



**Programmatic
Regulations
Review**

Task Force Meeting

October 1, 2009

restoration
restoration

Presentation Topics

- Background on Programmatic Regulations
- Concerns with existing regulations
- Emerging concepts for revising regulations

WRDA 2000

Comprehensive Plan approved by Congress as a “framework”

- Individual “Project Implementation Reports” required for project approval and authorization
- Projects justified by environmental benefits to South Florida ecosystem
- No further economic justification required, if project is cost-effective
- Programmatic Regulations to be developed

WRDA 2000 - PIR Requirements

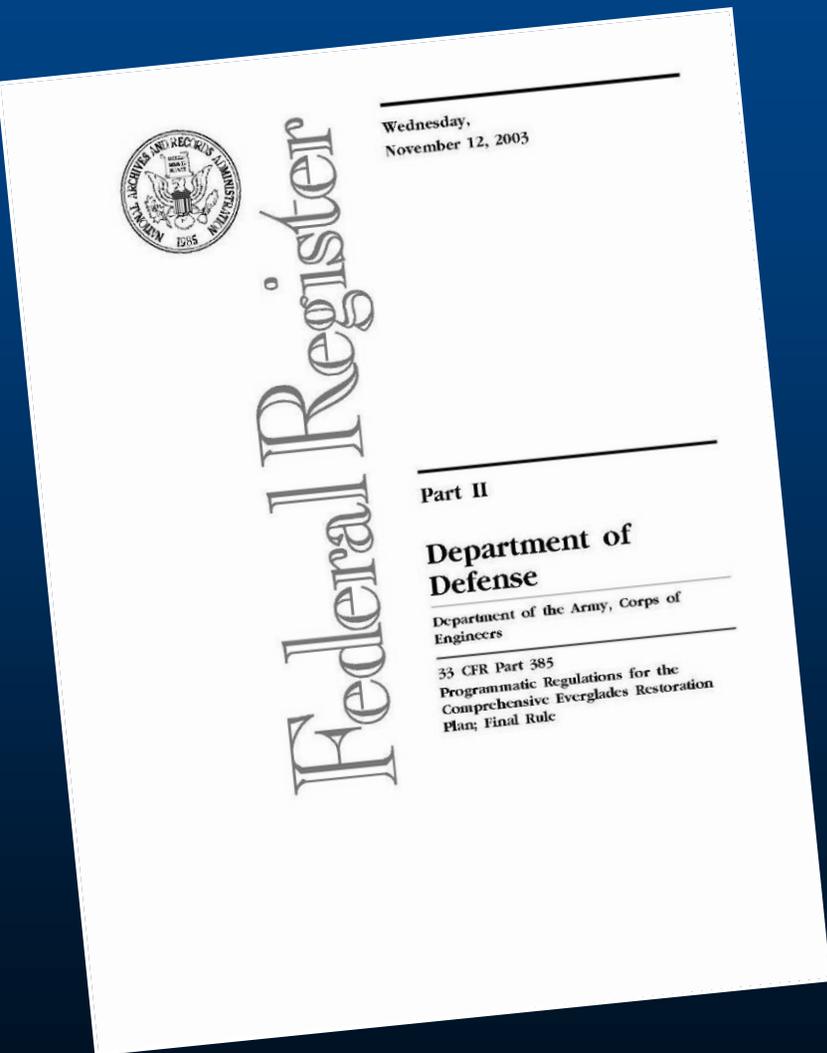
PIRs shall:

- Be consistent with the Plan and the ProRegs
- Comply with NEPA
- Identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system
- Identify the amount of water to be reserved or allocated for the natural system
- Comply with applicable water quality standards and applicable water quality permitting requirements
- Be based on best available science
- Include an analysis concerning the cost-effectiveness and engineering feasibility of the project

Programmatic Regulations

Establish Processes -

- To ensure that the goals and purposes of the Plan are achieved
- To ensure that new information, including information developed through the principles of adaptive management, is integrated into the implementation of the Plan
- To ensure protection of the natural system, including establishment of interim goals by which restoration success of the Plan may be evaluated throughout implementation process



Current Programmatic Regulations

- Developed by interagency team with extensive input from stakeholders
- Utilized formal Federal rule-making process
- Promulgated by Secretary of the Army on November 12, 2003 with concurrence of Secretary of the Interior and the Governor of Florida
- Regulations became effective on December 12, 2003 as Title 33 Part 385 of Code of Federal Regulations

Programmatic Regulations Review

- Review of programmatic regulations required by WRDA 2000 at least every five years
- Review process described in current programmatic regulations
- Proposed revisions must be undertaken through Federal rule-making process
- Revised regulations will require concurrence of Secretary of the Interior and Governor before promulgation by the Secretary of the Army

Public Scoping Process for Review

- Federal Register notice to initiate review on May 20
 - 90-day comment period
 - Public was invited to provide scoping comments on review effort
 - Issues concerning programmatic regulations
 - Items in the regulations that should be reviewed
 - Suggestions to improve the regulations
- Comments received from 9 individuals and 18 groups
 - 10 environmental groups co-signed one letter

