



NOAA Damage Assessment and Restoration Program

Natural Resource Damages

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Public Policy Objectives



NOAA Damage Assessment and Restoration Program

Public Policy of Natural Resource Statutes

- To make the public and environment whole for injury to natural resources and their services
- Responsible Party pays
- Statutes, rather than common law, make it easier to achieve these goals

Major NRD Statutes



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- Clean Water Act (CWA)
 - 33 U.S.C. § 1321(f)(4) & (5)
- Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA)
 - 42 U.S.C. § 9607
- National Marine Sanctuaries Act (NMSA)
 - 33 U.S.C. § 1443
- Oil Pollution Act (OPA)
 - 33 U.S.C. § 2704(b)(2)(A)
- Park System Resources Protection Act
 - 16 U.S.C. § 19jj











Commonality of Provisions



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All NRD Statutes Have Virtually Identical Provisions:

- Liability
- Claim Components
- Remedial in purpose and not punitive
- Defenses
- Judicial inter-application – Courts are willing to use case law based on one NRD statute and apply it in another. U.S. v Great Lakes Dredge & Dock

- Liability for natural resource damages:
 - Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for the following categories:
 - ◆ Response costs
 - ◆ Damages resulting from the destruction of the sanctuary resources

Case Law Liability



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- Strict
- Joint and several
- Case Law
 - U.S. v. Great Lakes Dredge and Dock, 259 F.3d 1300 (11th Cir. 2001)
 - U.S. v. M/V Jacqui L, 100 F.3d 1520 (11 Cir. 1995)
 - U.S. v. Fisher, 22 F.3d 262 (11th Cir. 1994)
 - U.S. v M/V Beholden, 856 F. Supp 668 (S.D. Fla. 1994)

Damages Claim Components



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- Damages is defined to include:
 - The cost of replacing, restoring, or acquiring the equivalent of the sanctuary resource
 - The value of the lost use of the sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resources

Claim Components cont.



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- Damage assessment costs
- The *reasonable* costs of monitoring the injured, restored, or placed resources
- The cost of curation and conservation of cultural resources
- The cost of enforcement actions undertaken by the Secretary

Claim Components cont.



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- Remedial

Courts will construe the statutory provisions liberally to effect the remedial purpose

Goal is restoration therefore provisions not punitive

Exception: § 307 Civil penalty provisions under the National Marine Sanctuary Act (and Park Service Statute)

- Strict liability: defenses limited to those prescribed by statute
- Act of God
- Act of War
- Act or Omission by a 3rd Party
 - Entity claiming the defense acted with due care
- Injury was authorized by Federal or State law
- Injury was negligible

