

Joint Federal State Task Force on Federal Assistance Policy
Meeting Report of October 25 and 26, 2004

The Joint Federal/State Task Force on Federal Assistance Policy (JTF) met in Minneapolis, Minnesota on October 25 and 26, 2004. This report summarizes the outcomes and action items resulting from that meeting.

Attendance:

Glen Salmon Co-Chair - Director, Division of F&W, Indiana DNR
Clint Riley Co-Chair – Special Assistant, Office of the Director, USFWS

State Representatives

Tom Niebauer Federal Policy Advisor, Wisconsin DNR
Gerald Barnhart Director, New York Division of FW&M Resources
John Frampton Director, South Carolina DNR
Keith Sexson Assistant Secretary, Kansas Department of W&P
Lisa Evans Federal Funds Manager, New Mexico Department of G&F

Fish and Wildlife Service Representatives

Mitch King Assistant Director – Wildlife and Sport Fish Restoration
Dale Hall Regional Director – Region 1
Kris LaMontagne Chief, Division of FA, Washington
Chris McKay Assistant Regional Director – Region 1
John Organ Regional Grants Manager – Region 5
Tom Barnes Policy Branch Chief, FA, Washington

Legal Representatives

Larry Mellinger Office of the Solicitor, DOI

JTF members and others unable to attend

Kelly Hepler Director, Sport Fish Division, Alaska Department of F&G
Scott Porter Assistant AG, Counsel to Kentucky Department of F&W

Additional Attendees

Jimmy Christensen Chief, General Counsel Section, Wisconsin DNR (ex-officio member)
Jennifer Mock JTF Recorder, IAFWA
Kim Galvan Policy Branch Staff, FA, Washington

This summary of discussions is provided in the following manner:

- I. Pre-Agreement Costs Director's Order
- II. JTF Charter Amendment

- III. Additional Issues Related to; Wildlife and Sport Fish Restoration; State Wildlife Grants; and, Landowner Incentive Program
- IV. Overview of NEPA Requirements Related to Federal Assistance
- V. Update on Status of JTF Activities and Implementation of Director's Orders
- VI. Future Meeting Schedule

I. Pre-Agreement Costs Director's Order

As a result of the JTF discussion at our Anchorage Meeting, the Draft Director's Order on Pre-Agreement Costs was distributed to State fish and wildlife agencies and FWS offices for review using Group Systems. At this meeting, the JTF reviewed the comments received through that exercise and developed a final draft that will be submitted to the Director for consideration. We had 17 individuals respond (10 representing State fish and wildlife agencies and 7 representing the FWS).

Several comments focused on minor suggested changes to the sections of the proposed Director's Order dealing with the purpose, authorities and definitions. Most of these comments resulted in minor clarifications to the final Director's Order.

The JTF also received considerable comment centering around three basic themes. First, concern was expressed regarding the timing of pre-agreement costs. As written, the responders were concerned that there was not a time limit on how far back a State could go for reimbursement of pre-agreement costs. In fact, a project that is complete at the time of the proposal request could be considered. Second, several responders were concerned that the current language in this section could be interpreted to require too much specificity in the Grant Agreement for pre-agreement costs. Third, there was concern that the proposed language in this section would create situations where on-the-ground actions included in a Grant Agreement may be completed prior to fully complying with the requirements of NEPA, ESA and NHPA.

The JTF discussed all of these concerns in detail and made significant changes to Section 5 and added a new Section 6 to the Director's Order.

The JTF reviewed a final draft of the Director's Order on Pre-Agreement Costs and agreed that the Co-Chairs should perform a final "clean-up" of the document and forward it to the Director of the Service and the President of the IAFWA for final approval.

II. JTF Charter Amendment

The JTF was provided a draft amendment of their existing charter that was developed following discussions at the Alaska meeting. After further discussion and minor modification, the JTF approved this amendment and charged the Co-Chairs with finalizing the amendment for signature by the Director of the Service and the President of the IAFWA.

III. Additional Issues Related to Wildlife and Sportfish Restoration; State Wildlife Grants; and, Landowner Incentive Program.

