



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/WSFR/POP-BPOL/068273

JUN - 7 2018

To: Regional Chiefs, Wildlife & Sport Fish Restoration Programs

From: Assistant Director, Wildlife & Sport Fish Restoration Programs 

Subject: Guidance for WSFR-funded Projects in Canada

The Wildlife & Sport Fish Restoration Programs (WSFR) statutes and policy supports that State fish and wildlife agencies may fund projects in Canada that benefit State's fish and wildlife management goals and objectives. The enclosed interim guidance affirms the allowability of using WSFR funds for projects in Canada and responds to requests to clarify administrative requirements for grants that include Canadian subrecipients.

WSFR recently received support from both the Association of Fish & Wildlife Agencies and the Joint Federal/State Task Force on Federal Assistance Policy to publish this guidance. We are issuing this as "Interim Guidance" to facilitate States' ability to pursue projects in Canada while WSFR staff explores developing more inclusive grant management guidance that will address mutually beneficial projects with any foreign entity, including Canada. We are hopeful that this will allow many projects that have been pending to move forward. If your staff or State partners have additional questions or concerns, please contact Lisa Van Alstyne at 703.358.1942 or Lisa_Van_Alstyne@fws.gov.

Thank you for assisting in developing and implementing this interim guidance that will support additional approaches for State agencies to achieve their fish and wildlife management goals.

Attachment



WSFR-funded Projects in Canada

Document ID: 2018_0604_BPOL_009
Document Type: Guidance Interpretation Briefing White paper
Date Issued: 06/04/2018
Date Expires: When superseded by Service Manual Chapters or Regulation
Status: **NEW – Interim**
Contact: Lisa E. Van Alstyne, Chief, WSFR Policy Branch, 703.358.1942

Summary: Regional Wildlife & Sport Fish Restoration Programs (WSFR) Offices may accept and approve applications that include proposals to achieve program goals and objectives through projects in Canada. Some of the operational processes and considerations differ from projects in the United States (U.S.). Although projects in countries other than Canada could be approved under the PR/DJ programs, this guidance is specific to grants funded for projects carried out in Canada.

Audience: WSFR staff, award recipients and subrecipients, which may include Canadian public entities and organizations.

Terms and Acronyms:

- *PR* means the Pittman-Robertson Wildlife Restoration Program⁶, 16 USC 669 et seq., which includes the associated Act and other legal and programmatic authorities.
- *DJ* means the Dingell-Johnson Sport Fish Restoration Program⁷, 16 USC 777 et seq., which includes the associated Act and other legal and programmatic authorities.
- *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.
- *Foreign public entity* is defined at [2 CFR 200.46](#).
- *Foreign organization* is defined at [2 CFR 200.47](#).
- *Subrecipient* is defined at [2 CFR 200.93](#).
- *WSFR* means the Wildlife and Sport Fish Restoration Program.
- *WSFR-administered* means all programs and subprograms that a Regional WSFR Division administers. A list of most programs administered by at least one Regional WSFR Division is at Service Manual chapter [518 FW 1, Authorities and Responsibilities](#).

Program: This guidance applies to projects in Canada that States carry out with funding under the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777) (Acts). Regional WSFR Divisions may apply this guidance to projects in other WSFR-administered programs if applicable under authorizing legislation, statutes, regulations, or policy for those programs.

Background: WSFR administers financial assistance awards to State fish and wildlife agencies for eligible projects under the Acts. These projects typically occur within the boundaries of the U.S., but projects in Canada may also benefit the fish and wildlife resources of a U.S. State. Regional WSFR Divisions asked the WSFR Policy Branch to develop guidance explaining how WSFR staff may have to alter existing financial assistance procedures for projects in Canada. The Acts do not exclude projects that are outside the U.S., and 16 U.S.C. 669h specifically addresses administrative funds and their applicability to travel to Canada for purposes related to administering the Act. WSFR Regional and Headquarters staff discussed this topic at a 2014 meeting and the consensus was that State fish and wildlife agencies may use WSFR financial assistance to support projects in Canada that will benefit the fish and wildlife goals of that State. This year we received support from the Association of Fish & Wildlife Agencies (see Appendix) and the Joint Federal/State Task Force on Federal Assistance Policy for issuing this guidance.

