



# **BUDGET** The United States Department of the Interior **JUSTIFICATIONS**

and Performance Information  
Fiscal Year 2009

## **NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION PROGRAM**

NOTICE: These budget justifications are prepared for the Interior, Environment and Related Agencies Appropriations Subcommittees. Approval for release of the justifications prior to their printing in the public record of the Subcommittee hearings may be obtained through the Office of Budget of the Department of the Interior.



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# DEPARTMENT OF THE INTERIOR



## Restoration Program

Assessment & Restoration Program

### Fiscal Year 2009 Budget Justifications

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# NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION PROGRAM

## **GENERAL STATEMENT**

### **FY 2009 Budget Request:**

The Restoration Program's total Fiscal Year 2009 request for current appropriations is \$6,338,000, an increase of \$136,000 over the 2008 enacted level. The increase is comprised of the following:

- A program increase of \$22,000 for increased costs associated with budget and financial management of settlement funds.
- An increase of \$114,000 for fixed cost increases. Another \$4,000 in fixed cost increases are absorbed through cost saving measures.

In addition, the request also includes an estimated \$55.0 million in permanent funds for DOI bureaus, which result from negotiated legal settlement agreements and cooperative damage assessments with responsible parties.

The mission of the Natural Resource Damage Assessment and Restoration Program (Restoration Program) is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. In partnership with other affected State, Tribal, and Federal trustee agencies, damage assessments provide the basis for determining the restoration needs that address the public's loss and use of these resources.

Cooperative conservation is the centerpiece of the Administration's environmental policy vision. The President's August 2004 Executive Order on Cooperative Conservation continues to drive the Department's efforts in resource protection, calling on Federal agencies to strengthen interagency coordination and cooperation with States, Tribes, landowners and others to enhance environmental performance. The Restoration Program's core mission is predicated on such cooperation with its co-trustees and partners, and where possible, with the responsible parties as well.

As authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), the Clean Water Act (CWA), and the Oil Pollution Act of 1990 (OPA), injuries to natural resources that the Department of the Interior manages or controls are assessed, and appropriate restoration projects are identified in contemplation of negotiated settlements or legal actions (in rare cases) with potentially responsible parties. Recoveries, in cash or in-kind services, from the potentially responsible parties are then used to finance or implement the restoration of the injured resources, pursuant to a publicly reviewed restoration plan.

The Restoration Program Office manages the confluence of the technical, ecological, biological, legal, and economic disciplines and coordinates the efforts of six bureaus and three offices to

accomplish this mission. The Program has a nationwide presence encompassing nearly the full span of natural and cultural resources for which the Secretary has trust responsibility. Each bureau has its unique natural resource trusteeship and brings its expertise to bear on relevant sites. The Restoration Program is a truly integrated Departmental program, drawing upon the interdisciplinary strengths of its various bureaus and offices.



The **Bureau of Indian Affairs** administers and manages over 66 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives and provides assistance to 562 federally recognized tribal governments to help protect water, natural resources and land rights.



The **Bureau of Land Management** administers 262 million acres of land, located primarily in 12 western states, sustaining the health, diversity, and productivity of these public lands for the use and enjoyment of present and future generations.



Working primarily in the western United States, the **Bureau of Reclamation** manages nearly 9 million acres associated with reclamation projects to protect local economies and preserve natural resources and ecosystems through the management and effective use of water resources.



The **U.S. Fish & Wildlife Service** conserves, protects and enhances fish, wildlife, and plants and their habitats and manages the 96 million acre National Wildlife Refuge System for the continuing benefit of the American people, providing primary trusteeship for migratory birds and threatened and endangered species.



The **National Park Service** preserves unimpaired the natural and cultural resources and values of the 84 million acre national park system and conserves the scenery and the natural and historic objects and the wildlife of the park system for the enjoyment, education, and inspiration of current and future generations.

In addition to the five trustee bureaus, the U.S. Geological Survey, the Office of the Secretary, and the Office of the Solicitor play key roles in making the Restoration Program a fully integrated Departmental program. The Office of the Solicitor provides legal advice, USGS

provides technical scientific support, and the Office of Policy Analysis provides economic analytical expertise to the Program at both national policy and individual case management levels. The Office of Environmental Policy and Compliance provides regional coordination support as well as a link to response and remedial activities associated with oil or chemical releases.

The Departmental trustee bureaus conduct every damage assessment and restoration case in partnership with co-trustees, and all restoration plans must undergo public review and be approved by affected State and Tribal governments. The Restoration Program serves as a model of implementation of cooperation in its day-to-day operations and partnerships that have been developed with Tribal, State, and other Federal co-trustees, as well as with non-governmental conservation organizations and industry.

**Total 2009 Budget Request**  
*(Dollars in Thousands)*

Budget Authority	2007 Actual	2008 Enacted	2009 President's Budget	2009 Request Change from 2008	
				Amount	Percent
Discretionary	6,043	6,202	6,338	+136	+2.19%
Mandatory	75,759	115,000	55,000	-60,000	-52.17%
<b>TOTAL</b>	<b>81,802</b>	<b>121,202</b>	<b>61,338</b>	<b>-59,864</b>	<b>-49.39%</b>
<i>FTE</i>	7	7	7	-	-

**2009 Budget Request by Interior Mission Area**  
*(Dollars in Thousands)*

Mission Area	2007 Actual	2008 Enacted	2009 President's Budget	2009 Request Change From 2008
Resource Protection	6,043	6,202	6,338	+136
Resource Use	0	0	0	0
Recreation	0	0	0	0
Serving Communities	0	0	0	0
<b>Total</b>	<b>6,043</b>	<b>6,202</b>	<b>6,338</b>	<b>+136</b>

**Performance Summary**

All activities within the Restoration Program (damage assessment, restoration support and program management) support resource restoration either directly or as necessary steps on the

road to restoration. These activities support the Department's Strategic Plan Goal of Resource Protection, specifically End Outcome Goal 1 – **Improve Health of Watersheds, Landscapes, and Marine Resources that are DOI Managed or Influenced** by restoring trust natural resources that have been injured as a result of oil spills or hazardous substance releases into the environment.

In 2009, the Program will continue to develop and implement guidance and regulations that directly address process improvements recommended in 2007 by the NRDAR Advisory Committee that was convened under the Federal Advisory Committee Act. The program will also sponsor a series of technical workshops to gather the most up to date information needed for guidance development. These improvements address four major policy areas: injury quantification, damage determination, analysis of restoration alternatives, and restoration implementation. Once implemented, the recommendations will lead to improved processes and tools to achieve long-term restoration goals reflected in the Departmental Strategic Plan.

The program will continue to focus its activities in support of trust resource restoration. FY 2009 planned performance targets include the restoration of 12,600 acres and 128 stream or shoreline miles, increases of 800 acres (+7%) and 8 stream / shoreline miles (+7%), respectively over FY 2008 strategic plan goals. Attainment of these goals will be accomplished by DOI and its co-trustees through the use of funds or in-kind services received in settlement of damage claims with responsible parties.

## **President's Management Agenda:**

**Budget / Performance Integration** - In keeping with the President's Management Agenda, program performance information continues to play a key role in Program operations and the development of the 2009 budget request. Damage assessment projects funded by the Department are subject to a thorough screening and evaluation process that ensures that the highest priority cases are funded. The Program continues to require case teams to track and report progress biannually on ongoing damage assessment cases, with key milestones in this tracking system linked to essential damage assessment steps as promulgated in the damage assessment regulations. Cases that fail to progress and meet performance expectations are required to correct deficiencies prior to receiving additional funding. Budget execution is also closely monitored, so that any funds carried over from the previous year(s) are factored into the funding allocation decisions for the coming year.

**Strategic Management of Human Capital** - The Restoration Program has worked to integrate its staff planning efforts within the framework established by the Departmental Workforce Planning Team. With only seven FTE in the Restoration Program Management Office, the Program relies greatly on distributive management, in close coordination with a workgroup comprised of multiple bureaus and offices. The FY 2009 request includes a small amount of additional funds which will help address the program's increasing needs for budget and financial stewardship to effectively manage the growing volume of settlement funds deposited into the Restoration Fund. The requested increase will provide sufficient resources to address this growing need.

**Competitive Sourcing** - As part of ongoing Departmental Competitive Sourcing exercises, all current positions within the Restoration Program Office are reviewed annually to identify opportunities for competitive sourcing. At this time, all positions were identified as being inherently governmental in nature because they focus on Program-level policy, budget, and program guidance activities. Many ongoing cases already make use of contractors and consultants, and the bureaus may identify additional opportunities, while ensuring that the inherently governmental tasks in each case continue to be carried out by DOI employees. In addition, the Restoration Support Unit will identify further opportunities to use contractors and/or cooperators to implement restoration activities.

**Other President’s Management Agenda Items:** - The Restoration Program Office, as part of the Office of the Secretary, follows the lead of Departmental management in a number of other areas related to the President’s Management Agenda where applicable. These areas include improving financial performance, including development and implementation of the Department-wide Financial Business and Management System (FBMS), as well as applicable Expanding E-Government initiatives.

