



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AMBS/FA/

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Memorandum

To: Thomas Bennett, President, International Association of Fish and Wildlife Agencies
Steven Williams, Director, Fish and Wildlife Service

From: Terry Crawford, Co-chair, Joint State/Federal Task Force on Federal Assistance Policy
Clint Riley, Co-chair, Joint State/Federal Task Force on Federal Assistance Policy

Subject: Policy Recommendation of the Joint State/Federal Task Force on Federal Assistance Policy - Useful Life of Capital Improvements Funded by Federal Assistance Grants

The Joint State/Federal Task Force on Federal Assistance Policy (JTF) submits the attached recommendation concerning "Useful Life of Capital Improvements Funded by Federal Assistance Grants" for your review and consideration. We suggest that the guidance be implemented in the form of a Director's Order, with future codification within the U.S. Fish and Wildlife Service Manual.

The substance of the policy recommendation is detailed within the body of the recommendation itself. It was developed by the JTF over the course of four meetings (in Atlanta, GA on March 11-12, 2003, at NCTC on May 13-15, 2003, in Missoula, MT on August 5-7, 2003, and in Madison, WI on October 22-24, 2003), as well as JTF workgroups who submitted information to the JTF at each of these meetings. As designated by each of you, the members of the JTF represent both State fish and wildlife agencies and the Service, and are listed at the end of the memorandum.

Following the JTF meeting in August, a draft recommendation was provided to all grantees of the Wildlife and Sport Fish Restoration Programs, and to all Service Regional Offices and relevant Service Programs, requesting comment. Comments were received from thirteen grantee agencies, and from six Service offices. Roughly summarized, the most substantial comments received are listed below in italics.

The terms "capital improvement" and "useful life" need to be clarified, and the draft recommendation should include reference to real property as described in 43 CFR 12 in

order to better define capital improvements. The JTF agreed that additional clarification of these terms was needed, and added a definition for capital improvements to Section 4 along with an expanded list of examples. The language in Section 4 also was revised to clarify that the term "useful life" of a capital improvement carries the expectation of adequate, routine maintenance of the improvement. The revised language refers to the relationship between "capital improvement" and "real property," but the JTF did not believe it would be necessary to add reference to 43 CFR 12.

An OIG interpretation stated that predetermining useful life conflicts with 43 CFR 12.71(b), which states, "...real property will be used for the originally authorized purposes as long as needed for that purpose [sic]". The JTF reviewed this regulatory language and the relevant OIG interpretation with Federal and State legal counsel. The JTF does not believe establishing the useful life of a capital improvement at the time of the grant agreement conflicts with existing regulation, and believes the practice should be required as a matter of policy. Based on the legal counsel received, the JTF disagrees with the OIG analysis to the extent it says otherwise.

The described methods for calculating useful life are not clear for a number of reasons, including: Use of IRS standard depreciation tables creates confusion; should specify who may determine "design life;" and should refer to the useful life determinations for federal property in Director's Order #157. The JTF agreed that the attempt to specify actual methods for calculating useful life may create confusion, and is unnecessarily limiting. Consequently, reference to IRS tables was removed from Section 5 (previously Section 7), and instead the language refers to "the State's standards to determine design life . . . or other established methods for defining useful life." This language is intentionally open-ended, and therefore would allow for the use of the engineer's design life, IRS tables, deference to DO #157, or other established methods.

A dollar threshold for capital improvements should be established below which documenting the calculation method for the useful life is not required. The JTF agreed and set the threshold at \$100,000 in Section 5 using the flexibility given agencies to establish capitalization thresholds according to their own financial and operational conditions according to guidance in the Statement of Federal Financial Accounting Standards No. 6. Additional guidance was added to this Section to say that, while a useful life must be established, the Service would defer to the State's determination of the useful life of a capital improvement less than the \$100,000 threshold.

As written this Section does not provide the Service the opportunity to question useful life as established by the States. The JTF agreed that this interpretation was possible, but did not intend for this to be the case. Therefore, language was added to Section 5 to note that approval of the grant agreement will represent concurrence by the Service for the final determination of useful life.

A minimum useful life needs to be established. The JTF considered this comment, but believes that referring to the requirement of "substantiality of character and design" in

Section 5 eliminates the need to establish a minimum useful life. In other words, any improvement that has a less than acceptable minimum useful life would not meet substantiality of character and design requirements.

- *As written, Section 6 (formerly Section 5) implies States are responsible for "control of lands" underlying capital improvements only for the useful life of the improvement. The JTF noted that this interpretation was possible, but was not intended. Consequently, the JTF revised Section 4 and Section 7 to emphasize that capital improvements are a subset of real property, and that responsibility for any federal interest in the underlying lands would continue after the useful life of a capital improvement has expired.*
- *In the case of renovations or major repairs, the new or revised useful life needs to be clearly stated in the grant documentation. Also, the useful life could be shortened by a catastrophic event. The JTF agreed that these clarifications would be appropriate. Language was added to Section 5 that the useful life can be shortened by catastrophic events, or lengthened by construction or rehabilitation projects funded with Federal Assistance. The need to include this information in the grant documents would need to be considered on a case-by-case basis.*
- *The draft recommendation does not address the stated purpose, and is directed to States rather than to the Service. The JTF added language to clarify the draft is intended to identify roles and responsibilities of the Service and grantees with regard to determining the useful life of capital improvements, and believes the recommendation provides appropriate direction to the Service concerning administration of the Federal Assistance program.*
- *The draft recommendation should be expanded beyond the Wildlife and Sport Fish Restoration Programs to other programs. The JTF reaffirmed that its mandate is to make policy recommendations specific to the Wildlife and Sport Fish Restoration Programs, but noted the need to communicate to various offices that programs such as Boating Infrastructure and Clean Vessel Pumpout are funded through the Sport Fish Restoration Program and as such are covered by this draft guidance.*

The actual comments received could be provided to you at your request.

The recommendation presented to you at this time reflects the JTF's consideration of all of these comments, and our consensus opinion after this review. If you have any questions about this recommendation, or the process used by the JTF to arrive at this recommendation, please contact either of us, or any member of the JTF.

Members of the Joint State/Federal Task Force on Federal Assistance Policy (in alphabetical order):

Gerald Barnhart, Director, New York Division of Fish, Wildlife and Marine Resources
John Frampton, Director, South Carolina Department of Natural Resources

Don Friberg, Chief, Division of Federal Assistance, FWS Region 1
Dale Hall, Regional Director, FWS Region 2
Kelly Hepler, Director, Sport Fish Division, Alaska Department of Fish and Game
Bobbi Keeler, Federal Aid Coordinator, Montana Department of Fish, Wildlife, and Parks (JTF member when policy was developed)
Mitch King, Deputy Regional Director, FWS Region 4
Kris LaMontagne, Chief, Division of Federal Assistance, FWS Washington Office
Tom Niebauer, Federal Policy Advisor, Wisconsin Department of Natural Resources
Gary Reinitz, Branch Chief, Grant Operations and Policy, FWS Washington Office
Glen Salmon, Director, Division of Fish and Wildlife, Indiana DNR
Paul Schmidt, Assistant Director, Migratory Birds and State Programs, FWS

Attachment
