



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
504 FW 1, 2, 3, 4, 5 & 640 FW 1	Department of Agriculture Programs Inventory Property Disposal Program Debt Cancellation Conservation Contract Program	431
ORIGINATING OFFICE Division of Fish and Wildlife Management and Habitat Restoration	Wetlands Reserve Program Wetland Conservation - Swampbuster USDA Conservation Programs Management of Non-Owned Lands Partners for Fish and Wildlife Program	DATE September 24, 2003

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters are the Service Partners for Fish and Wildlife Program policy. They establish goals, requirements, limitations, and priorities for habitat improvement projects and technical assistance provided to private landowners.


Deputy DIRECTOR

FILING INSTRUCTIONS:

Remove:

504 FW 3, 01/11/95, FWM 168
None
504 FW 7, 02/17/95, FWM 175
504 FW 6, 02/17/95, FWM 174
504 FW 8, 02/17/95, FWM 176
Appendix 1, 504 FW 8, 02/17/95, FWM 176
Appendix 2, 504 FW 8, 02/17/95, FWM 176

Insert:

504 FW 1, 09/24/03, FWM 431
504 FW 2, 09/24/03, FWM 431
504 FW 3, 09/24/03, FWM 431
504 FW 4, 09/24/03, FWM 431
504 FW 5, 09/24/03, FWM 431
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None
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1.1 What is the purpose of this chapter? This chapter and 504 FW 1, 2, 3, 4, and 5 prescribe the policies and procedures for implementation of the Partners for Fish and Wildlife Program. As used in this chapter, the terms “we,” “our,” and “Service” refer to the Fish and Wildlife Service.

1.2 To what does this chapter apply? This chapter applies to Partners for Fish and Wildlife Program projects implemented with Partners for Fish and Wildlife Habitat Restoration (1121-HR) and Technical Assistance (1121-TA) funds.

1.3 What is the Partners for Fish and Wildlife Program? The Partners for Fish and Wildlife Program is our primary mechanism for delivering voluntary on-the-ground habitat improvement projects on private lands for the benefit of Federal trust species. We provide technical and financial assistance to landowners to help meet the habitat needs of Federal trust species on private lands. Program projects may include improving habitat for any or all of the following: migratory bird species; anadromous fish species of special concern to the Service; endangered, threatened, or candidate species; species proposed for listing; and other declining or imperiled species.

1.4 What are the authorities for this chapter?

- A. Fish and Wildlife Coordination Act (16 U.S.C. 661).
- B. Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j).
- C. Partnerships for Wildlife Act (16 U.S.C. 3741).

1.5 Who is responsible for implementing the Partners for Fish and Wildlife Program?

A. Assistant Director - Fisheries and Habitat Conservation administers the Partners for Fish and Wildlife Program in consultation with the Assistant Director - National Wildlife Refuge System.

B. Assistant Director - National Wildlife Refuge System will advise the Assistant Director - Fisheries and Habitat Conservation on Partners for Fish and Wildlife issues related to management of the National Wildlife Refuge System.

C. Chief, Division of Fish and Wildlife Management and Habitat Restoration:

- (1) Develops Partners for Fish and Wildlife Program policy and monitors its implementation.
- (2) Provides guidance and training on Partners for Fish and Wildlife Program procedures to Regional, State/Ecoregion, and local Partners for Fish and Wildlife coordinators.

(3) Prepares guidance, policy, procedures, and directives, as needed, for the Regions on issues that have national implications.

(4) Prepares materials and coordinates input for the budget process, including, but not limited to, budget estimate and justification language, capability statements, effect statements, initiatives, and allocation methodology.

(5) Represents the Service when dealing with the U.S. Department of Agriculture (USDA) and other agencies at the National level on Partners for Fish and Wildlife Program activities.

(6) Collects, analyzes, and reports data on the accomplishments, costs, and benefits of Service activities related to the Partners for Fish and Wildlife Program.

(7) Coordinates Partners for Fish and Wildlife Program activities and opportunities with entities inside and outside of the Service.

(8) Coordinates resolution of issues elevated to the Washington Office from the Regions.

(9) Establishes and maintains partnerships at the National level.

D. Regional Directors will implement the Partners for Fish and Wildlife Program within their Region. Each Regional Director will designate a **Regional Partners for Fish and Wildlife coordinator** who will:

(1) Provide guidance to the field regarding all current policies, procedures, or national directives issued by the Washington Office regarding the Partners for Fish and Wildlife Program.

