

## **1.0 PURPOSE AND NEED FOR THE CONSIDERED ACTION**

### **1.1 Project Authorization**

A minimum schedule of water deliveries from the Central and Southern Florida (C&SF) Project to the Everglades National Park (ENP) was authorized by Congress in 1969 in Public Law (PL) 91-282. Section 1302 of the Supplemental Appropriations Act of 1984 (PL 98-181), passed in December 1983, authorized the U.S. Army Corps of Engineers (Corps), with the concurrence of the National Park Service (NPS) and the South Florida Water Management District (SFWMD), to deviate from the minimum delivery schedule for two years in order to conduct an Experimental Program of water deliveries to improve conditions within the ENP. Section 107 of PL 102-104 amended PL 98-181 to allow continuation of the Experimental Program until modifications to the C&SF Project authorized by Section 104 of the ENP Protection and Expansion Act of 1989 (PL 101-229) were completed and implemented. PL-101-229 eventually led to the Modified Water Deliveries (MWD) Report and Project (USACE 1992). The MWD Project is expected to be completed in 2003, and will provide for increased water deliveries to the Park through a route that more closely approximates the original historic flow-way down the center of Northeast Shark River Slough (NESRS).

Test Iteration 7 of the Experimental Program of Modified Water Deliveries to ENP (herein referenced as the 1995 Base) was initiated in October 1995 (USACE 1995). In February 1999, the U.S. Fish and Wildlife Service (FWS) issued a Final Biological Opinion (B.O.) (Appendix C) under provisions of the Endangered Species Act (ESA), which concluded that the provisions of Test 7, Phase I were jeopardizing the continued existence of the Cape Sable seaside sparrow (CSSS). They further concluded that ultimate protection for the species would be achieved by implementing the MWD to ENP project (PL 101-229) as quickly as possible. In the opinion of the FWS, the FWS B.O. presented a Reasonable and Prudent Alternative (RPA) to Test 7, Phase I of the Experimental Program that would avoid jeopardizing the CSSS during the interim period leading up to completion of the MWD project. The FWS RPA recommended that certain hydrologic conditions be maintained in the sparrow's breeding habitat to avoid jeopardizing the continued existence of the species. In January 2000, the Experimental Program was terminated, and in March 2000, Test 7, Phase I was replaced by the current Interim Structural and Operational Plan (ISOP) (USACE 2000). The ISOP was designed to meet the conditions of the FWS RPA included in the FWS B.O. from March 2000 until implementation of the Interim Operational Plan (IOP). The Corps was recently authorized by Council for Environmental Quality (CEQ) to conduct emergency operations under ISOP 2001 for the 2001 nesting season. The ISOP will be in place until completion of the EIS and a Record of Decision (ROD) is signed for the Interim Operational Plan (IOP). Once the ROD is signed, the IOP will replace the ISOP and continue FWS RPA protective measures for the CSSS until implementation of the MWD project.

## **1.2 Project Location**

The C&SF system-wide project is located in South Florida and includes portions of several counties as well as portions of the ENP, Big Cypress National Preserve, and adjacent areas (Figure 1). The Corps' June 1992 General Design Memorandum (GDM) titled "Modified Water Deliveries to ENP," defines the project boundary as Shark River Slough and that portion of the C&SF Project north of S-331 to include Water Conservation Area 3 (WCA 3). The major project components of the MWD and C-111 projects are shown in Figure 2.

## **1.3 Project Purpose**

On 19 February 1999, the FWS issued a Final FWS B.O. for the MWD project, Experimental Water Deliveries Program, and C-111 Project under provisions of the Endangered Species Act of 1973, as amended. The FWS B.O. concluded that continuation of Test 7, Phase I operations would cause adverse modification of CSSS critical habitat and would jeopardize the continued existence of the CSSS. Currently, six such population clusters of the CSSS are known and are distributed within the southernmost portion of the C&SF project area (Figure 3). The operating criteria for Test 7 were defined in a concurrency agreement between the Corps, ENP, and the SFWMD in October 1995. Test 7 was to be implemented in two phases. Phase I consisted of operating the structures in place at that time until Phase II structures could be completed. The ultimate goal of Test 7 was to improve the timing, volume, and location of water deliveries to ENP to more closely reflect natural pre-development flows. The FWS B.O. also concluded that ultimate protection for the CSSS would be achieved by the rapid completion and implementation of the MWD project. The current ISOP is designed to take the place of Test 7 until completion and implementation of the IOP. The IOP will avoid jeopardizing the CSSS during the interim period (2002 and 2003) leading up to MWD implementation.

