

SECTION 11

**COMPLIANCE WITH FEDERAL
ENVIRONMENTAL STATUTES**

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SECTION 11 COMPLIANCE WITH FEDERAL ENVIRONMENTAL STATUTES

All alternative plans were considered in relation to compliance with Federal environmental review, consultation, and regulatory statutes. Florida statutes relevant to environmental review and state funding requirements are covered in Section 12 of this report.

11.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

Notice of Intent to prepare a Draft Integrated Project Implementation Report and Environmental Impact Statement (dPIR) for the Southern Golden Gate Estates (SGGE) project was published in the Federal Register on May 24, 2002. Scoping was initiated with a letter sent to federal, state, and locale agencies, Indian tribal governments, and surrounding landowners on June 26, 2002. The Draft Project Implementation Report and integrated Draft Environmental Impact Statement (DEIS) were coordinated with agencies and interested public beginning on May 14, 2004, when the Notice of Availability was published in the Federal Register. The initial public comment period was 45 days, but at the request of several stakeholders present at the Public Workshop, an additional 15 days were granted for review and comment. The comment period on the Draft PIR/EIS ended on July 13. Agency, tribal, and public involvement as required by NEPA is covered in Section 10 of this report. Through this stage in planning, the SGGE project is in compliance with the requirements of the National Environmental Policy Act (NEPA) of 1969 as amended.

11.2 ENDANGERED SPECIES ACT OF 1973, AS AMENDED

The U.S. Fish and Wildlife Service (FWS) has been an integral part of the SGGE Project Delivery Team (PDT) as it proposed, designed, and selected alternatives for this project. Informal Endangered Species Act (ESA) consultation with FWS has been underway on all alternatives since the inception of the project. Service biologists provided specific concerns relative to the Florida Panther, the West Indian Manatee and other listed species in the September 22, 2004 Final Coordination Act Report included in Appendix D. Additionally, Service biologists have provided in-depth analysis of habitat requirements and stressors to the population of West Indian Manatee that utilize the Ten Thousand Islands area and the Port of the Islands Marina; specific information on Florida Panther movements within its range throughout the region and in the project area. The Corps has determined that the recommended alternative, Alt 3D, may affect, but is unlikely to adversely affect, the red-cockaded woodpecker, bald eagle,

Everglade snail kite, eastern indigo snake, American crocodile and West Indian manatee critical habitat. The proposed project would have “no effect” on everglade snail kite critical habitat and American crocodile critical habitat. Corps and Service biologists have agreed that there is insufficient information at this project phase to make a determination regarding effects on wood stork, West Indian manatee and Florida Panther. By letter dated October 20, 2004, the Service concurred with these determinations. A copy of the Biological Assessment for listed species found on proposed project lands is included in Appendix D. Coordination has concluded for the planning (feasibility-stage) of the project in 2004, but will continue, if the project is approved and funds are provided to continue through detailed design and construction, throughout the project life. No construction will begin until determinations of effects are coordinated with the Service for the three species of ongoing concern and concurrence is reached. It is the expectation of Corps and Service biologists that with detailed analysis, availability of pre-construction surveys, and final coordination of listed species conservation measures, concurrence may be reached early in the detailed design phase.

Initial informal consultation on marine species with the National Marine Fisheries Service (NMFS) began on May 25, 2001. Informal consultation was updated in an email exchange and a February 10, 2004 phone conversation. NOAA fisheries indicated its concurrence with a Corps information determination of no effect on listed marine species.

Section 9.6 of this report has additional information on both marine and upland listed species. With receipt of Service concurrence with current effect determinations, the Project is in compliance with the ESA for feasibility phase activities. Full compliance will be achieved when determinations on the manatee, Florida panther and wood stork are re-coordinated with the Service in a new BA, and Service concurrence is received.

