

**Joint Federal/State Policy Task Force
Portland, Maine - August 11 and 12, 2009**

Meeting Notes

Tuesday, August 11

8 am - **Welcome Remarks and JTF Member Introductions**
Hannibal Bolton/Kelly Hepler

All members present except Dave Schad (MN DNR) and Robyn Thorson (FWS).

The JTF invited the following individuals to participate in the meeting because of their expertise on the issues under consideration: Glen Salmon, USFWS, Deputy Assistant Director of Wildlife and Sport Fish Restoration; and Gary Armstrong, Federal Aid Coordinator, Indiana Department of Natural Resources, Division of Fish and Wildlife.

8:30 - **Status of Action Items from February JTF Meeting -**
Tom Barnes and Small Group leads

Tom suggested that small groups have appointed leaders in order to facilitate more efficient follow up. The JTF agreed that this would be done in the future.

A handout was provided with the status of each action item. Items listed below require additional follow up:

#6 – Lisa will follow up on this. If the language has not been drafted, she will draft some.

#7 –Larry thinks the new 50 CFR 80 deals with this issue succinctly. The small group will make their recommendation shortly.

#8 – John Organ suggesting including the word “control” in the definition. This language had been included originally and was later removed. License funds need to be under the “control” of the state director.

9:00 - **Update on Wallop-Breaux – Issues & Contingencies -**
Hannibal Bolton/Kelly Hepler/Steve Barton

Steve provided an update of the Wallop-Breaux reauthorization. There may be an 18-month extension of transportation-related issues. On the Senate side, FWS has reviewed and commented on that proposal. On the House side, they would like to move forward on the reauthorization. A few weeks ago the House Coast Guard Maritime Committee requested drafting assistance, which the Coast Guard provided. As worded, the draft would reauthorize the Wallop-Breaux amendment and make some changes to administration amounts that would be comparable to the AFWA/NASBLA consensus agreement. Three or more Bills may be drafted.

Glen recognized the excellent work that Ron Regan of AFWA had done with the Angler and Boater Alliance and getting people to develop consensus documents.

9:30 - **State Closures re: Recreational Fishing – Glen Salmon**

The JTF discussed the American Sportfishing Association's (ASA) perspective on how Marine Protected Areas (MPA) should be factored into state Sport Fish Restoration appropriations. The JTF discussed this issue and the proposed language in 50 CFR 80 in 80.50 (b)(vi) (activities that are eligible) and 80.51 (d) (activities that are ineligible). This language was derived from the Multistate Conservation Grant Program. Alternative language has been drafted if these edits are not accepted. Both have the support of ASA

This issue will be discussed in more detail by a small group.

10:30 - **Break**

10:45 - **Review of 50 CFR 80 and comments received by States and Regions - Joyce Johnson/Tom Barnes**

Joyce explained that last year, during the license certification revision, FWS received additional comments that needed to be addressed. This is the first major revision of 50 CFR 80 since 1985 when Wallop-Breaux was authorized and is a major accomplishment. The JTF reviewed the edits proposed by FWS at the February 2009 meeting and the Wildlife and Sport Fish Restoration Program staff subsequently spent significant time soliciting additional comments and developing the current draft. The State Directors have been notified and were given an explanatory document that identified the major changes for their review. Tom incorporated most of the comments received but has summarized six issues that the JTF needs to assist with and clarify as conflicting comments were received. Hannibal recognized Tom's excellent and diligent work on the 50 CFR 80 revisions.

While the current draft of 50 CFR 80 has been distributed widely for review, some states have not yet commented, possibly due to the financial crises many have faced. The JTF discussed opportunities for obtaining more input from states using AFWA's upcoming Annual Meeting in September. The timeline will be revised to allow additional opportunities for input. A letter will be drafted to select AFWA committees with a request for comments on specific parts of 50 CFR 80 to obtain clarification on issues that have received conflicting feedback. Publication in the Federal Register will also provide another opportunity for states to comment. States are encouraged to suggest outcomes as opposed to specific language in order to accommodate the need for policies to be written in plain language.