In the opinion of the FWS, the FWS B.O. presents a Reasonable and Prudent Alternative (RPA) to the Experimental Program that would avoid jeopardizing the CSSS. The FWS RPA recommends that the following hydrological conditions be met for protection of the CSSS: 1) A minimum of 60 consecutive days of water levels at or below 6.0 feet NGVD at NP 205 between March 1 and July 15; 2) Ensure that 30%, 45%, and 60% of required regulatory releases crossing Tamiami Trail enter ENP east of L-67 extension in 2000, 2001, and 2002, respectively, or produce hydroperiods and water levels in the vicinity of subpopulations C, E, and F that meet or exceed those produced by the 30% , 45% , and 60% targets; and 3) Produce hydroperiods and water levels in the vicinity of subpopulations C, E, and F that equal or exceed conditions that would be produced by implementing the exact provisions of Test 7, Phase 2 operations (USACE 1995). During implementation of the ISOP, the Corps received confirmation from the FWS that producing the hydrologic equivalent of the 30%, 45%, and 60% conditions, as opposed to the actual release percentages, would also meet the FWS RPA conditions.

The proposed actions will allow the Corps to meet the FWS RPA conditions and minimize impacts to other natural and human resources, while managing the system for purposes authorized under the C&SF Project.

#### 1.4 Related Environmental Documents

A number of actions relevant to the proposed action have been implemented since the 1983 Experimental Program was authorized. The following list identifies milestones leading up to the proposed action.

Some of the key environmental documents relevant to the proposed action are the Final ISOP EA, Final SEIS on the 8.5 SMA and Test 7 Summary. The Corps is currently operating under the ISOP. The Final Environmental Assessment (EA) for the ISOP was issued in March 2000. A critical component to implementing the actions recommended in the FWS B.O. is the protection of the 8.5 Square Mile Area (SMA), a residential area located to the east of Northeast Shark River Slough (NESRS). A Final SEIS was prepared and coordinated in August 2000 for implementation of a preferred alternative that consists of perimeter and interior levees as well as a seepage canal. A new proposed pumping structure (S-357) located at the southern terminus of the seepage canal would discharge seepage water into a treatment area located south of Richmond Drive in the C-111 project area. The ROD for the 8.5 SMA SEIS was signed on December 6, 2000.

<b>Date</b>	<b>Action</b>
1983	Authorization of the Experimental Program
1989	ENP Protection and Expansion Act of 1989
1990	Draft General Design Memorandum (GDM) on Modified Water Deliveries
1990	Biological Opinion on Modified Water Deliveries
1992	Final GDM on Modified Water Deliveries
1993	Implement Test 6 of the Experimental Program
1994	C-111 Reevaluation Report
1995	Biological Opinion Test 6, Experimental Program
1995	Extension of Test 6
1995	Implement Test 7, Phase I of the Experimental Program
1995	Initiate Test 7 Hydrologic and Ecological Monitoring
1997	FWS Request Corps to reinitiate Section 7 consultation
1998	Implement 1998 Emergency Deviation from Test 7, Phase I
1999	Biological Opinion on the Experimental Program, Modified Water Deliveries, and C-111 Project
1999	Implement Emergency Deviation from Test 7, Phase I
2000	Implement ISOP 2000 Emergency Deviation
2000	8.5 SMA Plan Final SEIS and ROD
2001	Completion of Test 7 Hydrologic and Ecological Monitoring Report
2001	Implementation of ISOP 2001 Emergency Deviation
2001	Draft EIS for the Interim Operational Plan for Protection of the Cape Sable Seaside Sparrow

As part of the interagency agreement that accompanied approval of Test Iteration 7 of the Experimental Program of Water Deliveries to ENP, the Corps participated in a monitoring program to determine the ecological and hydrologic benefits of the program. The monitoring program evaluated changes in hydrologic conditions beginning in November 1995 through May 2000. In addition, ecological factors that included freshwater fish and macroinvertebrates; mangrove resident fish; wading birds; CSSS; and American crocodile were monitored to determine the effects of the Test 7 Experimental Program on natural resources in the ENP.