(2) Collect data on the accomplishments, costs, and benefits of the Region’s activities related to the Partners for Fish and Wildlife Program and report that data to the Chief, Division of Fish and Wildlife Management and Habitat Restoration.

(3) Establish and implement monitoring protocols to ensure that habitat improvement projects have met their biological and structural intent, and that landowners are satisfied.

(4) Develop, administer, and monitor multi-State partnership agreements.

(5) Provide technical assistance across all Service program areas.

(6) Conduct Partners for Fish and Wildlife Program oversight reviews of field stations to help ensure compliance,

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recognition, and resolution of problems or issues, and effectively communicate helpful information to all parties.

(7) Identify training needs and assist and coordinate activities to fulfill training needs.

(8) Develop Regional Partners for Fish and Wildlife Program budget allocation recommendations for all Partners for Fish and Wildlife Program activities and stations.

(9) Track budget allocations and accomplishments and report to the Division of Fish and Wildlife Management and Habitat Restoration.

(10) Carry out all Regional education and outreach activities associated with the Partners for Fish and Wildlife Program.

E. State/Ecoregion Partners for Fish and Wildlife Coordinators will coordinate and implement the program at the field level and will:

(1) Evaluate opportunities for habitat improvement.

(2) Provide technical assistance to private landowners and USDA on restoring habitat.

(3) Provide financial assistance to private landowners who voluntarily wish to improve Federal trust species habitat on their lands.

(4) Design and implement habitat improvement projects under formal Partners for Fish and Wildlife Program agreements with private landowners consistent with national guidance, policies, and directives.

(5) Design and implement habitat restoration projects on USDA's Farm Service Agency (FSA) easement property; on property transferred in fee title to the Service or to a State agency; and on property that is covered by an FSA debt cancellation conservation contract, when appropriate.

(6) Direct outreach efforts for the Partners for Fish and Wildlife Program to those geographic areas where there are opportunities to benefit priority resources.

(7) Collect data on the accomplishments, costs, and benefits of activities related to the Partners for Fish and Wildlife Program in the coordinators' geographic areas of responsibility and report this data to the appropriate Regional Partners for Fish and Wildlife coordinator.

(8) Monitor established projects to ensure that the intended results are fully achieved and that the landowners are satisfied.

(9) Establish and monitor coordination efforts with State fish and wildlife agencies to ensure that all activities are effectively coordinated in advance of field implementation.

(10) Develop annual work plans for each State and coordinate the same with the State fish and wildlife agency.

1.6 What terms do I need to know? Definitions for some of the terms used in this chapter are as follows. Other definitions may be found in the Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act.

A. Candidate Conservation Agreement with Assurances (CCAA). Authorized by the Endangered Species Act, a CCAA is a formal agreement between the Service and one or more parties to address the conservation needs of proposed or candidate species, or species likely to become candidates, before the species become listed as threatened or endangered. Property owners voluntarily commit to implementing specific actions that will reduce or remove threats to these species, thereby contributing to stabilizing or restoring the species so that listing is no longer necessary. In return, property owners receive assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agreed to at the time they entered into the CCAA. In addition, the Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) provide take authorization under section 10 of the Endangered Species Act, allowing participants to take individuals or modify habitat to return population levels and habitat conditions to those specified in the CCAA.

B. Contract definitions. We utilize the U.S. Department of Labor definitions in Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act) as contained in 29 CFR 5.

C. Cooperative agreement. A legal instrument reflecting a relationship between the Federal Government and a State government, a local government, or other recipient when (1) the principal purpose of the relationship is the transfer of money, property (real or personal), services, or anything of value to the recipient to carry out a public purpose of support or stimulation authorized by Federal statute, and (2) substantial involvement between the parties is anticipated during performance of the project. Except for Economy Act agreements, all agreements (e.g., landowner, assistance, etc.) mentioned in this chapter are types of cooperative agreements.

D. Federal trust species. For purposes of this chapter, Federal trust species include migratory birds, threatened and endangered species, anadromous fish of special concern to the Service, and marine mammals.

E. Incidental take. A term used in the Endangered Species Act, incidental take is the taking of listed fish or wildlife species that results from, but is not the purpose of, carrying

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out an otherwise lawful activity by a Federal agency or by a person who requires formal approval or authorization from a Federal agency prior to conducting the activity.

