

**Joint Federal/State Task Force on Federal Assistance Policy**  
*Meeting Report of August 5, 6, and 7, 2003*

The Joint State/Federal Task Force on Federal Assistance Policy met in Missoula, Montana on August 5, 6, and 7, 2003. This report summarizes the outcomes and action items resulting from that meeting. The following participants attended:

Clint Riley                Co-Chair, Special Assistant, Office of the Director, USFWS  
Terry Crawford        Co-Chair, Director, Nevada Department of Wildlife

**State Fish and Wildlife Agency representatives:**

Gerald Barnhart        Director, New York Division of Fish, Wildlife and Marine Resources  
John Frampton         Director, South Carolina DNR  
Kelly Hepler            Director, Sport Fish Division, Alaska Department of Fish and Game  
Bobbi Keeler            Federal Aid Coordinator, Montana Department of Fish, Wildlife and Parks  
Tom Niebauer            Federal Policy Advisor, Wisconsin DNR  
David Waller            Director, Georgia Wildlife Resources Division

**U.S. Fish and Wildlife Service representatives:**

Don Friberg             Chief, Division of Federal Assistance, Region 1  
Chris Hall               Regional Director, USFWS Region 2  
Chris LaMontagne      Chief, Division of Federal Assistance, Washington Office  
Mitch King              Deputy Regional Director, Region 4  
Paul Schmidt            Assistant Director, Migratory Birds and State Programs

**Additional Attendees:**

Larry Mellinger        Office of the Solicitor, Department of the Interior  
Jimmy Christenson     Chief, General Counsel Section, Wisconsin DNR  
JTF Staff                Chris McKay, Division of Federal Assistance, Washington Office  
Recorder                Jennifer Mock, International Association of Fish and Wildlife Agencies

**Joint Task Force participant unable to attend:**

Gary Reinitz            Branch Chief, Grant Operations and Policy, Washington Office

This report summarizes discussions of the August 5-7, 2003, meeting in the following manner:

- I. Update on Previous Recommendations
- II. Review of Comments Received, and Finalization of Recommendations
- III. Submission of Draft Recommendations for Comment
- IV. Next Issues for Development as Draft Recommendations
- V. Workgroup Assignments and Other Issues for Discussion
- VI. Next Meetings

The "Operations and Processes" of the Joint Task Force were summarized in report of the Nov. 13-14, 2002 meeting, and continue to describe the steps intended in order to address Federal Assistance policy issues. (Please contact any member of the Joint Task Force to obtain a copy of that report.)

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Since the last meeting, the JTF received comments from five states in Region 3 and the FWS Region 3 Office concerned that the time available to provide comments on draft recommendations was too limited to allow for productive analysis and comment. In this case, two weeks were provided in the middle of July to comment on three separate draft recommendations. The JTF appreciates this concerns, and appreciates the comments received. We will be reviewing ways to allow more time for review and comments on draft recommendations, while continuing to move forward on completing recommendations.

The JTF also received two additional comments from states in Region 6, one concerning the terms used in draft recommendations, and the other requesting a summary of proposed recommendations to assist in understanding and commenting. Terms and phrases in draft recommendations are intended to comply with standard practice and definitions in existing Federal Assistance regulations and policies. Therefore, "State fish and wildlife agency" includes reference to any agency structure responsible for fish and wildlife management, and to territories and other non-state grantees. Also, we will review the suggestion to add more explanation to draft recommendations, but will continue our intention to make the recommendations themselves as self-explanatory as possible.

#### **I. Update on Previous Recommendations**

The Director of the Fish and Wildlife Service adopted two Director's Orders following recommendations previously submitted by the JTF.

- (1) Director's Order #152: Allowable Recreational Activities and Related Facilities on Federal Assistance Lands (effective July 1, 2003).
- (2) Director's Order #156: Budget Changes in Federal Assistance Grants (effective July 17, 2003).

Information concerning the adoption of these two Director's Orders was provided by memorandum dated July 25, 2003. In keeping with the recommendation of the Joint Task Force, the FWS intends to begin the process of incorporating these into the Service Manual, which will include additional opportunity for public comment.

#### **II. Review of Comments Received, and Finalization of Recommendations**

Following its meeting on May 13-15, 2003, the JTF requested comments from State fish and wildlife agencies and from FWS offices concerning three draft recommendations: (1) Program Income, (2) Allowable Commercial Activities and Related Facilities on Federal Assistance Lands, and (3) ESA Section 7 Consultations on Federal Assistance Grants to States.

### Program Income

Comments were received from ten grantee agencies, and from nine FWS offices. A number of commenters expressed concern, in one form or another, that the draft recommendation could erode FWS oversight of State Program activities. A few of these comments specified concern regarding income that would be received by entities other than the State or a subgrantee. Other comments focused on income received outside of the grant period. The JTF discussed these points extensively, and with the assistance of legal counsel. As closely as possible, the recommendation is intended to follow existing regulations, including quoting the controlling regulations whenever appropriate. Especially concerning the issues of definition of program income and the applicable time period, existing regulations require statements more lenient, or in some cases more strict, than what some commenters preferred. Where appropriate, the recommendation addresses opportunities to include provisions in Grant Agreements that would establish additional levels of control. In response to comments, the JTF decided to use the flexibility available in regulation to more clearly allow for the use of the additive method of applying program income, but with more explicit statement that the income must be used in the program that generated it. The JTF made a number of additional revisions in response to comments, including reorganization of certain sections, clarification of examples and additional examples, and general editorial modifications.