At the December 17, 1999 emergency meeting of the SFWMD Governing Board, the Corps presented the ISOP, which was prepared to modify hydrologic conditions in ENP to avoid jeopardizing the CSSS. In a letter to the Corps dated January 20, 2000, the SFWMD stated:

*“The ISOP explicitly represents a departure from Test Iteration 7 of the Experimental Program of Water Deliveries to Everglades National Park operating criteria: consequently, the three-party concurrency agreement established for Test Iteration 7 cannot adequately facilitate implementation of the ISOP. Based upon your briefing that the requirements of the biological opinion for the CSSS now supercede the management objectives of the Experimental Program, we realize the Experimental Program has been effectively terminated.”*

At that point, Test Iteration 7 of the Experimental Program was terminated and replaced by the ISOP. An EA was prepared for ISOP 2000, which provided a plan for operations to meet the requirements of the B.O. during 2000. ISOP 2001 provides for current operations of water deliveries to the ENP.

The Corps issued a Draft EIS for the Interim Operational Plan (IOP) for the Protection of the Cape Sable Seaside Sparrow in February 2001, which assessed six alternatives. Due to the number of issues which were still unresolved, the Corps was directed by CEQ to work with the various agencies to formulate a consensus plan which would meet the B.O. requirements while satisfying other authorized C&SF Project purposes. At the suggestion of the President’s Council on Environmental Quality (CEQ), the Corps engaged the services of the U.S. Institute for Environmental Conflict Resolution (IECR) to facilitate the development of an improved plan to address the FWS’ concerns. A number of meetings and teleconferences were held between the FWS, ENP, and the South Florida Water Management District from May through August to resolve issues regarding the IOP. As a result of this process, an additional alternative was developed for review under the NEPA process.

## **1.5 Scoping**

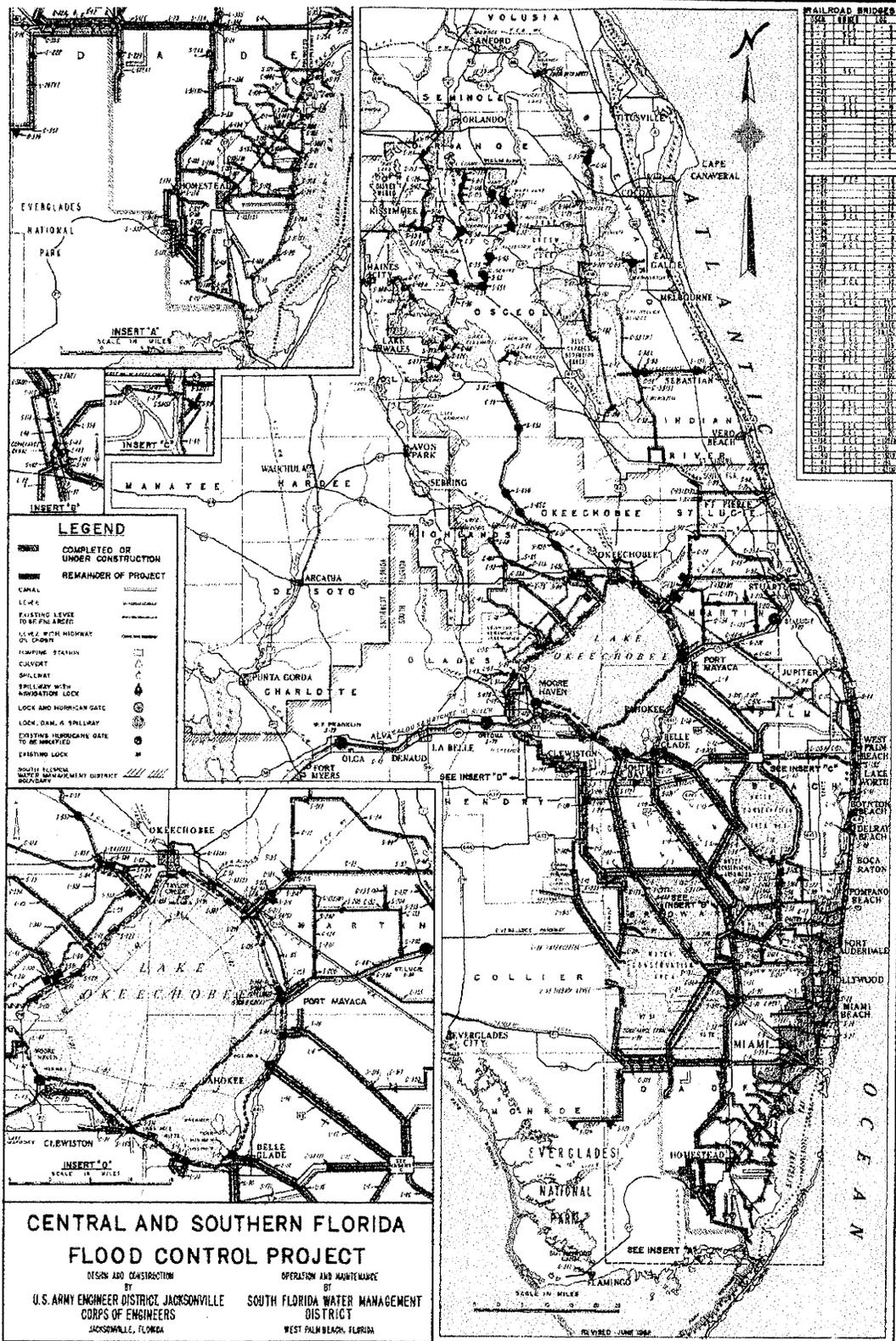
A Scoping Letter was issued to various stakeholders and interested parties on October 26, 1999 and comments were received through November 30, 1999. A Public Scoping Meeting was held in Homestead, Florida on November 16, 1999 to elicit comments and determine issues to be resolved during the NEPA process. Interagency meetings were

