

## **Joint Federal State Task Force on Federal Assistance Policy (Short Version)**

*Meeting Report of January 11 and 12, 2005*

The Joint Federal/State Task Force on Federal Assistance Policy (JTF) met in Kansas City, Kansas on January 11 and 12, 2005. 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  
Kelly Hepler                     Director, Sport Fish Division, Alaska Department of F&G

### **Fish and Wildlife Service Representatives**

Mitch King                      Assistant Director – Wildlife and Sport Fish Restoration  
Dale Hall                        Regional Director – Region 2  
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

### **Additional Attendees**

Larry Mellinger                Office of the Solicitor, DOI (ex-officio)  
Jimmy Christensen            Chief, General Counsel Section, Wisconsin DNR (ex-officio)  
Kim Galvan                      Policy Branch Staff, FA, Washington (JTF Recorder)

### **JTF members and others unable to attend**

Scott Porter                    Assistant AG, Counsel to Kentucky Department of F&W (ex-officio)

This summary of discussions is provided in the following outline:

- I.      Transitioning Director's Orders and Guidance Memos into Manual Chapters
- II.     Cost Accounting Director's Order – Stewardship Investment Issue
- III.    Using Federal Assistance funds to Maintain Lands Purchased with Land and Water Conservation Act Funds
- IV.    Joint Task Force Outreach Efforts

- V. Review of the Five Issues Ranked by States and Regional Office
- VI. Review SWG / LIP application to existing Director's Orders and Guidance Memos
- VII. Future Meeting Schedule

## **I. Transitioning Director's Orders and Guidance Memos into Handbook Chapters**

The JTF identified the process that will be used for transitioning Director's Orders and Guidance Memos into Federal Assistance Handbook Chapters. The group agreed that they would work to incorporate JTF products into existing handbook chapters, where appropriate, as opposed to developing new chapters. However, new chapters will be developed where a Director's Order addresses an issue that stands alone, and where a new chapter will facilitate use and application of policy. The JTF reviewed a proposed time frame that would incorporate all existing DOs into Manual Chapters this calendar year and made suggestions including setting a goal for at least one stand-alone DO to be addressed before the next meeting.

## **II. Cost Accounting Director's Order – Stewardship Investment Issue**

During the final reviews of the Cost Accounting Director's Order, FWS staff identified a conflict with a 2003 Director's memo directing that States should utilize Performance Reports to provide information necessary for the FWS to respond to a Departmental data call relative to the Service's responsibility to report Stewardship Investment activities. This contradicted the language of the Cost Accounting DO, which made the inclusion of any cost figures in the Performance Report voluntary. After discussion, the JTF recommended not to modify the proposed Cost Accounting Director's Order to address this issue. Instead, it was recommended that the Service develop an alternative means of getting the information needed to satisfy the Stewardship Investments data call and modify the 2003 Director's memo accordingly.

## **III. Using Federal Assistance funds to Maintain Lands Purchased with Land and Water Conservation Act Funds**

Recent audits have found that States should not be using FA funding to operate and maintain properties purchased with LWCF funds made available to them through the National Park Service. This has created some problems in States who are doing wildlife management on lands purchased as state parks. The JTF discussed this matter with legal counsel and it appears there may be a variety of possible interpretations of existing law and policy. Options for resolution range from legislative fixes to policy clarifications.

The JTF agreed that FWS will meet with NPS to discuss current policy and options for addressing the issue.

#### **IV. Joint Task Force Outreach Efforts**

The JTF discussed options for better disseminating information about JTF recommendations and related FWS decisions. Two products were developed as a result of the last meeting. FWS staff developed a notebook that compiles final JTF products as well as related FWS products, and will distribute it to FWS Regional Offices and State FA Coordinators. In addition, FWS staff developed a PowerPoint presentation for use at various meetings to briefly recap the activities of the JTF. This presentation will be edited slightly and distributed to JTF members for future use at regional Association meetings and at the upcoming State FA Coordinators meetings.

#### **V. Review of Five Issues Ranked by States and Regional Offices**

Prior to this meeting, the JTF had utilized the Group Systems online survey methodology to request further input from States and FWS Regional FA offices on five program issues that were determined to be of national significance.

These five issues (highlighted in bold below) were selected by the JTF as the most important issues from a larger group of issues generated from a similar Group Systems exercise. Participants were asked to rank the five issues in order of priority and provide further clarification on their perception of the issue being reviewed. There were 24 respondents that provided a relative ranking for the five issues. In addition, the respondents provided clarifying comments on the issues that indicated a variety of interpretations for each issue. These rankings and comments helped guide the JTF's discussions and recommendations.

Following is a summary of the discussions for each issue. The issues (highlighted in bold) are presented in priority order with the Summary Ranking Score identified in parenthesis.