F. Landowner agreement. A written document between the Service and a private landowner detailing the requirements of a Partners for Fish and Wildlife Program project or habitat improvement project (paragraph 1.12). A Wildlife Cooperative Extension Agreement is a type of landowner agreement.

G. Person. For purposes of contracting, a person includes an individual, corporation, partnership, trust, association, or any other private entity; any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; and any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

H. Private lands. Private lands include tribal and Hawaiian Homelands and lands or waters owned by non-Federal or non-State entities.

I. Take. As defined in the Endangered Species Act, take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct, with regard to threatened and endangered species.

J. Section 10 Safe Harbor Agreement (SHA). A voluntary agreement between the Service or the National Marine Fisheries Service and cooperating non-Federal landowners, for the benefit of endangered and threatened species. Like a CCAA, an SHA gives landowners assurances that their conservation actions will not result in future regulatory obligations in excess of those they agreed to at the time they entered into the agreement. The Safe Harbor regulations are set forth in 50 CFR 17.22(c) and 17.32(c).

K. Volunteer services. Any activity that is undertaken by private landowners or partners that benefits Federal trust species and that is not an activity that is required by a permit or other legal instrument. We apply the definition at 40 U.S.C. 276d-1 to determine what constitutes "volunteer services" for purposes of waiving the Davis-Bacon minimum wage requirements and related labor standards on Federally authorized and financed construction projects.

1.7 What are the objectives of the Partners for Fish and Wildlife Program?

A. Promote and implement habitat improvement projects that benefit Federal trust species.

(1) Promoting and implementing habitat conservation and stewardship by providing technical and financial assistance to private landowners and other partners for proactive, voluntary, ecologically sound, on-the-ground native habitat improvement projects on private lands, for the benefit of Federal trust species (program projects).

(2) Supporting the objectives of Service plans and programs, including, but not limited to, the National Wildlife Refuge System; the North American Waterfowl Management Plan; the North American Bird Conservation Initiative; the National Invasive Species Management Plan; threatened and endangered species recovery plans; Coastal Program management plans; Partners in Flight plans; fisheries management and restoration plans; ecosystem management plans; and other habitat plans.

B. Provide conservation leadership and promote partnerships.

(1) Providing leadership and technical expertise to other Federal, State, tribal, and local government agencies administering nonregulatory habitat programs that benefit Federal trust species and their habitats on private lands.

(2) Promoting partnerships in order to encourage participation by potential new partners.

(3) Developing and maintaining partnerships and contributing financial and technical assistance to partners, for native habitat improvement projects that benefit Federal trust species.

(4) Publicizing the benefits of, and providing recognition to, effective ongoing partnerships in order to encourage participation by potential new partners and to maintain existing partnerships.

C. Encourage public understanding and participation.

(1) Broadening public understanding of fish and wildlife, habitat functions, and restoration techniques, and of the benefits derived from improved wildlife habitat; e.g., improved water quality associated with an increase in wetland acreage and function.

(2) Encouraging public participation in on-the-ground conservation efforts by demonstrating restoration techniques for habitat improvement projects on private lands in a variety of ecosystems.

(3) Informing the public and others of fish and wildlife conservation techniques through development and distribution of educational materials that illustrate our habitat improvement accomplishments and that demonstrate the

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importance of proper land use and management practices to Federal trust species as well as human populations.

D. Work with USDA to implement USDA's conservation programs. USDA conservation programs have broad-based natural resource conservation objectives, including air and water quality and conservation, soil conservation, wildlife habitat, grazing land conservation, and other agricultural conservation objectives. The Partners for Fish and Wildlife Program projects focus specifically on the conservation of Federal trust species and their habitats. Our role in USDA conservation programs is to provide guidance and technical assistance in order to maximize benefits to Federal trust species. For further information about USDA conservation programs, see 504 FW 1, 2, 3, 4, and 5.

1.8 What do habitat improvement practices include?

We undertake habitat improvement practices to restore or artificially provide physiographic, hydrological, or disturbance conditions necessary to establish or maintain native plant and animal communities. Habitat improvement practices may also include periodic manipulations to maintain intended habitat conditions on completed program projects. The term "habitat improvement" includes habitat restoration, enhancement, and establishment (singularly or in any combination), as those terms are defined below:

A. Habitat restoration is the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning full (natural/historic) functions to lost or degraded native habitat. Habitat restoration includes:

(1) Practices conducted with the goal of returning a site, to the extent practicable, to the ecological condition that likely existed prior to loss or degradation. Examples include removal of tile drains or plugging drainage ditches in former or degraded wetlands; returning meanders and sustainable profiles to straightened streams; burning grass communities heavily invaded by exotic species to reestablish native grass/plant communities; and planting native plant communities that likely existed previously on the site.

