

Final Notes:

Meeting Minutes: Joint Federal/State Policy Task Force

Date: February 16-17, 2011 Location: Lexington, KY

Members present: Hannibal Bolton, Kelly Hepler, Larry Mellinger, John Organ, Steve Guertin, Glen Salmon, Steve Barton, Joyce Johnson, Mike Piccirilli, Carol Bambery, John Frampton, Larry Mellinger, Jon Gassett, Wayne MacCallum

Members absent: Curtis Taylor, Keith Sexson, Lisa Evans

Guests: Federal Aid Chiefs: David McGillivray, Fred Caslick, Jim Hodgson, Stephen Robertson, Steve Klein, Sue Detwiler ; Federal Aid Coordinators Working Group: Carl Magnuson (KS), Kris MCarthy (MA), Laura Richards (NV), Rosie Roegner (TX), Paul Vehlow (IL), Barry Sumners (TN, Chair), Ross Self (SC)

Wednesday, Feb 16: Joint Session w/ WSFR Chiefs and Federal Aid Coordinators Working Group

Welcome and Introductory Remarks – Hepler/Bolton/Sumners

Wallop-Breaux Reauthorization- Bolton:

Hannibal reported that HR 662 was introduced to extend the Transportation Bill through September of 2011. That legislation is still pending in Congress. He has hopes that Congress will take up a full reauthorization before that deadline. We are working with all parties on a strategy.

WSFR Administration – Bolton:

The group discussed the Administration's WB reauthorization plan to raise the administrative dollar cap available to fund staff and operational functions to run the PR/DJ programs. Information on the need for additional administrative funds was presented at the September, 2010 AFWA Trust Funds Committee meeting and in December of 2010 to the AFWA EXCOM, by Director Dave Schad. A copy of the PowerPoint presentation that was given to the Trust Funds Committee was included in the JTF briefing packet. The plan includes resetting the administrative dollar amount that was placed on the program back in 2000 (under the Federal Aid Improvement Act). That would increase the approved staffing level by 9 FTE from the currently approved OMB level of 105 FTEs up to 114 FTEs. The Federal Aid improvement act actually authorized WSFR to operate with 120 FTEs, but funding for that number of FTEs has never been allocated. Hannibal presented three different FTE level options for OMB review. The 114 FTE level was a determined to be adequate after a series of meetings with the OMB examiner.

Three of the 9 new FTEs would be used to fund 3 existing employees in the National Survey Branch. They are currently being funded with a mixture of SWG and Multi-State Conservation Grant (MSCGP) funds. Switching the funding method for those three FTEs would free up money for the MSCGP. The other 6 FTEs would be divided up to work in the WSFR Program. A team is working on determining an equitable way to split up the 6 new FTEs if the Administration's position is accepted by Congress. While WSFR is currently approved to operate with 105 FTEs, due to inflation and other cost of business related factors (travel, trainings, salary adjustments, IT, office space, etc.) funding is only available to pay for 85 employees. The Washington Office and the Regions are all staying within budget by keeping positions vacant and using those funds to cover administrative functions. A lengthy conversation took place among the JTF concerning the existing staffing level of 85 staff to run the program and the proposed new staffing level of 114. To

be supportive of the proposal the State JTF members requested additional detail. Hannibal agreed that additional clarification was needed to be transparent and said he would get additional information out to the JTF as soon as possible.

Status of 50 CFR 80 –

Tom Barnes reported that the WSFR Branch of Policy is working on the 50 CFR 80 Final Rule. He intends to move it forward for approval by the Director, the Department of the Interior, and OMB no later than mid-April.

