

**Federal/State Policy Joint Task Force Meeting**  
**August 16, 2011**

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**Members Present:** Steve Barton, Kelly Hepler, Lisa Evans, Jon Gassett, Mike Piccirilli, John Organ, Larry Mellinger, Carol Bambery, Michael Marcum, Wayne MacCallum, Hannibal Bolton, Joyce Johnson, Thomas Barnes, Stephen Guertin, John Frampton, Sue Detwiler, Bob Brocheid

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**Summary of Actions Taken:**

- **Action Item:** JTF will work to revise the language of 80.35(b) and (c) (it will be a targeted rulemaking). The small group will prepare an interpretive memo (temporary fix to provide guidance) signed by the director to clarify the intent. Small Group will be Carol, Tom, Larry, Steve, and John F.
  - **Action Item:** The next step: Draft letter on behalf of JTF and send it out with timeline for implementation; need to decide how many people we want on policy team. Steve Barton and Gary Taylor will draft letter on behalf of JTF.
  - **Action Item:** Desired Outcome: clear guidance on eligible R&R activities
    - 1) Solicit information (guidance to the states is needed to make it clear that education is not always the same as R&R; R&R is not always marketing) from AFWA committees at AFWA's Annual Meeting (Michael Marcum will send letter/questions to Hunting and Shooting Sports Participation Committee, Fish and Wildlife Trust Fund Committee, and Fishing Boating Committee to provide some input): identify suite of perceived needs and activities related to effective R&R programs.
    - 2) Develop draft guidance (Lisa and John O.) on eligible R&R activities and funding sources (e.g., aquatic education, section 10, 4(c), regular PR, boating access, outreach).
    - 3) Send draft guidance to subgroup of state-federal R&R experts.
    - 4) Bring to JTF for review at February meeting.
    - 5) JTF will follow normal process.
  - **Action Item:** JTF needs to solicit input from the regions for issues to discuss at the next meeting prior to the next meeting in February 2012.
  - **Action Item:** Larry Mellinger's small group will send a draft of 50 CFR 80.35(b) and a draft director's memo clarifying existing 80.35(b) regulations.
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**-Meeting Commenced at 8:23am-**

**Welcome and Introductory Remarks** (Hannibal Bolton/Kelly Hepler)

**Welcome to Ft Baker and Cavallo Point Lodge** (Howard Levitt, Director of Communications & Partnerships, Cavallo Point Lodge)

**Summary/Status of Action Items from February 2011** (Joyce Johnson)

- Action items found in Tab 2 of Binder

**Wallop-Breaux Reauthorization and WSFR Administration** (Hannibal Bolton/Steve Barton)

- White House has cleared the reauthorization wording.
- Had several meetings with House and Senate Resource Committee.
- Currently tied into Transportation Bill.
- Current reauthorization expires Sept. 30<sup>th</sup>. We anticipate a continuing resolution.
- Language change: effect on states \$1.4 million spread across the 50 states and 6 other jurisdictions.
- No change in wording from last Congress; it is taking time getting approval from Congress and the White House.
- Sport Fish Restoration: Interest has gone from \$72 million to \$32 million to \$0; affected receipts; seeing recovery of receipts on import duties (up 3.4%).
- Wildlife Restoration: Archery equipment and arrow shafts up; pistols and revolvers down; ammo down. FY12: Revenue estimate range is \$344-377 million (average of 376 million; down 7%).
- Administrative Activities: FY11: Budget \$22.6 million; things are tight. Depending on reauthorization bill, we are not expecting a lot of change in FY12; Meeting in Denver in November: budget issues will be a major topic including land owner improvement program funding, wildlife and sport fish restoration funding, state and tribal wildlife grant program funding.
- The Coastal Impact Assistance Program is being transferred to the WSFR program. It affects 76 entities (6 states and coastal parishes and counties are eligible for grant monies).

**50 CFR 80 – Review of Final Rule** (Tom Barnes/Joyce Johnson)

- Completed rulemaking; published final rule; will become effective on August 31<sup>st</sup>. PR passed in '37; DJ passed in '50. No major revisions since the 1980s. 2008: rulemaking targeted to license certification issues and other minor issues.
- 26 states responded to 2008 rulemaking; brought up a number of problems that needed to be addressed; 2010: discussed issues with states.
- Grants are not required to have regulations by law. But regulations are the main way that the Federal Government speaks to non-federal entities.
- June 10<sup>th</sup>: proposed rule published; 10 states and 2 non-profits commented on proposed rule; August 1<sup>st</sup>: final rule published.

