§ 990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured natural resources and services, including:

(a) Pre-incident planning. Trustees may engage in pre-incident planning activities. Pre-incident plans may identify natural resource damage assessment teams, establish trustee notification systems, identify support services, identify natural resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding procedures if, in the sole judgment of the trustees, the proposed assessment procedures:

(A) Are not technically feasible;
(B) Are not scientifically or technically sound;
(C) Would inadequately address the natural resources and services of concern;
(D) Could not be completed within a reasonable time frame; or
(E) Do not meet the requirements of §990.27 of this part.

(7) Disclosure. Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties’ participation. If the responsible parties’ participation is terminated during the assessment, trustees must provide a brief explanation of this decision in the administrative record and Restoration Plan.

(d) Public. Trustees must provide opportunities for public involvement after the trustees’ decision to develop restoration plans or issuance of any notices to that effect, as provided in §990.55 of this part. Trustees may also provide opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees’ decisionmaking or avoid delays in restoration.
issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in assessments, should be included in pre-incident planning to the fullest extent practicable.

(b) Regional Restoration Plans. Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop Regional Restoration Plans. These plans may be used to support a claim under §990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration alternatives for consideration in the context of specific incidents.

Subpart B—Authorities

§990.21 Relationship to the NCP.

This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with damage assessment activities are conducted pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

§990.22 Prohibition on double recovery.

When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d)(3) of OPA.

§990.23 Compliance with NEPA and the CEQ regulations.

(a) General. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees.

(b) NEPA requirements for federal trustees. NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under §990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements.

(c) NEPA process for federal trustees. Although the steps in the NEPA process may vary among different federal trustees, the process will generally involve the need to develop restoration plans...