Discussion of any upcoming issues of concern to States, Regions, AFWA, FWS, WSFR and JTF -- Bolton/Hepler/All

- Barry and several FAC members would like to see a positive message come out from WSFR in regards to the transition to FBMS. **Action: Hannibal agreed to investigate this.**
- The blackout period for transition to FBMS concerns the States and they would like WSFR to investigate how States could draw a percentage of their funds ahead of the blackout period to fund programs and staff. **Action: Hannibal will see if we have the legal authority to do this.**
- States continue to struggle to match federal funds. Using program income as state match continues to be something that the States would like WSFR to look into and clarify. State are looking for any other sources that might be available to help match PR/DJ funds. Larry got everyone's interest by explained that in some cases, Natural Resource Damage Account (NRDA) funds can be used as state match. This is a complicated area involving policy, regulations and law, but worth pursuing. **Action: a legal opinion will be needed on the use of NRDA funds as match. Larry will investigate.** A document that outlines allowable ways to match federal funds was discussed.
- Additional Program Income information: Note from Glen- After I sent out the original notes from this meeting, several JTF members commented that my notes were incomplete, and that more information on this topic was needed. As a follow up, I requested additional thoughts and comments. At the end of these notes, under **Additional program income information**, I have included what JTF members sent me.
- Glen asked about how the "bump" in PR was used. Several Coordinators and FA Chiefs reported on how the funds were used to just hold existing programs together, or in some cases do new work such as purchasing land. He would like to see a one-pager created to demonstrate to partners how those funds were used by the States. **Action: this will be discussed at the AFWA Trust Funds Committee**
- Hannibal briefed the JTF on the decision by DOI Secretary Salazar to move the Coastal Impact Assistance Program (CIAP) from the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) to the FWS, under WSFR. The CIAP program involves six states that produce offshore oil and gas (AL, AK, TX, LA, CA, MS). This transfer will be complete on October 1, 2011. A joint BOEMRE/FWS team is working on the transition documents and process.
Information on the CIAP program is available on the BOEMRE website:
<http://www.boemre.gov/offshore/CIAPmain.htm>

75th anniversary of WSFR :

Glen briefed the JTF of progress on the 75th anniversary of the WSFR program. A State/Federal /NGO steering committee has been formed and several working groups are tasked with communications, funding, and events. The kick-off is planned for the 2012 North American meeting. Christina Zarrella is working full time on the project. A symbol (aka logo) has been

adopted by the committee as well as the tag line: *75 years of success, a partnership for America's fish and wildlife*. The next meeting will be at the March 2011 NA meeting

The Council to Advance Hunting and the Shooting Sports :

Carol reported on the progress of the group. A search for a CEO is underway. An ad in the Wall Street Journal and other outreach resulted in 45 candidates, of which the search committee plans to interview 8-10. CAHSS has a 28 member board of directors and about \$2 M in operating funds contributed by the States through a WSFR grant process from the bump in PR funds. The focus of the group will be to pursue a national strategy to effectively recruit and retain hunters and shooters. The next meeting will be at the March 2011 NA meeting.

Integrating LCCs and State Management/Conservation Needs:

State and FWS members reported on the progress of standing up LCCs, and the underlying issue of States needing funds to participate. The group discussed that it appeared that much was being accomplished, but a means to tell the success stories was needed. Kelly indicated that perhaps Doug Austen might be the key to start getting the word out. No JTF action item was identified.

Thursday, February 17, Joint Task Force only session.

Summary of topics brought forward from the Joint Session and continued JTF involvement with Regional Chiefs and States - Hepler/Bolton

Hannibal led a discussion on the upcoming transfer of WSFR grant fiscal functions to FBMS and where the FWS is with developing an accomplishment reporting system (TRACS) to replace FAIMS. FAIMS has been scheduled to be shut down on numerous occasions in the past, but it is still surviving on life support. The latest FAIMS decommissioning date was to be October 1, 2011, but Hannibal and staff have continued to work with the FBMS folks to be sure that no WSFR reporting functionality is lost. Several of the critical components of FAIMS such as safety margins and apportionment calculations will not be supported by FBMS and will eventually become a component of the new TRACS system. The fiscal and financial management components all must go under the FBMS system. Time is needed to get the new system up and running. FAIMS will be extended for at least 6 months and perhaps a year past the October 1, 2011 deadline. Several JTF members asked about the process to involve the States on the TRACS development. Hannibal explained that a State Project Advisory Group has been involved with the development of TRACS since the beginning. **Action: Send out the PAG membership to the JTF.** The JTF had additional discussion about data security and access and the need to protect sensitive information.