(2) Practices conducted when the restoration of a site to its original ecological condition is not practicable, but will repair one or more of the original habitat functions and involve the use of native vegetation. Examples include installation of a water control structure in a swale on lands isolated from overbank flooding by a major levee in order to simulate natural hydrological processes and placement of streambank or instream habitat diversity structures in streams that cannot be restored to original conditions or profile.

(3) Removal of the disturbing/degrading element to enable the native habitat to reestablish or become fully functional. Examples include fencing livestock out of a riparian area; removing constructed barriers to promote movement of aquatic species; and gating a bat cave.

B. Habitat enhancement is the manipulation of the physical, chemical, or biological characteristics of a native habitat to change (heighten, intensify, or improve) specific function(s) or the seral stage present. Habitat enhancement includes:

(1) Practices conducted to increase or decrease a specific function or functions for the purpose of benefitting Federal trust species. Examples include increasing the hydroperiod and water depth of a wetland beyond what would naturally occur, to improve waterfowl habitat conditions; establishing water level management capabilities (moist soil management) for native plant communities or to create mud-flat conditions important for shorebirds; and cross-fencing and establishment of a rotational grazing system on native range to improve grassland nesting bird habitat conditions.

(2) Practices conducted for the purpose of shifting a native plant community successional stage. Examples include burning an established native grass community to reduce or eliminate invading brush or exotic species; brush shearing to set back early successional plant communities; and forest management that promotes a particular seral stage. This definition does not encompass regularly scheduled and routine maintenance and management activities such as annual mowing or spraying of unwanted vegetation.

C. Habitat establishment is the manipulation of the physical, chemical, or biological characteristics present to create and maintain habitat that did not previously exist on the site. Examples include construction of shallow water impoundments on non-hydric soils and construction of side channel spawning and rearing habitat where none previously existed.

1.9 How does the Service determine habitat improvement priorities?

Partners for Fish and Wildlife Program projects must advance our mission, promote biological diversity, and be based upon sound biological principles. Each year, we receive more requests from private landowners for financial assistance than we can fund; therefore, we must use a priority system to make selections. For the purpose of providing the greatest benefits to Federal trust species, use the following priority factors to focus project selections geographically or ecologically:

A. Priority ranking factors. We will give highest funding priority status to proposed projects that meet the following conditions (sequence of listing does not imply order of preference):

(1) **National Wildlife Refuge System.** The purpose of a proposed project on private lands will complement activities on National Wildlife Refuge System lands or contribute to the resolution of problems on refuges that are caused by off-refuge land use practices. Examples include: enhancing the quality of water that enters a refuge, facilitating wildlife dispersal, and establishing corridors between refuges and

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other protected habitats. High priority status will be afforded to the initial restoration of habitats on lands with FSA conservation easements or that FSA has transferred in fee title to the Service, when the purpose of the conservation instrument is to restore the ecological integrity of the site for the benefit of Federal trust species.

(2) Species at risk. The proposed project must improve habitat for migratory bird species of management concern; anadromous fish of special concern to the Service; endangered, threatened, or candidate species or species proposed for listing; and/or other declining species.

B. Secondary ranking factors. Give special consideration to proposed projects that meet the following conditions (sequence of listing does not imply order of preference):

(1) Ecoteam priorities. Projects identified by Service ecosystem teams or in collaboration with State fish and wildlife agencies, conservation districts, and other partners.

(2) Links and augmentation. Projects that reduce habitat fragmentation.

(3) Globally or nationally imperiled. Projects that conserve or restore a natural community that a State Natural Heritage Program or Heritage Database has designated as globally or nationally imperiled.

(4) Self-sustaining. Projects that result in self-sustaining systems that are not dependent on artificial structures. If such structures are necessary for project success, they must be designed to blend with the natural landscape and to minimize future operational and maintenance costs.

(5) Buffers. Projects that serve as buffers for other important State or Federal conservation lands.

C. General ranking factors. If other considerations are roughly equal, we will give priority to funding projects that have agreements that are longer in duration; that involve greater non-Service partnerships and cost-sharing; and/or that have the greatest cost effectiveness.

