



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
521 FW 1, 2, and 4	State Grant Programs	380
FOR FURTHER INFORMATION CONTACT Division of Federal Aid	Eligibility Standards for Wildlife Restoration Eligibility Standards for Sport Fish Restoration Endangered Species	DATE October 10, 2001

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters include minor revisions and incorporate plain language requirements.

K Adams

ACTING DEPUTY DIRECTOR

FILING INSTRUCTIONS:

Remove:

521 FW 1, 12/17/92, FWM 059 (1 sheet)
521 FW 2, 12/17/92, FWM 059 (1 sheet)
521 FW 4, 12/17/92, FWM 059 (1 sheet)

Insert:

521 FW 1, 10/10/01, FWM 380 (2 sheets)
521 FW 2, 10/10/01, FWM 380 (2 sheets)
521 FW 4, 10/10/01, FWM 380 (2 sheets)

**FISH AND WILDLIFE SERVICE
STATE GRANT PROGRAMS**

State Grant Programs

Part 521 Federal Aid Program Eligibility

Chapter 2 Eligibility Standards for Sport Fish Restoration

521 FW 2

2.1 What is the purpose of this chapter? This chapter provides eligibility standards for the Federal Aid in Sport Fish Restoration Program. As used in this chapter, the term "we" refers to the Fish and Wildlife Service and the term "State" refers to State fish and wildlife agencies and other entities eligible to participate in the program.

2.2 What is the authority for this program?

A. Federal Aid in Sport Fish Restoration Act of 1950, as amended, (16 U.S.C. 777-777k). The Act directs the Secretary of the Interior ". . . to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth" Section 1(a) of the Act concludes with ". . . all projects shall conform to the standards fixed by the Secretary of the Interior."

B. 50 CFR 80.

C. 43 CFR 12.

2.3 Who administers this program?

A. The Director, Fish and Wildlife Service, is the Secretary's representative in matters relating to the administration and execution of the Federal Aid In Sport Fish Restoration Program (50 CFR 80).

B. The Assistant Director--Migratory Birds and State Programs provides national oversight for the program.

C. Regional Directors will administer the Federal Aid in Sport Fish Restoration Program within their Region, to include approving grant proposals, monitoring performance of projects within an approved grant, and monitoring compliance with applicable Federal laws and regulations.

2.4 Who can participate in this program? State fish and wildlife agencies [SFR Act Sec 1] and the Commonwealth of Puerto Rico, Guam, American Samoa, Virgin Islands, Commonwealth of the Northern Mariana Islands, and District of Columbia [SFR Act Sec 12].

2.5 What are the requirements to participate? To be eligible, a State must have assented to the provisions of the Act and passed laws for the conservation of fish that include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of the State fish and game department [50 CFR 80.3]. Each year within 60 days of the apportionment notice, States must notify the Secretary of the Interior that they want to participate in the program for the year [50 CFR 80.9].

2.6 Does a grant recipient have to comply with any laws or regulations? Grantees must comply with all applicable

Federal laws and regulations, as a condition of acceptance of Federal funds [50 CFR 80.21]. In addition to the laws and regulations specific to the grant program, there are numerous other compliance requirements for Federal grant programs (see 523 FW 1). Those that are generally applicable to all Federal grant programs are "assurances," since grantees must provide assurance that they will comply with applicable provisions.

2.7 Do States have to maintain a base level of funding?

Additional funds resulting from expansion of the Sport Fish Restoration Program by the Wallop-Breaux amendments must be added to existing State fishery program funds available from traditional sources and not as a substitute (50 CFR 80.5(b)(2)). Each State must maintain a base level of State funding for its sport fish program that is at least equal to the level of funds that were allocated following the enactment of the Wallop-Breaux amendments.

A. The Regional Director will ensure that the State complies with the maintenance of funding provision. If the Regional Director finds that the current funding levels for the State fishery program are materially less than the base level, he/she will request the State to provide an explanation.

(1) If, in the judgment of the Regional Director, the explanation provides a rationale that indicates essential compliance with the requirement, no further action is required. The program components included in the originally established base calculations constitute the State fishery program.

(2) If the Regional Director decides that the State has not complied with the requirement, he/she will request the State to add funds to its fishery program to bring the funding level up to the base level. If the State does not add funding, the Regional Director will withhold obligation of sport fish restoration funds in an amount equal to the difference between the base level and the current funding level. This may result in that portion of sport fish restoration funds reverting at the end of their period of availability.

B. Prior to withholding obligation of funds, the Regional Director will advise the State Director and Service Director of all relevant issues.

2.8 For what purposes can States use Sport Fish Restoration funds? The following are eligible purposes under the Federal Aid in Sport Fish Restoration Program. Part 522 contains additional information on eligible grant purposes.

A. Restoring, conserving, managing, and enhancing sport fish, and providing for public use and benefit from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation [50 CFR 80.5(b)(1)].

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B. Enhancing the public's understanding of water resources and aquatic life forms, and assisting them in developing responsible attitudes toward the aquatic environment (SFR Act Sec 8)].

2.9 What are ineligible activities? The Federal Aid in Sport Fish Restoration Act prohibits using Federal Aid funds for certain purposes. In addition, the rules and policies (50 CFR 80) specify certain other purposes or activities that are not consistent with the grant program purposes and are also ineligible. The following is a summary of ineligible activities:

A. Public relations activities that promote organizations or agencies and that do not apply to educational or technical activities specifically related to accomplishment of Federal Aid grants or programs [50 CFR 80.6(b)].