Guidance:

- 1. Can States use Wildlife Restoration and/or Sport Fish Restoration funds to support projects in Canada?** Yes,
 - A.** Neither the Acts nor their implementing regulations¹ prohibit funding international projects that benefit wildlife, fish, or their habitats in the 50 States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. States may use PR or DJ funds, or both, to support projects in Canada that restore and manage wildlife and fish for the benefit of the public if the project:
 - (1)** Has a direct benefit to the wildlife and/or sport fish management goals and objectives of the State fish and wildlife agency;
 - (2)** Is eligible under the Act(s), substantial in character and design, complies with 50 CFR 80, and meets all other requirements and standards for projects under the Act(s).
 - B.** The State is ultimately responsible for ensuring that any Canadian subrecipient is eligible and meets the criteria of the Acts, regulations, and Federal grant management policies.
- 2. Does 2 CFR 200⁸ apply to subawards to foreign public entities or foreign organizations?** Yes. 2 CFR 200.101(c) states: "Federal agencies may apply subparts A through E of this Part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government." 2 CFR 200.101(b)(1) states: "...The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. ..."
- 3. Does WSFR use a different process to review proposed projects in Canada?** No. WSFR uses the same guidelines and systems for reviewing and approving grants for projects proposed in Canada.

4. Are there special requirements for award documentation on projects in Canada? Yes.

A. If subrecipients submit award documentation in a language other than English, they must also provide the recipient with an English translation of these documents.

B. All financial information for the award on any reports or other documents must be in U.S. dollars and must show the exchange rate used for the calculation.

5. Must the Service apply the same compliance requirements on projects to Canada that we do to projects in the U.S.? In most cases, the Service is not required to complete Federal compliance requirements on projects in Canada. Canada has its own environmental compliance laws and a U.S. entity cannot force implementation of U.S. laws on Canada. When subawarding financial assistance to a Canadian entity, States must include language in the agreement that requires the subrecipient follow the appropriate Canadian laws, regulations, and policies. This includes historic preservation, environmental protection, and any other applicable legal authorities. However, WSFR and States must be aware of certain requirements.

A. National Historic Preservation Act (NHPA)^{2,5} The National Historic Preservation Act has a limited application to Federal projects in Canada based on U.S. participation in the World Heritage Convention (16 U.S.C. 470a–2, 54 U.S.C. 307101). The recipient must inform the Service in the application if the proposed Canadian project has direct adverse effects on any property on the World Heritage List or on Canada’s equivalent of the National Register. If so, the recipient must submit plans to avoid or mitigate the adverse effects. Once a project in Canada has met the compliance conditions, further NHPA compliance is not required.

B. National Environmental Policy Act (NEPA)³ A WSFR-funded project in Canada must have an impact on the State’s environment in order to be deemed necessary and reasonable. The Federal action in the U.S. is the approval of a WSFR grant award and this action does require compliance with NEPA. WSFR staff will refer to Department of the Interior Manual chapter [516 DM 8](#) when addressing NEPA. The activities in Canada are not under the U.S. Federal authority and we cannot impose U.S. NEPA on projects in Canada, but we must address NEPA for the Federal action.

The Council on Environmental Quality (CEQ) issued “Guidance on NEPA and Transboundary Impacts”⁴ further supports this when stating: *Case law interpreting NEPA has reinforced the need to analyze impacts regardless of geographic boundaries within the United States, and has also assumed that NEPA requires analysis of major federal actions that take place entirely outside of the United States but could have environmental effects within the United States.*

States must document how Canada complies with the Canadian equivalent of NEPA to the extent that the project funded by the grant affects the environment in the United States. If the Canadian equivalent of NEPA demonstrates that a WSFR-funded project in Canada has an

adverse effect on the environment in the U.S., States must notify their WSFR Regional Office and we must consider additional actions.

