

DISCUSSION NOTES
Joint Federal/State Task Force on Federal Assistance Policy
November 14-15, 2006, Wichita, KS

Tuesday

Morning Session:

- **Co-chairs' welcome and review of Agenda**

Rowan Gould and Glen Salmon opened the meeting. Keith Sexton also welcomed the group on behalf of the State of Kansas. All members were in attendance except Lisa Evens and Gerry Barnhart. Also in attendance was Dave McGillivary (USFWS). The agenda was discussed, modified and approved.

- **Review of action items from Charleston meeting**

Tom Barnes provided a status report on actions from the Charleston, SC meeting (attached).

Other related discussion included:

The group discussed the recently finalized and distributed SWG Q&A's. Kelly Hepler was concerned that the JTF should have had more time to comment on the Q&A's. He was also concerned that the Q&A's did not adequately address the match issue raised by several states.

Coastal grants – they will undergo comprehensive review; any changes will have to go through rulemaking.

Manual Chapter review – Based on State response to Glen Salmon's request to participate in the strategic planning process, he now thinks there will be state representatives available to help with Manual Review. Tom Barnes reminded the group that the proposed Drafting Steering Committee is small and will be doing drafting, not just review. The process is proposed to start in January, 2007.

ACTION: Glen will get volunteers to the FWS.

FWS FAIMES performance codes – the Service developed interim reporting codes in FAIMS that will be replaced by a reporting system resulting from the strategic planning process. FAIMS, because it is fast becoming obsolete, needs to be replaced soon with a system designed to meet expanding needs.

- **Timeliness of grant submissions**

Rowan Gould indicated that the Service was having trouble regarding this issue. State projects are getting dumped on the FWS at the end (sometimes hours before FWS' obligation deadline) and the FWS is having difficulty processing. Jim Greer pointed out that the Service is considering working with the States to set deadlines. The Service is put in a bad spot because they are being asked to sign-off on projects without adequate review. John Organ indicated the main concern was the late obligation date for second year SWG dollars. The group discussed several options to speed up the SWG obligation rate. John Organ indicated he had been working with States and Service Ecological Services offices to speed up the process. The group decided a positive letter from the Trust Fund committee to the State Directors and a duplicate letter to Service Regions giving suggestions would be helpful.

ACTION: Glen and the Service's Washington Office will write the initial draft. John Organ will develop a list of barrier/reasons for delays in state spending as an attachment.

Glen Salmon also pointed out that the hill might be interested in knowing the barriers/reasons why funds obligation can be slow.

- **Use of PR funds for reimbursement on private land habitat development**

Keith Sexson led a discussion regarding use of PR funds on private lands. One key requirement is that there needs to be a public benefit. Access is not necessarily a requirement.

- **Discussion of Wyoming audit and National Land Inventory**

Based on a letter of concern by WY, the group discussed and affirmed the content of a proposed Director's memorandum on "Guidance on Limiting Corrective actions and Resolutions for Federal Assistance Audits of Grantees". That guidance is consistent with previous JTF policy decisions that: (1) auditors can't go beyond 5 yrs before the audit period; (2) auditors can look at diverted land and property purchases beyond five years before the audit period because a land diversion continues to occur during the current five year period. To deal with a land diversion, corrections must be based on current market value.

Related to consideration of land diversions, Mitch King brought up the potential that the ongoing land inventory process will likely identify many more problem areas. This could have severe financial ramifications for the States. Jim Greer indicated that the goal was to get an accurate accounting of lands purchases with Federal dollars as well as license fee dollars. The target completion date is spring 2007. Since the issue involves both SFR/WR funds and license revenue funds, the group felt State directors should be aware that all states needed to dedicate time to complete the process. No issues have come up thus far.

ACTION: FWS-WO will prepare the letter to the state directors

ACTION: The audit memo will be sent to the Director for signature

- **Cooperative Farming**

Mitch King hypothetically described a situation where a State entered into an agreement to work with a farmer to improve wildlife value on 100 acres; the farmer took the crop from three-fourths of the land and left one-fourth for wildlife. The problem is that auditors are claiming that the value of the remaining one-fourth is program income. Mitch feels that if you account for the value on one side of the ledger, you need to account for it on the other side of the ledger (i.e., see what the costs would be if you do it yourself vs. allowing someone else to do it at a cost of 75 acres worth of crops). After a short discussion, the issue was referred to small group for consideration and development of possible solutions.

