

October 1995

RESTORING THE EVERGLADES

Public Participation in Federal Efforts



**Resources, Community, and
Economic Development Division**

B-261985

October 24, 1995

Congressional Requesters

The flow of water has substantially shaped the environment and economy of central and southern Florida. In this region, where national parks and wildlife refuges lie next to agricultural lands, urban areas, and Indian reservations, the boundaries between public and private lands and between federal, state, local, and tribal jurisdictions overlay the ecological boundaries created by the flow of water. Therefore, human activities that change the quality or flow of the water in one area of South Florida can affect the environment and local economy of other areas. During the last half century, engineering projects have altered the quantity and timing of the water's flow, agricultural runoff has altered the quality of the water, and urbanization has fragmented the region's ecosystem. As a result, South Florida—including the Everglades (described by some as a river of grass, unique on earth) and Florida Bay (located at the southern tip of the Florida peninsula)—is showing signs of environmental distress. These signs are cause for concern in the localities whose economies depend on tourism and commercial fishing.

At the urging of the Secretary of the Interior, federal agencies began an effort in 1993 to coordinate environmental restoration activities in South Florida. These activities include efforts to (1) manage the Florida Keys National Marine Sanctuary and protect its resources, (2) modify the effects of engineering projects that have diverted water from the Everglades, and (3) reduce agricultural pollutants in the water entering the Everglades. Federal funding for these activities totaled about \$90 million in fiscal year 1995.

In addition, the administration has identified South Florida as an appropriate site for testing a new approach to ensuring a healthy environment and managing the nation's lands and natural resources. This approach recognizes the interrelationship between natural systems and healthy, sustainable economies. It cuts across the boundaries of ownership and jurisdiction and is variously termed "ecosystem management," "regional partnerships," "cross-media problem solving," or "the next generation of environmental conservation."

Central to the administration's new approach is the need for federal and nonfederal stakeholders to collaborate and build consensus on solutions

to problems or issues of mutual concern.¹ In response to two separate congressional requests, we identified (1) the processes used by federal agencies to involve nonfederal stakeholders in environmental restoration efforts in South Florida and (2) the lessons learned about federal and nonfederal collaboration and consensus-building in South Florida that may be applicable elsewhere.

In reviewing federal agencies' involvement of nonfederal stakeholders, we examined the agencies' experience with or use of advisory committees chartered under the Federal Advisory Committee Act (FACA). Passed in 1972, FACA, among other things, seeks to prevent special interest groups from obtaining unfair access to federal officials. It requires federal agencies, under certain circumstances, when working with state, local, or other governmental agencies or other parties, to create an advisory committee to provide advice on issues of mutual concern. The advisory committee must be balanced in terms of the points of view it represents, and it must take a number of steps to ensure open public meetings.

Results in Brief

Federal agencies have involved nonfederal stakeholders in their efforts to coordinate activities, develop plans, and implement solutions to specific environmental concerns in South Florida. Within the constraints imposed by external factors—such as legislative requirements and limitations, agencies' regulations and procedures, executive orders, and litigation—the agencies have, among other things, opened their meetings to the public, made draft products available for public review and comment, established groups and committees that include nonfederal members, held workshops with various interest groups, solicited information from the public and then provided feedback on how it was used, and/or entered into formal mediation. However, the Federal Advisory Committee Act's requirements seem cumbersome to some federal officials, and a February 1993 executive order that requires federal agencies to limit the establishment of federal advisory committees, coupled with uncertainty over when federal parties can meet with nonfederal parties without being required to charter an advisory committee under the act, has limited nongovernmental interests' formal participation in federal restoration efforts. In particular, the federal interagency task force established to coordinate environmental restoration activities in South Florida has developed a strategy to collaborate with nonfederal stakeholders that does not include formal

¹See *Ecosystem Management: Additional Actions Needed to Adequately Test a Promising Approach* (GAO/RCED-94-111, Aug. 16, 1994).

participation by local officials or representatives of diverse nongovernmental interests across the region.

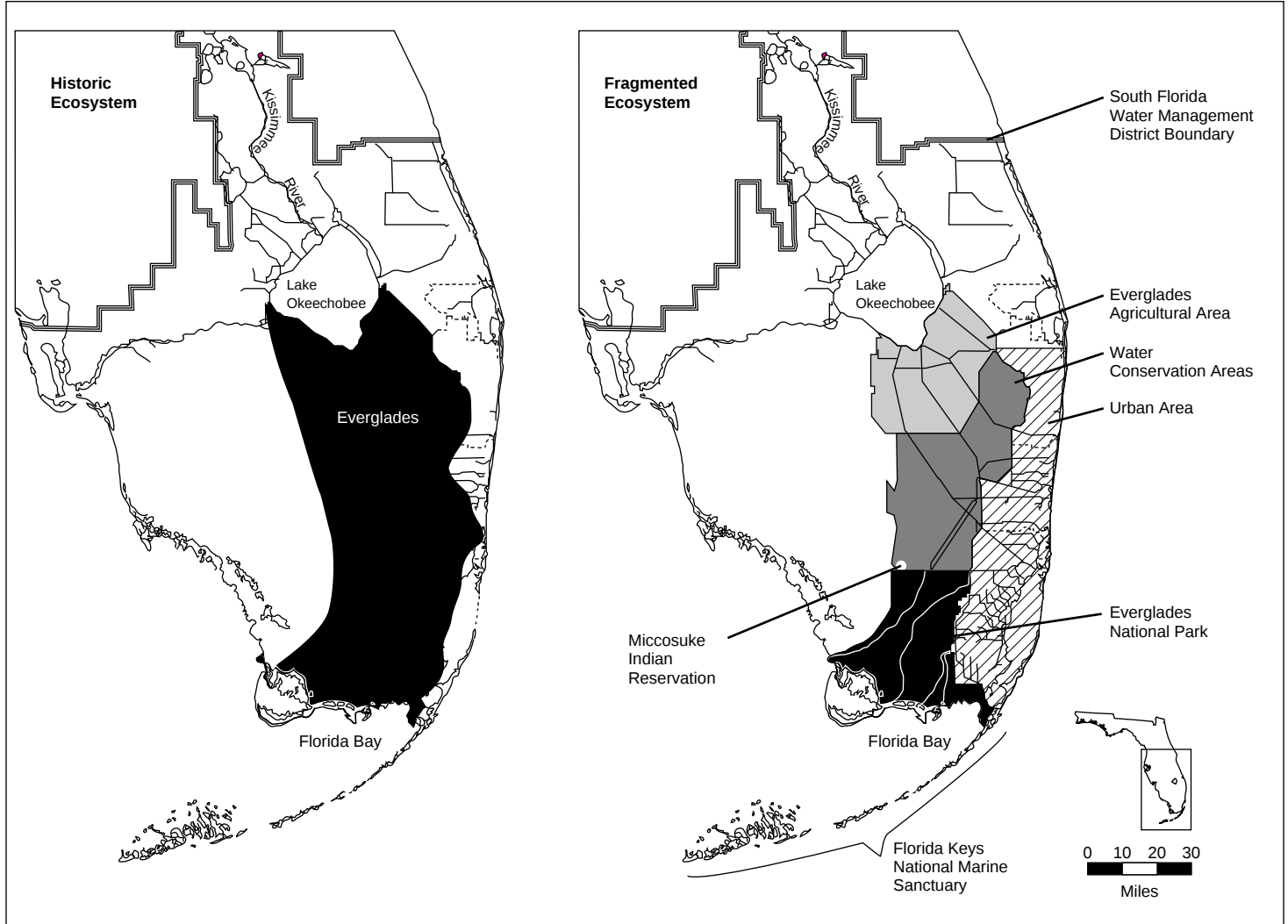
Among the lessons learned so far in South Florida is that nonfederal stakeholders would generally prefer to present their concerns, positions, and supporting documentation during rather than after the development of federal proposals to address environmental concerns. However, constraints imposed by external factors often dictate the extent to which federal agencies can involve nonfederal stakeholders in their activities. Furthermore, although consensus among federal and nonfederal stakeholders is desirable, restoration efforts are inherently contentious, and consensus on solutions that directly affect various interests may not be attainable. In addition, dissatisfaction with the process for nonfederal involvement expressed by stakeholders directly affected by a public policy decision often cannot be dissociated from their dissatisfaction with the outcome of the process. Therefore, the most that federal agencies may be able to achieve is an open airing and full consideration of all views within the constraints imposed by external factors.

Background

For centuries, the Everglades has provided habitat for many species of wading birds and other native wildlife, including the American alligator, which depend on the water flow patterns that existed before human intervention. With Florida Bay, the Everglades provides important nursery grounds for fin fish, shrimp, lobster, stone crab, and other commercial species. The wildlife, fish, and recreational opportunities in the Everglades and Florida Bay have made tourism and commercial fishing mainstays of the local economy.

Before human intervention, freshwater moved south from Lake Okeechobee in a broad, slow-moving sheet and then emptied into Florida Bay. The quantity and timing of the water's flow depended upon rainfall patterns and natural processes that resulted in the slow release of stored water. Water stored throughout the vast area of the Everglades supplied water to wetlands even during dry seasons.

During recent decades, engineering projects, agricultural activities, and urbanization have altered past ecological patterns. As figure 1 shows, agricultural, industrial, and residential development have reduced the Everglades to about half its original size.

Figure 1: The Everglades—Past and Present

Source: GAO's adaptation of an illustration prepared by the South Florida Water Management District.

The Central and Southern Florida Project—an extensive system of canals, levees, pump stations, and other structures—was authorized by the Congress in 1948, initially to prevent flooding, provide drainage, and supply water in South Florida. Areas immediately south of Lake Okeechobee in the Everglades Agricultural Area, which is drained by the

project, are now farmed—primarily by sugar growers—while the eastern part of the region is heavily urbanized. Canals carry water away from the Everglades Agricultural Area into levied water conservation areas or directly into the Atlantic Ocean, bypassing much of the former Everglades.

These engineering changes have diminished the broad, slow flow of water and reduced the area where water can be stored for dry seasons. At the same time, agricultural practices are altering native plant communities. Phosphorus—a plant nutrient—is carried in runoff from sugar farms to the Everglades, where it supports the growth of cattails, which choke out the native grasses. Wildlife populations have declined significantly. For example, the number of wading birds, once in the millions, has fallen by 90 percent in recent decades. Moreover, some scientists believe that the reduced flow of freshwater into Florida Bay may be hastening the bay's environmental decline.

Nonfederal Stakeholders' Involvement in Federal Restoration Efforts

The administration has established coordination and collaboration as essential principles of ecosystem management. As we noted in our August 1994 report on this approach, implementing solutions to environmental and economic concerns that transcend the boundaries of ownership and jurisdiction requires increased collaboration and consensus-building among federal and nonfederal stakeholders within most ecosystems. The extent to which desired ecological and economic conditions can be maintained or restored will depend in large measure on the extent to which private landowners and government agencies can agree on the necessary or desired trade-offs among ecological and socioeconomic values and concerns, including those related to the conditions and trends of local economies and industries and the stability of communities.²

The federal interagency task force established to coordinate environmental restoration activities in South Florida and the environmental restoration efforts under the task force's umbrella have involved nonfederal stakeholders in their activities. The various efforts began at different times, under different authorities, and have progressed to different stages, ranging from planning to implementing solutions for specific concerns. Only one of the efforts—to manage the Florida Keys National Marine Sanctuary and protect its resources—has chartered an advisory committee under FACA, as required by the act establishing the sanctuary.

²See footnote 1.

Appendix I discusses the chronology of events, the process for involving nonfederal stakeholders, and the stakeholders' response to that process for the effort to coordinate environmental restoration activities in South Florida. Appendix II discusses the effort to manage the Florida Keys National Marine Sanctuary and protect its resources. Appendixes III and IV discuss efforts to modify the effects of engineering projects that have diverted water from the Everglades. Appendix V discusses the effort to reduce agricultural pollutants in the water entering the Everglades. The involvement by nonfederal stakeholders in these efforts is summarized below.

Effort to Coordinate Restoration Activities in South Florida

At the urging of the Secretary of the Interior, the Interagency Task Force on the South Florida Ecosystem was formed in September 1993 to coordinate environmental restoration activities in South Florida. Consisting of assistant secretaries from the Departments of the Interior, Commerce, the Army, and Agriculture; an assistant attorney general from the Department of Justice; and an assistant administrator from the Environmental Protection Agency, the task force is responsible for developing consistent policies, strategies, plans, programs, and priorities for addressing environmental concerns in South Florida. Among the task force's products are an annual report and a report (prepared by a science subgroup of the task force's working group) on the ecosystem's restoration needs—including the need to acquire private lands in the Everglades Agricultural Area.

