UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

APR 22 2015

MEMORANDUM FOR: Kathryn D. Sullivan, Ph.D.
Under Secretary of Commerce
for Oceans and Atmosphere

FROM: Lois Schiffer
NOAA General Counsel

Eileen Sobeck
Assistant Administrator for Fisheries

Russell Callender, Ph.D.
Acting Assistant Administrator for National Ocean Service

SUBJECT: Approval of Damage Assessment, Remediation and Restoration Framework Document – DECISION MEMORANDUM

We recommend approval of the attached Damage Assessment, Remediation and Restoration Program (DARRP, Program) Framework document. The DARRP has operated successfully as a matrixed NOAA program for over 20 years. The Framework updates and more formally institutionalizes operations for the DARRP, including how the three NOAA components work together and provide regular reporting to leadership.

BACKGROUND

The DARRP works to protect and restore NOAA trust resources threatened and/or impacted by releases of oil and/or hazardous substances and vessel grounding impacts. NOAA resources are found, for example, 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.

A matrix of three NOAA components comprises the DARRP: the Assessment and Restoration Division (ARD) of the National Ocean Service (NOS); the Restoration Center (RC) of the National Marine Fisheries Service (NMFS); and the Natural Resources Section of the NOAA Office of General Counsel (Section). The DARRP has been effectively led and managed by a Trustee Management Team (TMT), and this will continue. The ARD and RC Division Chiefs and the Section Chief comprise the TMT.

INFORMATION THAT SUPPORTS RECOMMENDATION

The Framework strengthens DARRP functionality by clarifying previously ambiguous decision authorities and establishing roles and responsibilities for all aspects of the

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Program. The Framework addresses TMT reporting to the DARRP Leadership Group (Directors of NOS' Office of Response & Restoration and NMFS' Office of Habitat Conservation, and NOAA's General Counsel). The DARRP Leadership Group will apprise the Assistant Administrators for NOS and NMFS of the work of DARRP and through us the Assistant Secretaries, the DUS/O, and the NOAA Administrator. The Framework addresses decision authority as recognized by other requirements (e.g., Authorized Official under the Comprehensive Environmental Response, Compensation, and Liability Act and Responsible Program Manager under the National Environmental Policy Act.)

The Framework and associated Appendices will be referenced in relevant Orders as dynamic program guidelines that will be reviewed every 3 years and adapted if necessary. The TMT will update the Framework appendices as necessary to reflect changes in policy, such as new fiscal requirements associated with the Damage Assessment and Restoration Revolving Fund (DARRF).

RECOMMENDATION

- Approve the DARRP Framework, to be retained by the Program as a memorandum that strengthens program functionality over time and ensures clarity and equity in program decision-making.
- Direct our development of Orders and delegations as necessary for implementation.

1. I concur _____ 4/22/15
   Date

2. I do not concur _____
   Date

ATTACHMENT:

Damage Assessment, Remediation and Restoration Program (DARRP) Framework

2015 Damage Assessment, Remediation and Restoration Program (DARRP)
FRAMEWORK

This paper sets forth the updated framework under which NOAA's Damage Assessment, Remediation, and Restoration Program ("DARRP" or "Program") will operate. The Program, initially called the Damage Assessment and Restoration Program and described in a 1993 proposed NOAA Administrative Order, has operated successfully for over 20 years as an arrangement among three components of NOAA: the Assessment and Restoration Division (ARD) of the National Ocean Service (NOS); the Restoration Center (RC) of the National Marine Fisheries Service (NMFS); and the Natural Resources Section of the Office of General Counsel.[1] During this time, changes have occurred in the program, including the name, as documented in updated framework documents dated October 27, 2005, and in the vision and misson created in February, 2010. All earlier versions of the framework, whether approved or in draft, are superseded when this new framework is approved by the NOAA Administrator. Existing policies are referred to in the Appendices and will be updated as necessary

The goal of the framework set forth here is to clarify and institutionalize more formally the arrangements for the Program, including how the three components work together. The three principals of the Program - the Chief of the ARD, the Chief of the RC, and the Chief of the Natural Resources Section – will make a joint recommendation about the framework to the Directors for NOS' Office of Response & Restoration (ORR) and NMFS' Office of Habitat Conservations (OHC), and through them to the Assistant Administrators for NOS and NMFS and the NOAA General Counsel, who will in turn submit their joint recommendation to the NOAA Administrator for final approval. Once the NOAA Administrator adopts the Framework, it will be retained as an adopted memorandum, and implemented in appropriate Delegations and NOAA Administrative Orders. The three principals will periodically (approximately every three years) review the arrangements to determine whether changes are needed.

A. <u>The Damage Assessment, Remediation, and Restoration Program (DARRP)</u>

The DARRP Program works to protect and restore NOAA trust resources threatened and/or impacted by releases of oil and/or hazardous substances and vessel grounding impacts. NOAA resources 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. Examples include, commercial and regional fishery resources; migratory fish species; marine mammals; endangered and threated marine species and their habitats; marshes, mangroves, seagrass beds, coral reefs and other (Great Lakes) coastal habitats; shelf and deep

[1] For the first several years, the Damage Assessment Restoration Program (as it was then called) included the Office of National Marine Sanctuaries. A 1994 MOU separated the National Marine Sanctuary Act cases from the DARRP unless there was a specific nexus with an OPA or CERCLA action.

water habitats within the exclusive economic zone; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves.

NOAA's responsibilities for natural resource damage assessment and restoration are established principally under two statutes - the Oil Pollution Act and CERCLA.[2,3,4] The DARRP is financially supported by the Damage Assessment and Restoration Revolving Fund (DARRF), more fully described in Section H below, and by appropriations to NOAA.

The three offices that share the responsibility for the DARRP (NMFS through the RC; NOS, through ORR; and NOAA General Counsel through the Natural Resources Section) operate through a program manager level Trustee Management Team (TMT, see Section B). To date, the program has been semi-autonomous, with each of the three principals keeping their Office Directors apprised of their work. This framework clarifies the responsibilities of the DARRP staff and provides a regular reporting approach.

B. The DARRP is Managed by a Trustee Management Team (TMT)

The DARRP has, since its inception, been effectively led and managed by a Trustee Management Team (TMT) and this will continue. The Trustee Management Team is comprised of the Division Chief of the ARD in NOS, whose staff has particular responsibility for reviewing proposed remedial/response activities and conducting assessments of natural resource injury; the Division Chief of the RC in NMFS, whose staff has particular responsibility for restoration planning and implementation; and the Chief of the Natural Resources Section in the NOAA Office of General Counsel, whose staff has particular responsibility for assuring that the Program operates within the legal framework of the OPA and CERCLA, of handling other legal issues, and of coordinating with the Department of Justice. The TMT is responsible for overall operation of the DARRP. The Chairmanship of the TMT will rotate among its members annually; the Chair is responsible for assuring that the collective duties are carried out. The TMT's responsibilities are listed more fully in Appendix A-1. The TMT makes decisions by consensus. For the following responsibilities, the consensus position of the TMT requires the written approval of two people taking into account the advice of the NOAA General Counsel, that is the Director of NOS' Office of Response & Restoration and the Director of NMFS' Office of

[2] See Oil Pollution Act, 33 USC§2701 *et seq.*, and CERCLA, 42 USC §9601 *et seq.* These obligations are also set forth in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (EPA), in DOI Regulations (43 CFR Part 11), and NOAA Regulations (15 CFR §990 *et seq.*).

[3] Other authorities under which NOAA could bring a Natural Resource Damage claim include the Clean Water Act (33 USC Sec. 1251 et seq.) and the National Marine Sanctuaries Act (16 USC §1431 et seq.).

[4] Since 1994, DARRP has not generally managed NOAA trust resources located within National Marine Sanctuaries under the natural resource damage provisions of the National Marine Sanctuaries Act except in instances where there is a nexus with either OPA or CERCLA. It is a priority for the National Ocean Service and the Sanctuaries Program at NOAA to reinvigorate the natural resource damage program for sanctuaries. Without delaying this framework, the TMT will promptly work with a designee from the Office of National Marine Sanctuaries to develop a plan for protecting sanctuary trust resources incurring natural resource damage that is consistent with the framework here.

