

DISCUSSION NOTES
Joint Federal/State Task Force on Federal Assistance Policy
May 23-25, 2006, Charleston, SC

Tuesday

Morning:

- **Co-chairs' welcome and review of Agenda**

Glen Salmon and Rowan Gould welcomed the group. John Frampton also welcomed the group on behalf of the South Carolina Department of Natural Resources. All members were in attendance except Kelly Hepler and John Organ. Also in attendance were Mike Piccarilli (USFWS), Don Winslow (SCDNR), and Emily Cope (SCDNR).

- **Review of action items from San Antonio meeting**

Tom Barnes provided a status report on action items from the San Antonio meeting.

- **Analysis of completed audits**

Jim Greer discussed the past 5-year audit cycle. It should be completed by September, with the exception of MS and the Virgin Islands which were deferred to next cycle because of Hurricane Katrina. The next cycle will include PR, DJ, as well as non-tribal SWG (but not LIP). The auditors will be looking at in-kind match and land acquisition.

There was a general discussion regarding the newly implemented SWG program. The JTF regarded the soon to be distributed "Guidelines – Q's and A's" to be applicable to those making application. The Q's and A's need one final review by the JTF before they are finalized. A big concern is how match requirements for SWG program will be interpreted. There needs to be more guidance to those implementing the SWG program – as well as appropriate guidance to auditors before they look at the program. The issue was referred to a small group for further consideration and recommended action.

- **U.S. Fish and Wildlife Service (FWS) report on coordination regarding Coastal grants**

Jim Greer indicated he had talked to Hannibal Bolton about Coastal grants, but didn't get into JTF issues. Jim will have further discussions, but doesn't think there will be many direct connections to JTF products. He will report back on those discussions.

- **Fire management policy issues**

Tom Barnes discussed the proposed fire guidance memo which was distributed before the meeting. He received feedback from 6 individuals indicating no concern. Tom had discussed the issue with the Service's refuge program who is responsible for fire management. They felt the existing guidance would pose no problem for States. The JTF, however, after discussing the matter, felt an explanatory addendum to existing Service guidance would preclude misinterpretation. Tom Barnes agreed to finalize the addendum to be approved by the Director and distribution to the Service directorate. In addition, the Addendum would require an explanatory cover memo from Glen and Rowan to the Director.

- **Review of the white paper on a manual revision process**

Tom Barnes reported on the white paper on revision of manual chapters. He indicated there were two separate but relate issues:

- (1) Do JTF products have the binding/force and effect of law? To extent that it's based on law, yes it has force of law; otherwise it's an instructions to staff.

There was considerable discussion regarding whether JTF products needed to go through rulemaking – giving them the force of law. Some of the JTF products are presently a reflection of an existing law. For those that are not, the discussion revolved around the pros and cons of going through a rule-making process – considering that a rulemaking is labor intensive and includes, in most cases, a lengthy public participation process. When something goes in a Manual, however, we are interpreting regulations. A Service Director is given deference in that interpretation. New Directors could have different interpretations. Director's Orders (DO), for the most part are based in regulation. LIP and SWG may require rulemaking. Everyone felt a clearly written, up-to-date manual, given the circumstances, was the desirable outcome – given the complexity of other options. The point was made that we have regulations, DO's and manual chapters. It's very confusing. A desirable outcome is to compile everything into a new Manual. Solicitor's opinions also carry a lot of weight and are important tools. An example is the opinion about whether harvested timber is real property (it is not). However, if we put the opinion in regulation, it's harder to change.

After considerable discussion regarding the update of the manual, it was decided that the scope of a manual change needed to be determined. It was noted, however, that the job was not a specific responsibility of the JTF. Someone needs to determine what must be done, as opposed to nice to do conflicts and ambiguities must be corrected resulting from JTF actions.

Glen summed up by saying that the group is fairly comfortable using the manual as guidance and only going through rulemakings where absolutely necessary. We will deal with disagreements and interpretation conflicts as they come up.