11.3 FISH AND WILDLIFE COORDINATION ACT OF 1958, AS AMENDED

Consultation was initiated with FWS on February 26, 1999 in a Scope of Work (SOW) requesting a Planning Aid Letter (PAL) for the SGGE project. Several planning aid letters (PALs) have been received by the Corps (ref. Appendix D) Further coordination with the U.S. Fish and Wildlife Service resulted in the submission to the Corps of a draft Coordination Act Report (dCAR) dated February 2, 2004 and a Final report (FCAR) on September 22, 2004. The FCAR included 16 recommendations to assure that the objectives of the project would be achieved. The FWS stated that the proposed project, as described, should provide significant hydrologic improvements and enhancement of wetland

habitats through restoration of more natural sheet flow. Long-term benefits of this restored hydrology include a decrease in the rate of expansion of exotic plant species, and possible increases in forage, cover and reproductive areas for fish and wildlife. FWS provided additional detailed recommendations and editorial assistance for the Final PIR/EIS, and Service biologists have worked cooperatively with the Corps and Water Management District to develop a monitoring plan and operational recommendations to further assure fish and wildlife benefits are realized. Answers to FWS recommendations contained in the FCAR can be found in Section 9.5 of this report. Service comments on the Draft Report and Corps Responses are also shown in Appendix D. Many Service recommendations have been incorporated directly in this document's text, as indicated in the comment-response matrix. This report incorporates a final Fish and Wildlife Coordination Act Report and is in compliance with the Act.

11.4 NATIONAL HISTORIC PRESERVATION ACT OF 1966

The National Historic Preservation Act of 1966 as amended (PL89-665), The Archaeological and Historic Preservation Act as amended (PL 93-291), and Executive Order 11593 and consultation with the State Historic Preservation Officer (SHPO) will be completed during the PED phase once project specific designs are developed. Letters dated 13 March 2002 were received from the SHPO, which confirmed the necessity of a cultural resources survey within the project area. The survey is currently underway, and it will continue until the entire potentially affected area has been covered. Results of the survey and recommendations will be addressed in future consultation. Project specific surveys for cultural resources and site evaluations will be conducted during pre-construction Engineering and Design Phase of the project. Project construction will not commence until coordination with the SHPO is complete and full compliance will be achieved upon concurrence with Corps recommendations by the SHPO.

11.5 CLEAN WATER ACT OF 1972, AS AMENDED

A Section 401 water quality certification from the Florida Department of Environmental Protection will be obtained by the SFWMD. All State water quality standards will be met. A Section 404(b)(1) evaluation is included in Appendix D of this report. The project is in compliance with this act.

11.6 SAFE DRINKING WATER ACT OF 1974, AS AMENDED

Implementation of the recommended alternative will improve infiltration into the upper groundwater aquifer however there is no Project Area involvement with waters actually or potentially designated for drinking use that would be affected by project related activities. The project is in compliance with this act

11.7 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) OF 1980, AS AMENDED

The State of Florida, as owner of some Study Area lands that have HTRW problems is aware of their responsibility to remediate the contamination prior to the beginning of project construction. Sections 3.14, 8.8.3, and 9.14 contain information on state agency efforts to determine the best option for contamination cleanup and the current status of ongoing studies and remediation. The project is in compliance with this act.

11.8 CLEAN AIR ACT OF 1972, AS AMENDED

Air quality within the SGGE Project Area is in compliance with the Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) standards. There are no non-attainment basins in the area or its immediate surroundings. Implementation of the recommended alternative will improve air quality. See Sections 3.8 and 9.8 of this report for more information. The project is also in compliance with Chapter 3.09 of the Law regarding public coordination of proposed Federal Projects. The project is in compliance with this act.

11.9 COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED

A Florida coastal zone management program federal consistency evaluation is included in Appendix D of this draft PIR. State review of the evaluation was performed during the 60 day agency coordination of the draft PIR/EIS. The State of Florida Clearinghouse determined that the project is in compliance with the Florida Coastal Program at this time. (Clearinghouse comments are reproduced in the "Coordination" appendix G.