Habitat Conservation: designating the NOAA Trustee representative for each matter and keeping a central and current file of those designees; approving plans for preparation of case damage assessments; approving all final Damage Assessment and Restoration Plans (DARP); recommending case settlements to the NOAA General Counsel who will in turn, if approved, recommend settlement to the Department of Justice; assuring that each DARP includes an adequate and informative process under NEPA, and approving all relevant NEPA reviews. [5] Each Office Director may delegate this approval case-by-case to the TMT member. Each TMT member is responsible for his/her own program component, consistent with the consensus position(s) of the TMT. Each TMT member may elevate any issue or concern to her/his supervisor when necessary. The TMT will develop semiannual reports for the DARRP Leadership Group (see Section F) including the state of the docket, accomplishments of the previous six months, plans for the upcoming six months, and any other significant issues. The TMT will brief the Leadership Group in person at least once each year, generally in December, to review the current semiannual report, management of the DARRP and DARRF (the Fund), and to highlight any issues where support for the DARRP is needed.

The specific responsibilities of the DARRP TMT are included in Appendix A1.

C. Work of the Program will be carried out through the DARRP Regional Management Teams

DARRP managers and attorney coordinators are generally located in four key coastal regions[6] around the United States to ensure a quick response when incidents occur and to carry out day-to-day assessment, protection and restoration activities. The Regional Managers are Branch Chiefs from the Assessment and Restoration Division (NOS) and Regional Supervisors from the Restoration Center (NMFS). In coordination with an attorney assigned from the Natural Resources Section of the NOAA General Counsel's Office for each region, the Regional Management Teams are responsible for collectively managing the caseload of their region. They seek to operate on a consensus basis within the Region to carry out the overall direction, allocation of resources, and priority setting developed by the TMT.

The specific responsibilities of the DARRP Regional Management Teams are included in Appendix A2.

D. Case Team Coordinators Will Manage Individual Cases in the Regions

The Regional Management Teams assign and are responsible for designating and supervising a Case Team Coordinator for each open case. The Case Team Coordinator (with approval of the

[5] Department of the Interior regulations for Natural Resource Damages refer to an Authorized Official. See footnote 8 below. NOAA regulations do not include that term, and it is not used here.

[6] These coastal regions for Natural Resource Damages are the Northeast, the Southeast, the Southwest and Oceana, and the Northwest.

appropriate Regional Managers) is responsible for designating and assigning all non-attorney members of the case team, and assuring by discussions with the NOAA General Counsel's office that an attorney from the Natural Resources Section of the NOAA Office of General Counsel is appointed to the Case Team by the Chief of the Natural Resources Section.[7] As designated by the TMT, the Case Team Coordinator will also be the Trustee Representative for that case. This individual is responsible for presenting and representing NOAA's position within and as a member of the Trustee Council.

The specific responsibilities of the DARRP Case Team Coordinators are included in Appendix A3.

E. Case Teams Will Manage and Handle Individual Cases including Assessment and Restoration Planning

The DARRP uses case teams to assess and quantify injury, scale injury to restoration, develop plans for restoring injured resources, pursue damage claims, apply recovered damages to the restoration of NOAA trust resources, and monitor projects to ensure cleanup or restoration objectives are met. Effective functioning and work of each case team is the responsibility of the Case Team Coordinator (see Section D above).

Each case team is responsible for overall planning, strategy development, case decisions, and timely and efficient execution of the work identified as appropriate to move a case forward.

Case teams make case decisions by consensus. In a discussion among the case team to develop a position, a lack of objection, "abstention," or silence by a case team member is considered to be acceptance of the position. If the case team cannot promptly reach consensus, members will quickly elevate to the Regional Management Team for resolution. If that fails, the Regional Management Team will elevate the issue for resolution to the TMT. Once consensus or resolution is reached, all Case team members will follow it, including in communications with co-trustees or PRP representatives. As circumstances change, a case team may revisit a previous consensus position to determine whether revision is appropriate.

Specific responsibilities of the DARRP Case Team and its members are included at Appendix A4.

F. DARRP Leadership Group

The DARRP Program is a significant NOAA program that has operated effectively across lines and offices for over 20 years. To ensure that it continues to be strong and effective, involvement by NOAA leadership is imperative. The NOAA Leadership Group for DARRP (DARRP

[7] For Tier A cases, the NOAA General Counsel or Deputy General Counsel must approve the assignment. Tiers are defined in Appendix B.

Leadership Group) is comprised of the Directors of NOS' Office of Response & Restoration and NMFS' Office of Habitat Conservation, and NOAA's General Counsel. That group will receive the semiannual reports from the TMT (see above) including the state of the docket, accomplishments of the previous six months, plans for the upcoming six months, and any other significant issues. The DARRP Leadership Group will meet in person at least once each year, generally in December, with the three TMT members to review the most recent semi-annual report, to review the management of the DARRF, and to provide support to the DARRP. The DARRP Leadership Group will keep the Assistant Administrators for NOS and NMFS apprised of the work of DARRP and through them the Assistant Secretaries, the DUS/O, and the Administrator for NOAA.

G. Authorized Official for the Program[8]

NOAA will no longer use the term Authorized Official for NRDA-related work.[9] To assure clarity, the Director of the Office of Response and Restoration will have primary responsibility for working with the US Coast Guard National Pollution Fund Center (NPFC) on funding for each case and more generally, and for undertaking response activities.

H. Composition and Management of the Damage Assessment & Restoration Revolving Fund

Some but not all of the funding for the program is provided through the Damage Assessment & Restoration Revolving Fund (DARRF), established under provisions of the Oil Pollution Act. A discussion of the authorities for and composition and management of the DARRF will be provided in a separate memorandum.

[8] An "authorized official" is provided for in the Department of the Interior Regulations issued under CERCLA; 43 CFR Sec. 11.14 provides: "(d) Authorized official means the Federal or State official to whom is delegated the authority to act on behalf of the Federal or State agency designated as trustee, or an official designated by an Indian tribe, pursuant to section 126(d) of CERCLA, to perform a natural resource damage assessment. As used in this part, authorized official is equivalent to the phrase "authorized official or lead authorized official," as appropriate. The analogous NOAA regulations, 15 CFR Part 990, do not use or define the term.

[9] See fn. 8, above.

Appendices

Appendix A. Responsibilities of DARRP elements:

1. DARRP TMT Responsibilities
2. DARRP Regional Management Team Responsibilities
3. DARRP Case Team Coordinator Responsibilities
4. DARRP Case Team Responsibilities

Appendix B. 2014 DARRF Policies and Procedures Manual

Appendix C. Existing Policy Documents

Appendix D. Current List of Regulatory Authority and Agency Delegations

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APPENDIX A: Responsibilities of DARRP Elements

1. Responsibilities of the DARRP Trustee Management Team

- Overall policy and management role:
  - Setting the overall direction of the DARRP, including program priorities.
  - Allocating financial resources from the DARRF and approving overall budget operating plans for expenditures from the DARRF related to damage assessments and restoration actions. Assuring effective accounting and auditing of the DARRF, including establishment of subaccounts. Financial responsibilities of the DARRF will be set forth more fully in a separate memorandum.
  - Establishing policy coordination mechanisms and setting priorities for policy development, and maintaining policies in a Manual or website accessible to employees. The current policy Manual is presented in Appendix IV as an example. Policies may be changed by the TMT at any time. The TMT will assure that policies and policy changes are noticed to those in the program and others who need to know.
- Program Management Role:
  - Resolving issues elevated by the DARRP Regional Management Teams.
  - Assuring that all necessary environmental compliance activities including consultation and permitting are addressed prior to implementation of projects.
  - Providing semi-annual written updates to the ORR and OHC Program Directors and the NOAA General Counsel (DARRP Leadership Group (see Section F)), and through them to the Assistant Administrators for NMFS and NOS regarding the status of the docket, hot cases, hot issues, accomplishments, and anticipated work.
  - Providing guidance for staff interactions with the NOAA Office of Communications and External Affairs, which will issue press releases and respond to press inquiries, as appropriate; and assuring that any requests from Members of Congress or their staffs are handled in the first instance by the NOAA Office of Legislative and Intergovernmental Affairs, and cooperating with that office in responding to such requests.
  - Developing and maintaining an updated case selection and prioritization policy that is included as part of the Policy Manual. This policy will include a tiered process (identifying each case as Tier A, B, or C) that is predicated on the existing 7 DARRP prioritization factors.[10]

