



# Department of the Interior Natural Resource Damage Assessment and Restoration: Program Review

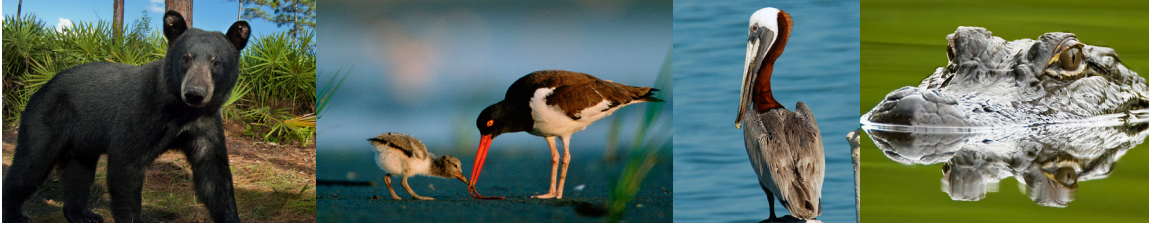
Prepared by Lynn Scarlett, with the National Wildlife Refuge Association

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National  
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Association

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## I. Executive Summary Findings & Recommendations

The *Office of Restoration and Damage Assessment* (ORDA) in the Department of the Interior is undertaking a strategic review of the Natural Resource Damage Assessment and Restoration (NRDAR) Program and its management to identify key needs and opportunities to enhance performance, transparency, and accountability. This report contributes to that process by providing an independent assessment, based on interviews and a review of published materials, budget documents, and other reports. The ORDA plays a central role in developing consistent policies and in coordinating actions of Interior's six bureaus and three offices engaged in implementing NRDAR responsibilities. This coordination helps ensure the responsible parties are able to focus on a unified assessment and restoration plans. A large, recent influx of funds and other concerns about transparency, efficiency, accountability, and effectiveness have motivated NRDAR program managers to explore continuous improvements and reexamine program infrastructure and staffing on a Department-wide basis. This report contributes to that exploration and offers several areas for suggested program improvements.

***Transparency and Decision Clarity:*** Overall opportunities for continued improvement regarding transparency include 1) strengthening communication with the field; 2) working with bureaus to clarify skills required, ensure adequate training, and 3) developing model performance measures with which bureaus can assess participant performance.

***ORDA and Bureau Capacities:*** Recommendations for improving capacities fall into five categories, including: 1) enhanced training, particularly in the field, on collaborative processes and multi-criteria decision analysis; 2) enhanced capacity support by ORDA in providing specialized services such as contracting officers, realty support, restoration planning, NEPA compliance, engineering support, and dedicated project oversight for large projects; 3) increased funding for skilled case managers; 4) reassessment of program delivery structures, with a particular focus on alignment of skill sets with required tasks and alignment of structures with incentives for timely action and significant restoration outcomes; 5) enhancing coordination with other offices and agencies, including supporting studies at higher levels early on to speed up movement to final settlements; clarifying EPA processes and the role and decisions of remediation managers

***Efficiency:*** As ORDA strives to enhance program efficiency, it would benefit from working with bureaus and possibly outside experts a) to refine the measures through which efficiency is measured; and work with external stakeholders and industry in developing clearer guidelines for identifying endpoints and determining how much information is enough information. There are also opportunities to increase use of cooperative assessments in the field through guidance, case support, and, possibly, by reviewing “best practices.”

***Effectiveness of Restoration Projects:*** There are several opportunities for ORDA to influence restoration outcomes, including influencing durability; scale; planning and leveraging; and measures. ORDA could:

- Assist trustees in developing best practices regarding monitoring—tailored to project scale. Guidance on when and how to include monitoring in NRDAR projects could enhance long-term outcomes



(and transparency). Once Responsible Parties settle a case, they don't typically have responsibility for implementing restoration projects.

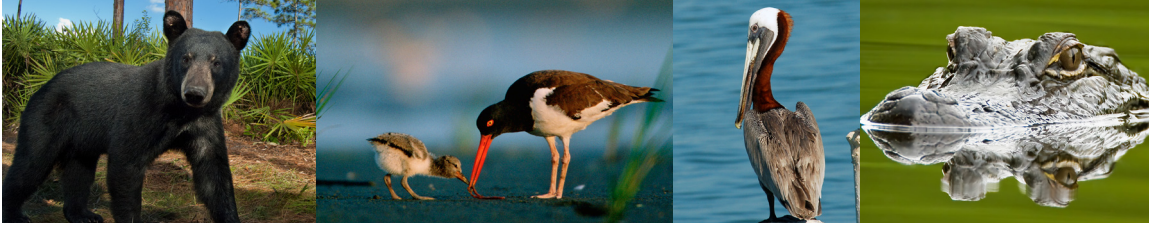
- Assist in identifying best practices for how trustees can work with Responsible Parties to monitor and report on project results.
- Enhance the pooling of smaller settlements into projects at broader landscape scales. ORDA could assist trustees in these efforts by working with them to develop criteria for taking larger scale benefits into consideration when identifying and selecting specific restoration projects.
- Identify best practices in working with Non-Government Organizations (NGOs) to identify restoration project opportunities to which settlement funds could be directed and explore the role of the Landscape Conservation Cooperatives (LCCs) in helping identify possible restoration actions that contribute to outcomes larger than an individual settlement agreement.
- Help identify and assist trustees in building upon existing watershed, landscape, and flyway scale restoration plans, where appropriate.
- Work with agencies to use “enterprise” approaches for case management of restoration efforts in which the focus is on overall project goals rather than on agency-specific goals/needs.
- Draw from extensive efforts in the academic, nonprofit, public and private sectors to improve measures pertaining to natural resource management and assess how to refine program performance measures.

## II. Purpose of Report

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The *Office of Restoration and Damage Assessment* (ORDA) in the Department of the Interior is undertaking a strategic review of the program and its management to identify key needs and opportunities to continue to enhance performance, transparency, and accountability. This report contributes to that process by providing an independent assessment, based on interviews and a review of published materials, budget documents, and other reports.

