§ 990.51 Injury assessment—injury determination.

(a) General. After issuing a Notice of Intent to Conduct Restoration Planning under §990.44 of this part, trustees must determine if injuries to natural resources and/or services have resulted from the incident.

(b) Determining injury. To make the determination of injury, trustees must evaluate if:

(1) The definition of injury has been met, as defined in §990.30 of this part; and

(2)(i) An injured natural resource has been exposed to the discharged oil, and a pathway can be established from the discharge to the exposed natural resource; or

(ii) An injury to a natural resource or impairment of a natural resource service has occurred as a result of response actions or a substantial threat of a discharge of oil.

(c) Identifying injury. Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(d) Establishing exposure and pathway. Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil,
§ 990.52 Injury assessment—quantification.

(a) General. In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline.

(b) Quantification approaches. Trustees may quantify injuries in terms of:

(1) The degree, and spatial and temporal extent of the injury to a natural resource;

(2) The degree, and spatial and temporal extent of injury to a natural resource, with subsequent translation of that adverse change to a reduction in services provided by the natural resource; or

(3) The amount of services lost as a result of the incident.

(c) Natural recovery. To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for natural recovery without restoration, but including any response actions. The analysis of natural recovery may consider such factors as:

(1) The nature, degree, and spatial and temporal extent of injury;

(2) The sensitivity and vulnerability of the injured natural resource and/or service;

(3) The reproductive and recruitment potential;

(4) The resistance and resilience (stability) of the affected environment;

(5) The natural variability; and

(6) The physical/chemical processes of the affected environment.

§ 990.53 Restoration selection—developing restoration alternatives.

(a) General. (1) If the information on injury determination and quantification under §§990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point.

(2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the