

A decorative image on the left side of the slide, showing a close-up of a green and blue structure, possibly a modern building facade or a natural formation like a tree trunk, with light rays emanating from the top.

# Climate Adaption and Environmental Regulation

## Florida Chamber's Environmental Permitting Summer School

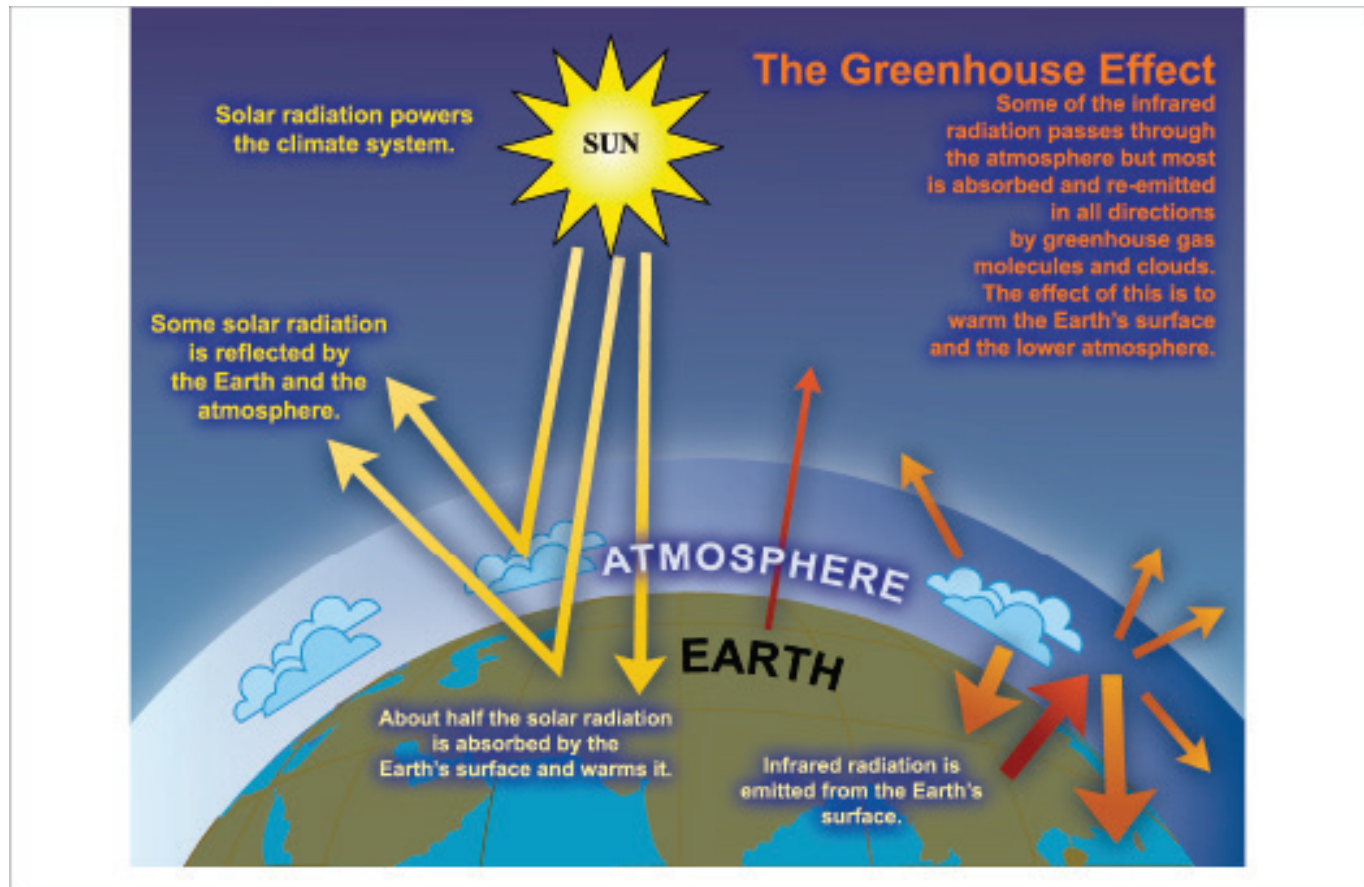
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# Legal Requirements for Addressing Climate Adaptation



> Source: Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report, 2007

## Legal Requirements for Addressing Climate Adaptation: National Environmental Policy Act Guidance Document



Source: <http://divingstatus.gr/environmental/>

- > The CEQ's draft Guidance Document on the manner in which federal agencies must consider GHG emissions in their environmental analyses and the effects of climate change on agency actions and the affected environment was withdrawn.
- > New guidance is expected.