1.10 How does the Service implement the Partners for Fish and Wildlife Program?

A. Coordination with others. Whenever possible and appropriate, we will coordinate the Partners for Fish and Wildlife Program with other Federal, State, tribal, and local government agencies as well as nongovernmental organizations that share our objectives of benefitting Federal trust species and their habitats.

B. Federal lands and waters. Generally, habitat improvement projects on Federal lands and waters are deemed to be for the direct benefit or use of the Federal Government, and are implemented by Service employees, volunteers, or by contractors hired in accordance with the Federal Acquisition Regulation (FAR).

C. Private lands. For each of the following methods of implementing habitat improvement projects on private lands, any landowner cost-sharing requirements may be met with funds, labor, materials, or other valuable contributions. In addition, the following general rules apply:

(1) Federal contractors. As a general rule, when we arrange for a contractor to perform work on private lands, we award a Federal procurement contract to the contractor, in accordance with the FAR.

(2) Other agencies and organizations. When other Federal, State, or local government agencies or private organizations act as intermediaries for the Service in arranging and carrying out habitat improvement projects on private lands, we will use a cooperative agreement, except that interagency agreements under the Economy Act (31 U.S.C. 1535) must be used with other Federal agencies. Cooperative agreements must include a mechanism for the recovery of Federal funds if the terms and conditions of the agreement are not met. A clause similar to the one in paragraph 1.12F fulfills this requirement.

(3) Landowner labor and/or contracts. Federal assistance agreements similar to the Wildlife Cooperative Extension Agreement (FWS Form 3-2257) and FWS Forms 3-2255 (Project Plan) and 3-2256 (Findings and Determination to Support Habitat Development on Private Lands), or comparable supporting documentation, must be used when landowners will either do the habitat improvement work themselves (with some guidance from Service employees) or will hire their own contractors.

1.11 What are the requirements for program projects?

The following requirements apply to all Partners for Fish and Wildlife Program-funded habitat improvement projects:

A. Regions must focus on projects in those ecosystems or watersheds where efforts will achieve the greatest benefits for Federal trust species. The objective of habitat improvement projects on private lands must be improving the habitat of Federal trust species for the principal benefit of the Federal Government. Program projects must be biologically sound and cost-effective, and must reflect the application of the most effective techniques based on state-of-the-art methodologies and adaptive management. We may measure or ensure program project quality through the establishment of project selection protocols; monitoring success criteria; program reviews; and/or employee training.

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B. The costs of the proposed habitat improvement projects must be reasonable; i.e., the value of what is to be achieved by a project must be at least equal to (and preferably greater than) the Federal expenditures.

C. Habitat improvement projects must comply with all applicable environmental laws such as the National Environmental Policy Act and the Endangered Species Act, as well as other statutes that protect historic and cultural resources.

D. Prior to implementing habitat improvement projects on private lands, the Service and the landowner(s) must sign an agreement that secures the Federal investment. When a third party acts as an intermediary for us, we will use agreements as specified in paragraph 1.12B.

E. Habitat restoration projects must, to the extent technically feasible, attempt to reestablish the original (predisturbance) ecological community, or a successional sequence of natural communities that will lead to the reestablishment of the original ecological community, on at least 70 percent of the project site.

F. Habitat establishment projects must, to the extent technically feasible and economically practical, establish self-sustaining natural communities, including native vegetation.

G. The goal of habitat establishment projects is to provide the same habitat functions and general landscape appearances as are exhibited by similar naturally occurring and restored habitat.

H. Habitat establishment practices must not be conducted on areas of existing native habitats important to Federal trust species; those habitats supporting other rare or declining species; or on other unique habitats, unless it can be demonstrated that the practices will not negatively affect the imperiled plant or animal species dependent upon or utilizing the affected native habitats.

I. All planting or seeding must consist of native species adapted to local site conditions. Exceptions may be made to achieve rapid soil stabilization; where weed control considerations are preeminent; or when site conditions require specific solutions not attainable with native species. Projects will be avoided where domination of the site by exotic plants cannot be prevented.

J. Agricultural activities on a project site that involve plowing or other disturbance of the soil are permitted where they would directly contribute to site preparation associated with habitat improvement; where they would help control the spread of invasive plant species; or as emergency measures within a specified time frame that would contribute to the solution of an immediate and urgent problem (e.g., disease outbreak) that is having a severe effect on a Federal trust species.