## **Final Rule Changes**

**See Tab 3 materials from JTF Meeting Binder.**

**Section 80.2: What terms do I need to know?** New definitions added:

- Capital improvement: threshold \$10,000; if you have a capital improvement, grantee has responsibility of managing it for the purposes of the grant.
- Fee simple: when you own the whole bundle of legal rights connected with the land (except powers reserved to the government).
- Definition of Personal Property (including intellectual) and Real Property (land or structure attached to land including trees).
- Wildlife: restricted to wild birds and mammals.

**Section 80.12: Does an agency have to confirm that it wants to receive an annual apportionment of funds?**

**Section 80.21: What if a State diverts license revenue from the control of its fish and wildlife agency?**

**Section 80.22: What must a state do to resolve a declaration of diversion? (addition to existing requirement)**

**Section 80.31: How does an agency certify the number of paid license holders? (new requirement)**

**Section 80.33: How does an agency decide who to count as paid license holders in the annual certification?**

**Section 80.35: What additional requirements apply to multi-year licenses?**

- IMPORTANT NOTE: We need to further develop the definition of “in close approximation of single year license net revenue.” The definition is ambiguous. \*JTF discussed definition of “close approximation to net revenue received.” In the final rule published in 2008, the language was the same as the current rule. In 2008: left it vague so that reasonable people would understand close approximation that some degree of discount occurs.
- Concern: What we have seen is that certain states are creative in their method of getting a larger piece of the pie to the detriment of other states. How do we make it fair and equitable? Many states have special licenses for seniors or handicapped individuals.
- A state can create any class of license and set the fee.
- Great impact on the states: senior licenses and multiyear licenses, so new rulemaking might be the best option. We could withhold or withdraw this rule and then complete the new rulemaking before next year’s deadline.
- Close Approximation language is the issue; can we do something short of a rule change (a policy interpretation regarding how to apply the rule)?
- The members of the JTF did not reach a general consensus on how to resolve the question.

### **Options for moving forward:**

- Option 1: we can explore other options before discussion of this issue moves forward in a big or small group
- Option 2: we can go through the normal JTF procedures for preparing a white paper, organizing a small group discussion, and preparing a recommendation for the group
- Option 3: start rulemaking again to correct the ambiguity
- Option 4: work within this rule to determine correct interpretation of the rule and implement with a policy clarification

### **-Break (10:10am-10:30am)-**

- Targeted rulemaking could take less than 6 months.
- Do we have a consensus of what we want it to say? Can we come up with the interpretation we want within the existing regulation or do we need to revise the language?
- ***Small Group: To provide a consensus language for clarification of 80.35(b) and (c).***
- This issue of close approximation was addressed at JTF Portland, Maine Meeting in a small group regarding whether \$1 net revenue was close approximation; senior license is different from regular annual license in terms of how net revenue is calculated. The JTF did not reach a final resolution.
- Special licenses categories such as senior license or veterans' license are permitted and can be multiyear.
- PR provisions do not limit the state from creating special categories of licenses.
- Recommendation not to change the license but to revise the interpretation.
- Group got together to prepare interpretive memo to be signed by the director that explains what the parameters are for a regular multiyear license with a discount and the parameters for a special license.

### **Recommendation:**

- 1) Regulations stay as they are (no change to the existing regulation);
- 2) JTF will work to revise the language of 80.35(b) and (c) (it will be a targeted rulemaking)
- 3) The small group will prepare an interpretive memo (temporary fix to provide guidance) signed by the director to clarify the intent. Small Group will be Carol, Tom, Larry, Steve, and John F.

***ACTION ITEM: JTF will work to revise the language of 80.35(b) and (c) (it will be a targeted rulemaking). The small group will prepare an interpretive memo (temporary fix to provide guidance) signed by the director to clarify the intent. Small Group will be Carol, Tom, Larry, Steve, and John F.***

### **Section 80.36: May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?**

- Answer to the question is “yes.”
- Conditions eliminate funds being diverted.
- Must be treated the same as a regular license (must be issued using unique identifiers or in the license holder's name).