The focus of this report is on the Department's program management through the Office of Restoration and Damage Assessment and not on the broader political, policy, legal, and regulatory structures and processes that shape natural resource damage assessments, plans, and restoration activities. These broader considerations have undergone decades of scrutiny, debate, and discussion pertaining to methodologies for assessing damages, scope of responsible party liabilities, roles of “trustees” of public resources (federal, state, and tribal), and other substantive policy issues about the underlying legal authorities and implementation of the program. These considerations are both significant and important, but addressing them involves fundamental matters of public policy. The focus of this report is, instead, on the ORDA coordination and management, at the departmental level, of the program and on the interface of that management with Interior bureaus responsible for program implementation in the field at specific sites and with other program participants, partners, and experts.



### III. Report Preparation and Methods

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To prepare this review, we relied primarily on interviews, with a particular focus on federal agency program participants, other program partners, as well as some private-sector experts (See Appendix 1 for a list of interviewees). In addition, a review of relevant publications, including budget documents and performance reports, as well as academic and conference literature, was undertaken. The literature on damages methodologies is vast; a review of that literature was not deemed relevant for this strategic review though it figures prominently in legal and analytical disputes and discussions about natural resource damages assessment and restoration. Instead, the focus was on documents and publications that could illuminate issues pertaining to program performance and management (See Bibliography).

The review was centered on four topics: program efficiency, accountability, capacity, and effectiveness. (See Appendix 2 for the questions used in interviews).

### IV. Background: Natural Resource Damage Assessment and Restoration Program

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#### A. Legal Authorities—Brief Summary

The Natural Resource Damage Assessment and Restoration Program is authorized and guided by a series of laws, regulations, executive policies, and departmental policies and informed by several court decisions. Through these statutory and other legal foundations, the Department of the Interior and other trustees of federal, state, and tribal natural resources are authorized to protect and restore these natural resources (and the services provided by those natural resources) if they are harmed through releases and discharges of hazardous substances or through the discharge of oil. Of these authorities, three laws and their associated regulations predominate. These include:

- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 USC 9601, et seq.), including but not limited to sections 104, 107, 111(i), and 122. Regulations implementing the natural resource damage assessment and restoration (NRDAR) provisions are found at 43 CFR 11. Section 106 of the Act authorizes trustees for public natural resources to assess and recover damages for injury to these resources from releases of hazardous substances and use these recovered damages for restoration, replacement, or acquisition of equivalent natural resources. The statute provides for permanent authorization to appropriate receipts from responsible parties for assessment and restoration.
- Oil Pollution Act of 1990 (OPA) (33 USC 2701, et seq.), including but not limited to sections 1006 and 1012. Regulations implementing the NRDAR provisions of this statute are found at 15 CFR 990. The Act, which amends the CWA, authorizes natural resources trustees to claim and recover damages for injuries to these resources from responsible parties for vessels or facilities from which oil is discharged.



- Federal Water Pollution Control Act, or Clean Water Act (CWA), as amended (33 USC Sec. 1251, et seq.), including but not limited to section 311(f). The Act authorizes trustees for public natural resources to assess and recover damages for injuries to these resources caused by discharges of oil into or on navigable waters of the United States, shorelines, and other areas that may affect natural resources under the management authority of the United States.

These statutes provide processes through which agencies: 1) identify and quantify the adverse effects or “injury” to natural resources caused by a release or discharge; 2) identify actions to restore or replace the injured resources; and 3) seek damages from responsible parties to pay for the restoration, as well as the costs of assessing restoration needs. In addition to these statutes, some Interior agencies also have implementing guidance for the program.

Fundamentally, the purpose of the NRD assessment and restoration processes is to provide means by which federal, state, and tribal governments that manage and serve as trustees for public lands, waters, and other natural resources can assess injuries to those resources resulting from release or discharge of a contaminant or oil. The NRDAR processes and resulting payments for restoration do not constitute fines, punishment, or penalties.

## ***B. Departmental Policies and Guidelines—Summary***

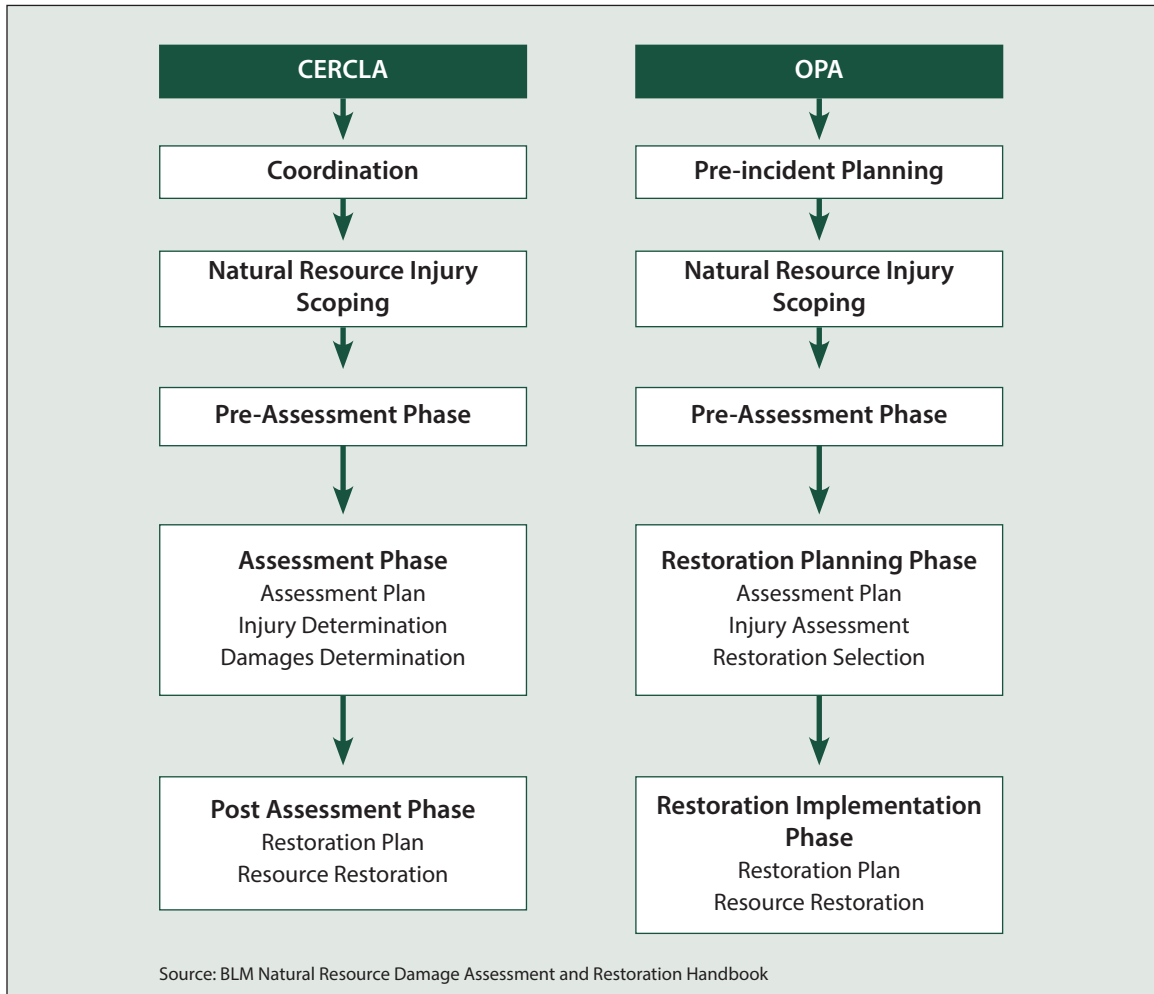
The Department of the Interior (DOI) has promulgated regulations and policies to guide the implementation of its NRDAR responsibilities. Departmental Manual 521 directs bureaus to “conduct NRDAR activities in accordance with the regulations under CERCLA (43 CFR Part 11) and OPA (15 CFR Part 990) to the greatest extent practicable, and develop and maintain an Administrative Record (AR) of actions taken during the assessment, restoration planning, and restoration process.” Relevant DOI policy documents include the Departmental Manual, Part 207, Chapter 6, “Natural Resource Damage Assessment and Restoration” (207 DM 6) and Departmental Manual, Part 521, Chapter 1, “Authorities and Policy,” Chapter 2, “Responsibilities,” and Chapter 3, “Signatory Authority.”

