

Endangered Species Act's Implementation Challenges to Large Scale Ecosystem Restoration Programs

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Endangered Species Act (ESA)

- **Purpose:** Protect and recover imperiled species and the ecosystems upon which they depend
- **Protection:** Prohibit the take of listed animals, except under federal permit (e.g., for conservation and scientific purposes)
- **Take:** To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct
- **Harm:** Act which actually kills or injures wildlife (e.g., significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering)
- **Critical Habitat:** Federal actions must avoid destruction or adverse modification of designated critical habitat - areas that contain the physical or biological features essential to the conservation of the species

Federal Agency Cooperation - Sec. 7

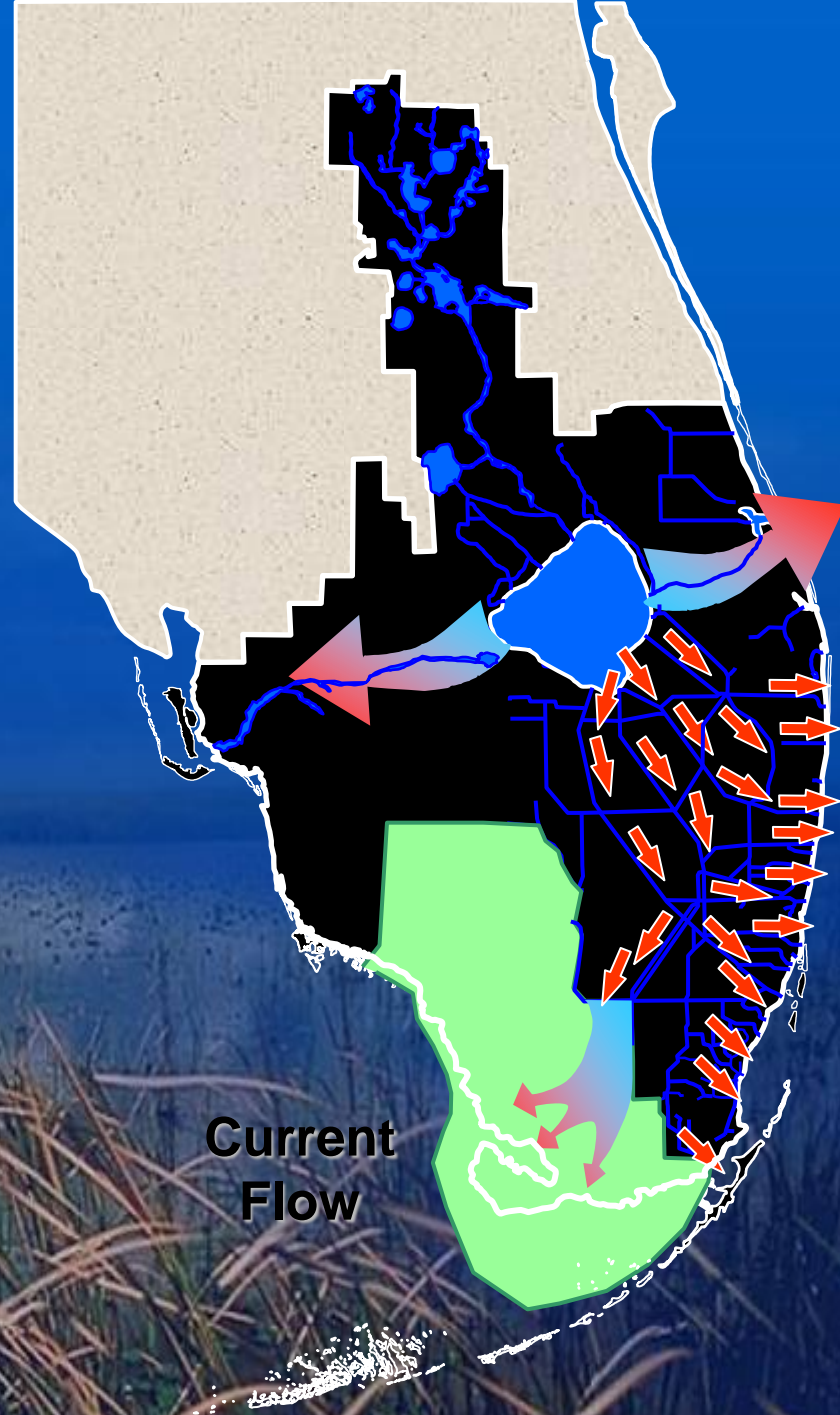
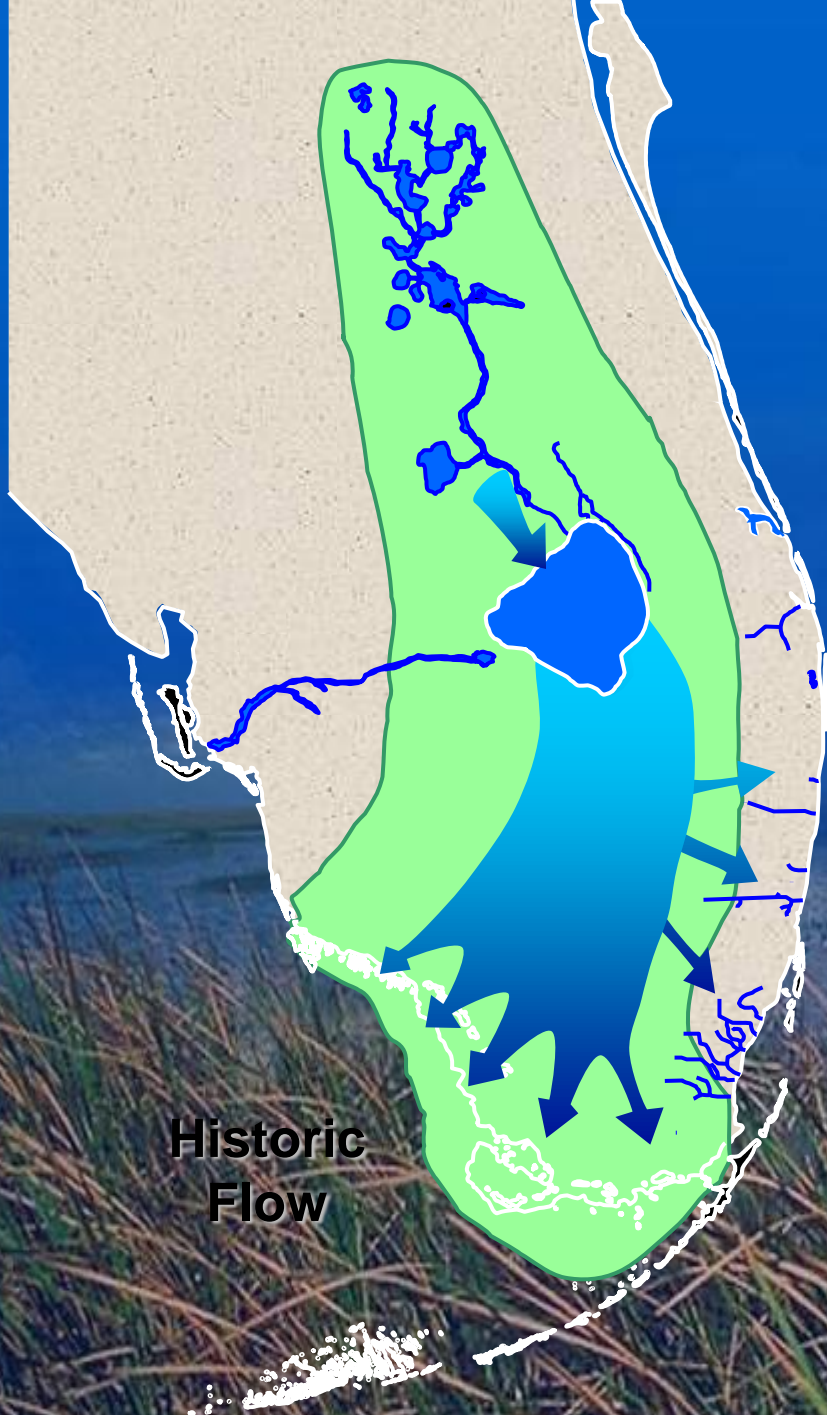
- Requires federal agencies to promote conservation purposes of ESA and to consult with FWS and NMFS to ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species.
- Action agency receives a biological opinion addressing the proposed action. If FWS or NMFS makes a jeopardy determination, the agency offers reasonable and prudent alternatives about how the proposed action could be modified to avoid jeopardy.

