

**FINAL MEETING NOTES**  
**Joint Federal/State Task Force on Federal Assistance Policy (JTF)**  
**Meeting Date:** October 28-29, 2014  
**Location:** Denver, CO

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**JTF Co-chairs:** Kelly Hepler (ADFG) and Hannibal Bolton (USFWS)  
**JTF Members:** Steve Barton, Tom Busiahn, Tom Barnes, Mike Piccirilli, Clint Riley, Benjamin Tuggle (absent), Lisa Evans, Glenn Normandeau (absent), Jim Douglas, Dan Forster, Curtis Taylor and Larry Voyles  
**Legal Counsel:** Carol Bambery and Larry Mellinger  
**Guests:** David Goad, Jon Gassett, Dave McGillivary  
**AFWA Contact:** Ashley Salo, AFWA, Multistate Conservation Grants Coordinator  
**USFWS Contact:** Joyce Johnson, Special Assistant for Program Development and Analysis

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**Tuesday, October 28<sup>th</sup>**

**1. Welcome and Introductory Remarks (8:00am) – Bolton/Hepler**

- Members need to verify their contact information on the updated contact list. This list will be posted on the WSFR website.

**2. Status of Previous Action Items – Joyce Johnson**

- 1) **ACTION ITEM:** John Organ (Chair), Tom Barnes, and Lisa Evans will draft language for JTF and state review that will potentially move wildlife damage management policy into regulation which will be included in the next revision of 50 CFR 80. Additionally, draft guidance on a potential appendix for 50 CFR 80 will be compiled and made available for review by the 2014 fall JTF meeting. **Status:** Background materials provided and topic is on the agenda.
- 2) **ACTION ITEM:** Larry Mellinger, Tom Barnes, John Organ (Chair), and Curtis Taylor will review the current WSFR procedures or standard practices for approving mineral, oil and gas transactions on wildlife management areas. WSFR Chiefs will compile a case history of regional mineral, oil and gas decisions to inform the development of a toolbox for use by the states by fall 2014 JTF meeting. **Status:** Background materials provided and related topics are on the agenda.
- 3) **ACTION ITEM:** Dan Forster will work with the AFWA Executive Committee to finalize the FWS draft administrative effectiveness measures/outputs document and will then be distributed to JTF members. Status: to be reported at JTF meeting. **Status:** The Service will review and refine the measures for implementation, and share the product with AFWA prior to the December AFWA ExCom meeting.

4) **ACTION ITEM:** JTF and WSFR Chief's meeting agendas will be shared with both groups prior to their bi-annual meetings. Status: Agendas provided in background materials. **Status:** Completed.

5) **ACTION ITEM:** Reinvigorate technical review group for the Council to Advance Hunting and the Shooting Sports. **Status:** The Technical Review Workgroup was contacted. Nominations to replace two state members are being considered by CAHSS and AFWA.

6) **ACTION ITEM:** Dan Forster will send WR State Apportionment Analysis spreadsheet to JTF members. **Status:** Completed.

7) **ACTION ITEM:** Steve Barton will distribute, when available, the FWS finalized administrative audits and any applicable corrective action plans to JTF members for their review. Results from administrative audits will be used to help formulate appropriate JTF meetings. **Status:** Corrective action plan is still in process and should be finalized in December.

8) **ACTION ITEM:** Ashley Salo will work with Tom Busiahn to fully execute third Amendment to the JTF Charter. Status: Complete – a copy is in the background materials. **Status:** Completed.

9) **ACTION ITEM:** JTF Co-Chairs will send a letter (drafted by Joyce Johnson, Lisa Evans) to solicit ideas for potential topics for JTF consideration annually through the AFWA Directors (Ashley Salo) and Chiefs and Federal Aid Coordinators (Tom Busiahn). **Status:** A letter has been drafted but has not been reviewed by the Co-Chairs. Joyce Johnson will provide the letter to co-chairs to review.

