



Natural Resource Damage Assessment

Overview: Natural Resource Damage Assessment (NRDA) is a legal process to determine the type and amount of restoration needed to compensate the public for harm to natural resources and their human uses that occur as a result of an oil spill.

NRDA is conducted by designated state and federal natural resource trustee agencies including State Governors; the Secretaries of Commerce (NOAA), Interior (US FWS, NPS, BLM, BIA, and BR), Agriculture, Defense and Energy; and Federal Indian tribes (see Trustees, below).

Trustees seek to restore injured resources and services to baseline and to compensate the public for interim losses, i.e., the time it takes the resources to recover. Over the course of the NRDA process, the Trustees assess the nature and extent of the injuries, develop a restoration plan, seek compensation from the responsible party, oversee and/or implement the restoration plan, and conduct/oversee monitoring to ensure restoration has occurred. Liability for natural resource damages is in addition to liability for cleanup.

NRDA Process: Through the NRDA process, DARRP and co-trustees conduct studies to identify the extent of resource injuries, the amount and type of restoration required to restore those resources to baseline conditions and compensate the public for interim losses. Under the OPA NRDA regulations, there are 3 steps in a NRDA:

1. Preassessment: Trustees determine whether injury to public trust resources has occurred. This includes collecting time-sensitive data and reviewing scientific literature about the released substance and its impact on trust resources to determine the extent and severity of injury.

Mathematical models may be used to help predict the fate and effects of the spill on trust resources. If resources are injured, trustees proceed to the next step.

2. Restoration Planning (Including Injury Assessment): Trustees quantify injuries and identify possible restoration projects. Economic and scientific studies assess the injuries to natural resources and the loss of services. These studies are also used to develop a restoration plan that outlines alternative approaches to speed the recovery of injured resources and compensate for their loss or impairment from the time of injury to recovery. Trustees (i) evaluate the proposed alternatives based on factors identified in the OPA NRDA regulations, and (ii) draft and seek public comment on a Restoration Plan. The Restoration Plan identifies alternatives considered, discusses their evaluation and proposes projects intended to compensate



for the injuries. Examples of restoration include enhancing beach shoreline, creating oyster reefs and other shellfish habitat, and conducting species recovery and monitoring programs.

3. Restoration Implementation: The final step is to implement restoration and monitor its effectiveness. The trustees seek from the responsible party the costs of conducting the assessment and restoration planning – a process in which the responsible party often works cooperatively with the trustees. The trustees also seek damages to implement the restoration, unless restoration is implemented by the responsible party, subject to trustee oversight. If the responsible party does not agree to damages, the trustees may bring suit or submit a claim for damages to the Oil Spill Liability Trust Fund (Fund), administered by the USCG's National Pollution Funds Center. The United States may seek to recover from the responsible party any compensation paid by the Fund.

Although the concept of assessing injuries may sound simple, understanding complex ecosystems, the services these ecosystems provide, and the injuries caused by oil and hazardous substances takes time—often years. The season the resource was injured, the type of oil and the amount and duration of the release are among the factors that affect how quickly resource injuries are assessed and restoration and recovery occurs. The rigorous scientific studies that are necessary to prove injury to resources and services—and withstand scrutiny in a court of law—may also take years to implement and complete. But the NRDA process described above ensures an objective and cost-effective assessment of injuries—and that the public is compensated for these injuries.

Trustees: Natural resource trustee agencies (including NOAA, DOI, state agencies, and Indian tribes) are responsible for trust resources as designated by the National Contingency Plan (40 CFR § 300.600). The Secretary of Commerce (acting through NOAA) is a trustee for 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.

U.S. Department of the Interior trusteeship includes natural resources such as BLM-managed public lands, the National Park System, National Wildlife Refuges, migratory birds, threatened and endangered species, inter-jurisdictional fisheries, Tribal resources, and public uses (such as recreation) that are dependent on those resources.



State trust resources include wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend.