Until April 1995, membership in the working group was limited to representatives of federal agencies. However, after legislation was enacted in March 1995 exempting certain meetings between federal officials and state, local, or tribal officials from FACA's requirements,³ the working group increased its membership to include state and tribal officials. In addition, most meetings of the task force and of the working group are open to the public, and the working group gives the public an opportunity to comment at each open meeting. The working group has also scheduled some of its meetings to coincide with meetings of the Governor's Commission on a

³In March 1995, legislation was enacted exempting from FACA's requirements meetings between federal officials and state, local, or tribal officials that are solely for the purpose of exchanging views, information, or advice on the management or implementation of federal programs established under public law that explicitly or inherently share intergovernmental responsibilities.

Sustainable South Florida⁴ to facilitate the two groups' interaction and the public's participation.

Still missing as formal participants in the working group and its subgroups, however, are local officials and representatives of diverse nongovernmental interests across South Florida, including landowners, farmers, sportsmen, commercial fishermen, developers, and environmental organizations. Precedent exists, however, for establishing a citizens' group to formally participate in the task force's effort and to promote public involvement and outreach. Moreover, in its fiscal year 1996 budget request for the Department of the Interior, the administration supported the public's involvement in an ecological restoration effort that, like the South Florida effort, affects a variety of interests. According to the budget request, the public will continue to have a major role in developing a long-range strategy to restore and protect the aquatic ecosystem of California's San Francisco Bay and the Sacramento-San Joaquin Delta, in part through the creation of a citizens' advisory committee representing urban, agricultural, environmental, and other interests. (See app. I for more information about this effort.)

Effort to Manage the Florida Keys National Marine Sanctuary

The Florida Keys National Marine Sanctuary and Protection Act of 1990 established the sanctuary and requires the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) to develop a comprehensive plan to manage the sanctuary and protect its resources. NOAA made a draft of the management plan available for public comment in April 1995.

To develop the plan, NOAA was required by the act to work with relevant federal, state, and local agencies and to establish a citizens' sanctuary advisory council whose members could include representatives from local industries, commercial endeavors, conservation groups, the general public, and others. To implement these requirements, NOAA followed a newly developed strategic assessment approach that involved three groups of stakeholders: (1) a core group representing federal, state, and local agencies whose jurisdictions affect the sanctuary, (2) a citizens' sanctuary advisory council, chartered under FACA, representing local industries and businesses, user groups, local citizens, environmentalists, and scientists as well as some agency staff from the core group, and (3) a broader network of local scientists and management experts.

⁴This commission, which consists of a wide variety of stakeholders in South Florida, including federal officials, was established by the governor to examine options for maintaining the Everglades' health and sustaining South Florida's economy.

In general, the core group identified issues, effects, causes, data needs, strategies, and alternatives for addressing management issues. Efforts by the core group were developed with, or reviewed by, local scientists and management experts. The sanctuary advisory council also reviewed and revised the work of the core group, often after conferring with constituents in the community, and contributed directly to the development of a key component of the plan establishing special-use zones within the sanctuary. NOAA staff facilitated each step in the process.

Both the core group and the citizens' sanctuary advisory council recommended the same preferred management alternative to NOAA. This alternative, which consists of a combination of strategies, proposes to limit certain uses and activities to certain areas within the sanctuary to provide different levels of protection for natural resources. Since the draft plan was made available for public comment, sanctuary staff have held or planned to hold (1) information expositions ("expos") throughout the Keys to answer residents' questions about the plan, (2) working sessions with various interest groups, and (3) public meetings before the comment period closes in December 1995. (See app. II for more information about this effort.)

Efforts Designed to Modify the Effects of Engineering Projects That Have Diverted Water From the Everglades

In response to federal legislation, the U.S. Army Corps of Engineers (Corps) has undertaken four efforts since 1985 to reverse some of the engineering changes implemented earlier in the century and restore the natural volume or timing of the water's flow in South Florida. During this period, the Corps has conducted various studies and experiments, identified or proposed modifications to the Central and Southern Florida Project, issued reports on its findings, and prepared environmental products required by the National Environmental Policy Act (NEPA).⁵

Over the years, the Corps has increased nonfederal stakeholders' involvement in its decision-making. At first, the Corps limited nonfederal involvement to the minimum requirements for public participation set forth in NEPA. This act involves nonfederal stakeholders primarily in reviewing and commenting on products drafted by the agency.

⁵NEPA requires the applicable federal agency to prepare a detailed environmental impact statement for every major federal action that may significantly affect the quality of the human environment. The environmental impact statement is designed to ensure that important environmental impacts will not be overlooked or understated before the government makes a commitment to a proposed action. Implementing regulations provide that, when an agency is not sure whether a proposed action will significantly affect the quality of the human environment, it may undertake an environmental assessment. This assessment should give the agency enough information to determine whether an environmental impact statement is necessary.

However, because the environmental restoration of South Florida has commanded the attention of the public, political officials, and the media, the Corps has increased the opportunities for public input. For example, the Corps has (1) relied on a state committee established by the governor of Florida to identify problems, goals, and objectives for managing the east Everglades, (2) held meetings and workshops with representatives of the agricultural community, homeowners, conservation groups, and local government agencies to provide information and obtain their feedback on proposed alternatives, (3) used an interagency study team instead of relying solely on its own staff to formulate alternative plans and recommend further studies, and/or (4) obtained input through open meetings held at various stages in the process. The Corps is also considering alternatives to increase public involvement, including chartering an advisory committee under FACA, to provide advice on all of the Corps' South Florida restoration efforts. (See apps. III and IV for further information about the Corps' efforts.)

Effort to Reduce Agricultural Pollutants in Water Entering the Everglades

Unlike the other efforts discussed in this report, this one does not represent an attempt by federal agencies to implement a public policy initiative required by law or begun at the urging of the Secretary of the Interior. Rather, it represents an effort to settle years of litigation over the runoff of phosphorus from sugar farms in the Everglades Agricultural Area. The effort began in 1988 when the federal government sued two state agencies for failing to enforce the state's water quality standards. It led to the enactment in 1994 of Florida's Everglades Forever Act, which is now being implemented.

Federal negotiators involved in this effort were not trying to build collaboration and consensus among federal and nonfederal stakeholders but to reach a fair settlement for the federal government. Hence, participation in the process was limited primarily to the parties to the litigation. However, public participation did occur during (1) formal mediation to address technical issues and (2) the state's legislative process leading up to the act's passage. The enactment of Florida's Everglades Forever Act abrogated the need for an evidentiary hearing at which parties to the litigation had been scheduled to present their views and evidence before an impartial hearing officer. (See app. V for further information about this effort.)

Experience With and Use of Advisory Committees

NOAA's use of an advisory committee chartered under FACA to develop a comprehensive management plan for the sanctuary indicates that the

advisory committee can be an effective tool for facilitating communication between federal and nonfederal parties. However, apart from NOAA, which was required to establish a citizens' advisory council by the act establishing the Florida Keys National Marine Sanctuary, no federal agency has chartered an advisory committee under FACA to bring stakeholders together.

Some federal officials cited the cumbersome steps that an advisory committee must take to ensure open public meetings as a primary reason for not chartering committees under FACA. These steps include publishing advance notice of meetings in the Federal Register, holding meetings in public, making detailed minutes of the meetings available to the public, and allowing interested persons to appear before it. This concern is consistent with concerns raised by other federal officials who believe that FACA's procedural requirements make it difficult for federal agencies to establish partnerships with stakeholders and involve the public in ecosystem activities. These officials believe that, in attempting to prevent special interest groups from obtaining unfair access to federal officials, the act has had the unintended consequence of isolating federal officials from public contact.⁶

Some federal officials cited concerns expressed by the Congress and the administration over the proliferation of advisory committees and their related costs as a primary reason for not chartering committees under FACA. These concerns culminated in Executive Order 12838, issued on February 10, 1993, which requires federal agencies to reduce the number of federal advisory committees and to limit the establishment of new ones.

In addition, some federal officials and some nonfederal stakeholders expressed frustration to us about the difficulty of determining when federal parties can meet with nongovernmental parties without being required to charter an advisory committee under FACA. According to federal officials responsible for interpreting FACA—including attorneys in the Department of Justice's Civil Division and officials in the General Services Administration's Committee Management Secretariat, which is responsible for overseeing the implementation of FACA and monitoring advisory committees' activities—it is often difficult to determine when an advisory committee is required to comply with the act, and the courts have not provided clear tests for such a decision. Whether federal parties can meet with nongovernmental parties without an advisory committee often

⁶See, for example, The Ecosystem Approach: Healthy Ecosystems and Sustainable Economies, Volume I - Overview, Report of the Interagency Ecosystem Management Task Force (June 1995).

depends on whether information—rather than advice—is exchanged, whether a consensus is reached among the parties, and how often meetings occur and who initiates them. Furthermore, these officials noted that the courts look at a combination of factors that affect the need for a committee in a given situation; few factors by themselves clearly indicate that a group must be chartered under FACA.

Lessons Learned in South Florida

Among the lessons learned so far in implementing environmental restoration efforts in South Florida is that nonfederal stakeholders would generally prefer to present their concerns, positions, and supporting documentation during rather than after the development of federal proposals to address environmental concerns. This lesson is drawn from the desires expressed by nonfederal stakeholders for greater involvement in the efforts to coordinate restoration activities and to modify the effects of engineering projects that have diverted water from the Everglades.

Another lesson is that constraints imposed by external factors often dictate the extent to which federal agencies can involve nonfederal stakeholders in their activities. For example, federal members of the interagency task force's working group could still be found in violation of FACA for holding meetings with nongovernmental parties without the benefit of an advisory committee chartered under the act; nevertheless, these federal officials believe that they are precluded from expanding their membership to include nongovernmental stakeholders because Executive Order 12838 limits the establishment of new advisory committees under the act.⁷

A third lesson is that although consensus among federal and nonfederal stakeholders is desirable, restoration efforts are inherently contentious, and consensus on solutions that directly affect various interests may not be attainable. Consensus can begin to wane as a restoration effort moves from the planning to the implementation stage and stakeholders begin to feel the effects of public policy decisions. For example, decisions that change land-use patterns and affect property ownership—such as the state's decision to acquire privately owned agricultural lands adjacent to the Everglades National Park to mitigate the effects of engineering projects that have diverted water from the Everglades—may not be acceptable to all stakeholders.

⁷According to the General Services Administration's Committee Management Secretariat, the executive order limiting the establishment of new advisory committees under FACA does not prevent a new advisory committee from being established if there is a "clear need" for one.

A fourth lesson is that dissatisfaction with the process for nonfederal involvement expressed by stakeholders directly affected by a public policy decision often cannot be dissociated from their dissatisfaction with the outcome of the process. For example, the dissatisfaction with the process for nonfederal involvement expressed by agricultural landowners whose properties are adjacent to the Everglades National Park and have been identified for acquisition by the state cannot be dissociated from their dissatisfaction with the state's decision to purchase their properties.

In the final analysis, the most that a federal agency may be able to achieve is an open airing and full consideration of all views within the constraints imposed by external factors, and any conclusion about the extent to which an agency or effort meets this objective is highly subjective. For example, several parties—smaller sugar growers in the Everglades Agricultural Area, the Miccosuke Tribe of Indians whose reservation and leased lands border the northern boundary of the Everglades National Park, and two environmental groups—have criticized the process that resulted in Florida's Everglades Forever Act for not affording full consideration of their views and evidence. Officials from or representatives of these parties told us that they would have preferred an open airing of their views and evidence at an evidentiary hearing before an impartial hearing officer. (As previously noted, the act's passage abrogated the need for the hearing.) However, these groups' dissatisfaction with the process for nonfederal involvement cannot be dissociated from their publicly expressed dissatisfaction with the outcome of that process.

Conclusions

All of the efforts discussed in this report share the goal of restoring the environment and local economy of South Florida. Hence, one effort's experience in involving nonfederal stakeholders may be applicable to another effort. On a broader scale, the lessons learned in implementing environmental restoration efforts in South Florida may be applicable to other interactions between federal and nonfederal stakeholders. Among these lessons is that nonfederal stakeholders would generally prefer to present their concerns, positions, and supporting documentation during rather than after the development of federal proposals to address environmental concerns.

Federal agencies have involved nonfederal stakeholders in their efforts to restore the environment of South Florida, and some, including the Interagency Task Force on the South Florida Ecosystem and the Corps, are considering alternatives to increase public involvement. However, the

executive order limiting the establishment of new advisory committees under FACA, coupled with the difficulty of determining when federal parties can meet with nongovernmental parties without being required to charter an advisory committee under the act, has limited formal participation by nongovernmental interests in federal restoration efforts. In particular, the Interagency Task Force on the South Florida Ecosystem has developed a strategy to collaborate with nonfederal stakeholders that does not include formal participation by local officials or representatives of diverse nongovernmental interests across the region. Since the extent to which desired ecological and economic conditions can be maintained or restored will depend in large measure on the extent to which private landowners and government agencies can agree on the necessary or desired trade-offs among ecological and socioeconomic values and concerns, the lack of formal participation by local officials or representatives of the region's nongovernmental interests could severely compromise the task force's effort.