- Case management role:

  --As specified more particularly in Section B above, the consensus position of the TMT requires the written approval of two people for the actions below, taking into

[10] The prioritization factors include: Threat to NOAA resources, Benefits from DARRP involvement, Visibility of case, Feasibility of successful outcome, Fostering Partnerships, Cost Effectiveness, and Cost Recovery Potential. These are included in the DARRP Policy Manual.

account the advice of the NOAA General Counsel—that is, the Director of NOS' Office of Response & Restoration and the Director of NMFS' Office of Habitat Conservation, either of whom may delegate this approval case-by-case to the TMT member:

- Selecting a Trustee Representative for each case and maintaining a written docket of those designations; it will generally designate the Case Management Coordinator as the Trustee Representative.
- Approving plans for preparation of damage assessments for each case;
- Approving all final Damage Assessment and Restoration Plans (DARP);
- Recommending case settlements to the NOAA General Counsel who will in turn, if approved, recommend settlement to the Department of Justice;
- Evaluating existing cases on an annual basis and reviewing new cases in light of these factors and NOAA's resource capacity (case docket review). Where appropriate and based on existing information from the regions, the TMT will decide to accept/reject new cases and move forward with/drop existing cases.
- Assuring that each DARP includes an adequate and informative process under NEPA, and insuring that all relevant NEPA reviews are undertaken. See all Section B, pp. 3-4 above.

--In addition the TMT is responsible for the following:

- Formally approving the case docket review and the DARRP case-specific resources commensurate with the case prioritization.
- Assuring that those directly handling cases are coordinating effectively with co-Trustees including other federal, state, and tribal agencies, by providing clear direction to staff and periodically meeting with headquarters offices of co-trustees to assure smooth operations.
- Approving and assuring implementation of each DARP;
- For those cases where the Responsible Party does not settle or agree to the DARP, work closely with the Department of Justice on litigation regarding the DARP and related matters.
- Coordinating effectively through the DARRP Regional Management Teams (see Section C) and with other federal, state and tribal trustees to ensure that all legal requirements including NEPA and statutory consultation requirements are appropriately addressed over the course of, and in the context of the litigation/settlement and restoration planning processes.

2. **Responsibilities of the DARRP Regional Management Teams.**

- Recommending to the TMT regional case priorities and allocating staff and contractor resources across programs to meet case responsibilities, consistent with DARRP Prioritization Factors established by the TMT.

- Assigning Case Team Coordinators (see Section D) and Members (see Section E), taking into account expertise, leadership skills, the different roles of program components, the different types and stages of a case, efficiency, and other considerations. The Regional Manager may change Case Team Coordinators as the case evolves or for any other reason.
- Approving case team strategies and draft Damage Assessment and Restoration Plans.
- Reviewing proposed settlements for consistency with program policies and objectives, and making recommendations for such to the TMT.
- Identifying additional resource needs, as well as priorities for existing funding and staffing resources, and making recommendations for such to the TMT.
- Overseeing implementation of all phases of a case, including resolving disputed issues within a case team.
- Elevating significant case issues or matters that cannot be resolved by consensus of the regional managers to the TMT for decision.
- Providing reports 30 days before the end of each quarter to the TMT concerning the status of the docket, hot cases, hot issues, accomplishments in the previous quarter, and anticipated work during the coming quarter.

3. Responsibilities of DARRP Case Team Coordinators

- Ensuring that case team members, in consultation with the regional managers/coordinators, develop an effective strategy for pursuing a case.
- Ensuring that case strategies are executed in a timely manner.
- Ensuring that the multi-disciplinary case team works effectively toward the program's objectives in a case.
- Proactively ensuring overall coordination, direction, and implementation of case team activities to achieve the case objectives.
- Ensuring that milestone accomplishments are tracked, including updating DARRP Reports, the Restoration Center Database (RCDB) and Office of Response and Restoration Database (ORRDB), and information for GPRA measures.
- Ensuring the maintenance of any updates that are necessary for public dissemination, including on the DARRP website and other public outreach vehicles.
- Ensuring compliance with all programmatic policies and procedures and applicable laws (e.g., OPA, NEPA, consultation requirements, peer review).
- Promoting effective communication among the case team and keeping all case team members informed of case developments.
- Managing overall case costs to meet the "reasonable assessment cost" standard, with an emphasis on including attorneys in settlement discussions and other meetings as appropriate to ensure optimal productivity and cost-effectiveness.

- Anticipating problems by monitoring case progress and interacting with team members, and keeping the Regional Manager apprised of critical problems. Elevating issues quickly to the Regional Manager when case team consensus cannot be reached.
- Ensuring that individual team members coordinate with their counterparts in other NOAA divisions and with other trustee agencies about specific case-related tasks, as appropriate.
- Assisting team members in developing effective strategies for working with trustees.
- Serving as the primary technical spokesperson for the NOAA trustee team with the Trustee Council and the PRPs, in coordination with the assigned NOAA and Department of Justice attorneys and other federal trustees.
- Serving as a case contact for the TMT and the Regional Managers/Coordinators, and providing periodic reports on the status of the case to the Regional Managers, and on request, to the TMT. Periodic reports must include a formal update following the public comment period for a draft Environmental Review/Damage Assessment Restoration Plan when comments have been received suggesting significant changes.

4. Responsibilities of DARRP Case Teams and Case Team Members

- Establishing case strategy, and planning and implementing actions that are appropriate to accomplish case-specific goals taking into account established policies and supervision from the Case Team Coordinator. This includes implementing restoration plans (getting permits, etc.)
- Considering efficiencies and minimizing costs where possible.
- Keeping the Case Team Coordinator apprised of the status of the case, significant case issues, expected budget needs, case expenditures, assessment and restoration accomplishments, and other related information.
- Consulting with the Case Team Coordinator on emerging issues or difficulties with case assignments.
- Supporting and assisting the Case Team Coordinator in his/her efforts to provide for timely and effective communications with co-trustees, PRPs, Regional Managers/Coordinators, and the TMT.

Appendix B. 2014 DARRF Policies and Procedures Manual

DARRF POLICIES AND PROCEDURES MANUAL A GUIDE FOR PROCESSING DARRF TRANSACTIONS NOAA ASSESSMENT AND RESTORATION DIVISION

SEPTEMBER 23, 2014

DARRF POLICIES AND PROCEDURES MANUAL

A GUIDE FOR PROCESSING DARRF TRANSACTIONS

NOAA ASSESSMENT AND RESTORATION DIVISION

SEPTEMBER 23, 2014

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DARRF POLICIES AND PROCEDURES MANUAL

BACKGROUND

The Oil Pollution Act of 1990 authorized the NOAA Damage Assessment and Restoration Revolving Fund (DARRF). Under the Act, trustees are to retain sums recovered by federal, state, Indian, or foreign trustees for natural resource damages in revolving trust accounts, without further appropriation, for use only to reimburse or pay costs incurred by trustees with respect to damaged resources.

DARRF accounts are maintained within the Office of Response & Restoration by the DARRF Manager, who is assisted by the DARRF Assistant.

Accounting and financial data are collected into NOAA's financial management system CBS (Commerce Business System) at governmental budget and finance levels. CBS is NOAA's system of record. Microsoft Excel is used internally within OR&R to account for DARRF activity, specifically, tracking cases and collecting, reimbursing, and disbursing activity at a multi-program level.

DARRF ACCOUNTING PROCEDURES

Collecting and Recording

All funds for the DARRF account are sent directly to the DARRF Manager for processing. The funds for the DARRF account are sent to NOAA in various methods such as electronic transfers, IPAC transactions, or checks. The funding received is reviewed to verify that the funds are correctly assigned to the DARRF account. Funding received in error is sent to the appropriate party after notifying the NOAA Finance Office of the error. Copies of all documentation associated with the non-DARRF related funding is maintained for an administrative and accounting record. Once it is determined the funding is for the DARRF account, the DARRF assistant begins the deposit process.