## Legal Requirements for Addressing Climate Adaptation: National Flood Insurance Act of 1968

- > Requires the adoption and enforcement of **floodplain management ordinances** approved by the Federal Emergency Management Agency (FEMA)
- > Establishes the **federal flood insurance program**.
- > Restricts flood insurance for certain construction on **coastal barrier islands**.



## Legal Requirements for Addressing Climate Adaptation: Coastal Zone Management Act

- > Requires the adoption and implementation of **coastal zone management plans** at the local government and state levels for all coastal states, with which federal projects must also be consistent.
- > Provides federal funding for the CZM planning
- > Mandates that the state plans address **coastal hazards and mitigation**, including beach erosion and potential effects of sea level rise and beach erosion

## Legal Requirements for Addressing Climate Adaptation: Coastal Zone Management Act

- > Examples of various CZM measures include --
  - Restrictions on seawall construction
  - Establishment of coastal construction and erosion protection setbacks
  - Enhanced review of construction projects within coastal hazard area.
  - Creation of **coastal wildlife habitat plans**





## Legal Requirements for Addressing Climate Adaptation: Clean Water Act

- > Regulates **post-construction runoff** and requires the adoption of erosion and sediment control programs
- > Regulates dredging and filling activities in navigable waters, including **coastal zones**
- > Both measures provide opportunity for the **flood protection** and **buffering of communities**

# U.S. Army Corps of Engineers – Civil Works

## Sea Level Change Considerations on Federal Coastal Storm Damage Reduction Projects

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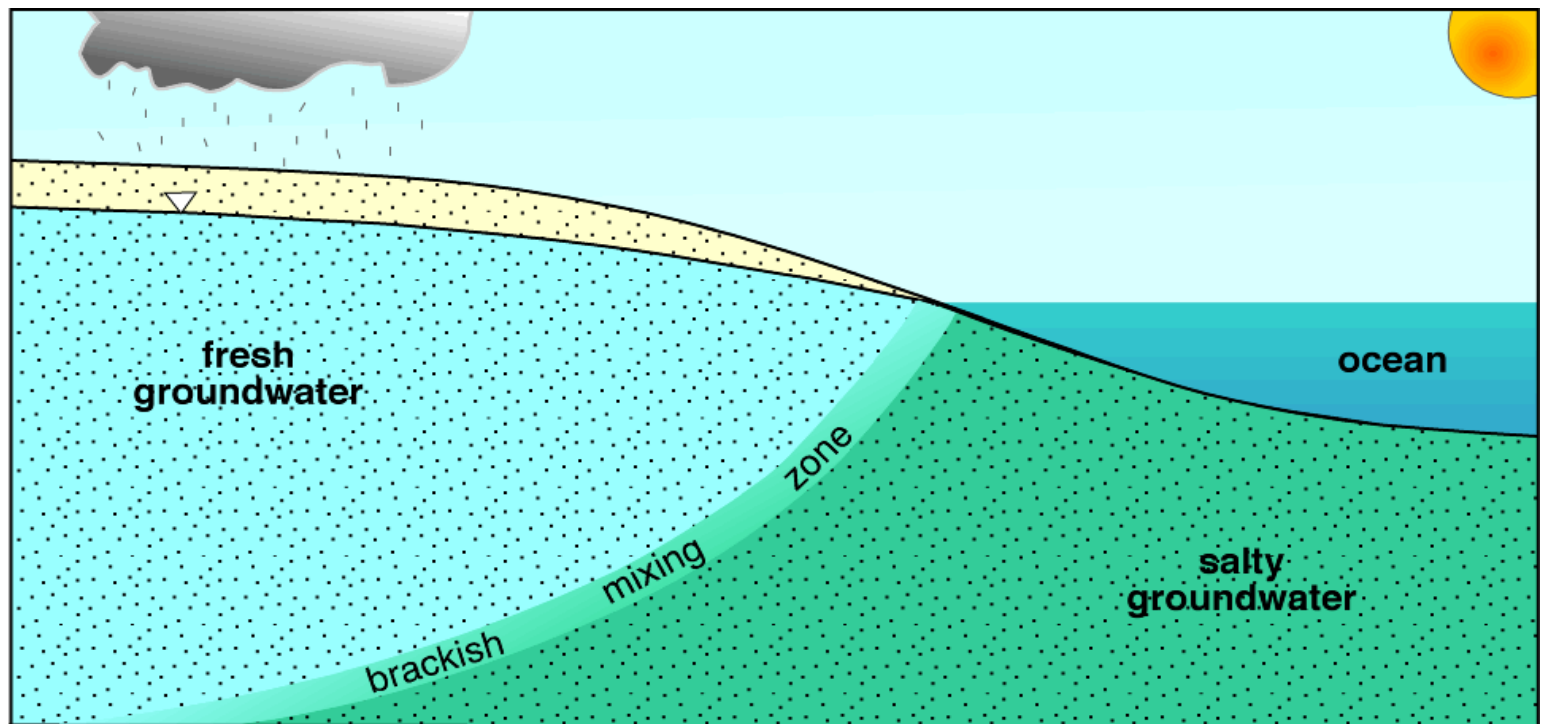