**2009 Program Performance**

**2009 Funding by Strategic Plan Goals**

*(Dollars in Thousands)*

Account / Budget Activity	RESOURCE PROTECTION		
	Improve Health of Watersheds, Landscapes and Marine Resources	Sustain Desired Biological Communities on DOI -Managed or Influenced Lands and Water	Protect Cultural and Natural Heritage Resources
Damage Assessments		3,979	
Restoration Support		604	
Program Management		1,755	
NRDAR Appropriation, Total		6,338	

Restoration program performance measures and accomplishments in all three activities are singularly focused on one goal, the increased restoration of acres and stream / shoreline miles. Such restoration creates or protects habitat for injured biological communities to recuperate, thrive and flourish. Program accomplishments at the activity level are but a step leading to the implementation of restoration actions. Within the Damage Assessment activity, data is collected biannually on all Departmentally-funded cases, which enables the Program to monitor the

progress of cases through the assessment process to settlement, using measures such as number of cases reaching various milestones, numbers of cooperative assessments with industry, and number of cases settled. Through the restoration science initiative begun in 2006, the Program is working with the USGS to develop protocols and metrics to better measure the ecological outcomes of restoration activities.

The Restoration Program's performance goals reflect continued progress funded with monies and in-kind actions recovered in settlement from responsible parties, and not appropriated funds. Appropriated funds are used to administer the program and provide technical support. There is roughly \$240 million in settlement funds currently in the DOI Restoration Fund that should allow the program to continue moving forward towards its long term restoration goals.

Restoration accomplishments in acres and stream/shoreline miles restored can fluctuate from year-to-year, the result of a complex process in which numerous trustee councils across the nation are moving forward in identifying specific opportunities for restoration consistent with approved restoration plans, but which generally cannot be scheduled or readily anticipated on a site-specific basis. The year-to-year variability in performance shown on the following table reflects the pace of restoration which is greatly influenced by factors outside the Department's control, such as finding cooperative landowners or willing sellers.

There are a number of efforts currently underway or will be accomplished in 2009 that will help the Restoration Program meet its performance goals for 2009. Overall, continued program maturity and a focus on achieving restoration, as well as products and services such as contracting, restoration planning, engineering support and a partnership/matching funds clearinghouse will be provided by the Restoration Support Unit, which will provide a boost to case teams in getting restoration projects underway. The continued growth in cooperative assessments is expected to continue, thus minimizing the chance of adversarial confrontations with responsible parties, and thus allowing case teams to move more quickly to settlement and restoration. In the longer term, the recently- begun implementation of regulatory, policy and operational improvements arising from the NRDAR Advisory Committee recommendations will lead to better, more efficient damage assessments, which will lead to quicker and more effective restorations, positioning the Restoration Program to achieve its long-term strategic plan goals.

Cost information in the context of performance measurement is of limited value within the Restoration Program, due to the wide variability of possible restoration solutions that might be implemented. Every restoration implemented is unique, from the resource injury being addressed, to the ecological, biological, and engineering aspects involved, and the number and roles of other involved co-trustees, partners, and responsible parties. The wide range of possible but generally not comparable restoration actions is best exemplified in the restoration success stories found in the Restoration Support section beginning on page 18.

The bureaus will continue to collect, validate, and verify the performance data before reporting to the Program. In addition, the Program Office will continue to track internally the progress of cases from start to finish using measures such as increased numbers of restoration plans drafted, finalized, and in stages of implementation; increased numbers of restorations completed; increased numbers of cooperative assessments with industry; and increased funding leveraged from restoration partnerships.

<b>Goal Performance Table</b>
<b>Target Codes:</b>
<b>Type Codes:</b>

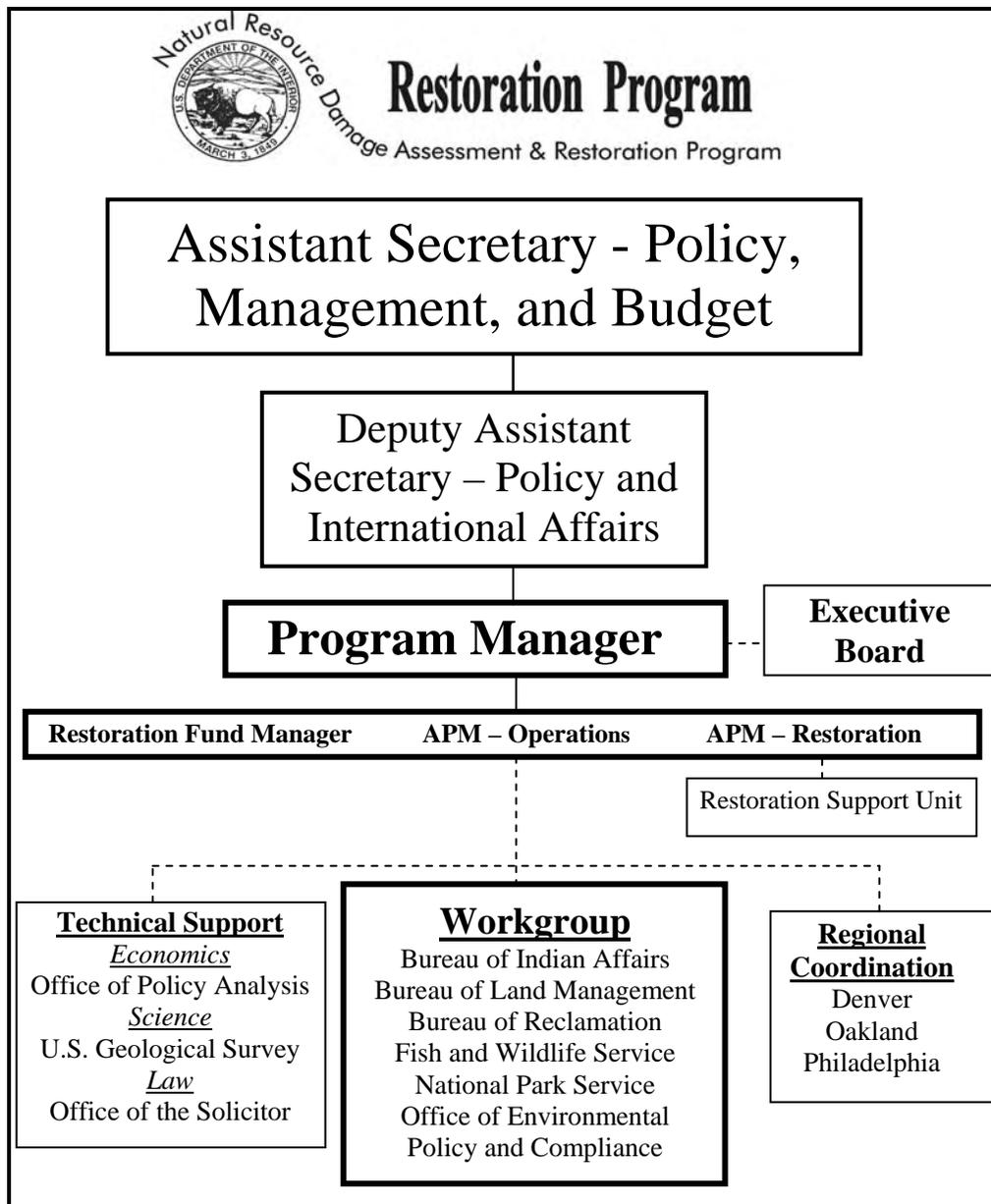
SP = Strategic Plan measures	PART = PART Measure
TBD = Targets have not yet been developed	UNK = Prior year data unavailable
C = Cumulative Measure	NA = Long-term targets are inappropriate to determine at this time
A = Annual Measure	F = Future Measure

**End Outcome Goal 1.2 Resource Protection: Sustain Biological Communities**

End Outcome Goal End Outcome Measure / Intermediate or PART Measure / PART Efficiency or other Outcome Measure	Type	2004 Actual	2005 Actual	2006 Actual	2007 Plan	2007 Actual	2008 Plan	2009 President's Budget	Change from 2008 Plan to 2009	Long-term Target 2012
<b>End Outcome Measures</b>										
<b>Restoration: Number of acres restored or enhanced to achieve habitat conditions to support species conservation:</b>	A	1,074	13,782	13,403	10,000	15,462	11,800	12,600	+800 (+7%)	15,000
Comments:	Note: Year to year variability is to be expected based on the variability of timing and settlement amounts									
△ Contributing Programs:	NRDAR, FWS Environmental Contaminants, NPS Environmental Quality, BIA, BLM, BOR, other Federal, State, and Tribal co-trustees.									
<b>End Outcome Measures</b>										
<b>Restoration: Number of stream or shoreline miles restored or enhanced to achieve habitat conditions to support species conservation:</b>	A	30	12	42	100	171	120	128	+8 (+7%)	150
Comments:	Note: Year to year variability is to be expected based on the variability of timing and settlement amounts.									
△ Contributing Programs:	NRDAR, FWS Environmental Contaminants, NPS Environmental Quality, BIA, BLM, BOR, other Federal, State, and Tribal co-trustees.									

**Note:** The actual and planned acres and miles presented in this table are included among the performance results and targets presented in the Performance Budgets of the trustee bureaus. As such, in order to avoid double-counting, these acres and miles are not included in the Department's aggregate results calculations or performance projections.