The funding received is recorded in a password protected Excel spreadsheet maintained by the DARRF Manager. This spreadsheet, also referred to as the "long sheets", contains all of the historical data on the DARRF account. The long sheets are sent out periodically to the various offices that utilize DARRF funding in their operations.

In addition to the long sheets, the DARRF assistant maintains an electronic tracking of the funding received in the DARRF Receipts Journal. The DARRF Receipts Journal is an Excel spreadsheet that is used to assign and track a check or collection with a sequential receipt number. The DARRF assistant assigns the receipt number based on the fiscal year and a sequential number on the order of the deposits received. For instance, the first deposit received in Fiscal Year 2008 was 08DARRF01, and the next deposit would be 08DARRF02. In addition to the DARRF number, the DARRF Receipts Journal contains information about the deposit such as the amount received, the case name, and the date the funding was received.

A cover memorandum is prepared requesting the NOAA Finance Office to deposit the funds to fund code 41 Damage Assessment & Restoration Revolving Fund - 13X4316. The Suspense Account 1C0MF99 is the general holding account for the funding received until the allocation process is performed. Generally, the cover memorandum is prepared and sent to the NOAA

Finance Office within 24 hours of receiving the funds. In some instances it is not easily identifiable which case the funds are related to and at that time more information is requested to determine the funds are in fact for DARRF. Once the case is confirmed the cover memorandum is prepared and sent to Finance within 2 business days. The cover memorandum indicates the amount of funding received, DARRF number, case name, and the responsible party associated with the case. The DARRF assistant saves the memo by the sequential deposit number (for example 08DARRF01) under the current year fiscal folder on the shared drive. Finance should record the deposit into the general ledger within 2 business days.

The cover memorandum is submitted to the DARRF Manager who will review, sign, and return the memorandum to the DARRF assistant. After the signature of the DARRF Manager, two copies of the memorandum are made for record keeping purposes for the DARRF Manager and DARRF assistant. The DARRF Manager maintains a file of the cover memorandums for reconciliation purposes.

The DARRF assistant makes two photocopies of the check received. One photocopy will be maintained in the case file and the second copy will be maintained with the allocation documentation once prepared. The DARRF receipt number is annotated on the check copies. The check copy and a copy of the signed cover memorandum are placed in the case file by DARRF number order placing the most recent number on top for ease of access.

The original cover memorandum with the DARRF Manager's signature and the check are placed in an inner office envelope addressed to the NOAA Finance Office in Germantown, Maryland. The DARRF assistant sends an email to NOAA Finance and NOAA Budget with a copy of the memo attached for their records. In addition, the DARRF Manager or DARRF Assistant sends an email to the attorney or case manager notifying them that the funding has been received and is currently being processed by NOAA Finance.

When an Intra-Governmental Payment and Collection (IPAC) or Department of the Interior (DOI) transfer is received, original signature cover memorandums are not sent to NOAA Finance. IPAC transactions are processed electronically, NOAA has already accepted this money from the originating agency, and thus NOAA Finance has all of the original documentation for the amount received. NOAA Finance personnel will send over the documentation to the DARRF Manager for verification that the funding is for the DARRF account before additional processing. Funding received from DOI is usually sent to NOAA Finance in a lump sum, meaning that the funding amount could relate to two or more cases. The notification of anticipated funding from DOI is sent directly to the DARRF Manager and DARRF assistant. The funding is maintained in a separate general account until further direction is given to Finance. Once the transfer back-up documentation and resolutions associated with the funding are received, the DARRF assistant prepares a cover memorandum to place the funding in the Suspense Account (COMF99).

Distribution Process

Once funds are received, they are reviewed for proper allocation to NOAA programs. The funding received can be allocated based on legal documents such as resolutions, settlement agreements, consent decrees, or by the cost documentation package information received for the case. The legal document and resolution will state the amount and the purpose of the funding received. The cost documentation package is a financial extension of the legal documents and resolutions showing the numerical breakdown of costs associated with a case for a specific period of time. The financial breakdown can also come from other sources associated with the case such

as the attorney and case leads that provide spreadsheets of allocations or other information via email.

The settlements received for DARRF cases are often for large amounts. As a result, the responsible party may send the settlement amount in several installments. In some instances, NOAA will accept a reduced amount in order to expedite the settlement process with the responsible party. The attorney and/or case lead should be notified via email when the amount received differs from the settlement amount listed in the legal document. If the attorney is aware of the difference and future amounts will be received, a tickler file is created to track the funding for that case.

Prior to allocating funds to the various programs, the DARRF assistant will determine if there are any outstanding reimbursable agreement amount that should be satisfied before the distribution. Using the case project/task code, a reimbursable agreement report is run from CAMS. If there is no outstanding reimbursable amount for the case, the allocation is created based on the documentation received for the case. If there is an outstanding reimbursable amount for the case, the outstanding amount is satisfied first. The remaining funds are then prorated based on the percentage of costs incurred and properly allocated in the appropriate COMFs. Once all of the information is reviewed, an allocation memorandum is prepared showing the appropriate allocation to each COMF and reimbursable tasks, if applicable.

The DARRF assistant prepares a package which contains the allocation memo and all the documentation to support the proposed allocation of funds. The package is given to a third party in the Assessment and Restoration Division (ARD) who is responsible for the quality control of the allocation package. After the quality control review, the ARD reviewer signs the allocation memo and returns the entire allocation package to the DARRF assistant for distribution and approval.

The DARRF assistant creates a PDF file of the allocation package and saves it on the shared drive using the case name and the assigned DARRF number (i.e., New Bedford Harbor 08DARRF99). An email is sent to the DARRP Managers, with the PDF file attached, for approval of the allocation. The internal policy for approvals is that the DARRP Managers are to send responses to the proposed allocation to the DARRF assistant within 10 business days of the date of the email. Concurrence is assumed if no comments are received within 10 business days. Concerns or questions about the allocation from the Managers are addressed prior to the final processing of the allocation. If a response from the DARRP Managers requires an adjustment to the allocated amounts, a revised allocation memo is prepared by the DARRF assistant, reviewed by ARD for quality control, and resent to the DARRP Managers for another 10 day review process. Approvals, rejections, and questions for the allocation are tracked and placed in the appropriate case file.

Distributing Funds to the Account Holders

The distribution of funds is made at the close of the 10- day approval process (given all pertinent information and signature from DARRF manager has been received) and the memo should be prepared within 24 hours. The DARRF assistant uses the cover memorandum saved on the shared drive to request changes to the original allocation to COMF 99 based on the allocation process. The amount originally placed into Suspense is reversed out by changing the funding amount to a negative. The approved account COMFs are then added to the cover memorandum. Funding per the approved allocation is added to the COMFs in positive amounts. The DARRF

assistant ensures that the net change is zero, meaning that all funds are removed from COMF 99 and reallocated to specific COMFs. The distribution cover memorandum is saved on the shared drive using the same file name and adding a "D" to the end for distribution. The memorandum is given to the DARRF Manager for approval and signature. After the memorandum is approved and signed, a copy is given to the DARRF Manager for record keeping and the original is maintained by the DARRF assistant in the case file. The distribution cover memo is attached to an email sent to the NOAA Finance Office and DARRF Manager informing them of the distribution from COMF 99. If the allocation includes paying off a reimbursable agreement payoff, the email with the cover memo should also be sent to the specific NOAA Finance contact that handles payments to Reimbursable Agreements.

Adjustments to Distributions

Several events can result in the need to redistribute previously allocated receipts. For example, funds will need to be redistributed if information unavailable during the allocation process is later received and dictates a different allocation than was first recorded. The process to redistribute and record is the same process as presented in the sections above.

Redistribution also occurs if payments to a third party, such as the State of Florida or Brevard County, are required to fulfill requirements of legal documents or settlement agreements. If this situation arises, the DARRF Manager completes an ACH Payment Enrollment Form and submits it to the Finance Office.

Disbursements from DARRF

Disbursements from DARRF are expenses or other reductions requested by DARRP managers. An email indicating the amount requested, case name (if applicable), and disbursement purpose is needed from the DARRP manager to complete this transaction. This email is sent to the DARRF Manager. Upon receipt of the request, the DARRF Manager assigns a sequential number using the DARRF Disbursements Ledger. The DARRF Manager will notify appropriate NOAA Finance Office contacts to ensure that payment is made from the DARRF account and inform the DARRF assistant as well. The assigned number is written on a copy of the email request and filed in the corresponding case file.

