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CEC Training for OSCs...CERCLA Coordination with Natural Resource Trustees

Sponsored by: EPA Office of Superfund Remediation and Technology Innovation

Delivered: November 21, 2013, 11:00 AM - 1:00 PM, EST (16:00-18:00 GMT)

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Seminar Homepage

The image shows a screenshot of a seminar homepage for the EPA. The page is titled "Technology Innovation and Field Services Division" and "EPA". It features a navigation menu on the left with "Join to Seminar", "Feedback", and "EPA in Studio". The main content area includes a "Download Slides" button and a "Feedback" button. The page also contains a "Join to Seminar" section with a "Join to Seminar" button and a "Feedback" section with a "Feedback" button.

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Housekeeping

- Entire broadcast offered live via Adobe Connect
 - participants can listen and watch as the presenters advance through materials live
 - *Some materials may be available to download in advance, you are **recommended to participate live via the online broadcast***
- Audio is streamed online through by default
 - Use the speaker icon to control online playback
 - If on phones: all lines will be globally muted
- Q&A – use the Q&A pod to privately submit comments, questions and report technical problems
- This event is being recorded and shared via email shortly after live delivery
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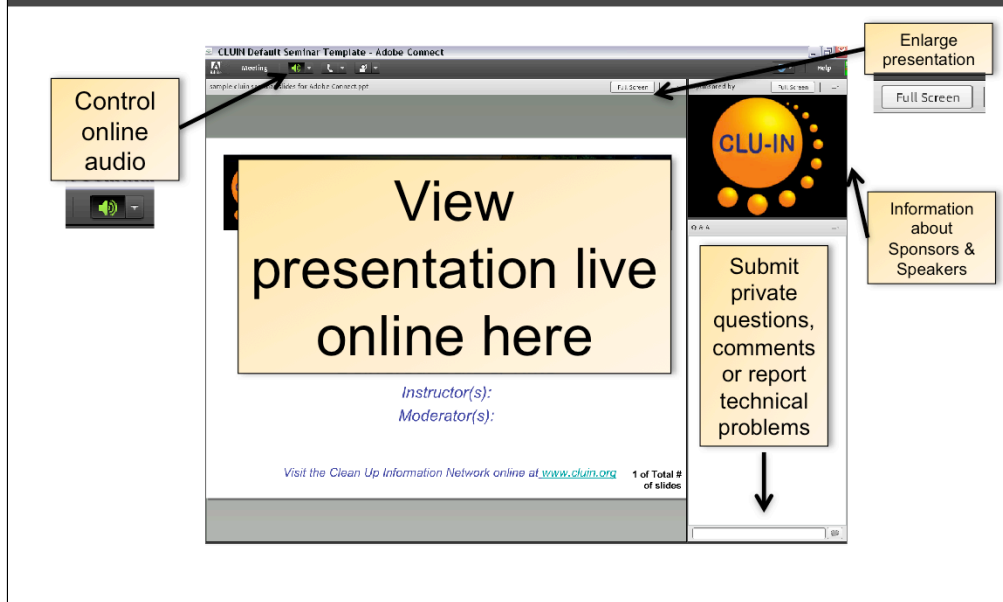
Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

Please mute your phone lines during the seminar to minimize disruption and background noise. If you do not have a mute button, press *6 to mute #6 to unmute your lines at anytime. Also, please do NOT put this call on hold as this may bring delightful, but unwanted background music over the lines and interrupt the seminar.

You should note that throughout the seminar, we will ask for your feedback. You do not need to wait for Q&A breaks to ask questions or provide comments. To submit comments/questions and report technical problems, please use the ? Icon at the top of your screen. You can move forward/backward in the slides by using the single arrow buttons (left moves back 1 slide, right moves advances 1 slide). The double arrowed buttons will take you to 1st and last slides respectively. You may also advance to any slide using the numbered links that appear on the left side of your screen. The button with a house icon will take you back to main seminar page which displays our agenda, speaker information, links to the slides and additional resources. Lastly, the button with a computer disc can be used to download and save today's presentation materials.

With that, please move to slide 3.