Penalties and Enforcement – Sec. 11

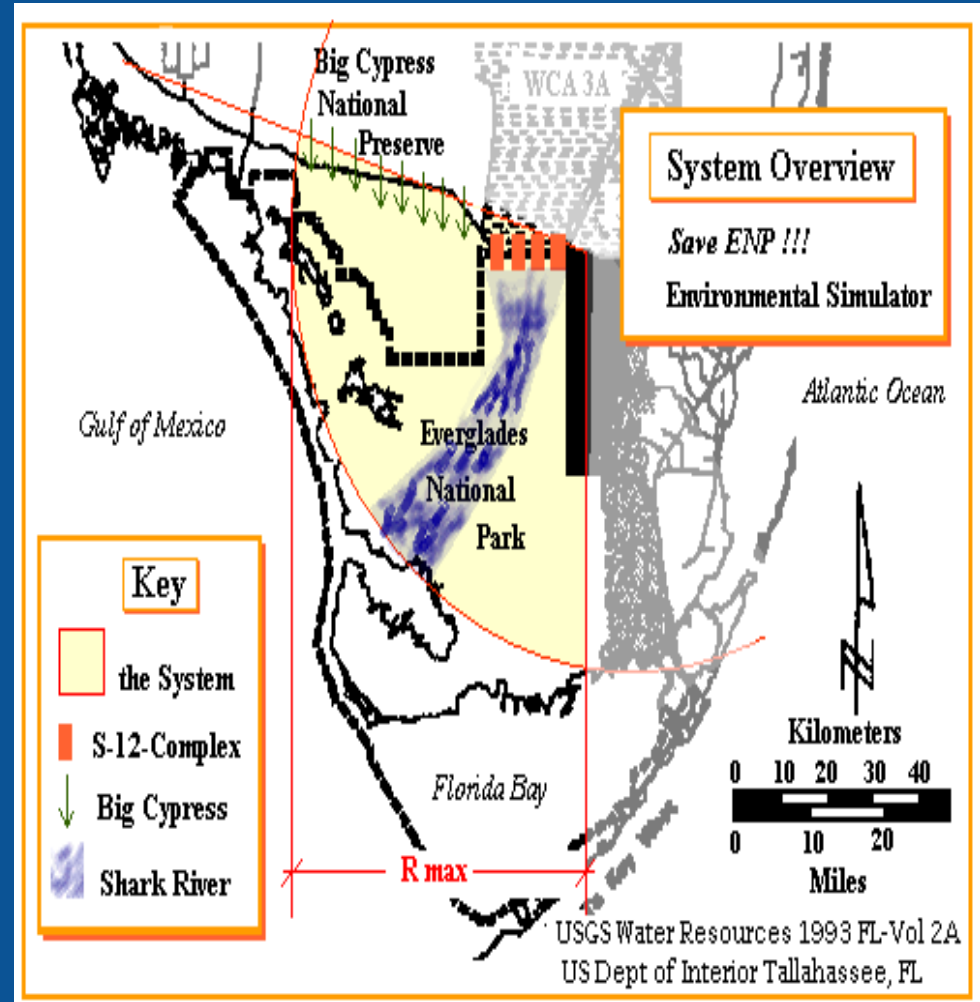
- **Civil penalties** of \$12,000 - \$25,000 for knowing violation and \$ 500 for any other violation
- **Criminal penalties** of \$25,000 - \$ 50,000 and up to a year in prison