**Section 80.37: What must an agency do if it becomes aware of errors in its certified license data?**

- Have 90 days to report errors.

**Section 80.38: May the Service recalculate an apportionment if an agency?**

- After final apportionment, would only recalculate if it doesn't reduce the funds to other states.

**Section 80.50: What activities are eligible for funding under the PR act?**

- Coordination of grants added.

**Section 80.51: What activities are eligible for funding under the DJ act?**

- Coordination of grants added.
- Added stocking fish for recreational purposes.

**Section 80.52: May an activity be eligible for funding if it is not explicitly eligible in this part?**

- Clarifies that list of eligible activities is not closed.

**Section 80.54: What activities are ineligible for funding?**

- Expands the scope of an ineligible activity specifically dealing with public relations activities.

**Section 80.85: May an agency receive a grant to carry out part of a larger project?**

- Confirms eligibility of an existing practice.

**Section 80.60: What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhance Hunter Education and Safety Program?**

- Explains hunter education and safety.

**Section 80.65: Does an agency have to allocate funds between marine and freshwater fisheries projects?**

- Clarifies an existing requirement.
- Under national survey, most states have more freshwater anglers than saltwater anglers.

**Section 80.66: What requirements apply to allocation of funds between marine and freshwater fisheries projects?**

- New requirement added.

**Section 80.67: May an agency finance an activity from more than one annual apportionment?**

- Extends an authorization from DJ Act to Projects under PR Act.

**Section 80.81: What must an agency submit when applying for a comprehensive management system grant?**

- Explains a legally authorized procedure.

**Section 80.82: What must an agency submit when applying for a project-by-project grant?**

- Requires an applicant to state the purpose of the project.

**Section 80.83: What is the Federal share of allowable costs?**

- Easing of existing restriction (10% minimum).

**Section 80.84: How does the Service establish the non-Federal share of allowable costs?**

- Implements existing legal requirement regarding territories.

**Section 80.85: What requirements apply to match?**

- New requirement based on service manual chapter.

**Section 80.91: What is a Federal obligation of funds and how does it occur?**

- New definition for “Federal Obligation.”

**Section 80.92: How long are funds available for a Federal obligation?**

- Correction of an existing regulation (corrects existing 80.80).

**Section 80.94: May an agency incur costs before the beginning of the grant period?**

- Changes existing requirements.

**Section 80.95: How does an agency receive Federal grant funds?**

- Clarifies that an advance is possible.

**Section 80.96: May an agency use Federal funds without using match?**

- Explains that an exception may be possible in the case of in-kind contributions.

**Section 80.97: May an agency barter goods or service to carry out a grant-funded project?**

**Section 80.98: How must an agency report barter transactions?**

- New section added.

**Section 80.100: Does an agency have to display one of the symbols in this part on a completed project?**

- Authorizes regional director to approve the use of symbols in some situations.

**Subpart I – Program Income (Section 80.120-80.126)**

- Applies program income requirements of 43 CFR 12.65 to projects funded by PR and DJ acts.

**Section 80.130: Does an agency have to hold title to real property acquired under a grant?**

- Clarifies an existing requirement.

**Section 80.131: Does an agency have to hold an easement acquired under a grant?**

- Provides an alternative.

**Section 80.134: How must an agency use real property?**

- Clarifies an existing requirement.

**Section 80.136: Is it a diversion if an agency does not use grant acquired real property for its authorized purpose?**

- Clarifies an existing requirement.

**Section 80.137: What if real property is no longer useful or needed for its original purpose?**

- New requirement added.

**Section 80.150: How does an agency ask for revision of a grant?**

- Clarification of an existing process.

**Section 80.151: May an agency appeal a decision?**

- New requirement added.

**Lands Chapter Review and Training – Proposed changes in real property acquisition process and upcoming external review; availability of training (Tom Barnes/Steve Barton)  
See Tab 4 of JTF Meeting Binder.**

**Authorities:**

- See 49 CFR 24 and 43 CFR 12
- Discussion regarding condemnation and perceived threat of condemnation of real property.
- Goal of the rule: Make sure landowners get a fair deal.
- Primary purpose of 49 CFR 24 is to protect the interests of the landowner.
- Exception process requires the buyer to tell the landowner what it believes the property to be worth; buyer must also explain that it will not acquire the property if they do not reach an amicable agreement. Additional requirements apply if state agency has condemnation authority.