B. Activities whose purpose is producing revenue. This includes all processes and procedures directly related to the printing, distribution, issuance, or sale of licenses, permits, etc., 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 [50 CFR 80.14(c)].

(1) A portion of the activities and associated costs of the development and maintenance of an automated licensing system is eligible for Federal Aid funding to the degree that it supports development of databases for storing State management information, or that would improve the States' license certification process [50 CFR 80.10]. In such cases, the grant proposal must contain an allocation of costs between eligible and ineligible activities [50 CFR 80.15(c)].

(2) The production of income that results from otherwise eligible activities, incidental to these activities, is not prohibited. Examples are sale of surplus commodities, collection of user fees, etc. [50 CFR 80.14(c)]

C. Providing services or property of material value to individuals or groups for commercial purposes or to benefit such individuals or groups [50 CFR 80.5(b)(1), 50 CFR 80.14(c)]. This does not prohibit providing technical assistance to a private landowner or operator where a public benefit will be served [50 CFR 80.5(b)(1)] (see 522 FW 14).

D. Enforcement of game and fish laws and regulations. This includes routine patrol, investigations, and law enforcement training [50 CFR 80.6(a)]. This does not prohibit activities necessary to accomplish Federal Aid grant purposes, or to protect Federal Aid assets, such as control of public entry. Nor does it prohibit activities to ensure public health and safety on Federal Aid areas. [50 CFR 80.5(b)(1)]

E. Establishment, publication, and dissemination of regulations that a State issues pertaining to the protection and utilization of fish and wildlife resources. Includes laws, orders, seasonal regulations, bag limits, creel limits, license fees, etc.

[50 CFR 80.6(a)]. This does not prohibit the scientific collection of information needed to support management recommendations [SFR Act Sec 2].

F. Furnishing public facilities, equipment, or services in excess of the minimum required to meet grant purposes or health and safety standards. [50 CFR 80.13(d), SFR Act Sec 1]

G. Wildlife damage management activities.

(1) Wildlife damage management activities, including removal or control of predatory, nuisance, or depredating animals; purchase or application of repellants or toxicants; installation of control pipes, culverts, fences, or other barrier or exclusion structures; or compensation for damage caused by predatory or depredating animals, if one or more of the following conditions apply:

(a) An entity prohibits or restricts conservation measures, such as hunting and trapping, for the species causing damage to a level that compromises the ability of the State fish and wildlife agency to reasonably attain its wildlife management objectives (excepting circumstances where firearms, archery, or trapping restrictions for valid public safety reasons as verified by the agency preclude hunting or trapping, or the restrictions are the result of Federal primary legal authority).

(b) State has specifically delegated management authority for the animals in question to an agency or entity other than the State fish and wildlife agency.

(c) State fish and wildlife agency does not have control and expenditure authority over use of license fees for wildlife damage management.

(d) The primary purpose of the wildlife damage management activity is not an eligible activity in the Sport Fish Restoration Program.

(2) If conditions (1)(a), (b), (c), or (d) apply, a State fish and wildlife agency may still use Federal Aid funds to monitor wildlife damage and provide technical guidance, exclusive of actual management activities, if the Federal Aid grant documents and approves the activity. Payments for wildlife damages are not an eligible use of Federal Aid funds.

2.10 Are there instances when a State could use license fees for wildlife damage management? We allow the use of license fees for wildlife damage management (including predator control) or damage compensation that helps achieve fish and wildlife management goals if the State fish and wildlife agency has:

A. Control and expenditure authority over these funds, and

B. Management authority over the animals in question.

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2.11 When would a diversion of funds occur?

A. A diversion of funds under 50 CFR 80.4 occurs if a State uses license funds for wildlife damage management where one or more of the following conditions apply:

(1) An entity prohibits or restricts conservation measures, such as hunting and trapping, for the species causing damage to a level that compromises the ability of the State fish and wildlife agency to reasonably attain its wildlife management objectives (excepting circumstances where firearms, archery, or trapping restrictions for valid public safety reasons as verified by the agency preclude hunting or trapping, or the restrictions are the result of Federal primary legal authority).

(2) State has specifically delegated management authority for the animals in question to an agency or entity other than the State fish and wildlife agency.

(3) State fish and wildlife agency does not have control and expenditure authority over use of license fees for wildlife damage management.

B. Even if one or more of the conditions in subparagraph A apply, State fish and wildlife agencies would not be in diversion if they use license fees to provide technical guidance, consultation, permitting, and monitoring of wildlife damage, exclusive of actual management activities, such as removal of animals. We allow the use of fees for control of exotic species not under authority of the State fish and wildlife agency if necessary to restore or maintain populations of species under the State agency's authority.

C. If a diversion of license revenues occurs, the State becomes ineligible to participate under the Sport Fish Restoration Act from the date we declare the diversion until the State satisfies the requirements of 50 CFR 80.4(d).

2.12 Where can I find additional guidance? Part 522 contains general administrative requirements and program standards for documentation and execution of the Federal Aid in Sport Fish Restoration Program. We intend the guidance to be thorough and current; however, grantees should not rely on it as a sole source. Regional Offices will answer specific questions.