

# **Programmatic Regulations**

**Working Group Meeting**

**September 9, 2002**



**COMPREHENSIVE EVERGLADES  
RESTORATION PLAN**

# Current Status

- Draft Programmatic Regulations (proposed rule) published in Federal Register on August 2
- Public comment period open until October 1
- Public meetings to be held September 10 and September 19

# Public Meetings

Tuesday, September 10

Florida Memorial College Banquet Hall

15800 NW 42<sup>nd</sup> Ave

Miami

Thursday, September 19

SFWMD Auditorium

3301 Gun Club Road

West Palm Beach

# How to Make Comments

1. Written comments to: U.S. Army Corps of Engineers,  
ATTN: CESAJ-DR-R, P.O. Box 4970, Jacksonville, FL 32232-0019
2. E-mail to: [proregs@usace.army.mil](mailto:proregs@usace.army.mil)
3. Web page form at:  
[www.evergladesplan.org/pm/progr\\_regs\\_comment\\_form.shtml/](http://www.evergladesplan.org/pm/progr_regs_comment_form.shtml/)

# Warning!

- Proposed rule (draft programmatic regulations) currently undergoing public review
- This briefing designed to provide overview and summary of proposed rule

➡ Clarifications and explanations

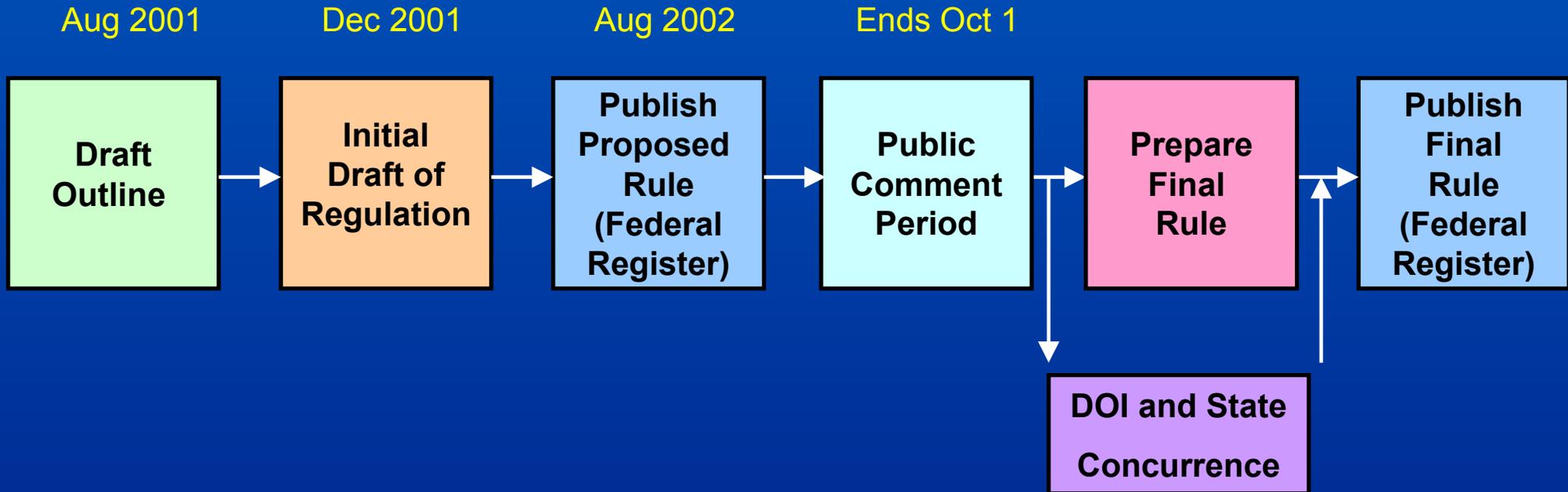
✗ Interpretations

# Programmatic Regulations

## Section 601(h)(3) requires:

- ...the Secretary of the Army promulgate programmatic regulations to ensure that the goals and purposes of the Comprehensive Plan are achieved.
- ...that these regulations be developed within two years of the date of enactment; after notice and opportunity for public comment; with the concurrence of the Governor and the Secretary of the Interior; and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.
- Review of regulations required whenever necessary to attain Plan goals and purposes, but not less often than every 5 years

