

[Electronic copy. Original on file in Office of Policy]

## **DIRECTOR'S ORDER #14: RESOURCE DAMAGE ASSESSMENT AND RESTORATION**

Approved: A. Durand Jones  
Acting Director

Effective Date: September 28, 2004

Sunset Date: September 30, 2008

### **Table of Contents**

- 1.0 Background
  - 2.0 Purpose and Scope
  - 3.0 Authorities and Related Guidance
  - 4.0 Definitions
  - 5.0 Special Delegations
  - 6.0 Principles and Policies
  - 7.0 Requirements and Instructions
  - 8.0 Responsibilities
- 

This Director's Order (DO) and its accompanying Handbook (Guidance for Implementing Damage Assessment and Restoration Activities in the National Park Service) expands on the provisions of 4.1.6 (Compensation for Injury to Natural Resources) and 5.3.1.3 (Compensation for Damages), in the NPS *Management Policies*. The DO replaces the interim delegations and responsibilities assigned by the Director in a memorandum issued on November 10, 1997 (Damage Assessment Responsibilities). This DO and Handbook also supercede any other NPS directives and/or guidelines applicable to resource damage assessment and restoration under the applicable statutes below that may have been issued previously by any office of the National Park Service.

### **1.0 BACKGROUND**

The National Park Service is responsible under the 1916 NPS "Organic Act" and a variety of other statutes (see NPS Management Policies 2001) for the management, protection and conservation of park resources and values in a manner that will leave them unimpaired for the enjoyment of future generations. Among these statutes, there are four that specifically allow the NPS to recover civil damages and agency costs from any person who destroys, causes the loss of, or injures any park system resource: 1) *The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended*, 42 U.S.C. §§ 9601 et seq; 2) *The Oil Pollution Act (OPA)*, 33 U.S.C. §§ 2701-2761; 3) *The Federal Water Pollution Control Act or Clean Water Act (CWA)*, 32 U.S.C. §§ 1251-1387, and; 4) *the Park System*

*Resource Protection Act (PSRPA)*, 16 U.S.C. § 19jj. The damages recovered are then used to restore, replace, or acquire the equivalent of the resources that were lost or injured. The NPS authority under these four statutes is derived from the delegated authority of the Secretary of the Interior.

The first three statutes authorize the NPS to act as trustee for *natural resources* injured as a result of releases of *hazardous substances* or discharges, or threats of discharge of *oil* affecting the national park system. The Secretary's authority as trustee under these three statutes covers *natural resources and natural resource services* belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Department of the Interior. This authority may be a shared authority. Trusteeship for some resources may overlap with other DOI bureaus, other federal agencies, and states or federally recognized tribes. It is the policy of the Department of the Interior to exercise, as appropriate, its natural resource trusteeship to the fullest extent authorized by law and to seek recovery of damages for injury to trust resources in order to accomplish restoration of the resource (see Departmental Manual, [521 DM 1](#)).

The fourth statute (PSRPA) provides the NPS its own separate authority to collect damages for injury to park resources, which is *not restricted to injury to natural resources* caused by oil spills or hazardous substance releases. It allows the NPS to seek recovery of damages for injury to *any park system resource* resulting from *any incident* caused by a person or instrumentality. PSRPA imposes strict liability (i.e., without fault) on individuals who cause injury to park system resources, and allows the NPS to recover and retain monies or services through settlements and/or litigation to protect and restore injured park system resources. In addition, this law allows the NPS to recover its costs for actions taken in responding to incidents that cause injury to park system resources, and actions taken to abate or minimize the imminent risk of injury to park system resources caused by the incident.

## **2.0 PURPOSE AND SCOPE**

This Director's Order sets forth the policy and special delegations under which the NPS will carry out its responsibilities to collect civil damages for injury to park system resources caused by actions of a third party, in order to restore those injured resources and resource services and collect appropriate costs incurred by the NPS for response actions and assessment. *The Damage Assessment and Restoration Handbook (herein the Handbook) combined with this Director's Order constitute the NPS standardized procedures and guidance for the PSRPA.*

Although the CERCLA, OPA and CWA have criminal and civil penalty provisions, the PSRPA and the provisions for the recovery of damages to natural resources under the other three statutes described above are strictly civil compensation authorities. This Order and its accompanying Handbook address the administrative and judicial process where responsible parties may incur a liability to the federal government. This liability is solely compensatory and not punitive in nature. These statutory authorities differ from other civil authorities and may be used concurrently or in addition to other criminal and civil authorities available to the NPS that may apply to the same incident. The PSRPA authority is specific to NPS managed sites and is complementary to the CERCLA, OPA and CWA authorities. Thus PSRPA is used in addition to these statutes when appropriate and where incidents involving the release of oil or hazardous substances occur.

