

## SECTION 10

### COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

The alternative plans were considered in relation to compliance with Federal environmental review and consultation requirements and Florida State review and funding requirements.

#### 10.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Environmental information on the project was compiled and a Final Programmatic Environmental Impact Statement (PEIS), Central & Southern Florida Project Comprehensive Review study (Restudy), was coordinated in 1999. This draft Supplement to the Restudy Programmatic EIS covers the feasibility phase studies for the Water Preserve Areas. This draft Supplemental EIS (SEIS) is being circulated in accordance with the National Environmental Policy Act for a period not less than 45 days (See *Section 1.4 National Policy Act Requirements*).

#### 10.2 FISH AND WILDLIFE COORDINATION ACT OF 1958

In response to the requirements of this Act, the U.S. Army Corps of Engineers has and will continue to maintain continuous coordination with the U.S. Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission during all stages of the planning and implementation of this project. The U.S. Fish and Wildlife Service submitted, under separate cover, a Planning Aid Report and a Draft Fish and Wildlife Coordination Act report. The Florida Fish and Wildlife Conservation Commission submitted a Coordination Act Report in April 2001. The comments provided as a part of these reports were reviewed by the Corps and served to provide a framework for future investigation of scenarios and modifications to the recommended plan. The referenced reports are included in their entirety in *Annex A*.

#### 10.3 ENDANGERED SPECIES ACT OF 1973

Informal consultation has been completed at this phase. The U.S. Fish and Wildlife Service identified the following species as present in the study area: Cape Sable seaside sparrow, indigo snake, snail kite, Florida manatee, and wood stork. (See *Annex B*). The U.S. Fish and Wildlife Service has confirmed, by letter dated April 2001, that it concurs with the biological assessment prepared for the project by the Corps. This project is in full compliance with the Act.

#### **10.4 NATIONAL HISTORIC PRESERVATION ACT OF 1966**

The study is in partial compliance at this stage. Consultation with the Florida State Historic Preservation Officer has been initiated. Cultural resources investigations are ongoing to determine effects to historic properties. When completed, results will be coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation.

#### **10.5 CLEAN WATER ACT OF 1972**

The study is in partial compliance at this stage. Full compliance will be achieved with issuance of a Section 401 permit from the State of Florida. A Section 404(b) Evaluation is included in this report as *Annex C*.

#### **10.6 CLEAN AIR ACT OF 1972**

Coordination with the U.S. Environmental Protection Agency and the Florida Department of Environmental Protection, Air Quality Division determined the overall project is in partial compliance with the Clean Air Act. No permits will be required at this stage of planning. Full compliance will be achieved with receipt of comments on the Draft Supplemental Environmental Impact Statement from the U.S. Environmental Protection Agency (EPA). Coordination of this Draft Supplement will also comply with Section 309 of the Clean Air Act.

#### **10.7 COASTAL ZONE MANAGEMENT ACT OF 1972**

The study is in partial compliance at this time. Full compliance would be achieved with receipt of comments from the Florida State Clearinghouse. A Federal consistency determination in accordance with 15 CFR 930 Subpart C is included in this report as *Annex D*.

#### **10.8 FARMLAND PROTECTION POLICY ACT OF 1981**

Coordination with the U.S. Department of Agriculture, Natural Resources Conservation Service in Gainesville, Florida to meet the requirements of the Farmland Protection Policy Act has been initiated. Almost all land in central and southern Florida used for agricultural production has been designated unique farmland. This land has a unique combination of soil quality, location, growing season, and moisture supply for producing high value food and fiber crops. The

Initial Draft Plan includes several components that may require land in central and southern Florida to be removed from agricultural production. Coordination under this law is expected to be complete prior to completion of the Final SEIS.

**10.9 WILD AND SCENIC RIVER ACT OF 1968**

This law does not apply to the WPA.

**10.10 MARINE MAMMAL PROTECTION ACT OF 1972**

Incorporation of barriers and manatee protection devices during project construction and operation will protect marine mammals likely to occur in the project area, therefore, this project is in compliance with the Act.

