



Programmatic Regulations Review

WRAC Meeting

July 2, 2009

restoration
restoration

Presentation Topics

- Background on Programmatic Regulations
- Concerns with existing regulations
- Emerging concepts for revising regulations

WRDA 2000

Comprehensive plan approved by Congress as a
“framework”

- Individual “Project Implementation Reports” required for project approval and authorization
- Projects justified by environmental benefits to South Florida ecosystem
- No further economic justification required, if project is cost-effective
- Programmatic Regulations to be developed

Programmatic Regulations



Federal Register

Wednesday,
November 12, 2003

Part II

Department of
Defense

Department of the Army, Corps of
Engineers

35 CFR Part 385
Programmatic Regulations for the
Comprehensive Everglades Restoration
Plan; Final Rule

Establish Processes -

- To ensure that the goals and purposes of the Plan are achieved
- To ensure that new information, including information developed through the principles of adaptive management, is integrated into the implementation of the Plan
- To ensure protection of the natural system, including establishment of interim goals by which restoration success of the Plan may be evaluated throughout implementation process

Current Programmatic Regulations

- Developed by interagency team with extensive input from stakeholders
- Utilized formal Federal rule-making process
- Promulgated by Secretary of the Army on November 12, 2003 with concurrence of Secretary of the Interior and the Governor of Florida
- Regulations became effective on December 12, 2003 as Title 33 Part 385 of Code of Federal Regulations

Programmatic Regulations Review

- Review of programmatic regulations required by WRDA 2000 at least every five years
- Review process described in current programmatic regulations
- Proposed revisions must be undertaken through Federal rule-making process
- Revised regulations will require concurrence of Secretary of the Interior and Governor before promulgation by the Secretary of the Army

Public Scoping Process for Review

- Federal Register notice to initiate review on May 20
 - 90-day comment period
 - Public was invited to provide scoping comments on review effort
 - Issues concerning programmatic regulations
 - Items in the regulations that should be reviewed
 - Suggestions to improve the regulations
- Comments received from 9 individuals and 18 groups
 - 10 environmental groups co-signed one letter
- Summary of comments prepared

Analysis of Public Comments

- Streamline process, particularly PIRs
- Effect of River of Grass acquisition
- Integrated Delivery Schedule/MISP
- Guidance Memoranda – complete? Incorporate?
- Next-added increment/project justification
- Interim Goals
- Assurances – identification of water and savings clause
- Incremental adaptive restoration/adaptive management
- Role of RECOVER
- Role of DOI
- Recreational needs
- Stakeholder involvement
- Treatment of State restoration projects

So...What's Wrong with the Existing Regulations?

- PIR requirements burdensome
- NAI and justification of individual projects counter to an integrated system-wide (ecosystem) plan
- Assurances and savings clause analyses are complex and difficult to understand
- Bottom line: Implementation process takes too long and the ecosystem continues to decline