SMALL WORKING GROUP: Mitch, Keith, Kim, Dave, Tom B

Afternoon Session:

- **Feasibility of establishing a website for State and FWS FA Coordinators to ask questions regarding application, regulations, etc.**

The group discussed the pros and cons of establishing an interactive website to address FA implementation concerns. The group felt this approach was not the best way to resolve problems because of the complexity of issues.

- **Excess allowable costs revisited**

Tom Niebauer and Larry Mellinger framed an issue related to excess allowable cost. In short, as an example, they described a situation where a State was building a \$20 million hatchery and was considering its various options to create a FA project which maximized project benefits including FA protections, project \$ drawdown efficiencies and maximized excess allowable costs as match for other projects. Discussion mostly revolved around whether the project should be for the entire \$20 million or some smaller increment. The issue was referred to small group for further consideration and recommendations.

SMALL GROUP: Jim, Kelly H., John O, Larry, Carol, Tom N, Tom B., John F., Rowan

- **PART/GPRA – including State participation in FA strategic planning**

John Frampton reported on a high-level meeting between State Directors/AFWA and OMB regarding the State's concern that they were being held accountable for reporting performance data under the federal PART process through the FWS. A previous meeting with DOI had indicated the Department was sensitive to the State's concern. OMB was not receptive to an exemption from the PART process (because of the origin of the supporting funds), but agreed that that reported performance measures (outcomes and outputs) should not be unilaterally developed by the FWS. Additionally, OMB agreed that they would not question the States authority to ultimately decide the nature of the reported information – but reporting was a requirement. In consultation with the FWS Director Hall, the decision was made to meet this requirement through the JTF.

In related discussion, Rowan Gould reported that OMB was requiring the Service to complete a strategic plan to meet PART requirements for the FA program – to remove the “performance not demonstrated” designation now assigned to the program. There was concern that DOI’s GPRA process might conflict (or confound) the PART process, and how a strategic planning process could affect both processes. John Frampton wanted to make sure the process kept a focus on PR-DJ to avoid confusion with requirements of other grant programs. Also, Kelly Hepler pointed out that the performance measures developed in concert with the Service needed to feed into the Strategic plan but were separate from the more specific elements of a strategic planning process. In addition, he felt all aspects of this process must be subject to JTF oversight and review because the JTF had the responsibility. There was general agreement.

The group then focused on how best to accomplish the task. A wide range of alternatives were discussed. The group finally settled on convening a team of State and Federal experts as the best way to accomplish the task. Possible participants were identified. The kick-off meeting was scheduled for December 6-7 to define and initiate the process – Rowan Gould and Glen Salmon agreed to participate the first day.

ACTION: FWS will prepare packet; prepare for Dec. 6-7 meeting of Strategic Planning/Performance Measures Working Group

Glen Salmon will approach Directors for participation approval

The JTF should develop sideboards for group

- **Draft State Wildlife Grants pre-audit procedures**

Tom Niebauer reported on the progress of the team formulating guidance for the upcoming SWG auditing process. He indicated that this is an opportunity to look at program issues, not just financial issues; a point that needs to be emphasized. We need to make sure States understand the purpose and benefit of this exercise before we roll it out. We also need to refer to it as a management audit or management review – or determination of best management practices. The audit process will identify requirements for update of the SWG Manual Chapter and look for best management practices (to include third party agreements - which require further general guidance).

The group discussed potential approaches to accomplish the audit. The use of a coordinating contractor was preferred. The development of potential parameters in an RFP was referred to a small group.

SMALL GROUP: Tom N., Chris M., Jim

ACTION: Prepare a RFP and JTF will review.

FWS distributes RFP and then JTF team (Tom N., Kelly H, Chris M, Jim) will evaluate vendor proposals.

Rowan and Glen will make final decision.

- **Study by Universities of SWG: (new agenda item)**

Kelly Heplar had heard that universities were starting new projects to evaluate State Wildlife Action Plans. The group was not aware of the effort.

ACTION: Rowan volunteered to check into the situation and report back

- **Hunting for the hungry and PR matching funds**

The Congressional Sportsman Foundation is looking for a reliable funding source for the “Hunting for the Hungry” program. Although this issue is not within the JTF purview, the group entertained a discussion to consider whether the program was eligible for support using PR dollars. Several in the group thought that if the program was connected to a legitimate state game management program, funds could be used; but not if the funds were being diverted only to support the program – even if the program had good societal outcomes. The use of FA funds is very specifically restricted in law

ACTION: Carol will talk to Matt Hogan and a letter to CSF will either come from the Association or from Glen as Trust Funds Committee chair.