This Director's Order and Handbook do not document all procedures and requirements for the collection of response costs and civil damages under these statutes, other than for the Park System Resource Protection Act. The Secretary's trust responsibility and the delegated authority of the Director of the National Park Service under CERCLA, OPA and CWA, are controlled by other procedures developed by the DOI and the Department of Commerce. The NPS will follow all applicable policy, regulations and procedures for these other authorities as may be described and referenced in this order and handbook so as to ensure the greatest benefit to the NPS, its resources, and the services they provide.

This order is intended only to improve the internal management of the NPS and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its department, agencies, instrumentalities or entities, its officers or employees, or any other person.

### 3.0 AUTHORITIES AND RELATED GUIDANCE

The general authority for issuing this Director's Order is contained in the NPS Organic Act 16 U.S.C. 1 through 4, and the delegation of authority contained in Part 245 of the Department of the Interior Manual (DM). Other laws and regulations applicable to the subject matter in this Director's Order include:

- 16 U.S.C. § 19jj et seq. Park System Resource Protection Act, as amended by the Omnibus National Parks and Public Lands Management Act of 1996;
- 33 U.S.C. § 1251 et seq. Federal Water Pollution Control Act or Clean Water Act (CWA), as amended;
- 42 U.S.C. § 9601 et seq. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended;
- 33 U.S.C. § 2701 et seq. Oil Pollution Act of 1990 (OPA);
- Executive Order 12580, Superfund (CERCLA) Implementation, as amended (designates the Federal trustees for natural resources);
- Executive Order 12777, Implementation of Section 311 of the Clean Water Act, as amended, and the Oil Pollution Act of 1990 (OPA) (designates the Federal trustees for natural resources);
- 40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan (NCP);
- 43 CFR Part 11, Natural Resource Damage Assessment Regulations for CERCLA;
- 15 CFR Part 990, Natural Resource Damage Assessment Regulations for OPA;
- 43 U.S.C. §§ 1474b and b-1, Department of the Interior Natural Resources Damage Assessment & Restoration Fund (first established as the Natural Resource Damage Assessment and Restoration Fund, it is now referred to as the Restoration Fund);
- P.L. 102-154, Interior and Related Agencies Appropriations Act of 1992 (authorizes receipt of payments for damage assessment and restoration activities to be made available without further appropriation until expended);
- P.L. 102-229, Emergency Supplemental Appropriations for Fiscal Year 1992 (provides that the Restoration Fund receipts are authorized to be invested and interest made available until expended);
- P.L. 104-134, Interior and Related Agencies Appropriations Act of 1998 (provides authority to make transfers of settlement funds from the Restoration Fund to other federal trustee agencies and payments to non-federal trustee agencies).

