

Joint Federal/State Task Force on Federal Assistance Policy
Meeting Report of May 13, 14 and 15, 2003

The Joint State/Federal Task Force on Federal Assistance Policy met in Shepherdstown, West Virginia on May 13, 14 and 15, 2003. This report summarizes the outcomes and action items resulting from that meeting. The following participants attended:

Clint Riley Co-Chair, Special Assistant, Office of the Director, USFWS
Terry Crawford Co-Chair, Director, Nevada Department of Wildlife

State Fish and Wildlife Agency representatives:

Gerald Barnhart Director, New York Division of Fish, Wildlife and Marine Resources
John Frampton Director, South Carolina DNR
Bobbi Keeler Federal Aid Coordinator, Montana Department of Fish, Wildlife and Parks
Tom Niebauer Federal Policy Advisor, Wisconsin DNR

U.S. Fish and Wildlife Service representatives:

Don Friberg Chief, Division of Federal Assistance, Region 1
Dale Hall Regional Director, USFWS Region 2
Kris LaMontange Chief, Division of Federal Assistance, Washington Office
Mitch King Deputy Regional Director, Region 4
Mary Reintz Branch Chief, Grant Operations and Policy, Washington Office
Paul Schmidt Assistant Director, Migratory Birds and State Programs

Additional Attendees:

Larry Mellinger Office of the Solicitor, Department of the Interior
Jimmy Christenson Chief, General Counsel Section, Wisconsin DNR
JTF Staff Chris McKay, Division of Federal Assistance, Washington Office
Recorder Jennifer Mock, International Association of Fish and Wildlife Agencies

Joint Task Force participants unable to attend:

Kelly Hepler Director, Sport Fish Division, Alaska Department of Fish and Game
David Waller Director, Georgia Wildlife Resources Division

This report summarizes discussions of the May 13-15, 2003, meeting in the following manner:

- I. Update on Previous Recommendations
- II. Submission of Draft Recommendations for Comment
- III. Next Issues for Development as Draft Recommendations
- IV. Workgroup Assignments and Other Issues for Discussion
- V. Next Meetings

The "Operations and Processes" of the Joint Task Force were summarized in report of the Nov.

14, 2002 meeting, and continue to describe the steps intended in order to address Federal Assistance policy issues. (Please contact any member of the Joint Task Force to obtain a copy of that report.)

I. Update on Previous Recommendations

As noted in the Report for the meeting on March 11-12, 2003, the Joint Task Force submitted two recommendations to the Director of the FWS and the President of the IAFWA on March 24, 2003, concerning: (1) Budget Changes, and (2) Allowable Recreational Activities and Related Facilities on Federal Assistance Lands. Service staff reported to the Joint Task Force that the Director has indicated approval of these recommendations, and Director's Orders are anticipated to be distributed in the near future. [NOTE: Subsequent to the Joint Task Force meeting in March, these draft Director's Orders were distributed on February 20, 2003 for comment.] In keeping with the recommendation of the Joint Task Force, the FWS intends to begin the process of incorporating these into the Service Manual, which will include additional opportunity for public comment.

II. Submission of Draft Recommendations for Comment

The Joint Task Force reviewed Draft Recommendations that had been developed based on previous discussions on three issues:

1) Program Income

- (2) Allowable Commercial Activities and Related Facilities on Federal Assistance Lands**
- (3) ESA Section 7 Consultations on Federal Assistance Grants to States**

After further discussion and review, the Joint Task Force is now submitting these Draft Recommendations to State Directors and to FWS Regional Directors and Assistant Directors for review and comment. Simultaneously, Regional Federal Assistance Chiefs will be sent copies for comment and distribution to State Federal Assistance Coordinators for their review and comment. Comments are requested by July 24, 2003, through your Federal Assistance staff, and further information regarding how comments will be collected will be provided with the transmittal for the Draft Recommendations. In addition, Assistant Regional Directors for Ecological Services will be asked to comment on the draft recommendation on ESA Section 7 Consultation. Depending on the comments received, the Joint Task Force intends to finalize these recommendations at its next meeting.

III. Next Issues for Development as Draft Recommendations

The Joint Task Force substantively discussed three additional policy issues. A summary of the status of the discussion for each issue follows. (The Joint Task Force member with the lead is in parenthesis.)