### **3. Wildlife Damage Management – Tom Barnes/Lisa Evans**

- John Organ compiled the white paper summarizing the adequacy of the current WSFR policy on wildlife damage management prior to his departure for the USGS. Tom Barnes has reviewed the white paper and has determined that it closely mirrors what is currently in the Service manual chapters on wildlife damage management. The recommendation being put forth is to move the policy into regulation (50 CFR 80).
- The white paper needs to be distributed to State Wildlife Chiefs for comment before moving the policy into regulation.

**ACTION ITEM:** Kelly Hepler will work with AFWA staff to coordinate distribution of JTF White paper on Wildlife Damage Management to State Wildlife Chiefs for feedback by November 7<sup>th</sup> 2014. Comments from Chiefs will be due back to AFWA by December 7<sup>th</sup> 2014. This notification will inform states of the intent to move the Wildlife Damage Management, as outlined in White paper, into regulation.

### **4. Applying new interpretations retroactively – Larry Voyles/All**

- Many states have been affected recently by new interpretations on license certification practices by the Service. There should be a way to “anchor” a rule given to a state to protect from new interpretations in the future. If there is a change, it would apply to new license(s) not existing ones (i.e. multiyear licenses would be most impacted). How do we deal with a multiyear license, when over the life of that license, there is a potential for multiple rule or interpretation changes?
  - States should coordinate with their regional FWS offices before formulating recommendations/applying license standards/buying structures. This may help abet states from being negatively impacted by interpretation changes.
    - Many states need to work with their state legislatures before they can issue a new license buying structure. Timing would be critical – there would need to be fast response(s) from Regional FWS offices as decisions can move quickly with legislation.
    - Many Regional FWS offices already work closely with their states on license certification.
  - There is concern that previous regulations do not make the link that revenue from multiyear licenses must generate near the net revenue of an annual license.
  - This group needs to remember where the money comes from – it comes from sportsmen/women and industry.
- A key policy question has been raised that needs to be addressed by this group. How do we get documentation from the Service that is sufficient to limit the impact of new rule/interpretations for state license certification on existing licenses particularly during subsequent audits?
  - Need to memorialize the applicable rules when a license is purchased – document the direction conveyed when implementing license buying structure. Grandfathering through policy would be a further way to prevent this dynamic from happening in the future.
  - The process will need to ensure the ultimate decision makers agree instead of the Regional FWS offices.
  - There’s currently no consistency among states on how licenses are sold – would it be possible to get states to commit to a level of consistency?
    - This is not probable – most states control over licensing structures is nestled within the state legislatures.
  - FWS Regions are sometimes asked questions they do not always have the authority to answer – such as: defining close approximation, grandfathering legislation, what does the minimum required net revenue mean, etc.
    - Perhaps the FWS Regions could provide guidance then the guidance could be certified by the Service. When states are audited, they are held accountable regardless if the Service has provided guidance that was accurate or inaccurate.
  - If policy and/or interpretation changes are made, it needs to be noted how these changes will impact previously sold licenses that are still valid.

- Need to compile a comprehensive strategy to address these types of concerns. (Perhaps a white paper?)
- How often do we effectively document what is currently relevant for license certification? If a state has guidance, in writing, from a FWS Regional office, then that ought to be binding.
- The Service should provide for a grace-period (2-3 yrs.) before a change is implemented.
- What is needed is consistency, nationally, on interpretation of policies. Sign-off on license buying structures should be centralized – not delegated to the regions.
- The decision for how much authority can be delegated to the Regional FWS offices is the Service’s call. All 50 states will need to know what authority is and is not delegated to that level.
- The real issue we should be dealing with is retroactive law. If a license was valid 5-10 years ago, without any changes since then it should be counted, no memos required. If it met the criteria at the time of regulation it was current then it should be counted. The responsibility to articulate what type of license they are certifying should fall to the states.
- The Service does not certify hunting/fishing numbers. It accepts and uses what number the states certify.
- The Service needs to provide guidance to the states – if states should work with their Regional offices, then that needs to be clear. Auditors always look at certification numbers during the PR-DJ audits.
- There are three major points which seem to have a fair amount of consensus. If we have a pathway forward it will help construct our discussion: 1) There’s the issue of delegation – there needs to be a centralized authority or a clear authority mechanism in place; 2) There also needs to be accountability for responsiveness. States will need quick responses when dealing with state legislatures; and, 3) a transitional (grace-period) should be established.
- Small group should work to flesh out these discussion points into a white paper.