Recommendations

We recommend that the Secretary of the Interior direct the Interagency Task Force on the South Florida Ecosystem to develop a strategy to extend formal participation in its working group and subgroups to local officials and representatives of South Florida's nongovernmental interests, including landowners, farmers, sportsmen, commercial fishermen, developers, and environmental organizations. One alternative would be to establish a citizens' advisory group to formally participate in the task force's effort and to promote public involvement and outreach. The task force should include its planned strategy in its next annual report.

We also recommend that if the task force finds that formal participation by nongovernmental interests in federal restoration efforts continues to be limited by Executive Order 12838 and by the difficulty of determining when federal parties can meet with nongovernmental parties without being required to charter an advisory committee under FACA, the task force should inform the General Services Administration's Committee Management Secretariat of the impact the two constraints are having on collaboration and consensus-building between federal and nonfederal parties and suggest alternatives to increase participation by nongovernmental interests.

Agency Comments

We requested comments on a draft of this report from the Secretaries of the Interior, Defense, and Commerce or their designees. Interior officials,

including the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary—Policy, Management and Budget, raised several concerns about the report’s overall findings and about the conclusions and recommendations that flowed from them.

The draft report proposed two recommendations: (1) The task force should develop a strategy to improve collaboration with nonfederal stakeholders in coordinating environmental restoration activities in South Florida and should view as examples the processes used by NOAA to develop a comprehensive management plan for the Florida Keys National Marine Sanctuary and by the Corps to consider modifications to the Central and Southern Florida Project and (2) the task force should inform the General Services Administration’s Committee Management Secretariat, which is responsible for drafting guidelines to implement the March 1995 exemption to FACA, of the extent to which the exemption and guidelines allow the task force to share information, coordinate activities, and work routinely with state, local, and other governmental agencies without violating the act.

In commenting on the first proposed recommendation, Interior officials stated that the task force had already developed a strategy to collaborate with nonfederal stakeholders that has worked well and represents a model for such partnerships around the country. Moreover, according to these officials, NOAA’s process for developing a comprehensive management plan for the Florida Keys National Marine Sanctuary is not an appropriate model for the task force, since the task force is an operative and action-oriented body, not a “master planning body.” While we agree that the task force has developed a strategy to collaborate with nonfederal stakeholders, this strategy does not include formal participation in the working group and its subgroups by local officials and by representatives of South Florida’s diverse nongovernmental interests. Moreover, we believe that NOAA’s effort to manage the Florida Keys National Marine Sanctuary is similar to the task force’s effort to coordinate environmental restoration activities in South Florida in that both have developed a plan of action and are moving toward implementation. In addition, precedent exists for establishing a citizens’ group to formally participate in the task force’s effort and to promote public involvement and outreach (see app. I).

We modified the second recommendation to recognize that the task force’s working group had increased its membership to include state and tribal officials. The recommendation now focuses on constraints to formal participation by nongovernmental interests in federal restoration efforts.

Interior officials also emphasized that (1) environmental restoration efforts should not be compared to one another, (2) the efforts are interrelated, and (3) consensus on solutions to problems or issues may not be attainable. In addition, these officials suggested that the report's discussion of the effort to coordinate restoration activities in South Florida (see app. I) be updated to reflect actions taken since legislation was enacted in March 1995 that exempts from the requirements of FACA certain meetings between federal and state, local, or tribal officials. They also noted that in the effort to settle complex water quality litigation (see app. V), (1) litigation limited participation by the public, (2) public participation occurred during the state's legislative process leading up to passage of the Everglades Forever Act, (3) small sugar growers, Indian tribes, and environmental groups were involved in the negotiations, and (4) these groups' dissatisfaction with the process for nonfederal involvement cannot be dissociated from their dissatisfaction with the act. We agree with these comments and have revised the report to present Interior's positions.

In addition, Interior offered updated information and editorial comments, which we incorporated into the report where appropriate. Interior's comments and our responses are summarized in appendix VI.

Commerce provided minor editorial changes, which we made to the report where appropriate. Defense suggested a technical change, which we made to the report, and concurred without further comment (see app. VII).

Scope and Methodology

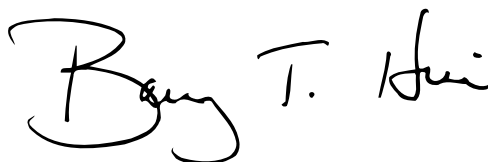
To identify the processes used by federal agencies to involve nonfederal stakeholders in efforts to address environmental and economic concerns in South Florida, we met or spoke with federal officials or scientists from the Everglades National Park, the Loxahatchee National Wildlife Refuge, the Florida Keys National Marine Sanctuary, NOAA, the Environmental Protection Agency, and the U.S. Army Corps of Engineers' Jacksonville District, as well as with state officials from the South Florida Water Management District and the Department of Environmental Protection. We also met with representatives of several environmental groups, including the Audubon Society and the Friends of the Everglades; the Miccosukee Tribe of Indians; the Sugar Cane Growers Cooperative of Florida; United States Sugar Corporation; the Dade County Farm Bureau; the East Everglades landowners; and the Florida Keys National Marine Sanctuary Advisory Council. In addition, we reviewed applicable laws and regulations, court decisions, reports, plans, and other documents on the

five processes we identified. Finally, we reviewed FACA, its legislative history, and related court cases, and we met or spoke with officials responsible for interpreting FACA, including attorneys in the Department of Justice's Civil Division and officials in the General Services Administration's Committee Management Secretariat.

We conducted our work between October 1994 and August 1995 in accordance with generally accepted government auditing standards.

We are providing copies of this report to the Secretaries of the Interior, Defense, the Army, Commerce, and Agriculture; the Attorney General; the Administrator of the Environmental Protection Agency; and other interested parties.

If you or your staff have any questions, please contact me on (202) 512-8021. Major contributors to this report are listed in appendix VIII.

A handwritten signature in black ink that reads "Barry T. Hill". The signature is written in a cursive, flowing style.

Barry T. Hill
Associate Director, Natural Resources
Management Issues

List of Requesters

The Honorable Dana Rohrabacher
Chairman, Subcommittee on
Energy and Environment
Committee on Science
House of Representatives

The Honorable George Miller
Ranking Minority Member
Committee on Resources
House of Representatives

The Honorable Gerry E. Studds
Ranking Minority Member
Subcommittee on Fisheries,
Wildlife, and Oceans
Committee on Resources
House of Representatives

The Honorable Charlie Rose
Ranking Minority Member
Subcommittee on Risk Management
and Specialty Crops
Committee on Agriculture
House of Representatives

The Honorable Mark Foley
House of Representatives

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Abbreviations

EPA	Environmental Protection Agency
FACA	Federal Advisory Committee Act
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration

Effort to Coordinate Restoration Activities in South Florida

At the urging of the Secretary of the Interior, federal agencies established the Interagency Task Force on the South Florida Ecosystem in 1993 to develop consistent policies, strategies, plans, programs, and priorities for addressing environmental concerns in South Florida.

Chronology of Events

The Interagency Task Force on the South Florida Ecosystem consists of assistant secretaries from the Departments of the Interior, Commerce, the Army, and Agriculture; an assistant attorney general from the Department of Justice; and an assistant administrator from the Environmental Protection Agency. Officials from these agencies signed an agreement in September 1993 to accomplish ecosystem restoration goals together, including (1) agreeing on federal objectives for the restoration, (2) establishing an ecosystem-based science program, (3) developing multispecies recovery plans for species that were listed or could be listed under the Endangered Species Act, and (4) expediting the implementation of projects included in coordinated plans. The agreement created the Management and Coordination Working Group to formulate and recommend management activities to the task force. According to Interior officials, the task force and working group also coordinate the various agencies' budget processes and resolve disputes among the agencies.

The working group formed several subgroups to assist it in its efforts, including a science subgroup whose members are federal officials. In November 1993, the science subgroup released a report on the ecosystem's restoration needs. This report provides a federal scientific perspective on the goals and objectives for restoration and presents an approach, which includes the acquisition of private land, to help restore the natural flow of water through the Everglades. The report was developed for use by the U.S. Army Corps of Engineers (Corps) in its consideration of modifications to the Central and Southern Florida Project (see app. IV).

The working group's 1994 annual report to the task force, issued as a draft in August 1994 and published in May 1995, outlines general objectives for federal ecosystem management and recommends a large number of actions deemed necessary to restore the ecosystem. These actions include improving the water's quality and supply, issuing permits for using wetlands, restoring habitat, and promoting sustainable development and scientific research. The science subgroup's scientific information needs assessment, issued as a draft in September 1994, outlines modeling, monitoring, and special studies needed to provide a scientific information

base for ecosystem management. The assessment is a precursor to a science plan.

The chronology of events and stakeholders' involvement in developing the working group's annual report and the science subgroup's report on the ecosystem's restoration needs and draft scientific information needs assessment are outlined in table I.1. Stakeholders' involvement in the task force's effort to coordinate environmental restoration activities in South Florida is discussed in more detail below.

Appendix I
Effort to Coordinate Restoration Activities
in South Florida

Table I.1: Chronology of Events and Stakeholders' Involvement in Developing the Working Group's Annual Report and the Science Subgroup's Report on the Ecosystem's Restoration Needs and Draft Scientific Information Needs Assessment

Date	Event	Participants
Sept. 1993	Participating agencies sign the Federal South Florida Interagency Task Force Agreement to coordinate consistent policies, strategies, plans, programs, and priorities. The task force creates a working group with authority to establish subgroups.	Federal agencies in the task force (working group) Interior (multiple agencies) Army Corps of Engineers Justice Commerce National Oceanic and Atmospheric Administration Agriculture Environmental Protection Agency
Nov. 1993	The working group's science subgroup, with the help of the South Florida Water Management District (District), ^a releases a report on the ecosystem's restoration needs.	Federal agencies in the science subgroup Interior (multiple agencies) National Oceanic and Atmospheric Administration Agriculture Environmental Protection Agency State agency District Public (given an opportunity to comment on the report)
Aug. 1994	The task force's working group issues its draft 1994 annual report, which sets forth objectives and recommends restoration actions.	Federal agencies in the working group Public (given an opportunity to comment on the draft report)
Sept. 1994	The working group holds four public meetings on the draft annual report.	Anyone—open to the public
Sept. 1994	The science subgroup completes a draft scientific information needs assessment and subsequently makes it available for public comment and for review by peers and state, local, and tribal agencies.	Federal agencies in the science subgroup and the District Outside experts consulted by the subgroup
Mar. 1994	Two public meetings are held on the draft scientific information needs assessment.	Anyone—open to the public
May 1995	The working group publishes the 1994 annual report.	Federal agencies in the working group

^aThe South Florida Water Management District was created by the Florida legislature in 1949 to serve as the state's local sponsor of the Corps' Central and Southern Florida Project. The District operates and maintains water control structures with funding from property taxes levied within its boundaries. It is responsible for most water-related issues within its boundaries and has some regulatory authority to protect water resources.

Stakeholders' Involvement

Soon after it was created, the working group reached consensus that public involvement was very important to the success of its goals. The media throughout South Florida is informed in advance of each of these meetings. Each meeting is open to the public except when the agencies' fiscal year budgets are discussed before being submitted to the Congress. After consulting with legal advisers in the Departments of the Interior and Justice, the working group has provided an opportunity for public comment at each open meeting. In addition, detailed minutes of each meeting are prepared.

From June 1994 to August 1995, the task force and the Governor's Commission on a Sustainable South Florida scheduled six of their meetings back to back at the same location to facilitate the two groups' interaction and the public's participation. Moreover, at one of these meetings, the task force, the working group, the commission, and the South Florida Water Management District's (District) governing board met to interact and exchange information.

The task force's 1993 agreement recognized the need for state, local, and tribal governments to be integral partners in developing and implementing activities for restoring the ecosystem. However, until April 1995, these nonfederal entities were largely limited to reviewing and commenting on the products drafted by the working group and its science subgroup. Interior officials on the task force or working group believe that further involvement would have required chartering an advisory committee under the Federal Advisory Committee Act (FACA). According to some members, the working group did not charter an advisory committee under FACA primarily because of concerns shared by the Congress and the administration over the proliferation of advisory committees chartered under FACA and their related costs. These concerns culminated in Executive Order 12838, issued on February 10, 1993, which requires federal agencies to reduce the number of federal advisory committees and to limit the establishment of new ones. However, the executive director of the task force as well as other members of the working group agreed that FACA's requirements—such as having to file a detailed charter, publish advance notice of meetings in the Federal Register, hold meetings in public, and make detailed minutes of the meetings available to the public—are cumbersome and pose a significant barrier to coordination with nonfederal parties.