## ***C. Program Management Processes—Brief Overview***

Implementation of NRD assessment and restoration responsibilities involves five key steps, including: 1) coordination and pre-incident planning; 2) injured resource scoping and evaluation; 3) pre-assessment screening for a determination on whether to proceed with action; 4) natural resource damage assessment, comprising assessment planning, injury determination, injury quantification, and damages determination; and 5) post-assessment restoration planning, implementation, and monitoring. The actual process may vary, depending on the lead agency, particular circumstance, and whether the incident falls under CERCLA or OPA authorities. The Bureau of Land Management NRDAR Handbook provides a useful schematic of the decision process under CERCLA and OPA, respectively (see Figure 1).



**Figure 1: Decision Processes of NRDAR**



The DOI Office of Restoration and Assessment provides advice, recommendations, and coordination relating to the Interior Department’s NRDAR authorities, responsibilities, and implementation under CERCLA, OPA, and the CWA. The Office of the Solicitor, with eight regional offices, assigns attorneys to assist bureaus with NRDAR cases, and the Department’s Office of Policy Analysis has economic expertise to assist with NRDAR analyses, including use of various tools such as Habitat and Resource Equivalency Analysis. The Office of Environmental Policy and Compliance assists with National Environmental Policy Act requirements associated with NRDAR cases and provides links to response and remedial activities associated with oil spills and chemical releases.<sup>1</sup> The Department of the Interior, the five bureaus with primary natural resource management trust

<sup>1</sup> U.S. Department of the Interior, Budget Justifications and Performance Information, Fiscal Year 2015, Natural Resource Damage Assessment and Restoration Program, p. 4.



responsibilities, and the [US Geological Survey](#) (which provides scientific support) conduct damage assessments and restoration in partnership with co-trustees, including other federal agencies, states, and tribes. All restoration plans “must undergo public review and be approved by affected State and Tribal governments.”<sup>2</sup>

### ***D. Office of Restoration and Damage Assessment (ORDA) Role***

The ORDA plays a central role in developing consistent policies and in coordinating actions of Interior’s six bureaus and three offices engaged in implementing NRDAR responsibilities. The office “manages the confluence of the technical, ecological, biological, legal, and economic disciplines” and coordinates among the bureaus in allocating up-front funds for assessments. Once settlements with responsible parties are completed, recoveries—in cash and in-kind services—are used to reimburse assessment costs “and finance or implement restoration of injured resources, pursuant to a publicly reviewed restoration plan.”<sup>3</sup>

The ORDA role is simultaneously significant and constrained. On the one hand, the office plays a critical role, through an Executive Team, a Work Group, and its own staff, in at least four key activities: 1) development of department-wide regulations pertaining to implementation of NRDAR responsibilities; 2) coordination of decisions to allocate appropriated funds for initial assessments that may, ultimately, lead to settlements with responsible parties and cash or in-kind resources to undertake restoration (and reimburse any assessment costs undertaken up-front with appropriated funds); 3) training and capacity building within the Department and its bureaus; and 4) administrative support for contracting and other services necessary to undertaking assessments and restoration activities. Selection of damage assessment projects occurs through engagement of a Work Group involving all relevant Interior bureaus and, ultimately, an Executive Team. Through this process, the department applies screening criteria to select priorities that link to broader departmental priorities; consider likelihood of successful restoration; and take into account other legal, administrative, and technical factors.<sup>4</sup>