The Restoration Program Management Office consists of seven FTE. They are the Program Manager and six staff: the Assistant Program Manager for Operations, the Assistant Program Manager for Restoration, and the Budget Officer/Restoration Fund Manager, located in its Washington, DC headquarters and two staff Restoration Support specialists and a regional coordinator located in Denver, Colorado. The following organization chart goes beyond the small number of people in the Program Management Office and reflects the integrated management structure of the Program as a whole, with the inter-related components of six bureaus, the Office of the Solicitor, and two offices within the Office of the Secretary.



The Restoration Program reports to the Deputy Assistant Secretary – Policy and International Affairs, under the Assistant Secretary - Policy, Management, and Budget (AS-PMB). There is also a “Restoration Executive Board” representative at the assistant director level for BIA, BLM, BOR, FWS and NPS; a Deputy Associate Solicitor, and the Director of the Office of Environmental Policy and Compliance. The Restoration Executive Board is responsible for overseeing policy direction and approving allocation of resources.

**Summary of Requirements Table**  
(Dollars in Thousands)

**Appropriation: Natural Resource Damage Assessment and Restoration Fund**

Activity	2007 Actual		2008 Enacted		Fixed Costs & Related Changes (+/-)		Program Changes (+/-)		2009 Budget Request		Inc. (+) Dec. (-) from 2008	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>APPROPRIATED FUNDS</b>												
Damage Assessments	0	3,873	0	3,938	0	+41	0	0	0	3,979	0	+41
Restoration Support	3	576	3	591	0	+13	0	0	3	604	0	+13
Program Management	4	1,594	4	1,673	0	+60	0	+22	4	1,755	0	+82
<b>Total, Appropriation</b>	<b>7</b>	<b>6,043</b>	<b>7</b>	<b>6,202</b>	<b>0</b>	<b>+114</b>	<b>0</b>	<b>22</b>	<b>7</b>	<b>6,338</b>	<b>0</b>	<b>+136</b>
<b>PERMANENT FUNDS (RECEIPTS)</b>												
Damage Assessments		4,449		8,000		0		-3,000		5,000		-3,000
Restoration												
[Prince William Sound Restoration]		8,714		4,000		0		0		4,000		0
[Other Restoration]		62,496		102,000		0		-56,250		45,750		-56,250
Program Management		100		1,000		0		-750		250		-750
<b>Subtotal, Gross Receipts</b>	<b>0</b>	<b>75,759</b>	<b>0</b>	<b>115,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-60,000</b>	<b>0</b>	<b>55,000</b>	<b>0</b>	<b>-60,000</b>
<b>Transfers Out</b>		<b>-3,902</b>		<b>-1,000</b>		<b>0</b>		<b>0</b>		<b>-1,000</b>		<b>0</b>
<b>Total, Net Receipts</b>		<b>71,857</b>		<b>114,000</b>		<b>0</b>		<b>-60,000</b>		<b>54,000</b>		<b>-60,000</b>

Justification of Fixed Costs and Related Changes:  
Natural Resource Damage Assessment and Restoration Program

	2008 Budget	2008 Revised*	2009 Fixed Costs Change
<b><u>Additional Operational Costs from 2008 and 2009 January Pay Raises</u></b>			
<b>1. 2008 Pay Raise, 3 Quarters in 2008 Budget</b> <i>Amount of pay raise absorbed</i>	+\$63 [\$11]	+\$62 [\$11]	NA NA
<b>2. 2008 Pay Raise, 1 Quarter (Enacted 3.5%)</b> <i>Amount of pay raise absorbed</i>	NA	NA	+24 [4]
<b>3. 2009 Pay Raise (Assumed 2.9%)</b>	NA	NA	+88
<p>These adjustments are for an additional amount needed to fund estimated pay raises for Federal employees.</p> <p>Line 1 2008 Revised is an update of 2008 budget estimates based upon an enacted 3.5% and the 1.56% across the board reduction.</p> <p>Line 2 is the amount needed in 2009 to fund the enacted 3.5% January 2008 pay raise from October through December 2008.</p> <p>Line 3 is the amount needed in 2009 to fund the estimated 2.9% January 2009 pay raise from January through September 2009.</p>			
	2008 Budget	2008 Revised*	2009 Fixed Costs Change
<b><u>Other Fixed Cost Changes</u></b>			
<b>One Less Pay Day</b> This adjustment reflects the decreased costs resulting from the fact that there is one less pay day in 2009 than in 2008.	NA	NA	-12
<b>Employer Share of Federal Health Benefit Plans</b> The adjustment is for changes in the Federal government's share of the cost of health insurance coverage for Federal employees. The increase is estimated at 3.0%, the average increase for the past few years.	150	150	+5
<b>Rental Payments</b> The adjustment is for changes in the costs payable to General Services Administration and others resulting from changes in rates for office and non-office space as estimated by GSA, as well as the rental costs of other currently occupied space. These costs include building security; in the case of GSA space, these are paid to DHS. Costs of mandatory office relocations, i.e., relocations in cases where due to external events there is not alternative but to vacate the currently occupied space, are also included.	76	76	+4
<b>Departmental Working Capital Fund</b> The change reflects expected changes in the charges for Department services and other services through Centralized Billing in the Departmental Working Capital Fund. These charges are displayed in the Budget Justification for Department Management.	86	86	+5

## **Natural Resource Damage Assessment and Restoration Program**

### **Appropriations Language:**

*To conduct natural resource damage assessment and restoration activities by the Department of the Interior necessary to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 [(Public Law 101-380)] (33 U.S.C. 2701 et seq.), and Public Law 101-337, as amended (16 U.S.C. 19jj et seq.), \$6,338,000, to remain available until expended.*

### **Authorizing Statutes:**

*Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C. 9601 et seq.). Section 106 of the Act authorizes the President to clean up hazardous substance sites directly, or obtain cleanup by a responsible party through enforcement actions. Trustees for natural resources may assess and recover damages for injury to natural resources from releases of hazardous substances and use the damages for restoration, replacement or acquisition of equivalent natural resources. Provides permanent authorization to appropriate receipts from responsible parties.*

*Federal Water Pollution Control Act (Clean Water Act), as amended, (33 U.S.C. 1251-1387). Authorizes trustees for natural resources to assess and recover damages for injuries to natural resources resulting from the discharge of oil into or upon the navigable waters of the United States, adjoining shorelines, the waters of the contiguous zone, or in connection with activities under the *Outer Continental Shelf Lands Act* or the *Deepwater Port Act of 1974*, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.*

*Oil Pollution Act of 1990, (33 U.S.C. 2701 et seq.) Amends the *Federal Water Pollution Control Act*, and authorizes trustee(s) of natural resources to present a claim for and to recover damages for injuries to natural resources from each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive zone.*

*Public Law 101-337, (16 U.S.C. 19jj). Provides that response costs and damages recovered under it or amounts recovered under any statute as a result of damage to any Federal resource within a unit of the National Park System shall be retained and used for response costs, damage assessments, restoration, and replacements. Liability for damages under this Act is in addition to any other liability that may arise under other statutes.*

*Interior and Related Agencies Appropriation Act, 1992 (P.L. 102-154). Permanently authorized receipts for damage assessment and restoration activities to be available without further appropriation until expended.*

*Dire Emergency Supplemental Appropriations for Fiscal Year 1992 (P.L. 102-229).* Provides that the Fund's receipts are authorized to be invested and available until expended. Also provides that amounts received by United States in settlement of *U.S. v Exxon Corp. et al.* in FY 1992 and thereafter be deposited into the Fund.

*Interior and Related Agencies Appropriation Act, 1998 (P.L. 104-134).* Provides authority to make transfers of settlement funds to other federal trustees and payments to non-federal trustees.

## ACTIVITY: DAMAGE ASSESSMENT

Natural Resource Damage Assessment	FY 2007 Actual	FY 2008 Enacted	2009			Change from FY 2007 (+/-)	
			Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	2009 Request		
Activity: Damage Assessment	\$000	3,873	3,938	+41	0	3,979	+41
	FTE	0	0	0	0	0	0

### Activity Overview:

Damage assessment activities are the critical first step taken on the path to achieving restoration of natural resources injured through the release of oil or hazardous substances. The nature and magnitude of injury must be identified, investigated, and thoroughly understood if the resulting restoration is to be effective. The resulting physical and scientific evidence of natural resource injury then forms the basis for the Department's claim for appropriate compensation via restoration settlements that allow the Restoration Program to contribute to the Department's Strategic Goal of **Resource Protection – Improve Health of Watersheds, Landscapes, and Marine Resources that are DOI Managed or Influenced**. Information regarding the nature and magnitude of the injury, and the means by which they are determined, also help establish the goals of the restoration plans and influence the determination of when those goals have been successfully reached.

