Office of CONSERVATION INVESTMENT

Partnering to fund conservation and connect people with nature.

Natural Climate Solutions and Carbon Credits

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SUMMARY

Natural climate solutions—and resulting monetization efforts such as voluntary carbon markets—present potential opportunities for non-Federal entities (NFEs) to earn income from carbon benefits (offsets) generated by habitat and land management activities. These activities frequently occur on lands purchased by or managed with U.S. Fish and Wildlife Service (Service) financial assistance or hunting and fishing license revenue. Existing Service policy allows for secondary commercial activities that generate income, so long as specific criteria are met. Specific requirements vary by program, but typically include: 1) secondary activities must not interfere with the purpose(s) for which the land was originally acquired, improved, operated, or maintained; 2) secondary activities cannot result in an encumbrance or a disposal of real property unless approved or otherwise provided for by the Service; and 3) secondary activities cannot result in a

loss of management control. Additional requirements for revenue depend on an assessment of program income and any special award terms and conditions.

AUDIENCE

Service and NFE personnel involved in decision making related to lands purchased by and/or managed with the below-identified Federal financial assistance programs.

PROGRAMS

Federal financial assistance programs administered by the Service's Office of Conservation Investment, including:

- Wildlife Restoration Program
- Sport Fish Restoration Program
- State Wildlife Grants Program
- National Coastal Wetlands Conservation Grant Program

BACKGROUND

Natural climate solutions are actions or strategies to protect, sustainably manage, and restore habitats while simultaneously storing carbon or avoiding greenhouse gas emissions and providing additional co-benefits, such as flood storage and human community resiliency. The increasing popularity of natural climate solutions and associated monetization efforts—such as voluntary carbon markets—present a potential scenario wherein a NFE might earn income for carbon benefits generated by ongoing habitat and land management activities. This scenario could result in additional income from activities that were already taking place or may take place under a Federal award or on lands purchased with Federal financial assistance. Such income might typically be earned through the sale of carbon credits in a carbon market, usually by engaging with one or more carbon programs as a facilitator.

A carbon credit is a certificate or other instrument that nominally corresponds to some amount of carbon dioxide or carbon dioxide equivalent (CO2e), referred to as the carbon benefit or carbon offset. Entities can buy, sell, or trade these credits to claim carbon benefits to compensate for emissions and reduce their overall carbon footprints. In theory, carbon credits represent carbon benefits that are additional, permanent, and verifiable.

There are two fundamental types of markets that buy, sell, or trade carbon credits: 1) regulatory or mandatory markets and 2) voluntary carbon markets. Regulatory markets function within compliance regimes—a well-known example is the cap-and-trade system, wherein entities are assigned an emissions quota by a regulatory agency and must buy additional credits in the marketplace in order to emit more than their assigned quotas. Only a few states operate regulatory carbon markets.

In contrast, voluntary carbon markets rely on willing buyers interested in reducing their greenhouse gas footprints by purchasing carbon benefits from third-party sellers engaged in carbon-sequestering or emissions-reducing activities. Voluntary carbon markets and any associated activities should not be considered mitigation in a regulatory or legal sense because there is no established compensatory requirement.

Although the details vary, *carbon programs* work to establish voluntary markets; identify, collect, and aggregate carbon benefits that are generated by third parties (e.g., non-Federal entities); verify, certify, and assign those benefits value; generate unique and tradeable carbon credits; sell those credits to willing buyers looking to reduce their emissions; and return a portion of the proceeds from those sales to the entities that generated the benefits.

In both markets, sellers (e.g., non-Federal entities) earn income by conducting carbon-sequestering activities that either 1) reduce CO_2e emissions below a certain status quo, or 2) remove CO_2e from the atmosphere and store (sequester) that CO_2e, typically in above- or below-ground biomass or in soils. These activities may be collectively referred to as natural climate solutions and typically generate carbon benefits as a result of *biological carbon sequestration*. Geological sequestration—the mechanical sequestration of CO_2 in subsurface pore space--is not a typical avenue for participation in these types of carbon programs and is not considered further by this guidance. For guidance on geological sequestration questions or projects, please reach out to your Regional Office of Conservation Investment lands specialist.

The carbon program then provides compensation—typically guaranteed up front—for activities resulting in carbon benefits, generating income for the seller. Carbon benefits are typically estimated using one or more models and are rarely measured directly to determine compensation (although some sampling may occur as part of the verification process).