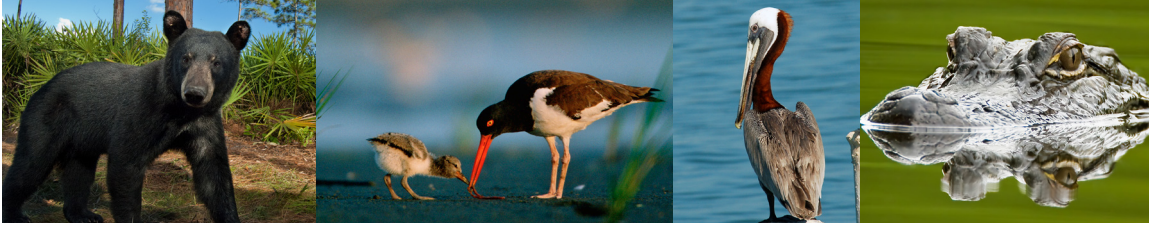
On the other hand, ORDA’s role is also constrained. Damage assessments (and subsequent restoration) are actually conducted by the five resource management bureaus within the Interior Department (Fish and Wildlife Service, Bureau of Land Management, National Park Service, Bureau of Indian Affairs, and Bureau of Reclamation). Their work is funded directly within each bureau. These bureaus, in turn, may work as co-trustees in conjunction with other federal and state agencies, as well as with tribes. By working collaboratively on particular damaged sites, co-trustees can share data, avoid duplicative analysis and administrative expenses, and collaborate with stakeholders jointly to develop agreed upon restoration plans and actions. The coordination also helps ensure the responsible parties are able to focus on a unified assessment and restoration plans. While these coordinated field efforts among co-trustees facilitate on-the-ground decision making, the ORDA office has little or no direct role in managing the timelines, collaborative processes, restoration activities, or post-restoration monitoring at specific damaged sites. Subsequent sections of this report will discuss the challenges that result from this “distributed” decision making and implementation context.

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<sup>2</sup> Ibid.

<sup>3</sup> U.S. Department of the Interior, Budget Justifications and Performance Information, Fiscal Year 2015, Natural Resource Damage Assessment and Restoration Program, p. 2.

<sup>4</sup> Ibid., p. 19.



## E. Funding

The Department of the Interior's NRDAR program comprises two primary funding elements: 1) congressional appropriations for damage assessments, restoration support, and overall program management; and 2) settlements and recoveries that include recovered assessment funds, restoration settlements, and interest proceeds from funds invested with the U.S. Treasury. Damage assessment funds provided to tribes go through the Bureau of Indian Affairs rather than directly to individual tribes. Other funds may also be available for damage assessments through the U.S. Coast Guard Oil Spill Liability Trust Fund, tribal resources, and advance funding from responsible parties.

The NRDAR appropriations for 2014, enacted by the Congress, were \$6,623,000. Over the past four years, the program has received an average of over \$135 million each year in restoration settlements and (advance) cooperative damage assessment funds. Currently, approximately \$500 million in settlement funds reside in the DOI Restoration Fund, with more settlements anticipated in the near future.<sup>5</sup> For a bigger picture, in the period of 1992-2011, some \$1.2 billion had been deposited in the NRDAR restoration fund, of which about one-quarter was associated with the Exxon Valdez Oil Spill (settlement and interest).<sup>6</sup> Some 96 percent of DOI Restoration funds, which includes \$1.1 billion in deposits and over \$70 million in earned interest, were earmarked for specific restoration activities.<sup>7</sup>

Over the 20-year period, some 660 different damage assessments or restoration site projects were undertaken, involving around 350 settled cases.<sup>8</sup> Over 100 shared, joint settlements were managed by the Interior Department on behalf of federal, state, and tribal trustees. Funds generated through settlements are available without further appropriation. The Interior Department has the authority to accept joint, indivisible restoration settlements on behalf of natural resource trustees and to distribute these funds to trustees provided Interior is one of the involved trustees. The Department does not charge management fees or other charges associated with use of the DOI Restoration Fund.<sup>9</sup> Settlement balances, deposits, allocations, and income forecasts can be publicly viewed on-line at: <http://doi.nrdar.ibr.doi.gov>. (Accessed August 31, 2014)

## V. Enhancing Program Performance—Key Issues

The Department of the Interior's NRDAR program distributes large sums of funding through the Restoration Fund and plays a significant role in coordinating participation of five resource management bureaus and other offices in program implementation. Periodically, concerns have arisen among the Congress, stakeholders, responsible parties, and trustees regarding: 1) the pace at which NRDAR cases are settled and restoration is undertaken and completed; 2) the effectiveness of restoration projects and their durability; 3) the

5 U.S. Department of the Interior, Budget Justifications and Performance Information Fiscal Year 2015, Natural Resource Damage Assessment and Restoration Program, p. 1.

6 U.S. Department of the Interior, Office of Restoration and Damage Assessment, DOI NRDAR Fund 101, Power Point, available at: <http://www.sagchip.org/planning/NRDR/pdf/NRDA101.pdf> (Accessed August 31, 2014)

7 Ibid.

8 Ibid.

9 Ibid.





methodologies used for assessing damages; and 4) the transparency and accountability of decision making on the part of trustees and NRDAR program managers.

Responses to these and other concerns over the past two decades have resulted in improved project tracking and disclosure of the status of project spending; regulations emphasizing (but not requiring) use of a restoration cost framework to determine compensation; heightened multi-bureau coordination; and other program enhancements.

Nonetheless, program scrutiny continues, particularly in light of the significant influx of settlement funds as some large and sometimes long-running damage assessments have recently settled. This influx of funds and other concerns about efficiency, transparency, accountability, and effectiveness have motivated NRDAR program managers to explore continuous improvements and reexamine program infrastructure and staffing on a Department-wide basis.<sup>10</sup>

Invariably, such reviews confront the challenges associated with managing a program that is, in fact, composed of many dispersed programs that operate through multiple federal, state, and tribal agencies and governments. Such reviews also confront the challenges associated with the very concept and intrinsic nature of natural resource damage assessment and restoration—such assessments and restoration activities are necessarily extremely site and situation specific. A variety of factors unrelated to program management can affect the expedition with which assessments are carried out, funds are allocated, and restoration is accomplished.

This review is not intended to examine individual agency management of NRDAR responsibilities and how such management might be improved. Instead, the focus here is on how departmental management can target and help to address key challenges, both in its own administration of certain aspects of the program and in its support of bureaus as they strive to implement their own responsibilities.