Damage assessment cases are conducted by one or more of the five resource management bureaus within the Department: (Fish and Wildlife Service; Bureau of Land Management; National Park Service; Bureau of Indian Affairs; and Bureau of Reclamation). Economic analytical support is provided by the Office of Policy Analysis, scientific / technical analysis and support from the U.S. Geological Survey, and legal counsel from the Office of the Solicitor. In nearly all cases, assessment activities are carried out in partnership with other affected Federal, State, and/or tribal co-trustees. These partnerships have proven very beneficial for all involved, as cooperation and consultation among the trustees facilitates addressing overlapping areas of trustee concern, and consolidates those concerns into a single case. Trustees can also share data, achieve economies of scale, avoid duplication of effort and minimize administrative burdens. Responsible parties also benefit, as they are able to address trustee concerns in a single case.

The Restoration Program continues to make progress in conducting many of its damage assessment cases on a cooperative basis with responsible parties. As a matter of practice, responsible parties are invited to participate in the development of assessment and restoration plans. The Department has been involved in over thirty-five cooperative assessments across the country, where the responsible parties have elected to participate in the damage assessment process and provide input into the selection of various injury studies and contribute funding towards Interior assessment activities.

Selection of damage assessment projects is accomplished on an annual basis through an extensive internal proposal and screening process that assures that only the highest priority cases are funded. Priorities for selecting initial projects are based upon a case's likelihood of success

in achieving restoration, either through negotiated restoration settlements or through successful litigation where necessary. Cases must demonstrate sufficient technical, legal, and administrative merit focused on the purpose of achieving restoration.

The Restoration Program's selection process is designed to:

- Be inclusive of all natural resources under Interior trusteeship and trustee roles;
- Provide a process that encourages thorough planning and ultimately, enhanced opportunities for restoration success;
- Provide a process that evaluates both the objective and subjective aspects of individual cases; and
- Fund cases that have demonstrated sufficient levels of technical and legal merit, trustee organization, and case readiness.

DOI bureaus are also required to coordinate their efforts into a single project proposal, thus promoting efficiencies and eliminating duplication of effort. Bureau capabilities are used to augment and compliment each other, as opposed to building redundant program capabilities in each bureau.

Once projects are funded, the Restoration Program makes use of project performance information to inform future funding decisions. In addition to project milestone reporting, financial obligation data is monitored at the aggregate (DOI), bureau, and project levels across all involved bureaus. This obligation data and carryover balances are factors considered in the annual funding decision process. Further, unobligated balances on all damage assessment projects are closely tracked through to settlement, at which time all unused or unneeded funds are pulled back and re-allocated to other high-priority projects. In some instances and under certain circumstances, case teams have been directed to or have voluntarily returned project funds from ongoing projects so that they can be re-allocated to other projects and needs.

The program requires its case teams to document their respective assessment costs and attempts to recover those costs from the potentially responsible parties when negotiating settlement agreements. Over the past three fiscal years (2005 – 2007), the Program has utilized an average of \$2.0 million annually in recovered funds to fund new and ongoing assessment needs.

## **2009 Activity Performance**

In 2009, the program will continue to utilize recovered past assessment costs from recent settlements and/or returned funds from completed assessments in addition to the \$4.0 million in appropriated funds contained in this request. It is estimated that these funds will support new or ongoing damage assessment efforts at approximately 30 sites, maintaining the program's damage assessment capability at current levels. This level of funding will support new feasibility studies, initiation of assessments at new sites, as well as providing continued funding for ongoing cases. As has been the norm in recent years, the program anticipates that the annual project proposals from the field will exceed the amount of funding available. The program will continue its focus on the use of cooperative assessments, and pursue funding agreements with potentially responsible parties wherever and whenever possible. Money provided under these funding agreements expands the program coverage by allowing other damage assessment cases to utilize

the appropriated and returned assessment funds. In addition, the program will continue to refine its milestone reporting process and use that performance information to enhance management of its damage assessment workload.

In 2009 the program will continue its implementation of administrative and regulatory reforms that resulted from the Secretary's acceptance of the FACA Committee recommendations issued in 2007. (See Program Management activity section for a broader discussion of the FACA Committee).

In its 2007 project funding deliberations, the Restoration Program again made use of performance data collected from ongoing cases that document the attainment of specific chronological milestones (trustee MOU, assessment plan development, injury determination and quantification, claim for damages, etc.) in the multi-year process toward settlement. Funding decisions were weighted towards those cases that continue to show progress along the damage assessment continuum towards settlement and eventual restoration. Cases that stall or fail to progress are considered a lesser priority, but are given direction to make course corrections at a stable or reduced funding level. Course corrections must be made before funding is made available for addressing subsequent milestones. For example, a case team was directed to finalize necessary procedural products such as a publicly-announced assessment plan before beginning its scientific studies. Such performance information lends itself to helping the Restoration Program better manage its workload by having a clearer sense of when damage assessments are near completion and opportunities for new starts emerge.

The Program's current damage assessment project caseload through 2008 totals 48 ongoing cases (including feasibility studies), and are among those depicted on the map and table on the following pages.

Damage Assessment and Restoration Sites  
Funded by the Department of the Interior Restoration Fund



<b>Alabama</b>		<b>Louisiana</b>		<b>Ohio</b>					
1. Anniston PCBs	△	25. Calcasieu Estuary	△	47. Ashtabula River	△				
2. CIBA - McIntosh NPL Site	△	<b>Massachusetts</b>		48. Ohio River	★				
<b>Arizona</b>		26. Housatonic River	★	49. Ottawa River	△				
3. Cyprus Tohono Mine	△	<b>Michigan</b>		<b>Oklahoma</b>					
4. Phelps-Dodge Mine Complex	△	27. Kalamazoo River	△	23. Tri-State Mining District --					
<b>Arkansas</b>		28. Saginaw River and Bay	★	Tar Creek (20)	△				
5. Vertac/Bayou Meto	★	29. Tittabawassee River	△	<b>Oregon</b>					
<b>California</b>		<b>Minnesota</b>		50. M/V New Carissa Oil Spill	★				
6. Almaden Quicksilver	★	30. St. Louis River	△	51. Portland Harbor NPL Site	◎				
7. American Trader Oil Spill	★	31. St. Regis Paper	△	<b>Pennsylvania</b>					
8. APEX Houston Oil Spill	★	<b>Missouri</b>		52. Paoli Railyard	★				
9. Cantara Loop Chemical Spill	★	23. Tri-State Mining District --		53. Palmerton Zinc	△				
10. Iron Mountain Mine	★	Jasper County	△	<b>South Dakota</b>					
11. Montrose Chemical / Los Angeles Bight	★	69. S.E. Missouri Lead Mining Sites	△	54. Whitewood Creek	★				
12. New Idria Mine	◎	<b>Montana</b>		55. Lavaca Bay	★				
13. PG&E Topock Compressor Station	◎	33. Grant-Kohrs Ranch	★	<b>Texas</b>					
14. Santa Clara River Oil Spill	★	(Clark Fork River)	△	<b>Utah</b>					
<b>Colorado</b>		<b>Nevada</b>		56. Jordan River	★				
15. Upper Arkansas River	▽	33. Rio Tinto Mine	△	57. Kennecott Copper-North End	△				
73. French Gulch Mines	▽	34. Leviathan Mine	△	58. Richardson Flats Mine / Silver Creek	◎				
<b>Florida</b>		35. Yerington Anaconda Mine	△	<b>Vermont</b>					
16. Lake Apopka - North Shore	★	<b>New Jersey</b>		59. Pine Street Canal	★				
<b>Georgia</b>		36. Diamond Alkali	△	<b>Virginia</b>					
17. LCP Chemical	△	37. Great Swamp NWR	★	60. CERTUS - Clinch River Spill	★				
18. Terry Creek	◎	38. Berry's Creek Watershed	△	61. Lone Mountain Coal Slurry	★				
19. Lake Hartwell PCBs	★	39. GAF / ISP-ESI Facility	◎	62. Saltville Disposal NPL Site	△				
<b>Idaho</b>		40. U.S. Avenue Burn	◎	70. DuPont - Waynesboro Facility	△				
20. Coeur d'Alene Mine	△	<b>New Mexico</b>		<b>Washington</b>					
(Bunker Hill Mining District)	★	41. Molycorp Mine	◎	63. Commencement Bay	△				
<b>Illinois</b>		<b>New York</b>		64. Elliott Bay	△				
71. Former Indian Refinery	△	42. Hudson River PCBs	△	65. Holden Mine	△				
72. Sauget Area Dump Sites	△	43. Onondaga Lake NPL Site	△	66. Tenyo Maru Oil Spill	★				
<b>Indiana</b>		44. Niagara River	△	67. Midnite Mine	△				
21. Grand Calumet River	★	45. St. Lawrence Environment	△	<b>Wisconsin</b>					
22. Viacom / Westinghouse PCBs	△	<b>North Carolina</b>		68. Fox River / Green Bay	★				
<b>Kansas</b>		46. LCP - HoltraChem Superfund Site	◎						
23. Tri-State Mining District --	△								
Cherokee County	△								
24. Eastern Kansas Smelters	△								
◎	Feasibility Studies	△	Damage Assessment in Progress	▽	Case Settled - Restoration to Follow	★	Restoration Actions in Progress	◇	Tribal Involvement

Damage assessment activities are essential first steps in the process of restoring natural resources that have been injured by releases of oil or hazardous substances. The nature and magnitude of the natural resource injury must first be fully understood and quantified if the resulting restoration actions are to be effective. The program performance measures of acres and miles of habitat restored, however, do not directly measure progress in the Damage Assessment activity. Instead, the Program must rely on workload measures, such as numbers of assessment cases that have been settled and amount of funds recovered in those settlements. These program output measures report the following 2007 accomplishments: Through December 2008, the DOI Restoration Fund has recovered over \$785 million in gross settlement receipts and earned interest since its creation in 1992. (All amounts inclusive of Exxon Valdez oil spill funds). Deposits and interest for 2007 alone totaled nearly \$76 million). Within that amount, 3 Departmentally-funded damage assessment cases reached settlement, with settlements of over \$26.4 million received.