# Programmatic Regulations Development Process



# Content of Regulations

## *Establish a Process —*

- For development of project implementation reports, project cooperation agreements, and operating manuals that **ensure that goals and objectives of the Plan are achieved**
- To ensure that **new information** from changed or unforeseen circumstances, new scientific or technical information or information developed through adaptive management, or future authorized changes to the Plan are **integrated into the implementation of the Plan**
- To ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the **establishment of interim goals to provide a means to evaluate success of the Plan**

# Outline of Proposed Rule

## (Add Part 385 to Title 33 CFR)

- Preamble
- Subpart A - General Provisions
- Subpart B - Program Goals and Responsibilities
- Subpart C - CERP Implementation Processes
- Subpart D - Incorporating New Information into the Plan
- Subpart E - Ensuring Protection of the Natural System and Water Availability Consistent with the Goals and Purposes of the Plan
- Appendix - Figures

# Subpart A

General Provisions

# Definition of Restoration

- For purposes of this regulation, restoration means to bring about level of recovery and protection described in Plan
- Accomplished by increasing water storage, water supply, improving water quality, and increasing connectivity so that natural system again exhibits and sustains essential physical and ecological characteristics that defined the pre-drainage South Florida ecosystem
- Also incorporates process of adaptive management to seek continuous improvement of the Plan

# CERP Guidance Memoranda

- Six program-wide guidance memoranda to be developed:
  - Format and content of PIRs
  - Formulation and evaluation of alternatives for PIRs
  - RECOVER system-wide evaluation of alternatives for PIRs
  - Content of Operating Manuals
  - Assessment activities by RECOVER
  - Procedure for identifying water to be reserved
- Guidance memoranda to be jointly developed by Corps and SFWMD in consultation with others
- Guidance memoranda to be developed not later than six months after programmatic regulations adopted or December 31, 2003, whichever is sooner
- Concurrence required by Secretary of Interior and Governor
- Provide public with notice of availability in Federal Register and opportunity to comment on proposed guidance memoranda

# Subpart B

Program Goals and Responsibilities

# Consultation

- Consultation with Tribes
  - In addition to consultation provisions of EO, Corps and sponsors to consult with and seek advice from Tribes throughout implementation process
  - Secretary of Army and Secretary of Interior to fulfill responsibilities under Indian trust doctrine
- Consultation with Agencies
  - Consult with and seek advice from DOI, EPA, Dept. of Commerce, Florida DEP, and other Federal, State, and local agencies throughout implementation process