Civil Penalties: NMSA Only



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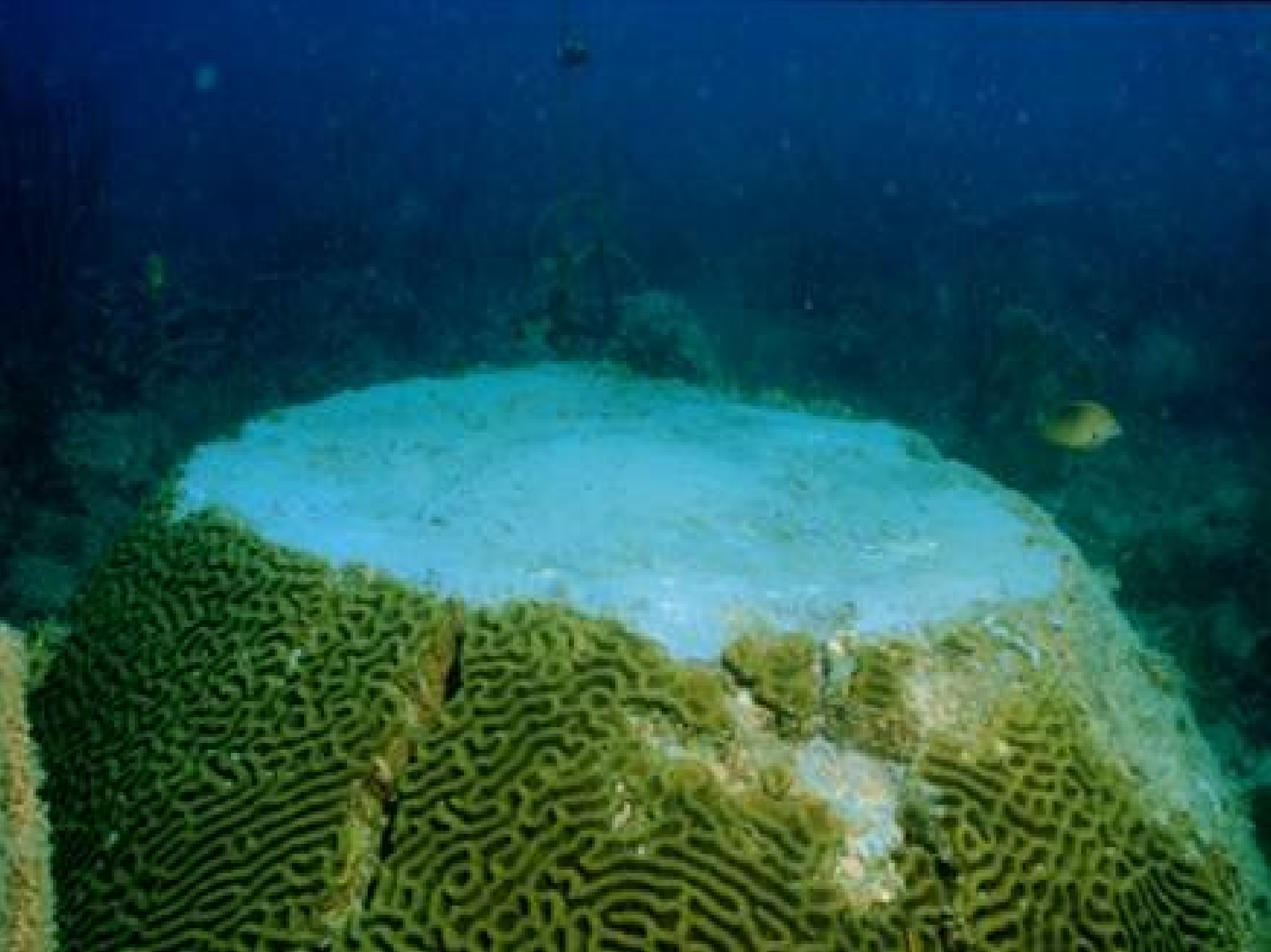
- Liability for civil penalties: “307 penalty”
 - Any person who violates the provisions of the National Marine Sanctuaries Act, its regulations, or its permits, shall be liable to the United States for a civil penalty of not more than \$100,000 for each violation.
 - 16 USC section 1437(d)

Comparison of 312 and 307



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- Section 312
 - Larger injuries
 - Natural resource damage assessment and claim development
 - Present claim: settle, or file suit in U.S. District Court
- Section 307
 - Smaller injuries
 - No natural resource damage assessment
 - Submit notice of violation (NOVA): pay full amount, compromise, or hearing before an Administrative Law Judge







Restoration Components



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■ Primary Restoration

- Projects that restore the resources and their services to as close to their baseline condition as possible.
- Baseline – the condition of the resource and services but for the incident