Natural climate solutions and any associated income-generating carbon activities fall under the same rules as other secondary (ancillary) uses of real property funded with Federal financial assistance. However, because these biological carbon sequestration activities may look very similar to ongoing, award-eligible wildlife and habitat management activities, this guidance seeks to clarify the application of existing regulation and policy to natural climate solutions, with a specific focus on monetization methods such as voluntary carbon credits.

AUTHORITIES

Pittman-Robertson Federal Aid in Wildlife Restoration Act (16 USC §669)

Dingell-Johnson Federal Aid in Sport Fish Restoration Act (16 USC §777)

Coastal Wetlands Planning, Protection, and Restoration Act (16 USC §3951)

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR 200)

Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Public Law 117-180

Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 1402)

Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts, (50 CFR 80)

National Coastal Wetlands Conservation Grant Program (50 CFR 84)

U.S. Fish and Wildlife Service Manual: Real Property- Allowable Commercial Activities and Related Facilities on Federal Assistance Lands (522 FW 22)

DEFINITIONS

Biological carbon sequestration. The storage of atmospheric carbon in vegetation, soils, woody products, and aquatic environments. *Natural climate solutions* often result in carbon benefits through the process of biological carbon sequestration.

Carbon activities. Any and all activities associated with carbon sequestration, participation in a carbon program, and/or involvement in a voluntary carbon market. This may include habitat or land management activities that generate carbon benefits or any additional monitoring and management activities, voluntary or otherwise, resulting from participation in a carbon program or market.

Carbon benefits. The amount of carbon stored or emissions avoided above baseline conditions after deductions for leakage and impermanence. This includes *carbon dioxide equivalents (CO2e)* and is often referred to as the *carbon offset*.

Carbon credit. A tradeable certificate, permit, or other interest equivalent to a pre-assigned amount of carbon benefits (offsets). Credits are certified by governments or third parties to represent an emission reduction of some amount of CO2e.

Carbon dioxide equivalent (CO2e). A measure used to compare the emissions from various greenhouse gases on the basis of their global-warming potential by converting amounts of other gases to the equivalent amount of carbon dioxide with the same climate change potential.

Carbon program. The entity or organization that is usually providing a payment for *carbon benefits* generated as a result of carbon-sequestering activities or emissions reductions; carbon programs may do their own verification and issuance of carbon credits, or they may rely on additional entities for those activities. Carbon programs vary widely, and every model is slightly different.

Carbon offset. A reduction in emissions or the storage of CO2e that is used to compensate for activities and emissions that occur elsewhere to maintain or reduce overall climate change impacts. This is more broadly referred to as the *carbon benefit*.

Monetization. Broadly, the act of generating income from *carbon benefits*. Natural climate solutions generate *carbon benefits*—those benefits may be monetized through initiatives such as *voluntary carbon markets (carbon credits)*.

Natural climate solutions. Actions to protect, sustainably manage, and restore habitats while simultaneously storing carbon or avoiding greenhouse gas emissions and providing additional co-benefits, such as flood storage and human community resiliency.

Program income. Gross income earned by the NFE that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. See 2 CFR 200.1 for more information.

Real property. One, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human action (520 FW 6). Alternatively, the land, including land improvements, structures, and appurtenances thereto, but excluding moveable machinery and equipment (2 CFR 200.1). Different program-specific regulations may include different definitions of real property.

Voluntary carbon market. Carbon markets that exist outside of compliance regimes and operate only using willing sellers and buyers. There is no requirement for participation and no single marketplace—carbon credit programs may operate their own voluntary market for carbon credits or two or more programs may collaborate to operate a single marketplace.

GUIDANCE

1. Eligibility for Award Funding

Carbon activities and participation in associated monetization efforts are not typically activities eligible for funding under Federal financial assistance programs administered by the Office of Conservation Investment. Climate or carbon-related benefits or outcomes must not be the purpose of award-funded activities, but rather must be secondary or ancillary to the primary eligible purposes of award-funded activities or the use of land purchased with Federal financial assistance. As with other secondary commercial uses of real property, costs attributable to participation in carbon activities, including development, review, and monitoring of third-party agreements, are not eligible as reimbursable costs under programs administered by the Office of Conservation Investment unless they support an award's primary purpose (522 FW 22.8).

2. Allowability as a Secondary Activity

There are three main criteria for determining the allowability of secondary commercial uses on real property purchased or managed with Federal financial assistance. The responsibility to make an initial determination of allowability of secondary activities on lands purchased with Office of Conservation Investment financial assistance lies with the NFE (522 FW 22.6). NFEs are encouraged to consult with the Service on potential activities and may request concurrence on findings related to allowability. As with all activities related to Federal financial assistance, the Service maintains the responsibility to review and inspect activities to ensure compliance with applicable regulation, policy, and award terms and conditions.

