



SECTION 4: PLANNING

4.1: Resource Protection

4.2: Trustees For Natural Resources

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4.2. TRUSTEES FOR NATURAL RESOURCES

CERCLA, CWA, and OPA require the designation of certain Federal, State, and Native American Tribal officials to act on behalf of the public as trustees for natural resources that they manage or protect. Natural resources, as defined in CERCLA Section 101(16) and OPA 1001(20) means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government, or Indian Tribe.

Natural resource(s) trustees are responsible for assessing damages to resources under their jurisdictions resulting from oil spills or release of hazardous substances. Also, agencies are responsible for seeking recovery for losses from responsible parties and for devising and carrying out rehabilitation, restoration, and replacement of injured natural resources. Where more than one natural resource(s) trustee has jurisdiction over a resource, agencies will coordinate and cooperate in carrying out the activities described above (reference NCP 300.600). Damage assessment is controlled by the designated natural resource(s) trustees and not response; however, it is important for natural resource(s) trustees to work with the OSC/RPM to coordinate activities as necessary.

To minimize impacts to natural resources and assist trustees in carrying out their responsibilities, the OSC is required to:

- (1) Promptly report actual or potential discharges or releases to those federal, state, and tribal agencies designated as trustees for natural resources;
- (2) Consult with trustees and other natural resource managers in determining such impacts and appropriate protective actions;
- (3) Coordinate all response activities with trustees and other natural resource managers;
- (4) Make available to trustees, documentation and information that can assist the trustees in determining actual or potential natural resource injuries; and
- (5) Consult with USFWS on all incidents and response activities that may affect federally-listed threatened or endangered species, or their habitats.

The trustees and other natural resource managers, consistent with procedures specified in the *Fish and Wildlife Annex* (Appendix IX), may provide timely advice on recommended actions concerning resources that are potentially affected by a discharge of oil or release of hazardous substances. This could include providing assistance to the OSC/RPM in identifying and recommending pre-approved response techniques and in predesignating shoreline types and areas.

For U.S. EPA Region 5, the DOI Office of Environmental Policy and Compliance contact is located in Philadelphia, PA, at (215) 597-5378.

See Appendix IX for detailed discussion of trustee responsibilities.

Contact U.S. EPA Emergency Response Team (ERT) at (908) 906-6825 (business hours).

The trustees are authorized to assess monetary damages for resources injured, lost, or destroyed as a result of discharge of oil or releases of hazardous substances. In addition, the trustees are authorized to seek damages from the responsible person(s), and to devise and carry out restoration, rehabilitation and replacement of natural resources. Where more than one trustee has jurisdiction over a resource, these agencies should coordinate and cooperate in carrying out their activities. RRT representatives from trustee agencies serve as contact points.

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4.2.1. Federal Trustees

Unless delegated to an Authorized Official, the Secretary of the Interior is the natural resource trustee for the natural resources managed or controlled by the following DOI Bureaus:

NPS: National parks, national monuments, national historic sites, national recreation areas, and wild and scenic rivers;

USFWS: National wildlife refuges, national fish hatcheries, waterfowl production areas, migratory birds, threatened and endangered species, and anadromous fish.

BLM: Public lands and federally owned minerals (underlying private as well as public lands).

BIA: In cases where the United States acts on behalf of a Native American Tribe, the Secretary of the Interior also acts as trustee for natural resources for which the tribe would otherwise act as trustee, i.e., reservations and other lands or natural resources held in trust for the tribe including off-reservation natural resources).

The Secretary of Agriculture is trustee for the national forests and national grasslands.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), is trustee for lands under their administration; certain federally listed species; marine mammals; and marine, anadromous, and some Great Lakes fishes.

The Secretary of Defense is trustee for military lands and USACE project lands.

The Secretary of Energy is trustee for DOE lands and facilities.

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4.2.2. State Trustees

The governor of each state has designated state officials to act on behalf of the public as trustees for natural resources. Natural resources under state jurisdiction include all fish, wildlife, and biota including a shared trusteeship with the federal government for certain plants and animals, air, surface water, groundwater, and land.

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4.2.3. Native American Tribal Trustees

The tribal chairman or head of the tribal governing body, or person designated by tribal officials, acts as trustee of natural resources under Native American tribal trusteeship including lands and other natural resources belonging to, managed by, controlled by, or otherwise appertaining to the tribe; or held in trust for the tribe; or belonging to a member of the tribe if subject to a trust restriction on alienation.

State trustees for natural resources within Region 5 are listed in Annex 1 to Appendix IX.

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4.2.4. Functions of Trustees

The DOI Office of Environmental Policy and Compliance manages oil spills, and releases of hazardous substances. This includes supervision of DOI's participation in contingency planning, response activities, technical assistance, and training exercises. In this regard it represents the Department in the NCP, the FRERP, and other Federal response plans for natural and technological hazards on national and regional response teams.

The DOI Office of Environmental Policy and Compliance is the initial contact for notification and for overall coordination of its trustee activities. USFWS is the program manager for endangered species, anadromous fish, and the lands in the National Wildlife Refuge system, and will be among those involved for DOI in spill incidents because of its responsibility for these resources. The Department of the Interior, Department of Defense, Department of Energy, Department of Agriculture, U.S. National Forest Service, National Oceanic and Atmospheric Administration, and Native American Tribes may serve as trustees or co-trustees.

At the time of a spill, the Federal trustees and trustees of affected State and Tribal communities will meet and select one agency to act as Lead Administrative Trustee (LAT). They will convene a trustee group to ensure the best possible coordination of natural resource trustee activities such as data gathering, damage assessment, and negotiations with responsible parties.

The trustees may initiate a natural resource damage assessment. The Federal damage assessment regulations for oil discharges mandated under OPA were developed by NOAA and are now final. The regulations developed by DOI under CERCLA and CWA authorities apply to releases of hazardous substances and are in effect and available for trustee guidance and use. The NOAA SSC can serve as the liaison between the OSC and the trustees conducting damage assessment data collection efforts.

Specific natural resource trustee activities which may be expected to begin during a response include, but are not limited to:

- (a) convening the trustee group;
- (b) developing and implementing initial sampling plans;
- (c) establishing the lead administrative trustee;
- (d) developing NRDA initiation requests to the OSLTF;
- (e) selecting appropriate assessment strategies;
- (f) implementing longer-term assessment studies; and
- (g) planning and implementing natural resource restoration.

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