Charges to DARRF Project Codes

Fed Ex/UPS:
All charges to the Fed-Ex/UPS accounts are to go against the appropriated project codes unless prior approval is obtained via an email. The email must request prior approval to charge the sum to a DARRF project code stating the approximate amount. The Budget POC or the DARRP Manager must reply to the email granting prior approval. The email and a copy of the Fed-Ex/UPS bill are to be submitted to the Budget POC within 30 days following the approval.

Travel:
All charges to DARRF project codes must be directly related to damage assessment and restoration-related activities. All DARRF-related travel is to be approved by the Budget POC and the appropriate DARP Manager.

Purchase Card or Procurement charges:
All purchases on bank cards or on a purchase order are to be approved by the Budget POC and the DARP Manager prior to the purchase action. The case project code is to be included along

with the amount. The standard approval form is to be used. If an email is sent in the place of the approval form in cases of emergency then the email along with the approval form will be submitted to the Budget POC as soon as possible.

COTR and Budget POC will continue to track the ordering period of BPAs issued by AGO and discontinue use after the stated ordering period has expired or two-years (unless affirmative notice is received from AGO or the end date is unclear). COTR and Budget POC will also ensure pre-approval of funding is obtained before placing call using established format for purchase card approval.

Unrelated Case Collections

Occasions arise when monies received into the DARRF account will be unrelated to case liability actions, such as when a refund is received for a cell phone purchase that was used for various cases. If non case-related funds are recovered from a vendor, the money is to be deposited into DARRF using the distribution memorandum. If the check is written to an employee, an endorsement is required to process the check. A sentence in the body of the memorandum should clarify the reason funds are being deposited. The normal allocation process is not followed for unrelated case collections as with funds recovered from a primary responsible party. The proper COMF for the funds received will be determined by the case lead or the DARRF Manager.

RECONCILIATIONS

DARRF Manager's Spreadsheet to DARRF Assistant's Spreadsheet

This reconciliation done on a monthly basis as needed between the DARRF Manager's password protected Spreadsheet and the DARRF Assistant's password protected Spreadsheet will acknowledge that both have recorded the information correctly. The DARRF Assistant's Receipts Journal should mirror the deposits and disbursements of the DARRF Manager's long sheets. Both the DARRF Manager and DARRF Assistant maintain separate spreadsheets (The Long Sheets & Receipts Journal) to record entries for DARRF. In addition, requests for distributions and transfers do not always filter to the DARRF assistant.

CBS to DARRF Manager's Spreadsheet

This reconciliation done on a monthly basis as needed compares the CBS Accounts Receivable Report and the Long Sheet entries to verify that distributions are recorded in the proper COMFs. A comparison is made between the amount of funding distributed from COMF 99 in the Long Sheets for the prior month and what is listed in COMF 99 in NOAA Finance records. If previously approved allocations from COMF 99 were not processed in Finance, the DARRF assistant will resend the distribution cover memorandums to NOAA Finance for correction. The deposit correction amount is also provided to the DARRF Manager. The amounts are recorded and tracked in the following month to ensure the processing was completed.

Independent Review by BSG Manager

This quarterly review is performed by the BSG Manager to review and approve the reconciliations above.

GLOSSARY

The glossary contains terms that are mentioned in this document as well as terms that are included in other documentation that will be obtained, used, and researched while carrying out the DARRF deposit process.

Assessment and Restoration Division (ARD)
ARD implements the Secretary of Commerce's responsibilities for natural resource damage assessment for releases of oil and hazardous substances. ARD scientists and economists provide the technical foundation for these assessments and work with other trustees and responsible parties to restore resources injured by releases of oil and hazardous substances, as well as injury to resources of National Marine Sanctuaries and Estuarine Research Reserves.

ARD collects data, conducts studies, and performs analyses needed to determine if coastal resources have sustained injury from releases of oil or hazardous materials, determine how to restore injured resources, and to ascertain damages that must be recovered to accomplish restoration. ARD maintains an administrative record to facilitate public input, conducts public outreach activities, documents expenditures to support cost recovery, and administers and oversees significant damage assessment contracting capabilities.

Budget Operating Plan (BOP)
A BOP is a financial plan for a requesting office. The DARRF Manager will BOP money over to the various offices to create and pay obligations for the office. The DARRF Manager and requesting office track the expenses applied to the BOP throughout the year. At year end, the total expenses of the requesting office are totaled and listed on the DARRF Manager's long sheets to maintain an accurate account balance. The DARRF assistant records this amount in QuickBooks at the fiscal year's end.

Clean Water Act (CWA)
This is the principal statute governing water quality. The statute's goal is to end all discharges entirely and to restore, maintain, and preserve the integrity of the nation's waters with an interim goal of providing water that is both fishable and swimmable. The Act regulates both the direct and indirect discharge of pollutants into the nation's waters. It mandates permits for wastewater and storm water discharges, regulates publicly owned treatment works that treat municipal and industrial wastewater, requires states to establish site-specific water quality standards for navigable bodies of water, and regulates other activities that affect water quality, such as dredging and filling of wetlands. The Clean Water Act was enacted in 1977 as a series of amendments to the Federal Water Pollution Control Act of 1948. It also defines roles for agencies that serve as natural resource trustees.

COMF
COMFs are the project codes created to distinguish the account holders and to track their funds and the use of those funds. The following COMFs are used for receipts and disbursements in the DARRF:

Program	COMF/Project Code	Use of Funds
ARD/GCNR	1C0MF13 - Available	Available for past or future costs of ARD and GCNR
NMFS/RC	1C0MF11 - Future Cost	Available only for future costs incurred by

		NMFS and RC
NMFS/RC	1C0MF12 - Past Cost	Available only for past costs already incurred by NMFS and RC
NMFS/RC	1C0MF22- DA Future Costs	Available only for DA future costs incurred by NMFS/RC/GC/ARD/NOS
ARD	1C0MF17 - Case Specific	For case specific costs incurred by ARD
Marine Sanctuaries	1C0MF15 - DA Cost	For damage assessment costs incurred by Marine Sanctuaries
Marine Sanctuaries	1C0MF16 - Restoration	For restoration costs incurred by Marine Sanctuaries
Suspense	1COMF99	For unallocated funds received

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) in 1986 are often referred to as Superfund. The federal statute establishes liability for site cleanup, prescribes a procedure for identifying and ranking contaminated sites, provides a funding mechanism for site cleanups, reduces uncontrolled releases of hazardous substances, establishes cleanup procedures that provide protection for humans and the environment, and restores injured natural resources through provisions administered by the natural resource trustees.

Consent Decree
A consent decree is a legal document approved by a judge that formalizes an agreement reached between EPA and potentially responsible parties (PRPs) through which PRPs will conduct all or part of a cleanup action at a Superfund site; cease or correction actions or processes that are polluting the environment; or otherwise comply with EPA-initiated regulatory enforcement actions to resolve contamination at a Superfund site. The consent decree describes the actions PRPs will take and may be subject to a public comment period.

Cost Documentation Packages
Cost packages are prepared to document costs incurred for damage assessment and restoration on a case (with specific task numbers) for a specified time period. Over the course of work on a site, costs may be incurred in several categories: direct labor by personnel, travel, supply and equipment costs, contractor costs, construction costs, and administrative and overhead (indirect) costs. An independent contractor reviews and certifies the cost documentation packages for counsel and trustees to present in cost claims. Whether for purposes of settlement negotiations or submission of court evidence, copies of the certified packages are maintained in the DARRF case files.

Court Registry Investment System (CRIS)
To the extent possible, sums recovered for restoration from responsible parties through the litigation process reside in court-held registry accounts, accruing interest for the trustee. In these situations, it is NOAA's intent to leave restoration money in the court-held account until it is ready for obligation to accrue the maximum amount of interest. It is recommended that the status of funds held in Court Registry accounts be reviewed when NOAA has an interest as a trustee.