6. How should we address compliance with Canadian laws on WSFR-funded projects in Canada?

WSFR and State recipients should confirm in award and subaward letters and in the terms and conditions of the award and subaward that Canadian subrecipients are responsible for complying with all applicable Canadian laws. We recommend language telling the recipient that before approving any WSFR-funded undertakings, the recipient must:

- *Inform the Service if the undertaking may directly and adversely affect property included on the World Heritage List or on Canada's equivalent of the National Register, and if so, present plans to avoid or mitigate any adverse effects.*
- *Comply with all Canadian laws, regulations, and policies applicable to the project, and maintain records/documentation as to how it has satisfied those legal requirements.*
- *Provide compliance documentation as may be requested by the Service at any time.*

7. May a WSFR-funded project in Canada include acquiring real property or any interest in real property?

No. Although the Acts^{6,7} do not prohibit real property acquisition outside the U.S., there are statutory and regulatory requirements that States must hold title to property acquired with grant funding. The DJ Act requires the State recipient to hold title to any real property acquired (16 U.S.C. 777g(a)). It states:

“Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this chapter, shall be vested in such State.”

50 CFR 80.130 applies DJ's title-holding requirement to both PR- and DJ-funded acquisitions as follows:

“A State fish and wildlife agency must hold title to an ownership interest in real property acquired under a grant to the extent possible under State law.”

Additionally, 50 CFR 80.132 addresses control of land or capital improvements with other legal instruments and the duration of those agreements as follows:

“A State fish and wildlife agency must control the parcel of land and water on which it completes a grant-funded capital improvement. An agency must exercise this control by holding title to a fee or leasehold interest or through another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life even if the agency did not acquire the parcel with grant funds.”

Due to the requirements for States acquiring, holding title, and maintaining control of real property in Canada, and the difficulties of meeting this requirement with foreign-acquired lands, WSFR will not approve any project proposals that include acquiring real property.

8. Must Canadian subrecipients register and have SAM and DUNS numbers? Yes.

A. The only exception is for:

(1) Individuals and subrecipients who will receive less than \$25,000, and

(2) Subrecipients who will receive more than \$25,000 but are eligible for a waiver.

B. State recipients must alert potential subrecipients to register early, as it could take 6–8 weeks for them to get needed responses.

9. How do States maintain control of WSFR-funded projects in Canada? States maintain control of projects funded in Canada through award terms and conditions. States may also use contracts or other instruments to maintain control of projects for the useful life of the project. If WSFR's share of an award to Canada is more than \$750,000, the Service and the State should review the adequacy of the subrecipient's audit processes.

10. Must States monitor WSFR-funded projects in Canada? Yes. States must monitor WSFR-funded projects in Canada. On-site monitoring is allowed, but not required. States may require, through award terms and conditions, that recipients submit photographs, videos, documents, or other means of verifying project progress. States may use other forms of monitoring as needed and advisable, such as desk audits, reviewing receipts, real-time GPS viewing, and video conferencing.

11. What must States do to ensure WSFR funds and U.S. Federal funds from other programs are appropriately managed?

The North American Wetlands Conservation Act (NAWCA) program provides matching grants to wetlands conservation projects in the United States and Canada. The match contributions to those Federal funds must be no less than a 1-to-1 ratio (50%). Projects using WSFR funds must not be combined with any projects using NAWCA program funds or other U.S. Federal financial assistance. Award terms and conditions should be used to tell subrecipients that they must disclose any NAWCA or other U.S. Federal funds that are being used for projects that are related to the WSFR-funded project, clearly document the source of non-Federal funds to WSFR grants, and demonstrate that there is no funding conflicts between the WSFR and NAWCA programs.

12. What other recommendations apply to WSFR-funded projects in Canada?

A. The Service recommends that States receive an "endorsement letter" or other documentation that shows agreement with the project if the subrecipient does not control the project area. The State must ensure that the project is acceptable to Canadian authorities and not in violation or conflict with the wildlife and fish management goals and objectives of the supervising government entity.

B. CFR 200.101(c) states: "Federal agencies may apply subparts A through E of this Part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal

awarding agency determines that the application these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.” 2 CFR 200.101(b)(1) states: “...terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. ...”