New online broadcast screenshot

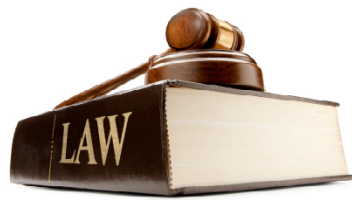


CERCLA Coordination with Natural Resource Trustees

Course Objectives

- Acquire a general understanding of:
 - Natural resources and natural resource trustees
 - Trustee notification and coordination requirements
 - Trustee participation in I/UC and activities in emergency response
 - Trustee responsibilities for natural resource damage assessment and restoration

I. Natural Resources and Natural Resource Trustees



Statutory Framework

- Response provisions of the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA) focus on the protection of human health and the environment
- Statute also provides authority for assessment and restoration of natural resources that have been injured by a hazardous substance release or response
- CERCLA authorizes the United States, States, and Tribes to act on behalf of the public as Natural Resource Trustees for natural resources under their trusteeship [CERCLA §107(f)(1)]



- Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) in December 1980 to address the dangers of abandoned or uncontrolled hazardous waste dumps by developing a nationwide program for
 - Emergency response; information gathering and analysis; liability for responsible parties; and site cleanup
 - Also created a Trust Fund (or "Superfund") to finance emergency responses and cleanups
- In the late 19th century, Love Canal was proposed as a planned community, a "[utopian metropolis](#)"
 - Developer only got as far as digging a large pit before giving up due to lack of people who actually wanted to live there
 - In 1920, Niagara Falls bought the pit and used it for a chemical dump
 - US army disposed of waste from chemical warfare experiments in Love Canal's pit; Hooker Chemical acquired the property in 1947 and continued chemical disposal. By the 1950s, it was filled with [21,000 tons of toxic waste](#). Hooker Chemical covered it with clay and soil and declared it sealed
 - Hooker Chemical sold it back to the city of Niagara Falls, which built a neighborhood on top
 - Residents noticed strange smells and odd illnesses, as well as a shockingly high rate of [miscarriages and birth defects](#). It wasn't until 1978 that the extent of the area's toxicity was revealed when an investigation by the local newspaper led to federal attention
 - Over a thousand families were relocated, and the Superfund program was born out of the incident.
- **Valley of the Drums** is a 23 acre (9.3 hectare) [toxic waste](#) site near [Louisville](#), Kentucky, named after the waste-containing [drums](#) strewn across the area
 - It is also known as one of the primary motivations for the passage of the Comprehensive Environmental Response, Compensation, and Liability Act, or [Superfund](#) Act of 1980
 - While the widely publicized [Love Canal](#) disaster is often credited as the reason the Superfund law was passed, Love Canal activist [Lois Gibbs](#) has said that Love Canal looked like a suburban community, while "Valley of the Drums became the visualization of the problem

Statutory Framework . . .

- Oil Pollution Act (OPA) provides authority for oil pollution liability and compensation as well as for the Federal government to direct and manage oil spill cleanups
- Similar to CERCLA, OPA contains authorities to allow the assessment and restoration of natural resources that have been contaminated by the discharge, or threatened discharge, of oil [OPA §1006(c)]
- OPA also authorizes foreign governments to act as Trustees [OPA § 1006(b)(5)]



- The Oil Pollution Act (OPA) was signed into law in August 1990, largely in response to rising public concern following the Exxon Valdez incident
- On March 24, 1989, shortly after midnight, the oil tanker **Exxon Valdez** struck Bligh Reef in Prince William Sound, Alaska, spilling more than 11 million gallons of crude oil
- The spill was the largest in U.S. history and tested the abilities of local, national, and industrial organizations to prepare for, and respond to, a disaster of such magnitude

National Oil and Hazardous Substances Pollution Contingency Plan

- National Oil and Hazardous Substances Pollution Contingency Plan (NCP) was established in 1968 and amended by the Clean Water Act (CWA) and CERCLA
- Promotes overall coordination of the hierarchy of responders and establishes procedures for conducting responses for oil and hazardous substances
- Designates the On-Scene Coordinator (OSC) as the manager of spills of oil and removal response for hazardous substances



- The first National Contingency Plan was developed and published in 1968 in response to a massive oil spill from the oil tanker **Torrey Canyon** off the coast of England the year before; more than 37 million gallons of crude oil spilled into the water, causing massive environmental damage
- To avoid the problems faced by response officials involved in this incident, U.S. officials developed a coordinated approach to cope with potential spills in U.S. waters
- Congress has broadened the scope of the National Contingency Plan over the years
 - As required by the Clean Water Act of 1972, the NCP was revised the following year to include a framework for responding to hazardous substance spills as well as oil discharges
 - Following the passage of Superfund (CERCLA) legislation in 1980, the NCP was broadened to cover releases at hazardous waste sites requiring emergency removal actions
 - Over the years, additional revisions have been made to the NCP to keep pace with the enactment of legislation; the latest revisions to the NCP were finalized in 1994 to reflect the oil spill provisions of the Oil Pollution Act of 1990

Trust Natural Resources

- CERCLA and OPA define natural resources broadly to include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources [CERCLA §101(16); OPA §1001(20); 40 CFR 300.5]