## 4.0 DEFINITIONS

- 4.1 **Authorized Official (AO):** For CERCLA, OPA, and CWA, the Authorized Official or AO is the Departmental official delegated the authority to act on behalf of the Secretary to conduct natural resource damage assessments, restoration planning and implementation. For PSRPA, the Authorized Official is the NPS official delegated the authority to act on behalf of the Secretary and the Director to implement all activities under 16 U.S.C. 19jj.
- 4.2 **Baseline:** Baseline refers to the condition of the resource and the resource services that would have existed had the injury not occurred.
- 4.3 **Case Team:** A case team is the group of individuals responsible for managing and overseeing the damage assessment phase, including injury assessment, restoration determination and claim resolution.
- 4.4 **Damages:** For PSRPA, damages are those specified in section 16 U.S.C. § 19jj(b) of PSRPA. For OPA, damages means damages specified in 15 CFR Section 990.30 and as authorized in section 1002(b)(2) of OPA. For CERCLA and CWA, damages means damages as specified in 43 CFR Section 11.14(l) and as authorized in section 107(a)(4)(C) or 111(b) of CERCLA. In general, damages means the amount of money or the value of restoration actions sought as compensation for injuries caused to resources and resource services, plus assessment costs.
- 4.5 **Incident:** Incident means an individual occurrence or event that results in a response action by the NPS or other authorities, or which either threatens injury to park system resources or results in actual or suspected injury or loss to park system resources.
- 4.6 **Injury:** Injury means an observable or measurable adverse change in a Park System Resource, or loss or diminishment of services provided by a park system resource. An injury to any park system resource or service may constitute impairment as defined in the NPS Management Policies 2001, but impairment is not necessary in order to have an injury.
- 4.7 **Park System Resource:** Under PSRPA, a park system resource means any living or non-living resource located within the boundaries of a unit of the National Park System, except for resources owned by a non-Federal entity. Park system resources thus include natural resources, cultural resources, and physical facilities associated with the park.
- 4.8 **Natural Resources:** Under OPA, CERCLA and CWA, the definition of natural resources generally 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, or any foreign government (15 CFR 990.30; 43 CFR 11.14(z)).
- 4.9 **Project Team:** A project team is the group of individuals responsible for managing and overseeing restoration planning and implementation actions taken following claim resolution.
- 4.10 **Response:** For PSRPA, response includes actions as specified in section 16 U.S.C. § 19jj-2(b)(1) of PSRPA, including all necessary actions to prevent or minimize the destruction, loss of, or injury to Park System resources, or to minimize the imminent risk of such destruction, loss, or injury. Under OPA, response is specified at 15 CFR 990.30, and under CERCLA at 43 CFR 11.14(jj).

- 4.11 **Responsible Parties:** Responsible parties include individuals, corporations, or other entities whose actions caused the injury to park system resources.
- 4.12 **Restoration:** Restoration is the return of affected resources and services to baseline conditions. Restoration actions can include replacement and the acquisition of the equivalent resources or resource services that were either lost or diminished.
- 4.13 **Restoration Fund:** The Restoration Fund is the Natural Resource Damage Assessment and Restoration (NRDAR) Fund as established by the Fiscal Year 1992 Interior and Related Agencies Appropriations Act (P.L. 102-154) that provides permanent authority to accept receipts for damage assessment and restoration activities collected under the specific authorities of CERCLA, OPA, CWA, and the PSRPA. It also authorizes restoration receipts to be invested and the principal and accrued interest to be held until expended for restoration purposes without further Congressional approval.
- 4.14 **Services:** Services refer to, but are not limited to, the ecological or physical and human use functions provided by a park system resource.

## 5.0 SPECIAL DELEGATIONS

- 5.1 The Department of the Interior Manual (DM), at 207 DM 6, delegates authority to the Director of the National Park Service and other Department officials to carry out the Secretary's responsibilities as trustee for natural resources under CERCLA, OPA and CWA. 207 DM 6.3B grants authority to the Director of the NPS to act on behalf of the Secretary as the Authorized Official (AO) in conducting Natural Resource Damage Assessment and Restoration (NRDAR) activities when so designated by the Department. This authority includes authority for NRDAR activities that cross agency functional lines or which are the responsibility of another bureau.
- 5.2 521 DM 1-3 identifies authorities and prescribes Department policy to carry out responsibilities related to the NRDAR program and activities. 521 DM 2.3J prescribes the authority, duty and responsibility of the AO.
- 5.3 The authority delegated to the Director of the NPS in 207 DM 6 is hereby re-delegated to the Associate Director Natural Resource Stewardship and Science (AD-NRSS). The authority granted by this delegation may be re-delegated at the discretion of the AD-NRSS, but no lower than to a Regional Director or equivalent level (207 DM 6.3C).
- 5.4 The authority granted to the Secretary to carry out the responsibilities for 16 U.S.C. § 19jj and delegated to the Director of the National Park Service in 245 DM 1.1 is hereby re-delegated to the Associate Director Natural Resource Stewardship and Science (AD-NRSS).
- 5.5 The AD-NRSS, as delegated Authorized Official for the National Park Service in Paragraphs 5.3 and 5.4, is granted the authority to approve, on behalf of the NPS, all proposed litigation referrals and settlements (administrative and judicial) for damages to park system resources under PSRPA, CERCLA, OPA, and CWA. For proposed settlements involving applicable sections of CERCLA response cost recovery, the delegation of authority for resource damages may apply concurrently with that of the Associate Director, Park Planning, Facilities, and Lands for response actions. Under this circumstance both Associate Director's must approve actions.