## U.S. Army Corps of Engineers – Civil Works

- > Potential relative sea-level change must be considered in every Civil Works USACE coastal activity as far inland as the extent of estimated tidal influence.
- > Three Tiers of Analysis:
  - Decision Context
  - Without-Project Forecast
  - Alternative Development

# Water Management District Permits

- > Both CUPs and ERPs require evaluation of the potential for salt water intrusion under the Basis of Review.



## The President's Climate Action Plan (June 25, 2013)

- > To prepare for climate change impacts, the Obama administration intends to focus on **three initiatives**:



1. “Building stronger and safer communities and infrastructure, including establishing **local task forces** on climate preparedness...;

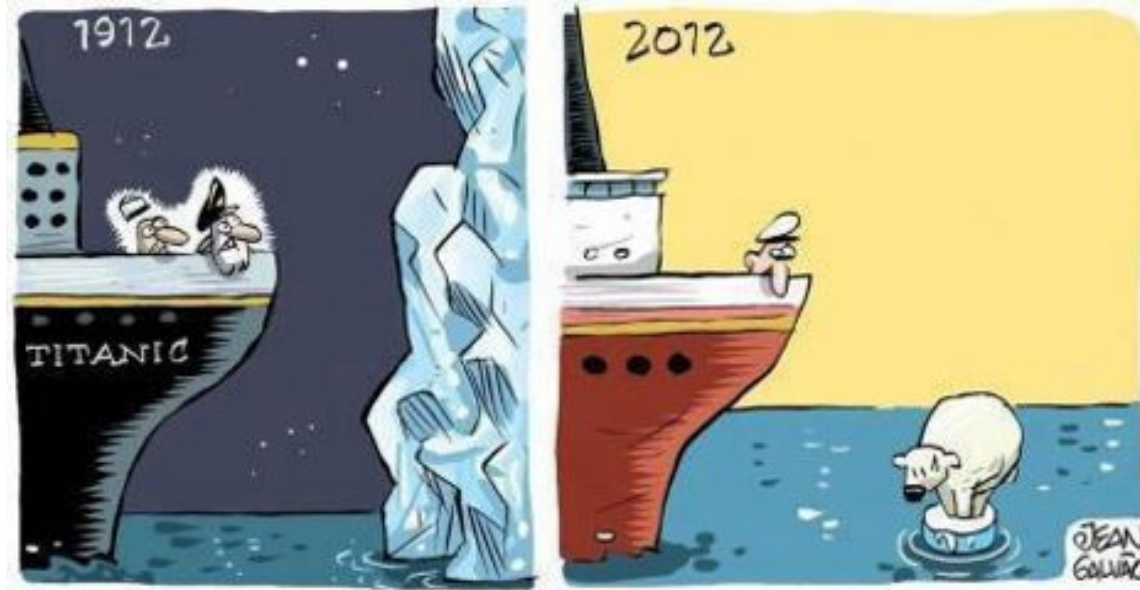
## The President's Climate Action Plan (June 25, 2013)

2. Protecting the economy and natural resources, including identifying **vulnerabilities of key sectors** to climate change and support climate resilient investments; and
3. Providing tools using **sound science** to manage climate change impacts.”



## Challenges for Adaptation

- > Data – the lack of “sound science” or inconclusive data
- > Climate Change Impacts – Impacts are widely varying and across a multiplicity of contexts, resources
- > Conflicting Priorities, Even Among Governmental Agencies



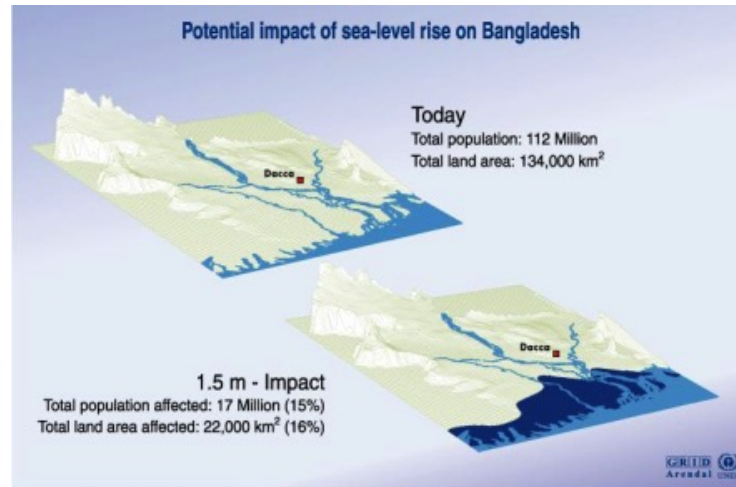


# Challenges for Adaptation: Miami-Dade County Consent Decree for Sewer System Upgrades



[http://environment.newscientist.com/channel/earth/mag12526141\\_606-huge-sea-level-rises-are-coming--unless-we-act-now.html](http://environment.newscientist.com/channel/earth/mag12526141_606-huge-sea-level-rises-are-coming--unless-we-act-now.html)