2.1 Interference with Authorized Purpose. First, commercial secondary uses of Federally-funded real property, such as carbon activities, cannot interfere with the purposes for which land was acquired or is being managed. If an award has funded the acquisition of real property (e.g., a parcel of land or water), the NFE must use that real property for the purpose authorized in the award (2 CFR 200.311(b)). If an award funds the management, operation, or maintenance of a parcel of land or water, program-specific regulations and policy may require that the NFE use that property for the purpose authorized in the award during the award period, even if the NFE did not use Federal funds to purchase the property (e.g., 50 CFR 80.134(c)).

NFEs must ensure that any natural climate solutions and associated carbon activities either a) have a primary purpose consistent with the intended use of the land (e.g, wildlife habitat or public access for wildlife-dependent recreation) OR b) do not interfere with *any* of the authorized purposes for which the land was originally acquired or is being managed.

It is important to note that carbon activities must not simply be consistent with any eligible purpose under the relevant Federal financial assistance program, but rather must be consistent with the specific eligible purpose for which the parcel of land in question was acquired or is being managed. For example, tree planting activities that generate carbon benefits, although potentially beneficial for some wildlife, would interfere with the intended use of a property purchased or managed specifically for grassland habitat for upland birds.

2.2 Disposal and Encumbrance. Second, NFEs may not encumber or dispose of title to real property acquired under a Federal award unless such an action is approved or otherwise provided for by the Service (2 CFR 200.311(b)). Therefore, natural climate solutions and associated activities, including engagement with carbon programs and/or participation in voluntary carbon markets, cannot constitute either an encumbrance or a disposal of real property unless explicitly provided for by the Service, subject to the requirements at 2 CFR 200.311(c) and any program-specific regulations or policy. NFEs should consult with their Regional Offices as soon as possible if they suspect carbon activities might involve an encumbrance or disposal of real property.

Although it is not likely that a carbon program or similar entity will seek to hold title to any real property, some entities may wish to hold an easement or place a deed restriction on participating lands. NFEs should exercise diligence in understanding the requirements of the carbon program and must not grant an easement, deed restriction, or any other type of encumbrance on real property purchased with or contributed as match towards a Federal award without prior Federal approval. NFEs are also encouraged to make explicitly clear to any carbon partners that projects may not result in the transfer of any real property interest associated with carbon or carbon benefits.

2.3 Management Control (Federal Aid in Wildlife and Federal Aid in Sport Fish Restoration Grant Programs). Third, State fish and wildlife agencies are responsible for maintaining control of land or water purchased with Federal financial assistance authorized by the Federal Aid in Wildlife and Sport Fish Restoration Acts. If an agency has other jurisdictional responsibilities, the agency is considered the State fish and wildlife agency only when exercising responsibilities specific to management of the State's fish and wildlife resources. Management control is essential for ensuring that property purchased or used as match under these programs is used for authorized, intended purposes.

If there is a hunting and fishing license revenue nexus on the property, either through acquisition or ongoing management, a loss of control may constitute a diversion of hunting and fishing license revenue (50 CFR 80.136). Carbon activities cannot result in a loss of decision-making authority or management control on the property that would constitute a loss of control and negatively impact the use of the land for the purposes for which it was acquired.

Loss of control can be difficult to identify. Below are several potential characteristics of carbon programs that may, collectively or individually, contribute to a loss of control. NFEs and Regional Offices should work collaboratively to identify potential loss of control issues.

- Extended duration of any agreements or requirements from the carbon program
- Strict or limiting requirements that will impact current or future management activities
- Strict requirements to maintain biomass plantings without flexibility
- Strict requirements or serious penalties for non-performance within the carbon program
- Participation involves an encumbrance or a disposal of a real property interest that gives rights to the carbon program and limits the rights of the NFE (e.g., an easement or a deed restriction)

<u>3. Federal Financial Assistance Obligations for Income</u>

3.1 Program Income. Income earned from the implementation of natural climate solutions and associated carbon activities must first be assessed to determine if it meets the definition of program income. Program income is gross income earned by the NFE that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance (2 CFR 200.1). Because the suite of biological carbon sequestration activities that generate carbon benefits—and therefore income—overlaps considerably with common and ongoing award-supported habitat and land management activities, there is significant potential for income from carbon activities to meet the definition of program income.

