



United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/FA

JUL 15 1983

FA Policy Memorandum 83-2

To: Regional Directors, FWS, Regions 1, 2, 3, 4, 5, 6, and 7 (ARD/FA-AFF)

From: Associate Director - Federal Assistance *R. Lumberton*

Subject: Policy on Eligibility of State Federal Aid Projects in Certain Areas of State Fish and Wildlife Management

Attached is a copy of the revised Chapter 1 of the Federal Aid Manual. This memorandum addresses two ineligible activities in Sections 1.4a. and 1.4b. Specifically, these are sale of licenses, permits, etc., and the preparation, publication, and distribution of game and fish laws and regulations. This is not new policy in our view. The States and our Regional Offices have largely restricted FWS involvement in these matters. No specific policy statement was written previously since the need was not apparent.

Policy: The P-R and D-J programs shall not be involved either in the establishment of public policy on resource management, such as regulations, rules, bag limits, and seasons, or the implementation of such public policy, including printing and distribution of laws or regulations, the licensing of hunters and fishermen, or the enforcement of such laws or regulations. The programs may be involved in surveys, inventories, and research; analysis and assembly of data; and preparation of recommendations, including recommendations of seasons, bag limits, etc., which are soundly based on data gathered.

Rationale: There is no implication in the P-R and D-J Acts that all management of fish and wildlife resources may be funded. Those that are approved, of course, must meet standards of substantial character and design and satisfy various other requirements. It should also be noted that a tenet of most Federal grant programs is not to replace State costs in normal activities, but to add an increment of capability to States beyond their normal capability. Regarding the two issues noted above, the following points were considered:

Sale of Licenses, Permits, etc.:

- A primary purpose of this activity is the generation of revenue.
(See CFR 80.14(c).)
- The policy makes the issue of program income moot should an instance arise where an activity might be considered otherwise approvable.

- Providing information and education to the public as an integral part of a nongame conservation program.
- Controlling public use to avoid degradation of resources or facilities or to maximize the benefits realized.

1.4 Ineligible Activities. The authorizing Acts, in some cases, provide prohibitions on the use of Federal Aid funds for certain purposes. In addition, the Rules and policies specify certain other purposes or activities that are not consistent with the grant program purposes and are, therefore, ineligible. The following is a summary of those activities that are ineligible for Federal Aid support.

a. All programs. The following activities are ineligible for participation under all grant programs administered by the Fish and Wildlife Service.

- Public relations activities for the purpose of promoting organizations or agencies, including publication of agency magazines, displays, exhibits, etc. This prohibition does not apply to educational or technical guidance activities specifically related to accomplishment of Federal Aid Program purposes.
- Activities for the purpose of producing revenue. Includes all processes and procedures directly related to the sale of licenses, permits, etc., which are imposed by law or regulation. It also includes the acquisition of real or personal property for the purpose of rental, lease, sale, or other commercial purposes. The production of income which results from otherwise eligible activities, incidental to these activities, is not prohibited. Examples are sale of surplus commodities, collection of user fees, etc.
- Providing services or property of material value to individuals or groups for commercial purposes or to benefit such individuals or groups. This does not prohibit providing technical assistance to a private landowner or operator.

b. Federal Aid in Wildlife Restoration (P-R) and Federal Aid in Fish Restoration (D-J) programs. The following activities are ineligible in addition to those included in Section 1.4a.

- Enforcement of game and fish laws and regulations. This includes routine patrol, investigations, and law enforcement training. This does not prohibit activities necessary to accomplish Federal Aid project purposes or to protect Federal Aid assets, such as control of public entry, and does not prohibit activities to ensure public health and safety on Federal Aid areas.
- Establishment, publication, and dissemination of regulations issued by a State pertaining to the protection and utilization of fish and wildlife resources. Includes laws, orders, seasonal regulations,

Printing and Distribution of Laws, Regulations, etc.:

- While Sections 2 and 5 of the P-R Act do not address this issue, Section 2.(b) of the D-J Act does, although the scope of application is not clear. This policy provides clarification.
- State laws and regulations for hunting and fishing of resident fish and wildlife are public policy issues which State fish and wildlife commissions and legislatures have traditionally reserved to themselves.
- The Federal Aid Program EIS referenced in several places that Program activities related to the issue of hunting and fishing were limited to the gathering of facts and information that may be used to set seasons, bag limits, etc. Beyond that, the States exercise their own authorities without Federal involvement. References may be found in at least the following four places:
 - . Page III-5 (first full paragraph).
 - . Page III-9 (Conclusion, second sentence).
 - . Page III-17 (first dot point).
 - . Pages IX-186 and 187 (response No. 8).
- The limitation on involvement in hunting seemed of particular significance during the recent P-R litigation in defining appropriate Federal/State roles and responsibilities.

Further Considerations: It was pointed out by some Regions that the regulations/proclamations of a few States, printed for use by the public, contain some information which is otherwise related or essential to Federal Aid projects. While it would be preferable for the State to assume the costs with State funds and substitute another eligible activity, we have no objection to allowing a pro rata cost of printing. Our background information on this matter is not sufficient to give further guidance in such situations. We hope your sound judgment will not make this necessary. The principle applies more broadly than this single issue. The programs may be involved in certain activities which are essential for approvable Federal Aid project purposes such as the collection of entry fees, printing of information leaflets for Federal Aid areas, protection of Federal Aid assets, and activities to ensure public health and safety on Federal Aid areas.