**Real Property Law:**

- Complexity makes it difficult to establish policy.

**2 Sets of Appraisal Standards for Grant Funded Real Property:**

- UASFLA (“Yellow Book”): conforms to the basic requirements of the Uniform Act, 49 CFR 24, and Federal Court decisions in condemnation cases.
- USPAP: a standard USPAP appraisal does not comply with the basic requirements of the Uniform Act or 49 CFR 24 unless the buyer gives the appraiser assignment conditions to that effect.
- However, there are no generally accepted licensing or certification standards for reviewing appraisers despite the importance of their role in a federally funded acquisition.

**Future Service Manual chapter and regulations:**

- Possible need for separate chapter for mineral rights.

- WSFR has drafted four real property chapters that deal with grant application, acquisition, inventory, monitoring, use, control, and disposition.
- Another area that needs to be addressed: water rights (adds to the complexity of appraising real property).

### **Where are we headed?**

- Adopt as a standard acquisition approach a special process that exempts an acquisition from almost all 49 CFR 24 requirements. The grantee would have to follow only a few simple steps to qualify the acquisition for this process.
- Require an appraisal and appraisal review for all acquisitions above \$10,000.
- Allow the grantee to use USPAP for all appraisals that do not involve condemnation.
- Require a “Notice of Federal Participation” to be recorded with reference to the deed. It will have the following information:
  - 1) The specific Federal grant that funded the acquisition.
  - 2) The purpose of the grant.
  - 3) A statement that the grantee must use the real property for its authorized purpose as long as needed for that purpose.
  - 4) A statement that the State must not dispose of or encumber real property without the Services’ concurrence.
- Major issue that requires more research: Mineral rights.

### **-Lunch Break (12:13pm-1:04pm)-**

### **The Council to Advance Hunting & the Shooting Sports (Carol Bamberg/Joyce Johnson)**

- Council update and discussion of CAHSS Technical Advisory Group
- First telephone conference by Mid-September
- \$1.5 million from PR grants.
- PR Section 4(c) money (see JTF Meeting Binder Tab 7) – need to discuss ability to spend PR Section 4(c) money for CAHSS activities. Only limited to teach hunter education or operate, construct or maintain firearm and archery ranges for public use.
- 4(c) money can be given to CAHSS.
- JTF requests AFWA to provide updates regarding how the money is being distributed.
- Technical Advisory Group will protect the state and federal interests regarding the disbursement of PR money to the CAHSS. This group will serve as a way for JTF to monitor the disbursement of PR money to the CAHSS.

### **Tracking and Reporting Accomplishments for the Conservation of Species (TRACS) (Hannibal Bolton/Steve Barton/All)**

#### **See JTF Meeting Binder Tab 5.**

- Captures all of the features of FAIMS with improvements for all WSFR grant programs.
- Focused on state wildlife grants but will be used as method by which we can display to everyone the good programs that are occurring under PR and DJ grant funding. It is a new tracking and reporting data management tool of the WSFR.

- Wildlife TRACS split into two pieces: 1) Data TRACS being developed by the Program and Accomplishments Reporting Branch (geo-spatially enable to show where all of these programs are occurring), 2) Public TRACS being developed by Paladin Data Systems.
- TRACS will be rolled out in October 2012.
- Project Advisory Group with representatives from each state will be updated on the progress of this new system.
- Project Development Team (consisting of state and federal members) will test the new system.
- Discussion of Public and Data TRACS. TRACS will include a network of web services and external data sources to provide conservation program data.
- State JTF Members expressed serious concern over the role of Natureserve and state data that would be available to the public.
- Concern expressed over an increase in the workload to State Federal Aid Coordinators.
- Concern about the appropriate use of PR/DJ funding when there are other reporting programs already in place that have been used in the past. Regarding adequate reporting in the past, it is not always transparent where the excise tax dollars are going.
- Discussion of where is the money going. TRACS will show the location of where the money is going and where conservation progress has been made. We need to show how effective the grants are.
- A state can choose to contract with Paladin for additional features in Public TRACS.
- Senior policy level representative from the states need to be involved in this TRACS database (especially as it relates to working with proprietary data).