- Trust resources include both **species** and **places**
- Fish, wildlife, migratory birds, and marine mammals are all mentioned in CERCLA and the NCP as trust resources, as are National Marine Sanctuaries and Estuarine Research Reserves; DOI protects not only endangered species but also National Parks and Monuments
- NCP acknowledges that protecting a living resource entails not only preventing or mitigating contamination of the protected species itself but also ensuring the continued availability and quality of that species' habitat and food sources
- Clear implication is that the definition of what is a trust resource is left to the trustee
 - Thus within the bounds of trustees' responsibilities defined by various statutes, trustees may interpret their CERCLA mandate to include whatever biota "and their supporting ecosystems" that the trustees consider appropriate
- With regard to specific sites, the OSC should let trustee agencies determine whether trust resources are present and potentially affected by a release or discharge

Trust Natural Resources . . .

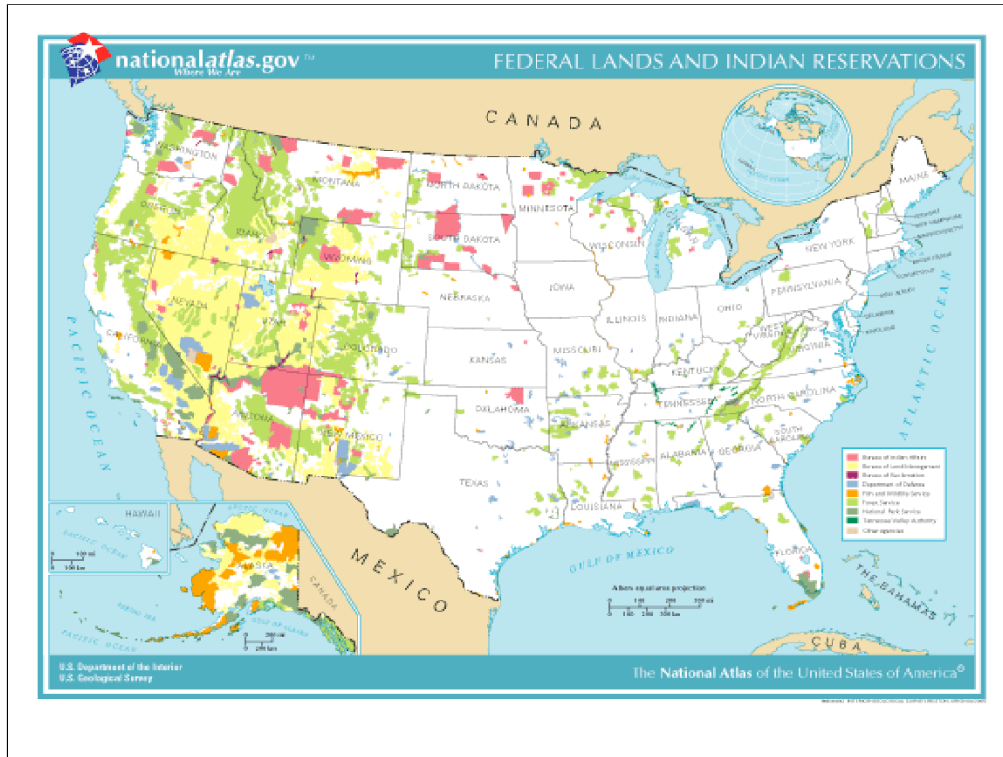
- Both statutes limit natural resources to those resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any, State, an Indian Tribe, a local government, or a foreign government



Natural Resource Trustees

- **Federal** - Secretaries of Agriculture, Commerce, Defense, Energy, Interior (40 CFR 300.600)
- **State** - designated by the Governor (40 CFR 300.605)
- **Tribal** - designated by Tribal Chairperson or the Secretary of the Interior may serve as trustee at request of the tribe (40 CFR 300.610)
- **Other** – Under OPA, foreign officials can also act as Trustee (40 CFR 300.612)

- By Executive Order 12580 and in the NCP, the President has designated certain executive officers as Federal trustees for natural resources



- Map intend only to give you a sense of where the federal resource trustees are located
- Lavender – Bureau of Indian Affairs
- Yellow – Bureau of Land Management
- Purple – Bureau of Reclamation
- Blue – Department of Defense
- Orange – Fish and Wildlife Service
- Light green – Forest Service
- Sage – National Park Service
- Dark green – Tennessee Valley Authority
- Light grey – Other federal agencies

Natural Resource Trustees and Natural Resource Managers

- Natural resource trustees are from agencies that have land and resource management responsibilities
- Natural resource trustees have responsibilities as **natural resource managers** to protect natural resources under their trusteeship
- Natural resource managers provide technical assistance and expertise for use by the OSC for a variety of program activities such as cultural and historic, fisheries, habitat, minerals, recreation, water, and wildlife