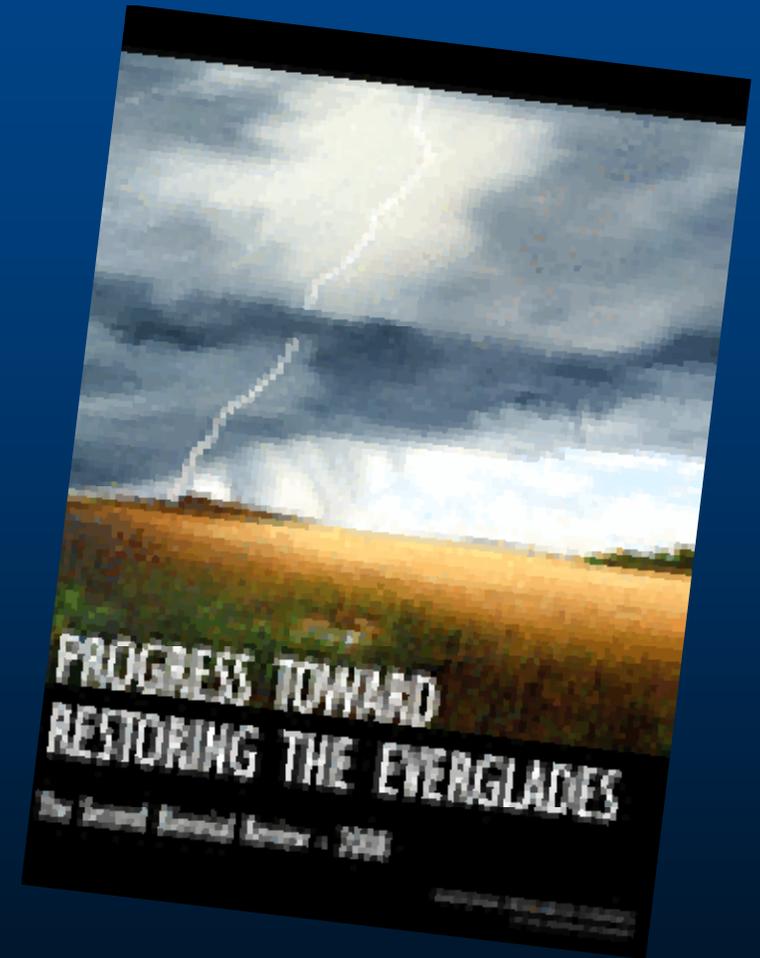
Key Provision from Existing Regulation

“The alternative plan to be selected should be the plan that maximizes net benefits, both monetary and non-monetary, on a system-wide basis, provided that this plan is justified on a next-added increment basis.”

2008 NAS Report to Congress

- The complex project planning and approval process has been a major cause of delays for CERP projects to date
- Deficiencies in CERP system-wide planning are affecting the delivery of natural system restoration benefits

“The next added increment is a benefits evaluation method that considers benefits only from the proposed and previously authorized projects....as currently implemented in the Everglades, it undermines system-wide planning.”



The Bottom Line

Money spent vs. decisions not improved

“We’ve spent a lot of time and money to convince ourselves that we had the right plan to begin with”

ProRegs Review Process

- Corps-SFWMD-DOI-FDEP team formed to review regulations and develop revisions
- Team is considering concepts for revised regulations
- Team will refine concepts for agency review
- Opportunities for stakeholder engagement throughout process
- Revised rule will be a complete document, not set of amendments to existing regulation

Emerging Concepts



CAUTION

Initial thinking and concepts developed by the team. Workability and acceptability of these concepts to be determined.

Role of Plan and PIRs

- “The Plan” should be the central focus of CERP
 - Justification for the program
- PIRs have a specific role in implementing projects as defined in WRDA 2000:
 - Consistency with the Plan
 - Identify water to be reserved for the natural system
 - Analysis of cost-effectiveness and engineering feasibility
 - Compliance with NEPA
 - Compliance with water quality standards
 - Compliance with savings clause requirements

Outline of Revised Regulation

- Subpart A: General Provisions
- Subpart B: Program Goals and Responsibilities
- Subpart C: Program Implementation
- Subpart D: Project Implementation

Revised PIR Requirements

- Eliminate requirement to justify individual projects
- Habitat units (HUs) inappropriate metric for individual projects
- Should use appropriate hydrologic metrics to determine cost-effectiveness and engineering feasibility
- Project selection should be based on:
 - Hydrologic performance
 - Cost effectiveness
 - Engineering feasibility
 - Adaptive management considerations
 - Risk/uncertainty considerations

Adaptive Management

- Adaptive management essential to success of program
- Incremental Adaptive Restoration (IAR) concept recommended by National Academies will be incorporated into the overall adaptive management program

Sequencing

- Inclusion of non-CERP projects into program sequencing is needed for determining appropriate CERP project sequencing
 - Integrated Delivery Schedule
- Revised regulation will need to incorporate process to periodically update project sequencing

