



# 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<br>CONTACT<br>Division of Federal Aid | Eligibility Standards for Wildlife Restoration<br>Eligibility Standards for Sport Fish Restoration<br>Endangered Species | DATE<br>October 10, 2001 |

## EXPLANATION OF MATERIAL TRANSMITTED:

These chapters include minor revisions and incorporate plain language requirements.

*K Adams*

ACTING DEPUTY DIRECTOR

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## 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)

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**FISH AND WILDLIFE SERVICE  
STATE GRANT PROGRAMS**

**State Grant Programs**

**Part 521 Federal Aid Program Eligibility**

**Chapter 4 Endangered Species**

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**4.1 What is the purpose of this chapter?** This chapter provides the eligibility standards for grants under Section 6 of the Endangered Species Act (ESA)

**4.2 What is the authority for this Program?** Section 6 of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531-1543]. The ESA authorizes the Secretary of the Interior, ". . . to enter into a cooperative agreement with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. . . ." The Secretary has delegated to the Director the responsibility for carrying out the purposes of the ESA. 50 CFR 81 contains the regulations for execution of the ESA.

**4.3 Who administers this program?**

**A.** The Assistant Director - Endangered Species provides oversight for the Endangered Species program.

**B.** The Assistant Director - Migratory Birds and State Programs provides oversight of the grants administration.

**C.** Regional Directors are responsible for administration of the Endangered Species and Federal Aid programs within their Region, including:

(1) Establishing a Cooperative Agreement (paragraph 4.5C).

(2) Approving grant proposals.

(3) Determining eligibility and substantiality in character and design.

(4) Monitoring performance of approved grants.

(5) Monitoring compliance with applicable Federal laws and regulations.

**4.4 Who can participate in this program?** Any State agency or agencies, or other government entities, with authority to conserve resident species of fish and wildlife or plants deemed threatened or endangered is eligible to participate [50 CFR 81.2]. A State is any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands [50 CFR 81.1(i)].

**4.5 Are there any prerequisite requirements?** The State must establish and maintain an adequate and active program for the conservation of endangered and threatened species, and must enter into a Cooperative Agreement with the Secretary of the Interior [50 CFR 81.2 and 81.3].

**A. What criteria must the State program for threatened and endangered species meet?** To meet the requirement for an adequate and active program, the State must meet the following requirements:

(1) Authority resides in the State agency to conserve resident species of fish and wildlife or plants deemed endangered or threatened [50 CFR 81.2(a)].

(2) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Endangered Species Act, for all resident species of fish and wildlife or plants in the State deemed endangered or threatened [50 CFR 81.2(b)].

(3) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife or plants [50 CFR 81.2(c)].

(4) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species [50 CFR 81.2(d)].

(5) Provisions are made for public participation in designating resident species of fish and wildlife or plants as endangered or threatened [50 CFR 81.2(e)].

**B. What information must the State provide?** The State must provide the following information so that the Regional Director can determine if the State meets the requirement for an adequate and active program [50 CFR 81.2]. If any of the information changes, the State must submit revised information to the Regional Director [43 CFR 12.50(b)(3), 50 CFR 81.2].

(1) Memorandum of Law asserting that the State has the authority to conserve, investigate, and establish programs for endangered and threatened species.

(2) List of federally designated endangered and threatened species that occur in the State.

(3) List of resident species designated by the State as endangered or threatened.

(4) Copy of the State authorities that apply to endangered and threatened species.

(5) Copy of the State program for the conservation of federally listed endangered or threatened resident species.

(6) Summary of the procedures that the State uses to provide for public participation in the designation of endangered and threatened species.

**C. Is an agreement required between the State and the Federal agency?** If the State's program meets the requirement for an adequate and active program, the Regional Director will prepare, in consultation with the State, a Cooperative Agreement between the State and the Service. The Cooperative Agreement will set forth the roles and responsibilities of the State and the Service in the

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management of threatened and endangered species. The Service needs a complete, signed Cooperative Agreement before we can obligate Federal funds to any project within a grant [50 CFR 81.3, 50 CFR 81.5, 43 CFR 12.50(b)(3)].

**(1) What is the scope of this agreement?** The scope of the Cooperative Agreement may be for fish, wildlife, or plants, collectively or separately, based on the needs of the State. For example, a State may enter into a Cooperative Agreement for plants only.

**(2) Are there different levels of authority involved in these Agreements?** Based on enabling State legislation, the State may enter into full or limited authorities Cooperative Agreements. A full authorities Cooperative Agreement commits the State to protect any federally listed species that resides in the State. A limited authorities Cooperative Agreement commits the State to protect those species the Service and the State both agree are in most urgent need of protection.

**4.6 What is required for grant application documentation?** To pursue a grant under Section 6 of the Endangered Species Act, once a Cooperative Agreement for management of threatened and endangered species is in place between the State and the Service, the State must submit a Grant Proposal (GP) (including an Application for Federal Assistance) and Grant Agreement (GA) [50 CFR 81.6]. 522 FW 1 provides general guidance for GP's and GA's. Part 522 provides guidance more specific to different kinds of projects that may be in a Section 6 grant (e.g. land acquisition, habitat manipulation, etc.).