- (2) Options for revising the Manual

Tom discussed four options. The group decided that the responsibility to assist the Service in this effort best resided in the AFWA Trust fund committee, possibly with a working group. Participants need to be either State of Federal employees because of FACA issues.

We discussed possible instructions to a manual revision group to include “if there is a conflict between a JTF product and what is in the manual, then accept JTF policy or bring the issue to the attention of JTF for resolution.” The only side-boards on this process are JTF products, the grant program laws and federal grant regulations.

The group complimented Tom Barnes on his extensive and insightful work on this issue.

Afternoon:

Three items were added to the agenda;

Stewardship Investment reporting
Discussion of Regional FA reviews
Regional consistency

Stewardship Investment reporting:

New Federal Accounting Standards require agencies to report Stewardship Investments (SI), which include nonfederal Physical Property, Human Capital, and Research and Development. That requirement is now part of the FWS financial audit. OMB has not given the FWS authority to ask the States for SI information. Without that information, the Service will likely show a weakness in the A-123 review.

In the last audit, SI information was submitted as supplemental information – but indications are that the Service will soon be required to elevate the importance of the information to “footnote” status (a higher level of auditable significance). The States are uncomfortable including any Stewardship Investment information in a Performance Report that would make the report auditable. The issue is unresolved.

Through the JTF, the States addressed the view that SI information should not go into the Performance Report because the Performance Report should not deal with cost data. The Service, based on a recommendation from the JTF, then wrote a Cost Accounting Manual Chapter reinforcing the view that SI information should be collected using other means. There is an older 2003 memo stating SI information must go into Performance Reports or the SF 269. The Manual Chapter and the guidance memo are in conflict. Larry Mellinger suggested that IG-contracted Service auditors use estimated SI data provided in grant agreements.

Discussion of Regional FA reviews:

Jim Greer reported that the Service plans to initiate Regional FA reviews – both as a check on operations, but also as a check on consistent application of policies and procedures. The process was scheduled to start this fall, but has been postponed because of staffing issues.

Regional Consistency:

It's not uncommon for the Service to be criticized about inconsistent application of the Federal Aid program between the Regions. That form of criticism is not useful - to the Service or the JTF - because we need specifics to correct any problems. Specific examples of either inconsistent interpretation or application on manual guidance or DO's will allow either a specific fix, or determination that there is a larger, generic problem that should be addressed by the JTF. The group agreed that identifying specific problems would be useful, but how we get information should be designed to preclude strained relationships between the State and Federal offices. The group came to no conclusion on that matter – beyond an agreement that identifying specific problems (especially through group systems) is important.

- **Review of GroupSystems comments from latest information request**

Compliance issues, in particular ESA and NEPA continue to be large workload issues. There is still confusion and varying degrees of federal/state cooperation. There was a discussion regarding ongoing efforts to streamline and share NEPA and ESA responsibilities. Further clarification regarding this issue is being developed within DOI and the FWS. On the NEPA issue, there was an Association working group that made recommendations on possible categorical exclusions. That effort may require updating, however. Tom Niebauer is going to send a copy of the work group's product to the JTF.

The group referred issues related to commercial activities – specifically selling interests - pursuant to DO 167 for small group consideration.

It was determined that there were no WR, LIP, or SWG issues that rose to the level of JTF action. A discussion of policy related to bartering resulted in direction to distribute Pat McHugh's guidance on the subject.

There is enough confusion regarding SWG operating guidance, beyond guidance in the Q and A's, which warrants some kind of manual.

The issue was referred to a small group to determine a list of key areas and a reporting format that needs to go out as guidance to Federal Aid Offices – state and federal.

In reviewing the GroupSystems product, some commenters were vague or incomplete describing their concern. Kim Galvin will check if there's a way to glean the source of a comment if we need further clarification.

- **Overview of white paper on multistate grants**

Issue:

1) Provide clarification if all JTF products and “Sportsfish and wildlife restoration programs” statement in DO’s and Manual Chapters means all programs funded with WR and SFR funds - or only the two programs, CFDA 15.605 and 15.611.