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- 2nd Statement → Will discuss in greater detail during the next slide

Trustee Responsibilities beyond CERCLA and OPA

- Trustees have statutory responsibilities to protect natural resources that may affect their actions and recommendations during a hazardous substance release or an oil discharge
- These laws may authorize them to take protective actions **with or without** OSC concurrence and to recover their costs from the responsible party



Department of Agriculture (USDA)



- Federal rangeland
- Federally-managed fisheries
- Federally-owned or managed farmland
- Land enrolled in the Wetlands Reserve Program
- National Forest System land

- Secretary of Agriculture, through USFS, has jurisdiction over large tracts of land in all areas of the country → **232,895,58** acres

Department of Commerce (DOC)

- Coastal environments, including salt marshes, tidal flats, estuaries, or other tidal wetlands
- Endangered marine species
- Marine mammals
- Rivers or tributaries to rivers which historically or presently support anadromous fish



- National Oceanic and Atmospheric Administration
- Anadromous fish – fish such as salmon which spawn in fresh water and spend a portion of their lives in the ocean

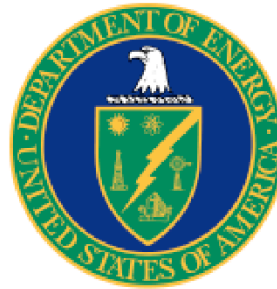
Department of Defense (DOD)



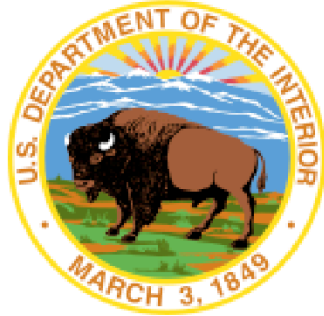
- All lands owned by the Department of Defense or the Air Force, Navy, and Defense Logistics Agency
- These lands include military bases and training facilities, research and development facilities, and munitions plants

Department of Energy (DOE)

- Natural Resources under its jurisdiction, custody or control
- These lands include national research and development laboratories, facilities, and offices



Department of the Interior (DOI)



- Certain anadromous fish
- Certain endangered species
- Certain marine mammals
- Migratory birds
- National Wildlife Refuges and Fish Hatcheries
- National Parks and Monuments
- Tribal Resources

- Bureau of Reclamation
- Bureau of Land Management
- Fish and Wildlife Service
- National Park Service

US Environmental Protection Agency (EPA)



- RESTORE Act established a Gulf Coast Ecosystem Restoration Council comprised of governors from the five affected Gulf States
- Council comprised of the Secretaries from the U.S. Departments of the Agriculture, Commerce, Interior, and Homeland Security, as well as, the Secretary of the Army and the Administrator of the U.S. Environmental Protection Agency

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• RESTORE Act dedicates 80 percent of all administrative and civil penalties related to the Deepwater Horizon spill to a Gulf Coast Restoration Trust Fund and outlines a structure by which the funds can be utilized to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast region

State Natural Resource Trustees

- State Trustees act on behalf of the public for natural resources, including ground and surface water, and the resources' supporting ecosystems, that are:
 - Within the boundary of the State
 - Belonging to, managed by, controlled by, or appertaining to the State
- Examples of resources under trusteeship of individual State officials include:
 - State forest lands
 - State-owned minerals
 - State parks and monuments
 - State wildlife refuges and fish hatcheries

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- Note that state natural resource trustees may be found in a variety of state offices

State Natural Resource Trustees . . .



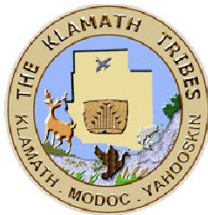
NEW MEXICO OFFICE OF
NATURAL RESOURCES TRUSTEE



Indian Tribe Trustees

- Indian Tribe Trustees act on behalf of the Indian Tribe for natural resources, including their supporting ecosystems, that are:
 - Belonging to, managed by, controlled by, or appertaining to such Tribe
 - Held in trust for the benefit of the Tribe
 - Belonging to a member of the Tribe, if such resources are subject to a trust restriction or alienation
- Examples of resources under trusteeship of Tribal groups include:
 - Tribal-owned minerals
 - Ground and surface water resources on Tribal lands
 - Any other natural resources found on Tribal land

Indian Tribe Trustees . . .