## 6.0 POLICIES

The NPS has established its own policies regarding implementation of the civil damages provisions of the four statutes described in Section 1.0. The policies, along with the requirements and instructions of this Director's Order, are based on seven operating principles that were developed in consultation with the Department of Justice, Environmental Enforcement Division, and the Department of the Interior Office of the Secretary and Office of the Solicitor for use in developing the PSRPA procedures. These principles include: 1) apply the law consistently; 2) establish successful precedents; 3) establish solid technical basis for claims; 4) develop a separate process for small claims; 5) develop a process to track and monitor cases; 6) establish a single revenue stream for accountability of damages collected and spent; and 7) provide for accountability in all aspects of the program. The following policies, which are based on these 7 principles, address the NPS's specific authority under PSRPA and the applicable Departmental policies for OPA, CERCLA and CWA.

- 6.1 **Consistency with Departmental Policy.** The NPS recognizes and incorporates by reference the 207 DM 6 and 521 DM 1-3 policies of the Department of the Interior for OPA, CERCLA, and CWA.
- 6.2 **Taking Appropriate Actions.** The National Park Service will take appropriate actions necessary to prevent or minimize the destruction, loss of, or injury to park system resources, or to minimize the imminent risk of such destruction, loss, or injury.
- 6.3 **Seeking Compensation.** When an injury occurs to a park system resource as defined by the PSRPA, or to natural resources or resource services as defined by CERCLA, OPA, and CWA, the NPS will seek when appropriate and feasible, compensation for that injury and for any loss in services provided by the resource, and for restoring the resource and its services to baseline.
- 6.4 **Recovering Damages and Costs.** The NPS will seek recovery of all damages and costs including indirect costs and administrative overhead charges, and response and assessment costs, allowable under these laws. Under the PSRPA, damages include compensation for: 1) The costs of replacing, restoring, or acquiring the equivalent of a park system resource; and the value of any significant loss of use of a park system resource pending its restoration or replacement or the acquisition of an equivalent resource; 2) The value of the park system resource in the event it cannot be replaced or restored. The NPS will also seek to recover all damage assessment costs and response costs, including those costs for actions taken by the NPS to prevent or minimize injury or loss to resources, and to abate or minimize the imminent risk of any destruction, loss, or injury to park system resources, and to monitor the ongoing effects of the incident.
- 6.5 **Using Funds Recovered in Damage Claims.** All funds recovered for restoration will be used only to restore, replace, or acquire the equivalent of injured resources and services, and to monitor and study such resources as may be necessary to effect successful restoration and monitor ongoing injury and/or restoration success.
- 6.6 **Determining Resource Value.** When placing an economic value on park system resources and resource services, it is imperative that the valuation process be conducted in a manner that is well documented, consistent and supportable. The NPS will employ only generally accepted economic and other appropriate methodologies that account for non-market and market values. This will promote consistency in assessment techniques and resource valuation in the quantification of claims for injury to park system resources or in setting compensation for injury to resource services (see Handbook, Section 4, and Appendix E).

- 6.7 **Defining Restoration Needs.** When determining injury and considering restoration actions, the park superintendent should evaluate restoration needs in the context of resource management and park management objectives already identified in planning documents such as general management plans, or implementation plans such as land protection plans, and resource management plans. In all cases, the NPS will consider primary restoration on-site and in-kind, whenever, and wherever feasible to do so. The NPS will also implement, where appropriate, restoration of all lost services associated with injured park system resources, with an emphasis on restoring comparable resource services as further defined in the Handbook.
- 6.8 **Managing Funds.** All funds collected and/or recovered for injuries to park system resources will be deposited in park-specific accounts in the Department of the Interior Restoration Fund and reallocated to appropriate NPS accounts when requested. The Handbook identifies specific procedures regarding withdrawal, management, and reporting of collected funds.
- 6.9 **Restoring Resources.** Once recovery of damages is made, the NPS will implement feasible and effective restoration of all injured park system resources in a timely manner.

## 7.0 REQUIREMENTS AND INSTRUCTIONS

### 7.1 Preventing and Minimizing Injury and the Threat of Injury, to Park Resources

- 7.1.1 When feasible and appropriate, the superintendent should use internal ONPS funds and/or emergency funds to take response and/or emergency restoration actions when an incident occurs which either injures or threatens to injure park system resources, in order to prevent or minimize the injury, or threat of injury.

