

may include evaluation of factors such as: (a) Degree and spatial/temporal extent of injury; (b) sensitivity of the injured natural resource and/or service; (c) reproductive potential; (d) stability and resilience of the affected environment; (e) natural variability; and (f) physical/chemical processes of the affected environment. Approaches to estimating recovery times include literature reviews of recovery at similar sites or for similar species, computer models, and professional judgement.

#### E. Injury Assessment Procedures and Methods

##### 1. General

Whenever practicable, procedures should be chosen that provide information of use in determining the restoration appropriate for that injury. This proposed rule provides a range of assessment approaches, from simplified to more detailed. The technical and scientific adequacy of approaches will be judged based on the circumstances of the incident and injuries, and the information needed to determine restoration actions. Trustees should, however, first determine whether simplified assessment procedures are appropriate for a given incident. In general, more detailed assessment procedures may include, alone or in any combination, (a) field investigations; (b) laboratory methods; (c) model-based methods; and (d) literature-based methods.

##### 2. Selection of Procedures

Trustees must base their selection of assessment procedures on an evaluation of the following factors:

- (a) Potential nature, degree, and spatial/temporal extent of the injury;
- (b) Potential restoration actions for the injury;
- (c) Range of assessment procedures available, including the applicability of simplified assessment procedures;
- (d) Time and cost necessary to implement the assessment procedures; and
- (e) Relationship between the information generated by the assessment procedures and the information needed for restoration planning.

When trustees have made a determination that a simplified assessment procedure is the most appropriate procedure for a given incident or injury, the responsible parties may request that trustees use incident-specific assessment procedures instead of a simplified assessment procedure if the responsible parties, in a timeframe acceptable to the trustees:

- (a) Identify the incident-specific assessment procedures to be used and

the reasons supporting the technical appropriateness of such procedures for the incident or injury;

- (b) Advance the costs of using such incident-specific assessment procedures; and

- (c) Agree not to challenge the reasonableness of the costs of using such incident-specific assessment procedures.

##### 3. Simplified procedures

a. Type A procedures. Trustees may use the Type A procedures identified in 43 CFR part 11, subpart D, that address oil discharges provided that conditions are sufficiently similar to those listed in 43 CFR 11.33 regarding use of the procedures. For further discussion, see Appendix C to this preamble.

b. Compensation Formulas. In the January 1994 proposed rule, NOAA proposed compensation formulas for use for small incidents in estuarine and marine environments and inland waters. NOAA is now considering temporarily reserving those formulas. For further discussion, see Appendix C to this preamble.

##### 4. Incident-specific procedures

Trustees may also use incident-specific assessment procedures, provided they are cost-effective and relevant to determining the scope and scale of restoration appropriate for that injury. Incident-specific assessment procedures include, alone or in any combination:

- (i) Field methods;
- (ii) Laboratory methods;
- (iii) Model-based methods; and
- (iv) Literature-based methods.

#### IV. Restoration Selection

##### A. Purpose

Once injury assessment is completed, trustees must develop a plan for restoring the injured natural resources and services. Under the proposed rule, trustees must identify a reasonable range of restoration alternatives, evaluate those alternatives, select an alternative, develop a Draft Restoration Plan for public review, and produce a Final Restoration Plan that addresses public concerns.

##### B. Development of a Reasonable Range of Alternatives

###### 1. General

Trustees must identify a reasonable range of alternative restoration actions for consideration, except as provided in § 990.58 regarding the use of a Regional Restoration Plan. Generally, trustees will identify a package of actions and/or services. However, if there is a

reasonable basis for separately evaluating actions to restore separate natural resources and/or services, then trustees may do so. Acceptable restoration actions include any of the actions authorized under OPA (i.e. restoration, rehabilitation, replacement, or acquisition of the equivalent), any combination of those actions, and natural recovery.

Restoration alternatives may have two components: (a) Primary restoration, which is human intervention or natural recovery that returns injured natural resources and services to baseline; and (b) compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resources.

What constitutes a reasonable range of alternatives will vary from case to case but must always include a no-action alternative. A no-action alternative is not the same as a natural recovery alternative. Under the no-action alternative, no human intervention would be taken for primary or compensatory restoration. In contrast, under a natural recovery alternative, human intervention could be taken for compensatory restoration action. A natural recovery alternative could also include minimal primary restoration actions by trustees to prevent interference with natural recovery (e.g., closing an area to human traffic).

##### 2. Primary Restoration

Alternative primary restoration actions can range from natural recovery with no human intervention, to actions that prevent interference with natural recovery, to more intensive actions expected to return injured natural resources to baseline faster or with greater certainty than natural recovery.

When developing the primary restoration components of the restoration alternatives, trustees must define the desired outcome to be accomplished, and the criteria by which successful recovery will be judged. The goals and objectives should be clear and site-specific. The trustees should define the minimal acceptable criteria for recovery.

When identifying primary restoration alternatives to be considered, trustees should first consider whether activities exist that would limit the effectiveness of restoration actions (e.g., residual sources of contamination). Trustees should also consider whether any primary restoration actions are necessary or feasible to return the physical, chemical, and biological conditions necessary to allow recovery