11.10 FARMLAND PROTECTION POLICY ACT OF 1981

The Natural Resource Conservation Service (NRCS) was contacted prior to preparation of the Draft PIR/EIS. No prime or unique farmland would be impacted by implementation of this project. The project is in compliance with this act

11.11 WILD AND SCENIC RIVER ACT OF 1968, AS AMENDED

No designated Wild and Scenic river reaches would be affected by project related activities. The project is in compliance with this act

11.12 MARINE MAMMAL PROTECTION ACT OF 1972, AS AMENDED

The Corps has determined that the only marine mammal that may be affected by the SGGE project is the West Indian manatee. The environmental effects of this project on manatees have been addressed in Section 9.6.8. In general, the project should improve the overall hydration of the shallow aquifer in the project area, providing a longer duration of seepage into all the upper estuaries, while reducing “shock flows” of high volume into the Faka Union canal. Protection measures to assure survival of the manatee subpopulation that resides in the Ten Thousand Islands region and winters in the cold weather refugium in the Port of the Islands marina have been recommended by Service biologists and have been incorporated into the project. If anything, the project is expected to provide adequate groundwater-derived flow to assure manatees would not be adversely affected by cold weather episodes. However, an additional source of groundwater will be provided in the vicinity of the FU downstream weir, when and if necessary, to supplement or augment low flows during dry season cold spells. Formal consultation with the Service is ongoing. Refer also to the Biological Assessment in Appendix D. The project is in compliance with this act.

11.13 ESTUARY PROTECTION ACT OF 1968

In the draft PIR the Corps has considered the effects of the recommended alternative on the estuaries and bays of the Ten Thousand Islands Region. Most project effects are expected to be beneficial. The U.S. Environmental Protection Agency, which administers this law, has accepted the DPIR/DEIS as adequate. See Sections 3.11 and 9.11 of this report for more information. The project is in compliance with this act.

11.14 E.O. 11990, PROTECTION OF WETLANDS

The purpose of the SGGE project is to restore wetland habitats. The project is in compliance with the intent of this executive order.

11.15 E.O. 11988, FLOODPLAIN MANAGEMENT

The objective of the SGGE project is to reestablish the natural floodplain hydrology. Flood hazards to Northern Golden Gate Estates (NGGE) were considered during the planning process. Existing flood levels in NGGE will not be significantly or adversely impacted. The project is in compliance with the intent of this executive order.

11.16 E.O. 12898, ENVIRONMENTAL JUSTICE

No adverse impacts to human health or the environment are anticipated as result of the SGGE project. Impacts to “subsistence consumption of fish and wildlife resources” are not anticipated as a result of the proposed project. See Section 10.9 of this report for more information. The project is in compliance with the intent of this executive order.

11.17 E.O. 13089, CORAL REEF PROTECTION

Those species, habitats, and other natural resources associated with coral reefs are not found in close enough proximity to the project area to be likely to derive either benefit or adverse effects from implementation of the recommended project. The project is in compliance with the intent of this executive order.

11.18 E.O. 13112, INVASIVE SPECIES

The existing and future problem of invasive species growing within the SGGE Study Area has been considered during the planning process. All feasible and prudent measures to reduce present infestations and to minimize risk of introducing new invasive species will be followed. The Florida Division of Forestry (DOF) as the Project Area managing agency has an ongoing program of invasive and exotic species control. The Comprehensive Everglades Restoration Program (CERP) also includes further studies of means and methods to reduce the influence of exotic invasive plant species, including melaleuca and Brazilian

pepper, both of which are found on project lands. Additionally, some future DOF management actions, including fire management, are expected to reduce the dominance of the native cabbage palm. The Corps notes that FWS comments on the Draft PIR/EIS indicate some disagreement with this conclusion, and recommend a specific exotic species management plan for the project. However, such a plan will be part of the DOF management plan for Picayune Strand State Forest. The project is in compliance with the intent of this executive order.

11.19 FEDERAL WATER PROJECT RECREATION ACT

The Florida Department of Forestry will manage the SGGE project as part of the Picayune Strand State Forest. Outdoor recreation and fish and wildlife enhancement will be a large part of the Forest management plan. The project is in compliance with this act.

11.20 SUBMERGED LANDS ACT OF 1953

The project does not occur on submerged lands of the State of Florida. The project is in compliance with this act

11.21 COASTAL BARRIER RESOURCES ACT AND COASTAL BARRIER IMPROVEMENT ACT OF 1990

There are no designated coastal barrier resources within the project area. The project is in compliance with this act

11.22 RIVERS AND HARBORS ACT OF 1899

The proposed work would not obstruct navigable waters of the United States currently regulated by the Rivers and Harbors Act of 1899. Any modifications of navigable capacity caused by changes in water level in the canal system and its connections with tidal waters are authorized by the Congressional approval of the PIR and EIS. The project is in compliance with this Act.