Analysis of Public Comments

- Streamline process, particularly PIRs
- Effect of River of Grass acquisition
- Integrated Delivery Schedule/MISP
- Guidance Memoranda – complete? Incorporate?
- Next-added increment/project justification
- Interim Goals
- Assurances – identification of water and savings clause
- Incremental adaptive restoration/adaptive management
- Role of RECOVER
- Role of DOI
- Recreational needs
- Stakeholder involvement
- Treatment of State restoration projects

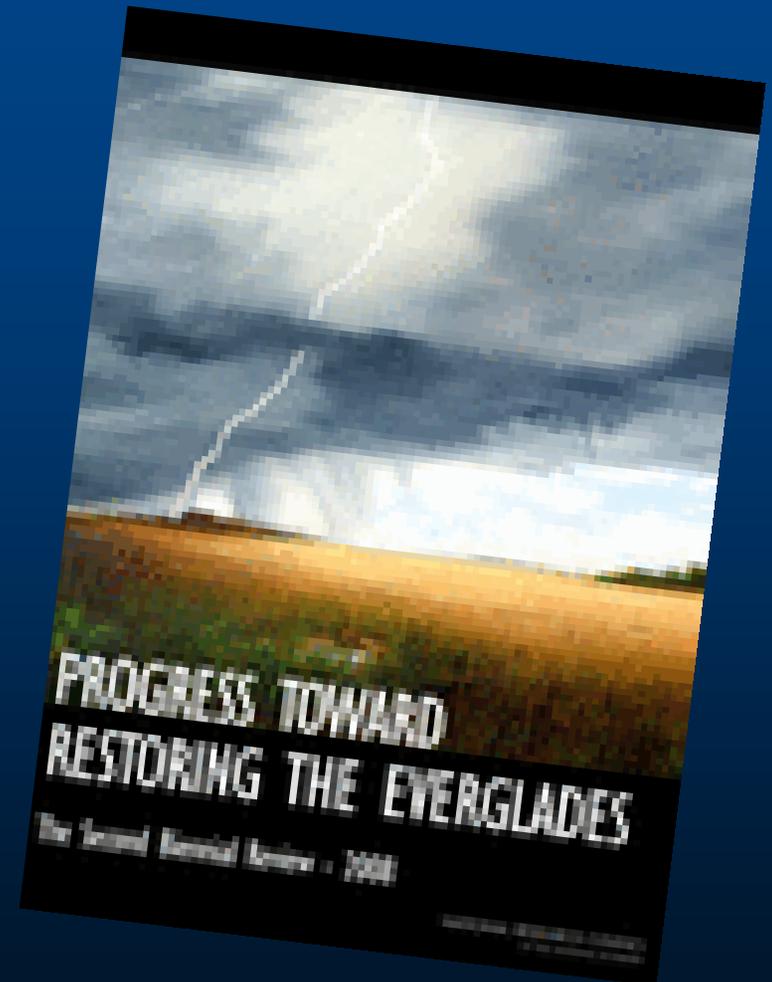
So...What's Wrong with the Existing Regulations?

- PIR requirements burdensome
- NAI and justification of individual projects counter to an integrated system-wide (ecosystem) plan
- Assurances and savings clause analyses are complex and difficult to understand
- Bottom line: Implementation process takes too long and the ecosystem continues to decline

2008 NAS Report to Congress

- The complex project planning and approval process has been a major cause of delays for CERP projects to date
- Deficiencies in CERP system-wide planning are affecting the delivery of natural system restoration benefits

“The next added increment is a benefits evaluation method that considers benefits only from the proposed and previously authorized projects....as currently implemented in the Everglades, it undermines system-wide planning.”



Emerging Concepts



CAUTION

Initial thinking and concepts developed by the team. Workability and acceptability of these concepts to be determined.

Role of Plan and PIRs

- The Plan should be the central focus of the restoration effort
 - Provides system-wide justification for CERP
 - Modifications to the Plan require analysis and justification
- PIRs have a specific role in implementing projects as defined in WRDA 2000:
 - Consistency with the Plan
 - Identify water to be reserved for the natural system
 - Analysis of cost-effectiveness and engineering feasibility
 - Compliance with NEPA
 - Compliance with water quality standards
 - Compliance with savings clause requirements

Plan Requirements Concept

- The Plan justifies CERP components in system-wide context
- The Plan links ecological improvements to hydrologic performance at the system-wide level
- The Plan defines component relationships and interdependencies

PIR Requirements Concept

- CERP components should demonstrate linkage to system as appropriate for selected project features
- Projects use appropriate hydrologic metrics to determine cost-effectiveness and engineering feasibility
- Project selection should be based on:
 - Hydrologic performance
 - Cost effectiveness
 - Engineering feasibility
 - Adaptive management considerations
 - Risk/uncertainty considerations