## ACTIVITY: RESTORATION SUPPORT

Natural Resource Damage Assessment	FY 2007 Actual	FY 2008 Enacted	2009			Change from FY 2008 (+/-)	
			Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	2009 Request		
Activity: Restoration Support	\$000	576	591	+13	0	604	+13
	FTE	0	0	0	0	0	0

### Activity Overview:

Every action the Restoration Program undertakes is done with the goal of restoration in mind. Upon the successful conclusion of a damage assessment and achieving settlement, Departmental bureaus, working in partnership with other affected State, Federal, tribal and/or foreign co-trustees, use settlement funds to carry out restoration activities. Under this activity, the Program continues its coordinated effort to focus greater attention on restoration activities and to expedite the expenditure of settlement funds to develop and implement resource restoration plans. The program's Restoration Support Unit staff, upon request, provides engineering and ecological/biological support to the Department's case managers/teams, as well as assistance with meeting various legal and regulatory requirements, identifying possible partnering opportunities, and drafting appropriate documents. In addition, the Program continues to work with the USGS in the field of restoration ecology to develop monitoring protocols to measure the success of restoration efforts.

Over ninety percent of all funds received and interest earned to date from natural resource damage case settlements are designated as restoration funds, and can be used only for restoration planning, implementation (including land acquisition), oversight, and monitoring of implemented restoration actions at a specific site or related to a specific settlement, and only after the issuance of an publicly-reviewed restoration plan. The use of such settlement funds provides real value to

the American public, as injured natural resources and services are restored by, or at the expense of the responsible party, and not the taxpaying public.

<b>Other Available Restoration Resources</b>		
(Dollars in \$000)		
	<u>2007</u>	<u>2008</u>
Settlement funds currently held in DOI Restoration Fund (estimate)	\$300,000	\$300,000
Settlement funds in various court registry accounts (estimate)	\$100,000	\$100,000

In addition to settlement funds deposited into the DOI Restoration Fund, the Department is a party to other natural resource damage settlements where settlement funds are deposited into a Court Registry or some other account selected by the Trustees. Additionally, there are a number of settlements where the responsible parties have agreed to undertake or implement the restoration action, with trustee agencies providing oversight to ensure compliance with the terms of the settlement and adherence to the approved and public-reviewed restoration plan. Once fully implemented, the restoration actions are then monitored by the trustees to ensure they have been effective and accomplished the goals and intent of the restoration plan.

### **2009 Activity Performance:**

In 2009, the Program will continue a variety of activities focused on furthering the achievement of restoration, primarily through the Restoration Support Unit in Denver. The focus of this activity will continue to be to provide assistance to the field for the sole purpose of getting restoration accomplished on the ground. As the focal point for the program's restoration efforts nation-wide, in 2009 the Unit will continue to support and facilitate restoration led by the bureaus at sites where damage claims have been settled. In addition, the Unit expects to have compiled a significant amount of information on restoration successes and actual restoration costs and start providing input based on lessons learned that will help damage assessment case teams improve the strength of their damage claims in the future. The Restoration Support Unit continues to provide technical support to case teams to facilitate multiple aspects of restoration, including contracting, restoration planning, engineering support, and seeking out partnership opportunities and matching funds.

In 2009, in addition to the activities just described, Unit staff will lead tech transfer and outreach activities to ensure that restoration advances made by individual case teams will be shared with fellow restoration practitioners. Examples include development of training modules to be taught at the FWS and BLM training centers, and the organization of seminar sessions at the Restoration Program's annual workshop.

In 2009, the program will continue to implement administrative and regulatory reforms that resulted from the Secretary's acceptance of a suite of FACA Committee recommendations. The FACA Committee recommendations in May 2007 address key questions that impact the restoration of injured natural resources, such as how to evaluate the potential effectiveness of

restoration alternatives (on-site vs. off-site) and how to streamline post-settlement restoration activities. Specific restoration support activities in response to the Committee recommendations include a partnership with the Society for Ecological Restorations to develop and maintain an inventory of restoration plans, opportunities, and success stories, as well as the development and implementation of policies and guidance to coordinate NRD restoration planning and NEPA compliance actions. (See Program Management activity section for a broader discussion of the FACA Committee).

Additionally, in 2009, the program will continue to work with USGS to implement the restoration science initiative. The study plans developed at the start of the initiative will establish possible out-year schedules for the testing of protocols at key sites representative of habitats and contaminants that the program addresses. The long-range outputs of the initiative include:

- Tools to predict the time from initiating restoration actions to system recovery that incorporate toxicological effects, land use, and the natural variability in ecosystems.
- Integrated models that will help to predict realistic responses for alternative management actions, thus enabling managers to implement adaptive management strategies and move impaired ecosystems toward their restoration goals.
- Increased understanding of the ecological significance of restored habitats, leading to improved endpoints and more meaningful criteria for measuring restoration success.
- Long-term time series (5-10 years) information on restoration success specific to contaminated lands.

These efforts bring USGS science expertise to address the ecological restoration of species and habitats injured by the release of oil or other hazardous substances and the monitoring and measurement of restoration success. Although many scientifically valid techniques are available to document the extent and severity of injury to natural resources, restoration science is still in its infancy. Several interconnected efforts, engaging multiple disciplines within USGS, are being undertaken to strengthen the state of restoration science, reduce disagreements with responsible parties, and help us achieve more timely and effective restoration.

Improving the science in the design, implementation, and monitoring of type-specific restoration projects will increase the understanding of issues critical to restoration success, thus benefiting the Restoration Program as a whole, as well as enabling “technology transfer” opportunities to other DOI restoration efforts, including the Everglades, California Bay-Delta, and possibly the hurricane-ravaged Gulf coast.

## RESTORING INJURED RESOURCES

The following are examples of recent on-the-ground restoration accomplishments achieved by the DOI bureaus and their co-trustees at a number of selected sites:

### *M/V New Carissa Oil Spill, OR*

Nearly a decade of hard work by the U.S. Fish and Wildlife Service, the Bureau of Land Management and their federal, state, and tribal co-trustees resulted in the August 2007 acquisition of 3,850 acres of forested lands in Oregon. The Confederated Tribe of Siletz Indians will manage the land as habitat for the threatened marbled murrelet and other species that make their home in the forests of the Pacific Northwest. In a unique arrangement, limited commercial timber harvest will be allowed in areas of the property without murrelet nesting habitat, when that is consistent with restoration objectives. This will provide revenue for managing the property and paying county property taxes. The Conservation Fund, a national environmental non-profit, assisted the natural resource trustee agencies in locating the property and negotiated the purchase from Forest Capital Partners, LLC, and Plum Creek Timber Company, Inc.



The 1999 grounding and break-up of the cargo ship *M/V New Carissa* released more than 70,000 gallons of fuel oil that killed nearly 2,500 seabirds including 262 marbled murrelets. The marbled murrelet, a small seabird that forages in open coastal waters, utilizes old-growth forests for nesting. In addition to the seabirds, several hundred migratory shorebirds were killed. Trustee biologists estimate

that 672 sanderlings and four to eight western snowy plovers, another threatened species, likely perished. Also 29,000 public recreation trips were lost or diminished because of the spill.

The acquisition of these forest lands is the centerpiece of a multi-prong effort to restore the habitat and resources injured in the spill. In the immediate aftermath of the spill, the trustees undertook emergency restoration efforts to restore habitat for snowy plover nesting in the dunes along the Oregon coast. Additional projects to benefit sea and shorebirds and to compensate for the lost recreational use of the coast are in various stages of planning, to be implemented in 2008 and the near future. These projects include:

- Annual maintenance on the restored western snowy plover nesting area on Coos Bay's North Spit for the next 30 years.

- Restoration of more than 400 acres of salt marsh on Bandon Marsh National Wildlife Refuge to benefit nesting and migrating shorebirds.
- Three distinct projects are planned as compensation for the over 2,000 seabirds lost due to the spill. The first of these projects entails the acquisition of lands containing and adjacent to seabird colonies. The land would be added to the Oregon Islands National Wildlife Refuge. A second project will reduce predation by non-native predators such as the red fox on seabird colonies along the south coast of Oregon. An education project is also planned that will benefit seabirds nesting along the Oregon coast.
- A number of projects to compensate for the recreational losses have been started or are planned including beach trail rehabilitation and improvements, directional and educational signs, expansion of day-use areas, fence removal, and improved access to campgrounds.