From Dec. notes: “After discussion, the consensus of the JTF was that the DO's approved to date apply to WR, SFR, CVA, BIG, Hunter Education and Safety (Sec. 10) Programs, but not to the Multistate Program.” The JTF re-confirmed that these apply. We will get notification of this decision out to the field.

2) Do policies of JTF apply to MSCGP?

This issue was referred to small group for further consideration.

3) Do we need specific guidance related to CVA and BIG?

Manual Chapters do not refer to regulations related to CVA and BIG. In addition, other agencies are involved in administering CVA and BIG. They are not at the JTF table. Because of the work involved in rewriting manual chapters and DO’s, we will address issues as they come up.

- **Modification of the Audit Period Director’s Guidance.**

There was a discussion regarding possible misreading of language provided by the JTF to be included in a Director’s Order on audit period. The issue related to a State’s financial liability for past diversion or loss of control (sale) of lands purchased with federal funds.

This issue was referred to a small group to craft language that would preclude misunderstanding.

Wednesday

Morning:

- **GPRA and Federal Aid PART review**

The Service must collect data on performance and outcome measures to satisfy GPRA and OMB PART requirements. This is FWS requirement, but requires participation by the States. The Service is trying to establish metrics that are easily measurable and can be pulled out of grant reports. Presently, FAIMS is not configured to easily retrieve data. Over the last 10 years we have developed 300 activity codes but nobody is using them. We are now trying to develop a limited number (45) of activity codes – and will continue to refine so as small a number as possible (maybe 12). These codes will reflect the FWS required outcome and output metrics. Bottom line is that the Service needs to populate the data sets.

There was considerable discussion regarding the States' appropriate role in a Federal GPRA or PART process. Glen Salmon's concern was that these processes are duplicative of similar State processes, and additional or conflicting state/federal outcomes, outputs and expectations may become unnecessarily burdensome. State representatives felt that FWS administration of the program is the most logical focus for PART and GPRA. All recognized the nature of Federal Aid funds makes the issue complicated. State members also felt this issue should be discussed at the Association level.

The group discussed several options for collecting State data for inclusion in the FAIMS performance reporting system. Everyone agreed that data must be collected in a nationally consistent manner. There is concern by the Regional coordinators that many of the measures don't account for what is really being done. The concern is that this data can reflect poorly on programs because it is not appropriately capturing what is being accomplished.

The FWS is in the process of getting clearance from OMB to write a jointly developed Strategic Plan for Federal Aid that identifies jointly developed outcome and output measures. OMB had indicated they wanted a revision of the programs SEIS to identify measures. An SEIS could take two years to develop and would entail an expensive, extensive public process – which goes beyond strategic planning.

- **JTF website ideas – What should be included? Short versions of meeting notes? Transmittal memos? Recommendation Memorandums to the Director?**

After discussion of the nature of some of the JTF products, it was agreed that all products should go on the website. Tom Barnes will post the products to the Toolkit.

- **Grants.gov**

The application procedure for Federal Aid grants is moving to Grants.gov. We expect it will be mandatory in a year. This is a requirement of both OMB and the DOI. Specific forms - grant agreement and NEPA checklist - weren't approved by OMB so they will not be required (FWS agreed they wouldn't ask for this information from States). FWS personnel will likely still issue a "grant agreement" showing information. However, they will put it together (and States will not sign). The FWS financial program will post funds once FWS finalizes grant agreement. The State's expenditure of funds will indicate acceptance of terms and conditions of a grant. A State can still use the NEPA checklist to review their proposal, but FWS cannot ask for it.

Small Working Groups –

SMALL GROUP - Commercial Activities (Keith, Mike, Tom N, Larry)

Results: No action is needed by the JTF. There is existing guidance and clarification in DO's/Manual Chapters.

The large group ratified the small group action.

DO's are clear that States make the determination about what interferes with the purpose of a grant - and the FWS has authority to monitor grants and flag the issue if there is a problem. States should have their own decision-making process for determining what is appropriate. There is no authority within JTF to require States to do this. Income from commercial activity would be handled according to the appropriate DO – and if there is a need for support, the FWS could be requested to provide input.