### 7.2 Assessment and Claim Development

- 7.2.1 When conducting an assessment and developing a claim for the restoration of injured park resources subject to either PSRPA, OPA, CERCLA, or CWA, the NPS will comply with the guidance provided in this Director's Order and the Handbook. Other applicable procedures found at 43 CFR Part 11 (for releases of a hazardous substance) and 15 CFR Part 990 (for incidents involving an oil spill) will also be followed when it is practical and appropriate to do so.
- 7.2.2 A case team approach will be followed on all cases conducted under PSRPA as specified in the Handbook. At a minimum, each case team will consist of an assigned case officer from the Environmental Quality Division's Environmental Response, Damage Assessment and Restoration Branch (EQD/ERDAR), a representative from the park, and an attorney from the Solicitor's Office. It will be the responsibility of the case team to manage the case to achieve the greatest opportunity to successfully recover the necessary funds or resources to accomplish restoration.
- 7.2.3 When damages are pursued under CERCLA, OPA, or CWA, the affected park unit will cooperate with other involved federal, state, or tribal trustee agencies as appropriate in assessing injury, presenting a joint claim for damages, and planning for and implementing restoration actions.

### 7.3 Required Consultations and Approvals

- 7.3.1 When preparing a Demand Letter or proposed claim for damages to park system resources including appropriate costs, the park unit involved will consult with the Solicitor's Office

and the EQD/ERDAR and follow the procedures prescribed in the Handbook. For CERCLA response costs, the park will also follow any procedures that may be defined and/or outlined by the Associate Director, Park Planning, Facilities, and Lands.

- 7.3.2 All claims, settlement positions, and litigation positions will be recommended, concurred with, and approved according to the procedures outlined in the Handbook. Unless specifically re-delegated to the appropriate regional director, only the AD-NRSS has the authority to approve the recommendation to the Solicitor of settlements for injuries to park system resources. For claims involving joint action under CERCLA involving both NPS response costs and resource damages, the AD-NRSS must obtain approval from the Associate Director, Park Planning, Facilities, and Lands for the response cost portion of the claim before final approval is given. For claims involving injury to cultural resources, the Associate Director, Cultural Resources must concur with the recommended agency position.
- 7.3.3 Only the Office of the Solicitor and the Department of Justice have the authority to approve settlements of the National Park Service for injuries to park system resources and/or to release responsible parties from civil liabilities under these authorities.

#### 7.4 **Restoration**

- 7.4.1 When undertaking restoration, the NPS will comply with the guidance provided in this Director's Order and the Handbook.
- 7.4.2 The NPS will plan for and implement restoration actions in a timely manner.
- 7.4.3 A project team approach will be followed on all restoration actions as specified in the Handbook. The project team will be formed within three months following the receipt of and/or deposit of restoration funds into the DOI Restoration Fund and should consist, at a minimum, of a park representative assigned by park management, and a project manager assigned by EQD/ERDAR.
- 7.4.4 The affected park unit will cooperate with other involved federal, state, or tribal trustee agencies as appropriate in planning for and implementing restoration actions.
- 7.4.5 For all PSRPA restoration recoveries, the superintendent will prepare appropriate restoration plans and other documents necessary to comply with all applicable environmental compliance requirements, and certify upon completion, all restoration projects as directed in the Handbook.

#### 7.5 **Recordkeeping and Reporting**

- 7.5.1 The NPS will track and document all response costs and assessment costs related to PSRPA, CERCLA, OPA or CWA actions. Documentation of costs should be kept in accordance with instructions in the Handbook for PSRPA, OPA and CWA. For CERCLA response costs, the NPS CERCLA Enforcement Guide and/or any other guidance from the Associate Director, Park Planning, Facilities and Lands should be followed. For OPA response costs and initiation of damage assessment, guidance provided by the National Pollution Fund Center (NPFC) and specifically the Technical Operating Procedures for determining costs and required documentation will be used in addition to the instructions found in the Handbook.

- 7.5.2 Parks will report all recoveries of damages for injuries caused to park resources, restoration actions, and agency expenditures related to PSRPA activities, including “in-kind” services received, to the EQD/ERDAR for the purposes of annual reporting to the Director and for the determination of any excess funds as required by 16 U.S.C. 19jj-3(c).

