

Appendix C. Legal Justification for Performance Measures

Both federal and state laws and regulations articulate the need to measure and evaluate system-wide response to CERP implementation. Performance measures provide tools to fulfill this need. Performance measures document success and failures to help identify when the CERP needs to be altered through adaptive management.

Water Resources Development Act of 2000

Through enactment of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-541), Congress approved the Comprehensive Plan as a framework and guide to modify the Central and Southern Florida (C&SF) Project. CERP's scope, complexity and importance and the significant outlay of public funds necessary for implementation dictate the need to measure, assess and report progress towards achieving CERP's objectives. Therefore, Section 601(b)(2)(C) of the WRDA 2000 gives specific authorization for an adaptive assessment and monitoring program. This program is essential for ensuring incorporation of new scientific and technical information into CERP. See www.evergladesplan.org/wrda2000/wrda.aspx for more information on WRDA 2000.

Programmatic Regulations

In the *Programmatic Regulations for the Comprehensive Everglades Restoration Plan; Final Rule*, which became effective on December 12, 2003 (DOD 2003), RECOVER is charged with “Developing proposed evaluation performance measures for evaluating alternative plans developed for the Project Implementation Report” (Section 385.20(e)(2)(i)) and “Developing proposed assessment performance measures for assessing progress toward the goals and purposes of the Plan” (Section 385.20(e)(1)(i)).

Guidance Memoranda

Programmatic regulations require guidance memoranda be developed to apply performance measures to 1) evaluate system-wide effects of alternatives developed for project implementation reports (Section 385.26(b)(1)) and 2) develop an assessment program to assess system responses to CERP implementation (Section 385.31(b)). The final draft *Assessing the Response of the Everglades Ecosystem to Implementation of the Comprehensive Everglades Restoration Plan* (RECOVER 2004) guidance memoranda fulfills this requirement. This guidance is included in the *Comprehensive Everglades Restoration Plan, Programmatic Regulations, Six Program-Wide Guidance Memoranda* document (USACE and SFWMD 2007).

United States Army Corps of Engineers Planning Guidance

System-wide evaluation performance measures presented in this document follow principles and guidelines set forth by the Water Resources Council in accordance with Section 103 of the Water Resources Planning Act (Public Law 89-80) and Executive

Order 11747. According to this regulation, the United States Army Corps of Engineers' ecosystem restoration planning objective is "to contribute to national ecosystem restoration" by increasing "the net quantity and/or quality of desired ecosystem resources." National ecosystem restoration is determined by measuring improvement in habitat quality and/or quantity. The United States Army Corps of Engineers developed the Planning Guidance Notebook (Engineering Regulation 1105-2-100, USACE 2000) to set forth a planning process grounded in these principles and guidelines. In evaluating national ecosystem restoration, Engineering Regulation 1105-2-100 requires that outputs be "clearly identified and quantified in appropriate units". Some examples of possible metrics that may be used include habitat units, increase in number of breeding birds, and diversity indices. System-wide evaluation performance measures presented in this document follow these principles and guidelines. The Corps of Engineers Planning Guidance (USACE 2000) does not pertain to assessment performance measures.

Florida Law

Florida Law requires water resource issues to be addressed in CERP planning activities. Section 373.1501(5)(a), Florida Statutes (F.S.), requires the South Florida Water Management District to "analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species and other natural system and habitat needs" during development of project components. To fulfill this mandate, ecological effects of each project will be quantitatively and qualitatively analyzed and evaluated using project-level performance measures adopted (consistent with RECOVER performance measures) by each project delivery team. These resource issues will also be analyzed and evaluated using the set of system-wide performance measures presented in this document. Examples of performance measures based on Florida's water supply planning law include establishment of minimum flows and levels pursuant to subsection 373.0361(2)(g), F.S., and capability of meeting the water supply demands in a 1 in-10 year drought pursuant to section 373.0361(2)(a)1, F.S. These analyses and evaluations will be documented for compliance with Section 373.1501(5)(a), F.S., in project implementation reports.

References

DOD. 2003. Programmatic Regulations for the Comprehensive Everglades Restoration Plan; Final Rule. Department of Defense, 33 CFR Part 385, Federal Register, November 12, 2003.

http://www.evergladesplan.org/pm/progr_regs_final_rule.aspx

RECOVER. 2004. Assessing the Response of the Everglades Ecosystem to Implementation of the Comprehensive Everglades Restoration Plan, Final Draft. Integrative Assessment Team, Restoration Coordination and Verification, c/o United States Army Corps of Engineers, Jacksonville District, Jacksonville, FL, and South Florida Water Management District, West Palm Beach, FL. December 2004.

http://www.evergladesplan.org/pm/recover/recover_docs/aat/rec_prelim_guid_de_c_2004.pdf

USACE. 2000. Corps of Engineers Planning Guidance Notebook. ER-1105-2-00. United States Army Corps of Engineers, Washington, D.C.

USACE and SFWMD. 2007. Comprehensive Everglades Restoration Plan, Programmatic Regulations, Six Program-Wide Guidance Memoranda. United States Army Corps of Engineers, Jacksonville, FL, and South Florida Water Management District, West Palm Beach, FL.

http://www.evergladesplan.org/pm/pm_docs/prog_regulations/072707_prog_regs_rev_final_dft_gm.pdf