Action items from September, 2010 JTF meeting:

- 1) The Trust Funds Committee will discuss the potential loss to WSFR income due to the Gulf Oil Spill and the potential to quantify this dollar amount and seek reimbursement. The TFC will charge AFWA's legal committee to define ways in which claims could be filed and action could be taken.

Action taken: *This topic was discussed at the TFC in September 2010. Consensus of the TFC was that it would be very difficult to make the legal case to recover any funds based on decrease in license sales. No additional action was required.*

- 2) Name 4 State Representatives to the "Council Technical Advisory Working Group"

Action taken: *None at this time, the Council is not ready at this time to submit potential projects for review. Representative will be named by November 2011.*

- 3) Draft a white paper in response to the following comment on the proposed draft of 50 CFR 80: *(Should recruitment of hunters be eligible for funding under Enhanced Hunter Education because it is not explicitly authorized in the Pittman-Robertson Wildlife Restoration Act?)*

Action taken: *Discussed at this JTF meeting- see notes below.*

- 4) Review of the Boating Access Provisions of the Sport Fish Restoration Program

Action taken: *An invitation was made to Doug Hobbs and the Sport Fishing and Boating Partnership Council to attend the next JTF meeting. They made a presentation at this JTF meeting. See notes below.*

- 5) JTF will review and assess the need to revisit appropriate chapters within the lands and administrative policy chapters relative to program income.

Action taken: *Tom Barnes reported that he is currently working on the Administrative and Lands Chapters and will look at this issue by the end of the calendar year.*

- 6) The JTF has agreed to reconvene in Lexington, Kentucky

Action taken: *Did that.*

Status of the recommendation to update JTF Charter :

Carol passed out the final draft of the Draft charter for review and comments. No substantial issues were raised. **Action:** the charter will move to Hannibal to seek FWS Director's signature.

Including a "free" sport fishing license with hunting licenses :

The topic was raised in reaction to information that some states had either recently adjusted their license structure to provide a free fishing license with an already established hunting license, or were about to offer such a license. JTF State directors members were concerned that this appeared to simply be a means to "game the system" to increase the number of certified anglers in those States and hence collect additional DJ funds. The "level playing field" approach and consistent application of the WSFR program rules and regulations are important keystones of the JTF process. A lengthy discussion took place on this topic. Larry pointed out that the current regulations are clear and that the license certification process is restricted to only counting a license if an actual sale of the license occurs which returns \$1 to the State. In the case under discussion, no additional fee for the new license (above the already existing license fee) was charged, and hence the license should not be counted as a license sold.

Action: A white paper will be prepared and this discussion will continue at the Trust Funds Committee in March, 2011. Additionally, the FA Chiefs will determine if other States are involved in this type of activity. Organ, Frampton, Barnes, Salmon and Mellinger are charged with development of the white paper.

Eligibility of hunter and angler equipment exchange programs :

A white paper covering this topic was provided in the JTF briefing folder. A small group consisting of Lisa, Gassett, Wayne, Frampton, Dave and Steve worked on this issue.

Action: The JTF indicated that they agree that these are eligible as long as the actual project is determined to meet the substantial in character and design requirement.

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Sport Fishing and Boating Partnership Council:

Doug Boyd, Vice Chair and SOBA President James Adams gave an excellent PowerPoint presentation on the activities of the SF&BPC. A good open discussion took place of a variety of topics including increased possibilities to match federal funds, access issues, interpretation of regulations covering launch

facilities for small boats and problems with communicating past JTF and WSFR decisions down to the program manager level. This was the first time that SF&BPC had addressed the JTF. The two groups pledged to continue to working closed together in the future.

Action: WSFR staff will reach out to Doug Hobbs and Gary Armstrong, who was on the review committee to frame up the issues to be addressed.

