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Memorandum

To: Dale Hall, Director of the U.S. Fish and Wildlife Service

From: Glen Salmon, Co-Chair, Joint Federal/State Task Force on Federal Assistance Policy
Mitch King, Co-Chair, Joint Federal/State Task Force on Federal Assistance Policy

Subject: Compliance Issues in the Division of Federal Assistance

State fish and wildlife agencies and the U.S. Fish and Wildlife Service Division of Federal Assistance have a shared responsibility for the administration of the Wildlife and Sport Fish Restoration Programs and other Federal Assistance programs within the Service. One component of this relationship involves compliance with Federal statutes and regulations, particularly those associated with the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA).

Federal Assistance staff in both the States and Service have raised several issues regarding compliance. These issues have been brought to the Joint Federal/State Task Force on Federal Assistance Policy (JTF) for review and action.

These issues include the following:

1. Service Regions appear to have different processes for compliance. For example, some Regions delegate substantial authority to the Division of Federal Assistance for ESA and NEPA compliance while others place control in Ecological Services and Habitat Conservation. Where substantial authority is not granted to the Division of Federal Assistance, grant approval tends to require extraordinary time and effort for compliance.

2. State Fish and Wildlife Agencies have technical knowledge and experience regarding Federal Assistance projects and as a result do most of the staff work for Federal compliance. However, in some Service Regions, States are not called upon to participate in or contribute to compliance decision making on the Federal level. Moreover, States have not been consistently involved in programmatic issues, such as the application of categorical exclusions.

3. In some cases, States avoid using Federal Assistance funds on projects that trigger ESA, NHPA or NEPA compliance. This is because either the Federal compliance process is burdensome or the Service does not recognize or rely on State expertise and procedures to aid in Federal compliance.

4. In some cases the threat of litigation extends the compliance process, requiring compilation of an excessive administrative record to support a decision.

Given these issues, the JTF respectfully recommends that the Assistant Director for Wildlife and Sport Fish Restoration work with other members of the Directorate to review the administration of compliance programs associated in the Division of Federal Assistance with the following considerations:

- Assign coordination for ESA, NEPA, and NHPA compliance to the Division of Federal Assistance for grant programs under their administration.

- Identify and communicate "best practices" for complying with ESA, NEPA, and NHPA to the Regional Federal Assistance Managers.

- To the extent feasible, share responsibility and authority with State fish and wildlife agencies for compliance.

- Working collaboratively with the States and, based on years of monitoring project outcomes, develop additional categorical exclusions under NEPA.

The JTF recognizes that compliance with ESA, NEPA, NHPA, and other established compliance regulations is of paramount importance to the natural resources of this country. The long-standing partnership between the Service and States provides a unique opportunity to insure effective compliance in an efficient manner.