Restoration Components



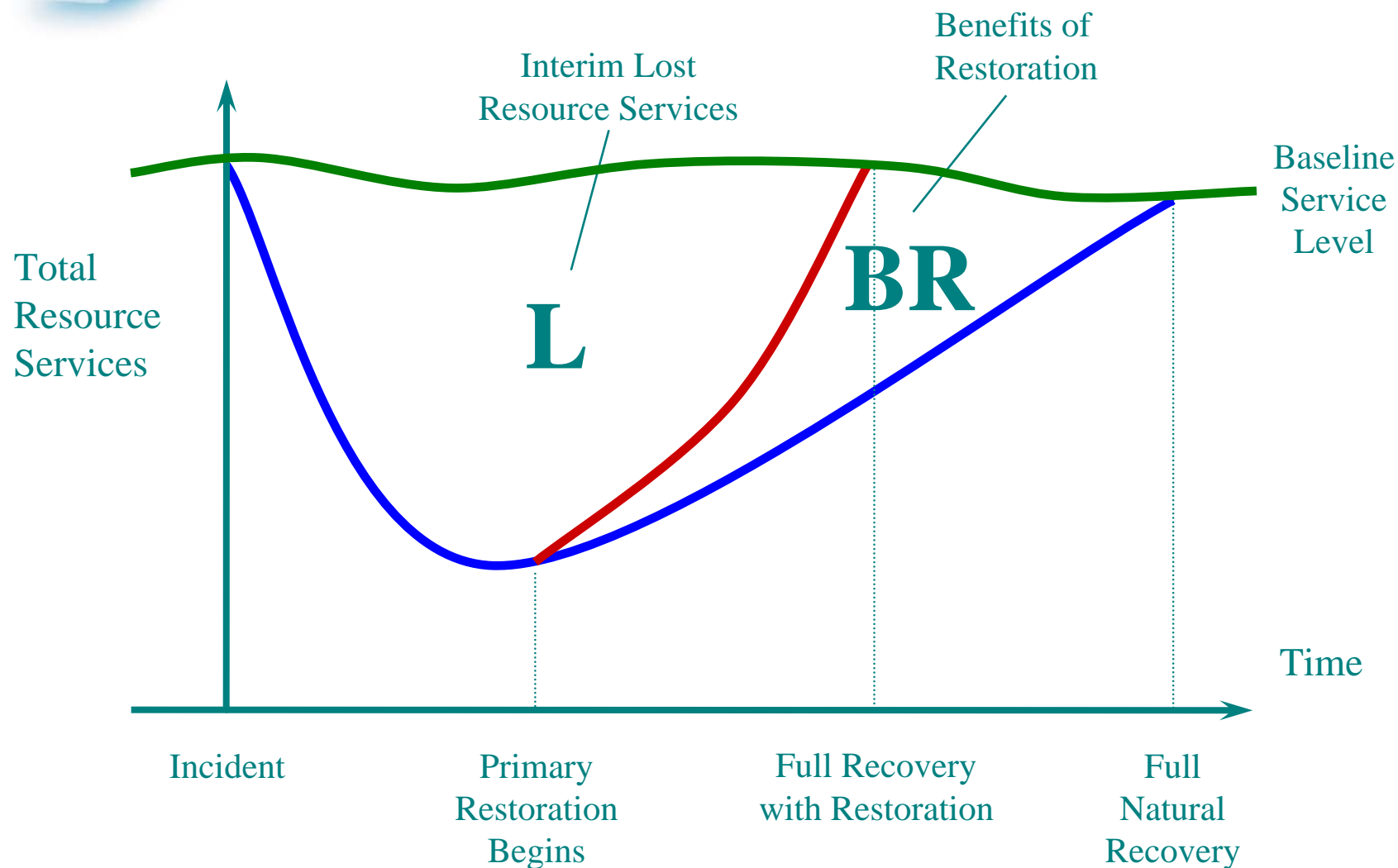
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- Compensatory Restoration
 - Projects that compensate for interim losses of natural resources and services that occur from the date of the incident until recovery to baseline

Compensatory Rest. Scaling



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Recovery Horizon



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- Even with primary restoration, baseline conditions will not be achieved immediately
- Calculate how long it will take the injured resources to return to baseline conditions
- Feeds into quantification of the amount of compensatory restoration

Role of HEA



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- Habitat Equivalency Analysis (HEA)
- Tool to calculate the amount of compensatory restoration
- Determines the amount of habitat or resources to be created or enhanced to provide the same level of services over time as were lost due to the injury
- Size of compensatory project dependent on
 - Injured resources services = resource services gained

CORAL RECOVERIES



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Cases in the Florida Keys National Marine Sanctuary:

- Cash Out \$16,376,158
- In Kind Restoration \$ 1,890,000
- TOTAL \$18,266,158

Covers cases through April 2005