Issue: The WSFR tool kit is hard to find for our partners-can it be made more visible?

Action: Glen will work with our web-site staff

Issue: The 15% requirement for motorboat access funds continues to be a struggle for some States to meet. Could a 5 year rolling average be used instead?

Action: discuss at TFC in March to determine if the States are interested in pursuing this as an option.

Action: Kelly and Hannibal- draft a note back to the SF&BPC thanking them for attending and briefing the JTF.

Boating-related Regulation revisions - 50 CFR Part 86 (BIG) and Part 85 (CVA):

Tom Barnes provided a written update, which was included in the JTF briefing packet. New regulations will strive to take into account the 30 recommendations of the SF&BPC to improve overall management, execution and participation.

Discussion of Action Item # 3 from September 2010 JTF meeting: Should recruitment of hunters be eligible for funding under Enhanced Hunter Education because it is not explicitly authorized in the Pittman-Robertson Wildlife Restoration Act?

A white paper authored by Tom McCoy (FWS) and Lisa Evans was distributed for review. Lisa was on the phone from Alaska for this conversation. Lisa said that several States had approached her recently and were still unclear as to what types of PR (sec 4A, section 10, regular WR) money was considered acceptable to use in hunter and shooter recruitment programs. Her information was that some grant applications had been questioned by the Regions. The JTF had a good discussion but was not ready to issue guidance at this time. Additional information seemed to be needed.

Action: John Organ and Lisa Evans will reach out to the Chiefs and Coordinators to determine why grant proposals have not been approved. This information will be used 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. Once this information is assessed, recommendations for JTF action will be made.

Additional JTF comments on Program Income:

From Barry Sumner's notes on the issue

Using Program income as match:

Program income is usually accounted for using the deductive method; occasionally the additive method is allowed; and the rules also include the matching method. We discussed this with the Chiefs and asked whether using program income for match is ever allowed. They stated that it has been used on rare occasions in the past and will only be allowed in extreme circumstances. An example would be a catastrophic event that makes it impossible for an agency to complete a federal project without using Program Income as match.

Thoughts from Mike Piccirilli:

I think it's important to remember that the JTF attachment and the revised 50 CFR 123, soon to be final have almost identical language.

Also when Program Income is used as match I view it as actually changing the state/federal match to 94% federal and 6 % state although it's not displayed to that detail on the SF-424. Program Income is generally earned at the typical grant match ratio of 75% to 25% . When program income (\$250,000) is used as match on a \$1 Million grant, the Federal \$ actually is \$937,500. \$750,000 of apportioned funds and 75% of the \$250,000 of program income being used as match. This is a slippery slope and I think does nothing but encourage states to develop grants for producing revenue which is prohibited.

Thoughts from John Organ:

Some states want greater flexibility in using Program Income as match - the cost sharing approach. Traditionally only Additive and Deductive methods were allowed, but the JTF saw that 43 CFR Part 12 also allowed cost sharing, so made it eligible. The JTF did not consider the reasons for why cost sharing has not been allowed, and to be fair, it isn't carved into stone anywhere, it is more implicit in the program regs and law. Using grant funds to generate income is expressly prohibited, so allowing program income, which should be incidental to accomplishing grant objectives, to be used as match turns into a slippery slope. Also, the intent of congress was for this to be a cooperative program with states sharing the cost - not a 100% federally funded program (see legislative history). The cost share method was designed for programs that are having difficulty achieving equitable representation across society. An example would be grant programs for day care or health care facilities where there is little incentive to develop these programs in under-privileged areas. Using program income as match helps (incentifies) achieving broader application and access. That has never been an issue with WSFR because all states receive funds. The Chief's policy has been to only allow program income as match under extraordinary circumstances such as Katrina where license revenues may decline precipitously as a result of natural disasters. I've attached a guidance document we drafted in region 5 and circulated to the WO and Chiefs. Ord Bargerstock (from the DC office) had the lead on the issue at the time.