**ACTION ITEM:** Clint Riley will finalize JTF White Paper regarding changes in rule, policy, and/or interpretations applied to license certifications. Draft Paper will be posted to FA Wiki by November 2014 for comments by FAC and Chiefs, and final version will be made available by December 2014.

## **5. Background Clarification/update on Multi-year licenses and state certification process**

- At the recent SEAFWA regional meeting, Hannibal Bolton and SEAFWA Directors discussed license certification. The FWS will send out revised guidance to be consistent with the 2013 certification process. Once this guidance has come out, states will have 30 days to respond, and the Service will work with states on a pathway forward to address

any problems/issues that may arise and how best to rectify them. SEAFWA directors supported regulation approach. Regulatory pathway will take more time, but would give individual states opportunity to comment on a final rule.

- The biggest change from the 2013 to the 2014 guidance was the 80% close approximation guideline.
- The state license certification workgroup agreed that the 80% rule had merit. It was included in the workgroup's final report which was presented to all state directors. Ultimately, at the AFWA 2013 meeting the draft report was adopted *except* for the proposed 80% rule.
- The FWS is in the early stages of drafting targeted rulemaking on this particular topic from a clarification standpoint. This will be open to comments, including through the Federal Register process.
  - Letter will be forthcoming from the Service? –Yes; State participation on the letter would be welcomed.
- Federal court case of 1962 – Udall vs. Wisconsin, Colorado, and Minnesota – issue of the case was what is the DOI Secretary's role in certifying license numbers from states? DOI secretary apportions funds based on license numbers submitted by states only.
  - Regulations have changed substantially since '62. The Secretary has authority now, through regulation, to examine certification numbers. The question should be is the ruling from the '62 court case still valid?
  - Regulation can't contravene word of the law.
- When the license certification workgroup finished its product, it was the conclusion of the group that the situation couldn't be fixed without a law change. The ultimate fix could be examining the intent of the license holder to participate which would need a change in the PR legislation.
  - Purportedly, the original intent was a license holder would be a hunter. It's more complicated now than ever before.
- There is some loss in the perspective of the real purpose of the PR/DJ Act. States need strong partnership with the Service to protect from legislative intent to give away licenses. The whole program was based on hunters buying equipment that would then be returned to the states for wildlife conservation.
- AFWA will be the key to establish any changes in the program for longevity. A transitional period, for any changes, will also be required.
- Tom Barnes has researched how the original formula was calculated and background information on the Act itself.
- There are tremendous numbers and types of combination licenses which provide privileges that may not necessarily be wanted. If a state only offers combination license, then a state survey of actual participation might make sense. Moving license certification towards participation rather than paid license holders would require a law change.

- There needs to be further discussion on what is actually meant by license holder, and paid. There are some states that certify free licenses because they pay a minimal amount for a tag. The underlying need is that everyone should be treated the same and certifying licenses using the same rules and interpretations.
- Most ideas being generated now create more complexity and workload which is not in our collective interests. Simplest solution would be for the Service to accept numbers from states on certification levels (based on guidance from 1962 court case referenced earlier).
- AFWA buy-in will be critical. Should do more research on the flexibility to implement any proposed changes. Perhaps a white paper should be developed to see what the moving parts would be. Dan Forster could lead this effort with support from AFWA's Executive Committee.

**ACTION ITEM:** Memo from AFWA and guidance from FWS on very productive conversation regarding license certification will be sent jointly to State Directors by November 7th 2014.

**ACTION ITEM:** Dan Forster will Chair a small working group, with involvement from AFWA Executive Committee, to develop a White paper outlining potential transition of license certifications based on participation ( intent) of license purchaser ) including in the White Paper information on congressional history (Tom Barnes will provide Dan Forster with historical research). White paper will be provided to JTF for final direction by Spring 2015 JTF meeting.