### **Fox River/Green Bay, Wisconsin, Michigan**

The trustee partnership for the Fox River/Green Bay site continues to add to the thousands of acres of habitats already restored and protected using funds from a variety of settlements of damage claims for natural resources injured due to the release of PCBs into the Fox River and Green Bay. In August 2007, the Natural Resource Trustee Council acquired a 974 acre parcel, which included approximately 1.5 miles of frontage on the Wolf River, a tributary of the Fox River. On behalf of the Trustee Council, the Wisconsin Department of Natural Resources (DNR) purchased the property for \$2.8 million using natural resource damage assessment settlement dollars from two potentially responsible parties. The acreage is adjacent to lands already owned and managed by the DNR. The combined properties encompass 4,474 acres, providing for the protection of a large contiguous section of important bottomland wetland habitat. The property, formerly owned by a hunting club that managed the lands for duck and deer hunting, will continue to provide important habitat for waterfowl and migratory songbirds, as well as for upland mammals. In addition, riparian wetlands along the Wolf River frontage provide critical walleye spawning marshes for the Wolf River system.

In the summer of 2007, the Oneida Tribe began construction on a 200-acre wetland restoration effort on their reservation in Wisconsin. After developing plans with technical assistance from the Fish and Wildlife Service, the Wisconsin DNR, Stockbridge-Munsee Tribe and Wisconsin Waterfowl Association, the Oneida Tribe began repairing years of ditching and draining to restore a soggy farm field back to the native wetland habitat it had been in the early 1900s. Construction included the installation of water control structures, building earthen berms, and siting and shaping nesting islands, settling basins, depressions, ponds, and waterways to mimic the cedar-tamarack wetlands originally found in the area. Seeding and replanting of vegetation took place in the fall, and further natural revegetation is expected. In addition to providing important waterfowl habitat, these wetlands will filter harmful runoff from the 2,000-acre watershed of the Suamico River, which provides important pike spawning areas and empties into Green Bay. The site is already a popular hunting spot for Oneida tribal members and it is expected to attract more community members for wildlife viewing, hiking and cultural activities.



**Lancaster Brook Stream Restoration**

Additional settlement funds were used for a stream restoration project along one-third of a mile of Lancaster Brook, a coldwater trout stream located in the northern portion of the Oneida Reservation. The stream possesses relatively good water quality, but exhibits highly variable flows and water levels and degraded instream habitat that has diminished the trout population from its historic levels. Through the strategic placement of logs and other large woody debris anchored in the streambed and along the shoreline, this project will improve habitat for native Brook trout and provide food and cover for a variety of other aquatic animals. Natural rain and snowmelt will continue to sculpt the streambed through scouring, and the formation of pools used by the trout. The restoration of Brook trout habitat will in turn improve fishing opportunities for Oneida Tribal members and support their cultural use of natural resources.

### **Chalk Point Oil Spill, Maryland**

To compensate for ruddy lost ducks injured or killed in an April 2000 oil pipeline rupture, the Fish and Wildlife Service and co-trustees from the National Oceanic and Atmospheric Administration, and the State of Maryland calculated that 1,850 acres of nesting habitat needed to be restored. In the summer of 2007, that goal was reached through partnerships with other Service programs, Ducks Unlimited, and private landowners who planted perennial grasses and placed conservation easements on the restored habitat in the Prairie Pothole Region of North and South Dakota. Prairie potholes provide some of the most productive wetland habitat for waterfowl in North America. Increasing nesting habitat in the prairie potholes, will lead to more ruddy ducks wintering in the Patuxent River and Chesapeake Bay where the spill and injury occurred.

### **Jordan River, Utah**

Utilizing funds from the Sharon Steel Mill Tailings Site NRDA settlement, the Fish and Wildlife Service and the Bureau of Reclamation are working closely with the Great Salt Lake Audubon and TreeUtah to restore habitats for migratory birds and waterfowl, as well as fish and other wildlife on 120 acres of land in the floodplain of the Jordan River, near Salt Lake City. The most recent achievement on this project was the restoration of Willow Creek, a tributary stream that had been diverted off the floodplain for over 80 years. Construction crews created a meandering streambed across the floodplain, following historic contours and oxbows of the original Willow Creek channel. TreeUtah then coordinated the work of community volunteers who planted several thousand trees, shrubs and native plants. The result was the restoration of over ½ mile of stream and 15 acres of associated ponds, wetlands and riparian habitat. The

Service continues to work with these partners and others to acquire land within the Jordan River floodplain that has high potential value as habitat for migratory birds, to replace invasive non-native vegetation with native species, and to work cooperatively to protect these areas into the future.

### **Iron Mountain Mine, California**

Restoration of natural resources injured at the Iron Mountain Mine involves a network of cooperators that goes far beyond the trustee agencies, and dovetails with ongoing conservation and recreation planning in the area, most notably the wide-ranging Cal-Fed partnership. Three DOI bureaus (Bureau of Land Management, Bureau of Reclamation, and the U.S. Fish and Wildlife Service) are teaming with state trustees, NOAA, the Packard Foundation, the Pacific Gas and Electric Company, and numerous non-governmental organizations to restore 42 miles of anadromous fish habitat in Battle Creek that is important for Chinook salmon and steelhead. The restoration effort entails removing five diversion dams, improving fish passage structures at three other dams, and greatly increasing instream flows, while at the same time maintaining integrity of the hydroelectric power production system. In addition, the trustees are partnering with The Nature Conservancy and Cal-Fed to acquire conservation easements to protect riparian habitat and water quality in the Battle Creek drainage. To compensate for lost recreational uses in this area with increasing recreation demands on public lands, restoration efforts also include several miles of new trail development in partnership with local governments and the McConnell Foundation and the recent BLM acquisition and opening up 900 acres of land from the potentially responsible party.



**Wildcat Dam to be removed in project to restore fish passage for Chinook salmon and steelhead on the North Fork of Battle Creek**

### **Berman Oil Spill, Puerto Rico**

On Earth Day, April 22, 2007, representatives of the National Park Service, NOAA, and the Commonwealth of Puerto Rico held a kickoff celebration at San Juan National Historic Site to recognize the issuance of the Berman Restoration Plan and announcement of restoration projects. These projects address three types of injuries caused by the oil spill and grounding: reef injuries, lost recreational beach use, and lost visitor use of the national historic site. The restoration projects being implemented include seagrass restoration, modular reef construction, acquisition and protection of a 270-acre parcel of shorefront property in Puerto Rico's valuable and environmentally sensitive Northeast Ecological Corridor, and several restoration projects at the San Juan NHS, including of the extension of the coastal promenade around historic fort El Morro.



Fort El Morro at the tip of San Juan Peninsula. A Berman Restoration Project now being designed includes an extension of the existing coastal Promenade (on the right side of the photo) around the fort and an overlook at the Water Battery (foreground center)

### **Lake Hartwell, Georgia/South Carolina**

In 2007, the Fish and Wildlife Service partnered with the states of Georgia and South Carolina to begin implementation of projects to restore fishery resources that had sustained injuries from long-term PCB contamination in Lake Hartwell and Twelvemile Creek, which flows into the lake. The purchase and removal of two hydroelectric dams will accelerate the EPA clean-up of the site and restore the hydrology of lower Twelvemile Creek to a free-flowing riverine system, improving biodiversity and population density of native species and providing suitable habitat for native submerged and emergent vegetation. These improvements will be supplemented by stream corridor restoration, which will improve bottom habitat for native fishes, establish a more natural sedimentation regime, and improve riparian habitat.

### **Anacortes Oil Spill, Washington**

The Texaco - Anacortes Trustees Restoration Committee, comprised of the Fish and Wildlife Service, the Bureau of Indian Affairs, three Washington State agencies, and four tribes, worked

in partnership with the Skagit Land Trust early in fiscal year 2007 to identify, purchase, and preserve 82 acres of tidelands in Fidalgo Bay at the northern end of Puget Sound. These tidelands contain important eelgrass beds and intertidal habitat that support juvenile salmon and forage fish, bald eagles, great blue herons, and many other species. In addition, the tidelands are a wintering ground for Black Brant and other migratory waterfowl. This newly protected acreage adjoins 450 acres acquired with NRDAR settlement funds in 1999 and will be managed jointly as a 532 acre State Aquatic Reserve.

## ACTIVITY: PROGRAM MANAGEMENT

Natural Resource Damage Assessment	FY 2007 Actual	FY 2008 Enacted	2009			Change from FY 2007 (+/-)	
			Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	2009 Request		
Activity: Program Management	\$000	1,594	1,673	+60	+22	1,755	+82
	FTE	4	4	0	0	4	0

### Summary of FY 2009 Program Changes for Program Management

Request Component	(\$000)	FTE
<u>Program Changes:</u>		
• Budget & Financial Stewardship	+22	0
<b>TOTAL Program Changes</b>	<b>+22</b>	<b>0</b>

### Justification of 2009 Program Change

The FY 2009 budget request for the Program Management activity is \$1,755,000 and 4 FTE, a program change of +\$22,000 and no FTE from the 2008 enacted level. The requested increase, along with base funding, will help address the program's increasing needs for budget and financial stewardship to effectively manage the growing volume of settlement funds deposited into the Restoration Fund. The Fund has experienced growth in the number of financial and budgetary transactions in its day to day operations. In a deliberate refocusing of program priorities towards increasing on-the-ground restoration actions which began in 2000, the program and Restoration Fund have seen increases in the number and dollar amount of settlement deposits, in cooperative assessment funds deposited, in investment activity, and in transfers of funds to other Federal, state, and tribal co-trustees. Additionally, as the number of such transactions increases, so does the amount of effort necessary to meet data requests from auditors during preparation of the Department's annual financial statements. Presently, the Restoration Fund totals over \$225 million, which is managed at the site/project level, with the current project list nearing 500 ongoing assessment and/or restoration cases. This growth and program maturation are expected to continue. For example, a single bankruptcy case covering a number of major, multi-year assessment sites has recently reached a settlement agreement, and may result in deposits of over \$75 million in 2008. To date, all these financial and budgetary management activities have been conducted by a single FTE in the program's headquarters, along with part-time accounting support through the Department's National Business Center. The requested increase will allow the program to keep pace with the Fund's growth and maintain high standards of fiscal responsibility to the Department and its co-trustees.