## **8.0 RESPONSIBILITIES**

### **8.1 Director**

- 8.1.1 Sets National Park Service policies and goals, and establishes a system of accountability for implementing those policies and accomplishing the goals.
- 8.1.2 Carries out natural resource trustee responsibilities as delegated by the Secretary of the Interior.
- 8.1.3 Designates an Authorized Official for the National Park Service.

### **8.2 Associate Director, Natural Resource Stewardship and Science**

- 8.2.1 Exercises the authority of the Director to develop and manage the NPS Damage Assessment and Restoration Program to implement NPS policies.
- 8.2.2 Serves as the Authorized Official (AO) for the National Park Service. May re-delegate Authorized Official responsibilities to the regional director as appropriate.
- 8.2.3 Cooperates with the Associate Director, Visitor and Resource Protection (AD-VRP) in developing appropriate coordination between civil and criminal processes for incidents involving injury or harm to park system resources.
- 8.2.4 Provides timely advice to the Associate Director, Visitor and Resource Protection concerning recommended actions with regard to the protection of park system resources potentially affected by emergency response actions undertaken and/or overseen by the NPS under applicable sections of OPA, CERCLA, and CWA.
- 8.2.5 Cooperates with the Associate Director, Cultural Resources (AD-CR) in the development of injury determination, resource valuation and restoration procedures/methodologies for damages claims covering cultural resources under PSRPA, and seeks concurrence by the AD-CR for all settlements and/or agreements involving injury to cultural resources.
- 8.2.6 As AO, approves and submits proposed claims for damages to the Solicitor within the timeframe applicable to the specific case as recommended by the Solicitor for action or referral to the Department of Justice. Also provides formal concurrence to the Solicitor for any proposed settlement and/or administrative agreements as appropriate. When CERCLA response cost recovery is involved, ensures concurrent approval with the Associate Director, Park Planning, Facilities, and Lands.
- 8.2.7 Serves on the Department of the Interior Restoration Program Executive Board as the National Park Service member.
- 8.2.8 Authorizes all deposits and withdrawals to the DOI NRDAR Fund. May re-delegate this function to EQD/ERDAR as appropriate.

- 8.2.9 Approves an annual report to the Director of recoveries and actions under the PRSPA.
- 8.2.10 Determines whether any recovered funds should be considered excess funds pursuant to 16 U.S.C. 19jj-3(c).

### **8.3 Associate Director, Administration, Business Practices, and Workforce Development**

- 8.3.1 Supports the AD-NRSS in cost recovery actions, including potential audits by Defendants and the Department of Justice where payroll records, completed and paid vouchers, agency purchase orders and other financial records dealing with expenditures or obligations of government funds are necessary.
- 8.3.2 Prepares and keeps current appropriate indirect and overhead cost rates for the National Park Service. These rates must be developed according to standard accounting principles and certified for purposes of proving cost recovery claims in a court of law.
- 8.3.3 Prepares appropriate labor and equipment cost rates for the NPS to support full cost recovery under PSRPA, CERCLA, OPA and CWA. These rates must be developed according to standard accounting principles and certified for purposes of proving cost recovery claims in a court of law.
- 8.3.4 Provides support as necessary to the DOI Restoration Fund Manager to adequately allocate, track and account for NPS monetary recoveries for damage assessment and restoration under the PSRPA, CERCLA, OPA and CWA.
- 8.3.5 Ensures that any excess portions of recovered funds collected under PSRPA are deposited into the General Fund of the United States Treasury as required by 16 U.S.C. 19jj-3(c).

### **8.4 Associate Director, Visitor and Resource Protection**

- 8.4.1 Cooperates with the AD-NRSS in developing appropriate coordination among civil and criminal processes related to actions taken in pursuit of incidents resulting in injury or harm to park system resources.
- 8.4.2 Coordinates closely with the AD-NRSS when emergency actions under applicable sections of CERCLA and OPA for both natural resource damages and response actions are concurrently pursued.
- 8.4.3 Cooperates with the AD-NRSS in the management and annual reporting of response costs and restitution recovered by the agency under any federal, state, or local law or regulation as a result of injury to park system resources both living and nonliving, pursuant to 16 U.S.C. 19jj-3, and retained by the NPS under this same authority.
- 8.4.4 Notifies the AD-NRSS when the NPS is involved with response and/or removal actions involving the discharge of oil and/or release of hazardous substances which potentially effect or threaten to effect park system resources. Coordinates with the AD-NRSS on assessments, evaluations, and planning with respect to appropriate response/removal actions, and on any civil and/or criminal investigations undertaken for the incident.
- 8.4.5 Ensures that NPS All Risk Incident Management Teams that may be assigned to assist a park in an emergency response action under applicable sections of OPA, CERCLA, and CWA, coordinates with the NPS Case Team conducting resource damage assessment for

consideration in calculating damages and determining appropriate resource protection and restoration goals.