As a reminder, Tom provided the overview of a white paper that reviewed the reasons for regulation, which include:

- Filling in the gap of an incomplete statute;
- Be permanent and have the effect of law;
- Address a policy that has been, or is expected to be, challenged;
- Used as a vehicle for public input.

Issue 1: Who should own interests in real property acquired under a grant?

DJ states that title should be vested with state but PR does not. A small group will address this issue and these related concerns:

- How to address the loss of control of management of a property;
- When states purchase land they must ensure the management of that property is consistent with the purpose of the grant in which it was purchased for;
- The inconsistency between PR and DJ;

-The potential problems of a State fish and wildlife agency and a subgrantee owning real property as tenants in common.

Issue 2: Should the net revenue of a multiyear license be in close approximation with the net revenue of the corresponding single-year license?

This wording generated significant opposition. A small group will address this issue and these related concerns:

- Consider net versus revenue;
- Consider that the purpose of purchasing a multi-year license is to do so at a reduced rate in order to encourage participation;
- In a separate part of 50 CFR 80 a \$1 revenue minimum is already established;
- Consider how “close approximation” is determined.

Issue 3: Should a state fish and wildlife agency count hunting and fishing licenses for certification if the agency received funds from the state to pay the fees normally charged for that category of license?

This wording generated significant opposition. A small group will address this issue and these related concerns:

- How to identify license buyer?
- Could this give a state an advantage over another state? Could additional language be included to ensure the payment is consistent with license costs?

Issue 4: Should a substantially completed project, especially one involving the purchase of real property, be allowed as a preagreement cost?

This language is more liberal than previously included and is a clarification of JTF policy. If a state can establish that the cost would have been approved if it were incurred during the cost period FWS can accept the preagreement costs. The JTF made no recommended changes to the language, which will continue to be reviewed by states.

Issue 5: Should we require a 10% minimum Federal share in grants?

The JTF made no recommended changes to the language drafted, which will continue to be reviewed by states.

Issue 6: Should the regional director approve a state fish and wildlife agency’s determination that real property is no longer useful or needed for its originally authorized purpose?

The JTF discussed the importance of making land disposition decision after careful consideration in order to protect the integrity of the program. A small group will address this issue

12:30 pm- **Lunch**

1:30 - **National Emergency Response Funding** - Mike Piccirilli

Mike provided the context for this issue. If a state fish and wildlife agency directs its staff who are paid with license funds to respond to a declared emergency, the agency should seek to be reimbursed as stated in an e-mail memo from Mitch King September 2, 2005 relative to Hurricane Katrina. However this memo does not clarify the issue completely.

States have experienced that FEMA does not reimburse the state agency for labor cost associated with standard 40 hour/week in state while working national disaster events.

Overtime costs in state and all labor costs out of state while working national disaster events are reimbursed. There is also this matter of justifying the expenses to an auditor.

The JTF discussed the issue and recommended that a policy be developed regarding state fish and wildlife agencies seeking reimbursement for emergencies declared by a state governor or the U.S. President noting that Executive Orders often supersedes federal laws. A small group will address this issue but not during this meeting. A small group will meet between JTF meetings and bring a draft policy for review at the next meeting.

2:45 - **Break**

3:00 - **Status of Service Manual Chapters** - Joyce Johnson/Tom Barnes
Tom provided an update on the status of the revision of the manual chapters. Glen acknowledged the need for this effort and recognized the large amount of effort that is going into the revisions.

3:30 - **Identify issues & break to small groups** - Kelly Hepler/Hannibal Bolton

Group 1: John Organ, Kelly, Mike, John Frampton and Ken

- State Closures re: Recreational Fishing
- 50 CFR 80 Issue 6

Group 2: Carol, Larry, Jon Gassett, Joyce, Tom

- 50 CFR 80 Issue 1

Group 3: Lisa, Glen, Keith, Gary, Steve

- 50 CFR 80 Issue 2
- 50 CFR 80 Issue 3

5 pm - **Adjourn**

Wednesday, August 12

8 am - **Continue in small groups**

9:30 - **Small group report out** - Small group leads

Group 1:

Topic: State Closures re: Recreational Fishing:

Recommendation: The current language is sufficient.

50 CFR 80 Issue 6: Should the regional director approve a state fish and wildlife agency's determination that real property is no longer useful or needed for its originally authorized purpose?