## **Activity Overview:**

Program Management provides the strategic vision, direction, management, and coordination of inter-Departmental activities necessary for the Department to carry out the Restoration Program. In short, it manages the intersection of complex interdepartmental relationships among biology, environmental toxicology, natural resource management, economics, and law. The Program Management activity allocates damage assessment project funding; monitors program performance and ensures accountability; provides the framework for identifying issues that raise significant management or policy implications; develops the Department's policies and regulations for conducting and managing damage assessment and restoration cases; responds to Departmental, Office of Management and Budget, and Congressional inquiries; and ensures coordination among Federal, State, and Tribal governments.

Program Management funding enables the program to maintain support for bureau workgroup representation, ensuring essential integrated program coordination across the Department. The request includes funds for program support positions in the five primary trustee bureaus (BIA, BLM, BR, FWS, NPS), technical support offices (USGS, Office of Policy Analysis, and Office of the Solicitor) and regional coordination (DOI Office of Environmental Policy and Compliance). The Program Office currently provides \$78,000 (approximately 0.6 FTE) to each participating bureau for workgroup participation and program support. A fully integrated Departmental program requires at least this level of bureau participation on the workgroup and Program Management Team, as well as continued regional coordination and technical support in science, economics, and law.

## **2009 Program Performance:**

For 2009, Restoration Program will continue the implementation of administrative and regulatory reforms were the result of FACA Committee recommendations. In addition, a wide range of program operations and improvements will be carried over from 2008. All Program management efforts are focused on providing the tools or processes to achieving restoration of injured natural resources.

The 2009 request level will support the workgroup as the Program continues its communication, consultation, and coordination activities with industry, the environmental community and Federal, State, and Tribal co-trustees. Continued cooperation and coordination with co-trustees will enhance opportunities for efficiencies and to identify and eliminate duplication of effort and process redundancies.

Program management activities in 2009 will include the following efforts to continue to develop, refine and update a number of existing administrative and policy tools, with an eye towards improved consistency and effectiveness. Among these efforts are the following:

- Continue to evaluate the appropriate use of economic analytical tools used in damage assessment and restoration activities.

- Coordination with other trustees and restoration funding entities (U. S Coast Guard's National Pollution Funds Center) to develop common cost documentation practices and formats to ensure consistency and uniformity.
- Broaden the opportunities for cooperative assessment by improving existing guidance and documents.
- Improve public outreach and information sharing through internet-based applications and websites.

Continued development and broader use of these and other tools will help ensure cross-bureau consistency and compatibility of information and systems, allowing the program to serve as a model for integrated management Department-wide.

A positive aspect to the cooperative conservation approach practiced by the Department is revealed in the amount of cooperative assessment funds provided by potentially responsible parties to the Department. In FY 2007, over \$3.6 million was provided by cooperating responsible parties to either reimburse the Department or to provide advance funding for damage assessment activities prior to settlement. These funds provide a significant boost to the Restoration Program's damage assessment capabilities, allowing the Department to fund other cases it might not otherwise be able to fund.

At a national workshop held in April 2007, the Program provided training for over 130 practitioners from across the Department on a variety of topics including project management, damage claim development, restoration methods and other scientific and legal issues. As an indicator of continued implementation of the Cooperative Conservation philosophy focused on communication and coordination with other involved parties, over 50 State, Tribal, and Federal co-trustees, as well as representatives from industry and the conservation community also attended the workshop.

### **Restoration Program Advisory Committee**

In 2005, the Secretary chartered an NRDAR Advisory Committee to provide advice recommendations on issues related to the Department's authorities, responsibilities and implementation of natural resource damage statutes and regulations. The Advisory Committee, consisting of 30 members selected from Federal, state and tribal natural resource trustee agencies, and representatives from business and industry, the academic community, and national and local environmental groups addressed key questions that impact the damage assessment process. The Advisory Committee met many times between 2005 and 2007, leading to committee recommendations that were presented to the Secretary in May 2007.

The Committee Charter identified a number of specific objectives for advice on actions that can be undertaken to achieve faster, more efficient, and more effective restoration of injured natural resources and to promote cooperation among interested parties. At the request of the Secretary, the Committee focused on actions within the purview of DOI's own authorities and

responsibilities, rather than on actions involving obligations imposed on non-trustee federal agencies, or state or tribal entities.

The Department specifically asked the Committee to consider four major parts of the NRDAR process: 1) Natural Resource Injury Determination and Quantification; 2) Restoration Action Selection; 3) Compensating for Public Losses Pending Restoration, and; 4) Timely and Effective Restoration *after* NRDAR Claims are Resolved. These four issue areas were chosen because they address persistent critiques and contention surrounding the NRDAR program and they represent specific provisions in the current DOI NRDAR Regulations.

Subcommittees were formed to analyze each of these four topics and presented detailed reports with recommendations to the full Committee. The full Committee considered and discussed the Subcommittee reports in two public meetings. The Subcommittee reports were not adopted by the full Committee, but contain additional valuable detailed information and discussions. A drafting team was charged with synthesizing consensus recommendations derived from the Subcommittee reports and preparing a final draft report. The full Committee reviewed, revised, and adopted this report at a final public meeting.

In brief, key full Committee recommendations are that DOI should:

- Explicitly authorize trustees to use a “restoration-based approach” for all natural resource damages, including interim losses.
- Adopt procedures that promote coordination between response and NRDAR activities.
- Encourage early and continued consideration of appropriate restoration options in the NRDAR process.
- Sponsor a series of workshops, research papers, and symposiums to inform guidance on explicitly linking the scale of restoration to the nature and extent of the injury.
- Ensure that compliance by federal trustees with the requirements of the National Environmental Policy Act (NEPA) occurs concurrently with restoration planning.
- Identify and adopt department-wide categorical exclusions from NEPA for appropriate types of restoration actions.
- Revise the existing criteria for evaluating restoration alternatives to provide clearer guidance that will enhance trustee decision-making.
- Enhance its NRDAR partnerships, through improvements in grants, cooperative agreements, and contracting, consistent with the goals of Cooperative Conservation.
- Encourage the use of existing local and regional restoration plans and databases for use in NRDAR.

The Committee strongly urged DOI to implement these recommendations expeditiously through a tiered approach, working first on those actions deemed easier to address, and later on more complex actions such as comprehensive regulatory and guidance revisions.

### **Program Support of Bureau, Department, and Governmentwide Costs:**

Section 405 of the 2008 Interior appropriations bill, and adopted in the 2007 Joint resolution directs the disclosure of overhead, administrative, and other types of administrative support spending. The provision requires that budgets disclose current amounts and practices with

regard to overhead charges, deductions, reserves, or holdbacks from program funding to support government-wide, Departmental, or bureau administrative functions or headquarters, regional, or central office operations. Changes to such estimates trigger reprogramming procedures, in which the Department must provide advance notice to and seek approval from the House and Senate Appropriations Committees.

For 2009, the Restoration Program's costs related to overhead, administration, and central/regional operations are addressed in three components of the budget, all under the heading of External Administrative Costs. These costs include amounts paid to the Department or other Executive Branch agencies to support Departmental or Government-wide administrative costs.

<b>External Administrative Costs</b>			
(Dollars in Thousands)			
	FY 2007 <u>Actual</u>	FY 2008 <u>Enacted</u>	FY 2009 <u>Estimate</u>
<b><u>DOI Working Capital Fund</u></b>			
Centralized Billings	80	87	91
Fee for Services	0	0	0
Direct Billings	155	160	177
Reimbursables	<u>0</u>	<u>0</u>	<u>0</u>
Total, Working Capital Fund	235	247	268
<b><u>Fish and Wildlife Service</u></b>			
FWS User-Pay Cost Share	170	182	179
<b><u>U.S. Geological Survey</u></b>			
Common Services Support	31	75	75
<b><u>U.S. Department of Justice</u></b>			
DOJ Sec. 108 3% Offset Authority	46	250	100

Charges related to the Departmental Working Capital Fund (WCF) identified in the above table reflect the Restoration Program's share of centralized Departmental expenses for items and expenses such as telecommunications, security, mailroom services, costs associated with audited financial statements, and other WCF charges.

The Fish and Wildlife Service (FWS) assesses its User-Pay Cost Share charges on damage assessment funds provided to the Service from the Restoration Program. Funds collected by FWS are used to offset a range of Servicewide administrative costs. For 2008, User-Pay Cost Share charges to the Restoration Program will be \$182,000. For 2009, FWS estimates those charges to be \$179,000.

