	<p style="text-align: center;">Background paper for the <i>"Seminar on Strengthening the Enforcement and Administration of Environmental law in North America."</i></p> <p>Panel 2.- Procedural and evidentiary challenges for effective environmental law enforcement. (e) – Natural Resource Damages. Author: Thomas W. Swegle, Attorney Advisor, Law and Policy Section, Environment and Natural Resources Division, U.S. Department of Justice.</p>
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Claims for Natural Resource Damages under the Law of the United States

I. Statutory Basis for Claims Under U.S. Law. Several U.S. statutes allow federal or state government “trustees” of natural resources, and, in some instances Indian Tribes, to assert claims for natural resource damages.

- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (the Superfund law), 42 U.S.C. §§ 9601 *et seq.*, gives the United States, the States, and Indian tribes a claim for damages for "injury to, destruction of, or loss of natural resources resulting from such a release [of a hazardous substance]." CERCLA § 107(a)(4)(C), 42 U.S.C. § 9607(a)(4).
- the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A) (damages from oil discharges into navigable waters or the adjoining shoreline);
- Section 311(f)(4) & (5) of the Clean Water Act, 33 U.S.C. § 1321(f)(4) & (5) (costs of restoring or replacing resources injured by discharges of oil or a hazardous substance into waters of the United States);
- the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. § 1443 (damages for any harm to National Marine Sanctuary resources); and
- the Park System Resources Protection Act, 16 U.S.C. § 19jj (damages for harm to any resource, natural or man-made, of a National Park).

II. Who can assert a NRD claim. The President has designated the Secretaries of the Interior, Agriculture, Commerce, Defense, and Energy as federal trustees of natural resources under their respective jurisdictions. The governors of most states have designated one or more natural resource trustees under CERCLA. Designated Indian Tribes are trustees for natural resources under their jurisdiction. The statutory language and implementing regulations clearly presume that there will often be concurrent or overlapping federal and state trusteeship, and in some cases concurrent tribal trusteeship as well.

III. What resources are covered. CERCLA § 101(16) defines "natural resources" as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources **belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by** the United States . . . , any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe."

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Congress excluded "purely private" property from the definition of natural resources. See Ohio v. DOI, 880 F.2d at 460. However, resources need not be owned by the government to be CERCLA "natural resources." Id. "Rather, a substantial degree of government regulation, management or other form of control over property would be sufficient" to make the CERCLA natural resource damages provisions apply. Id. at 461.

IV. Assessing Injuries to Natural Resources. The U.S. Department of the Interior has promulgated regulations providing guidance on how trustees shall assess injuries to natural resources and what must be done to restore injured natural resources. Those regulations are frequently used to evaluate claims for natural resource damages and to quantify the claim that Trustees assert in Court.

V. What Can Trustees Recover for Injuries to Natural Resources. The Oil Pollution Act specifies that the measure of natural resource damages under OPA is "(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources; (B) the diminution in value of those natural resources pending restoration; plus (C) the reasonable cost of assessing those damages." CERCLA provides for a similar measure of natural resource damages.