The District did, however, help to develop the science subgroup's November 1993 report on the ecosystem's restoration needs. This report

was then made available for public comment after its release at public hearings held by the Corps to discuss modifications to the Central and Southern Florida Project (see app. IV). The working group's 1994 annual report, which includes recommendations for restoration, was completed entirely by federal officials, but the draft report was made available for public review and comment at four public meetings. The science subgroup's scientific information needs assessment, issued in draft in September 1994, was developed, in part, on the basis of interviews with experts and contributions from representatives of local governments on issues affecting lands and waters within their jurisdiction. In addition, the Governor's Commission for a Sustainable South Florida convened a high-level meeting of state, regional, and federal scientists to provide a general consensus on research priorities, and the draft was sent to federal and nonfederal scientists for peer review. Two public meetings also were held to obtain comments from outside sources.

Other efforts to promote federal and nonfederal collaboration under the task force's umbrella include a steering committee established to develop a strategy to preserve wetlands. This committee consists not only of relevant federal agencies but also of Indian tribes and state and local agencies. A multispecies recovery team is also being established. This team includes federal, state, and other experts on the many South Florida species protected under the Endangered Species Act. The Endangered Species Act specifically exempts members of recovery teams from FACA's requirements.

After legislation was enacted in March 1995 exempting certain meetings between federal officials and state, local, or tribal officials from FACA's requirements, the working group formally invited the state of Florida and the Seminole and Miccosuke tribes to designate members to attend the working group's meetings. All three accepted and participated in the working group's April 5, 1995, meeting.

Still missing as formal participants in the working group and its subgroups, however, are local officials and representatives of diverse nongovernmental interests across South Florida, including landowners, farmers, sportsmen, commercial fishermen, developers, and environmental organizations. Interior officials on the task force and working group informed us that, in view of Executive Order 12838's limitation on the formation of new advisory committees, they do not plan to establish a citizens' group to formally participate in the task force's effort.

We believe, however, that a precedent exists for forming such a group. The Coastal Wetlands Planning, Protection, and Restoration Act of 1990 (section 303 of P.L. 101-646) established an interagency task force that includes five of the six federal agencies on the South Florida task force. Its purpose is to develop a “comprehensive approach to restore and prevent the loss of coastal wetlands in Louisiana.” Thus, its mission is similar to that of the South Florida task force. In 1991, the coastal Louisiana task force established a Citizen Participation Group representing 17 interests across the state’s coastal zone. The purpose of the group is to consistently review and comment on the task force’s restoration plan and lists of high-priority projects and to assist and participate in public involvement and outreach.

While the Louisiana task force’s Citizen Participation Group was established before the administration issued its February 1993 executive order, the General Services Administration’s Committee Management Secretariat, which is responsible for overseeing the implementation of FACA and monitoring advisory committees’ activities, informed us that the executive order does not prevent a new advisory committee from being established if there is a clear need for one. Moreover, in its fiscal year 1996 budget request for the Department of the Interior, the administration states that the public will continue to have a major role in the development of a long-range strategy to restore and protect the aquatic ecosystem of California’s San Francisco Bay and the Sacramento-San Joaquin Delta, in part through the creation of a citizens’ advisory committee representing urban, agricultural, environmental, and other interests.

Stakeholders’ Response

Interior officials on the task force and working group believe that the task force can serve as a model for federal and nonfederal partnerships around the country. They point to the public’s overwhelming support for restoring South Florida’s ecosystem, as reflected in the results of successive elections, public opinion surveys, and public meetings as well as in the continued willingness of private citizens and corporations to pay the major costs of the effort. However, some stakeholders have raised concerns about the process used by the task force to involve them in its effort to coordinate restoration activities in South Florida.

For example, the approach presented in the science subgroup’s report on the ecosystem’s restoration needs, which includes the acquisition of private land, appeared to catch some nonfederal stakeholders by surprise. The report raised fears among some that federal restoration activities

would eliminate agriculture in the Everglades Agricultural Area. The two largest sugar companies, which were then negotiating an agreement with Interior to settle complex water quality litigation concerning the runoff of phosphorus from sugar farms in the Everglades Agricultural Area, used the report to claim that the federal government had withheld information from the negotiations and thus acted in “bad faith.” According to Interior’s Assistant Secretary for Fish and Wildlife and Parks, the report did not represent the position of the federal government and did not take into account a mediated technical plan, adopted by Interior in July 1993 as the basis for water quality requirements, which assumes that agricultural interests will remain in the Everglades Agricultural Area (see app. V).

Others have expressed frustration at not being allowed to participate actively in the meetings of the working group and the science subgroup, although they are permitted to attend the meetings as observers. For example, a researcher for the state of Florida believes that state scientists should have been involved in developing the scientific information needs assessment.

Two parties described instances in which they had been told by federal officials that they were not permitted to attend meetings of the working group, even though the 1993 agreement states that the task force’s meetings are open to the public. These parties also maintain that they did not receive notice of a meeting even after requesting it or that notices of other meetings arrived after, or only a day or two before, the meetings. In one instance, the working group denied several requests by the chairman of the Florida Keys National Marine Sanctuary Advisory Council (see app. II) to present information to the working group on restoring ecosystems.

The Miccosuke Tribe of Indians, whose reservation and leased lands border the northern boundary of the Everglades National Park, has sued to permanently enjoin (prohibit) the use of the 1994 annual report and the scientific information needs assessment as the basis for restoring the ecosystem on the grounds that the task force, working group, and science subgroup violated FACA in developing these products. The tribe cites meetings with state officials and others—including the governor’s commission—as evidence of the federal government’s interaction with nonfederal parties without the benefit of a balanced advisory committee. They perceive a “light-switch approach” in the working group’s application of FACA: At some times, the working group appears to act solely with

federal employees, while at other times, it includes certain selected nonfederal parties.⁸

While the task force disagrees with the tribe's perceptions, some federal officials and some nonfederal stakeholders expressed frustration to us about the difficulty of determining when federal parties can meet with nongovernmental parties without being required to charter an advisory committee under FACA. According to federal officials responsible for interpreting FACA—including attorneys in the Department of Justice's Civil Division and officials in the General Services Administration's Committee Management Secretariat—it is often difficult to determine when an advisory committee is required to comply with the act, and the courts have not provided clear tests for such a decision. Whether federal parties can meet with nongovernmental parties without an advisory committee often depends on whether information—rather than advice—is exchanged, whether a consensus is reached among the parties, and how often meetings occur and who initiates them. Furthermore, these officials noted that the courts look at a combination of factors that affect the need for a committee in a given situation; few factors by themselves clearly indicate that a group must be chartered under FACA.

⁸The tribe has also filed a lawsuit against Interior and Corps officials over flooding on tribal lands. This issue is not directly related to the task force's restoration efforts.

Effort to Manage the Florida Keys National Marine Sanctuary

The Florida Keys National Marine Sanctuary and Protection Act of 1990 (P.L. 101-605) established the Florida Keys National Marine Sanctuary and requires the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) to develop a comprehensive plan to govern the overall management of the sanctuary and protect its resources. NOAA made a draft of a combined management plan and environmental impact statement available for public comment in April 1995.

Chronology of Events

The 1990 act specifically requires NOAA to work with relevant federal, state, and local agencies and to establish a citizens' sanctuary advisory council whose members may include representatives from local industries, commercial user groups, conservation groups, the general public, and others. In addition, the National Environmental Policy Act (NEPA) requires the preparation of an environmental impact statement in conjunction with a management plan.

To comply with the requirements of the 1990 act and NEPA, NOAA applied a new strategic planning process—the strategic assessment approach—to develop the comprehensive management plan and environmental impact statement. This approach is a problem-driven process that makes maximum use of existing knowledge. It relies on structured work sessions to identify, characterize, and assess alternative management actions on the basis of the best available knowledge, recognizing that precise information on many topics is not available. Much of the knowledge is derived from the experience of experts—including users of the local resources.

In carrying out this approach, NOAA relied on three groups: (1) a core group representing federal, state, and local agencies whose jurisdictions affect the sanctuary, (2) a citizen's sanctuary advisory council representing local industries and businesses, user groups, local citizens, environmentalists, and scientists, as well as some agency staff from the core group, and (3) a broader network of local scientists and management experts. The core group included representatives from NOAA, the Department of the Interior's Fish and Wildlife Service and National Park Service, the Environmental Protection Agency, the Florida Department of Environmental Protection, the Florida Department of Community Affairs, the Governor's Office of Environmental Affairs, and the South Florida Water Management District (District). Local agencies from Monroe County (Florida Keys) were also part of the core group. A team of staff from NOAA's Sanctuaries and Resources Division, Strategic Environmental Assessment Division, and

Office of the Assistant General Counsel for Ocean Services facilitated each step of the process.

To begin the process, NOAA obtained input from the general public through scoping meetings and questionnaires to outline important issues to be considered. The core group then reviewed and described these issues in conjunction with the network of scientists and management experts, as well as with other interested parties.

Through structured work sessions, the core group and the network of scientists and management experts developed strategies and alternatives for addressing the issues, as well as preliminary ideas on zoning within the sanctuary. The citizens' sanctuary advisory council reviewed these strategies, studied zoning issues in depth, and recommended zoning proposals, which the core group and NOAA reviewed and modified slightly.

Both the core group and the citizens' sanctuary advisory council recommended the same preferred management alternative, consisting of a combination of strategies, to NOAA. According to NOAA officials, after NOAA had finished writing a draft combined management plan and environmental impact statement, it made this document available for public comment. During the public comment period, the sanctuary staff held information "expos" to answer questions about the plan.

The chronology of events and stakeholders' involvement in developing the draft comprehensive management plan and environmental impact statement are outlined in table II.1. Stakeholders' involvement in the process is discussed in more detail below.

Appendix II
Effort to Manage the Florida Keys National
Marine Sanctuary

Table II.1: Chronology of Events and Stakeholders' Involvement in Developing a Draft Management Plan and Environmental Impact Statement for the Florida Keys National Marine Sanctuary

Date^a	Event	Participants
Nov. 1990	The President signs legislation creating the sanctuary.	Not applicable
Apr. - May 1991	Six public scoping meetings are held. Questionnaires are distributed for input.	Anyone—open to the public
Apr. - June 1991	Written comments and responses are received. Data are compiled, and management issues are identified.	NOAA team
July 1991	The core group reviews management issues and makes preliminary determinations of major effects and causes, data needs and potential data sources, and lead agencies for acquiring information.	Core group Federal agencies NOAA Fish and Wildlife Service National Park Service Environmental Protection Agency State agencies Department of Environmental Protection Department of Community Affairs Governor's Office of Environmental Affairs District Local agencies Monroe County agencies
July 1991	A meeting is held to review management issues and preliminary determinations. Issues are further refined through subsequent technical workshops and mailings.	Core group Scientists Federal and state resource managers Environmental groups User groups Others
July 1991	A workshop is held on the placement of mooring buoys for the draft plan.	Anyone—open to the public
Sept. 1991	A workshop is held to plan for a detailed mapping survey of the sanctuary.	Anyone—open to the public
Sept. 1991	A workshop is held to obtain input from environmental educators on developing an education plan.	Anyone—open to the public
Oct. 1991	A workshop is held to obtain input on a research and monitoring plan for the sanctuary.	Core group Over 100 scientists
Nov. 1991	A workshop is held to obtain input on an archaeological plan for the sanctuary.	Anyone—open to the public

(continued)

Appendix II
Effort to Manage the Florida Keys National
Marine Sanctuary

Date^a	Event	Participants
Nov. 1991	The core group clarifies issues by describing activities that affect resources and by identifying possible conflicts in the use of resources.	Core group NOAA team
Dec. 1991	A meeting is held to update resource managers on the status of the planning process and to introduce the concept of marine zoning.	Core group Federal and state resource managers
Jan. 1992	A week-long series of workshops is held to introduce the concept of marine zoning to the public.	Anyone—open to the public
Feb. 1992	A workshop is held to obtain input on a water quality protection program.	Anyone—open to the public
Feb. 1992	In a strategy identification and development session, the core group and others develop proposed management strategies on the basis of the best available knowledge and describe the impact of the strategies on resources.	Core group NOAA team Scientists Federal and state resource managers
June - Sept. 1992	In a strategy work session, the sanctuary advisory council reviews the proposed management strategies, identifies additional issues, and adopts or revises issues. Council members confer with constituents on issues.	Sanctuary advisory council Local industries and businesses User groups Local citizens Environmental groups Scientists
June - Sept. 1992	Through work sessions, the core group develops alternatives to address issues and incorporate strategies into alternatives for the environmental impact statement.	Core group NOAA team
July 1992	A workshop is held to obtain input on a water quality monitoring and research program.	Anyone—open to the public
Aug. 1992	A workshop is held to obtain input on institutional management and engineering options for a water quality protection program.	Anyone—open to the public
Sept. 1992	The core group develops preliminary ideas on zones: their types and boundaries and the types of activities that can take place in them.	Core group NOAA team
Oct. 1992	In a second strategy identification and development session, implementation costs are estimated and institutional responsibilities are identified.	Core group NOAA team Scientists Federal and state resource managers