**6. Real Property Chapters – Tom Barnes** (during this topic, representatives from NY and MA requested to be on a conference call line – which was provided)

- Three draft real property chapters went out for comment in August 2014. There was a request to extend the comment period. Comment period will now be open until December 30. Comments should be provided through FWS Wiki.
- Quick background:
  - 1989 – USPAP guidebook was developed
  - 1992 – Service published first land chapters
  - 2007 – Started working on draft chapters
  - 2011 – OVS (DOI's Office of Valuation Services) was designated as departmental authority for appraisal management and oversight.
  - 2012-2013 – Audit of a FWS program (not PR/DJ) took an in-depth analysis of appraisals. Sixteen appraisals were reviewed and none were deemed sufficient to meet USPAP standards. OIG questioned costs of about \$12 million.
  - 2013-2014 – Second OIG audit of another state discovered similar questionable appraisals related to fully meeting USPAP standards.
- The biggest changes in the draft Real Property chapters are:
  - They lay out step by step simplified procedures if a grantee does not qualify for condemnation authority.

- For the first time, provides qualification standards for those conducting certified review appraisals.
- Have received positive and negative feedback on the revised chapters.
- The regions have been involved in each step of developing the new chapters and are generally up to speed on the requirements.
  - Many of the new requirements need not be onerous. For instance, prior approvals can be made through a simple exchange of emails or even a documented telephone call.
- NY has a six step process and now it appears the process will change to a 10 step process. Where is the capacity in the Service to do this?
- Is there anything in here that would be perceived as a problem or potential loop hole if NGO purchased land then sold to State?
  - Some states are already doing this. The title must be vested with the state.
- When a state uses multiple sources of federal funds for the property – will there be a conflict between agency guidelines or are the states bound by FWS standards?
  - States should work with FWS to determine who would be the lead federal agency.
  - How do we identify the lead agency?
  - If federal agencies cannot agree on a lead agency, the DOT can appoint one.
- A fourth chapter is being developed which will deal with dispositions.
- A webinar on the real property chapters will be held on November 12, 2014. All are welcome to participate.

## **7. Oil, Gas, and Mineral (OGM) Extraction on WSFR Lands – Larry Mellinger**

- White paper was distributed prior to JTF meeting. In cases where the subsurface OGM rights are held by the State fish and wildlife agency, the revenues derived must be handled according to federal regulations under 50 CFR Part 80, or in some instances, 43 CFR Part 12. How these revenues are handled ultimately involves a determination as to whether the OGM sale represents a sale of personal property or a disposal of real property.
- Suggestion – temper language in last paragraph to include “in all likelihood.”
- What is the process from here?
  - The information could be moved into policy.
- AFWA’s legal committee will need to review the white paper as well.
- Could add sentence on land purchased through license dollars and that the revenue generated will be vested with the state agency.

**ACTION ITEM:** Larry Mellinger will revise the JTF White Paper on Oil, Gas, and Mineral Extraction on WSFR Lands to include information on land purchased with license revenues.

Carol Bambery will send revised White Paper to AFWA legal committee and out through AFWA Director's Line. Tom Busiahn will distribute revised paper to FWS regional offices.

**Next meeting of the JTF Meeting:** Date and location to be determined and coordinated later.

### **Wednesday, October 29th – Joint Session with WSFR Chiefs**

#### **1. WSFR Program Update – Charles Goad/Steve Barton/Hannibal Bolton**

- FWS is asking for an increase in administrative cap to help address funding and staffing concerns. Currently, FWS HQ is 18 positions short of recommended capacity because of shortfalls. Effectiveness measures for the increase in administrative funds have been developed and distributed to applicable review persons.
- Status of the 2016 National Survey of Fishing, Hunting and Wildlife-related Recreation – the Survey will be conducted in two parts. Part A (National Survey) will be conducted by US Census Bureau. Part B (50 state surveys) will be conducted by a private contractor. This will hopefully allow for sufficient data at a more affordable price.
- DJ Receipts/Forecast: Appears there will be between 4-5% increase in Sport Fish. On track for a total revenue of \$620M.
- Latest boat registration numbers – (FY15) down 1.1%. It's possible that there will be slight decrease (or maintain levels) for FY16 – assuming that tax receipt collections for domestic fishing collection stay consistent.
- PR: First quarter receipt numbers are in – based on these numbers PR could easily see 1B this year. However, sales are beginning to slow down.
- FY 14 Budget and Sequestration Impacts –The funds administered by WSFR will continue to operate under and deal with the mandatory sequester. Apportionment received recently – (sequester has caused delay in getting apportionment out) – it has to go through the Interior, OMB, etc. FY14 apportionment received – sequester amounts went to each of the subprograms for which they were held (SF – 5.2% from multistate grant, for example that money went back into that program). The Service is required to use the formula from FY13 on apportionment for FY14 to states.