11.23 ANADROMOUS FISH CONSERVATION ACT

The SGGE project would not be affect anadromous fish species. The project has been coordinated with the National Marine Fisheries Service and is in compliance with this act.

11.24 MIGRATORY BIRD TREATY ACT AND MIGRATORY BIRD CONSERVATION ACT

The restoration actions proposed within recommended alternative 3D should enhance natural habitat for migratory birds. The hydrologic restoration contained in this alternative should also increase available forage species such as amphibians, fish and aquatic invertebrates for wading birds. The project is in compliance with these acts.

11.25 MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT

The SGGE project does not involve any ocean dumping nor does it establish any marine sanctuaries. The project is in compliance with this act

11.26 MAGNUSON-STEVENSON FISHERY MANAGEMENT AND CONSERVATION ACT (PL 94-265)

This law addresses conservation of marine fish species of commercial importance, and requires consultation with the administering agency (National Marine Fisheries Service) on potential effects of proposed Federal projects on essential marine habitat for such species. Both the species and the habitat are defined by each Regional Fisheries Council. Informal consultation with National Marine Fisheries Service (NMFS) determined that project construction features are far enough upstream so that they are not likely to have a net negative effect on Essential Fish Habitat (EFH) in the SGGE Study Area. On the contrary, the net effect of the proposed project is expected to be the re-hydration of several estuaries to the west of the Faka Union estuary, with a consequent improvement in fish nursery habitat in each. As required under this act, the recommended alternative will continue to be coordinated with NMFS. The project is in compliance with this Act.

11.27 RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

The discovery of widespread soil contamination by chlordane, DDE, DDD, Dieldrin and Endosulfan lead the sponsor to commission a Phase I and II Environmental Site and Ecological Risk Assessment. See Sections 3.14 and 9.14 for more information. Prior to commencement of construction all identified contamination will be remediated and the project will be in compliance with this act.

11.28 WATER RESOURCE DEVELOPMENT ACT OF 1986, SECTION 904

Section 904 of the Water Resources Development Act of 1986 requires that the plan formulation and evaluation process consider both quantifiable and unquantifiable benefits and costs of the quality of the total environment and preservation of cultural and historical values. The project is in full compliance with this act.

11.29 WATER RESOURCE DEVELOPMENT ACT OF 1990, SECTION 307

Section 307 of the Water Resources Development Act of 1990 establishes, as part of the water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands, and a long-term goal of increasing the quality and quantity of the Nation's wetlands. The recommended alternative would restore wetlands in the immediate SGGE Study Area, in the Fakahatchee Strand State Forest, in Picayune Strand State Forest, and in the estuaries that collectively make up a major portion of the Rookery Bay- Cape Romano National Estuarine Research Reserve (?) and the Ten Thousand Islands National Wildlife Refuge. This project is in full compliance with this act.

11.30 WATER RESOURCE DEVELOPMENT ACT OF 2000, SECTION 601

Section 601 of the Water Resources Development Act of 2000 establishes that water generated from the Comprehensive Everglades Restoration Plan will be made available for the restoration of the natural system. Water made available by this project will not be permitted for consumptive use or otherwise made unavailable by the State, until such time as sufficient reservations of water for the restoration of the natural system are made under State law in accordance with the project implementation report and consistent with the Comprehensive Everglades Restoration Plan.

Section 601 of this act also establishes that until a new source of water supply of comparable quantity and quality as that available on the enactment of the Act is available to replace the water to be lost as a result of the implementation of the plan, the Secretary or non-Federal sponsor shall not eliminate or transfer existing legal sources of water including those for:

- (i) *an agricultural or urban water supply;*
- (ii) *allocation or entitlement to the Seminole Tribe of Florida under Section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e);*

- (iii) the Miccosukee Tribe of Indians of Florida;*
- (iv) water supply for Everglades National Park; or*
- (v) water supply for fish and wildlife.*

In addition to the above Section 601 of this Act also established that implementation of the plan shall not reduce level of service for flood protection that is:

- (i) in existence on the date of enactment of this Act; and*
- (ii) in accordance with applicable law.*

A detailed discussion can be found in Section 12 of this report. The project is in full compliance with this act.