- 8.4.6 Designates a liaison to AD-NRSS for program coordination, policy development, guideline and procedure development, OPA and CERCLA emergency response coordination, joint training, and field support.

## 8.5 Associate Director, Park Planning, Facilities, and Lands

- 8.5.1 Notifies the AD-NRSS and/or designee in ERDAR when a discharge or release occurs at an NPS owned and/or operated facility requiring the NPS to take response actions under applicable sections of OPA, CERCLA, and CWA, and which has injured or threatens to injure park system resources.
- 8.5.2 Consults with the AD-NRSS when response actions undertaken by the NPS at its own facilities may potentially harm and/or threaten to harm park system resources in order to determine appropriate resource protection measures.
- 8.5.3 Notifies the AD-NRSS upon receipt of a formal notification from another federal, state, or tribal natural resource trustee agency that they are initiating a natural resource damage assessment to determine if trust resources under their jurisdiction have been affected and/or potentially affected by a release from an NPS facility.
- 8.5.4 Coordinates with the AD-NRSS when the NPS is the lead agency in response actions under applicable sections of CERCLA and if the response actions under the direction of the NPS may cause injury or threaten to cause injury to park system resources. Ensures that the NPS Project Manager for the response action coordinates with the NPS Case Team conducting resource damage assessment for consideration in calculating damages and determining appropriate resource protection and restoration goals.

## 8.6 Associate Director, Cultural Resources

- 8.6.1 Cooperates with the AD-NRSS to develop consistency within Directorate programs related to injury determinations, valuation, and restoration of cultural resources in support of civil damage actions under the PSRPA.
- 8.6.2 Reviews all proposed litigation referrals, settlements, and agreements for PSRPA cases involving cultural resources and provides concurrence to the AD-NRSS prior to pursuing the claim.
- 8.6.3 Cooperates with the AD-NRSS in the annual reporting of response costs and damages recovered by the agency under any federal, state, or local law or regulation as a result of injury to park system resources both living and nonliving, pursuant to 16 U.S.C. 19jj-3, including recoveries made under Archaeological Resource Protection Act (ARPA) and retained by the NPS under this same authority.
- 8.6.4 Appoints a liaison to AD-NRSS for program coordination, policy development, guidance and procedure development, joint training, and field support.

## 8.7 Regional Director

- 8.7.1 Serves as the Authorized Official (AO) when delegated by the AD-NRSS.

- 8.7.2 When delegated AO becomes familiar with AO responsibilities and complies with all policies and procedures as outlined in 521 DM 2 and 2.3J specifically, and this Director's Order and Handbook.
- 8.7.3 When AO, approves and submits to the Solicitor for action settlement and/or litigation positions on park service cases and those cases involving other DOI Bureaus as appropriate when pursuing actions under OPA, CWA or CERCLA.
- 8.7.4 If not designated AO, reviews and concurs with damages claims, settlement and/or litigation positions submitted by parks, and forwards to the AD-NRSS for approval and referral to the Solicitor for action.
- 8.7.5 Assures the reporting of all recoveries made pursuant to PSRPA to the AD-NRSS including donations of services and/or money provided under 16 U.S.C. 19jj-4.

