

§ 990.57 Restoration selection—preparation of a Draft and Final Restoration Plan.

(a) *Draft Restoration Plan.* After selecting a preferred restoration alternative under § 990.56 of this part, the trustees must prepare a Draft Restoration Plan. The Draft Restoration Plan must include:

- (1) A summary of injury assessment procedures and methods used;
- (2) A description of the degree, nature, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;
- (3) The goals and objectives of restoration;
- (4) The range of restoration alternatives considered and a discussion of how such alternatives were identified and developed under § 990.55 of this part;
- (5) A discussion of the trustees' evaluation of the restoration alternatives under § 990.56 of this part;
- (6) 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
- (7) A description of the involvement of the responsible party in the assessment process, and proposed involvement in the restoration process.

(b) *Public review and comment.* The Draft Restoration Plan must be made available for public review and comment for at least 30 calendar days. The type of notice, review, and comment procedures used will depend on the nature of the incident and the restoration actions being proposed.

(c) *Final Restoration Plan.* After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. The Final Restoration Plan must include: the information specified in paragraph (a) of this section; a response to public comments; and an indication of any changes made to the Draft Restoration Plan. Trustees must make the Final Restoration Plan publicly available.

§ 990.58 Restoration selection—use of a Regional Restoration Plan.

(a) *General.* If trustees used a simplified assessment procedure under § 990.54(d) of this part, they may consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan.

(b) *Existing Regional Restoration Plan.* (1) 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 or services as those identified during injury assessment as having been injured.

(2) If the conditions set forth in paragraph (b)(1) of this section are met, trustees may present the responsible parties with a demand under § 990.62 of this part for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan as provided in § 990.65 of this part.

(c) *New Regional Restoration Plan.* (1) If there is not an existing Regional Restoration Plan that meets the conditions of paragraph (b)(1) of this section 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 under § 990.62 of this part for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries under § 990.65 of this part, until such time that sufficient funds to develop and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where injuries to natural resources and/or services were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed).

(2) New Regional Restoration Plans must be developed subject to public review and comment.

(d) *Notice of Intent to Use a Regional Restoration Plan.* If trustees intend to use a Regional Restoration Plan instead of developing an incident-specific restoration plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. Trustees must make a copy of the Notice publicly available. 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 set forth in paragraph (b)(1) of this section 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.

Subpart F—Restoration Implementation Phase**§ 990.60 Purpose.**

The purpose of this subpart is to provide a process for implementing restoration.

§ 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* After the trustees prepare the Final Restoration Plan or the Notice of Intent to Use a Regional Restoration Plan, they must close the administrative record. Trustees may not add documents to the record once it is closed. However, trustees may add documents relating to a Final Restoration Plan if such documents:

- (1) Are offered by an interested party that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the Plan;
- (2) Do not duplicate information already contained in the administrative record; and
- (3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration.

§ 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible party.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section, the demand must ask the responsible parties to either:

- (1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their oversight costs; or
- (2) Advance to the trustees a specified sum representing all costs associated with implementing the Final Restoration Plan, discounted as provided in § 990.63(a) of this part.

(c) *When a Regional Restoration Plan is used.* If the trustees intend to use a Regional Restoration Plan under § 990.58 of this part, the demand must ask the responsible parties to pay damages in the amount calculated by the simplified assessment procedure under § 990.54(d) of this part. Depending on the circumstances, it may