

deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Restoration means any action, or combination of actions, to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:

(1) Primary restoration, which is either human intervention or natural recovery that returns injured natural resources and services to baseline; and

(2) 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 resource.

Services or natural resource services means the functions performed by a natural resource for the benefit of another natural resource or the public.

State means any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

Trustees or natural resource trustees means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b).

Value means the amount of items an individual is willing to give up to obtain a good or is willing to accept to forgo a good. Under this part, value may be measured either in terms of units of natural resource services or dollar amounts. The total value of a natural resource or service is equal to the sum of all individuals' values.

Vessel means every type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Subpart D—Preassessment Phase

§ 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

§ 990.41 Determination of jurisdiction.

(a) Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident as defined in § 990.30 of this part has occurred;

(2) The incident involves a discharge or a substantial threat of a discharge that is neither:

- (i) Permitted under a permit issued under federal, state, or local law;
- (ii) From a public vessel; nor
- (iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.; and

(3) Natural resources under the trusteeship of the trustees have or may be affected as a result of the incident.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. If all of these conditions are met, trustees may proceed under this part.

§ 990.42 Determination to conduct restoration planning.

(a) If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine, based on readily available information, if:

(1) Injuries likely have resulted or will result from the incident;

(2) Response actions may not adequately address the potential injuries; and

(3) Feasible restoration actions exist to address the potential injuries.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed under this part.

§ 990.43 Notice of Intent to Conduct Restoration Planning.

(a) If trustees determine that all the conditions in § 990.42(a) of this part are met, they must prepare a Notice of Intent to Conduct Restoration Planning. The Notice will include a discussion of the trustees' analysis under §§ 990.41 and 990.42 of this part.

(b) Trustees must make a copy of the Notice publicly available.

(c) Trustees must send a copy of the Notice to the known responsible parties and invite their participation in the conduct of restoration planning.

§ 990.44 Administrative record.

If trustees make a determination to conduct restoration planning, they must open a publicly available administrative record. Trustees must include in the administrative record: the Notice of Intent to Conduct Restoration Planning; documents and other factual information considered by the trustees when assessing injury and selecting a restoration action under subpart E of

this part, including studies performed by the trustees; and documents that are submitted in a timely fashion by the responsible parties or other members of the public.

§ 990.45 Data collection.

Trustees may conduct limited data collection during the Preassessment Phase. Data collection during the Preassessment Phase must be coordinated with response actions such that the collection does not interfere with or hinder the response actions. Trustees may collect the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under § 990.41 of this part or a determination to conduct restoration planning under § 990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

Subpart E—Restoration Planning Phase

§ 990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate information on potential injuries to natural resources and/or services (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

§ 990.51 Criteria for acceptable procedures.

In order to be in accordance with this part, any procedures for assessing injury under §§ 990.52 and 990.53 of this part and scaling compensatory restoration actions under § 990.55(c)(3) of this part must meet the following criteria:

(a) If available, injury determination and quantification procedures that provide information of use in determining the type and level of restoration appropriate for a particular injury must be used;

(b) If a range of procedures providing the same type and quality of assessment information is available, the most cost-effective procedure must be used;

(c) The incremental cost of a more complex study must be reasonably related to the expected increase in relevant assessment information provided by the more complex study; and

(d) The procedures used must be reliable and valid for the particular context.