# Consultation

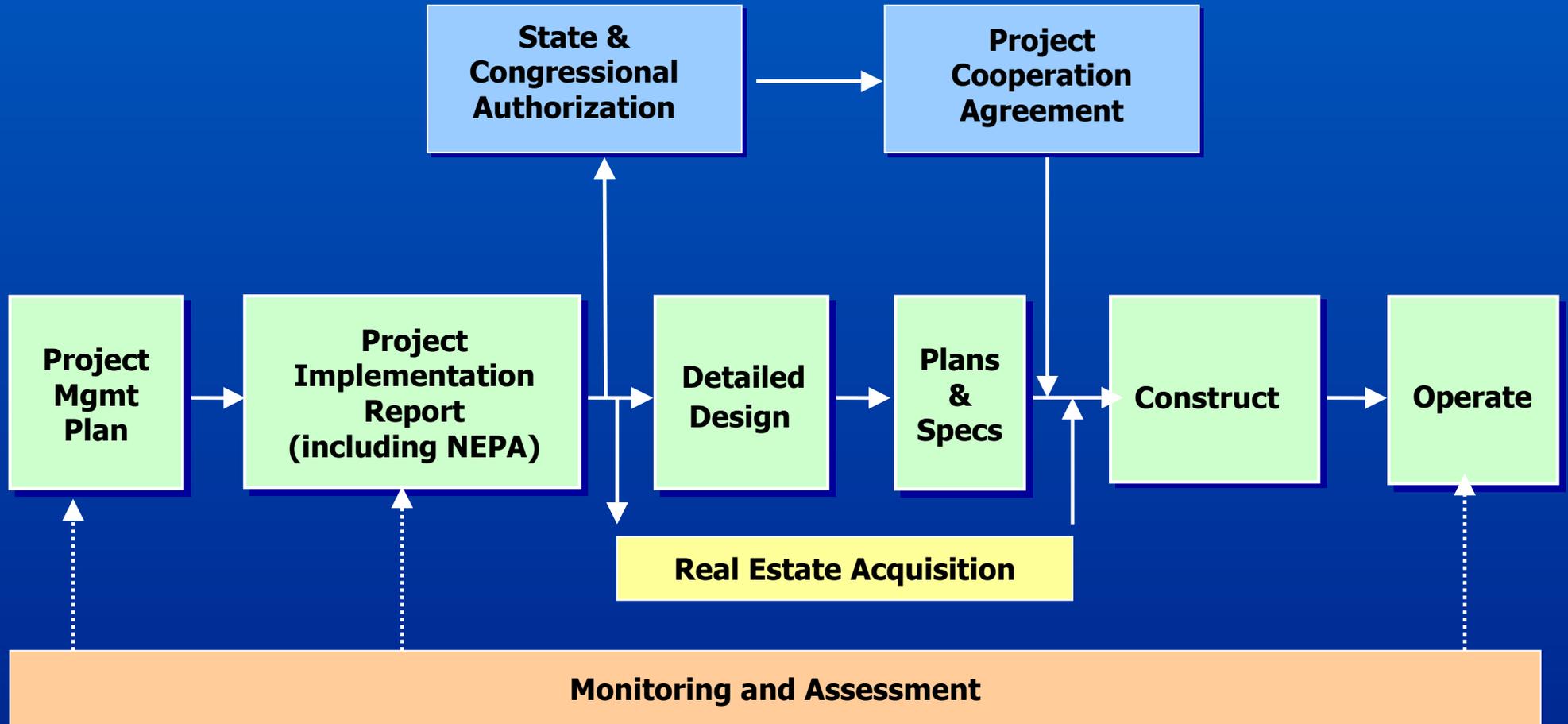
## (continued)

- Consultation with Task Force
  - Intent of Corps, SFWMD, and other sponsors to continue to consult with Task Force, Working Group, and advisory bodies throughout implementation process
  - Consultation required on:
    - Pilot Project Technical Data Report
    - Independent scientific review panel establishment
    - Assessment reports
    - Comprehensive Plan Modification Reports
    - Interim Goals
    - Targets to evaluate progress on achieving other water-related needs

# Subpart C

CERP Implementation Processes

# Development Process For Individual CERP Projects



# Pilot Projects

- Develop Project Management Plan before initiating activities
- Pilot Project Design Report to be completed before implementing pilot project
  - Contains technical information needed to construct project
  - Appropriate NEPA analysis
  - Contains operational testing and monitoring plan
  - Public to have opportunity to comment on draft report
- Pilot Project Technical Data Report prepared after completion of operational testing and monitoring
  - Independent scientific review panel to be given opportunity to review draft report
  - Public to have opportunity to comment on draft report

# Projects Implemented under Additional Program Authority

- To expedite implementation of the plan, Section 601(c) of WRDA 2000 provides authority to implement projects meeting certain criteria
- Projects implemented under this authority will generally follow the same implementation process as projects requiring Congressional approval
- PIR will be prepared and approved by the Secretary of the Army
- Each project may not exceed total cost of \$25 million
- Total cost of all projects implemented under this authority may not exceed \$206 million

# NEPA

- In implementing CERP, Corps to comply with NEPA requirements
- Regulation provides list of actions normally requiring EIS or EA
- Regulation provides list of categorical exclusions
  - Design Documentation Reports
  - Project Cooperation Agreements
  - Project Management Plans
  - Plans and Specifications
  - Pilot Project Technical Data Reports
  - Assessment Reports
  - Minor technical changes to Operating Manuals
  - Development or revision of guidance memoranda
  - Deviations from Operating Manuals for emergencies
- Categorical exclusion does not exempt action from compliance with other applicable Federal, State, or Tribal law

# Public Outreach

- Goal is to open and maintain channels of communication with public
- Corps and sponsors to provide transparent, publicly accessible process
- Develop and conduct outreach activities to:
  - Provide information to the public
  - Provide opportunities for involvement by the public
- Management Plans should include information concerning outreach activities to be conducted
- PDT and RECOVER meetings open to public
- Public provided opportunities to review and comment on draft documents