Damage Assessment, Remediation, and Restoration Program (DARRP)
DARRP is a multiple office program within NOAA involving the National Ocean Service, National Marine Fisheries Service, and Office of General Counsel. DARRP scientists, economists, and attorneys conduct natural resource damage assessments of and restoration projects for coastal and marine resources injured by oil and hazardous material releases.

DARRF Receipts Journal
The DARRF Receipts Journal is an Excel spreadsheet that is maintained by the DARRF assistant. The DARRF Receipts Journal is used to assign and track a check or collection with a sequential receipt number. The information contained in the journal is provided to ARD on a monthly basis to assist with allocation distributions in the DARRF Manager meetings.

DOI's Natural Resource Damage Assessment and Restoration Fund (NRDAR)
Public Law 106-113, the Consolidated Appropriations Act, 2000, was enacted November 29, 1999. Section 350 of H.R. 3423 authorizes deposit of all or a portion of the Joint Trust Funds previously received, or to be received, by the government in the Natural Resource Damage Assessment and Restoration Fund or accounts outside the United States Treasury or both.

Emergency Response Division (ERD)
The Emergency Response Division (ERD) was formerly known as the Hazardous Materials Response Division (HAZMAT). ERD consists of an interdisciplinary scientific team that responds to oil and chemical spills in U.S. coastal and navigable waters. The team provides and coordinates critical advice on science and natural resource issues to the Unified Command (as defined in OPA-90) under the National Oil and Hazardous Substances Pollution Contingency Plan. ERD forecasts movement and behavior of spilled oil or chemicals, evaluates the risk to resources, and recommends protection priorities and appropriate cleanup actions.

General Counsel for Natural Resources (GCNR)
GCNR is active in recovering funds from the principal responsible party. GCNR is involved from inception of an incident to final settlement and collection of funds. It is instrumental in obtaining legal documents throughout the litigation process, and these documents become the basis of accounting events. GCNR forwards all legal documents to the DARRF Manager as accounting support, even those that do not contain accounting information. As incident costs accrue, GCNR requires that NOAA prepare certified cost documentation packages to be forwarded to GCNR.

Judgments
A judgment is a court act creating or affirming an obligation, such as a debt.

Long Sheets
The Long Sheets are an Excel spreadsheet maintained by the DARRF manager. This spreadsheet contains all of the historical data on the DARRF account activity.

Memorandum of Understanding (MOU)
An MOU can be a legal contract if it meets specific criteria. Generally, in the world of commerce or international negotiations, an MOU is considered to be a preliminary document, not a comprehensive agreement between two parties. Rather, it is an interim or partial agreement on some elements, in some cases a mere agreement in principle, on which there has been accord. Most MOU's imply that something more is eventually expected.

National Marine Fisheries Service (NMFS)
NOAA Fisheries Service is dedicated to the stewardship of living marine resources through science-based conservation and management and promotion of healthy ecosystems. As a steward, Fisheries Service conserves, protects, and manages living marine resources in a way that ensures their continuation as functioning components of marine ecosystems, affords economic opportunities, and enhances the quality of life for the American public.

National Marine Sanctuaries
The mission of NOAA's Office of National Marine Sanctuaries is to serve as trustee for the nation's system of marine protected areas, and to conserve, protect, and enhance their biodiversity, ecological integrity, and cultural legacy. Its goals are appropriate to the unique diversity contained within individual sites. These may include restoring and rebuilding marine habitats or ecosystems to their natural conditions or monitoring and maintaining already healthy areas.

Oil Pollution Act (OPA)
OPA provides legislation designed to prevent oil spills, ensure cleanup when spills occur, and restore natural resources injured by these spills. OPA was passed in the wake of the Exxon Valdez oil spill in March of 1989. The statute establishes liability and limitations on liability for damages resulting from oil pollution and establishes a fund for the payment of compensation for such damages. In connection with CERCLA, it mandates a National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. It requires preparation of spill prevention and response plans by coastal facilities, vessels, and certain geographic regions. OPA amended the Clean Water Act and includes the Oil Terminal and Oil Tanker Environment Oversight and Monitoring Act of 1990.

Order to Distribute
An order to distribute is a document signed by judge directing the clerk of court to disburse funds from a trustee account.

Project Code
A project code is a unique number assigned to the extension of a task number identifying a specific task.

Settlement Agreement
This is an agreement or understanding that settlement has been reached.

Suspense
Suspense is a category used to describe collections that have not been distributed into program COMFs. All monies collected are temporarily held in Suspense until managers have approved allocations.

Task Number
A task number is a unique assigned number to an incident.

Trustee Council
A Trustee Council is a group of individuals formed to oversee restoration activities. DARP acts on behalf of the public as a trustee to manage, protect, and restore coastal and marine resources. The public trusts doctrine, a principle of property law that dates to Roman times, establishes the right of public benefits over private interests. Public lands, waters, and living resources are held in trust for the benefit of all people and future generations. Since the 1970s, Congress has enacted a number of federal statutes to protect and manage the natural resources that belong to all Americans. Congress directed the President to designate natural resource trustees to protect and restore these trust resources when they are threatened or harmed by oil or hazardous substance releases. Stewardship of the nation's natural resources is shared among several Federal agencies, states, and tribal trustees. Councils usually adopt operating procedures like Robert's Rules of Order.

Trustees
A trustee is an individual with legal authority to administer recovered funds or the person who holds property rights for the benefit of another through the legal mechanism of the trust. A trustee usually has full management and administration rights over the property but these rights must always be exercised to the full advantage of the beneficiary. All profits from the property go to

the beneficiary, although the trustee is entitled to reimbursement for administrative costs. There is no legal impediment for a trustee to also be a beneficiary of the same property.

Trustee Resolution

A trustee resolution is a document adopted by trustees demonstrating unanimous agreement to disburse funds from the Court Registry Investment System for a purpose consistent with MOU or settlement agreement.

Appendix C. Existing Policy Documents

DARRP Vision and Mission

DARRP Long Term Stewardship

DARRP Vision and Strategy

Foreword

For more than 20 years, NOAA's Damage Assessment, Remediation, and Restoration Program (DARRP) and its precursors have played a vital role in protecting and restoring coastal resources that are injured by oil spills, contaminant releases, and vessel groundings. DARRP works with remedial agencies, responsible parties, federal, state, and tribal co-trustees and the public to achieve cleanup actions that protect and projects that restore NOAA trust resources. The program ensures that the parties responsible address the problems and compensate the public for injuries caused to our natural resources. DARRP encourages responsible parties to participate in cooperative damage assessment and restoration activities, but also has the legal authority to compel restoration.

DARRP is a force for coastal restoration. In its role as a Trustee for Natural Resources, DARRP has achieved protective remedies at more than 500 hazardous waste sites and settled over 200 natural resource damage assessment (NRDA) cases. This has led to the restoration of more than 6,300 acres of coastal habitat, including scarce habitat in industrial areas that serve as the last remnants of refuge for migrating fish. DARRP also addresses lost services by increasing public access, improving fishing and boating facilities, and environmental education. These actions, which represent more than half a billion dollars for restoration, affirm the polluter pays principle, and directly improve local communities and economies.

DARRP is multi-faceted and dynamic. It is comprised of experts in environmental science, economics, restoration and law from three individual NOAA offices. The program has developed an innovative restoration-based approach to addressing injury, emphasizing cooperation and integration of remediation and restoration where possible, and continues to develop and pursue sound science and effective policy.

This DARRP Vision and Strategy was developed to convey the Program's goals and objectives and to help guide future DARRP activities. The vision, goals, strategies, and outcomes are outlined in this document to aid in the continued progress of the Program's accomplishments, science, and policy development.

NOAA's DARRP Trustee Management Team:

Craig R. O'Connor, J.D.
Special Counsel
NOAA Office of General Counsel

Christopher D. Doley
Chief, Restoration Center
Office of Habitat Conservation, NOAA Fisheries Service

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Office of Response and Restoration, NOAA National Ocean Service

Vision

To protect and restore coastal and Great Lakes natural resources in response to the highest priority oil, hazardous waste, grounding threats, and changing future conditions; and compensate communities affected by these environmental impacts.