**Urge USFWS Ecological Service and Federal Assistance staff to work more closely on realistic and consistent application of compliance requirements. (Summary Ranking Score – 87)**

After discussion, the JTF realized that some FWS regional FA staffs have developed arrangements with their Endangered Species and Habitat Conservation counterparts that might prove beneficial if adopted on a national scale. The JTF appointed a small group to clarify the issue and potential options for addressing it, including a draft recommendation of "best practices."

### **Limit Federal Assistance Audit Time Frames (Summary Ranking Score – 79)**

After reviewing the comments, the JTF decided that the rules for the time frames of an audit itself are sufficiently clear. However, a lack of written direction to the Regional Directors on CAP development and the associated time frames has led to confusion among the State agencies and the Service, specifically concerning the potential application of financial restitution outside the audit period. After discussion, the JTF's opinion is that the only justification to reach back prior to the current five-year audit period to expand a finding (and restitution) would be a finding of fraud as detailed in the audit chapter. The JTF will provide this opinion in the form of a memorandum to the IAFWA President and the FWS Director asking the Director to issue a policy memorandum that includes the following language: "Except in the case of fraud, the financial effect of a corrective action plan shall not reach back beyond the date of the current five year audit period."

**Add the following default language to the "other Grant Provisions" section of grant agreements: "Grant is eligible for reimbursement of amount obligated, not to exceed 75 percent of total expenditures." (Summary Ranking Score – 69)**

This suggested language would allow a State to fall back on the 25% minimum State match if something in the original funding arrangement falls through. After discussion, the JTF endorsed the inclusion of this suggested language into grant agreements with the understanding that the State would still have to meet the 25% minimum match and the total Federal funding amount cannot exceed that identified in the grant agreement. Consequently, the JTF recommended that the Service provide this language through the Regional Federal Assistance Chiefs. The Assistant Director will assure that this guidance is distributed.

**Clarify procedures for certifying the number of actual lifetime license holders for apportionment purposes. (Summary Ranking Score – 66)**

While it is clear in regulation that the States are held accountable for a license certification process, the standards provided in regulation for certifying lifetime licenses do not direct a specific methodology that must be used. Consequently, some commenters noted the possibility that a State's chosen methodology may lead to a future audit finding if it failed to meet the standards in regulation. An alternative concern was that specifying standards may unnecessarily reduce flexibility. The JTF reviewed the comments describing the various methods currently being used by States. After a lengthy discussion and decided that it is not necessary or appropriate to pursue a recommendation of specific procedures for certification at this time.

**Clarify State agency accessibility to LIP. (Summary Ranking Score – 59)**

Some of the State agencies that have direct responsibility for species eligible for consideration under LIP do not have direct access to the program. For example, if the

agency responsible for plant species of concern is not the State fish and wildlife agency, they do not have direct access to LIP funding. Under this example, the agency with the responsibility for plants must request consideration for funding through the State fish and wildlife agency. The JTF decided to support the earlier LIP decision identifying the State fish and wildlife agency as the principle point of contact for the LIP program.

## **VI. Review SWG / LIP application to existing Director's Orders and Guidance Memos**

Task Force members reviewed each of the existing (8) and pending (2) Director's Orders, the Director's Guidance on Endangered Species Act application, and the Director's Guidance on Boating Access to determine applicability to grants made under the State Wildlife Grant (SWG) and Landowner Incentive Programs (LIP). The JTF felt that the concepts included in the original DOs and the Director's Guidance on Endangered Species Act application should be applied to SWG and LIP. The JTF felt that SWG and LIP were not applicable to Director's Guidance on Boating Access.

The JTF will develop a generic Director's Order to incorporate SWG and LIP by reference for six DOs and the Director's Guidance Endangered Species Act application. This generic DO will be provided for State and regional FWS comment before the next meeting.

The JTF felt that two of the DO would require revision to appropriately incorporate SWG and LIP (Allowable Recreational Activities - DO# 152 & Allowable Commercial Activities - DO# 167. These new DOs will be developed by the JTF and circulated with our traditional review process (Group Systems) to seek input from States and Regional Offices.

The JTF decided that the two DOs addressing cost accounting and pre-agreement costs could be slightly modified to fully incorporate SWG and LIP. Because the Director has not yet signed these DOs, the JTF recommended that the necessary modifications be made before signature.

## **VII. Future Meeting Schedule**

The JTF decided to hold its next meeting in Portland during the week of April 11. Monday and Thursday afternoon will be a travel days with the meeting on Tuesday, Wednesday and part of Thursday. Chris McKay will host the meeting. (Meeting cancelled by email on 2/23 in favor of longer meeting in June).

The following meeting is set for the week of June 20 in New York. Monday and Friday will be travel days, with Tuesday, Wednesday and Thursday being meeting days. Gerry Barnhart will host the meeting.