

## **5.0 COMPLIANCE WITH FEDERAL STATUTES, EXECUTIVE ORDERS, AND POLICIES**

### **5.1 Archeological and Historic Preservation Act and National Historic Preservation Act.**

Archival research and consultation with the State Historic Preservation Officer (SHPO) have been initiated in accordance with the National Historic Preservation Act, as amended; the Archeological and Historic Preservation Act, as amended and Executive Order 11593. SHPO consultation was initiated August 22, 2001. The project will not affect historic properties included in or eligible for inclusion in the National Register of Historic Places. At this time coordination has not been completed. The project is in partial compliance with each of these Federal laws.

### **5.2 Clean Air Act.**

The affected air-shed is not a non-compliance area. No air quality permits would be required. This Supplemental DEIS will be coordinated with concerned agencies, including the U.S. Environmental Protection Agency (EPA), other stakeholder agencies and the public, and will then be in partial compliance with Section 309 of the Act. Full compliance will be achieved after the FEIS is coordinated.

### **5.3 Clean Water Act.**

Actions under the recommended IOP plan, as well as the ISOP operations discussed in this Supplemental DEIS, did not and will not result in the release of contaminants into the aquatic environment. The ISOP plans have been coordinated with the Florida Department of Environmental Protection (DEP), and the structures are operating under an emergency exemption as discussed in the Water Quality section. A permit application is pending for the preferred alternative operations, subject to completion of this NEPA process. ISOP 2001 and proposed IOP operations are fully compliant with this law. This law also regulates wetlands protection. The net result of proposed operations under the preferred alternative is an improvement in hydropatterns in NESRS due to improved water deliveries and partially degrading L-67 Extension Levee, while excessively high water stages near the western populations will continue to be avoided. An evaluation of wetlands impacts due to filling in the L-67 Extension Canal was included in the 1992 EIS on Modified Water Deliveries to Everglades National Park (Mod Waters, USACE 1992).

### **5.4 Endangered Species Act.**

From the hydrologic modeling output, it appears that the preferred alternative, Alternative 7 does not meet all of the Reasonable and Prudent Alternative (RPA) targets stated in the current Biological Opinion. The FWS has agreed to modify the B.O. in time for inclusion in

the FEIS to clarify that Alt. 7 does meet the necessary targets to adequately protect the CSSS, even though this is not clear from the modeling. The modified B.O. will also address possible adverse effects on the panther from construction of the new S-332B detention reservoir.

#### **5.5 Federal Water Project Recreation Act; Land and Water Conservation Fund Act.**

No public recreational facilities would be impacted under any alternative considered in this document. Both ISOP and IOP operations are specified as complying with this law.

#### **5.6 Fish and Wildlife Coordination Act.**

A Report was prepared by the U.S. Fish and Wildlife Service and National Park Service, Everglades National Park, in compliance with this law. The Coordination Act Report (CAR) and its Addendum, provided to the Corps on August 2, 2001, are included in this Supplemental DEIS as Appendix C. The CAR discusses ISOP operations as well as the alternatives proposed in the DEIS for the IOP. The CAR provides analyses that support the opinion of these Department of the Interior agencies that ISOP operations may not have fully met 2000 and 2001 RPA targets, and that overflow of the S-332B weir under ISOP and some IOP alternatives may have led or lead to introduction of unacceptably high levels of nutrients into the Park, or lead to changes in dominant vegetation. A Supplement to the CAR was provided on September 28, 2001. This Supplement, which discusses the preferred alternative (Alternative 7), is reproduced in the same appendix as the CAR. Additionally, the Corps has provided a different analysis of these issues in the text of this SDEIS, based on its understanding of water quality sampling and analysis, and of model limitations and results. Further considerations are provided as a second appendix following on the FWS CAR and Supplement to the CAR. In addition to stating that Alternative 7 will "likely meet ESA requirements for the CSSS," the Addendum further states that this alternative "should maintain or improve habitat suitability as compared to the ISOP or Draft IOP EIS alternatives."

