

stimulate discussions on some of the more intriguing suggestions considered in developing the proposed rule. Immediately after publishing the proposed rule, NOAA held six regional meetings in January and February of 1994. A seventh workshop was held in March of 1994 in Washington, D.C., to summarize the discussions and results of the six regional meetings. NOAA published an informational notice to summarize the kinds of concerns raised in the discussions and refine some issues on which NOAA was particularly soliciting comments. 59 FR 32148 (June 22, 1994).

NOAA received numerous comments on the January 1994 proposed rule. Based on these comments, NOAA is considering a fundamental restructuring of the rule to provide even greater emphasis upon restoration. To ensure that all interested parties have adequate opportunity to review and comment on this restructuring, NOAA is reproposing the rule.

This preamble is organized in the following manner: the Introduction gives an overview of the proposed rule and is followed by a discussion of each of the subparts of this proposed rule. Subpart A provides a general introduction, subpart B describes trustee authorities, subpart C gives definitions pertinent to this proposed rule, subpart D describes the Preassessment Phase, subpart E describes the Restoration Planning Phase, and subpart F describes the Restoration Implementation Phase. Finally, the preamble provides a general summary of the comments on the January 1994 proposed rule.

## INTRODUCTION

### I. Goal of OPA: Focus on Restoration

The goal of OPA is to make the public and environment whole for injury to, destruction of, loss of, or loss of use (injury) of natural resources and/or services resulting from an actual or substantial threat of a discharge of oil (OPA sec. 1002(b)(2)(A)). This goal is achieved by planning and implementing appropriate actions to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and/or services (restore). The purpose of this proposed rule is to provide a framework for conducting sound natural resource damage assessments (NRDAs or assessments) that achieve restoration under OPA for incidents.

This proposed rule emphasizes several processes to achieve the goal of restoring injured natural resources and services: (1) Identification and evaluation of injuries to natural resources and/or services; (2) employing

assessment methods relevant to the circumstances of a particular incident; (3) identification and evaluation of restoration alternatives; and (4) involvement of the public in the process of selecting restoration actions appropriate for a given incident.

NOAA believes that an NRDA process that meets the essential procedural elements of identifying and evaluating relevant injuries and restoration alternatives, and soliciting public input will accomplish three major goals: (1) Involve the public in the decision of what actions will make them whole; (2) ensure that appropriate scientific procedures and methods for determining restoration actions for a given incident are followed; and (3) reduce transaction costs.

NOAA recognizes that restoration planning by federal trustee agencies is subject to the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), except when a categorical exclusion applies. However, NOAA believes that the process identified in this proposed rule mirrors the decisionmaking process embodied in NEPA, without requiring significantly different steps or products than those envisioned in OPA. Thus, compliance with the procedures set forth in the proposed rule would fulfill the requirements of NEPA. Steps and products that are analogous under OPA and NEPA are identified in a diagram in Appendix A at the end of the preamble.

Finally, NOAA has developed guidance documents on various aspects of the NRDA process. These guidance documents are available in draft on: Preassessment, injury assessment, restoration, compensation formulas, and NEPA compliance (citations for the documents are included in the Bibliography at the end of this preamble). These draft documents are available from the address at the front of this preamble. The guidance documents are being prepared in conjunction with this rulemaking to provide additional technical information to those performing assessments under OPA and other interested members of the public. These documents will not constitute regulatory guidance, nor will they have to be followed for a damage assessment to be conducted in accordance with these regulations. The documents, in their final form, will be made available through a public information distribution service.

## II. Overview of the Restoration Planning Process: NRDA Under the Proposed Rule

Regardless of the scope or scale of the incident, the restoration planning process provided in this proposed rule is generally the same. In the Preassessment Phase, trustees must first determine threshold issues that establish their authority to begin the NRDA process, such as: (1) Whether OPA is applicable (e.g., did the incident involve oil?); (2) whether an exclusion from liability under the statute applies (e.g., natural resources were affected by a discharge from a public vessel); and (3) whether natural resources under their trustee authority were potentially affected by the incident. Trustees then assess whether injuries will be adequately addressed through response actions, or whether further action is warranted to consider the need for additional restoration.

If further action is justified, the trustees prepare a "Notice of Intent to Conduct Restoration Planning," or "Notice." Based on information available at this early stage of the assessment process, the Notice may also describe the trustees' proposed strategy for assessing injury and determining appropriate restoration actions. This proposed rule advocates using injury assessment procedures that directly provide information on restoration and are cost effective.

Once the Notice is published, trustees continue with the injury assessment component of the Restoration Planning Phase, in which trustees evaluate natural resource and/or service injuries. Following injury assessment, trustees determine the type and scale of restoration to address the injuries. Restoration under the proposed rule includes two components: (1) Primary restoration—actions taken to return the injured resources and services to baseline, including the natural recovery option, and (2) compensatory restoration—actions to make the environment and public whole for resource services lost from the date of the incident until recovery of the injured resources. The type and scale of compensatory restoration are related to the type and scale of primary restoration selected. Scaling of appropriate compensatory restoration actions is accomplished on a service-to-service comparison to services lost as a result of the incident, or through valuing the loss of the services and gains from compensatory restoration projects where service-based scaling is not feasible.

Trustees develop a Draft Restoration Plan, identifying and evaluating a