Jeopardy Opinion - Cape Sable Seaside Sparrow ISOP, IOP and CSOP



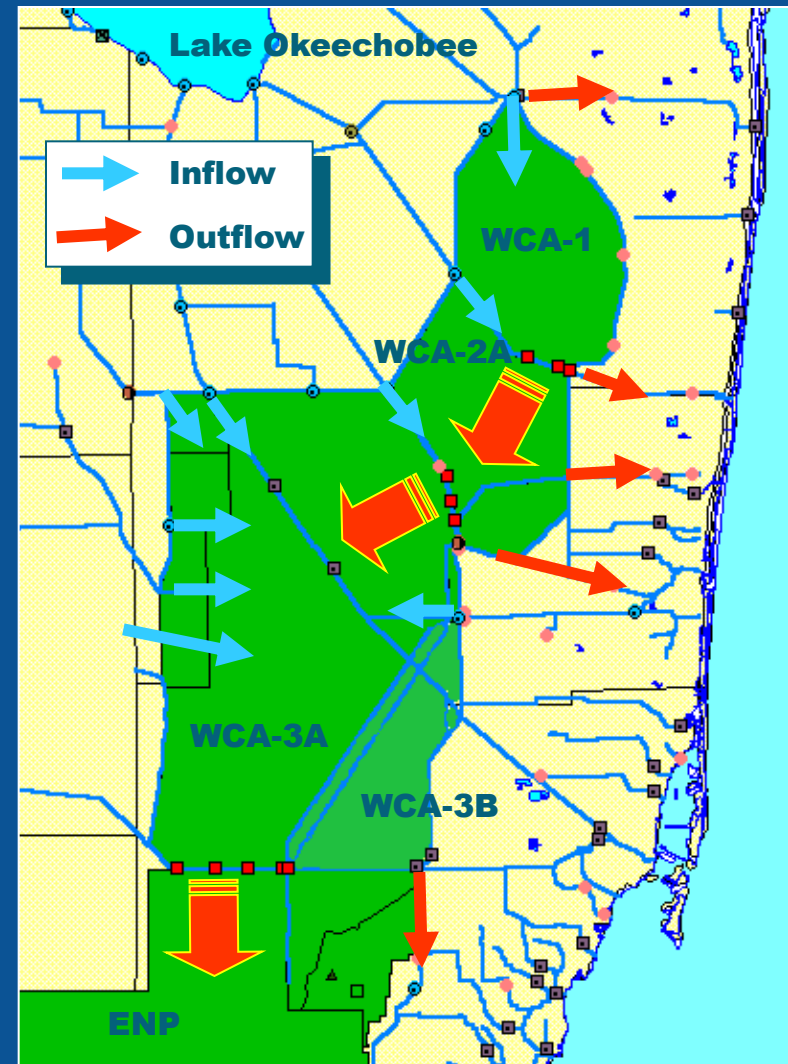


The Everglades today is dependent on engineered structures to deliver water. The water is moved through canals using spillways and pump stations.



Water Conservation Areas Flow Patterns

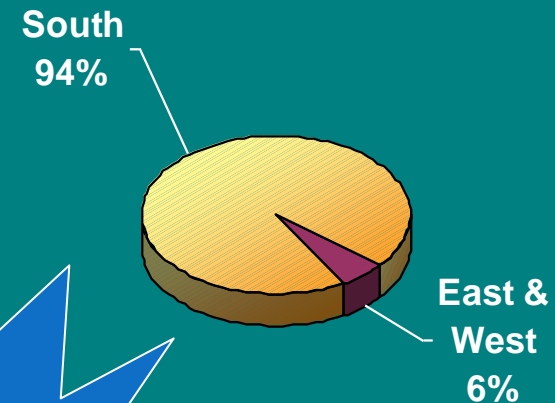
- Major structures within the WCAs discharge south toward Everglades National Park
- Smaller structures discharge east, primarily for water supply purposes



Water Conservation Area Design Discharge Capacities

- Almost all of the discharge capacity of the Water Conservation Areas is directed south
- Only small amounts of WCA regulatory discharge can be directed to tide