#### **5.7 Farmland Protection Policy Act.**

This SDEIS addresses operational changes of an existing system of levees, canals and structures. Only the new detention area has the potential to affect farmland. The lands recommended for construction of the additional detention area at S-332B were previously classified as Statewide Unique farmlands (rock-plowed lands with a 12-month growing season). However, they were acquired by the South Florida Water Management District as authorized under the C-111 Project (USACE, 1994), and are part of the "C-111 buffer area." While the SFWMD continues to lease some of this land for farming, its ultimate fate (removal from agricultural use) has already been determined. No further adverse effects to farmlands will occur as a result of siting the second detention area as recommended in Alternative 7 of this operational plan. Therefore, re-coordination with the Natural Resources Conservation Service is not necessary. The preferred alternative is in compliance.

### **5.8 National Environmental Policy Act.**

A Draft EIS (DEIS) for the Interim Operational Plan was coordinated with the public and agencies beginning on February 23, 2001. This SDEIS will circulate for a period of 45 days, beginning with the publication of the Notice of Availability in the Federal Register. Following the close of the public comment period, a Final EIS will be prepared and coordinated. The Plan will be in full compliance with NEPA after coordination of the FEIS and completion of the final comment period, when a Record of Decision is signed.

### **5.9 Coastal Zone Management Act.**

The SDEIS will be coordinated with the Florida Department of Community Affairs, the State clearinghouse for Coastal Zone Management Plan consistency review. The State of Florida undertakes consistency review of both Draft and Final Environmental Impact Statements. Previous coordination of the DEIS led to a determination by the Clearinghouse that the plan was consistent at that time.

### **5.10 Resource Conservation and Recovery Act and Toxic Substances Management Act.**

No items regulated under these laws or other laws related to hazardous, toxic or radioactive waste substances have been discovered. None are considered likely to exist in the project area, including the proposed second detention area at S-332B.

### **5.11 E.O. 11988. Floodplain Management.**

This Order directs Federal agencies to avoid siting projects in floodplains and to avoid inducing further development of flood-prone areas. All considered alternatives, including the no-action alternatives and preferred alternatives in the ISOP and the IOP, are in compliance with this Executive Order. The proposed operational changes continue to reduce hazards and risks associated with floods, minimize the impact of floods on human safety, health and welfare, and restore and preserve the natural and beneficial uses of the base flood plain.

### **5.12 E.O. 11990. Protection of Wetlands.**

This Order directs Federal agencies to avoid developing or siting projects in wetlands. The preferred alternative is in full compliance. Preferred alternative operations will reduce seepage of ground water away from wetlands along the Eastern Everglades boundary and partially re-hydrate wetlands in CSSS populations E and F during the rainy season, while providing for adequate water level controls for western CSSS populations during the nesting season. Additionally, the southernmost 4 miles of the L-67 levee extension will be degraded, returning the levee footprint to wetlands.

### **5.13 E.O. 12898. Environmental Justice.**

This Order directs Federal agencies to provide for full participation of minorities and low-income populations in the Federal decision-making process, and further directs agencies to fully disclose any adverse effects of plans and proposals on minority and low income populations. The ISOPs and proposed IOP are in full compliance. The operations of the structures discussed herein, in addition to providing acceptable protection to populations of the CSSS, will benefit all population groups of Southern Dade County by providing flood reduction, drinking water supply protection, and restoration of the wetlands and other natural resources inside and outside Everglades National Park.

## 6.0 PUBLIC INVOLVEMENT

The various agencies, affected stakeholders, and interested members of the community were allowed opportunities to provide input during the NEPA process. A number of public and plan development workshops were held to elicit input from interested parties. Table 6.1 provides a list of announcements, interagency coordination, and public workshops conducted throughout this process. A summary of the scoping process was included in Section 1.5.

**Table 6.1 Public Involvement Summary**

Action	Location	Date
NOI published in Federal Register	NA	13 August 1999 (Volume 64, Number 156)
Scoping Letter Mailed	NA	26 October 1999
Scoping Meeting	Homestead, FL	16 November 1999
1 <sup>st</sup> Round of Modeling Posted on the Corps Website	NA	24 March 2000
Interagency Meeting	Ft. Lauderdale, FL	10 April 2000
Public Workshop	Homestead, FL	25 April 2000
2 <sup>nd</sup> Round of Modeling Posted on the Corps Website	NA	28 April 2000
Interagency Meeting	Ft. Lauderdale, FL	15 May 2000
3 <sup>rd</sup> Round of Modeling Posted on the Corps Website	NA	31 May 2000
Public Workshop	Homestead, FL	7 June 2000
Public Workshop	Homestead, FL	30 January 2001
Public Workshop	Homestead, FL	20 June 2001
Presentation to the Governing Board of the SFWMD	West Palm Beach, FL	12 July 2001
Public Workshop	Miami, FL	16 July 2001
Stakeholder Outreach	Homestead, FL	20 July 2001
Stakeholder Outreach	Jacksonville, FL	13 August 2001
Stakeholder Outreach	Ft. Lauderdale, FL	22 August 2001

## 7.0 DISTRIBUTION

A list of agencies, organizations, and private individuals that will be sent a copy of the Supplemental DEIS is attached.