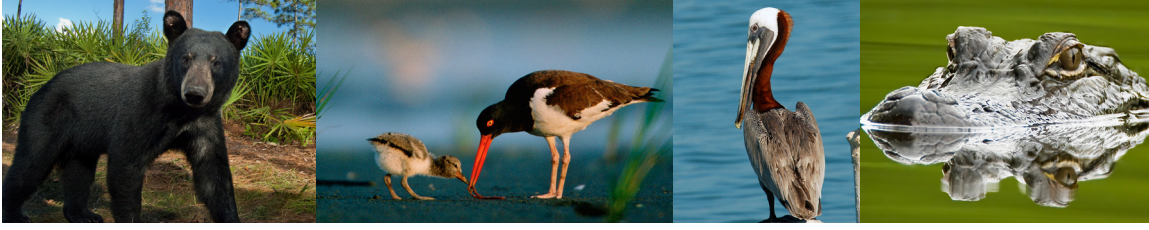
## ***A. Office of Restoration and Damage Assessment—Role and Accountability***

ORDA does not control the restoration processes associated with particular cases and sites. It does, however, offer programmatic support and plays a significant role in determining how assessment funds are allocated through a collective process that engages bureaus through a Work Group and Executive Team. In recent years, the ORDA office has attempted to enhance the effectiveness of the Work Group and Executive Team. These efforts include augmenting its systems for tracking cases to assess: 1) the time from initiation of assessments to case settlement, 2) total costs incurred, 3) timelines for reaching particular milestones, and 4) timing and cost of restoration measured in acres and river/stream miles.

Bureaus that participate in the Work Group and serve on the Executive Team do not generally see a need to revisit existing decision making structures. However, participants see a number of areas that would benefit

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<sup>10</sup> U.S. Department of the Interior, Budget Justifications and Performance Information Fiscal Year 2015, Natural Resource Damage Assessment and Restoration Program, p. 1.



from ongoing improvement, some of which require efforts by the bureaus themselves. These opportunities cluster into several key areas, including:

### Transparency and Decision Clarity

Despite perceptions of ongoing improvements in communication, some bureaus would like to see written protocols for Executive Team (ET) and Work Group decision processes, roles, and responsibilities. In guiding the ET and Work Group, the Office of Restoration and Damage Assessment has worked with agencies to develop clear priority-setting criteria for distribution of funds for assessments and other purposes. Nonetheless, perceptions of insufficient transparency persist but vary significantly among agencies. Varying perceptions appear to be linked more to the clarity of individual bureau processes and internal bureau communication between senior leadership and Work Group staff rather than to a fundamental lack of transparency or lack of departmental processes for bureau engagement in decision making.

Overall, three areas for continued improvement regarding transparency recurred in bureau and other expert observations about the program at the departmental level. All involve *shared* improvements by both the ORDA and the individual bureaus. These areas of improvement in transparency include:

- Strengthening communication with the field, where actual NRD assessments and restoration occur, so the field better understand funding allocation decisions. Bureau program leadership shares with the ORDA significant responsibility in enhancing this communication.
- Work Group effectiveness is very dependent on the individual agency representatives and their individual bureau support. ORDA could work with bureaus to clarify skills required, ensure adequate training, and develop model performance measures with which bureaus can assess participant performance.
- Additional case-management monitoring could help: a) in evaluating how ongoing cases are proceeding; b) inform whether and how much the Work Group will fund a specific case; and c) enable the Work Group to help case teams to speed up work within the limits of factors over which they have some control.

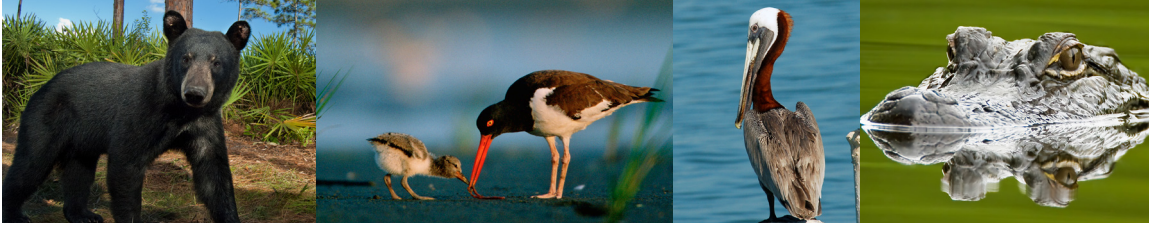
### ORDA and Bureau Capacities

Many of the challenges of effectively and efficiently managing the NRDAR program link to staff availability and skills in all facets of the program, from headquarters coordination to field implementation. Most federal programs face capacity constraints in which programmatic responsibilities outstrip available financial and human resources. However, these constraints are particularly challenging for implementation of NRDAR responsibilities because of the dispersed (and often episodic) nature of program implementation and the highly varied skill sets needed across different program elements—for example, skills needed in the sometimes adversarial, often legal processes of the damage assessment phase are very different from those needed for implementation of restoration plans. There are also capacity challenges for some tribes in their capacities as trustees, raising issues about how the NRDAR program can work with BIA to provide that support.



The management challenge, both for the ORDA and bureau leadership, is how best to structure and staff the program, distribute responsibilities, and ensure accountability in this context of resource constraints. The following recommendations to address these challenges fall into five categories—training; enhancing ORDA capacity support; rethinking case management; considering program delivery structures; and enhancing coordination among relevant DOI offices and other agencies.

- **Training:** All bureaus experience skill gaps. In particular, interviewees highlighted the need, particularly in the field, for an understanding of collaborative processes and multi-criteria decision analysis. Federal agencies as co-trustees often include people with legal and resource management expertise. While these skills are critical to NRD assessments and restoration, both aspects of NRD implementation would benefit from participants having training in how to lead and conduct collaborative decision processes and how to identify and evaluate multiple variables and trade-offs. There is, thus, a need for additional types of training for all participants working within the NRDAR program.
- **Enhancing Capacity Support:** Many interviewees saw benefits from a bigger role for ORDA in providing specialized services such as contracting officers, realty support, restoration planning, NEPA compliance, engineering support, and dedicated project oversight for large projects; and, through the Solicitor's Office, additional attorneys for whom NRD is the sole role and focus. Though the Restoration Support Unit of ORDA already provides a variety of support services to case teams and co-trustees, additional support, especially in planning and in helping case teams better link with other services, could improve overall program performance and reduce prospects of duplication by multiple bureaus. A possible advantage of broader capacity in the Restoration Support Unit of ORDA derives from the episodic nature of NRDAR projects at the field level. Building field-level (or even regional bureau-level) support for these NRDAR program requirements is potentially both costly and duplicative. For example, the need for such services at the field level varies over time (and in often unpredictable ways); at the regional level, increased ORDA capacity support could avoid the need for multiple bureaus at the regional level to build the same capacity.
- **Rethinking Case Management:** Case management is critical to timely resolution of the assessment process. More funding for skilled case managers (or even provision by ORDA of case managers) could ensure that the necessary skills are available and could enhance the ability to track case progress.
- **Examining Program Delivery Structures:** Program delivery structures present two challenges—one pertaining to skill sets and the other pertaining to incentives.
  - NRDAR case managers at the assessment stage are often not the best persons to serve as restoration managers. These two critical aspects of the NRDAR program involve very different skill sets. The assessment stage involves negotiations with the responsible party over the scope and evaluation of damages, legal responsibilities, and other considerations driving toward a final agreement. The restoration stage involves natural resource project implementation. Structures that combine management of both elements of NRDAR, in theory, ensure coordination of the two components (assessment and restoration) but at the expense of ensuring the skills (and focus) necessary for undertaking actual restoration work.