Discharge Capacity Comparison



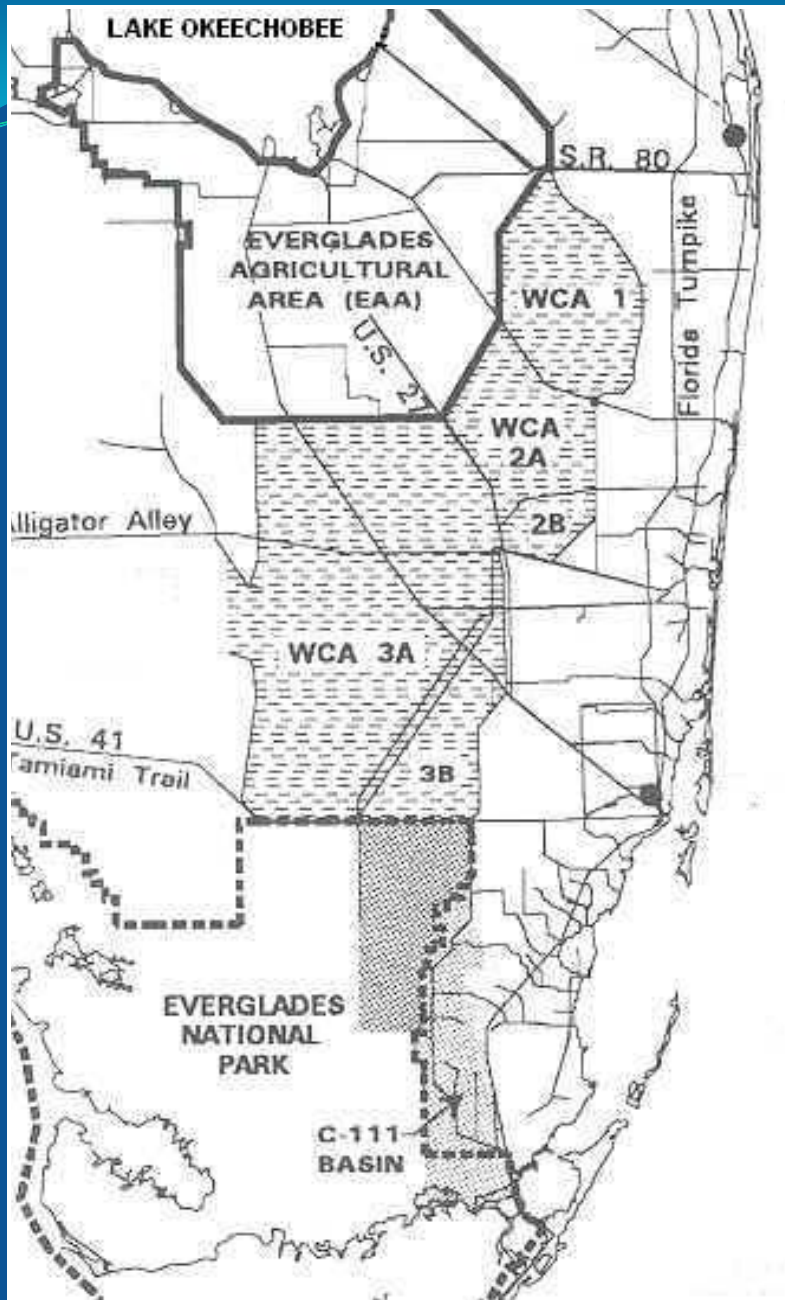
This is key
to the
struggle!

“If the adults remaining in the western subpopulation do not breed successfully during the next breeding season, the subpopulation is likely to become extinct. The loss of this western subpopulation, in turn, would make the extinction of the entire species almost certain”