Following its meeting of June 21-22, 2004, the JTF solicited comments from the State fish and wildlife agencies and FWS offices regarding additional Wildlife Restoration and Sport Fish Restoration Program issues that should be considered by the JTF Wildlife Restoration & Sport Fish Restoration.

A total of 30 individuals provided a total of 33 issues within the WR, SFR, SWG and LIP that they felt warranted further consideration by the JTF. In addition, numerous responders suggested that the existing Director's Orders be reviewed for their applicability to SWG and LIP.

The JTF discussed each of these proposed new issues and separated them into three categories; 1) Issues that may warrant further consideration which will be sent to State fish and wildlife agencies and USFWS offices to rank relative to importance (5 issues identified); 2) issues that required further clarification before the JTF made a final decision on them (2 issues identified); and, 3) issues that the JTF did not feel warranted their attention at this time (either because they were not significant or because they were outside of the Charter of the JTF) (26 issues identified). In addition, the JTF decided to take action at the next meeting on considering the application of existing Director's Orders to SWG and LIP.

Attached is a brief presentation of the proposed issues in the category identified.

IV. Overview of NEPA Requirements Related to Federal Assistance

The JTF reviewed the Report and Recommendations of the NEPA in Federal Aid Working Group formed by the IAFWA and several supporting documents. The question before the JTF was whether the recommendations of this IAFWA Working Group were something that this body would take on as a responsibility. While the members of the JTF support the findings of the Working Group, we felt that pursuing the recommendations including in their final report was outside of the charter of the JTF. Instead, the group felt that implementation of the Working Group recommendations should be remanded back to the Assistant Director of the USFWS and the Chair of the IAFWA Trust Funds Committee for further coordination. However, the JTF did agree that should sporadic implementation of these recommendations across the USFWS Regions result in the inconsistent application of Categorical Exclusions and Generic

Environmental Assessments across the nation, this will become a topic for future consideration.

V. Update on Status of JTF Activities and Implementation of Director's Orders

The JTF reviewed the current status report on their activities to date. They had a lengthy discussion on opportunities available to get the word out to all of those impacted by the existing list of Director's Orders that were developed by the group. As a result of those discussions, members will be involved in numerous actions to get the word out and will report at future meetings.

VI. Future Meeting Schedule

The JTF decided to hold its next meeting in Kansas City during the week of January 10. Monday the 10th will be a travel day. The meeting will be on all day on Tuesday and Wednesday and Thursday morning. Thursday afternoon will be a travel day. Keith Sexson is responsible for the arrangements.

The following meeting is tentatively set for the week of April 11 in New Orleans.

Attachment

Additional Issues Related to Wildlife and Sportfish Restoration; State Wildlife Grants; and, Landowner Incentive Program

Issues that may warrant further action by the JTF – JTF will send these issues to State fish and wildlife agencies and USFWS offices for ranking and further clarification.

1. *WR/SFR - A procedure for certifying lifetime license holders.*
2. *WR/SFR – What restrictions should there be on audit time frames? Tom Barnes will seek further clarification on this issue from the responder.*
3. *WR/SFR - Automatic default of grant eligibility amount language to “not to exceed 75% of total expenditures.*
4. *WR/SFR – Increasing complexity of compliance issues.*
5. *LIP – State agency accessibility to LIP. The JTF understands this potential problem. Larry Mellinger is going to look into the issue further. The JTF chose to send this issue to the State fish and wildlife agency and the FWS offices to better understand the extent of the problem and for ranking as to the importance of the problem.*

Issues that require further clarification before the JTF takes a position – JTF members or USFWS staff will seek further clarification and report at the next JTF meeting.

1. *WR/SFR – Standardize the methods being used to develop a saltwater/freshwater funding split in coastal states. Tom Barnes will see if we can get further clarification on the issue. The JTF decided to table this issue until further information was provided.*
2. *WR/SFR – Should Environmental Assessments be required for mineral extraction when the State has no control over the mineral rights? Lisa Evans agreed to work with those submitting this issue and provide that back to the JTF for further consideration.*

Issues that the JTF determined not to warrant further consideration at this time – JTF will monitor these issues to see if they become a more serious issue in the future.

