

**FISH AND WILDLIFE SERVICE
EQUAL OPPORTUNITY**

Equal Opportunity

Part 063 Federally Assisted and Conducted Programs

Chapter 2 Complaint Processing in the Public Access Civil Rights Program

063 FW 2

2.1 What is the purpose of this chapter? This chapter explains how the Wildlife and Sport Fish Restoration office (WSFR) processes complaints filed by members of the public.

2.2 What is the policy? WSFR must:

- A. Investigate allegations of discrimination covered by the Public Access Civil Rights Program (Program);
- B. Inform the complainant and the recipient or respondent of the findings; and
- C. Work with recipients or respondent agencies to resolve findings of discrimination, if necessary.

2.3 What is the scope of this chapter?

- A. Service Manual chapter 063 FW 1, section 1.3 describes the scope of the Program.
- B. WSFR does **not** process complaints for Federal financial assistance we give to educational institutions such as colleges and universities. The U.S. Department of Education monitors educational institutions that receive Federal financial assistance, so we refer all such complaints to them.

2.4 What are the authorities for this chapter? You can find the authorities for this chapter in 063 FW 1.4.

2.5 Who is responsible for processing complaints? The WSFR's Civil Rights Coordinator for Public Access receives and investigates all public access civil rights complaints. See 063 FW 1.5 for overall responsibilities for the Program.

2.6 What terms do you need to know to understand this chapter? If you need a definition of a term in this chapter, see 063 FW 1.6.

2.7 Who can file a public access civil rights complaint? Any person in the United States alleging discrimination or a violation of civil rights statutes covered by this Program, involving equal access to programs, activities, or facilities, may file a complaint. The complainant does not have to be a U.S. citizen. Exhibit 1 provides more information about the public's right to file a complaint and the investigative process.

2.8 How does WSFR receive civil rights complaints? We receive complaints in the following ways:

- A. Sometimes people send complaints directly to the Civil Rights Coordinator for Public Access.
- B. The Department of the Interior (DOI) Office of Civil Rights (OCR) may refer a complaint to WSFR. Some of these complaints may have been filed initially with the U.S. Department of Justice (DOJ) or the U.S. Access Board.
- C. Another Federal agency may refer a complaint to WSFR.
- D. A different Service program office may refer a complaint to WSFR.
- E. A recipient who could not resolve an issue at a local level sometimes refers the complaint to WSFR, within 10 days.

2.9 Are there any other special complaint processing circumstances? Yes, there are several:

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A. Complaints filed against Service programs, activities, or facilities. WSFR refers these complaints immediately to the DOI OCR, which has direct authority over complaints filed against a Departmental bureau.

B. Complaints filed against State or local government entities where we provide no Federal financial assistance. The DOI OCR may refer to WSFR this type of public access civil rights complaint. For instance, the DOJ has the authority under the Americans with Disabilities Act to assign a complaint to another Federal agency even when there is no Federal financial assistance involved. WSFR will investigate and try to resolve these cases. Since WSFR provides no Federal financial assistance to these agencies, we must refer all unresolved noncompliance matters back to the DOI OCR for appropriate action.

C. Complaints sent to us where we have no jurisdiction. In these cases WSFR identifies the agency responsible for addressing the complainant's concern and refer the complainant to that agency.

2.10 Is there a role for Regional Offices in the processing of complaints? Yes. Occasionally the Civil Rights Coordinator for Public Access will request the assistance of the Regional Diversity and Civil Rights (DCR) office to assist with informal resolution efforts. Sometimes a Regional DCR Chief assists with resolution efforts in a Region other than his/her own, if both Regions agree with this arrangement.

2.11 What does the investigation involve?

A. WSFR, in particular the Civil Rights Coordinator for Public Access, analyzes the case file including:

- (1)** Documents the complainant provides;
- (2)** Documents the recipient provides;
- (3)** Information from third parties;
- (4)** Relevant witness statements; and
- (5)** Applicable laws, regulations, and Court decisions.

B. On complex cases, WSFR seeks the input of the Regional DCR offices or the DOI OCR.

C. Determining whether discrimination or a violation occurred. WSFR uses the "preponderance of evidence" standard; that is, if at least 51 percent of the evidence favors one party, that party will prevail.

2.12 Who makes the final decision on complaints?

A. The Chief, Division of Policy and Programs signs decisions where there is a finding of no discrimination or a finding of no discrimination that includes programmatic recommendations for improvement to avoid possible future liability.

B. For violations and discrimination, the Civil Rights Coordinator for Public Access, with the approval of the Chief, Division of Policy and Programs, coordinates with the DOI Director, OCR. The Director, OCR signs all violation and discrimination letters. In rare cases, a WSFR official may sign such a letter, but only if the DOI OCR authorizes it in writing.

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2.13 Does WSFR use Alternative Dispute Resolution (ADR) during the investigation of complaints? Yes. Unless a clear-cut determination emerges during the complaint investigation, WSFR encourages communication between the parties in dispute and resolution efforts. The ADR may include efforts by the Regional DCR offices or a third party mediator to resolve the complaint. Agreement to use ADR is voluntary. The Civil Rights Coordinator for Public Access oversees all ADR efforts.

2.14 What is WSFR's involvement during settlement agreements? The complainant(s) and a designated official for the recipient or respondent agency sign settlement agreements. The Chief, Division of Policy and Programs signs the agreement to certify it or delegates certification to the Regional DCR office.

2.15 What must WSFR do if one or more of the parties breach the settlement agreement?

A. If one or more parties allege in writing that a settlement agreement has been breached, then the Civil Rights Coordinator for Public Access must investigate the allegation.

B. If WSFR determines that the agreement was breached based on our investigation, then the Chief, Division of Policy and Programs must notify the parties in writing of the breach.

C. The Civil Rights Coordinator for Public Access must then continue processing the complaint.

D. A breach of the agreement by the recipient could trigger enforcement actions in some cases (see section 2.16).

2.16 What happens if WSFR cites a recipient or agency for discrimination or a civil rights violation?

A. If WSFR finds discrimination or a violation (and if the DOI OCR concurs—see section 2.12B), then we give the recipient or respondent agency a reasonable period of time to correct the violation voluntarily.

B. If the recipient refuses to cooperate, we must notify the DOI OCR (see section 2.12) of the continued noncompliance. Then DOI may hold a sanctions hearing to suspend or terminate Federal funding to the recipient. DOI will inform the recipient in writing of the hearing process. When DOI suspends or stops funding, it must notify Congress.

C. DOI may also refer the issue of noncompliance to DOJ for civil enforcement. DOJ may file a lawsuit against the offending agency in a Federal court to seek a court order for injunctive relief or in some cases monetary damages.

D. In cases where WSFR finds a civil rights violation against an agency that does not receive Federal financial assistance from any DOI entity, and DOI concurs, then DOI may refer the case to DOJ for civil enforcement.

/sgd/ James J. Slack
ACTING DEPUTY DIRECTOR

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