Co-Trusteeship

- Federal and state agencies and Indian Tribes may be co-trustees for the same natural resource [40 CFR 300.615(a)]
- Examples:
 - Department of the Interior and States are co-trustees for migratory birds
 - Departments of Commerce and Interior can be co-trustees for certain natural resources



- Sea turtles are the trust responsibility of DOC in water and DOI on land
- States are co-trustees with DOC and DOI for sea turtles both at sea and on land



II. Trustee Notification and Coordination



- Natural resource trustees have a broad mandate to protect and restore resources under their jurisdiction → therefore, the responsibilities of the trustees are not restricted to any single point in the Superfund process

NCP Directs Federal On-Scene Coordinators and Natural Resource Trustees to work together

- OSCs **shall** work with natural resource trustees in specific preparedness and response activities, to help ensure that natural resources are protected when they are at risk from an actual or potential hazardous substance release or oil spill [40 CFR 300.135(j)]
- Trustees **shall** provide timely advice concerning recommended actions with regard to trustee resources potentially affected by such releases or spills [40 CFR 300.305(e) and 615(c)(3)(i)]
- Trustees **shall** coordinate natural resource damage assessment activities with response operations and provide data from these activities that may support more effective operational decisions to the OSC in a timely manner [40 CFR 300.305(e) and 615(c)(3)(ii)]

- Note “shall”

OSC Responsibilities to Trustees during Preparedness Activities

- Consult trustees in writing the Fish and Wildlife and Sensitive Environments Plan of the Area Contingency Plan [40 CFR 300.210(c)(4)]
- Obtain concurrence for preapproval of application of specific countermeasures such as use of dispersants, in situ burning, bioremediation, and so on 40 CFR 300.210(c)(4)(ii)(D) and 910(a)]



Trustee responsibilities to OSCs during Preparedness Activities

- Participate in area committees to identify fish and wildlife sensitive environments and strategies for protecting and treating them, for inclusion in the Area Contingency Plan [40 CFR 300.210(c)(4) and 615(c)(3)(i)]
- Provide concurrence for preapproval of application of specific countermeasures such as use of dispersants, in situ burning, bioremediation, and so on [40 CFR 300.210(c)(4)(ii)(D) and 910(a)]



OSC responsibilities to Trustees during Response Activities

- Notify trustees of incidents [40 CFR 300.135(j)(1), 300.305(e), 300.320(a)(5)]
- Consult trustees about protection priorities and methods [40 CFR 300.135(j)(2)]
- Share non-monetary response resources with trustees conducting Natural Resource Damage Assessment activities so long as this does not hinder response activities [40 CFR §300.305(e) and 615(c)(3)(iii)]
- Federal agencies assisting the OSC in response to an oil spill may be reimbursed [40 CFR 300.335(b)]



- Notification → important, particularly with respect to tribes (other Agency requirements)

Trustee responsibilities to OSCs during Response Activities

- Work with OSCs on the appropriate removal action to be taken [40 CFR 300.135(j)(2)]
- Provide **timely advice** to the OSC on trustee resources that are potentially affected by a discharge of oil, including identifying/recommending preapproved response techniques [40 CFR 300.305(e) and 615(c)(3)(i)]
- Designate a **lead** administrative trustee to serve as the focal point for coordination between natural resource damage assessment activities and response operations [40 CFR 300.305(e) and 615(c)(3)(ii)]

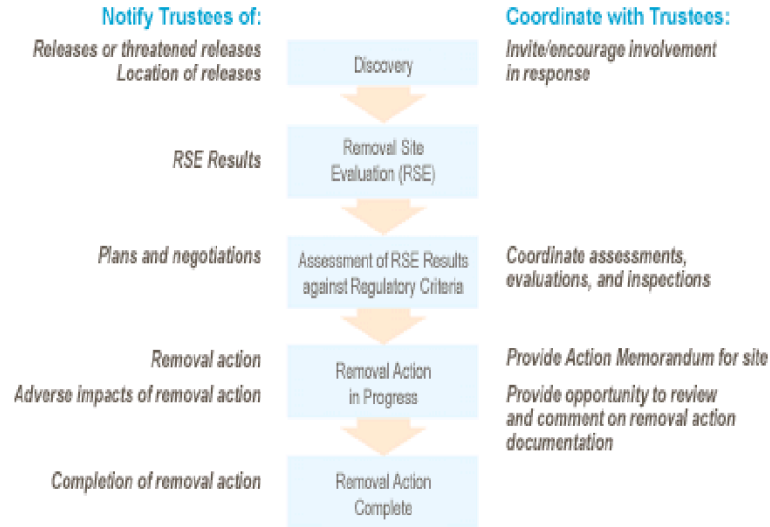


Trustee responsibilities to OSCs during Response Activities . . .