Cost Accounting and Reporting (Kris LaMontagne/Gary Reinitz)

The last audit cycle highlighted the need to clarify cost accounting and reporting requirements for Federal Assistance grants. Review of relevant laws and regulations indicated certain flexibility for the Service to set the parameters for required reports. Continuing discussions from previous meeting, the Joint Task Force reached conceptual agreement that financial reports should be required at the grant level, rather than at the project level or lower. The State grantee, however, should be held responsible for submitting performance reports at the project level. Based on discussion concerning the various interpretations of the term "project," the Joint Task Force identified the level at which a "project description" is submitted as an appropriate means of identifying the level requiring performance reports. Separate from the requirement for regular reports to the Regional Federal Assistance Office, the grantee would continue to be answerable, and thus "accountable," for each federal dollar and state match dollar reported on financial reports, and must have an accounting system sufficient for this purpose. The Joint Task Force intends to review a Draft Recommendation, in the form of a Draft Director's Order, at its next meeting.

Useful Life (Dale Hall/Gary Reinitz)

The term "useful life" appears in current regulation, but without further definition has caused confusion and inconsistent application between FWS regions. Information provided to the Joint Task Force identified a report from the Office of Inspector General asserting that predetermining useful life may be contrary to existing regulation. After discussion and review of relevant regulations, the Joint Task Force questioned this interpretation, and is requesting additional review from the Office of the Solicitor. Pending that review, the Joint Task Force reached consensus that it would prefer the useful life of a facility to be stated in grant documents, based on objective engineering analysis of the expected design life with routine maintenance. Thus, "cyclical" or "heavy" maintenance that intends to extend the design life of a facility would not alter its useful life for purposes of federal oversight, unless additional federal funds are used for that purpose. If review by the SOL approves this interpretation, the Joint Task Force intends to review a Draft Recommendation, in the form of a Draft Director's Order, at its next meeting.

Landbanking (Tom Niebauer/John Frampton/Paul Schmidt)

Discussions at this meeting identified certain parameters for the use of land as match. Most important, to have protection as part of the Federal Assistance program, which is desired by certain states, land must be part of a grant involving at least some use of Federal funds, rather than merely being part of a grant proposal for which no Federal funds have yet been committed. The Joint Task Force does support allowing lands that were an overmatch in one grant to be used as a match in a later grant, but believes guidance is needed to ensure consistent application. Restrictions would specify that land be consistent with the purpose of the grant for which it is used, regardless of geographic location. Primary outstanding issues involve the valuation of the land, including both how land would be monetarily valued, and how the value of the land would be determined if it were already owned by the State, but now being added to the Federal Assistance program. The Joint Task Force believes this issue will need to be relabeled, as these

Issues extend beyond "landbanking" to more general rules concerning use of land as match. Due to the number of outstanding issues, the Joint Task Force does not expect to have a complete Draft Recommendation for review at the next meeting.

IV. Workgroup Assignments and Other Issues for Discussion

The following issues continue to be identified as the next priorities appropriate for discussion and possible conceptual development of a Draft Recommendation at the next meeting, and therefore are assigned to a workgroup to develop a "white paper." (The Joint Task Force member assigned to lead the workgroup is in parenthesis.)

1. CMIA (Cash Management Improvement Act) policy and guidance (Kris LaMontagne)
2. Use of Property Acquired or Produced with License Fees (Bobbi Keeler)
3. Use of Sport Fish Restoration Funds for Boating Access (Gary Reinitz)
4. Homeland Security, and the potential need for guidance concerning appropriate use of fish and wildlife resources to support Homeland Security (Kris LaMontagne)

V. Next Meetings

The next meetings for the Joint Task Force will be as follows:

August 5 and 6, 2003 (8 a.m. – 5 p.m.) and August 7, 2003 (8 a.m. – noon)

Holiday Inn Parkside, Missoula, Montana

Hosted by Bobbi Keeler, Montana Department of Fish, Wildlife, and Parks

Agenda:

Review comments on three draft recommendations (see Section II)

Prepare two or three draft recommendations to submit for comments (see Section III)

Discuss from one to five additional items, to develop recommendations (see Section IV)

October 22 and 23, 2003 (8 a.m. – 5 p.m.) and October 24, 2003 (8 a.m. – noon)

Madison, Wisconsin

Hosted by Tom Niebauer, Wisconsin DNR

January 13 and 14, 2004 (8 a.m. – 5 p.m.) and January 15, 2004 (8 a.m. – noon)

National Conservation Training Center, Shepherdstown, West Virginia

Hosted by Clint Riley, Washington Office, USFWS

Respectfully Submitted

Clint Riley, USFWS

Terry Crawford, NV Department of Wildlife