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THIRD INTERSESSIONAL  
WORKING GROUP  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

**Submitted by the United States**

<b>Summary:</b>	This document contains information on the natural resource damage assessment process in the United States under the Oil Pollution Act of 1990.
<b>Action to be taken:</b>	The Working Group is invited to take note of the information provided in this paper.

### **1 Introduction**

The Third Intersessional Working Group is considering issues of environmental damages under the Conventions and Protocols. The natural resource damage assessment process in the United States under the Oil Pollution Act of 1990 (OPA) may provide some useful information. The concept of “primary restoration” under the damage assessment regulations (OPA rule) promulgated by the National Oceanic and Atmospheric Administration (NOAA) may be relevant to a discussion of “reasonable measures of reinstatement” under the 1992 Protocols.

### **2 Natural Resource Damage Assessment and Restoration Planning Under the OPA Rule**

- 2.1 The OPA rule provides a process to assess injuries to natural resources and design an appropriate restoration plan. The cost to assess injury, and develop and implement the restoration plan is the damage amount. This process is designed to result in feasible, cost-effective restoration of those natural resources and services injured by an incident.
- 2.2 The OPA rule does not require specific assessment methods but any method used must meet certain standards: relevant to the type and scale of restoration appropriate for a particular injury; additional cost of a more complex procedure must be reasonably related to the expected increase in the quality and/or quantity of information provided; and reliable and valid for the particular incident. If there are two or more equally appropriate assessment procedures, natural resource trustees must select the procedure that is most cost-effective.

- 2.3 The trustee conducts injury assessment to determine the nature and extent of injuries to natural resources and services, thus providing a technical basis for evaluating the need for, type of, and scale of restoration actions. Trustees must also quantify the degree, and spatial and temporal extent of injuries. Injuries are quantified by comparing the condition of the injured natural resources or services to baseline, where necessary.
- 2.4 Once injury assessment is complete, trustees must develop a plan for restoring those natural resources and services that have been injured. First, the trustee develops a reasonable range of restoration alternatives, consisting of feasible, cost-effective actions. A natural recovery alternative must be considered in every case.
- 2.5 Once the trustee has identified a range of possible restoration actions, the trustee must determine the correct scale of these actions to ensure that those actions would appropriately address the injuries identified.
- 2.6 The identified restoration alternatives are evaluated based on a number of factors including, but not limited to:
  - (1) The cost to carry out the alternative;
  - (2) The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
  - (3) The likelihood of success of each alternative;
  - (4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
  - (5) The extent to which each alternative benefits more than one natural resource and/or service; and
  - (6) The effect of each alternative on public health and safety.

Trustees must select the most cost-effective of two or more equally preferable alternatives. A Draft Restoration Plan will be made available for review and comment by the public, including appropriate members of the scientific community where possible. After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. The Final Restoration Plan will become the basis of a claim for damages.

### **3 Web Site References**

- 3.1 For additional information on restoration and examples of past and on-going cases, visit the NOAA natural resource damage assessment and restoration web site at: [www.darp.noaa.gov](http://www.darp.noaa.gov). The OPA rule may be found at: [www.darcnw.noaa.gov/ppd\\_ap-a.pdf](http://www.darcnw.noaa.gov/ppd_ap-a.pdf). Guidance documents on various components of the restoration planning process may be found at: [www.darcnw.noaa.gov/opa.htm](http://www.darcnw.noaa.gov/opa.htm).
- 3.2 For information on the U.S. Coast Guard's National Pollution Funds Center's (NPFC) Natural Resource Damage Claims Adjudication Division and a copy of the Natural Resource Damage Claimant's Information Guide, visit the NPFC website at: [www.uscg.mil/hq/npfc/nrd.htm](http://www.uscg.mil/hq/npfc/nrd.htm).

### **4 Action to be Taken by the Working Group**

The Working Group is invited to take note of the information contained in this document.

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