Recommendation: Proposed revised wording of 80.137 from the current language to:

“If the state fish and wildlife director and the Regional Director together concur that the real property is no longer useful or needed for its original purpose, the state fish and wildlife agency must:

- (a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or
- (b) Request disposition instructions for the real property.”

Group 2:

50 CFR 80 Issue 1: Who should own interests in real property acquired under a grant?

Recommendations:

- a) Should a subgrantee be able to hold title to possessory interests (fee title and leasehold) in land acquired under the Pittman-Robertson Wildlife restoration Act? Legally yes in regard to PR, but not in DJ.
- b) Should easements be held by the State fish and wildlife agency alone? In regard to DJ, yes but not in regard to PR. However, according to 43 CFR 12 it must be a state or subgrantee, no third party and the original grantee is held responsible.
- c) Should easements be held by the State fish and wildlife agency and a subgrantee together?
The small group recommends changing the word “should” to “may.”
- d) Should easements be held by a subgrantee alone?
It is possible in regard to PR, but not in regard to DJ.

The JTF discussed whether or not the language from DJ should also be applied to PR through the rulemaking process for consistency. It was decided that more input from states would be solicited on this point in future reviews, especially from federal aid coordinators and lands specialists. A white paper will be drafted under the lead of John Organ. This paper will be reviewed by Carol and Larry. A letter will be sent to AFWA committees to request input on this point in addition to the other 50 CFR 80 issues.

Group 3:

50 CFR 80 Issue 2: Should the net revenue of a multiyear license be in close approximation with the net revenue of the corresponding single-year license?

Recommendation: Replace p.10 80.34 (d) 1 with:

“The net revenue from the license must be at least one dollar for each year in which the license is valid.”

50 CFR 80 Issue 3: Should a state be able to count hunting and fishing licenses for certification if the agency received funds from the state to pay the fees normally charged for that category of license?

Recommendation: Add to 80.34 C:

“A state may provide funds other than revenue generated from the sale of hunting and fishing licenses for the purchase of a license provided that:

- i) State funds equal or exceed the full price for the license that the licensee would have paid, and
- ii) the license is issued in the licensee’s name at no cost to the licensee, and
- iii) the state funds must be accounted for as license revenue, and
- iv) the license purchase meets all other requirements of 50 CFR 80.”

10:30 - **Additional Issue:****Add:**

80.21 What if a State diverts license revenue to purposes other than administration of its State fish and wildlife agency?

If a State diverts license revenue *from the control of the State fish and wildlife agency* to purposes other than management of fish- and wildlife-related resources for which the State fish and wildlife agency has authority under State law, the Director may declare the State to be in diversion. The State is no longer eligible to receive the benefits of the pertinent Act from the date the Director signs the declaration of diversion until the State resolves the diversion.

10:45 - **Next Action Items** - Kelly Hepler/Hannibal Bolton

-Need better communication in regard to new members and transitioning members. Carol suggested using AFWA's Director's Line. Carol will complete this.

-Previous Action Item #6 –Lisa will follow up on this to see if it was completed. She thinks it may have been done before the TFC meeting in March. She will call Mitch and see if he got what was needed. Lisa will share the language if it exists, or draft new language.

-Previous Action Item #7 – examine when federal funds may be used as match. The small group needs to make a recommendation. Larry thinks the new 50 CFR 80 deals with this issue succinctly. Cite the types as examples and do not provide an exhaustive list. The small group may be close to completing this. Joyce will follow up on the completion of this item.

-50 CFR 80

- Draft charge to AFWA committees (Kelly)
- Revise timeline (Joyce)
- White paper re: PR/DJ consistency with title vesting (John Organ will write, Carol and Larry review)

-National Emergency Response Funding Small Group (Mike – will draft and arrange small group)

11:30 - **Logistics for next JTF Meeting** (Feds turn; western location; i.e. Salt Lake, Denver, Portland, Seattle)

The next meeting will be held in the Denver area, possibly Boulder April 12-14, 2010 and will be planned around the Chiefs and Federal Aid Coordinators Working Group meetings.

Noon - **Adjourn**