from a 12/24/97 letter
cosigned by Superintendent, ENP and State Supervisor, FWS

Short-term Emergency Deviations 1998 and 1999

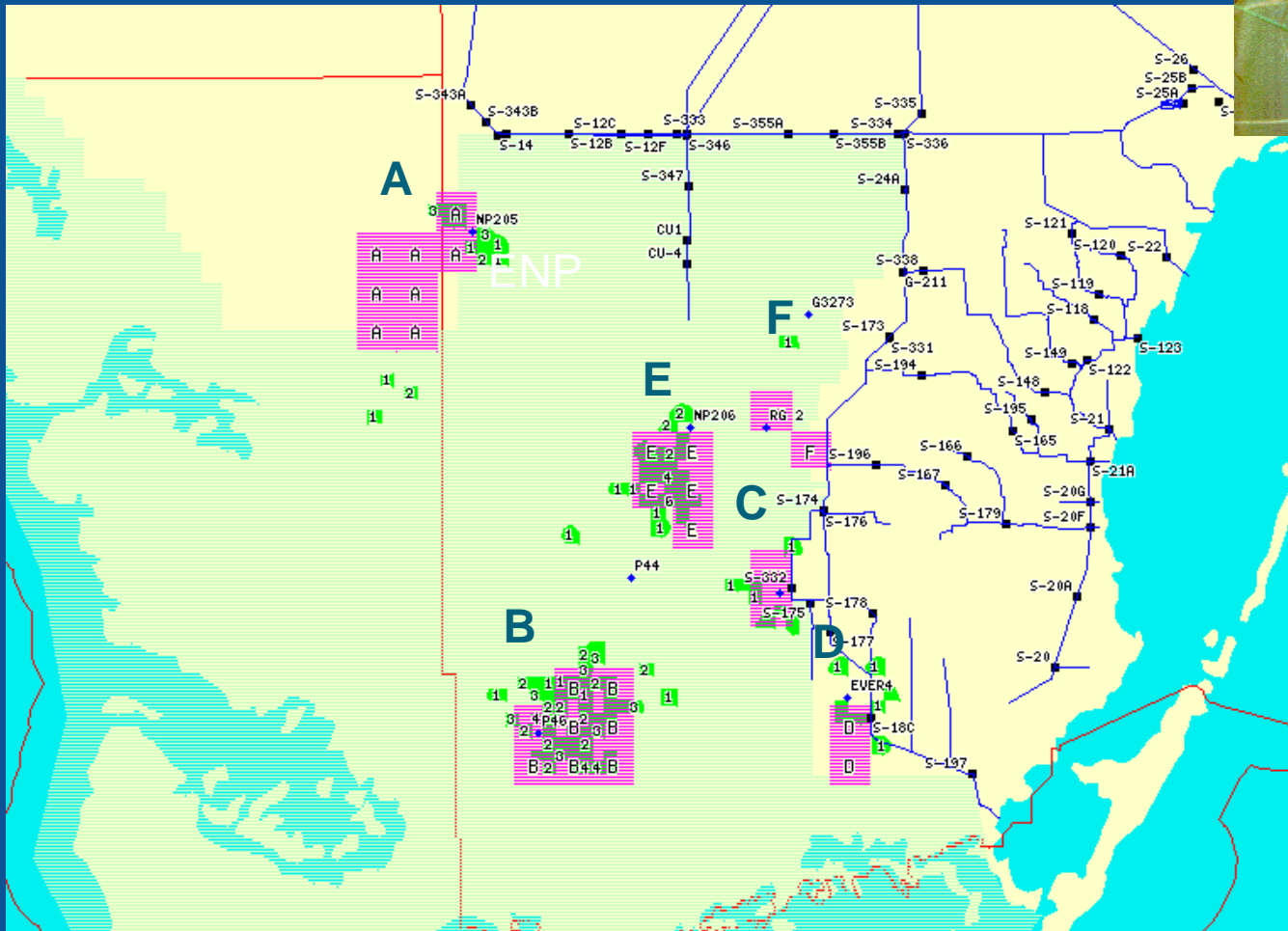




FWS Reconsultation Biological Opinion

USFWS

Biological Opinion of 1999 on Cape Sable Seaside Sparrow



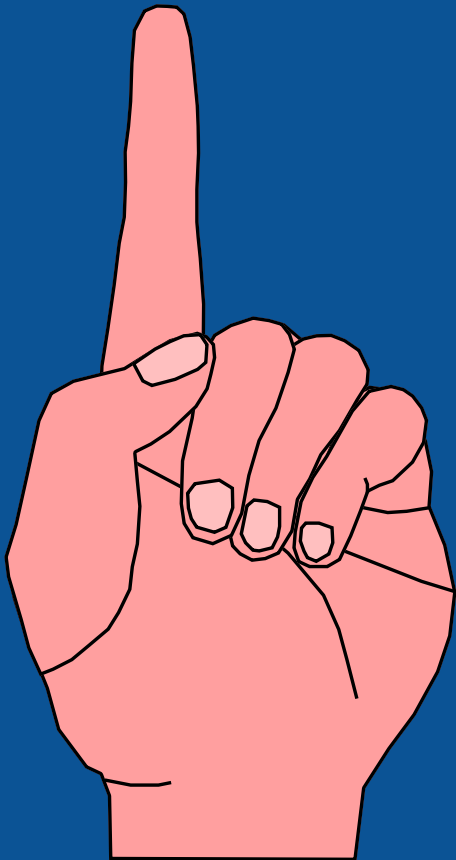
- Jeopardy on Experimental Program (Test 7 operations)
- No Jeopardy on Modified Water Deliveries to ENP or C111 Project

Interim Actions ISOP and IOP 2000- 2003

The era of dueling
battles between
the policy and
technical worlds!



9 Integral Components of RPA Phased In Approach



“Implementation of less than
all of these points will not
constitute compliance with
the RPA.”

