided previously do not need to be provided with each fund request.

a. Memorandum signed by the Regional Director/CNO Manager. See Exhibit 1 for additional information that may be required depending on the type of funding requested. FWS Forms 3-2302 (NRDAR Restoration Funding Request) and 3-2303 (NRDAR Assessment Funding Request) may be used instead of a memorandum. Include the following information:

(1) Name of site where funds will be used.

(2) Name and office of the case manager responsible for properly tracking the funds.

(3) Name and location of the site or incident resulting in the funds (if there have been multiple settlements for the same site/incident, information sufficient to identify the settlement providing the funds (e.g., court case name and number, settling parties should be included).

(4) The purpose for which the funds will be used; i.e., general NRDAR work, a case-specific damage assessment, advance assessment funding, restoration planning or restoration implementation.

b. Final consent decrees, administrative orders, and other settlement documents that identify amounts and purposes for funds being provided (including those setting up court registry accounts or other similar accounts outside the Departmental NRDAR Fund).

c. Current Settlement Tracking Forms (STF) (FWS Form 3-2299) for any deposits to the Restoration Fund, with signatures by representatives of the Service, Office of the Solicitor, and any other trustee bureaus that are affected in that case; an additional copy of the STF should be provided when the funds are requested for use.

d. Memoranda of Understanding or Agreement to establish trustee councils or govern advance or reimbursable funding from potentially responsible parties (PRPs), or other similar relevant documents. DEQ does not require copies of these documents.

e. Copies of letters written by the DOI Solicitor (or lead AOs/lead administrative trustee's General Counsel or Attorney General) to the PRP requesting reimbursement for assessment expenditures. Copies of these letters are only required when there is not a settlement document (e.g., consent decree) or funding and participation agreement with the PRP because the Service determined no further assessment or restoration was needed.

f. Copies of correspondence from the PRP included with payment of assessment costs to the Departmental NRDAR Fund. These are only required where there is not a settlement document (e.g., consent decree) or funding and participation agreement with the PRP because the Service determined no further assessment or restoration was needed.

g. Copies of the claim sent to the U.S. Coast Guard Claims Center and their response to the claim stating what portions are being paid. These are only required when there is no settlement with a PRP and the assessment and/or restoration are funded through the Oil Spill Liability Trust Fund.

h. Final assessment plans where assessment funds requested for a given case exceed \$100,000 and are not for the collection of ephemeral data or development of a settlement position.

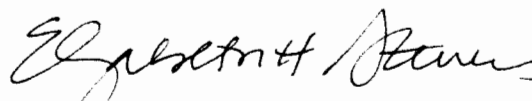
i. Final restoration plans and any significant amendments.

j. Signed trustee council resolutions pertaining to release of funds where the funds are held jointly with other trustees. DEQ does not require copies of these resolutions.

**Sec. 11 When is this Order effective?** This Order is effective October 1, 2004. The contents of this Order will be incorporated into Parts 035 and 573 of the Fish and Wildlife Service Manual.

**Sec. 12 When does this Order expire?** This Order will expire on December 31, 2005, unless it is amended, superseded, or revoked.

**Acting**



**DIRECTOR**

Date: October 1, 2004