### Allowable Commercial Activities and Related Facilities on Federal Assistance Lands

Comments were received from nine grantee agencies, and from seven FWS offices. Although most expressed general support for the draft recommendation, some commenters were concerned that it inappropriately removes FWS oversight responsibility, and that it is overly lenient towards (or even advocates) commercial use of property. The JTF discussed these issues extensively. Language was added to more expressly retain FWS authority for oversight, by adding reference to regulation similar to Section 7 of the Director's Order 152 concerning recreational use of property. While federal funds may not be used for the purpose of generating income, it was determined that there is no existing legal basis for federal policy to prohibit commercial activities that would not interfere with the purpose for which the land was acquired, developed, or is managed. While a State agency must prohibit such an activity if it does interfere, language was added to avoid the implication that state must allow an activity unless it can prove interference. Although some additional comments requested revisions not allowed within existing regulation, the JTF did make a number of additional modifications based on comments received.

### ESA Section 7 Consultations on Federal Assistance Grants to States

Comments were received from nine grantee agencies, and from nine FWS offices. In some cases, FWS Federal Assistance and Ecological Services comments from a single Region were submitted together. There was broad support for the draft recommendation and the underlying need for the guidance. However, several commenters felt the draft recommendation was still too confusing to be of immediate help. Most frequently, commenters questioned certain examples,

suggested that examples more clearly state either a "yes" or "no" answer. The JTF made a number of revisions to help clarify terms throughout the document, and modified several examples to provide more clear direction.

The JTF is currently putting all three of these recommendations into an appropriate form for submission to the Director of the FWS and the President of the IAFWA.

### III. Submission of Draft Recommendations for Comment

The Joint Task Force reviewed a draft recommendations on "Useful Life" that had been developed based on previous discussions, and after further discussion and review, the Joint Task Force is now planning to submit it to State Directors and to FWS Regional Directors and Assistant Directors for review and comment. As noted above, the JTF is considering alternative methods to collect comments. When the draft recommendation is prepared for it to be sent out for comment, additional communication will be provided at that time. Depending on the comments received, the Joint Task Force intends to finalize this recommendation at its next meeting.

### IV. Next Issues for Development as Draft Recommendations

The Joint Task Force substantively discussed one additional policy issues in preparation for development as a draft recommendation. A summary of the status of the discussion for that issue follows. (The Joint Task Force member with the lead is in parenthesis.)

#### Boating Access (Kris LaMontagne/Gary Reinitz)

The JTF discussed existing inconsistencies in interpretations of the requirement that 15% of each annual apportionment under the Sport Fish Restoration Program be used for recreational boating access facilities. It intends to begin drafting a recommendation that would confirm that these funds must be used for motorboat access (as opposed to projects that would only benefit non-motorized boats), but may broaden some existing interpretations to allow for projects that increase access beyond the boat dock itself. However, the JTF also determined that it wished to compile additional information before settling on this form of recommendation or proceeding with any recommendation at this time, including information about the status of national legislation and about current State challenges to spend required apportionments.

#### Cost Accounting and Reporting (Kris LaMontagne/Gary Reinitz)

Due to time constraints, no additional discussion was held on this topic. The Joint Task Force intends to review a Draft Recommendation, in the form of a Draft Director's Order, at its next meeting.

#### Use of Land as Match (formerly "Landbanking") (Tom Niebauer/John Frampton/Paul Schmidt)

Due to time constraints, no additional discussion was held on this topic. The Joint Task Force believes relabeling is appropriate, as these issues extend beyond "landbanking" to more general rules concerning use of land as match. Due to the number of outstanding issues, the Joint Task Force does not expect to have a complete Draft Recommendation for review at the next meeting, but intends to continue discussions that would lead to a Draft Recommendation.

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#### **V. Workgroup Assignments and Other Issues for Discussion**

The JTF discussed two additional issues, but determined that it would not be appropriate to develop formal recommendations concerning those issues at this time.

First, the JTF discussed policy and guidance for the Cash Management Improvement Act. It was recommended that the FWS Assistant Director for Migratory Birds and State Programs provide a communication to all State fish and wildlife agencies, as well as appropriate FWS offices, to ensure that states are aware of certain cash management options available under the CMIA.

Second, the JTF discussed the potential need for guidance concerning appropriate use of fish and wildlife resources to support Homeland Security. At this time, it was determined that members of the JTF would discuss with the Executive Committee of the IAFWA before determining whether formal guidance is appropriate.

The following issues are identified as the next priorities appropriate for discussion and possible conceptual development of a Draft Recommendation at the next meeting, and therefore are assigned to a workgroup to develop a "white paper." (The Joint Task Force member assigned to lead the workgroup is in parenthesis.)

1. Use of Property Acquired or Produced with License Fees (Bobbi Keeler)
2. Application of "Effective Dates" for Grant Approval (Don Friberg)
3. Subgrantee versus Grantee Status (Tom Niebauer)

#### **VI. Next Meetings**

The next meetings for the Joint Task Force will be as follows:

October 22 and 23, 2003 (8 a.m. – 5 p.m.) and October 24, 2003 (8 a.m. – noon)  
Madison, Wisconsin  
Hosted by Tom Niebauer, Wisconsin DNR

January 13 and 14, 2004 (8 a.m. – 5 p.m.) and January 15, 2004 (8 a.m. – noon)  
Las Vegas, Nevada  
Hosted by Terry Crawforth, Nevada Department of Wildlife

Respectfully Submitted

Ant Riley, USFWS  
Terry Crawford, NV Department of Wildlife

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