held on April 10, 2000 and May 15, 2000 to discuss project operations and to finalize alternatives to be evaluated in the EIS. In addition, the Corps posted hydrologic model runs and hydrographs of potential alternatives on its website for review by all interested parties. An additional Public Workshop was held in Homestead, Florida on June 7, 2000 to elicit public comment and inform the public of project developments.

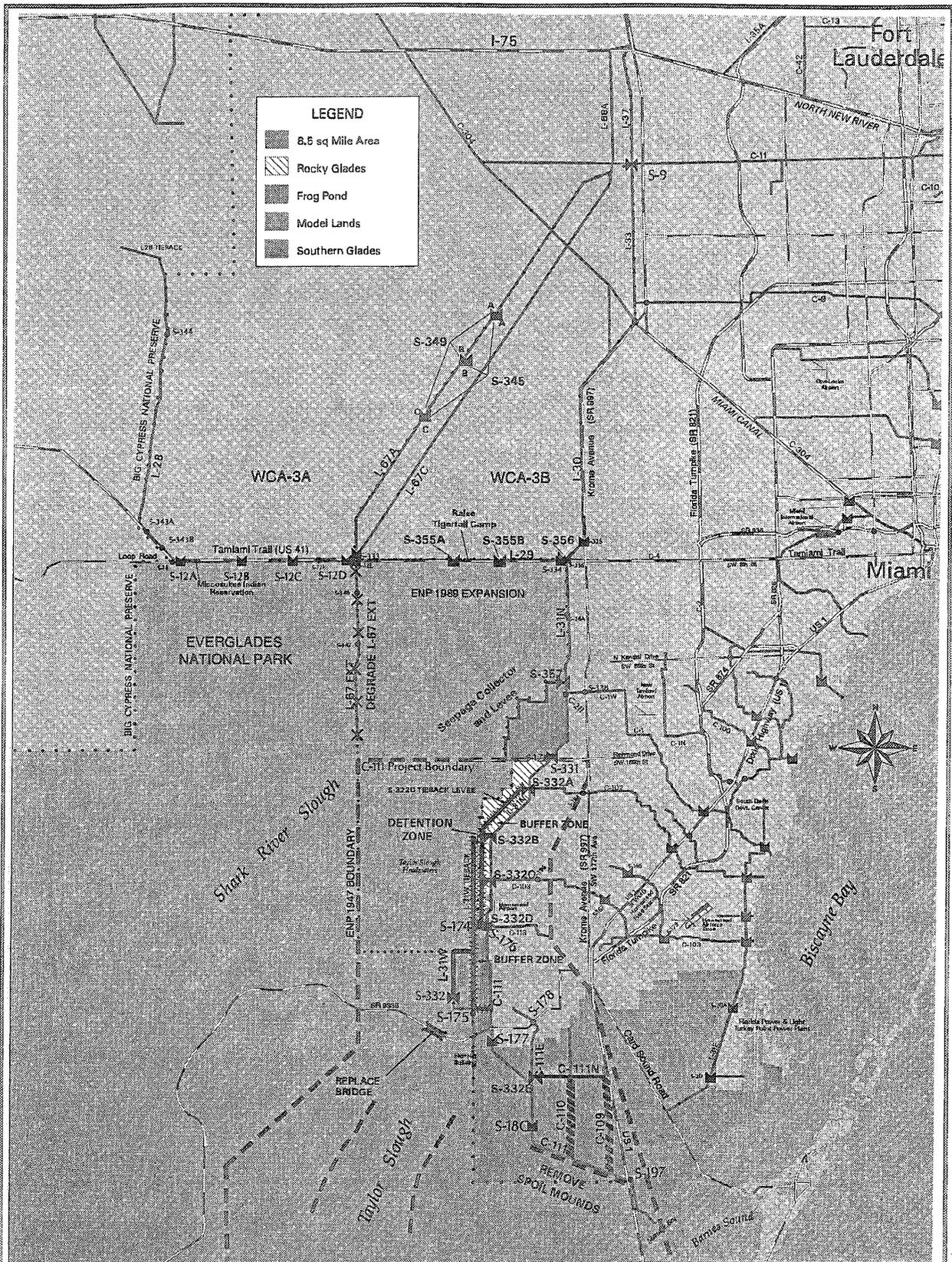
In accordance with the Council for Environmental Quality (CEQ) letter dated December 25, 2000, an additional Public Workshop was held January 30, 2001 to relay to the public that Phase 1 of the IOP preferred alternative would be the ISOP for 2001. On July 16, 2001, a public workshop was held to discuss Alternative 7. In addition, several stakeholder meetings were held throughout the summer and fall 2001 regarding the IOP.