**10.11 ESTUARY PROTECTION ACT OF 1968**

The study is in full compliance. The Recommended Plan takes into account the restoration of all the estuaries in the project area. The Biscayne Bay and Florida Bay estuaries will ultimately benefit from implementation of this Everglades Restoration component.

**10.12 FEDERAL WATER PROJECT RECREATION ACT OF 1965**

The project is in full compliance at this stage. The effects of the proposed action on outdoor recreation have been considered. Continued recreation planning would be performed during detailed project engineering and design.

**10.13 RESOURCE CONSERVATION AND RECOVERY ACT OF 1976**

No substances regulated under this Act and related laws have been identified in project lands at this stage of planning. The project is in compliance.

**10.14 TOXIC SUBSTANCES CONTROL ACT OF 1976**

No substances regulated under this Act and related laws have been identified in project lands at this stage of planning. The project is in compliance.

### **10.15 MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972**

This law relates to offshore disposal of dredged material, and is not applicable to the WPA project

### **10.16 RIVERS AND HARBORS APPROPRIATION ACT OF 1899**

The study is in full compliance. The proposed work would not obstruct navigable waters of the United States.

### **10.17 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT**

This act requires the preparation of an Essential Fish Habitat (EFH) Assessment and coordination with NMFS. The EFH assessment has been integrated within the draft SEIS and will be coordinated with NMFS during the normal NEPA coordination process.

### **10.18 COASTAL BARRIER RESOURCES ACT**

This Act is not applicable. The study area is not in a designated Coastal Barrier Resources Act unit.

### **10.19 ANADROMOUS FISH CONSERVATION ACT**

Anadromous fishes will be affected by project activities. The project has been coordinated with the National Marine Fisheries Service and is, therefore, in compliance with the Act. Specific concerns will be addressed during the Essential Fish Habitat resolutions.

### **10.20 MIGRATORY BIRD TREATY ACT AND MIGRATORY BIRD CONSERVATION ACT**

Migratory birds are known to utilize the project area. Temporary and permanent effects of constructing permanent water bodies (WPA's) out of uplands or shallow wetlands have been discussed in *Section 8*. The greatest adverse effect is removal of habitat for upland birds. Positive effects are related to increased foraging opportunities for fish-eating birds, and habitat improvement in the adjoining natural marshes. The project is in compliance with these Acts.

**10.21 SECTION 904 OF THE 1986 WATER RESOURCES DEVELOPMENT ACT**

Section 904 of the 1986 Water Resources Development Act 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 study and report are in full compliance.

**10.22 SECTION 307 OF THE 1990 WATER RESOURCES DEVELOPMENT ACT**

Section 307 of the 1990 Water Resources Development Act 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 plan is in full compliance.

**10.23 E.O. 11988, FLOODPLAIN MANAGEMENT**

The study is in full compliance. Nearly the entire study area is a "flood plain". The considered alternatives support avoidance of development in the flood plain, contribute to reducing flood hazards by capturing rain water now lost to tide, while assisting in the rehydration of natural marshes and increasing urban water supply. The WPA's are an essential component of the water storage needed to fully restore the Everglades.

**10.24 E.O. 11990, PROTECTION OF WETLANDS**

The study is in full compliance. The recommended plan will increase the cover of man-made "wetlands", as well as providing water to re-hydrate adjacent and distant natural Everglades wetlands.

**10.25 E.O. 12114, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS**

This executive order is not applicable to this study.

**10.26 E.O. 13089, CORAL REEF PROTECTION**

The proposed action may indirectly affect coral reef ecosystems as defined by the Executive Order. The Everglades restoration is designed to deliver more freshwater to both Florida Bay and Biscayne Bay and return them to a more natural regime. Seagrasses and nearshore habitats will benefit from this restoration plan. Some isolated coral heads just outside of Florida Bay may be impacted from tidally exchanged decreased salinity water, but monitoring will be needed to determine any effects. Any nearshore salinity changes in Biscayne Bay will not reach the hard ground areas of the Bay. This project is in compliance.