## 8.8 Superintendent

- 8.8.1 Complies with all provisions of this Director's Order and Handbook.
- 8.8.2 Takes response or restoration actions as appropriate to prevent or minimize the injury, or threat of injury to park system resources.
- 8.8.3 Notifies and consults with EQD/ERDAR and the Solicitor upon discovery of a potential injury to a park system resource caused by the actions of a third party, and appoints appropriate park representative/s to the Case Team assigned to develop claim for restoration and the recovery of agency costs.
- 8.8.4 In coordination with Case Team and/or Project Team;
- Tracks, documents and certifies all costs related to incidents involving injury to park resources where a claim for damages under these authorities is contemplated, including costs for technical support provided by other NPS offices, contractors, and the SOL. Properly separates and tracks both response costs and assessment costs as may be necessary under the individual provisions of PSRPA, OPA or CERCLA. Follows the instructions for this purpose in the Handbook and other appropriate guidance as needed.
  - Seeks appropriate expertise and funding to conduct necessary injury assessment and restoration determination to provide the NPS with adequate support of a claim for damages in litigation if necessary.
  - Prepares injury assessment and restoration determination documents as necessary to support claims for damages.
  - Participates in joint federal, state, and tribal Trustee Councils involved in multi-jurisdictional damage assessment and post recovery restoration planning and implementation activities as necessary and appropriate and where park system resources are involved or potentially involved.
  - Initiates appropriate documents to deposit and withdraw monetary recoveries from the DOI Restoration Fund or Court Registry Investment System as prescribed in the Handbook. Also properly manages allocations from the DOI Restoration Fund obtained for either damage assessment support or restoration projects in order to account for expenditures as required by law and Department policy.

- Oversees implementation of all restoration actions in the park and, when completed, certifies the amount/s spent and the projects completed to the AO and EQD/ERDAR for final case disposition.
- 8.8.5 Recommends claims for damages and settlement or litigation positions to the regional director for concurrence or approval as appropriate.
- 8.8.6 Reports any services provided by a responsible party during response activities under 16 USC 19jj-4 to EQD/ERDAR. Also, reports any restoration work and/or services provided by responsible parties received in settlement for liabilities under PSRPA, OPA, CERCLA or CWA to EQD/ERDAR.

### **8.9 Chief, Environmental Quality Division/Environmental Response, Damage Assessment, and Restoration Branch**

- 8.9.1 Provides direct support to the AD-NRSS for the development of national program policy, guidance, and technical assistance for NPS damage assessment and restoration activities.
- 8.9.2 Manages the NPS resource damage assessment and restoration docket for all cases under PSRPA, OPA, CWA and CERCLA.
- 8.9.3 Provides policy review, consistency reviews, and concurrence for all proposed claims for injury to park system resources under these statutory authorities and recommends appropriate actions to the AD-NRSS for resolution.
- 8.9.4 Provides the NPS member to the DOI NRDAR Work Group pursuant to 521 DM 2.2G and 2.2I.
- 8.9.5 Provides case management and/or oversight and technical assistance on all damage assessment cases as outlined in the Handbook.
- 8.9.6 Provides project management assistance and/or oversight and technical assistance on all restoration actions as outlined in the Handbook.
- 8.9.7 Ensures all appropriate NPS damages and costs are documented, reported and submitted for adequate cost recovery.
- 8.9.8 Prepares the Annual Report to the Director for the AD-NRSS on all activities under the Park System Resource Protection Act.
- 8.9.9 Recommends and submits proposals to the DOI Restoration Fund on behalf of the NPS for funding support on CERCLA and CWA Natural Resource Damage Assessment cases.
- 8.9.10 Recommends and submits proposals to the National Pollution Funds Center (NPFC) for emergency restoration, initiation of damage assessment, and damage assessment and restoration planning activities under OPA. Also submits claims for uncompensated damages resulting from injuries to park resources to the NPFC for adjudication and payment.
- 8.9.11 Ensures proper use and accountability of all non-appropriated funds recovered for past costs and future planning and oversight costs designated on the deposit slips for use by ERDAR. Oversees withdrawals of past and future costs from the Restoration Fund as

needed to ensure compliance with the policies governing use of the Fund by DOI Bureaus.

**8.10 Park Resource Specialist and/or other NPS Technical Expert**

- 8.10.1 Is knowledgeable of technical and scientific information on park system resources and the quality of such information.
- 8.10.2 Through participation on case teams, identifies additional resource information needs and technical and scientific studies necessary to ensure that adequate information exists to support a damages claim for injury to park system resources in a Court of law.
- 8.10.3 Has knowledge of the injury assessment and restoration determination process and procedures.
- 8.10.4 When designated a case team member, seeks assistance from EQD/ERDAR and other NPS offices, as needed, to facilitate injury assessment, restoration determination, planning and implementation. May represent more than one NPS unit on large complex multi-jurisdictional cases.
- 8.10.5 Based on professional knowledge, experience and judgment, is able to support park decisions on the determination of the level and extent of injury to park system resources, and the techniques and/or methodologies selected to restore those resources.

*---End of Director's Order---*