(continued)

Appendix II
Effort to Manage the Florida Keys National
Marine Sanctuary

Date^a	Event	Participants
Dec. 1992	Preliminary zoning ideas are presented to the sanctuary advisory council. The council agrees to break into subcommittees to consider the ideas in detail.	Core group Sanctuary advisory council
Jan. - Feb. 1993	Five workshops are held to consider and develop zones.	Core group NOAA Sanctuary advisory council Others
Feb. 1993	The sanctuary advisory council's subcommittees meet, develop criteria for zones, apply the criteria to proposed areas, and refine boundaries.	Sanctuary advisory council Subset of core group and NOAA team serve as facilitators
Feb. 1993	The sanctuary advisory council presents the subcommittees' zoning proposals to the public, hears public comments on the proposals, votes on the proposals, and recommends the proposals to the core group and NOAA.	Sanctuary advisory council Anyone—open to the public
Apr. 1993	The core group and NOAA review the sanctuary advisory council's zoning recommendations, modifying and refining some proposals slightly.	Core group NOAA team
Apr. 1993	The core group reviews and refines socioeconomic and environmental impact assessments to develop the preferred alternative for the environmental impact statement.	Core group NOAA team
July 1993	The sanctuary advisory council votes on a preferred alternative and submits its recommendation, with some modifications and concerns, to NOAA.	Sanctuary advisory council Anyone—open to the public
Aug. 1993	The core group reviews and adopts the sanctuary advisory council's recommendation on a preferred alternative, with minor modifications.	Core group
Nov. 1994	NOAA completes the draft management plan and begins the federal review and approval process.	NOAA
Apr. 1995	The draft plan is made available for comment.	Anyone—available to the public
Apr. - May 1995	Information "expos" are held to explain the plan in the Florida Keys and answer questions.	Anyone—available to the public

Note: Many meetings of the core group and all meetings of the sanctuary advisory council were open to the public.

^aDates are approximate.

Stakeholders' Involvement

The strategic assessment approach provided an opportunity for all stakeholders to play a significant role in developing the management plan. In general, the core group identified issues, effects, causes, data needs, strategies, and alternatives for addressing management issues. Efforts by the core group were developed with, or reviewed by, local scientists and management experts. The sanctuary advisory council also reviewed and revised the work of the core group, often after conferring with constituents in the community.

Through the strategic assessment approach, stakeholders identified management actions or strategies and their operational requirements, institutional arrangements, implementation costs, and financing alternatives. Many of these strategies point to the need for acquiring better knowledge of the resources before taking action. A NOAA official stated to us that this “back to front” approach helps clarify research needs by identifying the research projects that would be most helpful in finding solutions to specific management problems.

The sanctuary advisory council contributed directly to the development of a key component of the management plan establishing special-use zones within the sanctuary. Zoning involved designating areas within the sanctuary for different types of uses and activities and for different levels of resource protection. While NOAA and the core group developed the preliminary ideas for zones, the advisory council formed several subcommittees to examine these ideas in depth. The advisory council developed the criteria to be used in establishing zones, and the subcommittees then applied the criteria to develop proposed areas and refine boundaries. The subcommittees’ proposals were ultimately presented to the public in an open meeting, and the entire advisory council publicly voted to recommend the subcommittees’ proposals to NOAA and the core group.

The advisory council recommended a preferred management alternative to NOAA and the core group, which NOAA incorporated in the draft management plan. This plan and environmental impact statement were made available for public comment in April 1995. Afterwards, staff of the Florida Keys National Marine Sanctuary held or planned to hold (1) information expositions (“expos”) throughout the Keys to answer residents’ questions about the plan, (2) working sessions with various interest groups, and (3) public meetings before the comment period closes in December 1995.

According to a NOAA attorney, the core group's participation in this inclusive, integrated approach complied with the Federal Advisory Committee Act (FACA). The core group was not a chartered advisory committee; however, NOAA's attorney maintains that because it served to exchange information, not advice, on how the state and federal governments conduct operations on sanctuary waters, it did not fall under FACA's requirements. The citizen's sanctuary advisory council was chartered under FACA.

Stakeholders' Response

According to an official in NOAA's Strategic Environmental Assessment Division, all participating stakeholders had opportunities throughout the process to raise concerns and have these concerns addressed in the management plan. Consequently, few major concerns are expected on the draft management plan. However, in commenting on a draft of this report, Interior officials on the Interagency Task Force on the South Florida Ecosystem and its working group (see app. I) said that in spite of the extensive process outlined above, the plan remains highly controversial and many stakeholders are questioning the validity of their involvement. They pointed out that although consensus among federal and nonfederal stakeholders is desirable, restoration efforts are, by their very nature, highly contentious and that consensus begins to evaporate as a restoration effort moves from the conceptual and planning stages to the implementation of solutions that directly affect various interests. Interior officials believe that the most an agency can hope to achieve is an open airing and full consideration of all views.

Efforts to Address Concerns About the Flow of Water in the East Everglades

Since 1985, the U.S. Army Corps of Engineers (Corps) has been experimenting with delivering water to the Everglades National Park to improve environmental conditions. It has also proposed modifications to part of the Central and Southern Florida Project (project) to better protect the park's natural values and improve the delivery of water to the park. The project, first authorized by the Congress in 1948, serves multiple purposes, controlling flooding, providing drainage, and supplying water for municipal and agricultural purposes. It consists of miles of levees and canals that, together with water control structures and pump stations, drain and move water throughout South Florida.

Chronology of Events

In 1983, the Congress authorized experimental deliveries of water to the Everglades National Park to identify changes to the project that would improve environmental conditions. The legislation required the Department of the Interior's National Park Service, the Corps, and the South Florida Water Management District (District) to agree on the terms of such experiments and to acquire interest in agricultural areas adjacent to the Everglades National Park that would be adversely affected by modifications to the water delivery schedule. In 1989, the Congress authorized the Corps to modify the project's canal system on the basis of the experiments' findings to (1) permanently improve the delivery of water to the park and (2) restore natural hydrological conditions. In addition, under 1968 legislation modifying the project, the Corps has reevaluated the project's east Everglades canal system—known as the C-111 basin—to better protect natural values in the Everglades National Park and to find permanent solutions to water flow problems.

In addition to these federal efforts, Florida laws and programs have authorized the state to acquire some of the lands adjacent to the park's eastern boundary to assist in restoring the Everglades and Florida Bay. Federal law provides some funding for acquiring these lands.

The experimental water deliveries authorized by the 1983 act have proceeded since the resolution, in 1985, of a lawsuit filed by landowners who were concerned about the increased potential for flooding on their lands caused by the experiments. This case was settled out of court in an agreement that allowed the experiments to proceed for 2 years without

further litigation by the landowners. There have been no further lawsuits by, or agreements with, the landowners over the experimental deliveries.⁹

Since the experiments represent a major federal action that may significantly affect the quality of the human environment, the Corps was required to comply with the provisions of the National Environmental Policy Act (NEPA). The Corps completed two environmental assessments—one in 1985 and another in 1993—to address the impact of the experimental water deliveries to the northeastern and southeastern portions of the park, respectively. Between the 1985 and 1993 assessments, the Corps, the National Park Service, and the District prepared addendums to a letter of agreement that outlined annual operating criteria for each iteration of the experiments, which varied somewhat from year to year.

In response to the 1989 legislation authorizing the Corps to modify the project's canal system, the Corps completed a combined general design memorandum and environmental impact statement in 1992. The memorandum identified the structural modifications to the project needed to improve the delivery of water to the northeastern portion of the park and to restore natural hydrological conditions.

Finally, in May 1994, the Corps completed a combined general reevaluation report and environmental impact statement on changes to the C-111 basin. Among other things, the report recommended purchasing adjacent agricultural lands to better protect natural values in the Everglades National Park and maintain flood control.

The chronology of events and stakeholders' involvement that led to the 1985 and 1993 environmental assessments are outlined in tables III.1 and III.2, respectively. The chronology of events and stakeholders' involvement that led to the 1992 combined general design memorandum and environmental impact statement are outlined in table III.3. The chronology of events and stakeholders' involvement that led to the 1994 combined general reevaluation report and environmental impact statement are outlined in table III.4. Stakeholders' involvement in the four processes is discussed in more detail below.

⁹In a separate matter, adjacent agricultural landowners also protested a decision by the Corps and the National Park Service to cease drawing down water levels in the fall. In 1984, these agencies acceded to a landowners' request that they draw down water levels in October, as a 1-year experiment. This drawdown allowed farmers to plant crops earlier in the season than they could otherwise have done. The drawdowns continued through 1987. However, because of concerns about their impact on the park, the agencies stopped them in 1988. In 1993, agricultural landowners sued to have the drawdowns reinstated but lost their case.

Appendix III
Efforts to Address Concerns About the Flow
of Water in the East Everglades

Table III.1: Chronology of Events and Stakeholders' Involvement in Developing the 1985 Environmental Assessment for Experimental Water Deliveries

Date^a	Event	Participants
Jan. - May 1985	A draft environmental assessment is developed, reflecting informal coordination with other agencies on the likely impact of proposed actions on endangered species.	Federal agencies Army Corps of Engineers Interior Fish and Wildlife Service National Park Service Everglades National Park State agency District Local interests
June 1985	The final environmental assessment and finding of no significant impact are published and made available.	Federal agency Corps

^aDates are approximate and are sometimes based on the recollections of Corps staff.

Appendix III
Efforts to Address Concerns About the Flow
of Water in the East Everglades

Table III.2: Chronology of Events and Stakeholders' Involvement in Developing the 1993 Environmental Assessment for Experimental Water Deliveries

Date^a	Event	Participants
Dec. 1992	Scoping letters are mailed to all known interests.	Federal agencies Environmental Protection Agency Interior National Park Service Fish and Wildlife Service U.S. Geological Survey Commerce National Oceanic and Atmospheric Administration Agriculture Others State agencies District Governor's office Department of Environmental Regulation ^b Department of Natural Resources ^b Game and Freshwater Fish Commission Others Local agencies Metro-Dade County agencies Broward County agencies Indian tribes Environmental groups Agricultural interests Others
Jan. - Apr. 1993	The draft environmental assessment is developed.	Federal agency Corps
Apr. 1993	Coordination and consultation occur on the impact of proposed actions on wildlife and endangered species.	Federal agency Fish and Wildlife Service
Apr. 1993	The draft environmental assessment is made available for public comment.	Anyone—available to the public (A notice and/or copy is mailed to those on scoping mailing list)
Apr. 1993	A public meeting is held.	Anyone—open to the public
June 1993	The final environmental assessment and finding of no significant impact are completed and published.	Federal agency Corps

^aDates are approximate and are sometimes based on the recollections of Corps staff.

^bNow part of the Department of Environmental Protection.

Appendix III
Efforts to Address Concerns About the Flow
of Water in the East Everglades

Table III.3: Chronology of Events and Stakeholders' Involvement in Developing the Combined General Design Memorandum and Environmental Impact Statement for Modifying Water Deliveries

Date^a	Event	Participants
Jan. 1985	Alternatives are developed for public consideration.	Federal agencies Corps National Park Service Everglades National Park State agency District
Apr. 1985	Recommendations are developed on goals, objectives, and alternatives.	State agency East Everglades Resource Management and Implementation Committee
Jan. 1987	The first round of coordination workshops is held to review alternatives.	Various stakeholders
Oct. 1987	Alternatives are revised in response to comments.	Federal agency Corps
Oct. 1987 - Apr. 1988	A second round of coordination workshops is held to review changes.	Various stakeholders
Jan. 1989 - Feb. 1990	Consultations occur on the impact of proposed actions on endangered species.	Federal agencies Fish and Wildlife Service Corps
June 1989 - Oct. 1989	A final round of coordination workshops is held to consider changes to protect endangered species.	Various stakeholders
Aug. 1990	A draft combined general design memorandum and environmental impact statement is made available for public comment.	Anyone—available to the public
Sept. - Oct. 1990	Public meetings are held on the draft.	Anyone—open to the public
June 1992	The final combined general design memorandum and environmental impact statement with a preferred alternative is completed and published.	Federal agency Corps
Sept. 1992	Comments are received on the final combined general design memorandum and environmental impact statement.	Anyone—available to the public
June 1993	Responses to comments and the Corps' record of decision are published.	Federal agency Corps

^aDates are approximate and are sometimes based on the recollections of Corps staff. Distinctions among rounds of coordination workshops are not clear: Workshops were held continuously throughout the process.