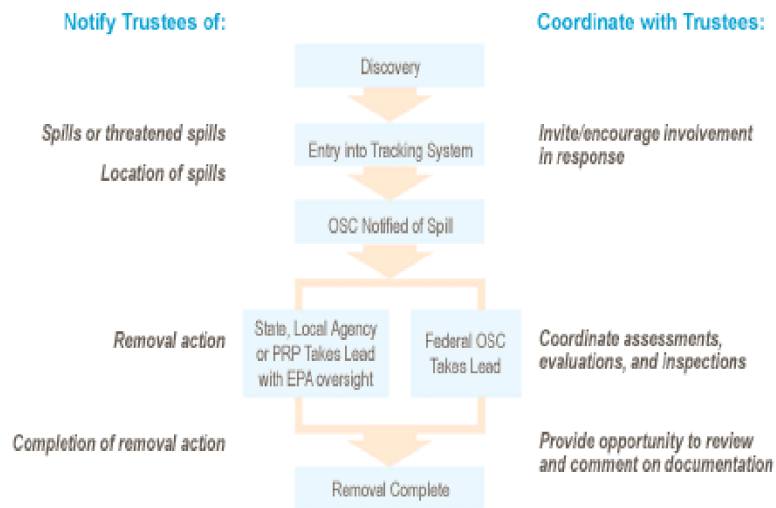
- Ensure that natural resource damage assessment activities do not interfere with response operations [40 CFR 300.615(c)(3)(ii)]
- Provide data from natural resource damage assessment activities that may support more effective operational decisions to the OSC in a timely manner [40 CFR 300.305(e)]



CERCLA Removal Actions – Notification and Coordination Flow Chart



OPA Removal Actions – Notification and Coordination Flow Chart





III. Trustee participation in I/UC and Activities in Emergency Response



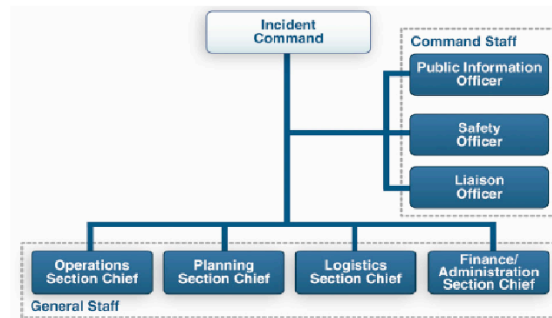
Trustee Participation in I/UC

- Depending on the nature of the incident, trustee representatives, acting as natural resource or land managers, may participate in one or more ICS units
- Each trustee agency may have a different approach to participation in ICS



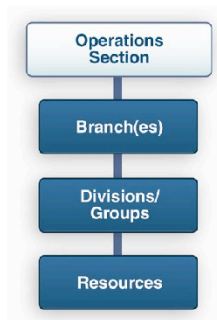
Trustee Participation in I/UC – Command

- For incidents with significant effect or the potential for significant effect on trust resources, having a trustee representative in Command would help to ensure that information on these resources is available to and used appropriately in decision-making



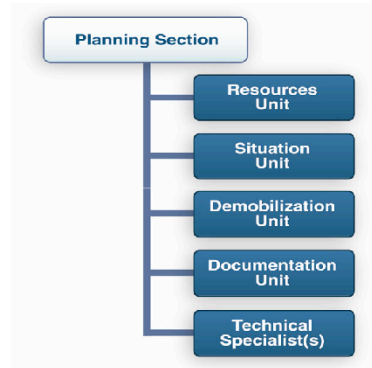
Trustee Participation in I/UC – Operations Section

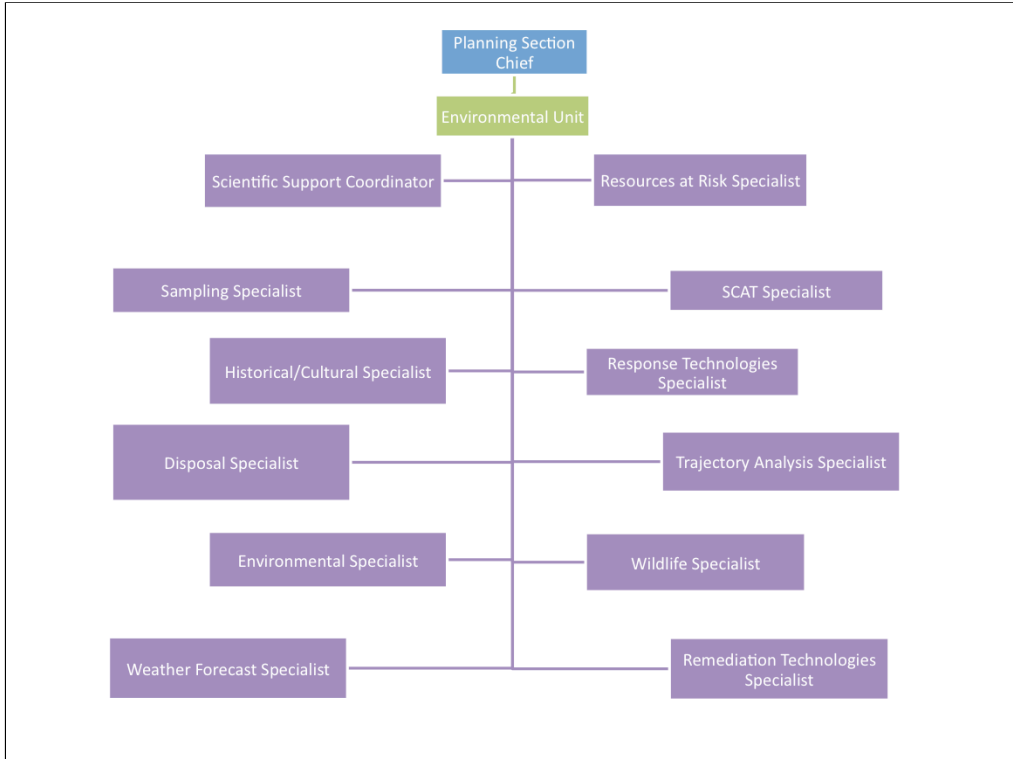
- Trustee representatives should participate and assist in activities affecting lands and resources under their jurisdiction and could assist in implementation of wildlife response efforts