***ACTION ITEM: The next step: Draft letter on behalf of JTF and send it out with timeline for implementation; need to decide how many people we want on policy team. Steve Barton and Gary Taylor will draft letter on behalf of JTF.***

- We need to lay out the process on paper and develop the appropriate metrics. There is some urgency as FAIMS gets shut down in October 2012.

#### **50 CFR 86 (Tom Barnes)**

- Proposed changes in program regulations for the Boating Infrastructure Grant Program
- States are the grantees; there are also sub-grantees.
- \$12 million program (tier 1 – state applies for it; if project is eligible, it is approved up to \$100,000 annually; tier 2 – nationally competitive process that awards up to \$1.5 million annually). BIG grants provide up to 75 percent of the eligible project costs. The applicant must provide at least 25 percent from non-Federal sources.
- Changes included in Proposed Rule include establishing better ranking criteria. See JFT Meeting Binder Tab 6 for additional changes.
- Grants proposals to include costs of insurance policy? Cannot spend more on insurance than what the program is worth (present value).
- Tier 1 (Basic BIG) proposed to include statewide administration

**License Certification Issue (Larry Mellinger, John Organ, John Frampton, Tom Barnes, Steve Barton)**

- Discussion about whether a state can legally certify a combination license (counted as both a paid fishing and hunting license) when an individual buys a hunting license and receives a “free” fishing license?
- By doing this, states are taking advantage and getting Federal Aid money.
- It was suggested that this issue be discussed in an agenda item at an AFWA Executive Committee Meeting.
- How do we resolve this issue? No resolution at this time. This issue will be discussed further in the future.

**Eligibility of Hunter and Angler Recruitment & Retention Activities for PR/DJ funding (Lisa Evans and John Organ)**

- Use of WR subaccounts (Sections 4a, 4C, and 10).
- A white paper authored by Tom McCoy (FWS) and Lisa Evans(AK) was distributed at the February 2011 JTF meeting.
- Follow-up: reach out to the Chiefs and Coordinators to assess whether there is inconsistency among regions in terms of what R&R activities are deemed eligible or if the grant proposals were questioned for other reasons.
- If needed, JTF action will be recommended.
- States agree that there needs to be some guidance under PR for what constitutes an R&R activity. This will help them in submitting future grant proposals. Some examples would be helpful.
- R&R mostly tied to educational activities. Marketing and Advertising for shooting ranges ineligible.
- Recruitment definition summary: attempt to engage or entice people to participate in hunting or fishing.
- Recruitment is actively marketing? It is a combined effort of marketing and education.
- Through a collective effort, we are just now learning what effectively works to aid in R&R.
- 50 CFR 80.51(d)(2): includes improving communication with anglers, boaters, and the general public on sport fishing and boating issues.
- What is it that we want to fund regarding recruitment with PR/DJ dollars?
- We want to make sure to get appropriate input and give this appropriate thought because some programs will be eligible and some will be ineligible.
- Prepare new White Paper for JTF to review.

***ACTION ITEM: Desired Outcome: clear guidance on eligible R&R activities***

- 1) Solicit information (guidance to the states is needed to make it clear that education is not always the same as R&R; R&R is not always marketing) from AFWA committees at AFWA’s Annual Meeting (Michael Marcum will send letter/questions to Hunting and Shooting Sports Participation Committee, Fish and Wildlife Trust Fund Committee, and Fishing Boating Committee to provide some input): identify suite of perceived needs and activities related to effective R&R programs.***

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- 4) *Bring to JTF for review at February meeting.*
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**NEXT JTF MEETING:**

Steve G. will provide local arrangements for February 2012 meeting and will coordinate with Kelly H.; Location: Denver. Possible Venue: Comfort Inn Suites near airport or Omni. Tentative Dates: January 30<sup>th</sup> and February 2<sup>nd</sup> travel dates. Meeting on January 31<sup>st</sup> and February 1<sup>st</sup> (noon).

June: 25<sup>th</sup> Travel Date. 26 & 27, done by noon on the 28<sup>th</sup>. Travel date after noon on 28<sup>th</sup> or on 29<sup>th</sup>. Alyeska, Alaska.

**-Meeting Adjourned at 5:00pm-**