We also recommend that the following or similar language be added along with other applicable terms and conditions (See 9, 10, and 11) to agreements with Canadian entities:

*The terms and conditions of Service awards flow down to subrecipients and contractors, unless a particular award term or condition specifically indicates otherwise. The Federal regulations applicable to Service recipients and their subrecipients and contractors are listed by recipient type in the **Service Financial Assistance Award Terms and Conditions** posted on the Internet at <https://www.fws.gov/grants/atc.html>.*

Disclaimer: This guidance was reviewed by the Solicitor’s Office, Parks and Wildlife Division. We have also consulted with other Service programs that give financial assistance to Canada and other countries and have discussed compliance with potential subrecipients in Canada. However, it has not undergone Servicewide or Canadian agency review and comment and does not include extensive consideration of potentially applicable Canadian laws.

Authorities:

¹ [Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts.](#)

² [National Historic Preservation Act:](#) World Heritage Convention.

³ [National Environmental Policy Act \(NEPA\)](#) of 1970

⁴ [CEQ Guidance on NEPA and Transboundary Impacts.](#)

⁵ [NHPA, 54 U.S.C. §300320](#)

⁶ [The Pittman–Robertson Wildlife Restoration Act](#)

⁷ [The Dingell–Johnson Sport Fish Restoration Act](#)

⁸ [2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Dec. 26, 2013](#)

⁹ [Department of the Interior Service Manual, Chapter 516 DM 8, Managing the NEPA Process—U.S. Fish and Wildlife Service](#)

APPENDIX



The voice of fish and wildlife agencies

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April 5, 2018

Paul Rauch
Assistant Director, Wildlife and Sport Fish Restoration Program
U.S. Fish and Wildlife Service
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Dear Mr. Rauch:

The Association of Fish & Wildlife Agencies (Association) endorses the continued use of Wildlife and Sport Fish Restoration (WSFR) Program funding for projects in Canada to help States achieve their program goals and objectives. The Association's Executive Committee passed a motion to this effect during our meetings last week at the North American Wildlife and Natural Resources Conference.

State WSFR funds have been spent in Canada, through the Flyway Councils, for waterfowl banding operations, research, and monitoring and have been funded individually and collectively by state agencies for many years. Additionally, WSFR funded research projects are operational in states and work occurs in Canada with non-federal match provided by Canadian organizations.

The use of WSFR funds for waterfowl and wetland conservation in Canada was discussed at the State-Federal WSFR Joint Task Force (JTF) meeting on November 15, 2017. The JTF concluded that it is legal to spend WSFR funds on habitat restoration in Canada and that Canadian partners could provide matching funds where projects have a nexus to habitat and wildlife resources in the State spending the WSFR funds. The JTF discussions also confirmed that 50 C.F.R. / 2 C.F.R. 200 regulations need to be applied correctly and that in terms of NEPA, there is a general exemption for projects outside the U.S. It was also suggested that supporting projects in Canada would set a precedent for potentially investing in projects in other locations (e.g., Southern Wings projects) where the benefits also go back to the wildlife in the state.

I wish to thank you, Bob Curry, Lisa Van Alstyne, and all of the other WSFR staff that have helped us work through the policy issues and develop the draft "National Guidance" for using WSFR funds in Canada. A few states are currently considering the use of WSFR funds for projects in Canada, including North Carolina (project proposal prepared), Alaska, Utah, and Arizona. Therefore, the Association requests that you issue a "Final Guidance" document to regional WSFR staff as soon as possible in an effort to help them work with states desiring to pursue this funding option. Please provide a copy of this "Final Guidance" to the Association at your earliest convenience.

Respectfully,



Virgil Moore
President, Association Fish & Wildlife Agencies

Cc. Kelly Hepler, Co-Chair, Joint Federal/State Task Force on Federal Assistance Policy
Bob Curry, Deputy Assistant Director, Wildlife and Sport Fish Restoration Program
Dean Smith, NAWMP Director/Wildlife Liaison (Canada), AFWA
Ron Regan, Executive Director, AFWA

ASSOCIATION OF FISH & WILDLIFE AGENCIES
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