Natural Resource Trusteeship

Under several federal and state laws, when oil spills, hazardous material releases, and vessel groundings occur, a responsible party incurs two types of liability: liability to cleanup and liability to restore what was injured. Response and cleanup activities are led by remedial agencies such as the U.S. Coast Guard and U.S. Environmental Protection Agency, while natural resource assessment and restoration is led by federal, state, and tribal natural resource trustee agencies.

NOAA is a natural resource trustee for marine and coastal resources, including the Great Lakes. In this role, NOAA acts on behalf of the public through the protection, management, stewardship, and restoration of natural resources. NOAA's trust resources include commercial and recreational fishery resources; migratory fish species; marine mammals; endangered and threatened marine species and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves.

The Damage Assessment, Remediation, and Restoration Program (DARRP) was established within NOAA in response to several mandates (see Appendix) to protect and restore natural resources. The core of the authority of a natural resource trustee is to act on behalf of the public to ensure that appropriate actions are taken to protect and restore injured natural resources under their trusteeship. If these actions are agreed to, responsible parties can be released from their liability for natural resource damages. Management of many natural resources is shared between different trustees, requiring that they work together in partnership.

DARRP is comprised of the Assessment and Restoration Division within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the General Counsel for Natural Resources within the Office of the General Counsel. Roles of these groups include:

Assessment and Restoration Division – Achieves protective cleanups; quantifies what resources and associated services have been injured or lost to the public; identifies the type and scope of protection and restoration best suited to address injuries; and achieves settlements necessary to restore the injured resources and services.

Restoration Center – Coordinates and conducts restoration planning; restores degraded habitats; monitors the success of implemented restoration projects; advances the science of coastal habitat restoration; transmits restoration technology to the private sector, the public, and other governmental agencies; and fosters habitat stewardship and a conservation ethic.

Office of General Counsel for Natural Resources – Provides legal support for DARRP and deals with all legal matters associated with NOAA's natural resource trusteeship.

The successful DARRP framework has been in existence for nearly two decades. At its core is a matrix management arrangement that allows DARRP to draw upon key skills and strengths integral to the mission from different parts of NOAA. These include expertise in risk and injury assessment, economics, remediation, restoration, monitoring, and law.

Defining the Threats to NOAA's Trust Resources

Oil spills kill fish and other wildlife, close beaches, and impair marine resources and coastal habitat. Hundreds of thousands of gallons of oil are spilled into U.S. coastal waters each year.

Hazardous waste releases contaminate fish, coastal wetlands, groundwater, and sediments. Pollutants such as toxic metals, pesticides, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and other harmful substances can persist in the environment for decades, and pose threats to fish, wildlife, and the public. They also limit ports and commerce due to the difficulty of dredging and disposing contaminated sediments. As of March 2008, the Environmental Protection Agency had 1,311 sites either proposed or listed on the National Priorities List (NPL), which are sites that become the subject for federal funding and enforcement efforts. States and territories also administer a program of removal and remedial actions at tens of thousands of other sites.

Vessel groundings and other injuries to resources within NOAA's Marine Sanctuaries destroy critical coral reef and seagrass habitat. Each year, U.S. reefs are harmed by hundreds of vessel groundings and other destructive events resulting from improper anchoring and fishing practices. These injuries result in reef loss and instability, which reduces coastal storm protection, harms local fisheries, and affects key tourist attractions.

Program Goals for NOAA's Damage Assessment, Remediation, and Restoration Program

Goal 1. Improve protection and restoration of marine and coastal natural resources and return services lost to the public as a result of oil spills, contaminant releases, and vessel groundings.

The Nation's marine and coastal natural resources, including the Great Lakes, support diverse and productive coastal ecosystems. These public resources provide significant ecological, cultural, and economic benefits to local communities that rely on them and to the entire Nation. Healthy ecosystems also provide services to the public, such as habitat for fish and wildlife; reducing the impacts of storms on coastal areas; and supporting commercial and recreational opportunities. DARRP will focus and improve our capabilities to protect and restore these natural resources.

Long-Term Strategies

- Focus on specific sites, cases, and activities that provide the greatest benefit to NOAA trust resources.
- Improve partnerships with our co-trustees, industry, the public, and other interested stakeholders as a means to moving to restoration as soon as possible.
- Increase efficiency and effectiveness in assessing injuries to natural resources and the degree to which the public has lost the use of resources.
- Maintain accountability and remain consistent with requirements of applicable mandates.
- Obtain reimbursement or recovery of assessment costs and leverage settlement funds to enhance or expand restoration projects.
- Seek efficiencies in the implementation of restoration projects and oversight of responsible party implemented projects.
- Improve application of science throughout case implementation.

Outcomes

- A public made whole by the protection and restoration of natural resources and associated services through science-based cooperative settlements.
- Economic benefits for communities that have been affected by oil spills, contaminant releases or vessel groundings.
- Increased efficiency and effectiveness in implementing NRDA cases: minimizing costs and time to complete NRDA processes.

Goal 2. Promote the development and innovation of risk assessment, natural resource damage assessment, and restoration science and policy.

DARRP considers good science essential for innovative and effective decision-making. DARRP will use sound science and tools to improve risk assessments and cleanups, to identify and quantify injury and scale restoration, and to achieve legally defensible restoration claims.

A collaborative community enhances effective and efficient damage assessment and restoration. Many stakeholders, including federal, state, and tribal trustees, non-governmental organizations (NGOs), the public, and responsible parties are involved in coordinating successful cleanups, injury assessments, and natural resource restoration. DARRP will promote coordination within the damage assessment and restoration communities and build the capability and capacity of our partners.

Long-Term Strategies

- Develop and share innovative, cost-effective tools, guidance, and solutions to guide decision-making for the damage assessment and restoration communities.
- Build capability and capacity in our partners through training and improved partnerships, and continuing collaboration.
- Continue to refine DARRP's practice of Restoration Up-Front of Assessment (RUFA) in coordination with co-trustees, responsible parties, and NGOs.
- Apply a watershed approach to injury assessment and improve the science of restoration implementation.
- Provide leadership in developing adaptive management strategies for natural resources that anticipate climate change effects.
- Provide internal training, mentoring, and other opportunities to promote professional development for Program staff.
- Incorporate peer review of damage assessment studies and restoration projects.
- Create and demonstrate new socially-relevant performance metrics for injury assessment and restoration success.

Outcomes

- DARRP leadership in protection, assessment, and restoration via publishing papers, articles, and other policy documents in trade and scientific literature.
- A NRDA co-trustee and partner community that effectively communicates and uses common tools to assess and restore natural resources.
- Regional and watershed assessment and restoration planning recognized as an integral component of the NRDA process.
- Well-trained DARRP staff knowledgeable of current science related to damage assessment and restoration.

Goal 3. Strengthen the public's understanding of and support for NOAA's activities to address the threats to marine and coastal resources.

NOAA's early and effective involvement at hazardous waste sites, oil spills, and groundings sites helps maintain clean, healthy coasts for the benefit of current and future generations. It is important for the Program to build partnerships with the public by relaying accurate and timely information on these activities. By informing and engaging the public, Congress, our partners, and other interested stakeholders of our efforts, DARRP will improve overall environmental awareness and stewardship of our trust resources and raise visibility, credibility, and support for the program.

Long-Term Strategies

- Conduct outreach to inform Congress of DARRP activities and accomplishments. Promote public participation in trustee planning and decision making.
- Enhance the public's understanding of the value of marine and coastal ecosystems and the ecological and recreational benefits they provide.
- Build environmental stewardship partnerships to maintain the benefits of restoration.
- Maintain effective web-based information for the public and stakeholders.

Outcomes

- An informed public.
- A knowledgeable and supportive Congress.

Goal 4. Address the challenges to coastal habitats resulting from global climate change.

DARRP must anticipate and prepare for impacts resulting from climate change. Sea level rise, storm severity and coastal flooding, and sea surface temperature change all impact our ability to deal with the protection and restoration of NOAA's trust resources. Sea level rise and increases in storm severities have the potential to erode and remobilize hazardous waste from existing coastal waste sites, leading to increased exposure in our coastal communities. Aging coastal infrastructure such as pipelines and oil refining facilities are vulnerable to the destructive effects of climate change. Vanishing Arctic sea ice will result in increased marine transportation and exploration and production for oil and gas throughout the Arctic Region, increasing the threat of oil spills.

