



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Memorandum

To: Office of the Director, Everglades Restoration Initiatives
Office of the Secretary, Department of the Interior
Attention: Joan Lawrence

From: Paul Souza, Field Supervisor
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Vero Beach, Florida

Subject: Notice of Initiation of Rule Review for Programmatic Regulations for the
Comprehensive Everglades Restoration Plan

This memorandum provides comments from the U.S. Fish and Wildlife Service (Service) on the programmatic regulations for the Comprehensive Everglades Restoration Plan (CERP) (33 CFR Part 385). Section 601(h)(3)(E) of the Water Resources Development Act of 2000 (WRDA 2000) required that Secretary of the Army develop regulations to guide implementation of the CERP, and that these regulations be reviewed at least every five years. The regulations were promulgated in November 2003, and the US Army Corps of Engineers (Corps) has now initiated the first review and invited scoping comments. The Service has worked with the Corps on virtually every CERP activity covered by the programmatic regulations. We appreciate the opportunity to offer the following suggestions for the review.

1. Value of the Programmatic Regulations.

Programmatic regulations are important for the CERP. The CERP is breaking new ground in water resources management. During the past five years, the CERP has focused on developing key guidance and moving projects forward. During this transition from a conceptual Restudy plan to project delivery there have been multiple policy, institutional and technical challenges. The programmatic regulations have helped sustain the system-wide restoration vision of the CERP by emphasizing a system-wide perspective, fostering consistency among project implementation reports (PIRs), and establishing a system-wide science program (RECOVER) to support planning, evaluation, assessment and integration. In considering potential changes to the regulations, it will be important to recognize and retain the value of the regulations in supporting these critical integrative functions.

2. PIR Formulation and Evaluation

Guidance on formulating and evaluating project alternatives warrants review and revision. Currently, project teams are required to use a procedure, the “system formulation,” that evaluates alternative project designs within a context of the entire CERP plan. A virtue of the system formulation is that individual projects must complement each other to support the overall goals of the CERP. However, the procedure has several significant drawbacks.

- a. Projects must be formulated using uncertain assumptions about future CERP components that may prove unfeasible or require change as part of adaptive management.
- b. PIR analysis cannot consider how a project will function in combination with other interdependent projects that are being planned concurrently. Hence, project design is disconnected from the specific benefits that were anticipated when the project was selected, along with others, for inclusion the initial phase of CERP.
- c. The system formulation is only used to compare project alternatives and cannot be used to quantify incremental benefits from the project, develop the project operating manual, or meet project assurances required under Federal and State of Florida law.
- d. An additional “future without CERP” baseline plus multiple “future with CERP” models must be evaluated for each PIR, adding modeling analysis that has been of limited value in developing the final project design.

The Service believes that system-level analysis is essential to achieving the restoration goals of the CERP. However, we recommend that the Corps consider options for conducting system-wide or regional formulation either outside the PIR development process or by developing larger, more comprehensive PIRs that include multiple, interdependent projects. Existing venues for non-PIR-based system formulation include periodic CERP updates, analysis of the Master Implementation Sequencing Plan (MISP), and modeling activities needed to develop interim goals and interim targets.

The current requirement for a Next-Added-Increment (NAI) analysis requires substantial discussion in reviewing the regulations. We believe that current difficulties in implementing the NAI requirement are largely a consequence of the inability of single projects to demonstrate benefits in the absence of interdependent projects that are also required to achieve a significant restoration response. Thus, the NAI requirement should not be treated as a stand-alone issue but discussed as part of a comprehensive evaluation of potential improvements to the CERP planning process.

3. Modeling Analysis and Model Baselines for PIRs

There has been much discussion of the challenges imposed by the multiple models required to complete a PIR. Although some reduction in modeling appears possible, most of the model analysis in PIRs is necessary either to meet Corps planning guidance or is required under WRDA 2000 or other Federal or State of Florida law. However, new model development is not necessarily required for every baseline in each PIR. We offer these remarks on the five baselines currently in use.