#### **2. TRACS Update – Dan Hogan**

- TRACS released for federal use on July 15, 2013
- Final approval from Office of Management and Budget (OMB) to collect data from grantees received February 28, 2014.
- Released for state use on March 7, 2014.
- There are currently 458 system users. 101 registered WSFR users and 357 registered state users.
- 55 U.S States and Territories have an appointed TRACS User Administrator (NY is the only state still pending)

- Since TRACS was released, 4 major updates deployed, 6 US-CERT critical security vulnerabilities were patched, and 26 virtual machines operated and maintained in Amazon cloud environment.
- When will states be responsible for data entry?
  - TRACS has been available to states for 7 months
  - CMS is not yet accommodated by TRACS structure
  - Approximately 30% of data entry currently performed by states
  - Data entry today serves as a template that can help to reduce workload later
  - TRACS data entry replaces the need for a hard copy of performance reports
- New TRACS trainers, Evan Lockwood and Yonah Cohen, hired in August 2014
- Training Specialist, Cal Cooley, starts work in December 2014
- Presentations on TRACS have been held at various conferences and trade shows.
- If states encountered any difficulties with TRACS system – they must submit a help desk ticket. The help desk ticket request will need to be specific to the problem.

### **3. Update on WSFR Policy Issues – Tom Barnes**

- 10 chapters in manual originated from recommendations by the JTF.
- Currently working to revise the Service manual: The Service is working to move seven chapters into program regulations.
- The DOI Office of Valuation Services will need to approve the revised chapters before they can be implemented. Real property draft chapters were distributed for comments in August 2014. It was request that the comment period be extended until December 30, 2014. Comments should be submitted through the Wiki if possible.
- BIG -sent out proposed rule some months ago. Out for 60 days for comments. Received 13 comments. Hopefully will have current rule replaced by the end of 2014 calendar year.
- Another action being taken will be to combine five audit chapters into one. (up to date, need to be reorganized).

### **4. Industry – branding messaging – Jon Gassett**

- Industry/Agency coalition meets once a year to enhance relationships and further common goals.
- Excise tax fairness issue is a key item being discussed among the coalition members.
- Also looking into developing a marketing plan to educate the public on PR/DJ program.
- Another key item is the modernization of PR. This would include adjusting the match requirement for states, increasing the multistate spot, and allowing marketing/outreach with PR funds.
- The next I/A summit will be held in April-May of 2015.

**5. Next JTF Meeting.** The JTF plans to meet with the FA State Coordinators and the WSFR Chief at their Spring meeting. The date and location is unknown at this time.

## **Summary of Action Items from October 2014 JTF Meeting:**

- 1) ACTION ITEM:** Hannibal Bolton and Steve Barton will continue their work to develop national guidance policies on SHPO to provide consistent management throughout the FWS Regional offices. This document will be reviewed and approved by JTF members prior to distribution (Continuation from previous JTF discussion).
- 2) ACTION ITEM:** Kelly Hepler will work with AFWA staff to coordinate distribution of JTF White paper on Wildlife Damage Management to State Wildlife Chiefs for feedback by November 7<sup>th</sup> 2014. Comments from Chiefs will be due back to AFWA by December 7<sup>th</sup> 2014. This notification will inform states of the intent to move the Wildlife Damage Management, as outlined in White paper, as regulation (Continuation from previous JTF discussion).
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- 9) ACTION ITEM:** Hannibal Bolton and Steve Barton will continue their work to develop national guidance policies on SHPO to provide consistent management throughout the FWS Regional offices. This document will be reviewed and approved by JTF members prior to distribution. Ongoing effort to be reported by Tom Busiahn at JTF Spring 2015