Appendix III
Efforts to Address Concerns About the Flow
of Water in the East Everglades

Table III.4: Chronology of Events and Stakeholders' Involvement in Developing the Combined General Reevaluation Report and Environmental Impact Statement for Changes in the C-111 Basin

Date^a	Event	Participants
Sept. 1993	Scoping letters are mailed to all known interests.	Federal agencies Interior National Park Service Fish and Wildlife Service Commerce National Marine Fisheries Service Others State agencies Game and Fresh Water Fish Commission District Others Local agencies Dade County agencies Others Tribes Environmentalists Agricultural interests Others
June - Dec. 1993	A preliminary draft general reevaluation report and environmental impact statement is developed.	Federal agency Corps
Dec. 1993	The preliminary draft is made available for public comment.	Anyone—available to the public
Dec. 1993 and Feb. 1994	The Corps briefs the District's subcommittee on Florida Bay.	Anyone—open to the public
Jan. - Mar. 1994	Three new alternatives are incorporated into the draft in response to comments on the preliminary draft from the National Park Service, agricultural interests, and others.	Federal agency Corps
Mar. 1994	The draft general reevaluation report and environmental impact statement is made available for public comment.	Anyone—available to the public
Mar. 1994	A public meeting is held.	Anyone—open to the public

(continued)

Appendix III
Efforts to Address Concerns About the Flow
of Water in the East Everglades

Date^a	Event	Participants
Apr. 1994	Meetings are held with state agencies and others.	Federal agency Corps State agencies Governor's office Department of Environmental Protection Department of Community Affairs Game and Fresh Water Fish Commission District Local agencies Dade County agencies Agricultural interests Environmental groups
May 1994	The final general reevaluation report and the environmental impact statement with a preferred alternative is published.	Federal agency Corps

^aDates are approximate and are sometimes based on the recollections of Corps staff.

Stakeholders' Involvement

Regulations for implementing NEPA require federal agencies, in preparing an environmental assessment, to involve other agencies and the public to the extent practicable. However, the regulations require the agencies, in preparing an environmental impact statement, to obtain comments early in the process from affected federal, state, and local agencies; Indian tribes; and other interested parties so that they can determine the scope of the issues to be addressed in the statement. The regulations further require the agencies, after preparing a draft environmental impact statement, to request comments from appropriate agencies and the public and then respond to these comments in a final environmental impact statement. In responding, the agencies can modify alternatives or analyses, evaluate new alternatives, make factual corrections, or explain why comments do not warrant further response. Federal agencies are free to increase the public's involvement beyond these minimum requirements.

Stakeholders' Involvement in Developing the 1985 and 1993 Environmental Assessments for Experimental Water Deliveries

Stakeholders' involvement in developing the 1985 environmental assessment was limited (see table III.1). The final environmental assessment indicates only that informal coordination took place with the District, local interests, the Everglades National Park, and the Fish and Wildlife Service. Moreover, the letters of agreement outlining changes to

annual operating criteria for each iteration of the experiments were not made available for public comment.

In completing the 1993 environmental assessment, the Corps involved the public more extensively and generally followed the steps required by NEPA for environmental impact statements (see table III.2). Scoping letters were mailed to a wide variety of potentially interested federal, state, and local agencies; interest groups; private citizens; university faculty; and others for comment early on, and opportunities were provided for stakeholders to comment on the draft assessment. A public meeting was held to obtain input as well. However, letters of agreement outlining changes to annual operating criteria for each iteration of the experiments were not made available for public comment.

**Stakeholders' Involvement
in Developing the
Combined General Design
Memorandum and
Environmental Impact
Statement for Modifying
Water Deliveries**

According to Corps officials in the Jacksonville District Office, the Corps, in developing the combined general design memorandum and environmental impact statement for modifying the project's canal system to improve the delivery of water to the park (see table III.3), relied on input from a state committee established by the governor of Florida to identify problems, goals, and objectives for managing the East Everglades. This committee—the East Everglades Resource Planning and Management Committee—whose members represented a variety of interest groups and state agencies, examined a broad range of water resource issues relevant to the East Everglades. The committee recommended actions for the governor to take in the East Everglades that were adopted as state policy.

In addition, according to Corps officials, the Corps held numerous coordination workshops with various stakeholders—including the agricultural community, homeowners, conservation groups, and local government agencies—during the development of the environmental impact statement. The Corps provided these groups with information about proposed alternatives before the workshops and obtained their feedback on the proposals during the workshops. In response to comments received during the first round of workshops, the Corps modified the alternatives and presented them for comment in a second round of workshops. The Corps held a final round of workshops to make modifications responding to concerns about endangered species. It then made the draft combined general design memorandum and environmental impact statement available for comment and held public meetings on the draft, including one specifically for homeowners in adjacent areas. The

Corps also made the final environmental impact statement available for comment before completing the record of decision.

**Stakeholders' Involvement
in Developing the
Combined General
Reevaluation Report and
Environmental Impact
Statement for Changes in
the C-111 Basin**

The Corps followed NEPA's basic requirements in completing the combined general reevaluation report and environmental impact statement for changes in the C-111 basin (see table III.4). It mailed scoping letters to all known interested parties—including federal, state, and local agencies; Indian tribes; and various interest groups—provided opportunities for stakeholders to comment on the preliminary and draft documents, and held a public meeting on the draft document. In addition, Corps officials informed us that they maintained an open-door policy during the development of the document; that is, they met with anyone who requested a meeting, including some agricultural landowners and environmental groups. Moreover, the District, in addition to several federal agencies, assisted the Corps in evaluating alternatives.

The Corps is considering alternatives to increase public involvement, including establishing an advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice on all of the Corps' South Florida restoration efforts (also see app. IV). If the Corps finds that the establishment of such a committee is warranted and recommended, it would have to obtain the approval of the Office of the Assistant Secretary of the Army (Civil Works), the Department of the Army, and the Department of Defense. In addition, the General Service Administration would have to find that establishing the committee complies with Executive Order 12838, which limits the establishment of new advisory committees under FACA.

**Stakeholders'
Response**

Many of the comments that the Corps received on the NEPA documents, including those from state agencies, generally supported the proposed federal actions, although they often raised concerns and suggested ways to improve the alternatives under consideration. However, adjacent landowners maintained in comments on the 1993 draft environmental assessment that their lands had been damaged by flooding from the experimental water deliveries. The National Park Service and the Corps maintained that they had taken the steps needed to prevent damage to the adjacent lands from the deliveries and that flood control was better under the experiments than before. The experimental water delivery program has continued unimpeded.

Agricultural interests also expressed concerns, in comments on the draft combined general design memorandum and environmental impact statement for modifying water deliveries, that the alternatives would increase flooding on their land. The Corps responded to the points raised; however, it did not modify the alternatives, and the project has proceeded.

Agricultural landowners expressed concerns, in comments on the draft combined general reevaluation report and environmental impact statement for changes in the C-111 basin, about the economic impact of the preferred alternative—acquisition of their land. They presented their own alternative—a curtain wall to prevent seepage between the Everglades National Park and adjacent fields. Such a wall would have allowed the park to maintain higher water levels without affecting the fields. The Corps examined this proposal but rejected it because it would have cost significantly more than acquiring the land. According to the landowners, the Corps’ analysis is flawed, and the Corps has not adequately considered the economic impact of removing agricultural land from production.

Although some landowners did not want to sell their land, portions have been condemned for purchase by the District under state law. The landowners recently agreed to make all of their land available for acquisition because they do not believe that the District’s plans are adequate to prevent flooding on land that is not acquired.

As Interior officials noted in commenting on the effort to develop a management plan for the Florida Keys National Marine Sanctuary (see app. II), restoration efforts are inherently contentious, and consensus on solutions can begin to wane as a restoration effort moves from the planning to the implementation stage and stakeholders begin to feel the effects of public policy decisions. Similarly, satisfaction with the process for nonfederal involvement may wane when nonfederal stakeholders perceive, as the agricultural landowners have done, that their interests have been adversely affected by the outcome of the process. According to Interior officials, the most that a federal agency may be able to achieve is an open airing and full consideration of all views.

Effort to Consider Modifications to South Florida's Extensive Flood Control and Water Supply System

The Water Resources Development Act of 1992 (P.L. 102-580) and two resolutions of the House Committee on Public Works and Transportation in 1992 authorized the U.S. Army Corps of Engineers (Corps) to study the feasibility of modifying the structure and operations of the Central and Southern Florida Project (project) for environmental quality, water supply, and other purposes. The focus of the study is to determine the feasibility of restoring components of the South Florida ecosystem that were altered by the project while providing for other water-related needs. The Corps completed the first phase of this study and issued a reconnaissance report in November 1994. This report recommended six basic plans for more detailed study in the feasibility phase.

Chronology of Events

The Corps generally plans for water resources projects in two phases: a reconnaissance phase and a feasibility phase. The objective of the reconnaissance phase is to identify problems and opportunities, formulate and evaluate preliminary concepts to address the problems, and recommend further detailed studies. During the feasibility phase, alternative plans are studied in more detail.

Corps officials told us that, in light of the interest shown by the public, political officials, and the media in the restoration of the South Florida ecosystem, the Corps recognized that its usual project study process would not be adequate. Hence, the Corps used an interagency study team instead of relying solely on its own staff and greatly increased the opportunities for public involvement. The interagency study team included staff from the South Florida Water Management District (District), the Department of the Interior's National Park Service and Fish and Wildlife Service, and the Department of Commerce's National Marine Fisheries Service, as well as Corps staff.

The chronology of events and stakeholders' involvement leading up to the issuance of the reconnaissance report are outlined in table IV.1. Stakeholders' involvement is subsequently discussed in more detail.

Appendix IV
Effort to Consider Modifications to South
Florida's Extensive Flood Control and Water
Supply System

Table IV.1: Chronology of Events and Stakeholders' Involvement in Developing a Reconnaissance Report on Modifications to the Central and Southern Florida Project

Date^a	Event	Participants
Sept. - Oct. 1992	The Congress authorizes a restudy so that the Corps can determine whether the project should be modified for environmental quality, water supply, and other purposes.	Not applicable
June - July 1993	A strategy is developed, work begins, and an interagency study team is assembled.	Interagency study team Federal agencies Army Corps Interior Fish and Wildlife Service National Park Service Commerce National Marine Fisheries Service State agency South Florida Water Management District (District)
Sept. 1993	The study team briefs the District's governing board.	Anyone—open to the public
Sept. 1993	The study team briefs the federal Interagency Task Force on the South Florida Ecosystem (see app. I).	Anyone—open to the public
Dec. 1993	The first round of public workshops is held to define the problem and identify public concerns for the reconnaissance phase.	Anyone—open to the public
Jan. 1994	An inventory of public concerns is developed.	Interagency study team
Apr. 1994	The study team briefs the District's governing board.	Anyone—open to the public
May 1994	The study team briefs the interagency task force and its working group.	Anyone—open to the public
Jan. - June 1994	Technical analysis occurs, planning objectives and constraints are established, and preliminary ideas are developed.	Interagency study team
June 1994	A second round of workshops is held to obtain public comment on the preliminary ideas.	Anyone—open to the public
June 1994	The study team briefs the Governor's Commission on a Sustainable South Florida.	Anyone—open to the public
Sept. 1994	The study team briefs a joint meeting of the interagency task force, the governor's commission, and the District's governing board.	Anyone—open to the public

(continued)

Appendix IV
Effort to Consider Modifications to South
Florida's Extensive Flood Control and Water
Supply System

Date^a	Event	Participants
June - Oct. 1994	Conceptual plans for the reconnaissance study are developed.	Interagency study team
Oct. 1994	The study team briefs the District's governing board.	Anyone—open to the public
Oct. 1994	The study team holds a third round of public meetings.	Anyone—open to the public
Nov. 1994	The study team completes the reconnaissance report.	Interagency study team

^aDates are approximate and are sometimes based on the recollections of Corps staff.

Stakeholders' Involvement

According to the Corps, a multiagency approach was essential to facilitate the flow of information among agencies and achieve buy-in from key stakeholders in public agencies. The overall strategy for involving the public in the reconnaissance phase was to solicit information from the public for use by the study team and then provide feedback to the public on how the information was being used.