Both the Florida Fish and Wildlife Conservation Commission (FFWCC) and Florida Department of Environmental Protection (FDEP) expressed concerns about potential effects of the project on the ecological conditions of the WCAs, which are managed by the state. In particular, the agencies were concerned that storage of additional water in these areas to reduce releases through the S-12 structures could cause loss of valuable habitat. The agencies also expressed concerns about freshwater pulses into estuary systems. The FFWCC provided a number of recommendations to be considered during the selection of the final alternative plan and requested that the Corps coordinate with them during the selection process.

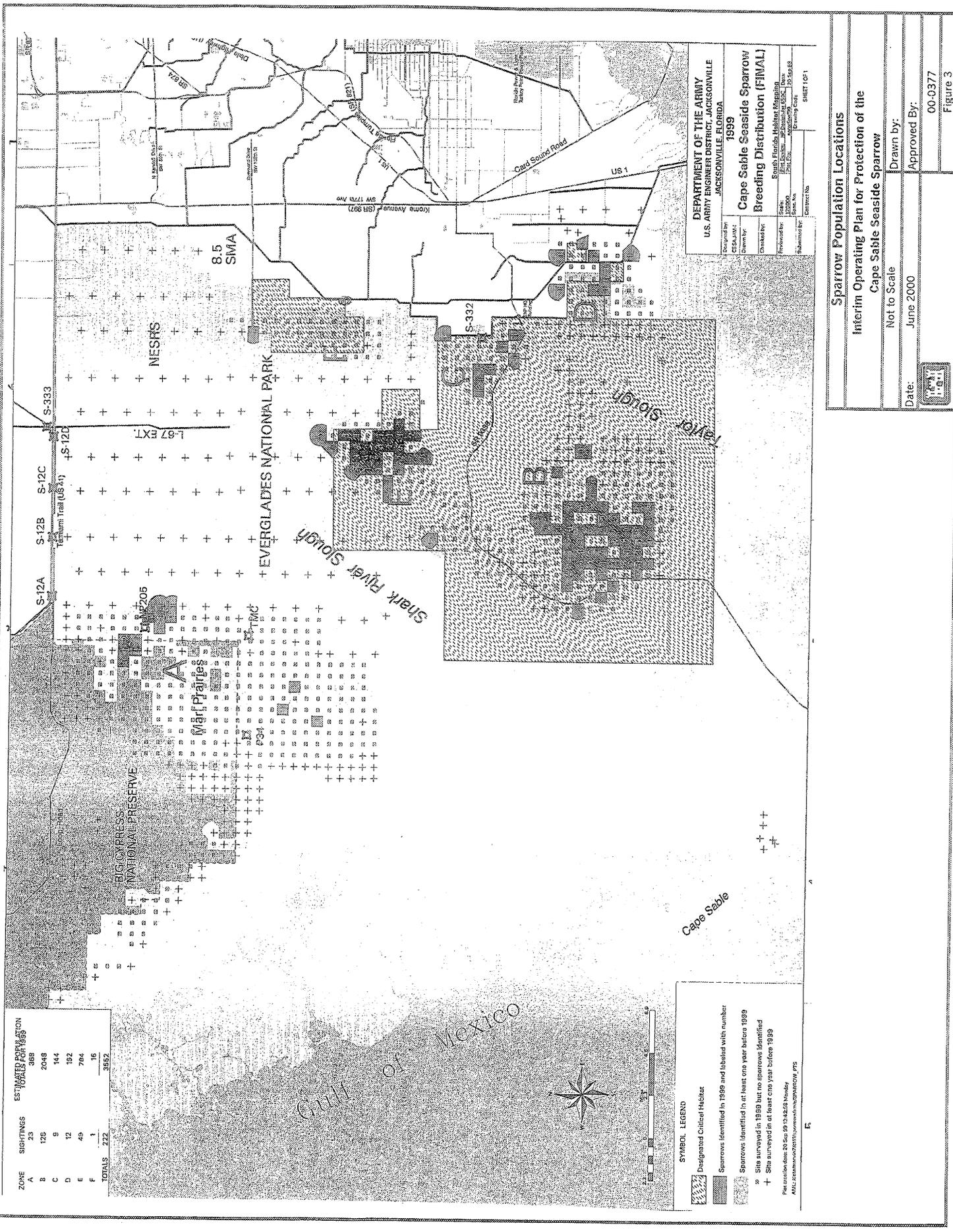
A letter from the Natural Resources Defense Council (NRDC) recommended that technical staff members from ENP, FWS, and SFWMD be included in the formulation of the IOP and EIS. The NRDC also provided recommendations regarding the analysis of regulatory releases, mitigation, impacts to private property, and coordination with other interest groups. A number of potentially affected property owners also commented regarding adequate compensation for their property from the National Park Service acquisition process associated with the ENP Expansion.



<b>Project Location</b>	