**4.7 What are the eligible purposes of these grants?** Endangered species grants must have the purposes of conserving species of fish, wildlife, or plants included on Federal or State lists of endangered or threatened species, or those that are candidates for listing status [50 CFR 81.2, 43 CFR 12.50(b)(3)]. Activities may include:

- A. Acquisition of endangered or threatened species habitat.
- B. Introduction of species into suitable habitats within their historic range.
- C. Enhancement of habitat.
- D. Surveys and inventories of habitats or populations.
- E. Research on endangered species.
- F. Propagation of animals and plants for introduction or protection of the species.
- G. Protection of listed or candidate species, or their habitat (e.g., mitigation of threats).

**4.8 What are the funding priorities?** We may use the following factors to establish priorities for funding projects:

A. Whether or not the proposal will accomplish tasks identified in a final or draft recovery plan.

B. The criteria outlined in 50 CFR 81.4, including (1) international endangered species commitments by the Federal Government; (2) the readiness of the State to implement its endangered species conservation program; (3) the number of endangered and threatened species in the State; (4) the potential for restoring an endangered or threatened species; and (5) the urgency of taking recovery or protection measures to assure survival of a species.

C. The recovery priority number as established in recovery plans, including (1) degree of threats facing the target species; (2) potential for recovery of the species; and (3) taxonomic status of the species for which full species have priority over subspecies or populations.

D. The listing status of the species. Federally listed species will be addressed first. Proposals to conserve Federal candidate species as well as monitoring of species after delisting may be funded even though no recovery plan exists.

**4.9 Does cooperation between States qualify for a higher Federal participation rate?** States may increase the rate of Federal participation from 75 percent to 90 percent of total grant costs when two or more States cooperate to conserve an endangered or threatened species of common interest [50 CFR 81.8(a)].

A. Section 6 (d)(2)(ii), ESA, defines cooperation as "whenever 2 or more States having a common interest in one or more endangered or threatened species, . . . enter jointly into agreement with the Secretary." A cooperative action is one where two or more States work on a mutual problem. This may be an action outlined in a recovery plan for a species of multi-State concern, an action outlined in a memorandum of agreement between cooperating States, an action described in cooperative grants, or an action outlined in a recovery implementation program.

B. The cooperating States may designate a lead State to coordinate with the Regional Director [43 CFR 12.50(b)(3), 50 CFR 81.6, 50 CFR 81.8(a), 50 CFR 81.9]. To seek an increased rate of participation for a cooperative project within a grant, cooperating States must provide the following documentation to the Regional Director with the Grant Proposal: Documentation of the cooperative action entered into by the cooperating States, which may be in any form (e.g., memorandum, letter of agreement, recovery plan, implementation program) that meets the needs of the cooperating States, provided it contains the responsibilities and work to be carried out by each of the cooperating States. Examples follow:

**(1)** Either (a) one State submits an Application for Federal Assistance, a Grant Agreement, and a letter of agreement from another State sharing cooperative efforts, or (b) each State identifies the joint recovery action from the recovery plan in existing Applications for Federal Assistance or Grant Agreement.

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(2) Each cooperating State submits a proposal for the joint project, separate Applications for Federal Assistance and separate Grant Agreements.

(3) When one or more States are participating in a recovery implementation program, one or more may submit separate Application(s) for Federal Assistance, Grant Agreement(s), and certification that they are participating in the recovery implementation program, such as "The Colorado River Recovery Implementation Program."

C. Each cooperating State is responsible for submitting performance and financial reports related to the joint project, when they are actively participating in Federal reimbursement funding. Incomplete work by any one of the cooperating States may result in a recovery of Federal funds from all States, if it is determined that the joint cooperative objective will not be accomplished [43 CFR 12.80].

**4.10 Are there any special conditions?** The following conditions are specifically applicable to endangered species grants:

A. Projects within a grant must be consistent with approved or draft species recovery plans. In no case will proposed work be in conflict with approved recovery plans [50 CFR 81.2].

B. A permit from the Regional Director may be required if a project within a grant involves taking, transporting across State lines, introduction into an area beyond its historic range, or holding wildlife in captivity for more than 45 days. If you anticipate any of these activities, you must submit an Environmental Assessment to the Regional Director before we will grant a permit [50 CFR 81.9, 43 CFR 12.50(b)(3)].

C. Grant Proposals for grants under Section 6 of the ESA must include certification that the State agency submitting the proposal is committed to implementing the projects within the grant [50 CFR 81.6(c)].

**4.11 Are there any compliance requirements?** Grantees must comply with all applicable Federal laws and regulations, as a condition of acceptance of Federal funds. In addition to the laws and regulations specific to the grant program, there are numerous other compliance requirements to Federal grant programs. Those generally applicable to all Federal grant programs are listed as Assurances, since grantees must provide assurance that they will comply with applicable provisions [50 CFR 81.9]. See 523 FW 1 for a summary of the compliance requirements normally associated with Federal Aid programs.

**4.12 Where can I find additional guidance?** 522 FW 1 contains general administrative requirements and program standards for documentation and execution of the Endangered Species grants 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.