NFEs and Regional Offices should work collaboratively to determine whether income from carbon activities results from award-supported activities, is earned during the period of performance, or otherwise meets the requirements for program income established at 50 CFR 80.120(a-c). Program income must be applied per the terms and conditions of the award and using an approved method as described at 2 CFR 200.307(e) and any program specific regulation (e.g., 50 CFR 80.123)

Some examples of scenarios where income from carbon activities could be considered program income include:

> Example 1: A NFE has an open Wildlife Restoration award that funds habitat management activities on their wildlife management areas (WMAs). Part of the approved activities under the grant award include tree plantings for habitat. A carbon program compensates the NFE for carbon benefits (offsets) generated by the tree plantings funded under the award on one of the identified WMAs. The income is earned by the NFE during the period of performance of the Wildlife Restoration award.
>
> - Does the income meet the definition of Program Income? In this scenario, most likely yes. The income is earned by the non-Federal entity; the income is generated by a supported activity of the Federal award (the tree planting); and the income is earned during the award period of performance.
>
> Example 2: A carbon program compensates the NFE for the carbon benefits (a decrease in carbon emissions) associated with sustainable or delayed timber harvest practices on several WMAs. The NFE has an open award that includes timber harvest activities on a

portion of those WMAs, but the award specifically excludes management activities on two of the WMAs under contract with a carbon program.

- Does the income meet the definition of program income? In this scenario, yes *and* no. The income is earned by the NFE during the award's period of performance. The remaining question is whether or not the revenue was earned as a direct result of award-supported activities.
- On WMAs included in the award, income is earned as a result of the award activities and should therefore be considered program income.
- On WMAs explicitly excluded from the award, income is not earned as the result of an award-supported activity and therefore does not meet the definition of program income.

3.2 Hunting and Fishing License Revenue. Income earned from carbon activities must be assessed to see if it meets the definition of hunting and fishing license revenue. Income earned from the use of real property acquired, managed, or maintained with hunting and fishing license revenue must also be treated as hunting and fishing license revenue (50 CFR 80.20). Income earned from carbon activities on lands purchased or managed with license dollars must only be controlled by the State fish and wildlife agency and used only for the administration of the State fish and wildlife agency.

3.3 Award Terms and Conditions. A particular award, either the original acquisition award or a subsequent habitat management or operations and maintenance (O&M) award, may have special terms and conditions that instruct the recipient how to handle revenue earned either during or after the period of performance. NFEs should carefully review the terms and conditions of any applicable Federal awards and should consult with their Regional Offices if there are any questions about specific award terms and conditions.

3.4 Income post Period of Performance. If income is not subject to any of the above requirements (for program income, hunting and fishing license revenue, or specific award terms and conditions), there are no additional Federal financial assistance obligations.

<u>4. Potential for Carbon-related Income to be Used as Match</u>

There is significant potential for income from natural climate solutions and associated carbon activities to be used as match towards Federal awards, with two exceptions.

First, the income earned from carbon activities cannot already have a Federal nexus—in other words, if income is received from a carbon program, the carbon program itself cannot be Federally funded. Matching funds may not be included as contributions for any other Federal award or be paid by the Federal Government under another Federal award, except where statute provides otherwise (2 CFR 200.306(b)).

Second, the value of carbon benefits and any associated carbon credits may not be donated as third-party in-kind match for a Federal award. Third-party in-kind contributions must be necessary and reasonable for the accomplishment of the Federal award (2 CFR 200.306(b)(3)); because carbon sequestration and climate change mitigation are not eligible purposes under most Federal financial assistance programs administered by the Office of Conservation Investment, third-party in-kind contributions of the value of carbon benefits are ineligible to be used as match. Once benefits are monetized (sold as credits or some equivalent), the resulting cash revenue may in turn be spent on award-eligible activities as matching contributions, but should not be considered or valued as third-party in-kind match. The value of the offset-generating activity (e.g., tree planting) may also be contributed as match so long as the activity is necessary and reasonable for the accomplishment of the Federal award.

If income from carbon activities is determined to be program income, that income may still be used as cost share if the NFE has elected to apply program income in that manner per 2 CFR 200.307(e)(3) and 50 CFR 80.123(c)(3).

If revenue is required to be treated as hunting and fishing license revenue, that revenue may be used for all purposes consistent with a State fish and wildlife agency's use of hunting and fishing license revenue, including as match towards current and future Federal awards with eligible purposes and activities.