# Public Outreach

## (continued)

- Conduct outreach activities to ensure socially and economically disadvantaged individuals, including individuals with limited English proficiency, are provided opportunities to review and comment during implementation
- Management Plans should include information concerning outreach activities to be conducted for socially and economically disadvantaged communities, including individuals with limited English proficiency
- Program and project information to be made available in languages other than English
- Provide translators at public meetings where significant number of participants expected to have limited English proficiency

# Environmental and Economic Equity

- Management Plans should include information concerning Environmental and Economic Equity activities to be conducted
- Consider and evaluate environmental environmental justice issues and concerns as required by applicable laws and policies
- District Engineer to ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals are provided opportunities to participate under section 15(g) of the Small Business Act

# RECOVER

- Interagency and interdisciplinary scientific and technical team
- Established to assess, evaluate, and integrate projects of Plan
- Documents, reports or recommendations not self-executing
  - Provided to Corps and SFWMD for review, discussion, revision, and/or approval in consultation with others
- Corps and SFWMD to seek independent scientific review as appropriate, including review of documents

# RECOVER

(continued)

- Intent of Corps and SFWMD to encourage participation of other Federal, State, and local agencies, and the Tribes
- Recognize the special role of DOI, NOAA, FFWFC, EPA, and FDEP
  - Continue to use these agencies as co-chairs of appropriate technical teams
- Agency participation not considered substitute for required consultation or coordination

# RECOVER

(continued)

- Corps and SFWMD will:
  - assign program managers responsible for carrying out RECOVER activities
  - Establish Leadership Group to assist program managers in coordinating and managing RECOVER activities, including establishment of sub-teams
  - Determine structure and functions of Leadership Group, but membership to include DOI, Miccosukee Tribe, Seminole Tribe, EPA, and FDEP
- Specific responsibilities for RECOVER are described

# Independent Scientific Review

- Secretary of the Army, Secretary of the Interior, and Governor, in consultation with Task Force to establish independent scientific review panel
- Reports completed by panel to be provided to Secretaries, Governor, and Task Force and to public
- Panel to produce biennial reports to Congress
- Corps, SFWMD, and other sponsors to cooperate with panel
  - Respond to requests for information
  - Consider and respond to recommendations
- Other review panels or peer reviews may be established as necessary

# Project Implementation Reports

- Contain additional project formulation and evaluation and more detailed engineering and design
- Identify appropriate quantity, timing, and distribution of water to natural system and amount of water to be reserved for the natural system under State law
- Identify quantity, timing, and distribution of water made available for other water-related needs of the region
- Comply with applicable water quality standards and permitting requirements
- Determine if existing legal sources of water are to be eliminated or transferred
- Determine if implementation of project would reduce levels of service for flood protection

# Project Implementation Reports

## (continued)

- Specific requirements for formulation and evaluation activities
- Include analysis by RECOVER of project's effect on achieving system-wide goals and purposes of Plan
- Include as appropriate information necessary for sponsor to address Chapter 373 requirements
- Include appropriate NEPA documentation
- Review and approval process described for transmitting report to Congress
- Guidance memorandum to be developed on format and content of PIRs

# Project Cooperation Agreements

- PCA to be executed prior to construction of a project
- PCA to include finding that reservation as identified in PIR has been executed under State law
- Changes to reservation requires an amendment to the PCA and verification that revised reservation continues to provide appropriate quantity, timing, and distribution of water to natural system
  - Sponsor to provide opportunities for public to review and comment on proposed changes to reservations, in accordance with State law
- PCA to include provision on savings clause compliance

# Operating Manuals

- Two types of Operating Manuals
  - System Operating Manual – system-wide operating plan for operation of projects of the Plan and other C&SF Project features
  - Project Operating Manual – details necessary for integrating operation of individual projects within the system operation
- Guidance memorandum to be developed for content and tasks necessary to develop Operating Manuals
- Operating Manuals describe regulation schedules, water control, and operating criteria
- Must be consistent with reservation of water described in PIR and PCA
- Must include a drought contingency plan
- Must include appropriate NEPA documentation