For those Regions having approved projects that are now considered ineligible as indicated in Chapter 1, we suggest you discuss the matter with the States, terminate the activity when the project period is up, or provide a brief extension if the project expires too soon to accommodate the change within the current State budget cycle.

Ronald E. Lamberton

Attachment



In Reply Refer To:
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WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,
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JUN - 2 1983



*Rec'd in
Fed. Aid
6/24/83*

Mr. Jack R. Grieb
Director, Division of Wildlife
Department of Natural Resources
6060 Broadway
Denver, Colorado 80216

Dear Jack:

It is unfortunate that the matter relating to the eligibility for Federal grant assistance of certain activities included in Colorado's former Pittman-Robertson (P-R) project W-121-R has remained unresolved so long. I am pleased that you, Associate Director Ronald Lambertson, and Regional Director Galen Buterbaugh arrived at an understanding and tentative resolution on March 21 at the North American Wildlife Conference. This letter is to summarize the issues for you.

It is clear to us that work outlined in W-121-R, Limited License Issuance and Harvest Analysis, is a single, well-defined unit and an essential link in the proper management of big game populations in Colorado. The problem is with the involvement of P-R funds in a portion of Colorado's regulatory and licensing systems. To clarify these and certain other issues for all States, we will issue shortly some brief statements of policy as part of Chapter 1 of the Federal Aid Manual. The portions pertinent to this issue are appended as an attachment.

Initially, in 1980 when we addressed this project with the Denver Regional Office and with you, we made our evaluation on basic eligibility rather than the program income issue. The Code of Federal Regulations (50 CFR 80.5(a)(1)) broadly states eligible undertakings as:

"(1) Projects having as their purpose the restoration, conservation, management, and enhancement of wild birds and wild mammals, and the provision for public use of and benefits from these resources."

Management is a broad term with many aspects applicable to the P-R program. In the context of this former P-R project, we view management as a complete cycle with four major types of actions:

- (1) Research, surveys, and inventories provide basic facts. These facts are analyzed and used to formulate species and harvest recommendations which are presented to boards, commissions or other policymakers for value judgments.

- (2) Policymakers translate the biological facts and recommendations into public policy such as regulations, orders, rules, bag limits, and seasons.
- (3) Based on the public policy, individuals are licensed (allowed to engage in an activity that they could not engage in without authorization) and revenue is usually collected to fund wildlife management activities.
- (4) Enforcement personnel are charged with the responsibility of ensuring that resource users know and comply with laws, regulations, and other constraints on resource use. (Number (4) is followed by Number (1) and the cycle repeats.)

There is no question that these four general categories of actions are management and are essential in the administration of the fish and wildlife agency. However, Section 2 of the P-R Act limits the scope of P-R reimbursable activities, as you will note below.

"Sec. 2. For the purposes of this Act the term 'wildlife-restoration project' shall be construed to mean and include the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates of interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources...."

Based on this section and Section 8(a) of the Act which states in part, "Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources", it has been and will continue to be the policy of the Service to limit grant participation to No. (1) of the management cycle described above. We view Nos. (2), (3), and (4) as wholly State functions which are excluded from grant participation. This policy removes the Federal Aid Program entirely from such matters as setting of seasons and harvest levels; printing, distribution, issuance, or collection of fees from licenses, applications, stamps, and tags (and the associated program income); and the printing, dissemination, and enforcement of laws, rules, regulations, or orders issued under authority of law.

Since the matter of program income was discussed with you, I will comment briefly on it. 50 CFR 80.14(c) states:

"(c) Federal Aid funds shall not be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and disposed of as directed by the Director."

This rule implements a basic premise of Federal grant programs that grant funds are not to be used for the purpose of generating income. "Incidental," as used in the rule, refers to an activity or activities that occur as minor consequences of or that are of minor importance to the project. Income-producing activities incidental to accomplishment of approved purposes and their treatment are covered in Section 5.8; Program Income, of the Federal Aid Manual.

We realize that Procedure 1 of the project in question has as its primary purpose the distribution of hunting pressure so that adequate harvest of big game is realized. Collection of license fees, along with the application for the license, is done for the convenience of the hunter who would otherwise be required to purchase the license over the counter. The agreement reached, as summarized below, should accommodate these purposes within the framework of our grant policy.

In summary, the agreement reached between you and Messrs. Lambertson and Buterbaugh on March 21 was to retain what appeared in Procedure 2, Measurement of the Harvest, of your former Project W-121-R for P-R grant participation. In addition, there were certain activities under Procedure 1, Issuance of Limited Licenses, Applications and Drawings, which we agreed are eligible P-R activities. These include determining the number of special licenses to be issued per management unit, handling applications and key punching information needed to set up the computer file, making the random drawing which forms the framework for harvest sampling, and preparing appropriate lists of applicants. Items not eligible are auditing, accounting and disposition of license fees, and printing, issuing, and mailing licenses. The principle involved in the agreement is that certain actions were essential to harvest measurements.

We regret the misunderstandings that caused the protracted delays in resolving this matter. I understand the further complication of accommodating the changes within your budget process; therefore, these changes will become effective July 1, 1984. We trust that these approaches will allow a smooth and satisfactory transition.

Sincerely yours,

/SGD./ROBERT A. JANTZEN

Director

Enclosure

cc: ✓ FWS Region 6