(E) Soil surface runoff, leaching, and weathering processes; and
(F) Local weather or climatological conditions that may affect recovery rates.


§ 11.80 Damage determination phase—general.

(a) Requirement. (1) The authorized official shall make his damage determination by estimating the monetary damages resulting from the discharge of oil or release of a hazardous substance based upon the information provided in the Quantification phase and the guidance provided in this Damage Determination phase.

(2) The Damage Determination phase consists of § 11.80—general; § 11.81—Restoration and Compensation Determination Plan; § 11.82—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; § 11.83—cost estimating and valuation methodologies; and § 11.84—implementation guidance, of this part.

(b) Purpose. The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injuries to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of (i) restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. Damages may also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

(c) Steps in the Damage Determination phase. The authorized official shall develop a Restoration and Compensation Determination Plan, described in §11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of §11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in §11.83 of this part, that will be used to calculate damages. The guidance provided in §11.84 of this part shall be followed in implementing the cost estimating and valuation methodologies. After public review of the Restoration and Compensation Determination Plan, the authorized official shall implement the Restoration and Compensation Determination Plan.

(d) Completion of the Damage Determination phase. Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in §11.90 of this part.


§ 11.81 Damage determination phase—restoration and compensation determination plan.

(a) Requirement. (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources capable of providing such services, and, where relevant, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

(c) Steps in the Damage Determination phase. The authorized official shall develop a Restoration and Compensation Determination Plan, described in §11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of §11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in §11.83 of this part, that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of
§ 11.82 Damage determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) Requirement. The authorized official shall develop a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) Steps. (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.