- Regarding incentives, one interviewee noted that, if the whole NRDAR effort is led by the assessment team, once a settlement is “on the books,” there is no urgency to spend those funds. There are other possible effects of structures on incentives, as well. For example, if assessments are wholly funded through cost recovery, this can drive decisions toward focusing on how to get settlement funds “in the door” rather than focusing on what activities yield the most significant restoration results. Evaluating the various merits of different decision structures is beyond the scope of this report. However, a recommendation is that the ORDA office, working with bureaus and other relevant offices, re-examine the overall decision structures and how best to manage the assessment and restoration components of the program.
- **Enhancing Coordination with Other Offices and Agencies:** Among Interior offices with relevant capacities, including the Solicitor’s Office, Office of Environmental and Policy Compliance, and Office of Policy Analysis, there is a general perception of good coordination and communication. Nonetheless, three areas were flagged as holding potential for improving access to relevant information and expediting timelines. Specifically,
  - ORDA could support studies at higher levels early on to speed up movement to final settlements, especially in cases where such studies could support the needs of multiple cases;
  - Several interviewees flagged processes driven by the Environmental Protection Agency (EPA) that must be completed before restoration work begins as challenges in ensuring timely action. EPA moves forward with its docket data gathering, often without NRDAR trustee engagement, thus undermining the ability of trustees to influence this data gathering to support both EPA’s needs and NRDAR program needs. There is lack of clarity about EPA processes and the role and decisions of remediation managers, and a reported high degree of variation on coordination. Interviewees described this coordination as “very spotty.” This variation seems, in part, to depend on “personalities,” but a critical role of all management is to transcend personalities and establish replicable and reliable coordination processes, practices, and transparent communications. While assessing whether and how ORDA might play a broader role in helping to coordinate these processes is beyond the scope of this report, this is an area that merits further examination.

## **B. NRDAR Program Efficiency**

As noted earlier, the NRDAR program is a highly distributed one, involving some level of departmental coordination through ORDA but also significant decision autonomy in the field by Trustee Councils that may include federal and state agencies and tribal governments. Moreover, the decision processes of these councils require public engagement and negotiations with responsible parties regarding damage assessments and restoration options. The focus of this report is primarily on overall program coordination by ORDA but includes some observations about opportunities for greater efficiencies at the field level where there is some possible influencing role for ORDA.



## ORDA Program Management to Enhance Efficiency

ORDA has shifted to on-line processes for data collection and sharing, a significant improvement over previous paper-based approaches. The office is enhancing tracking of projects from start to finish, including such measures as numbers of restoration plans drafted, finalized, and in stages of implementation; numbers of restorations completed; numbers of cooperative assessments with industry; and funding leveraged from partnerships. Moreover, ORDA is implementing processes to help jumpstart restoration where funds have sat idle for over three years; focus on the largest settlements; and look for cases with small settlements but that have a geographic nexus or link to other and could, thus, potentially be coordinated to achieve more timely and more significant restoration goals. There are two areas that would benefit from further improvement:

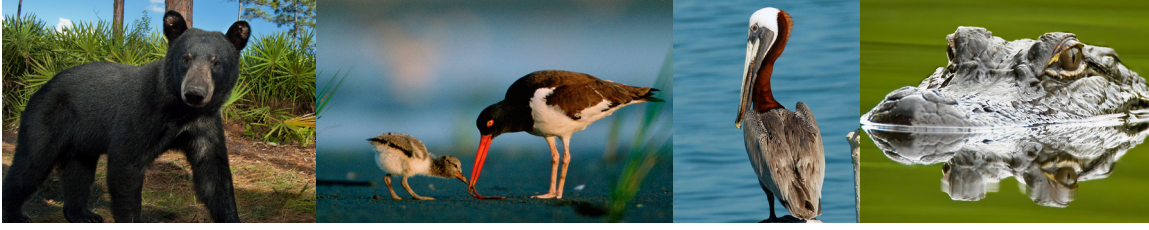
- As ORDA strives to enhance program efficiency, it would benefit from working with bureaus and possibly outside experts to refine the measures through which efficiency is measured. There are limits to understanding program efficiency by using cost per unit information, especially in multi-year timeframes, due to individual case uniqueness and the many variables at the individual case level that affect costs, timing, and actions.
- Many studies associated with the assessment process are perceived to go on beyond the point of adding value. External stakeholders and industry see benefit in clearer guidelines for identifying endpoints and determining how much information is enough information. Though ORDA does not have a direct role at the case level in the decisions about studies and information needs, this subject is one in which many other programs have grappled and for which “best practices” and guidelines could be useful. ORDA could consider providing or improving such guidelines.