FREQUENTLY ASKED QUESTIONS

Are carbon activities allowable secondary uses of land purchased with Federal financial assistance?

- Service policy (522 FW 22.6) and some program-specific regulation (50 CFR 80.134(d)) explicitly allow for commercial or secondary uses of Service-funded real property if the secondary (ancillary) uses do not interfere with the purposes, objectives, terms, and conditions of the award.
    - The decision to allow activities remains with the non-Federal entity (522 FW 22.9(A)); the Service may confer upon request (522 FW 22.6(D)) but maintains the right to review at will (522 FW 22.7).
    - NFEs do not need to include a description of commercial activities in award agreements so long as the criteria at 522 FW 22.9 are met.
- Participation cannot result in an encumbrance or disposal of the real property in question unless otherwise provided for by the Service (2 CFR 200.311).

How must NFEs handle income resulting from carbon activities?

- If the income meets the definition of program income (i.e., it's the result of award activities *and* is earned by the NFE *during the period of performance),* it must be applied per 2 CFR 200.307 and any program-specific regulations.
- If there is a hunting and fishing license fund nexus, the income must be treated as hunting and fishing license revenue and used only for the administration of the State fish and wildlife agency.
- Income must be handled per any specific award terms and conditions.
- If none of the above apply, there are no additional Federal financial assistance requirements for the income.

Can income from carbon activities be used as match?

- Income earned from participation in carbon programs may be used as match if:
    - There's no federal nexus on the carbon program itself (2 CFR 200.306(b)(5)). If the carbon program is Federally-funded, any revenue earned from the carbon program would be considered Federal dollars and may not be used as match towards another Federal award.
    - Income does not meet the definition of program income; that said, program income *could* be applied as match per 50 CFR 80.123 and 2 CFR 200.307 depending on NFE's identified approach.
- In-kind third-party contributions of carbon benefits are not typically necessary and reasonable for eligible award purposes and therefore are not allowable as match.

What if there is hunting and fishing license revenue involved (in either the activities or the land)?

- Participation cannot result in a loss of control of the real property in question (50 CFR 80.132)

- Participation cannot constitute a diversion; hunting and fishing license revenue and lands purchased or managed with hunting and fishing license revenue must be used only for the administration of the State fish and wildlife agency (50 CFR 80.10).
- Revenue from activities funded by hunting and fishing license revenue or taking place on lands purchased with hunting and fishing license revenue *must* be treated as hunting and fishing license revenue by the State fish and wildlife agency (50 CFR 80.20(c)); 50 CFR 80.20(d)).

Other notes

- Income production is never a primary eligible purpose; Federal awards that contain revenue-generating activities through participation in carbon programs must be scrutinized closely for eligibility. Any costs related to carbon sequestration or an offset generating activity (e.g., tree planting) sought to be reimbursed under an award must also be necessary and reasonable for the performance of the award.
- Climate change mitigation and carbon-related activities are not, by themselves, eligible purposes or activities under awards issued by the Office of Conservation Investment.
- The generation of carbon benefits, and the subsequent sale of any equivalent carbon credits, must represent ancillary benefits and not be the primary purpose for which property is purchased or activities are undertaken.
- Participation in regulatory carbon markets is outside the scope of this document.
- Geological carbon capture and storage projects are outside the scope of this document; this document focuses on natural climate solutions that sequester carbon through biological sequestration.

EXAMPLE SCENARIOS

<u>Example 1: Delayed Harvest</u>

A NFE receives payments from a carbon program for generating carbon benefits (emissions reductions) through delayed timber harvest. Every year, the carbon program surveys timber on NFE-owned lands (purchased with both Wildlife Restoration funds and state hunting and fishing license revenue) and offers a dollar amount to the NFE for delaying harvest of that timber for one year. Timber harvest and the delaying of timber harvest are both routine activities on NFE-owned lands. The NFE has an open Wildlife Restoration award that funds timber harvest and timber management activities for the purpose of wildlife habitat management.

Are the carbon-related activities eligible for Federal funding? No, carbon sequestration is not an eligible purpose for Wildlife Restoration funding.

Are the carbon-related activities allowable as a secondary use? To determine the allowability of carbon activities as a secondary use, the NFE must ask the following questions.