## 8.0 LIST OF PREPARERS

**Table 8.1 List of Preparers**

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## 9.0 CONCLUSIONS

The consensus Preferred Alternative meets or exceeds the 30%, 45%, and 60% targets and meet or exceed conditions that would be produced by Test 7, Phase II operations. The recommendations provided by the FWS in their Final Coordination Act Report (CAR) (FWS 2001) were incorporated into the preferred alternative design. S-334 will be the primary route for WCA-3A regulatory flows, the S-332B retention area will be constructed and overflow will only be allowed under limited circumstances described in the Pre-storm/Storm/Storm Recovery Operations (Appendix B), a trigger was included to prevent further S-332B operations if the adjacent CSSS habitat experiences hydroperiods greater than 180 days, and lower canal stages and increased pumping will only be implemented when WCA-3A regulatory releases are through the SDCS except under circumstances described in the Pre-storm/Storm/Storm Recovery Operations. In addition, improved SFWMM and MODBRANCH hydrologic models will be used for future modeling efforts, and the Corps will use a more collaborative approach to reach consensus with other agencies on future projects. On this basis, the FWS concurs that Alternative 7, the preferred alternative, is acceptable.

## 10.0 REFERENCES

- Bass, Sonny. October 30, 2000. Personal communication. E-mail correspondence to Dr. John Moulding regarding Florida panther habitat in the vicinity of the proposed S-332B seepage reservoir.
- Shafer, Mark. September 2001. Personal communication.
- U.S. Army Corps of Engineers. 2001. Interim Operational Plan (IOP) for Protection of the Cape Sable Seaside Sparrow, Central and Southern Florida Project for Flood Control and Other Purposes, Dade County, Florida. Jacksonville District, Jacksonville, Florida.
- U.S. Army Corps of Engineers. 2000a. Final Environmental Assessment, Central and Southern Florida Project for Flood Control and Other Purposes, Interim Structural and Operational Plan (ISOP), Emergency Deviation from Test 7 of the Experimental Program of Water Deliveries to Everglades National Park for Protection of the Cape Sable Seaside Sparrow, Dade County, Florida. Jacksonville District, Jacksonville, Florida.
- U.S. Army Corps of Engineers. 2000b. Central and Southern Florida Project for Flood Control and Other Purposes, Modified Water Deliveries to Everglades National Park, Florida 8.5 Square Mile Area, General Reevaluation Report. Jacksonville, Florida.
- U.S. Army Corps of Engineers. 2000c. Supplement to the Final Environmental Impact Statement, Central and Southern Florida Project for Flood Control and Other Purposes, Modified Water Deliveries to the Everglades National Park, 8.5 Square Mile Area, Dade County, Florida. Jacksonville District, Jacksonville, Florida.
- U.S. Army Corps of Engineers. 1999a. Central and Southern Florida Project Comprehensive Review Study: Final Integrated Feasibility Report and Programmatic Environmental Impact Statement. Jacksonville District, Jacksonville, Florida.
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- U. S. Army Corps of Engineers. 1995. Environmental Assessment and Finding of No Significant Fact, Test Iteration 7, Experimental Program of Water Deliveries to Everglades National Park, Central and Southern Florida Project for Flood Control and Other Purposes. Jacksonville District, Jacksonville, Florida.
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- U.S. Fish and Wildlife Service. 1999a. Final Biological Opinion for the U.S. Army Corps of Engineers, Modified Water Deliveries to Everglades National Park, Experimental Water Deliveries Program, and the C-111 Project. Vero Beach, Florida.
- U.S. Fish and Wildlife Service. 1999b. South Florida multi-species recovery plan. Atlanta, Georgia. 2172 pp.
- U.S. Fish and Wildlife Service. 2001. Final Coordination Act Report for the Interim Operating Plan for the Protection of the Cape Sable Seaside Sparrow. Vero Beach, Florida.

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