

will be preempted by water supply and flood protection needs. In this regard, the Natural Resources Defense Council urged that the programmatic regulations must "preclude the achievement of water supply and flood protection goals at the expense of restoration goals." Other commenters are concerned that the other water-related goals of the region will be ignored in an effort to advance an elusive and constantly changing vision of restoration favored by scientists, instead of the Plan approved by Congress. All commenters emphasized the importance of developing an appropriate definition of restoration so that CERP projects are properly sequenced and appropriations wisely spent.

The final regulations contain a new definition of restoration that responds to these comments. The regulations define restoration as the recovery and protection of the South Florida ecosystem so that it once again achieves and sustains the essential hydrological and biological characteristics that defined this ecosystem in an undisturbed condition. This definition acknowledges that, as authorized by Congress, the restored South Florida ecosystem will be significantly healthier than the current system but will be smaller and somewhat differently arranged than the historic ecosystem. Also, there may be different degrees of restoration in different areas of the ecosystem. The irreversible physical changes made to the South Florida ecosystem make a complete return to the historic ecosystem impossible. However, the restored ecosystem will have recovered those essential hydrological and biological characteristics that defined the undisturbed South Florida ecosystem and made it unique among the world's wetlands systems.

The new definition of restoration recognizes that the restoration goal of the Plan is to achieve a healthy and functioning ecosystem that once again exhibits the essential characteristics of the undisturbed South Florida ecosystem. The definition acknowledges that, as authorized by Congress, the restored ecosystem will be different than the historic ecosystem. In so doing, the definition affords flexibility to allow for adaptive management and the accommodation of other water-related needs of the region, as the Plan is implemented through individual projects specifically authorized by Congress.

The definition of restoration recognizes implicitly that science will be the foundation of restoration, but it also assumes, as noted throughout the

programmatic regulations, that in all phases of implementation of the Plan both restoration and the other goals and purposes of the Plan should be achieved. The definition also recognizes that we must act within the legislative framework that has been approved by Congress in WRDA 2000 and later may be approved by Congress in future authorization acts.

E. Amount of Water Provided for Restoration

Some commenters expressed the view that the regulations must include a statement that new water generated by the Plan will be reserved for the natural system on an 80%–20% basis. These commenters note that the report of the Senate Committee on Environment and Public Works on WRDA 2000 (Senate Report No. 106–362) states:

The Plan contains a general outline of the quantities of water to be produced by each project. According to the Army Corps, 80 percent of the water generated by the Plan is needed for the natural system in order to attain restoration goals, and 20 percent of the water generated for use in the human environment. * * * Subject to future authorizations by Congress, the committee fully expects that the water necessary for restoration, *currently estimated* at 80 percent of the water generated by the Plan, will be reserved or allocated for the benefit of the natural system (Emphasis added).

These commenters believed that the 80%–20% ratio should be set forth in the regulations as a generalized planning goal for reserving or allocating new water to the natural system. They are concerned that the 80%–20% ratio was not identified in the proposed regulations as a planning goal. On a different but related note, several commenters felt that a water budget should be developed for the South Florida ecosystem to ensure that the restoration goals of the Plan are achieved.

Other commenters observed that the 80%–20% ratio was merely the initial estimate of the new water that would be produced by the Plan and therefore, could be allocated or reserved for the benefit of the natural system. These commenters maintain that the goal of the Plan is to provide whatever water is needed for restoration of the natural system, irrespective of the 80%–20% ratio. These commenters point out that individual components of the Plan may produce amounts of water different from this initial estimate. In fact, some commenters pointed out that the 80%–20% ratio was part of a scenario called D–13R4, which was not included in the framework Plan (D–13R) authorized by Congress.

We understand the desire of the commenters to assure sufficient water will be allocated or reserved for the benefit of the natural system. To accomplish this result, we believe that it is necessary to preserve the ability to adapt to new information as the Plan is implemented. Therefore, the regulations do not contemplate the allocation of water on a rigid 80%–20% basis, either system-wide or project-by-project. Instead, the final regulations ensure that adequate water will be allocated or reserved for the benefit of the natural system without regard to this ratio by requiring that each Project Implementation Report evaluate and identify water to be reserved for the natural system and made available for other water-related needs of the region, and that the Plan itself be continually evaluated through adaptive management to assure that adequate water is allocated or reserved on a system-wide basis.

The final rule also provides that the Corps of Engineers and the South Florida Water Management District will determine the total quantity of water that is expected to be generated by implementation of the Plan, including the quantity expected to be generated for the natural system to attain restoration goals as well as the quantity expected to be generated for use in the human environment, and will periodically update that estimate, as appropriate, based upon changed or unforeseen circumstances, new scientific and technical information, new or updated modeling, and congressionally authorized projects or modifications to the Plan. In addition, the final regulations envision that a water budget for the Plan will be developed and disseminated annually to the public. These regulatory provisions will ensure that adequate water will be reserved or allocated to the natural system as intended by Congress.

F. Independent Scientific Review and External Peer Review

A number of commenters were concerned that the proposed regulations did not provide for the establishment of an independent scientific review panel. They noted that section 601(j) of WRDA 2000 requires that the Secretary of the Army, the Secretary of the Interior, and the Governor, in cooperation with the Task Force establish an independent scientific review panel convened by a body, such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system restoration goals of the Plan. These commenters feel that the panel must operate independently of the Corps of