## What is Projected - sea level



Source: UNEP/GRID Geneva; University of Dacca; JPO Munkin; The World Bank; World Resources Institute, Washington D.C.

[http://maps.grida.no/go/graphic/potential\\_impact\\_of\\_sea\\_level\\_rise\\_on\\_bangladesh](http://maps.grida.no/go/graphic/potential_impact_of_sea_level_rise_on_bangladesh)

## Challenges for Adaptation: Miami-Dade County Consent Decree for Sewer System Upgrades

- > U.S. EPA filed suit against Miami-Dade County for numerous unpermitted releases of sewage into the Biscayne Bay Aquatic Preserve in **violation** of the Clean Water Act.
- > EPA and Miami-Dade negotiated the terms of consent decree that would require the County to **fund and upgrade** its infrastructure improvements, estimated to cost in the billions of dollars over the term of the consent decree.



## Challenges for Adaptation: Miami-Dade County Consent Decree for Sewer System Upgrades

- > Environmental groups intervened in the suit and challenged the proposed consent decree, arguing that it **does not appropriately address sea level rise and other climate change impacts**.
- > More specifically, intervenor Biscayne Bay Water Keeper, seeks to block the entry of the consent decree. BBWK claims that the consent decree **fails to address sea level rise** as required and will require the expenditure of billions of dollars of public monies on infrastructure projects that are not sustainable over the long term.
- > DOJ, on behalf of EPA, rejected the arguments, on the grounds that the climate change considerations do not meet “relevance requirements” under the applicable rules of federal procedure because the **intent of the consent decree is to address sewer overflow violations**.

## Challenges for Adaptation: Miami-Dade County Consent Decree for Sewer System Upgrades



- > Citing to the post-Hurricane Sandy appropriations laws that require the implementation of resiliency planning initiatives to reduce the risks of climate change, BBWK countered that EPA was refusing to apply its own policies and allowed Miami-Dade to ignore its own policies by proposing a \$ 1.5 billion capital improvements plan that ignores the effects of climate change.

## Challenges for Adaptation: Miami-Dade County Consent Decree for Sewer System Upgrades

- > On Feb. 10, 2014, federal district judge Moreno heard the parties' arguments and vowed to rule quickly.
- > DOJ argued at the hearing that **“while climate change is quite possibly the biggest issue facing our generation”** the decree did not need to address specific violations over a 15-year span that would not require sea-level rise modifications. The DOJ attorneys reportedly stated that no other consent decree in the nation has imposed client-change measures.
- > Meanwhile, Miami-Dade County has characterized the delays associated with the entry of the consent decree due to the Intervenors' challenge as having **“exceeded the most pessimistic projections,”** underscoring the pressure on the County to proceed with the billion-dollar repairs to its deteriorating system.



## What is Miami-Dade County doing?



- > Accelerating adaptation planning process by seeking and formally selecting relevant expertise.
- > Establishing formal oversight and dedicate sufficient resources and staffing to ensure implementation and update Climate Change Advisory Task Force (CCATF) recommendations.
- > Implementing Adaptation Actions Areas (AAA' s) called for in the Comprehensive Development Master Plan (CDMP), incorporating sea level rise and storm surge risks.
- > Developing insurance mechanisms to provide assistance to victims of climate change.

## What is Miami-Dade County doing?

- > Working jointly with SE Climate Compact partners to conduct a comprehensive study and develop adaptation strategies to address potential flood damage reduction and saltwater intrusion.
- > Supporting everglades restoration through lobbying efforts and strategically utilizing and fully funding acquisition and management needs for County's Environmentally Endangered Lands Program (EEL).



## Miami Beach Stormwater Pumps – An Interim Solution to Climate Change



- > Stormwater Management Plan was one of the first municipal plans in the region to account for projected sea level rise.
- > A portion of the Plan includes installing approximately 60 pumps, and backflow preventers, throughout the City to minimize flooding.
  - Installation of pumps estimated to cost between \$350-500 million.
- > In the Fall of 2014, the first pumps, each of which can move 14,000 gpm, were installed – at a cost of \$15 million.



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> Source: <http://www.cleanwateraction.org/issue/protecting-americas-waters>