## Enhancing Best Practices in the Field

Cooperative assessments help avoid adversarial confrontations with responsible parties. By avoiding such confrontations, this approach can expedite the assessment process and motivate faster restoration. ORDA reports that the Interior Department is involved in 49 cooperative assessments. As a result of these assessments, in 2013 “\$34 million in advanced and/or reimbursed cooperative assessment funding was received for thirteen sites, including \$30 million from BP related to the Deepwater Horizon Oil Spill in the Gulf of Mexico.”<sup>11</sup>

- There are opportunities to increase use of cooperative assessments through guidance, case support, and, possibly, by reviewing “best practices.” The Ad Hoc Industry Natural Resource Management Group has been developing Cooperative NRDA Agreement Guiding Principles and a Sample Provisions Project and Restoration Project Catalog. ORDA should review these principles and documents to determine whether and how they could inform best practices and improve program efficiency at the field level.
- Similarly, some trustees and responsible parties have developed MOUs between parties to identify roles and responsibilities. These MOUs are perceived by some external participants to improve program efficiency by reducing conflict, enhancing clarity regarding timelines and expectations and other issues.

<sup>11</sup> U.S. Department of the Interior, Budget Justifications and Performance Information Fiscal Year 2015, Natural Resource Damage Assessment and Restoration Program, p. 19.



## Effectiveness of Restoration Projects

Over several decades, responsible parties and other analysts have focused much of their critique on damage assessments. Ultimately, however, the fundamental purpose of the program is to restore natural resources managed in trust by federal, state, and tribal governments. The fundamental test of program success must reside in the effectiveness and durability of restoration projects undertaken through the program. This restoration work is largely outside the direct control of ORDA, though the Restoration Support Unit assists on many aspects of restoration. Trustee council makes actual restoration decisions, and ORDA has limited oversight over trustee councils. ORDA managers are not decision makers regarding project priorities, resource leveraging, or collaboration and stakeholder engagement. ORDA does, however, offer administrative support to trustee councils and can influence funding flows in coordination with the bureaus who serve as trustees. In particular, there are several opportunities for ORDA to influence restoration outcomes, including influencing durability; scale; planning and leveraging; and measures.

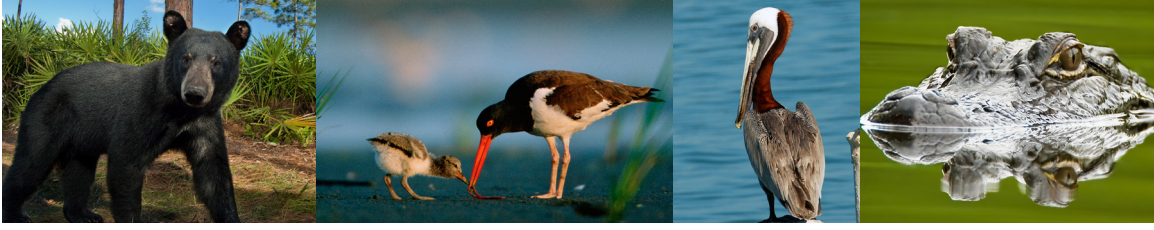
- ***Durability of results:*** Some external and agency interviewees raised questions about the durability of NRDAR-funded projects. Protection in perpetuity for projects is not required, nor are funds for ongoing stewardship required (e.g., easement monitoring and easement defense). In addition, results are often not measured, especially for small cases and associated small projects. Instead, the focus is on putting “funding” on the ground and not on monitoring the results of such projects. For larger cases, monitoring is generally included but may simply take the form of “before” and “after” snapshots. There are no legal limits to better monitoring within settlements, but many responsible parties and trustees want settlement funds to go toward on-the-ground projects rather than to monitoring.
  - ORDA could assist trustees in developing best practices regarding monitoring—tailored to project scale. In some instances of small-scale projects, monitoring may not represent the most effective use of funds, but guidance on when and how to include monitoring in NRDAR projects could enhance long-term outcomes (and transparency).
  - Once Responsible Parties settle a case, they don’t typically have responsibility for implementing restoration projects. As a result, there is little communication with the Responsible Parties regarding the status and success of selected projects. ORDA could assist in identifying best practices for how trustees can work with Responsible Parties to monitor and report on project results.
- ***Scale of projects:*** NRDAR projects unfold at many scales—from small and isolated impacts to extremely large and long-term projects. One contribution both to timely and effective action would be to enhance the pooling of smaller settlements into projects at broader landscape scales. Both ORDA and the Work Group have signaled such efforts as worth pursuing, and some bureaus are already engaged in such efforts. The Bureau of Land Management, for example, is trying to do more restoration by clustering many small settlements (e.g., Western Utah). The Fish and Wildlife Service has similarly enhanced its efforts to cluster projects (particularly in Region 5).



- ORDA could assist trustees in these efforts by working with them to develop criteria for taking larger scale benefits into consideration when identifying and selecting specific restoration projects.
- **Planning and Leveraging:** Interviewees saw significant potential to enhance restoration outcomes through planning support, better coordination across programs, and leveraging projects with other organizations. For example, the Fish and Wildlife Service is striving to select NRDAR sites that better match regional and field office priorities to use the NRDAR program strategically rather than opportunistically and to combine projects with other partnership projects. BLM has engaged in a wetland restoration NRDAR project in Oregon, the largest tidal marsh restoration in the state, in which it is leveraging NRDAR funds with other funds. ORDA should consider assisting these efforts in several ways:
  - Identify best practices in working with NGOs identify restoration project opportunities to which settlement funds could be directed (e.g., The Nature Conservancy has an agreement with NOAA designating the organization as one of three that the agency will work with on identifying priorities for connecting restoration actions with regional-scale conservation objectives). One significant untapped opportunity is to explore the role of the Landscape Conservation Cooperatives in helping identify possible restoration actions that contribute to outcomes larger than an individual settlement agreement.
  - Help identify and assist trustees in building upon existing watershed, landscape, and flyway scale restoration plans, where appropriate. Guidance to case teams to “think ahead” about restoration sites and actions by using pre-existing plans should be explored.
  - Work with agencies to use “enterprise” approaches for case management of restoration efforts in which the focus is on overall project goals rather than on agency-specific goals/needs)
- **Metrics and Measures:** Performance measures for NRDAR projects are generally characterized in terms of acres restored and stream miles repaired. Such measures do not address actual functionality. Extensive efforts in the academic, nonprofit, public and private sectors have been directed toward improving measures pertaining to natural resource management. The NRDAR program could draw from these efforts and assess how to refine program performance measures.