### **10.27 E.O. 12898, ENVIRONMENTAL JUSTICE**

Executive Order 12898 requires the Federal government to achieve environmental justice by identifying and addressing disproportionately high adverse effects of its activities on minority and low-income populations, and by involving potentially affected minorities in the public coordination process. It also requires the analysis of information such as the race, national origin, and income level for areas expected to be impacted by environmental actions. Populations at risk have been profiled in *Appendix G Socio-Economics* in *Section 2 National Economic Efficiency Impacts*. This profile data includes racial/ethnic population distribution, aged population, percentage of households below the poverty threshold, income, and unemployment, by county for the 16-county study area, as well as for the State and Nation for ranking comparison purposes. It is acknowledged that the rural communities where reservoirs may be sited may be partially characterized by low income and relatively high unemployment status. These populations may be vulnerable to the effects of land acquisition in areas of relatively low real estate values, and may find it difficult to obtain comparable property elsewhere in the counties. On the other hand, WPA's are proposed for largely agricultural rural areas, where population density is low, so displacement of residents will be minimized. Furthermore, construction of the WPA's is expected to generate additional employment. The Corps believes the affected populations are likely to be small. Further analysis of community impacts will be undertaken when more specific site information is obtained. If adverse effects cannot be avoided, affected parties will be engaged in dialogue to determine appropriate mitigation. However, due to the restorative and hydrological objectives of the WPA project, no adverse impacts on minority and low-income populations are anticipated. The project is in compliance with Environmental Justice requirements at this time.

### **10.28 FLORIDA STATUTES 373.1501 AND 373.026 (AMENDED)**

#### **10.28.1 Legislative Intent**

During the 1999 legislative session, Florida lawmakers created s. 373.1501 and amended s. 373.026 of the Florida Statutes. Section 373.1501 provides a legislative finding that the Comprehensive Review Study is important for restoring

the Everglades ecosystem and for sustaining the environment, economy, and social well being of South Florida. Legislative intent was to facilitate and support the Comprehensive Everglades Restoration Plan through a process concurrent with Federal government review and congressional authorization. Further legislative intent was to ensure that all project components are implemented through appropriate processes and are consistent with the balanced policies and purposes of Chapter 373, F.S. Specifically, s. 373.026(8)(b), F.S. directs the Florida Department of Environmental Protection (DEP) to collaborate with the South Florida Water Management District in the Comprehensive Everglades Restoration Plan and to approve each project component with or without amendments prior to submission of such components to Congress for authorization.

### 10.28.2 Compliance Criteria

The criteria upon which DEP to base its approval of project components is contained within s. 373.1501(5), F.S. and is incorporated below:

*S. 373.1501 (5) In its role as local sponsor for the project, the district shall comply with its responsibilities under this chapter and implement project components through appropriate provisions of this chapter. In the development of project components, the district shall:*

*(a) 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;*

*(b) Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;*

*(c) Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination:*

- 1. The district shall convene a preapplication conference with all state and federal agencies with applicable regulatory jurisdiction;*
- 2. State agencies with applicable regulatory jurisdiction shall participate in the preapplication conference and provide information necessary for the district's determination; and*

3. *The district shall request that federal agencies with applicable regulatory jurisdiction participate in the preapplication conference and provide information necessary for the district's determination;*

*(d) Consistent with chapter 373, the purposes for the restudy provided in the Water Resources Development Act of 1996, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment;*

*(e) Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized*

### **10.28.3 Purpose, Scope, and Organization**

A sub-report has been prepared for submittal to DEP for the purpose of gaining departmental approval, pursuant to s. 373.1501(5), F.S. and s. 373.026(8)(b), for the 12 components of the Comprehensive Plan. This sub-report is included as ***Appendix I, State Compliance***.

The sub-report is intended to provide DEP with the technical information necessary to make a determination of District compliance with the statute. Following this brief introductory chapter, there are summaries relating to each of the compliance requirements. These summaries state whether compliance has been attained and the location of the detailed information upon which that statement is based. The District is requesting a separate agency action on each of the components contained in this Feasibility Study.