K. Installation of water control structures to allow flooding of annually tilled cropland to benefit migratory birds will be permitted, provided that the site is flooded annually while under a landowner agreement; that no more than a total of 15 percent of a State's on-the-ground annual allocation will be used to fund projects on active cropland under the 15 Percent Pilot Program (paragraph 1.16B); and that no 1121-HR funds will be used to pay for the costs of water, water pumps, or equipment such as electricity or pipes needed or used to deliver water to these cropland areas.

L. Habitat improvement projects targeting fisheries and other instream aquatic communities must focus on areas that will show a marked improvement in water quality and habitat values in both the project area and in downstream reaches. High priority should be given to projects that restore stream courses, restore riparian buffers, and remove constructed barriers. Consideration should also be given to installation of fish passage structures at sites where migration to historic spawning and rearing sites has been permanently obstructed. Projects must be avoided where upstream disturbances that are outside the influence of the proposed project area are likely to continually affect the project area via streamflow (e.g., a project downstream of a gravel mining operation with frequent silt releases) and where the threat from passage of undesirable exotic species outweighs the benefits to native species.

1.12 What are the requirements for landowner and other types of agreements? We have broad authority to enter into assistance agreements and acquisition contracts with landowners, State and local governments, private organizations, and other cooperators, to improve the habitat of Federal trust species on private lands, provided that all of the following conditions are fulfilled and documented for every habitat improvement project:

A. Prior to implementing habitat improvement projects on private lands, the Service and the landowner(s) must sign an agreement that secures the Federal investment. The duration of the agreement must be commensurate with the technical and financial assistance provided by the Service and must not be less than 10 years. Agreements must conform to the requirements contained in the opinion of the Assistant Solicitor, Division of Conservation and Wildlife and Environmental Enforcement, May 3, 1996, subject: Authority for the Fish and Wildlife Service to Obligate Public Funds for Private Land Habitat Projects.

B. We may enter into cooperative agreements with conservation partners who will act as agents of the Service to implement multiple program projects. The agreement or contract must be for a minimum of 10 years in duration and must include a mechanism for the recovery of Federal funds if the terms and conditions are not met by the other parties (subparagraph F below).

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C. If project work beyond the scope of the original agreement is needed, the agreement must be amended, in writing, to reflect such work, prior to the work being done.

D. If ownership of the land described in the original agreement changes, we must contact the new landowner to explain the purpose and benefits of the program project and to request that the new landowner enter into an agreement that honors the terms and duration of the previous landowner's agreement.

E. We must enter into formal written agreements with landowners before proceeding to restore degraded habitats on lands subject to FSA debt cancellation conservation contracts. See 504 FW 2 for guidance on the FSA Debt Cancellation Conservation Contract Program.

F. To secure the Federal investment, each agreement or contract must include the following (or similar) clause: "This agreement [or contract] starts when fully signed and continues for _____ years. [This first sentence may be separated from the remainder of the clause.] This agreement may be modified at any time by the mutual written consent of the parties. It may be terminated by either party upon 30 days advance written notice to the other party. However, if _____ [a party other than the U.S. Fish and Wildlife Service] terminates the agreement before its expiration or materially defaults on its commitments, then _____ agrees to reimburse the U.S. Fish and Wildlife Service for the prorated cost to the United States of all habitat improvements placed on the land through this agreement. For this purpose, the total cost to the United States is agreed to be \$_____."

G. All applicants for Federal grants or cooperative agreements under discretionary and mandatory grant programs or activities must include a Dun and Bradstreet Data Universal Numbering System (DUNS) number on their applications. Only individuals (such as private landowners) who personally receive a grant or cooperative agreement award from the Federal Government apart from any business or nonprofit organization and others exempted by the Office of Management and Budget are not subject to this requirement. In other words, a private landowner who receives a direct payment from the Partners for Fish and Wildlife Program is not subject to this requirement. For further information, see the memorandum from the Deputy Director, August 29, 2003, subject: Financial Assistance Policy: Dun and Bradstreet Universal Numbering System Requirements for Federal Assistance, and attachments thereto.

1.13 Do projects have to comply with Federal, State, and local laws and regulations? All Service program projects must comply with all Federal laws and regulations, such as the National Environmental Policy Act; the

Endangered Species Act; the National Historic Preservation Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and the Clean Water Act. Program projects must also comply with any applicable State, local, and tribal laws and regulations that do not conflict with, or are not preempted by, Federal laws and regulations.