- a. The Future-Without-CERP baseline could be eliminated from PIR analysis if system formulation activities are conducted outside of the PIR process.

- b. The NAI analysis is most similar to conventional Corps planning, so it is doubtful that this baseline and modeling comparison could be eliminated.
- c. An Existing Conditions Baseline is essential, because it is required to analyze project impacts under NEPA as well as effects on federally-listed threatened or endangered species.
- d. The Initial Operating Regime (IOR) Baseline is identical to the Existing Conditions Baseline except for an increase in the assumed demands for water supply. This baseline is used to quantify potential water made available by a project to meet other water-related needs. This analysis need only be required for projects whose objectives include increased water supply.
- e. The pre-CERP Baseline is required to evaluate potential elimination or transfer of an existing legal source, consistent with the WRDA 2000 savings clause. The pre-CERP Baseline has already been developed and updates to this model should only be required if a PIR uses a new modeling tool, and then only if prior analysis of the IOR indicates that a comparison with the pre-CERP Baseline is required.

4. RECOVER

Establishment of the Restoration Coordination and Verification (RECOVER) program is an important element of the programmatic regulations. The regulations should retain RECOVER's responsibilities for conducting system-wide analysis in support of CERP planning, evaluation, and integration and assessment. Several elements of the regulations relating to RECOVER would benefit from review and possible refinement.

- a. The RECOVER Leadership Group (RLG) has recognized the importance of ensuring that RECOVER technical products have broad support from the agencies and tribes participating in the CERP. To foster this, the RLG has adopted a consensus-based process for managing RECOVER activities and approving RECOVER documents. We suggest that the language in the programmatic regulations establishing the RLG be updated to better reflect the management structure that has now been adopted.
- b. The Department of the Interior (DOI) has played a major role in RECOVER since its inception. Today the Service and National Park Service share ongoing program implementation responsibilities with the Corps and the South Florida Water Management District through the recently-formed RECOVER Executive Committee. We suggest that review of the programmatic regulations include a discussion of the role of the DOI in RECOVER, and whether enhanced DOI responsibility for program management and implementation would be beneficial to the CERP.
- c. In addition to the tasks assigned to RECOVER under the current regulations, RECOVER has led development of the strategy and guidance for CERP adaptive management. We recommend that the programmatic regulations clarify the role of RECOVER and the project teams in the adaptive management program.
- d. RECOVER has also taken the lead in conducting the initial update to the CERP. We recommend that the programmatic regulations clarify the role of RECOVER in periodic CERP updates and other system-wide formulation and analysis.

5. Interim Goals and Interim Targets

The programmatic regulations are ambiguous in guiding the development of interim goals and interim targets. Currently, the regulations require that interim goals represent the predicted performance of the MISP, be used to evaluate potential changes to the MISP, and be used to assess restoration success over time. These roles cannot be served by a single set of metrics. In developing initial recommendations for interim goals, RECOVER recognized this issue and now plans to include both desired as well as predicted CERP performance in future recommendations for interim goals. The Service supports this concept, and we recommend that the regulations be revised to provide clearer direction on the development and purpose of the interim goals and interim targets.

6. Adaptive Management

The programmatic regulations include many references to adaptive management but provide little guidance on how, when and by whom adaptive management will be conducted. The existing regulations include a section on adaptive management, which can now be expanded to better reflect the developing form of the adaptive management program, including: language to address how principles of adaptive management are to be applied during project-level and system-wide planning; the roles of project teams, RECOVER, and CERP management in the adaptive management process; and direction for the development of program-wide guidance on adaptive management.

7. Program-Wide Guidance Memoranda

Although still in draft form, the six program-wide guidance memoranda have been important in fostering consistency among PIRs and providing a focus for working through a number of policy and technical issues affecting PIR development. We suggest that the requirements for the guidance memoranda be reviewed to determine where existing draft guidance should be incorporated into the regulations, and to revisit the schedule for completing these documents.