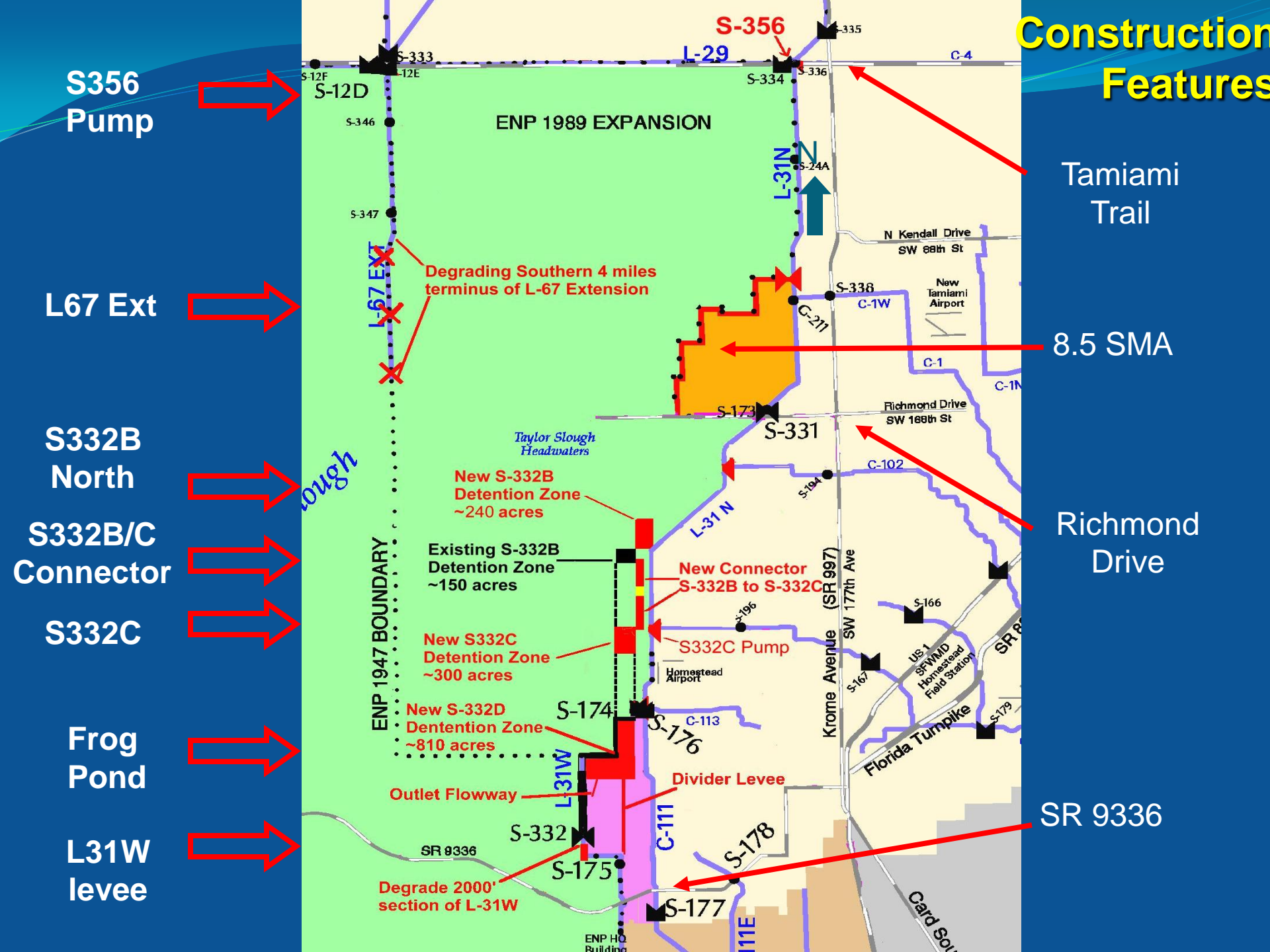
COL GOES TO JAIL!

Ultimate RPA - MWD By 2003

- Will funding be available?
- Funding contingent upon Congress, OMB, DOI and NPS



Construction Features



Tamiami Trail

8.5 SMA

Richmond Drive

SR 9336

S356 Pump

L67 Ext

S332B North

S332B/C Connector

S332C

Frog Pond

L31W levee

ENP 1989 EXPANSION

Degrading Southern 4 miles terminus of L-67 Extension

New S-332B Detention Zone ~240 acres

Existing S-332B Detention Zone ~150 acres

New S332C Detention Zone ~300 acres

New S-332D Detention Zone ~810 acres

New Connector S-332B to S-332C

Divider Levee

Outlet Flowway

Degrade 2000' section of L-31W

Taylor Slough

Taylor Slough Headwaters

N Kendall Drive SW 68th St

New Tamiami Airport

Richmond Drive SW 168th St

Krome Avenue (SR 997) SW 177th Ave

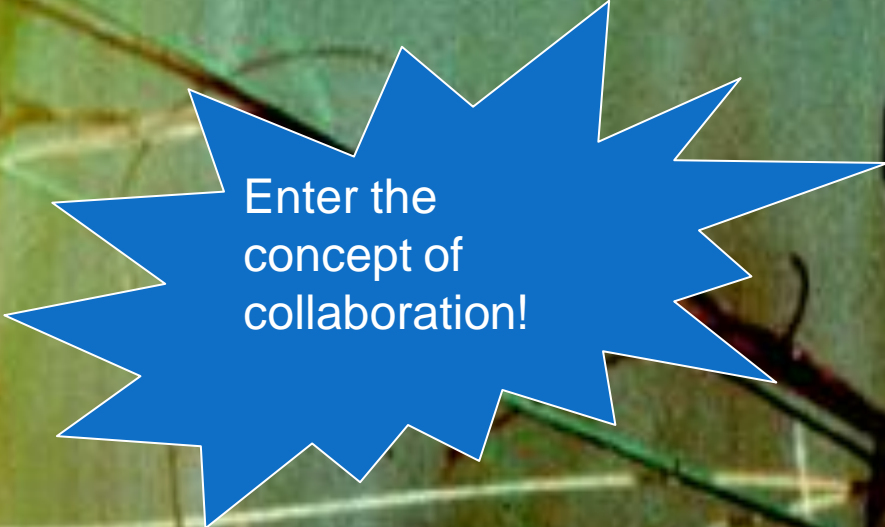
Florida Turnpike

Card Sol

ENP HO Building

CSOP

Oct 2002 Signed MOU



Enter the
concept of
collaboration!