The Department of Justice applies a three percent offset to some, but not all, civil litigation debt collections made on behalf of the Restoration Program. Authority for these offsets can be found in Section 108 of the Commerce, Justice, and State Appropriations Act for Fiscal Year 1994 (P.L. 103-121, 107 Stat 1164 (1994)). The offset is applicable to collections where the Department is the sole recipient of the funds. Funds subject to the offset authority are credited to the DOJ Working Capital Fund. The DOJ offset authority does not apply to restoration settlements jointly shared with non-Federal co-trustees that are collected by DOJ and deposited into the DOI Restoration Fund.

The Program Management activity, which includes Restoration Program administrative functions and central and regional operations, does not assess or levy any internal program overhead charges, deductions, or holdbacks to support such operations.

**DEPARTMENT OF THE INTERIOR  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
RESTORATION FUND**

**Program and Financing (in thousands of dollars)**

Identification code 14-1618-0-1-302	2007 Actual	2008 Estimate	2009 Estimate
<b><u>Obligations by program activity:</u></b>			
Direct Program:			
00.01 Damage Assessments	7,717	7,000	8,000
00.02 Prince William Sound Restoration	2,230	1,800	2,000
00.03 Other Restoration	37,999	20,200	22,000
00.04 Program Management	2,885	3,000	3,000
00.91 Total, direct program	50,831	32,000	35,000
<b><u>Budgetary resources available for obligation:</u></b>			
21.40 Unobligated balance carried forward, start of year	245,141	255,366	341,590
22.00 New budget authority (gross)	75,759	120,224	60,338
22.10 Resources available from recoveries of prior year obligations	801	1,000	1,000
22.21 Unobligated balance transferred to other accounts: (Funds Transferred to DOC/NOAA 13-4316) (Funds Transferred to USDA/USFS 12-1106) (Funds Transferred to USDA/USFS 12-5215)	-15,504 [-14,401] [-528] [-575]	-3,000 [-3,000]	-3,000 [-3,000]
23.90 Total budgetary resources available for obligation	306,197	373,590	399,928
23.95 New obligations	-50,831	-32,000	-35,000
24.40 Unobligated balance carried forward, end of year:	255,366	341,590	364,928
<b><u>New budget authority (gross), detail:</u></b>			
Discretionary:			
40.00 Appropriation (definite)	6,106	6,224	6,338
40.35 Appropriation permanently reduced	-63	0	0
43.00 Appropriation (total)	6,043	6,224	6,338
Mandatory:			
60.25 Appropriation (Special fund, Indefinite)	75,759	115,000	55,000
61.00 Transferred to Other Accounts: (Funds Transferred to DOC/NOAA 13-4316) (Funds Transferred to USDA/USFS 12-1106) (Funds Transferred to USDA/USFS 12-1119) (Funds Transferred to USDA/USFS 12-5215)	-3,967 [-3,626] [-25] [-27] [-289]	-1,000 [-1,000] [0]	-1,000 [-1,000] [0]
62.50 Appropriation (total mandatory)	71,792	114,000	54,000
70.00 Total new budget authority (gross)	77,835	120,224	60,338

**DEPARTMENT OF THE INTERIOR  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
RESTORATION FUND**

**Program and Financing (in thousands of dollars)**

Identification code 14-1618-0-1-302	2007 Actual	2008 Estimate	2009 Estimate
<b><u>Change in unpaid obligations:</u></b>			
72.40 Obligated balance, start of year	8,211	11,813	10,993
73.10 New obligations	50,831	32,000	35,000
73.20 Total outlays, gross (-)	-46,428	-31,820	-38,204
73.45 Adjustments in unexpired accounts	-801	-1,000	-1,000
74.40 Obligated balance, end of year	11,813	10,993	6,790
<b><u>Outlays, (gross) detail:</u></b>			
86.90 Outlays from new current authority	4,254	4,357	4,437
86.93 Outlays from current balances	816	1,813	1,867
86.97 Outlays from new permanent authority	7,576	10,650	5,300
86.98 Outlays from permanent balances	33,782	15,000	26,600
87.00 Total outlays (gross)	46,428	31,820	38,204
<b><u>Net budget authority and outlays:</u></b>			
89.00 Budget authority	77,835	120,224	60,338
90.00 Outlays	46,428	31,820	38,204
<b><u>Investments in U.S. securities</u></b>			
92.01 Total investments, start of year			
U.S. securities, par value	227,474	237,458	300,000
92.02 Total investments, end of year			
U.S. securities, par value	237,458	300,000	330,000

**DEPARTMENT OF THE INTERIOR  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
RESTORATION FUND**

**Object classification (in thousands of dollars)**

Identification code 14-1618-0-1-302	2007 Actual	2008 Estimate	2009 Estimate
<b><u>DIRECT OBLIGATIONS</u></b>			
Personnel compensation:			
11.1 Full-time permanent	818	841	866
11.3 Other than full-time permanent	0	0	0
11.5 Other personnel compensation	4	10	10
11.9 Total personnel compensation	822	851	876
12.1 Civilian personnel benefits	183	200	210
21.0 Travel and transportation of persons	81	40	40
23.1 Rental payments to GSA	40	45	50
23.3 Communications, utilities, and miscellaneous charges	3	3	3
24.0 Printing and reproduction	2	4	4
25.2 Other services	0	50	50
25.3 Purchases of goods & services from other govt. accounts	617	250	250
26.0 Supplies and materials	7	10	10
41.0 Grants	26,995	4,900	7,750
99.9 Subtotal, direct obligations	28,750	6,353	9,243
<b><u>ALLOCATION ACCOUNTS</u></b>			
Personnel compensation:			
11.1 Full-time permanent	4,928	5,100	5,300
11.3 Other than full-time permanent	1,087	1,000	1,000
11.5 Other personnel compensation	172	150	100
11.9 Total personnel compensation	6,187	6,250	6,400
12.1 Civilian personnel benefits	1,659	1,750	1,850
21.0 Travel and transportation of persons	592	700	730
22.0 Transportation of things	34	30	35
23.1 Rental payments to GSA	184	200	210
23.2 Rental payments to others	3	10	10
23.3 Communications, utilities, and miscellaneous charges	238	100	105
24.0 Printing and reproduction	15	50	50
25.1 Advisory and assistance services	53	50	50
25.2 Other services	6,312	6,800	6,767
25.3 Purchases of goods & services from other govt. accounts	362	600	600
25.4 Operation & maintenance of facilities	0	100	100
25.7 Operation & maintenance of equipment	22	50	50
26.0 Supplies and materials	461	600	600
31.0 Equipment	546	400	300
32.0 Land and structures	977	1,700	1,700
41.0 Grants	4,436	6,257	6,200
99.0 Subtotal obligations - Allocation Accounts	22,081	25,647	25,757
99.9 Total obligations	50,831	32,000	35,000

**DEPARTMENT OF THE INTERIOR  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
RESTORATION FUND**

**Obligation Summary (in thousands of dollars)**

Identification code 14-1618-0-1-302	2007 Actual	2008 Estimate	2009 Estimate
<b>Obligations are distributed as follows:</b>			
Natural Resource Damage Assessment Program Office	28,750	6,353	9,243
Bureau of Indian Affairs	849	1,300	1,300
Bureau of Land Management	861	700	700
Bureau of Reclamation	48	100	100
Fish and Wildlife Service	15,929	18,497	18,914
National Park Service	2,392	2,700	2,400
Office of the Secretary	860	750	743
U.S. Geological Survey	1,142	1,600	1,600
99.9 Total obligations	50,831	32,000	35,000

**Personnel Summary**

Identification code 14-1618-0-1-302	2007 Actual	2008 Estimate	2009 Estimate
<b>Direct:</b>			
Total compensable workyears:			
1001 Full-time equivalent employment	7	7	7
Average Salary per FTE	\$131,188	\$136,082	\$141,299

**DEPARTMENT OF THE INTERIOR  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
EMPLOYEE COUNT BY GRADE**

	<b>2007 Actual</b>	<b>2008 Enacted</b>	<b>2009 Estimate</b>
Executive Level .....	0	0	0
SES.....	1	1	1
CA-3 * .....	0	0	0
AL-2-3 ** .....	0	0	0
SL-0 *** .....	0	0	0
subtotal.....	0	0	0
GS/GM-15 .....	0	0	0
GS/GM-14 .....	3	3	3
GS/GM-13 .....	2	3	3
GS-12 .....	1	0	0
GS-11 .....	0	0	0
GS-10 .....	0	0	0
GS-9 .....	0	0	0
GS-8 .....	0	0	0
GS-7 .....	0	0	0
GS-6 .....	0	0	0
GS-5 .....	0	0	0
GS-4 .....	0	0	0
GS-3 .....	0	0	0
GS-2 .....	0	0	0
subtotal (GS/GM).....	7	7	7
Total employment (actual / projected) at end of fiscal year.....	7	7	7

\*CA - DOI Board Member

\*\*AL - Administrative Law Judge

\*\*\*SL - Senior-Level / Scientific Professionals