NRDA in NOAA is conducted by DARRP

The **Damage Assessment, Remediation and Restoration Program (DARRP)** is a matrixed program between the Assessment and Restoration Division within the Office of Response and Restoration, NMFS Restoration Center, and the NOAA General Counsel Office for Natural Resources. While offices within NOAA were protecting and restoring natural resources injured by hazardous material releases from waste sites and oil spills since the 1980's, DARRP was formally established in 1990, after the Exxon Valdez oil spill. DARRP provides a dedicated team of scientists, economists, restoration experts, and attorneys to assess and restore injured resources. Together with federal, state and tribal co-trustees, DARRP has protected natural resources at more than 40 oil spills and 500 waste sites and generated more than \$500 million for restoration to—

- Create and restore wetlands
- Create oyster reefs and other shellfish habitat
- Restore coral and seagrass beds
- Acquire, restore, and protect waterfowl habitat
- Conduct species recovery and monitoring programs
- Provide improved recreational opportunities

OR&R works cooperatively with co-trustee agencies and (in the case of a cooperative assessment of injuries) the Responsible Party (RP) to share data and information collected during the spill and during the injury assessment—working cooperatively with the RP and co-trustees can save time and money and can result in restoration being implemented faster and more efficiently.



Relevant Laws: *For summaries and links to these, see:*

www.darrp.noaa.gov/about/laws.html#OilPollution; www.doi.gov/restoration/authorities.cfm

- [National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300.](#)
- [Comprehensive Environmental Response, Compensation and Liability Act of 1980 \(CERCLA or Superfund\) 42. U.S.C. 9601 et seq.](#)
- [NRDA Regulations Under CERCLA](#) (43 CFR Part 11); revised on Oct. 2, 2008 (FR 73:192, p57259-57268).
- [Oil Pollution Act \(OPA\) of 1990](#) (33 U.S.C. §§ 2701, et seq.)
- [Oil Pollution Act Regulations for Conducting an NRDA](#) 15 CFR 990
- Federal Water Pollution Control Act or [Clean Water Act](#) (33 U.S.C. §§ 1251, et seq.)
- [National Marine Sanctuaries Act](#)
- [Anadromous Fish Conservation Act \(AFCA\)](#)
- [Coastal Zone Management Act \(CZMA\)](#)
- [Endangered Species Act \(ESA\)](#)
- [Fish and Wildlife Coordination Act \(FWCA\)](#)
- [National Environmental Policy Act \(NEPA\)](#)
- [Park System Resource Protection Act](#)
- [Rivers and Harbors Act](#)
- [Executive Orders](#) related to NRDA

General Links for Natural Resource Damage Assessment

Trustee Role: <http://www.darrp.noaa.gov/about/trustee.html>

NRDA Process: <http://www.darrp.noaa.gov/about/nrda.html>

Restoration: <http://www.darrp.noaa.gov/about/restoration.html>

Relevant NRDA Laws, including OPA: <http://www.darrp.noaa.gov/about/laws.html>

OPA Guidance Documents: http://www.darrp.noaa.gov/library/1_d.html

NRDA 101 Presentation:

<http://www.darrp.noaa.gov/partner/cap/pdf/nrda/NRD%20101%20Basics%20Presentation.pdf>

DOI links: www.fws.gov/contaminants ; www.restoration.doi.gov/ ; www.doi.gov/oepe

Cooperative Assessment Guidance: www.darrp.noaa.gov/partner/cap/index.html ; ;

www.fws.gov/contaminants/Documents/2007JATRecommendationsFinal.pdf

Twitter: <http://twitter.com/usnoaagov>

Facebook: <http://www.facebook.com/usnoaagov>

Podcasts: see <http://oceanservice.noaa.gov/podcast.html> for two spill-related Podcasts: Making Waves:NOS Highlights -Gulf of Mexico Oil Spill and Diving Deeper Oil Spill Response

Synopsis of NOAA Roles and Tools during a spill: <http://oceanservice.noaa.gov/topics/oceans/spills/>
Additional details on NRDA can be found at www.darrp.noaa.gov, or call Tom Brosnan at 301 713 2990 x186.