The Corps' strategy had three goals: (1) to gather input from diverse groups to help identify problems, opportunities, and solutions, (2) to develop relationships between federal and nonfederal stakeholders critical to the success of the study and the implementation of its recommendations, and (3) to manage expectations. Public input in the reconnaissance phase was obtained through 19 public workshops held at three stages in the process. Before the second and third rounds of workshops, newsletters were made available to stakeholders describing the purposes of the upcoming workshops, summarizing the public comments from the previous workshops, and explaining how the comments had been incorporated into the study. In addition, the study team briefed interested stakeholders—including agricultural, environmental, and tribal groups—on an ad hoc basis. The study team also briefed the federal Interagency Task Force on the South Florida Ecosystem (see app. I) and the District's governing board at key stages, giving them opportunities to review and comment on the team's progress and products. These meetings were open to the public.

The interagency study team was not chartered under the Federal Advisory Committee Act (FACA). According to Corps officials, the involvement of District staff on the study team does not violate the act because the District is the Corps' local cost-share sponsor for the study.

Preliminary steps for implementing the feasibility phase are now under way. The Corps is considering alternatives to increase public involvement, including establishing an advisory committee chartered under FACA to provide advice on all of the Corps' South Florida restoration efforts (also see app. III). If the Corps finds that the establishment of such a committee is warranted and recommended, it would have to obtain the approval of the Office of the Assistant Secretary of the Army (Civil Works), the Department of the Army, and the Department of Defense. In addition, the General Service Administration would have to find that establishing the committee complies with Executive Order 12838, which limits the establishment of new advisory committees under FACA.

Stakeholders' Response

Our discussions with nonfederal stakeholders and Corps staff indicated general satisfaction with the interagency study team's process for developing the reconnaissance report. However, according to Corps officials involved in the reconnaissance phase, some stakeholders have indicated that more public input would have been desirable. In addition, as previously noted (see app. III), restoration efforts typically raise contentious issues, and consensus may be difficult to sustain as implementation affects competing interests.

Effort to Reduce Agricultural Pollutants in Water Entering the Everglades

The effort to settle litigation concerning the runoff of phosphorus from sugar farms in the Everglades Agricultural Area began in 1988, when the federal government sued two state agencies for failing to enforce the state's water quality standards, and led to the enactment of Florida's Everglades Forever Act in 1994. In contrast to the other federal efforts discussed in this report, this one does not represent the implementation of a public policy initiative required by law or begun at the urging of the Secretary of the Interior. Rather, it represents an attempt to settle years of litigation that ultimately resulted in a public policy initiative (the 1994 act) that is now being implemented. Therefore, the goal of federal negotiators involved in this effort was not to build collaboration and consensus among federal and nonfederal stakeholders but to reach a fair settlement for the federal government. Given this goal, participation in the process was limited primarily to the parties to the litigation. However, public participation did occur during (1) formal mediation to address technical issues and (2) the state's legislative process leading up to the act's passage.

Chronology of Events

In October 1988, the federal government sued the South Florida Water Management District (District) and the Florida Department of Environmental Regulation (now part of the Department of Environmental Protection) for failing to enforce the state's water quality standards. According to the federal government, phosphorus from agricultural practices on sugar farms in the Everglades Agricultural Area was entering the Everglades National Park and the Loxahatchee National Wildlife Refuge, altering their plant communities. The federal government maintained that the addition of phosphorus—a nutrient—was changing the composition of the vegetation from sawgrass, which requires few nutrients, to cattails, which tolerate more nutrients. Cattails do not provide suitable forage or habitat for wildlife native to the Everglades.

In 1991, the federal government and the state of Florida entered into negotiations, and in July 1991, they reached a settlement agreement to resolve the lawsuit.¹⁰ This agreement accepted the federal government's position that phosphorus runoff from the region's sugar farms was polluting the Everglades. The agreement—and the state's plan for implementing it—proposed to design and construct stormwater treatment areas—that is, wetlands designed to filter phosphorus from the

¹⁰A group representing agricultural interests obtained intervenor status in July 1991, 2 days before the settlement agreement was signed. Other interests, including environmental groups, had previously obtained intervenor status. Intervenor status made these groups parties to the litigation, allowing them to submit arguments to the court supporting their position.

agricultural runoff and release the cleansed water into other parts of the Everglades. In February 1992, a federal district court approved the agreement as a legally binding consent decree.

The settlement agreement, among other things, required sugar growers in the Everglades Agricultural Area to adopt best management practices on their farms to help reduce phosphorus levels, obtain permits from the state to discharge water, monitor water quality, and possibly incur certain costs in meeting these requirements. Affected sugar growers filed lawsuits challenging the settlement agreement. They disputed, and sought to obtain, the documents that formed the scientific basis for the agreement—that is, (1) the state’s water quality standards and (2) the federal government’s position that phosphorus runoff from sugar farms was polluting the Everglades. The growers also petitioned for an evidentiary hearing on the findings in the settlement agreement and on the state’s plan to implement the agreement so that they could present evidence that they believed would cast doubt on both the federal government’s position and the effectiveness of the stormwater treatment areas in filtering phosphorus.

In response to the sugar growers’ litigation, the district court and a federal court of appeals ruled that the plan to implement the settlement agreement would be subject to the state’s administrative process. This process allows for an evidentiary hearing before an impartial hearing officer to resolve disputed factual issues. Therefore, after the state issued its plan to implement the settlement agreement in March 1992, sugar growers in the Everglades Agricultural Area filed legal challenges to obtain an evidentiary hearing on the plan.

In December 1992, the parties to the litigation¹¹ entered into formal mediation to resolve the challenges using a nationally recognized mediator. Other stakeholders—including Indian tribes and urban residents—were involved through a series of public meetings at which they could voice their concerns. The mediation also included a series of technical discussions involving scientists representing the federal government, the state, large and small sugar growers, Indian tribes, environmentalists, and others. The result was a mediated technical plan based on the settlement agreement. Most of the parties generally supported the plan, but agreement was not unanimous on all of its provisions. In addition, support for the plan depended on the parties’

¹¹In addition to these parties—the state of Florida, the District, and the sugar growers—the federal government and five environmental groups had obtained intervenor status to the litigation.

reaching agreement on other issues, such as cost-sharing and land acquisition.

Negotiations then moved to a second stage involving the parties who would share the cost of implementing the technical plan. These parties included the federal government—Interior and the U.S. Army Corps of Engineers (Corps)—the state—the Florida Department of Environmental Protection and the District—and the sugar growers. These negotiations, hosted by Interior primarily in Washington D.C., resulted in a statement of principles that adopted the mediated technical plan as the basis for water quality requirements and outlined the financial obligations of the various parties. Agricultural interests were to pay \$322 million over 20 years, and taxpayers were to pay the remaining costs through several state programs and District taxes. The statement was signed in July 1993 by the federal and state governments, the District, and the two largest sugar companies in the Everglades Agricultural Area—United States Sugar Corporation (U.S. Sugar) and Flo-Sun.¹²

Negotiations among these parties continued on other issues, including the date for compliance with the state's water quality standards. However, in December 1993 the two largest sugar companies walked away from the negotiations, claiming that the federal government had withheld information from the negotiations and thus acted in "bad faith" (see app. I). Subsequently, one of the companies—Flo-Sun—returned to the negotiations and, in January 1994, entered into an agreement to meet its financial obligations under the statement of principles.

The mediated technical plan and the financial obligations set forth in the statement of principles, coupled with the compliance date in the January 1994 agreement with Flo-Sun, formed the basis for the state's Everglades Forever Act, which the governor signed in May 1994. According to Interior's Assistant Secretary for Fish and Wildlife and Parks, the act was a product of committee hearings and floor debate, including votes on numerous amendments in both houses of the state legislature, over several months. Public involvement, debate, lobbying, and pressure from all interests was intense. The act's passage abrogated the need for the evidentiary hearing on the plan for implementing the settlement agreement that had been scheduled for several weeks later: The act repealed the requirement that the state develop such a plan for the Everglades.

¹²South Bay Growers, a wholly owned subsidiary of U.S. Sugar, also participated in the negotiations. A representative of U.S. Sugar signed the resulting statement of principles for both U.S. Sugar and South Bay Growers.

Appendix V
Effort to Reduce Agricultural Pollutants in
Water Entering the Everglades

The chronology of events and stakeholders' involvement leading up to the act's passage are outlined in table V.1. Stakeholders' involvement is subsequently discussed in more detail.

Table V.1: Chronology of Events and Stakeholders' Involvement Leading to the Passage of the Everglades Forever Act

Date	Event	Participants
Oct. 1988	The U.S. attorney's office sues the state for not enforcing the state's water quality standards for phosphorus runoff into the Everglades National Park and the Loxahatchee National Wildlife Refuge.	Federal agencies Justice U.S. attorney's office State agencies District Department of Environmental Regulation
July 1991	The parties reach a settlement agreement.	Federal agencies Interior Justice State agencies District Department of Environmental Regulation
Feb. 1992	A federal district court approves the settlement agreement in a consent decree.	Not applicable
Mar. 1992	The state issues its plan to implement the settlement agreement. Affected sugar growers subsequently challenge the plan.	Federal agencies Justice U.S. attorney's office State agencies District Department of Environmental Regulation Sugar growers
Dec. 1992	Formal mediation of challenges to the settlement agreement and implementation plan begins.	Anyone—open to the public
May 1993	Parties to the litigation develop a mediated technical plan.	Federal agencies Interior Corps State agencies District Department of Environmental Regulation Sugar growers Indian tribes Environmental groups Others

(continued)

Appendix V
Effort to Reduce Agricultural Pollutants in
Water Entering the Everglades

Date	Event	Participants
July 1993	Some parties to the litigation sign a statement of principles outlining cost-sharing for a mediated technical plan.	Federal agencies Interior Corps State agencies District Department of Environmental Protection Sugar companies Flo-Sun U.S. Sugar
Jan. 1994	Agreement is reached revising the date for compliance with the state's water quality standards.	Federal agency Interior Sugar company Flo-Sun
Jan. - May 1994	The Florida state legislature debates the Everglades Forever Act.	Anyone through the state legislative process
May 1994	The governor signs the Everglades Forever Act.	Not applicable

Stakeholders' Involvement

According to Interior officials involved in the negotiations, there is no legal or policy rationale for letting a person who is not a party to a lawsuit participate in the negotiations to settle the lawsuit. Therefore, mediation to develop a technical plan was limited primarily to the parties to the sugar growers' lawsuits challenging the settlement agreement. Similarly, negotiations on cost-sharing and on the date for complying with the state's water quality standards were limited primarily to the parties who would share the cost of implementing the technical plan. Interior officials noted, however, that the state's enactment of the Everglades Forever Act exhibited the workings of participatory democracy. Through legislative hearings and communications with elected officials, all interested parties arrived at a broad public consensus on what would be required to prevent phosphorus runoff from sugar farms from entering the Everglades.

However, Interior and the smaller sugar growers, represented by the Sugar Cane Growers Cooperative of Florida, disagree on the extent to which these growers were involved in the negotiations leading up to the statement of principles outlining the financial obligations of the various parties. According to officials from the cooperative, key decisions were made when representatives of the cooperative were not present. According to Interior's Assistant Secretary for Fish and Wildlife and Parks,

representatives of the smaller sugar growers were included, not excluded, from virtually all negotiations.

Similarly, the Miccosuke Tribe maintains that Interior violated the terms of a memorandum of agreement that the two parties signed to keep the tribe informed of activities connected with implementing the settlement agreement. The memorandum states, among other things, that Interior will notify the tribe of long-range changes in water policy or program goals related to implementing the agreement that would materially affect lands in which the tribe has interests. The tribe maintains that Interior engaged in secret negotiations over the Everglades with third parties outside the federal government, that these negotiations excluded the tribe, and that Interior failed to consult with or discuss these meetings with the tribe or advise the tribe of Interior's positions. Interior's Assistant Secretary for Fish and Wildlife and Parks disagrees, stating that attorneys for the tribe participated fully in developing the mediated technical plan and were kept informed of the cost-sharing negotiations. On January 24, 1995, the U.S. District Court, Southern District of Florida, took no position as to whether either party had violated the memorandum but ordered the federal government to take certain steps to keep the tribe informed of activities connected with implementing the settlement agreement.

According to Interior's Assistant Secretary for Fish and Wildlife and Parks, environmental groups that were parties to the sugar growers' lawsuits challenging the settlement agreement were represented by their attorneys—the Sierra Club Legal Defense Fund—in the negotiations that resulted in the statement of principles.

Stakeholders' Response

The signing of the Everglades Forever Act concluded years of litigation and began the implementation of a strategy for restoring both the quality of the water entering the Everglades and the quantity and timing of the water's flow. According to Interior's Assistant Secretary for Fish and Wildlife and Parks, the agreements that formed the basis for the Everglades Forever Act produced the most effective results the federal government could expect. That is, the cost-sharing provisions are better for the state and federal governments and restoration will begin more quickly than if the legal challenges filed by the sugar growers had been allowed to proceed.