Long-Term Strategies

- Assess and prioritize risks to natural resources from climate change.
- Develop strategies for the protection and restoration of resources and habitats that accelerate recovery of resources and address climate change impacts.
- Include consideration of climate change impacts and scenarios in all aspects of DARRP operations: assessment, remediation, and restoration.

Outcomes

- An informed understanding of oil spill and contaminant release threats resulting from impacts of climate change.
- Restoration that is adaptive to climate change impacts.

In Closing

DARRP is committed to fulfilling NOAA's Natural Resource Trustee responsibilities by providing leadership and innovation to the challenges of protecting and restoring our resources.

Appendix
DARRP Program Core Laws and Mandates

Clean Water Act (CWA) establishes the basic structure for maintaining and restoring waters of the United States, including coastal wetlands. The Act authorizes water quality and pollution research, provides grants for sewage treatment facilities, sets water quality and pollution standards, and establishes permit programs for water quality, point source pollution discharge, ocean pollution discharge, and dredging and filling in wetlands. The Act allows NOAA to seek (pursuant to delegated authority) damages to restore natural resources injured as a result of the discharge of oil or hazardous substances.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes the President to act on behalf of the public as trustee for natural resources regarding the release or threatened release of hazardous substances in the environment. This authority has been delegated to NOAA for resources for which the agency has management or protective responsibilities. As such, the Act allows NOAA to seek damages on behalf of the public to restore natural resources within the scope of its trusteeship that are injured by the release of hazardous materials.

National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to act as a trustee for sanctuary resources, conduct response actions, and recover damages for injury to sanctuary resources. NOAA has been delegated this trustee authority.

Oil Pollution Act (OPA) authorizes the President to act as a trustee for natural resources and to recover damages to natural resources for the discharge or threatened discharge of oil into navigable waters or adjoining shorelines. NOAA has been delegated this trustee authority with respect to natural resources for which the NOAA has management or protective responsibilities.

National Contingency Plan. The National Oil and Hazardous Substances Pollution Contingency Plan, more commonly called the National Contingency Plan or NCP, is the federal government's blueprint for responding to oil spills and hazardous substance releases. It promotes overall coordination among the hierarchy of responders and contingency plans. Among other things, it assigns responsibility for trust resources for federal agencies. The latest revisions to the NCP were finalized in 1994 to reflect the oil spill provisions of the Oil Pollution Act of 1990.

The Endangered Species Act (ESA) imposes a number of mandatory duties on the Secretary of Commerce. First, the Secretary must list a species that is threatened with extinction in all or a significant portion of its range and designate critical habitat for that species. The Secretary must then develop recovery plans for listed species, and all federal agencies, in consultation with the Secretary, must insure that any action that the agency undertakes, authorizes, or funds not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

The Estuary Restoration Act of 2000 (ERA) establishes an interagency council, including NOAA, to promote the restoration of estuary habitat; provide financial and technical assistance for restoration projects; develop enhanced monitoring and research capabilities; and monitor data coordination responsibilities.

The Executive Order on Great Lakes Restoration established a Great Lakes Interagency Task Force (including NOAA) to address environmental and natural resource issues of national concern and better coordinate the region's sustainable development and restoration.

The Fish and Wildlife Coordination Act (FWCA), as amended in 1964, requires that all Federal agencies consult with the NMFS, among other agencies, when proposed actions may result in modification of a natural stream or body of water. NMFS generally provides information on how to reduce environmental impacts to anadromous, estuarine, and marine fisheries and their habitats.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Reauthorization Act of 2006 provides for the conservation and management of the Nation's fishery resources. The Acts also provide information to further the conservation and enhancement of Essential Fish Habitat.

The Marine Mammal Protection Act (MMPA) was enacted for the purpose of ensuring that marine mammals are maintained at, or in some cases restored to, healthy population levels and providing jurisdiction over marine mammals to NMFS and Fish and Wildlife Service (USFWS). USFWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus while NMFS has jurisdiction over all other marine mammals.

The Protection and Conservation of Sea Turtles requires the Secretary of Commerce to initiate negotiations with foreign governments whose commercial fishing operations may adversely affect species of sea turtles that are the subject of DOC regulations and seek agreements to protect such species.

DARRP policy to include long-term stewardship costs in NRDA habitat restoration settlements

Long-term Stewardship Definition

Activities including monitoring and adaptive management that are necessary to maintain the flow of ecological services for the period of time required in order to achieve full compensation of damages. These activities include both physical asset and ecological management. While stewardship costs are often covered by the potentially responsible party(ies) (PRP) through an initial period where habitat is built, typically as a requirement of project permits, long-term stewardship refers to the period after construction and after habitat has reached full function, but where the project has not yet produced its full compensation value.

Long-term Stewardship Policies and Procedures

1. As a default position, NOAA case team members will only agree to proposed settlements that provide for actions or funding to cover long-term stewardship activities sufficient to ensure that projects eventually achieve their expected compensation values. Achievement of these values means maintaining the flow of ecological services at these sites for the number of years required to realize the ecological services required for full compensation.
2. The nature and amount of long-term stewardship required in a given case will be derived from the DSAY model or other method used to assess and quantify damages. Whatever method is used, an explicit time period for compensation will be written in the settlement agreement.
3. Given that the general purpose of accounting for and recovering long-term stewardship costs is to ensure the flow of ecological services over time through specific management and oversight activities, these costs should be considered reasonable and necessary costs of restoration.
4. If a case team determines that it is necessary to forgo long-term stewardship in order to reach an otherwise appropriate settlement, the case team coordinator may request, and the TMT may grant, authorization to forgo this support. In considering such a request the TMT will ask the case team to assess the likelihood of circumstances arising that may impair long term project performance and what, if any, contingencies or other resources may be available to address such circumstances.
5. NOAA case teams should consider the feasibility of developing relationships or agreements with parties capable of performing long-term stewardship for multiple sites in a watershed or region as a means of achieving economies of scale, broadly applying lessons learned and expertise gained, and developing consistent monitoring and reporting.
6. This policy does not affect cases that have already settled or in which the Trustees have progressed in negotiations with responsible parties to the point that consideration of long-term stewardship would be considered an unexpected or inflated demand.

Effective June 1, 2014, and until further notice, the DARRP TMT adopts the following policies and procedures regarding recovering long-term stewardship costs in habitat restoration settlements.

4-9-14

Robert I. Haddad, Ph.D. **Date**
Chief, Assessment and Restoration Division
NOAA Ocean Service, Office of Response and Restoration

4-7-2014

Christopher D. Doley **Date**
Chief, Restoration Center
NOAA National Marine Fisheries Service, Office of Habitat Conservation

4-9-2014

Craig O'Connor **Date**
Special Counsel for Natural Resources
NOAA Office of General Counsel, General Counsel for Natural Resources

Appendix D. Current List of Regulatory Authority and Agency Delegations

Number: DOO 10-15

UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE AND ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Effective Date: 2011-12-12

The following functions regarding response to releases of hazardous substances or discharges of oil, and the resulting claims for damages to natural resources, as authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, (42 U.S.C. §§ 9601-9675), and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1387), and delegated to the Secretary by E.O. 12580, (52 FR 2923, January 29, 1987), and the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2762, and delegated to the Secretary by E.O. 12777, 56 F.R. 5475, October 22, 1991

1.The functions of federal trustee of natural resources, including conduct of damage assessments, assertion of damage claims, agreements to covenants not to sue, preparation of natural resource restoration, rehabilitation, or replacement or acquisition plans, and expenditures of amounts recovered as damages to restore, rehabilitate, replace, or acquire the equivalent of such natural resources damaged or lost, as authorized by Sections 104(b), 106(a), 107(f), 111(b), 111(c), 111(i), and 122(j) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604(b), 9607(f), 9611(b), 9611(c), 9611(I), and 9622(j), and as authorized by Section 311 (f) (5) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321(f)(5), and delegated to the Secretary by Sections 1(c) and 5(d) of E.O. 12580 of January 23, 1987, and as authorized by Section 1006 of the Oil Pollution Act of 1990 and delegated to the Secretary by Sections 1(c), 7(a)(2) and 10 of E.O. 12777 of October 18, 1991.