> *Do the carbon activities interfere with the purposes for which the land was acquired or is currently being managed under a Federal award.* In this case, no. Timber harvest activities, including delaying of timber harvest, are routine habitat management activities that occur regardless of the associated carbon benefits. However, if the carbon program and associated activities began to drive decision making related to timber harvest—i.e., the NFE is delaying timber harvest on lands it would not have otherwise in order to receive a carbon payment—there would be an interference with the purposes for which the land was acquired.
>
> *Would participation in the carbon program result in an encumbrance or a disposal of real property*. In this case, no. The carbon program is not seeking a lease, easement, or to hold title to the property.
>
> *Does participation result in a loss of management control?* This question is only relevant because the lands were purchased with Wildlife Restoration funding and hunting and fishing license revenue. In this case, the short-term nature of the carbon contracts largely eliminates concerns about loss of control. In addition, there are no penalties associated with the NFE not complying with the carbon program rules—the NFE simply would not receive a carbon payment for those acres for that year. Thus, the NFE retains full management control over the property regardless of the agreement with the carbon program.
>
> *So are the carbon-related activities allowable?* Because there is no interference with the authorized purposes of the land, because participation would *not* result in an encumbrance or disposal of real property, and because participation does not result in a loss of management control, the carbon activities are allowed as a secondary use of real property.

How must income be treated? Because the NFE includes timber harvest and management activities in an open Federal award, income earned from the carbon program as a result of timber management activities should be considered program income. The income is earned by the NFE during the award's period of performance and is a direct result of award-support activities (timber management).

Is there potential to use this income as match? Because the income earned from the carbon activities is considered program income, it must be handled accordingly. If the NFE has elected to apply program income as cost share, then the income could be used as match.

<u>Example 2: Mine Land Reclamation</u>

The NFE holds title to un-reclaimed/abandoned mine lands purchased with both Wildlife Restoration and hunting and fishing license revenue. In collaboration with the State Department of Reclamation, which is providing significant funding for the restoration, this property will undergo extensive restoration, including native tree and grass plantings. These activities will assist in meeting fish and wildlife management goals that have long been identified for the property.

A carbon program has offered to purchase carbon credits that result from the biomass planting and other restoration activities; the activities would take place over an extended time frame, and payments would be spread out accordingly.

Are the carbon-related activities eligible for Federal funding? No, carbon sequestration by itself is not an eligible purpose for Wildlife Restoration funding.

Are the carbon-related activities allowable as a secondary use? To determine the allowability of carbon activities as a secondary use, the NFE must ask the following questions.

> *Do the carbon activities interfere with the purposes for which the land was acquired or is currently being managed under a Federal award.* In this case, no. The land was acquired for habitat purposes, and the restoration activities that generate carbon benefits align with the habitat management goals for the property. The fact that a carbon company is willing to compensate for the carbon sequestered as a result of restoration activities in ancillary to the decision to pursue the restoration opportunity.
>
> *Would participation in the carbon program result in an encumbrance or a disposal of real property*. Given the long-term nature of this project, it is more likely that the carbon program may seek some sort of encumbrance on the property to protect its investment in the carbon. This could look like an easement, a deed restriction, or a long-term lease. NFEs may not encumber real property unless otherwise the Service provides otherwise—if there are questions or concerns regarding a potential encumbrance of real property, the NFE should consult with Regional Office of Conservation Investment staff.
>
> *Does participation result in a loss of management control?* This question is only relevant because the lands were purchased with Wildlife Restoration funding and hunting and fishing license revenue. In this case, the long-term nature of the potential agreement with the carbon program generates concern over loss of control. The NFE has to maintain management control of the property, and a long-term agreement with a third party that either requires or limits certain management activities (e.g., the agreement may require that the NFE maintain a tree planting for fifty years) is a red flag. The NFE should carefully

assess whether there is the potential for a loss of management control on the property and should consult with their Regional Offices.

So are the carbon-related activities allowable? Potential yes, but there are significant questions around both potential encumbrances and potential loss of control issues that the NFE must work through in order to make a thorough determination of allowability. Consultation with the appropriate Regional Office is recommended.

How must income be treated? The natural climate solution activities generating income from resulting carbon benefits are *not* funded by a Federal award. Because income is not earned as a direct result of award-funded activities, that income should not be considered program income. However, the land was purchased with hunting and fishing license revenue, and any income earned from lands purchased with hunting and fishing license revenue must in turn be considered hunting and fishing license revenue. The NFE may only use the income earned on the property from carbon activities for the administration of the State fish and wildlife agency.

Is there potential to use the income as match? The income must be treated as hunting and fishing license revenue, and it may easily be contributed as match towards a Federal award with eligible purposes similar to how the NFE uses any other hunting and fishing license revenue.