- **Fire Issue – proposed amendment to Service Handbook**

A Sept. 2005 proposed amendment to fire policy was previously discussed by the JTF. Even though the JTF came to consensus on the wording, the Service’s fire branch, which is in charge of Service’s fire handbook, is seeking revisions. Tom Barnes and Larry Mellinger crafted wording that allowed for the concerns of the fire branch, as well as met the States requirement that they not be subject to FWS fire policies. The solution centered on the character of a grant which by definition means “no substantial involvement” by the grantor – thus making the grantee subject to implementation policies or procedures within their specific jurisdiction. According to Larry Mellinger, the only motive behind the Service’s concern was to ensure that if a burn conducted by the State impacts, for example, private property, then the FWS is not liable.

ACTION: Tom Barnes will send the fire policy to the Director for approval.

Wednesday

Morning:

- **Small working groups**

(1) SMALL WORKING GROUP Recommendations: Cooperative Farming; Mitch, Keith, Kim, Dave, Tom B.

The small group agreed that the following language developed by Tom Barnes was appropriate guidance:

“Cooperative farming arrangements, the exchange of crops for services, designed by the wildlife manager for wildlife management purposes is considered routine management activities and not considered program income.”

ACTION: Revised language will be added to the Exhibit of 522 FW XX. John Organ will communicate with FA Chiefs regarding the nature of exhibits (they are meant to be revised as needed).

(2) SMALL GROUP Recommendations: Excess allowable costs; Jim, Kelly H., John O, Larry, Carol, Tom N., Tom B., John F, Rowan

Legal Counsel for the Department of the Interior advised that there was nothing in federal law or regulation that explicitly allowed states to use a 75% federal 25% state split on the grant agreement when the actual state contribution was going to be in excess of the required 25% match. Counsel further stated that it was his opinion that all costs should be reflected on the grant agreement.

With this in mind, the JTF offered the following suggestions: If a grant agreement is submitted with a state share greater than 25%, the state should request that the U.S. Fish and Wildlife Service add the following special project condition: "Grant is eligible for reimbursement of amount obligated, not to exceed 75% of the total expenditures". This insures that if the final costs are less than the total grant, the state can get reimbursement for either the amount obligated or 75%, whichever is less.

If a grant agreement is submitted with a state share greater than 25%, any allowable costs in excess of the 25% minimum match required can be used to offset questioned costs in a subsequent audit of the grant. If, for example, you have a 15%/85% grant and the State cannot account for 5%, then since the state already put in 85% (65% above required match) the excess match can cover the 5%. It's an after-the-fact decision and all money is in the grant agreement

While considering this issue, there were several other related issues that were discussed including segmenting projects and using the new grant application procedure to help structure a grant (allowing the state to spend federal money over an entire project period - including carrying forward unspent funds).

No further action is required by the JTF.

(3) SMALL GROUP recommendations: SWG Audit RFP brainstorming – Chris M, Jim, Kelly H., Tom N.

The group recommended that the JTF solicit 8 volunteer States to volunteer to undergo the initial audit. There should be a good mix of operational configurations (DNR states vs. Wildlife Agency states). There should also be good geographical representation. The initial budget should be around \$50-60 thousand supported by the WO FA. The timeline should reflect draft results presented to the Trust Funds Committee in September 2007. A contractor could have the lead, but should employ state and federal employees to carry out the actual audit.

Approach:

- Review two states per AFWA Regional association (excluding AK, HI, territories);
- Manage the process with a contractor (achieves third party independence). We will prepare an RFP. We would require that all auditor's have direct State auditing experience.
- The audit team would be composed of a group leader, 2 state people and 3 federal people.

- **Large Group**

The large group finalized all decisions and/or approaches presented by small groups.

- **Future meetings and challenges of JTF**

ACTION: The next meeting of the JTF will be April 9, 10, and 11. Arrangement will be made by federal members. Location and details will be made available as soon as possible.

- **Finalization of unfinished business**

Glen reconfirmed the focus of JTF to handle issues of national significance. Issues can be brought to JTF through several channels - Group Systems, JTF agenda development, AFWA, FWS, etc.)