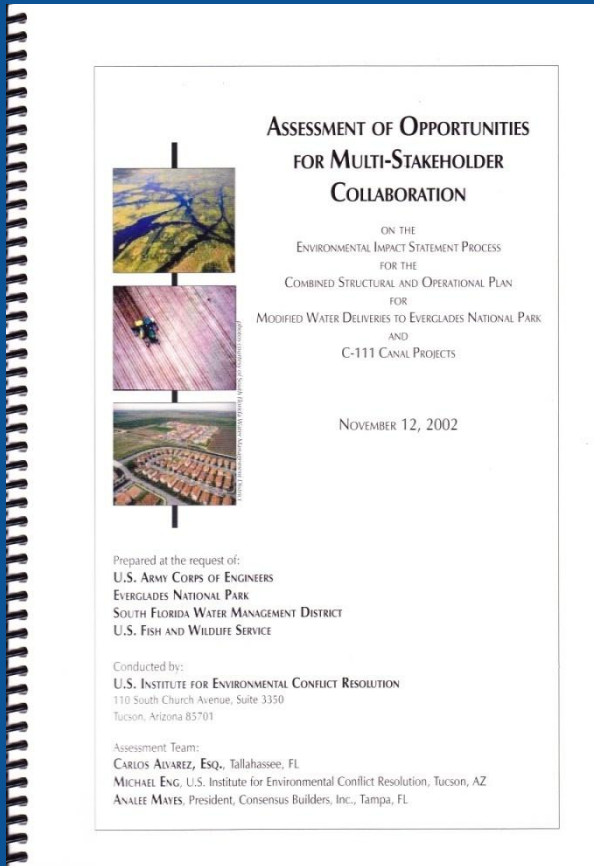
Combined Structural and Operational Plan (CSOP)

Being developed for operations with
MWD and C-111 in place

Facilitated Collaborative Process - IE CR

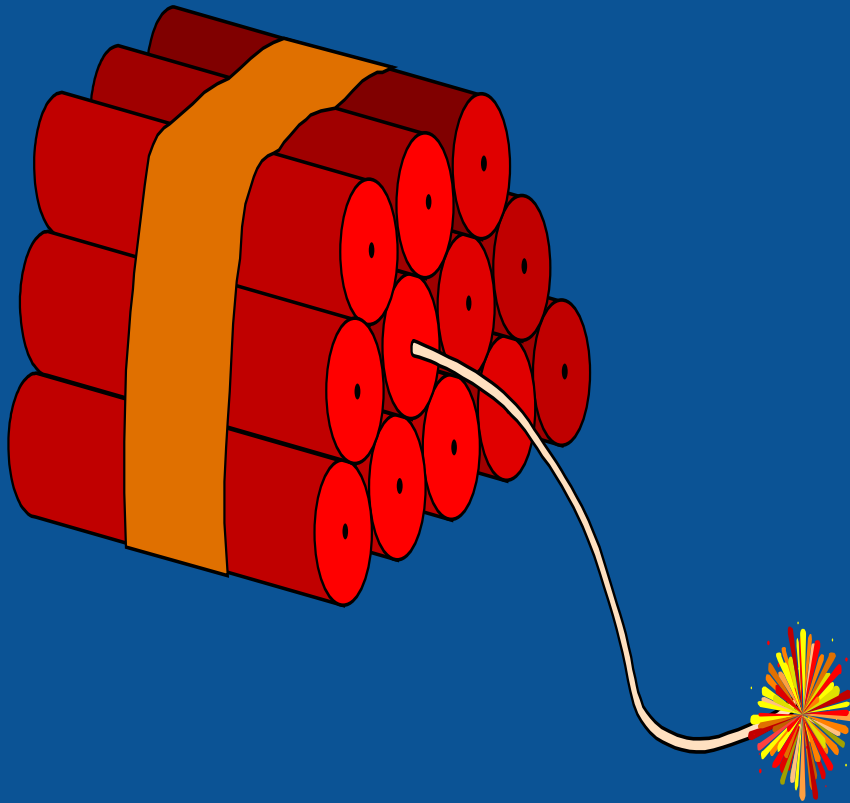
Oh, and don't forget the implications on CERP –
WRDA 2000 – It is “required” that MWD be
completed before certain components of CERP
can be implemented.

The Collaborative World of CSOP



- USACE, NPS (ENP), USFWS and SFWMD
- Contribute equal shares of funding
- Interagency retreat
- CSOP stakeholder assessment and multi-stakeholder involvement process
- MOU Protocols and Ground Rules
 - Roles and Responsibilities
 - Protocols for Sharing Info
 - Behavioral Guidelines
 - Joint Fact Finding
 - Open Meetings and Public Records
 - Stakeholder and Public Participation Plans
 - Interactions with the Media
 - Withdrawal Process

Challenging Times!



- ESA VS. Private Property Rights
- Other Endangered Species Impacts (Panther, Woodstork, Snail Kite)??
- Interim Operations that Satisfies All Parties?? CEQ IECR
- Flood Control Requirements Still Being Met??
- Lawsuits, lawsuits, lawsuits!

Insights

CEQ directed “marriage counseling” era
Closed door negotiations – Litigation
Policy – Technical Team - Ping Pong
Stakeholders Feedback – Transparent Process and Negotiations
CSOP Stakeholder Engagement thru South Florida ER Task Force
Exhausted but Came to Consensus!
USFWS – Still had CSSS issue and Tamiami Trail funding issue

Public is tired of repeating the same issues
Must understand the history behind your projects!
Be proactive and knowledgeable
History has many lessons to be learned and **NOT REPEATED!**