# Operating Manuals

## (continued)

- System Operating Manual
  - Provides system-wide operating plan for operation of implemented projects and other C&SF Project features
  - Initially based on existing completed C&SF Project features
  - Existing water control plans, regulation schedules, and Master Water Control plans to remain in effect until development of the System Operating Manual
- Project Operating Manual
  - Supplement to System Operating Manual
  - Draft Project Operating Manual to be included in PIR as an appendix
  - Final Project Operating Manual to be completed as soon as possible after completion of operational testing and monitoring phase

# Subpart D

Incorporating New Information into the Plan

# Master Implementation Sequencing Plan

- Corps and SFWMD to develop Master Implementation Sequencing plan that includes sequence and schedule for all projects of the Plan
- Projects to be sequenced and scheduled to maximize achievement of the goals and purposes of the Plan at the earliest possible time and in the most cost-effective way
- Review Master Implementation Sequencing Plan annually and revise as necessary based on new or changed information
  - RECOVER to review proposed revisions as appropriate
  - Public to have opportunity to review and comment on Master Implementation Sequencing Plan and proposed revisions

# Adaptive Management Program

- Assessment and management actions
- RECOVER to design assessment program to assess responses
  - Guidance Memoranda describes process to be used to conduct assessments
- RECOVER to develop and implement monitoring plan
  - Use information from monitoring program as basis for conducting assessment tasks
- RECOVER to prepare assessment report not any less often than every 5-years
  - Consult with Task Force in preparing report
  - Opportunity for Independent science review panel to review draft report
  - Opportunity for public to review and comment on draft report

# Adaptive Management Program

## (continued)

- Corps and SFWMD, in consultation with others, to determine appropriate management actions based on:
  - Assessment report prepared by RECOVER,
  - Information from independent scientific review panel, or
  - Other appropriate information
- Actions to be considered:
  - Operational changes
  - Sequence and schedule changes
  - Plan changes

# Comprehensive Plan Modification Report

- Initiated at discretion of Corps and SFWMD based on consideration of:
  - Recommendations of RECOVER
  - Requests from DOI or State
  - Other appropriate information
- Follows process consistent with provisions for consultation and coordination, outreach, and environmental and economic equity
- Contains information:
  - Such as plan formulation and evaluation, engineering and design, economics, environmental analyses, flood damage assessments, and real estate
  - RECOVER analyses
  - Appropriate NEPA documentation
- Report approval process similar to PIR approval process

# Changes to the Plan

- Plan to be updated to incorporate changes resulting from:
  - Programmatic authority projects approved by the Secretary
  - Authorization of projects by Congress
  - Comprehensive Plan Modification Reports approved by Congress
  - Other changes authorized by Congress
- Prepare periodic report to the public describing:
  - Components of the Plan, including approved changes
  - Estimated cost of the Plan, including approved changes
  - Water budget for the Plan
  - Water that has been reserved for the natural system under State law
- Annual report to OMB with updated estimate of costs of the Plan

# Subpart E

Ensuring Protection of the Natural System  
and Water Availability Consistent with the  
Goals and Purposes of the Plan

# Pre-CERP Baseline

- Corps and SFWMD to develop by June 30, 2003
  - In consultation with others
  - Method to be consistent with guidance memorandum for identifying water to be reserved for the natural system
- Concurrence of Secretary of Interior and Governor required
  - Statement required within 180 days or December 31, 2003, whichever is sooner
- Each PIR to determine if pre-CERP baseline quantity of water of comparable quality is still available
  - Consider change in availability of baseline water and previously reserved water in considering whether additional water quantity or improved quality is necessary, recommending preparation of Comprehensive Plan Modification Report, or recommending State re-examine reservation of water

# Identification of Water to be Reserved

- Guidance Memorandum to be developed to provide process to be used in preparing PIRs for identifying appropriate quantity, timing, and distribution of water managed for the natural system and water to be reserved under State law
- PIR to take into account pre-CERP baseline water and previously reserved water in identifying the appropriate quantity, quality, and timing of water for the natural system and determining if improvements to water quality are needed to meet applicable water quality standards

# Elimination or Transfer of Existing Legal Sources of Water

- PIR to include analyses to determine if existing legal sources of water are to be eliminated or transferred
- Existing legal sources of water include:
  - Agricultural or urban water supply
  - Allocation or entitlement to the Seminole tribe
  - Miccosukee Tribe
  - Water supply for Everglades National Park
  - Water supply for fish and wildlife
- If elimination or transfer will occur, then PIR will include implementation plan that ensures that elimination or transfer will not occur until a new source of comparable quantity and quality is available