Interior's Assistant Secretary for Fish and Wildlife and Parks told us that the governor and his administration supported the Everglades Forever Act

as a means to resolve both the federal and the sugar growers' lawsuits. He said that the act was generally supported by the federal government, some sugar growers, and some environmental groups and that it enjoyed almost unanimous editorial support in the Florida media as well as among the state's delegation to the Congress.

However, officials from or representatives of the Sugar Cane Growers Cooperative of Florida, the Miccosuke Tribe, and several environmental groups—Friends of the Everglades and the Everglades Coalition (a national coalition of environmental groups)—told us that they would have preferred the litigation to proceed, as scheduled, to a hearing where all sides could have presented their views and evidence before an impartial hearing officer. For example, the cooperative maintains that it has scientific evidence that casts doubt on the Everglades Forever Act's basis for requiring reductions in phosphorus levels. Both the cooperative and Friends of the Everglades have questioned the effectiveness of the stormwater treatment areas in filtering phosphorus and believe that the stormwater treatment areas could elevate mercury in fish and wading birds to harmful levels. These parties believe that the process that resulted in the Everglades Forever Act did not afford full consideration of their evidence, and each has filed legal challenges and/or administrative appeals relating to the act.

Interior officials characterize the legal challenges and administrative appeals as attempts to derail restoration on the part of a few disgruntled parties. The Sugar Cane Growers Cooperative of Florida, the Friends of the Everglades, the Everglades Coalition, and the Miccosuke Tribe have expressed their dissatisfaction with the Everglades Forever Act. Hence, their dissatisfaction with the process for nonfederal involvement cannot be dissociated from their dissatisfaction with the outcome of the process.

Comments From the Department of the Interior and GAO's Responses

We requested comments on a draft of this report from the Secretary of the Interior or his designee. On August 2, 1995, we met with the Assistant Secretary for Fish and Wildlife and Parks; the Assistant Secretary—Policy, Management and Budget; the Associate Solicitor for General Law; and other Interior officials to obtain their comments on the report. Before the meeting, the Assistant Secretary for Fish and Wildlife and Parks provided us with his comments on the draft. After the meeting, the Associate Solicitor for General Law and officials from the Everglades National Park also provided us with their comments.

Interior officials raised several concerns about the report's overall findings and about the conclusions and recommendations that flowed from them. In addition, Interior officials commented on the sections of the report and appendixes that address public participation in the efforts to coordinate restoration activities in South Florida (see app. I) and to settle complex water quality litigation (see app. V). Substantive comments by Interior officials are summarized below. In addition, Interior offered updated information and editorial comments, which we incorporated into the report where appropriate.

Interior's Comment: The report should be updated and the related recommendation deleted on the basis of the actions taken since legislation was enacted in March 1995 that provides exemptions from the Federal Advisory Committee Act (FACA).

The draft report stated that since the task force is acting under the federal agencies' general authorities rather than under specific programs, it was not clear what effect the March 1995 amendment would have on coordination between federal and nonfederal governmental agencies in South Florida or on similar efforts in other regions of the country. Moreover, Florida's Sunshine Act requires that all meetings involving state employees be open to the public. The draft report contained a proposed recommendation that the task force inform the General Services Administration's Committee Management Secretariat, which is responsible for drafting guidelines to implement the amendment, of the extent to which the amendment and guidelines allow the task force to share information, coordinate activities, and work routinely with state, local, and other governmental agencies without violating the act. Interior officials confirmed that the working group's membership has been expanded to include the state of Florida and the Seminole and Miccosuke tribes and that they participated in the working group's April 5, 1995, meeting.

GAO's Response: We revised the report to recognize that the working group had expanded its membership to include state and tribal officials. We also modified the recommendation to focus on constraints to formal participation by nongovernmental interests in federal restoration efforts.

Interior's Comment: The recommendation that the Interagency Task Force on the South Florida Ecosystem develop a strategy to improve collaboration with nonfederal stakeholders should be deleted.

The draft report recommended that the Secretary of the Interior direct the task force to develop a strategy to improve collaboration with nonfederal stakeholders in coordinating environmental restoration activities in South Florida. It further recommended that, in developing such a strategy, the task force consider as examples the processes used by the National Oceanic and Atmospheric Administration (NOAA) to develop a comprehensive management plan for the Florida Keys National Marine Sanctuary and by the U.S. Army Corps of Engineers to consider modifications to the Central and Southern Florida Project. Interior officials commented that the task force had already developed a strategy to collaborate with nonfederal stakeholders that has worked well and represents a model for such partnerships around the country. Moreover, these officials believe that the process used by NOAA to develop a comprehensive management plan for the Florida Keys National Marine Sanctuary is not appropriate for the task force, since the task force is an operative and action-oriented body, not a "master planning body."

GAO's Response: While we agree that the task force has developed a strategy to collaborate with nonfederal stakeholders, this strategy does not include formal participation in the working group and its subgroups by either local officials or representatives of the diverse nongovernmental interests across South Florida. Moreover, we believe that the effort to manage the Florida Keys National Marine Sanctuary is similar to the task force's effort to coordinate environmental restoration activities in South Florida in that both have developed a plan of action and are moving toward implementation. In addition, precedent exists for establishing a citizens' group to formally participate in the task force's effort and to promote public involvement and outreach (see app. I). Therefore, we have modified the recommendation to state that the task force should develop a strategy to extend formal participation in its working group and subgroups to local officials and representatives of South Florida's nongovernmental interests, including landowners, farmers, sportsmen, commercial

fishermen, developers, and environmental organizations. One alternative would be to charter a citizens' advisory group under FACA to formally participate in the task force's effort and to promote public involvement and outreach.

Interior's Comment: The restoration efforts should not be compared to one another.

In identifying the extent of nonfederal stakeholders' involvement, the draft report treated the five federal efforts to address environmental and economic concerns in South Florida separately and noted that the extent to which each effort involved nonfederal stakeholders varied significantly. The draft report cautioned, however, that differences among the five efforts—in the contentiousness of the issues and other influential factors—suggest that no one process to involve nonfederal stakeholders would be appropriate for all efforts. Interior officials believed that the draft report's organization of the five efforts on a spectrum of public participation damages the records of some efforts by elevating others and fails to note the many differences that exist among the various efforts.

GAO's Response: We agree with Interior that differences among the five efforts preclude comparisons. For example, efforts to coordinate activities, develop plans, or implement solutions to specific problems or issues should not be compared either explicitly or implicitly. Similarly, an effort that has already reached a difficult public policy decision—to acquire private lands, for example—should not be compared to one that has only begun to identify and evaluate options for solving a problem or issue. Finally, an effort to settle years of litigation that ultimately resulted in a public policy initiative (the Everglades Forever Act) should not be compared to other efforts to implement public policy initiatives that were required by law or begun at the urging of the Secretary of the Interior. Therefore, the report has been recast to better emphasize the differences among the efforts that preclude comparisons.

Interior's Comment: The environmental restoration efforts are interrelated.

Interior officials stated that, in treating the restoration efforts separately, the draft report leaves the mistaken impression that each is separate unto itself. Hence, the draft report largely misses the point that the efforts are all part of an integrated ecosystem management approach to restore the environment of South Florida.

GAO's Response: We agree that the efforts are all part of an integrated ecosystem management approach to restore the environment of South Florida and have identified linkages among them. However, the various efforts began at different times, under different authorities, and have progressed to different stages, ranging from planning to implementing solutions to specific concerns. Therefore, we believe that it is appropriate to address the efforts separately.

Interior's Comment: The effort to settle litigation concerning the runoff of phosphorus from sugar farms in the Everglades Agricultural Area should not be covered in the report.

Interior officials stated that the effort to settle the litigation should not be included in the report because the phase of the negotiations in which federal officials were involved that eventually failed to reach an agreement cannot be compared to any other public process.

GAO's Response: While we agree with Interior that differences among the efforts preclude comparisons, we believe that the effort to settle the litigation should be included in the report because it is clearly under the task force's umbrella and is linked to other environmental restoration efforts. We note that the administration's fiscal year 1996 budget request for Interior identifies the settlement as a major success of the task force.

Interior's Comment: Consensus on solutions to problems or issues may not be attainable.

Interior pointed out that although consensus among federal and nonfederal stakeholders is desirable, restoration efforts are, by their very nature, highly contentious. Moreover, consensus begins to evaporate as a restoration effort moves from the conceptual and planning stages to the implementation of solutions that directly affect various interests. Interior officials believe that the most an agency can hope to achieve is an open airing and full consideration of all views.

GAO's Response: In the draft report we stated that, as the efforts in South Florida have shown, increased collaboration can help federal and nonfederal stakeholders build consensus on difficult public policy issues and decide on actions that are necessary to maintain or restore desired ecological conditions. However, decisions that change land-use patterns and affect property ownership, such as the state's decision to acquire privately owned agricultural lands adjacent to the Everglades National

Park, may not be acceptable to all stakeholders. We have expanded this lesson to incorporate Interior's observations on the contentiousness of restoration efforts and on the instability of consensus in the face of direct threats to vested interests.

Interior's Comment: Litigation limited public participation.

The draft report stated that Interior had excluded all but a few stakeholders in reaching agreement over a strategy for improving the quality of the water entering the Everglades by turning to closed-door negotiations when mediation involving all stakeholders could not resolve key issues. In their comments, Interior officials pointed out that (1) there is no legal or policy rationale for letting a person who is not a party to a lawsuit participate in the negotiations to settle the lawsuit, (2) mediation to develop a technical plan provided an opportunity for parties to the lawsuit to voice their concerns, and (3) negotiations to reach agreement on sharing the cost of implementing the plan should be limited primarily to the parties who are going to incur the cost.

GAO's Response: We revised the report to recognize Interior's reasons for limiting public participation in the effort to reach agreement over a strategy for improving the quality of the water entering the Everglades.

Interior's Comment: Public participation occurred during the state's legislative process.

The draft report stated that the agreements resulting from the closed-door negotiations involving federal officials formed the basis of the state's Everglades Forever Act, which the governor signed in May 1994. The draft report did not point out that the public participated in the state's legislative process leading up to the act's enactment. Interior believed that the report should identify this process.

GAO's Response: We revised the report to recognize the public's participation in the state's legislative process.

Interior's Comment: Small sugar growers, Indian tribes, and environmental groups were represented in the negotiations.

The draft report stated that small sugar growers, Indian tribes, and environmental groups were excluded from the negotiations that resulted in a strategy for improving the quality of the water entering the

Everglades. Interior officials took exception to this statement, saying that (1) representatives of small sugar growers were included, not excluded, from virtually all negotiations, (2) attorneys for the Miccosuke Tribe participated fully in developing the mediated technical plan and were kept informed of the cost-sharing negotiations, and (3) environmental groups that were parties to the sugar growers' lawsuits challenging the settlement agreement were represented by the Sierra Club Legal Defense Fund in the negotiations that resulted in the statement of principles.

GAO's Response: We revised the report to recognize (1) the disagreement between Interior and the small sugar growers concerning the extent to which these growers were involved in the negotiations, (2) the disagreement between Interior and the tribe, as well as the court order addressing this issue, and (3) the representation of some, but not all, environmental groups in the negotiations.

Interior's Comment: Only a few stakeholders are dissatisfied with the Everglades Forever Act.

According to the draft report, the enactment of the Everglades Forever Act did not end years of litigation as Interior had hoped, but instead provoked a new series of legal challenges and administrative appeals. Interior, in its comments, pointed out that the signing of the act concluded years of litigation and began the implementation of a strategy for restoring both the quality of the water entering the Everglades and the quantity and timing of the water's flow. Interior characterized the legal challenges and administrative appeals filed after the act was signed as attempts by a few disgruntled parties to derail restoration.

GAO's Response: We revised the report to recognize both Interior's position and the difficulty inherent in distinguishing between a group's dissatisfaction with the process for nonfederal involvement and its dissatisfaction with the outcome of the process. However, the report continues to note that these groups would have preferred an open airing of their views before an impartial hearing officer and strongly believe that the process resulting in the act did not afford full consideration of their evidence.

Comments From the U.S. Army Corps of Engineers



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

22 AUG 1995



Mr. James Duffus, III
Director, Natural Resources
Management Issues
Resources, Community, and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report SOUTH FLORIDA RESTORATION: Public Participation in Federal Efforts Varied Significantly, dated July 12, 1995 (GAO Code 140525/OSD Case 9980).

The DoD has reviewed the draft report and concurs without further comment. A suggested technical change was separately provided to the GAO staff. The Department appreciates the opportunity to review the draft report.

Sincerely,

John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)

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