1. *WR/SFR - The use of WR & SFR funding to operate and maintain land and developments purchased or constructed with Land and Water Conservation (LAWCON)*

Act Funding. Larry Mellinger and other DOI Solicitors have been working on this issue. The JTF decided to wait until Larry reports back to the Department and some action is taken before deciding to take action on this issue.

2. *WR/SFR – The use of SFR funding for aquatic nuisance species control.* Tom Barnes will consult with the responder and report to the JTF at our next meeting. At this time, the JTF will take no further action.
3. *WR/SFR – Bass tournament mortality issues and assisting tournament promoters with live-release facilities.* Tom Barnes will seek clarification and provide input at the next meeting.
4. *WR/SFR – Non-collection of PR and DJ excise taxes.* The Assistant Director and the Chair of the IAFWA's Trust Fund Committee are working on a solution to this issue.
5. *WR/SFR – Consistent implementation of Director's Orders.* The JTF recognizes this as an important follow-up challenge that will require continual oversight.
6. *WR/SFR – Americans with Disabilities Act application to Federal Assistance supported facilities.* The Assistant Director will work with Regional Chiefs and Regional Directors to better clarify a position on this subject.
7. *WR/SFR – Appraisals and Appraisal Reviews of Federal Assistance supported acquisitions.* The Assistant Director is working on this issue.
8. *WR/SFR – Expiration of Directors Orders.* The Assistant Director is working to transform these Directors Orders into the FWS Manual.
9. *WR/SFR – In-kind use – site specific and/or statewide.* The JTF felt that this issue had been satisfactorily addressed in previous Directors Orders.
10. *WR/SFR – Federal Assistance Lands Inventory System.* The JTF recognizes this as a problem that needs attention within the FWS, but decided against taking further action on it at this time.
11. *SWG – Reversion of SWG funds after 2 years.* The Assistant Director is working on a position on how reversions of SWG funds will be handled. The JTF decided to take no action on this at this time and urged the FWS to provide clear guidance to the States on what the procedure was going to be.
12. *SWG – Education and Information Opportunities.* The JTF recognizes this as a deficiency in the SWG program, a change would take Congressional action. The JTF chose to take no further action on this issue.

13. *SWG/LIP – SWG & LIP match requirements.* The JTF recognizes the importance of this issue on future implementation of the SWG program, any change would require Congressional action. Therefore, the JTF elected to take no further action on this issue.

14. *SWG – SWG for States operating under CMS.* The JTF recognizes this as a problem to some States, but a solution would require Congressional action. Therefore, no further action by the JTF is warranted.

15. *SWG – Using SWG funds to buy and manage lands.* As noted earlier, the JTF has elected to allow the DOI to address this issue before taking further action.

16. *SWG – Increased grants management needs.* The JTF agrees but chose to take no further action on this issue at this time.

17. *SWG – Stable funding for the SWG program.* The JTF agrees with the responder. However, since this issue is outside of their charter, the JTF decided to take no further action on this issue.

18. *SWG – Regulations to support the SWG program.* The JTF decided to take no action on this proposal at this time.

19. *SWG – Contracting with FWS for SWG activities.* The JTF briefly discussed this issue and could identify no prohibition against FWS contracting with a State to fulfill a need identified and funded through a SWG proposal. No further action is proposed on this issue.

20. *LIP – Continued Funding for LIP.* The JTF agrees but any appropriate action would be outside of their charter. Therefore, they will take no further action on this issue.

21. *LIP – Safe Harbor Agreements.* The Assistant Director will take this issue up with the FWS Directorate and develop a solution. The JTF chose to take no further action on this issue at this time.

22. *LIP – LIP ranking criteria.* The Assistant Director is currently developing guidance on ranking criteria. At this time, the JTF elected to not pursue this issue further.

23. *LIP – Tax implications relative to LIP.* After discussion, the JTF decided to take no action on this issue.

24. *LIP – Regulations to support the LIP.* The JTF decided to take no action on this proposal at this time.

25. *LIP – Long term commitment by private landowners.* The JTF agrees with the desire to maximize the resource benefits from the LIP. However, they chose not to address this issue at this time.

26. *LIP – Deadlines for expenditure of LIP funds.* The JTF decided to take no action on this issue at this time.