Trustee Participation in I/UC – Planning Section

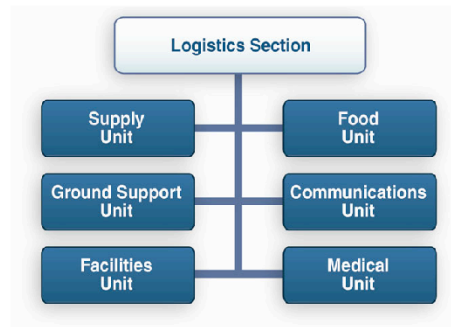
- Provide information about sensitive resources and appropriate response techniques





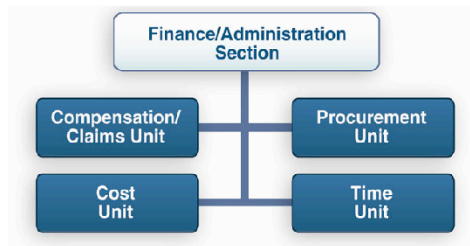
Trustee Participation in I/UC – Logistics Section

- It may be useful to have trustee representatives in this section when trustees have significant equipment and vehicle resources or facilities to contribute to the response



Trustee Participation in I/UC – Finance/Administration Section

- A trustee representative in this section could assist in supporting trustee personnel if there is significant trustee agency participation in the response



Trustee Activities in Emergency Response

- Identify/prioritize resources at risk
 - Supplement OSC's information on sensitive resources found in the ACP; provide local expertise and up-to-date information relative to the specifics of the incident; assist OSC in priorities in the ACP for sensitive habitat and resources requiring protection
- Evaluate protective measures and clean-up strategies
 - Advise the OSC on determination of **cleanup end-points**
- Participate in Team Assessing Cleanup
 - Provide resource experts to assist in assessment of clean-up activities



Trustee Activities in Emergency Response . . .

- Participate in Post Clean-up Inspection (Sign-off)
 - Assist OSC in determining adequacy of cleanup activities)
- Wildlife Rehabilitation
 - Advise the OSC on appropriate response actions for injured wildlife; ensure proper rehabilitation organizations are contacted and necessary permits have been obtained; and provide oversight to ensure wildlife response plans are implemented appropriately



- Comment emphasizing the importance of end points



IV. Trustee Responsibilities for Natural Resource Damage Assessment and Restoration

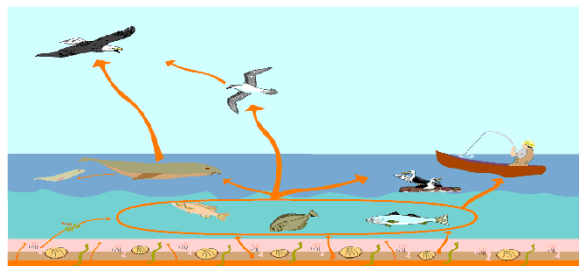
Trustee Responsibilities for Natural Resource Damage Assessment and Restoration

- Natural resource damages (NRD) refer to:
 - Costs to restore, rehabilitate, replace, or acquire the equivalent of the injured resource
 - Any interim lost use or diminution in value of the injured resource pending restoration
 - Reasonable cost of assessing those damages



Trustee Responsibilities for Natural Resource Damage Assessment and Restoration . . .