<b>Interim Operating Plan for Protection of the Cape Sable Seaside Sparrow</b>	
Not to Scale	Drawn by:
Date: June 2000	Approved By:
	00-0377
	Figure 1



<b>Project Features Map</b>	
<b>Supplemental DEIS for the Interim Operational Plan for Protection of the Cape Sable Seaside Sparrow</b>	
Not to Scale	Drawn by:
Date: September 2001	Approved By:
	00-0377
	Figure 2



ZONE	SIGHTINGS	ESTIMATED POPULATION TOTALS FOR 1999
A	20	306
B	126	2048
C	9	144
D	12	132
E	49	764
F	1	16
TOTALS	227	3952

**SYMBOL LEGEND**

- Designated Critical Habitat
- Sparrows identified in 1999 and labeled with number
- Sparrows identified in 1999 but no sparrows identified
- Site surveyed in at least one year before 1999
- Site surveyed in at least one year before 1999

Pre-creation date: 20 Sep 99 13:42:55 Monday  
 ANL/228/1999/06/20/110/summary/m/SPARROW.PTS

DEPARTMENT OF THE ARMY  
 U.S. ARMY ENGINEER DISTRICT, JACKSONVILLE  
 JACKSONVILLE, FLORIDA 32215  
 1999

**Cape Sable Seaside Sparrow  
 Breeding Distribution (FINAL)**

Checked by: [Name]  
 Prepared by: [Name]  
 Submitted by: [Name]  
 Contract No. [Number]

**Sparrow Population Locations**  
 Interim Operating Plan for Protection of the  
 Cape Sable Seaside Sparrow

Not to Scale  
 Date: June 2000

Drawn by: [Name]  
 Approved By: [Name]

00-0377  
 Figure 3