A. Endangered Species Act intra-Service section 7 consultation. Partners for Fish and Wildlife Program coordinators will conduct an Endangered Species Act intra-Service section 7 consultation on each habitat improvement project prior to implementation, to consider the effects of the proposed project, including the conversion of the property to pre-project conditions, on listed, proposed, and candidate species and on any designated or proposed critical habitat. Programmatic consultations, both formal and informal, are acceptable methods for meeting intra-Service section 7 consultation requirements. Specific guidance for conducting intra-Service section 7 consultations and a blank intra-Service section 7 consultation form are included in the Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act.

B. Endangered Species Act programmatic section 7 consultation.

(1) Purpose. In general, the purpose of an Endangered Species Act programmatic consultation is to evaluate the potential for a group of related agency actions (for example, all the Partners for Fish and Wildlife wetland restoration projects in Yuma County, Arizona) to affect listed, proposed, and candidate species and their critical habitats. Established standards, guidelines, and criteria guide the implementation of these actions. Partners for Fish and Wildlife coordinators work with Service endangered species biologists to develop the standards, guidelines, and criteria necessary to establish parameters within which a project could be covered under a programmatic section 7 consultation, and also work closely with endangered species personnel to facilitate completion of these consultations, including proper environmental baseline documentation. Partners coordinators should consult with the NMFS when species under NMFS jurisdiction may be affected.

(2) Effect. Programmatic section 7 consultations have the greatest potential to streamline the section 7 consultation process. A programmatic consultation completes the analysis of effects once, rather than repeatedly each time a similar project is proposed. Individual landowners can then be covered under the consultation through a stepped-down documentation that the project meets the eligibility requirements. This approach may shorten the process for completing consultation for proposed actions that were not included in the original programmatic consultation. Programmatic section 7 consultations also facilitate the

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timely completion of habitat improvement activities and the potential reversal of conditions if a landowner wishes to return his or her property to baseline conditions after the expiration of a Partners for Fish and Wildlife agreement.

C. Endangered Species Act safeguards for private landowners. We encourage Partners for Fish and Wildlife biologists to pursue safeguards for private landowners in the event that a listed, proposed, or candidate species colonizes on their property or increases in numbers as a result of a habitat improvement project. These safeguards, typically a section 7 incidental take permit, a SHA, or a CCAA, can increase the chances of preventing future land use restrictions on project sites due to listed, proposed, or candidate species issues. Partners for Fish and Wildlife Program staff will (1) ensure that all private landowners are made aware of the risks and benefits associated with these permits and agreements, (2) help private landowners to better understand the Partners for Fish and Wildlife Program, and (3) fully disclose all requirements of the Endangered Species Act when discussing these options.

D. Endangered Species Act incidental take authorization. We recommend an Endangered Species Act section 7 consultation as the most efficient method for providing incidental take authorization. However, landowners may elect to obtain their own incidental take permit or other assurances against further restrictions by entering into either an SHA or a CCAA. We developed both of these agreements to slow the decline and promote the recovery of listed, proposed, and candidate species by creating incentives for landowners and land managers to voluntarily contribute to the conservation of these species. Both SHA's and CCAA's can be developed for either an individual landowner or structured programmatically where we will enter into an agreement with a single entity that will then enroll other participants under separate permits or certificates of inclusion. Both SHA's and CCAA's can be time consuming (7 to 12 months) to develop, and there may be circumstances where these types of permits and agreements are not appropriate for the species of concern.

E. Cultural resources. We must obtain the written concurrence of the State Historic Preservation Office that consultation as required by Section 106 of the National Historic Preservation Act has been completed.

F. National Environmental Policy Act (NEPA). We will complete a NEPA Compliance Checklist (FWS Form 3-2185) as required by Director's Order No. 127.

G. Clean Water Act and Rivers and Harbors Act. We will determine the need for any permits required by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

H. Hazardous materials. We will assess the presence and impact of hazardous substances and other contaminants on

the project site. Project sites must be free of hazardous substances. When pesticides will be used during habitat improvement, the Partners for Fish and Wildlife coordinator must follow 30 AM 12, which may include the development and review of a pesticide use proposal. See also the Director's memorandum, December 9, 1993, subject: Pesticide Use Proposals.

I. Service fire management policy. We recognize that prescribed fire is an important and acceptable tool to reduce hazardous fuels, restore habitat, remove exotic species, and reintroduce natural disturbance regimes to benefit Federal trust species. When 1121-HR funds are used for, or when Service personnel are conducting, a prescribed fire, Partners for Fish and Wildlife coordinators will follow 621 FW 1. The Director's memorandum, March 12, 2003, subject: Service Fire Management Policy Clarification, states that Service fire management policy and implementation guidance apply to all Service fire management activities regardless of land ownership, including prescribed fires on private lands.