SMALL GROUP - Guidance document on SWG -- what are key areas to be addressed and in what form should guidance go out? (Lisa, Glen, Tom B, Gerry)

Results: The following important items were proposed for inclusion in a guidance document:

- Match (in-kind or otherwise) can be applied across categories of similar activities or at project level at State's request.
- Cost accounting can be applied at the project level, broader "sub-account" level or at the grant level depending on how the grant is structured.
- Obligate funds for grant agreement periods that reflect reasonable project life and allow for extensions as necessary to accomplish grant objectives. (There was concern that guidance should reflect that open ended grant agreements are not good stewardship of SWG funds)
- Allow for grant amendment without deobligation of funds that will allow for new grant or project objectives if necessary to retain apportioned SWG funds. (See comment on previous bullet)

- There should be flexibility to deal with the unknown and work with expertise outside of traditional F&G management.
- Provide for conditional approval of grant agreements that indicate cost-sharing elements are being solicited provided the grant package clearly delineates the purpose for soliciting cost-sharing agreements (i.e. general types of projects being solicited), method for doing so and selection process. Selected projects would be submitted for approval with necessary compliance documentation at a later date.

The recommended action is that a manual chapter will be developed for SWG (separate from Q&A's). An interim action will be development of Director's guidance. Lisa Evans will draft a memo in next 3-4 weeks that includes the bullet points and submit it to the small group for review. She will make any modifications and send it to JTF members for review. The modified memo will also be placed on Group Systems for State input. State input will be reviewed and discussed at the next JTF meeting.

The large group ratified the work of the small group. There was discussion about the importance of avoiding the perception that we are facilitating open-ended grants. There was also discussion regarding the desirability to combine the Q & A's with the guidance. It was pointed out that the Q&A's will be used by grant writers in States; SWG guidance will be used by the FWS. It will be awkward to put guidance to FWS into Q&A's. Mitch King pointed out that we generally review products as a group before they go to group systems – this is a deviation from common practice. The group agreed that we need to get this product out soon – and probably should shorten our process.

The small group also reported the need to draft guidelines for third-party agreements and how the FWS would approve such agreements in that they are part of a larger grant package. Items to be addressed include sub-grantee monitoring, contract templates, etc. The large group agreed with the small groups concern. Lisa Evans work with Art Newell, Gary Armstrong and others to draft guidelines/suggested approaches as a special project. However, this will be a product of the AFWA's Trust Fund committee. We can revisit the issue if it's deemed appropriate that this product come from another entity.

SMALL GROUP - white paper for MSCGP (Jim, Chris, John F., Carol, and Kelly)

Results: The small group concluded that the previous determination that JTF products approved to date apply to WR, SFR, CVA, BIG, and Hunter Education and Safety (Sec. 10) Programs was appropriate. It was determined there is no need to address applicably to the MSCGP at this time.

The Large group ratified the small group conclusion.

There was further discussion regarding the importance of providing clear policies and procedures. In general, the Service, JTF and National Grants committee should work together to provide that clarity.

SMALL GROUP - audit period (Rowan, Mitch, Larry, Don)

Results: The small group provided a modified draft Director's memo for consideration.

After a slight modification to the memo, the large group accepted the following version:

*In Reply Refer To:
FWS/AWSR/FA/025273*

Memorandum

To: Service Directorate

From: Director

Subject: Guidance on Limiting Corrective Actions and Resolutions for Federal Assistance Audits of Grantees

The purpose of this memorandum is to establish the conditions that Regions and the California/Nevada Operations Office must follow regarding any limitations placed on corrective actions and resolutions resulting from audits of Wildlife and Sport Fish Restoration grants. This guidance must be implemented uniformly in all Regions/CNO. The Joint Federal/State Task Force on Federal Assistance Policy (JTF) identified the need for this guidance and made recommendations that we considered when developing it.