- Natural resource damage assessment (NRDA)
 - Process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident
 - Determine the restoration actions needed to bring the injured natural resources and services back to baseline and make the environment and public whole for interim losses



Major Concepts in NRDA

- Natural resource damage process is the responsibility of the trustee agencies, not of EPA
 - EPA is not required to collect or fund the collection of all the information needed to carry out a NRDA
 - Equally important to remember CERCLA and NCP require prompt notification of, and close coordination with, trustees

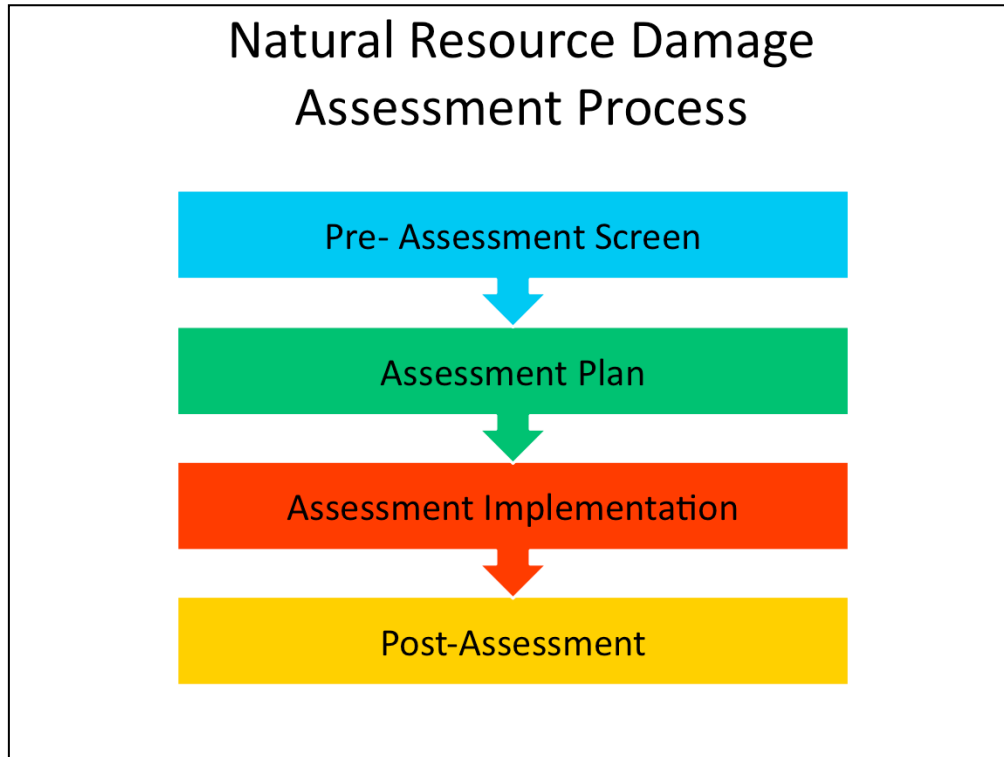


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Funding Today for a Cleaner Tomorrow

Major Concepts in NRDA . . .

- Damages are monetary compensation for injuries residual to response actions
- Damages are compensatory, not punitive
- Public and responsible parties are involved in process
- Recovered damages must be used for restoration





- **Pre-Assessment Screen:** Conducted to determine if additional action is warranted; determine whether an injury has occurred and a pathway of exposure exists
- **Assessment Plan:** Confirm exposure of trust resources and develop an assessment plan to identify how the potential damages will be evaluated
- **Assessment Implementation:** Purpose is to gather data necessary to quantify the injuries and determine damages
- **Post-Assessment:** Prepare report detailing the results of the Assessment implementation plan; restoration alternatives are proposed and a preferred alternative is selected

IV. In Review



V. In Review

- Trust resources include both species and places
- Trustees may consider biota and their supporting ecosystems
- Definition of as trust resource is left to the trustee
- Responsibilities of trustees are not restricted to any single point in the Superfund or OPA processes



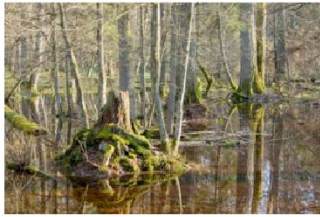
V. In Review . . .

- EPA is responsible for:
 - Notifying Trustees
 - Coordinating activities
- When a natural resource is injured, Trustees are responsible for:
 - Assessment
 - Restoration



V. In Review . . .

- EPA encourages participation by all affected Trustees
- Notification and coordination occurs throughout CERCLA and OPA processes





Certificates

- If you are interested in receiving a certificate for participating in this training, please send an email to Austin Oelschlager, Tetra Tech, at austin.oelschlager@tetrattech.com
- An electronic certificate will be emailed to you within 30 days

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