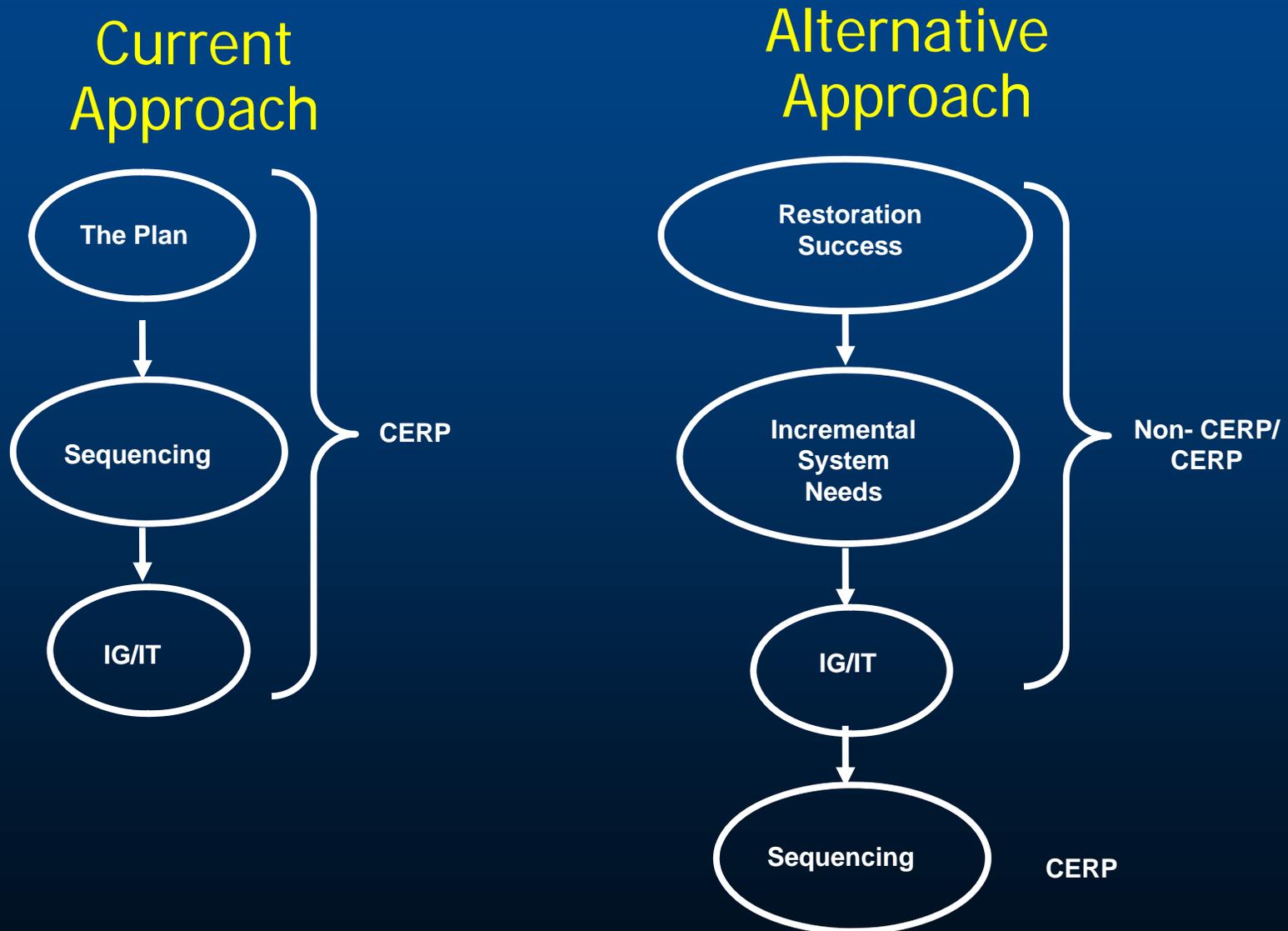
Guidance Memoranda

- Current regulations require 6 Guidance Memoranda with concurrence by Army, DOI, and State
 - Format and Content of PIRs
 - Formulation and Evaluation of Alternatives
 - Content of Operating Manuals
 - Assessment Activities of RECOVER
 - Identification of water
 - Identifying Elimination or Transfers of Existing Legal of Sources of Water
- Team considering the following options:
 - Incorporate guidance as needed in revised regulations
 - Issue guidance approved by Program managers
 - Maintain more limited number of GMs for concurrence

Interim Goals and Targets – Two Approaches

- Interim Goals required by WRDA
- Interim Goals and Targets contained in a separate agreement
- Two Approaches
 - Centers on CERP
 - Dependent on sequencing
- Alternative Approach
 - Independent of CERP
 - Requires agreement on “restoration success” and ecosystem priority needs
 - Sequencing driven by Interim Goals and Interim Targets
 - Restoration success and incremental needs to be developed at ecosystem level

Approaches for Interim Goals and Targets



CERP Updates

- Comprehensive Plan Modification Report is vehicle for developing and documenting recommended changes to the Plan
 - Submitted to Congress for approval
 - Update or supplement to programmatic EIS
- Eliminate requirement for periodic CERP updates every five-years

Important Note

While revising and simplifying the Programmatic Regulations is important, the regulations are not the sole reason for delays in CERP implementation

Other Issues to be Considered

- Project Assurances
 - Identification of Water
 - Savings Clause
- RECOVER
- Consultation

Schedule for Review

- Federal Register Notice of review: May 20, 2008
- Complete public scoping: August 22, 2008
- Complete initial draft of regulations: December 2009
- Initiate Federal rule-making process: January 2010
- Promulgate final revised rule: July 2010

Questions?