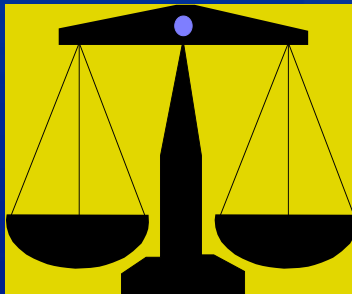


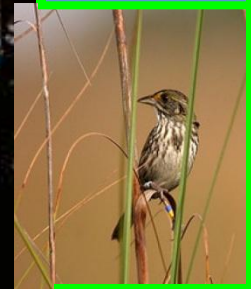
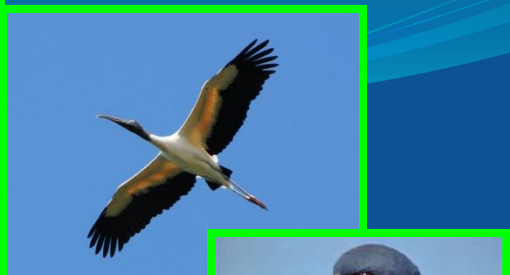
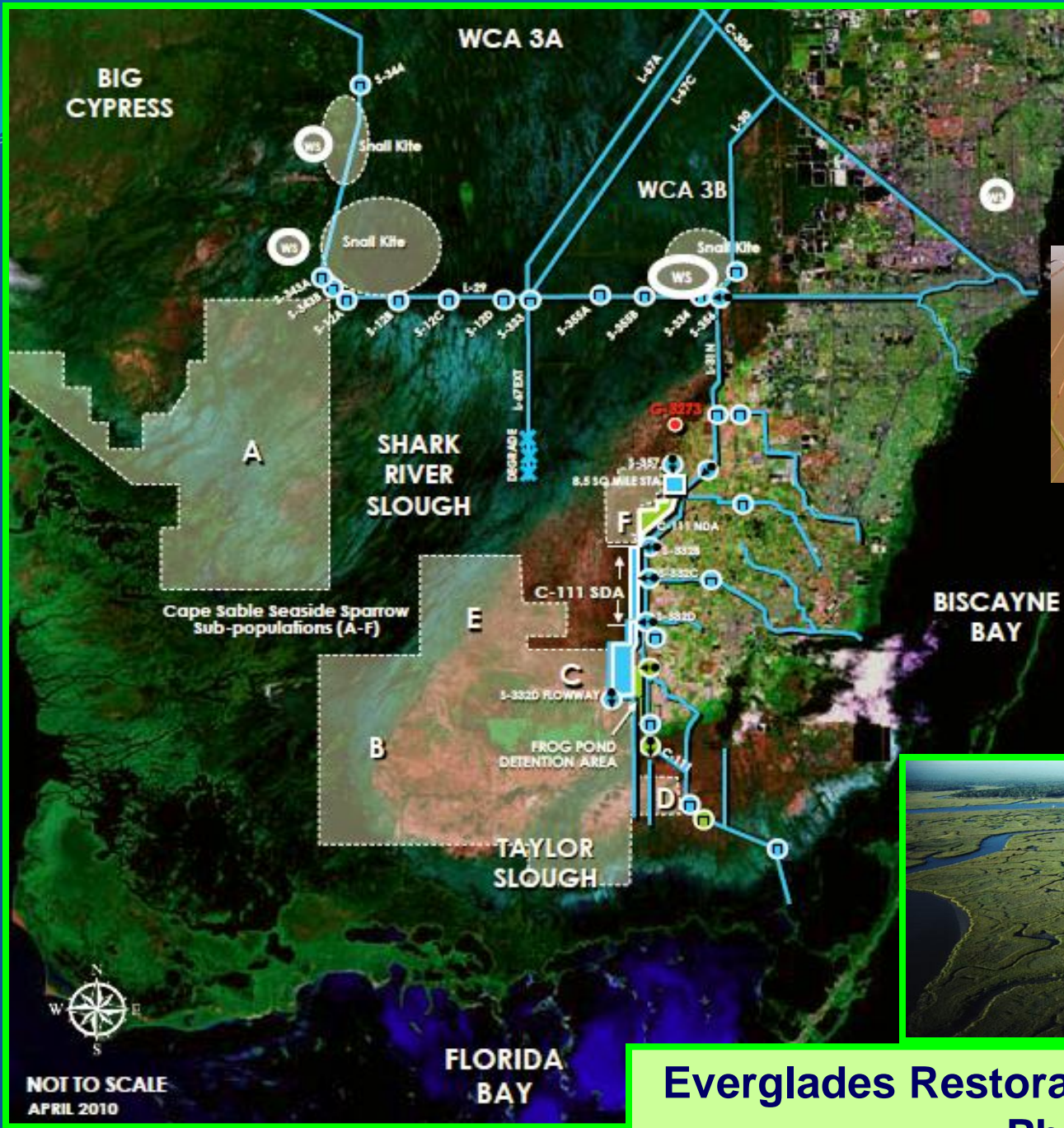
Insights

Power - Who Controls The Water

Limited Resource - Competing interests - Need Honest Broker

Balance Between Ag/Urban, Tribes, Everglades Natural Resources,
Water Supply, Water Quality and Flood Control





Everglades Restoration Transition Plan – Phase 1

NOT TO SCALE
APRIL 2010

Everglades Restoration Transition Plan Phase 1

Objectives

- To improve conditions for the Everglade Snail Kite, Wood Stork and other wading birds and their habitats in WCA-3A
- To maintain nesting season requirements for the Cape Sable Seaside Sparrow
- To maintain other C&SF project purposes

Everglades Restoration Transition Plan Phase 1

Paradigm Shift

- USFWS developed a Multi-Species Transition Strategy for WCA-3A
- ERTTP Includes Consideration of New Information
 - Current climate conditions
 - Project specific performance measures
 - Observed species data (1998-2009)
 - Periodic Scientist Calls
 - WCA-3A Spreadsheet Analysis

Current Status of ERTTP

- Draft EIS released – June 2011
- Comment Period Closed
- Concerns raised by State of FL thru
Clearinghouse Process
- The Rest is Yet to Come???

It's all about the WATER!