To ensure that consistent resolutions and corrective actions result from expanding a finding and/or restitution beyond the current audit period, Regional Directors and the Manager, CNO, must follow the same criteria and obtain the same approval that is required for expanding the audit period, as specified in the Service Manual in Part 417 Federal Assistance Audits, Chapter 2, Planning Audits, paragraph 2.6.

Therefore, corrective actions and resolutions normally will be limited to the current audit period unless there is an extraordinary finding. An extraordinary finding involves:

- Fraud,*
- Direct and material illegal acts, or*
- Noncompliance that could result in exclusion from further participation in the Federal Assistance program.*

*Regional Directors and the Manager, CNO, except in the case of fraud, must not authorize the financial effect of a corrective action plan to reach back beyond the scope of the audit and, in no event, beyond the date of the current 5-year audit period. For the purpose of this guidance, remedial actions that involve the **other** exceptions in paragraph 417 FW 2.6 of the Planning Audits Chapter must be handled on a case-by-case basis with the approval of the Director.*

*The limitations permitted in this guidance do not change or nullify the effect of applicable provisions of laws and regulations, such as **43 CFR Part 12 and 50 CFR Part 80**, on the development of corrective actions plans and resolutions for these audits. **Nothing in this memorandum is intended to conflict with the States' financial responsibility for the loss of control over real property purchased with federal aid funds or license revenues.***

The Assistant Director for Wildlife and Sport Fish Restoration Programs must ensure that this guidance is incorporated into the Service Manual, Part 417, Chapter 4, Audit Resolution, at the earliest opportunity.

If you have any questions concerning this matter or require further information, contact Rowan Gould, Assistant Director for Wildlife and Sport Fish Restoration Programs, at (202) 208-1050.

cc: 3238 MIB – CCU
3238 MIB – Directorate Reading File
FWS/AWSR-FA: Kim Galvan/jk: 5/8/06: 703-358-2156
File: S:\policy task force\two-year audit period cap resolution

The memo is not designed as a “gotcha”, but reminds State officials that diversion is not allowed under the rules. Another point that was brought up that there’s a solicitor’s affirmation that if a State diverts assets, even in the past, the responsibility for correction action is at current fair market value.

● **Continued Discussion of SWG Audit Issues**

Previously, the group agreed that Jim Greer would check with OIG to determine if they could assist us in the following “management” process:

1. Talk to FWS RC’s to coordinate with State FAC’s and grant managers to identify weaknesses and highlight strengths of administration and management of SWG
2. Compile the data nationally and get it out to States
3. Conduct peer (auditor) management review focusing on key areas
4. Make sure guidance for auditors is complete and appropriate when the financial audit is conducted

The group discussed the pros and cons of having a different audit approach between PR-DJ and SWG, even in the short term. There was also concern about going into a financial audit before clear guidance is available – and clear guidance is developed to help the auditors. Issues such as match and third party agreements are just not that clear. The group discussed the advantages of utilizing State auditors to look at management practices and procedures – but not in their State. Since the financial audits usually cover the last two years of completed grants, we may have some time. We also need to determine the costs and feasibility of decoupling the audits. The Association Trust Funds Committee needs to be in the loop.

The group discussed what the States need. States need someone to come out and take a look at how States are doing the entire SWG process. There are a lot of components that are not financially based that the States need reviewed. We may not need an auditor, but maybe someone that is recently retired. The OIG may be appropriate only for a full-blown financial audit.

The group agreed that Jim Greer is in the best position to get a feel for how the OIG might be involved. He will investigate and get back to the JTF in June – possibly by conference call.

- **Future meetings and challenges of JTF**

The group took an honest look at whether there are enough pressing issues to justify continued JTF involvement. Based on new, emerging issues – e.g. customer satisfaction results (still only 70%), Regional program reviews, strategic planning, etc. - the possibilities for involvement remain high. The group agreed that it is important to continually question our role and continued relevancy.

Our next meeting is planned for November 13 -16, 13 and 16 are travel days. The FWS will decide the location.

All participants thanked John Frampton and his South Carolina staff for hosting a productive and enjoyable meeting.