Guidance Memoranda

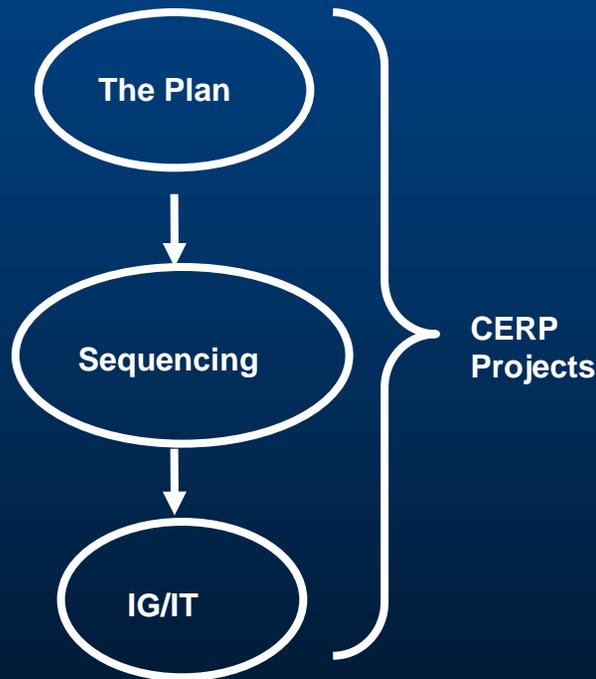
- Current regulations require 6 Guidance Memoranda with concurrence by Army, DOI, and State
 - Format and Content of PIRs
 - Formulation and Evaluation of Alternatives
 - Content of Operating Manuals
 - Assessment Activities of RECOVER
 - Identification of water
 - Identifying Elimination or Transfers of Existing Legal Sources of Water
- Intent of GMs is to provide CERP specific guidance
- GMs have been drafted and revised, but not approved
- Team considering the following options:
 - Incorporate guidance as needed in revised regulations
 - Issue guidance approved by Program managers
 - Maintain more limited number of GMs for concurrence
 - Reduce modeling requirements where possible

Interim Goals and Targets

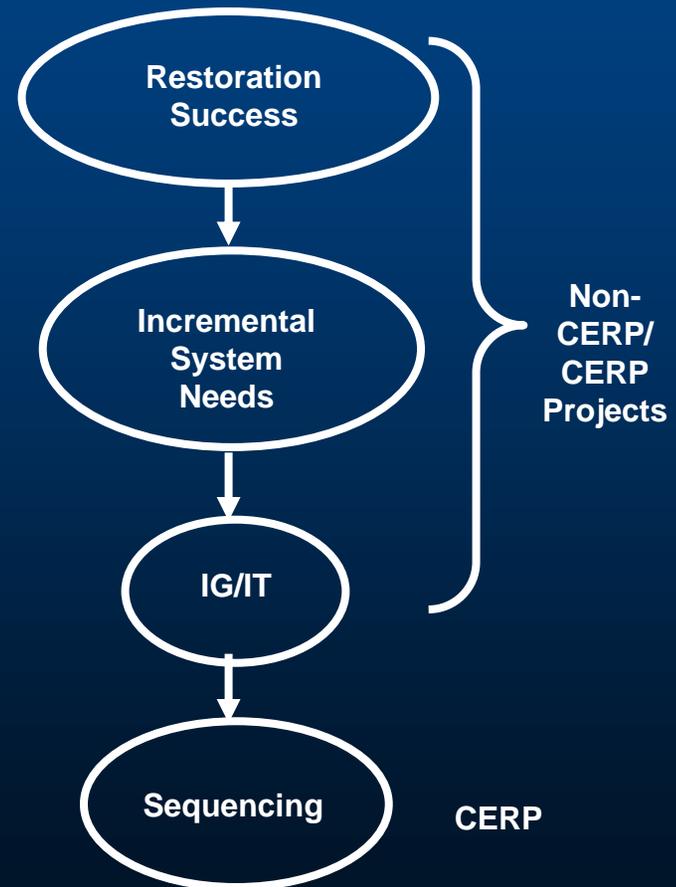
- Interim Goals requirement of WRDA
- Interim targets requirement of current Programmatic Regulations
- Current Interim Goals and Targets contained in separate executed agreements
- Team has developed two Approaches
 - Current Approach
 - Centers on CERP
 - Dependent on sequencing
 - Alternative Approach
 - Independent of CERP
 - Requires agreement on “restoration success” and ecosystem priority needs
 - Sequencing driven by Interim Goals and Interim Targets
 - Restoration success and incremental needs to be developed at ecosystem level

Approaches for Interim Goals and Targets

Current Approach



Alternative Approach



Sequencing

- Integrated Delivery Schedule effort has shown value of incorporating non-CERP projects into program sequencing
- Revised Programmatic Regulations will need to incorporate process to periodically update sequencing plan
- Revised Programmatic Regulations will eliminate “Master Implementation Sequencing Plan” and instead include process for developing sequencing to guide implementation
- Decision on Interim Goals approach will potentially affect project sequencing

Important Note

While revising and simplifying the Programmatic Regulations is important, the regulations are not the sole reason for delays in CERP implementation

Schedule for Review

- Federal Register Notice of review: May 20, 2008
- Complete public scoping: August 22, 2008
- Complete initial draft of regulations: December 2009
- Initiate Federal rule-making process: January 2010
- Promulgate final revised rule: July 2010

Questions?