# Flood Protection

- Flood protection, consistent with restoration, preservation, and protection of the natural system is a purpose of the Plan
- Level of Service
  - Each PIR to determine level of service in existence on the date of enactment of WRDA 2000; and in accordance with applicable law to be determined for the area affected by the project
  - PIR to include analyses to show level of service will not be reduced by implementation of project
- PIR may consider opportunities to provide additional flood protection consistent with restoration of the natural system, requirements of WRDA 2000, and other applicable laws

# Interim Goals

- Interim goals are targets by which restoration success of the Plan may be evaluated at specific points during implementation process
  - Facilitate planning, monitoring, and assessment
  - Not standards or schedules enforceable in court
- Secretary of Army, Secretary of DOI, and Governor to execute interim goals agreement by December 31, 2003 to establish interim goals
  - RECOVER recommendations to be provided and considered in developing interim goals agreement
  - Draft agreement to be published in Federal Register for public comment and consultation with agencies, tribes, and Task Force
- Parties to review interim goals agreement not less often than every five years

# Interim Goals

## (continued)

- RECOVER to develop recommendations for interim goals by June 30, 2003
  - RECOVER to consider hydrologic, water quality, and ecologic indicators in developing recommendations
  - Interim goals to reflect incremental accomplishment of the expected performance level of the Plan
  - Expected performance level represented by D-13R as modified by WRDA 2000, or other subsequent authorized modification
  - Incremental accomplishment measured at five-year increments beginning in 2005 using Master Implementation Sequencing Plan as basis for predicting increments

# Interim Goals

## (continued)

- Projects to be sequenced and scheduled to achieve the interim goals and targets for achieving other water-related needs of the region, to the extent practical given funding, technical, or other constraints
- If interim goals not met, or unlikely to be met then:
  - Document why goals not met or unlikely to be met
  - Develop plan of action that achieves the interim goals as soon as practical consistent with the other objectives of the Plan and initiate adaptive management actions based on the plan of action; or recommend changes to the interim goals

# Evaluating Progress on Achieving Other Water-Related Needs

- Progress on achieving other water-related needs of the region provided for in the plan to be evaluated
- Targets for evaluating progress to be established by Corps and SFWMD by December 31, 2003
  - Facilitate planning, monitoring, and assessment
  - Not standards or schedules enforceable in court
- Public to have opportunity to review and comment on proposed targets
- Corps and SFWMD to review targets not less often than every five years

# Evaluating Progress on Achieving Other Water-Related Needs (continued)

- RECOVER to develop recommendations for targets by June 30, 2003
  - Targets to reflect incremental accomplishment of the expected performance level of the Plan
  - Expected performance level represented by D-13R as modified by WRDA 2000, or other subsequent authorized modification
  - Incremental accomplishment measured at five-year increments beginning in 2005 using Master Implementation Sequencing Plan as basis for predicting increments

# Evaluating Progress on Achieving Other Water-Related Needs (continued)

- Projects to be sequenced and scheduled to achieve the targets for achieving other water-related needs of the region, consistent with the interim goals, to the extent practical given funding, technical, or other constraints
- If targets not met, or unlikely to be met then:
  - Document why targets not met or unlikely to be met
  - Develop plan of action that achieves the targets as soon as practical consistent with the purposes of the Plan and initiate adaptive management actions based on the plan of action; or adopt changes to the targets

# Reports to Congress

- Secretaries of Army and Interior, in consultation with others, to jointly submit periodic reports to Congress beginning October 1, 2005 and not less often than every five years
- Reports to include description of work accomplished, funds expended, work anticipated over next five years, and updated cost estimate
- Determination of each Secretary and EPA Administrator concerning benefits to natural system and human environment
- Progress towards interim goals and targets for other water-related needs
- Review of activities related to socially and economically disadvantaged individuals and individuals with limited English proficiency
- Public to be provided opportunity to review and comment on draft report

# Next Steps

- Prepare final rule
- OMB review of final rule
- Obtain concurrence of Governor and Secretary of Interior
- Publish final rule in Federal Register



**Questions?**