Here is the guidance document John referred to:

Program Income

Guidance for Application of Cost-Share Method to Federal Assistance Grants

Director's Order 168, *Program Income from Federal Assistance Grants*, was signed by the Director on March 11, 2004. Prior to issuance of DO 168, guidance for program income on Federal Assistance grants was contained in Appendix II of the Federal Aid Manual, *Guidelines for Program Income*. Appendix II guidelines mandated that disposition of program income must be done either by the additive or deductive methods. Common rule regulations (43 CFR Part 12.65) provide for a third disposition method: cost sharing. DO 168 departs from the Appendix II guidance by allowing use of the cost share method under certain circumstances deemed appropriate by the Fish and Wildlife Service. The Service must make the final decision on allowability of the cost share method based on a variety of factors related to the intent of the Wildlife and Sport Fish Restoration Programs.

Background

The cost share method was designed to provide incentives to encourage participation by under-represented groups or communities in existing programs. For example, a grant program may experience difficulty in delivery because potential grantees may not be willing to assume risks in providing services in certain sectors. The cost share method would provide incentive by allowing grantees to use income under the grant to defray required matching share. Confusion in current guidance is the result of seemingly conflicting guidance in financial management rules and PR/DJ program rules. Guidance under 43 CFR 12.65 explicitly states "Grantees are encouraged to earn income to defray program costs."

Program rules (50 CFR 80.14c) specifically prohibit using Wildlife and Sport Fish Restoration funds to generate additional revenue, unless incidental to accomplishment of grant objectives.

Congress, as clearly indicated in the legislative history of the Program, intended for States and the federal government to each contribute financial resources in a truly cooperative effort. Senator Key Pittman stated the following in hearings leading up to passage of the Pittman-Robertson Wildlife Restoration Act:

“The State and Federal Government will jointly pay the cost of these wildlife restoration projects.”
[Congressional Record July 6, 1937]

“The plan is to utilize the fund raised from the tax upon guns, shells, ammunition, in connection with a fund raised in the States from the issuance of licenses for hunting and fishing.” [Congressional Record August 7, 1937]

These inherent conflicts, and the fact that Wildlife and Sport Fish Restoration has full representation and participation, were the reasons why cost share had not previously been allowed for Federal Assistance grants.

Joint Federal/State Task Force Guidance

The JTF, in a memorandum dated December 12, 2003 transmitting DO 168 to the Service Director and AFWA Executive Vice President, noted that the new policy would allow use of the cost share method *“only when the Service deems appropriate based on appropriate considerations, as described in the recommendation. The JTF notes that the regulations provide for considerable flexibility, and that this is very much a statement of policy.”* Examples of acceptable factors where income incidental to accomplishment of grant objectives could be disposed of using the cost share method were developed by the JTF:

- (1) Allow the State share of funds to be used on additional fish or wildlife related projects that otherwise could not be sufficiently funded;
- (2) Allow State's Federal Assistance funds saved by using this method to be targeted for additional qualified Program activities; or
- (3) Results in a net benefit to the Program.

Appropriate Application of Cost Share Method

As specified in DO 168 and the JTF memorandum, the cost share method should only be applied for disposal of program income under certain circumstances deemed appropriate by the Service based on appropriate considerations. A paramount consideration is whether application of the cost share method would violate the intent and integrity of the Program through the purposeful generation of income or by essentially funding a project with 100% federal funds. Circumstances where cost share method could be applied, if consistent with the above considerations, include:

- State is in serious financial difficulty due to catastrophic events that significantly reduce ability to generate matching funds.
- State in risk of reversion due to unusual circumstances not related to internal Program management.
- Federal share of project is minimal.
- Changes in federal policy that affect a State's ability to generate matching funds in short-term.

Schedule for upcoming JTF meetings: – Bolton/Hepler

The location for the next meeting will be in the San Francisco area in August of 2011. Date selected were:

Travel day Monday, August 15th; meeting days on Tuesday the 16th and the morning of Wednesday the 17th; travel home on the evening of the 17th or the 18th.