

as provided above and must, at a minimum, contain: (a) A summary of injury assessment procedures and methods used; (b) a description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident; (c) the goals and objectives of restoration; (d) the range of restoration alternatives considered and a discussion of how such alternatives were identified and developed; (e) a discussion of the trustees' evaluation of the restoration alternatives; (f) a description of a monitoring plan for documenting restoration effectiveness and the need for corrective action and performance criteria for judging the success and completion of restoration and the need for corrective action; and (g) a description of the involvement of the responsible parties in the assessment process, and proposed involvement in the restoration process.

The types of parameters that should be addressed in the monitoring plan may include: (1) Duration; (2) frequency of monitoring needed to gauge progress and success; (3) the level of sampling needed to detect success or the need for corrective action; and (4) whether monitoring of a control or reference site is needed to determine progress and success.

Performance criteria include structural, functional, temporal, and other demonstrable goals that the trustees should determine with respect to all restoration actions. For example, an agreement to create new intertidal marsh habitat as compensation for marsh impacted by oil could be described by performance criteria including the number of acres to be created, the location, the elevation of new habitat, the species to be planted and details for planting such as density, and the timeframe in which identifiable stages of the project should be completed.

3. Public Review and Comment

The information provided in the Draft Restoration Plan must be adequate to allow the public to objectively assess the injuries resulting from the incident and restoration actions being considered to remedy those injuries. The Draft Restoration Plan must be made available for at least a thirty (30) calendar day public review and comment period.

The type of notice, review, and comment procedures may vary depending on the nature and scale of restoration actions proposed. For instance, notice may be accomplished through the **Federal Register**, local newspapers, state press releases, etc., and review and comment may be

facilitated through written responses, advisory committees, public meetings, etc.

F. Final Restoration Plan

After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. As part of the Final Restoration Plan, trustees must consider and respond to all comments on the Draft Restoration Plan. In response to the comments, the trustees may need to: (1) Modify the restoration alternatives being considered; (2) develop and evaluate alternatives that have not been given serious consideration by the trustees; (3) supplement, improve, or modify the analyses; (4) make factual corrections; or (5) explain why the comments do not warrant further trustee response, citing the reasons to support the trustee position, and possibly indicate the circumstances that would trigger reappraisal or further response. In the Final Restoration Plan, trustees indicate the restoration alternatives that will be implemented and include the information in the Draft Restoration Plan. The format of the Final Restoration Plan, which essentially follows that of the Draft Restoration Plan, must clearly indicate any changes to the Draft Restoration Plan.

If trustees plan to make significant changes to the Draft Restoration Plan in response to comments, revisions will be documented for public notice along with issuance of the Final Restoration Plan.

G. Use of Regional Restoration Plans

If trustees used a simplified assessment procedure, the proposed rule allows them to consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan. Under the proposed rule, trustees may use an existing Regional Restoration Plan provided that the Plan:

(i) Was developed subject to public review and comment; and

(ii) Addresses and is currently relevant to the same or comparable natural resources and/or services as those identified during injury assessment as having been injured.

If these conditions are met, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan.

If there is not an existing Regional Restoration Plan that meets these conditions and the information provided by the simplified assessment

procedure does not support development of an incident-specific restoration plan, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries, until such time that sufficient funds to develop plan and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where natural resource and/or service injuries were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed). New Regional Restoration Plans would then be developed subject to public review and comment.

Trustees should develop criteria and procedures governing pooling of funds and obligating portions of damages from simplified procedures to planning costs. Such criteria should address: (1) The length of time money should be maintained in an account before developing and implementing Regional Restoration Plans; and (2) suggested maximum percentages of recoveries that may be used for developing Regional Restoration Plans.

NOAA requests comments on the concepts and specific guidelines for pooling recoveries from simplified assessments and use of those monies.

If trustees use a Regional Restoration Plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. The Notice must include:

(1) A description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(2) A description of the existing Regional Restoration Plan and an explanation of how the conditions for use of a Regional Restoration Plan are met; or a description of the anticipated process for developing a new Regional Restoration Plan and an explanation of why the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan; and

(3) Identification of the damage amount sought and the calculation of that amount.

Trustees must make a copy of the Notice publicly available.

Subpart F—Restoration Implementation Phase

I. Introduction

At the completion of the Restoration Planning Phase, the trustees must: (a) Close the administrative record that