## VI. Conclusion

The NRDAR program affects the investment, over the long-term, of billions of dollars in natural resource restoration, land acquisition, and related management actions. Ensuring timely and effective use of the funds to achieve durable and meaningful restoration outcomes is critical to fulfilling the trustee responsibilities of public agencies and governments. Yet the task is challenging, as the program involves multiple agencies and governments—federal, state, and tribal—operating in dispersed locations within highly varying circumstances. The Interior Department, the Office of Restoration and



Damage Assessment (ORDA), and Interior bureaus are just one set of players in this complex tableau. Coordination among agencies, governments, and the private sector is critical to achieving timely and effective outcomes.

Within the Interior Department, the role of ORDA has evolved and strengthened over time, with significant improvements in transparency of decision processes and accountability for results. Nonetheless, there are opportunities for additional improvements, some of which ORDA can undertake on its own and some of which require full engagement of Interior bureaus or, even, other federal agencies. Many program implementation challenges link to the limited resources available for training, case management, and supporting services. Some challenges, however, can be addressed within existing capacities. The recommendations of this report provide some potential areas of useful focus for these improvements.



Everglades snail kite | Joaquin Paredes

Cover photo: Sacramento National Wildlife Refuge | Michael Rubin

Inset photos: Florida black bear | Carlton Ward, Jr.; American oystercatcher | Steve Greer; Brown pelican | Michael J. Morel; American alligator | Timothy Vidrine; American alligator | Danny Baer; Prothonotary warbler | Timothy Vidrine; Roseate spoonbill | Richard Weiblinger; West Indian manatees | Carol Grant





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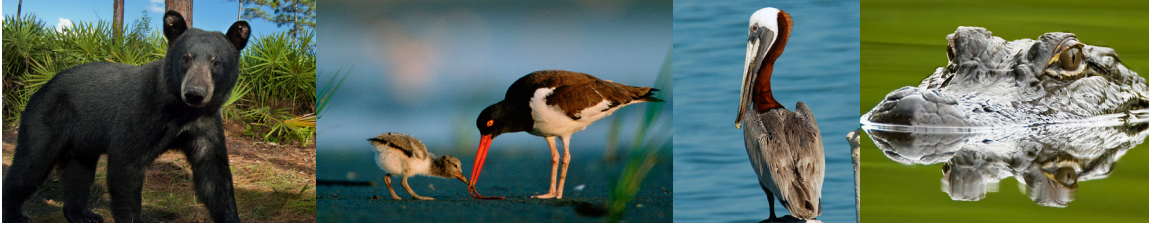
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## APPENDIX I

### List of Interviewees

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Jim Boyd, Resources for the Future

William Bresnick, formerly Energy & Environment Twenty-One

John Carlucci, DOI Office of the Solicitor

Nancy Dean, Bureau of Land Management

Gary Frazer, Fish and Wildlife Service

Herbert Frost, National Park Service

Barbara Goldsmith, Ad Hoc Industry Natural Resource Management Group

Robin Heubel, Fish and Wildlife Service

Tom Jensen, Sonnenschein Nath & Rosenthal

Ronald McCormick, Bureau of Land Management

Robert Quint, Bureau of Reclamation

Todd Rettig, State of Illinois

Bryan Rice, Bureau of Indian Affairs

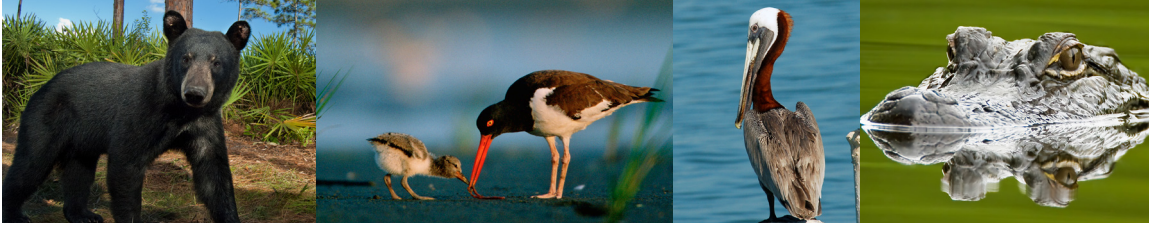
Edwin Roberson, Bureau of Land Management

Barry Roth, DOI Office of the Solicitor

Benjamin Simon, DOI Office of Policy Analysis

Willie Taylor, DOI Office of Environmental Performance and Compliance

Jessica Wilkinson, The Nature Conservancy



## APPENDIX II

### Interview Questions

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#### 1. Efficiency

a. **Timeliness** — Are damage assessments or restoration actions accomplished in an appropriate amount of time?

b. **Decision Processes** — Are there principles or guidelines that if applied would shorten the assessment or restoration process?

c. **Innovation** — Are there new or novel methods that would reduce the amount of time necessary to complete a damage assessment (e.g., revised type A procedures) or restoration project (e.g., early restoration or restoration banks).

d. **Skills** — What abilities or expertise is necessary to effectively conduct a damage assessment and to implement restoration projects?

#### 2. Accountability

a. **Roles** — Is there clear understanding of the responsibilities within and between ORDA, Bureaus, and other trustee agencies.

b. **Performance** — What measures are used to track case milestones and should they be standardized.

c. **Leadership** — Does ORDA, the bureaus, or other trustees provide case guidance and direction?

d. **Financial** — Are there effective controls in place for monetary spending (e.g., cash flow plans) versus case size.

#### 3. Capacity

a. **Capacity** — Does ORDA, the bureaus, or other trustees have a sufficient number of staff (e.g., FTEs) to manage and/or complete NRDAR cases?

b. **Training** — Does the current catalog of training provide sufficient instruction for new and existing NRDAR practitioners or supporting staff?

c. **Constraints** — What are the resource limitations that impact the completion of a damage assessment or restoration project?

d. **Work Load** — What factors are used to set priorities for project selection and completion for both damage assessment and restoration?

#### 4. Effectiveness

a. **Lessons Learned** — Does the program effectively build on lessons learned from successful case completion?

b. **Coordination** — Do we pursue opportunities for pooling resources and enhancing coordination or partnerships from all available sources?

c. **Monitoring** — Are restoration efforts achieving the intended results and how do we evaluate this endpoint?

d. **Geographic or Temporal Outcomes** — Does the program effectively incorporate or integrate with landscape-level initiatives or other broad scale issues (e.g., climate change)?