1.14 How does the Service monitor program projects? Within 6 months of the date of this chapter, each Region must develop project followup and monitoring protocols. Design these protocols to show how a project has met its biological and structural intent as well as the landowner's goals, and demonstrate the project's viability throughout the duration of the applicable agreement. Regions will submit the protocols to the Division of Fish and Wildlife Management and Habitat Restoration for review and approval. The Partners for Fish and Wildlife State coordinators must keep protocol and monitoring results in their files. Regions desiring rigorous assessments of completed projects are encouraged to explore partnerships with universities or other organizations.

1.15 How are program accomplishments tracked? Regional Offices and field offices must use the Habitat Information Tracking System (HabITS) to report habitat improvement accomplishments and program-specific technical assistance workloads associated with the Partners for Fish and Wildlife Program, as described in the Director's memorandum, June 28, 2001, subject: The Habitat Information Tracking System for Partners for Fish and Wildlife Program and the Coastal Program is Operational.

1.16 How are Partners for Fish and Wildlife - Habitat Restoration (1121-HR) funds used?

A. Priority use of funds. Give priority use of Partners for Fish and Wildlife - Habitat Restoration (1121-HR) funds to habitat improvement projects that strive to return full functions to native habitats. Although the primary goal of the Partners for Fish and Wildlife Program is ecological restoration, habitat establishment practices may be appropriate when necessary to respond to high priority Service habitat objectives that cannot be achieved through habitat restoration or enhancement. The cost of habitat

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establishment practices should be comparable to the costs of restoration practices on similar habitats in the general area.

B. 15 Percent Pilot Program. Beginning in FY 2004, a 3-year pilot initiative allows up to 15 percent of an individual State's annual allocation of 1121-HR on-the-ground funds to be used for providing cost share assistance to the following types of projects either alone or in combination:

(1) Projects on private lands that are protected by Federal easements that limit the landowner's rights to transfer, control access, quiet enjoyment, passive recreation, and extract subsurface minerals, provided they are reached laterally.

(2) Projects designed to annually flood active cropland for the purpose of providing temporary seasonal habitat for migratory birds. Installation of water control structures to allow flooding of annually tilled cropland to benefit migratory birds will be permitted, provided that the site is flooded annually while under a Partners for Fish and Wildlife agreement; that no more than a total of 15 percent of a State's on-the-ground annual allocation will be used to fund projects on active cropland under this Pilot Program; and that no 1121-HR funds will be used to pay for the costs of water, water pumps, or equipment (such as electricity or pipes) needed or used to deliver water to these cropland areas.

C. Project support. At least 70 percent of 1121-HR funds allocated to the Regions must be used for actual on-the-ground project design and implementation. Expenditures of the 1121-HR on-the-ground funds are appropriate for the following actions and activities:

(1) **Biologists' time;** e.g., directing project activities (e.g., earthwork, fence installation); conducting site assessment; designing projects; traveling to and from the project; conducting project monitoring.

(2) **Equipment;** e.g., earth moving equipment; surveying equipment; laboratory equipment.

(3) **Earthwork;** e.g., contracts for earth moving, planting, structure installation, or other site preparation; materials (e.g., fencing, plants and planting supplies, water control structures); cooperative agreement funds.

D. Administrative purposes. The remainder (30 percent) of the 1121-HR funds and all of the 1121-Technical Assistance funds (1121-TA) may be used for administrative purposes such as:

(1) **Biologists' time;** e.g., training, serving on committees, annual leave and sick leave, miscellaneous technical assistance, outreach, entering data into HABITS.

(2) **Office support costs in proportion to time spent on 1121 activities;** e.g., budget, accounting, and processing agreements; data entry; supervision; vehicles, vehicle upkeep, and maintenance; reasonable office expenses.

E. State properties. The Partners for Fish and Wildlife Program encourages participation with States and advocates leveraging funds with other conservation groups such as State fish and wildlife agencies. The expenditure of 1121-HR funds on State-owned lands is outside the mission of the Partners for Fish and Wildlife Program to assist private landowners to restore Federal trust species' habitats; however, 1121-HR funds may be expended on State-owned lands for the following purposes:

(1) The initial restoration of habitats on lands with FSA conservation easements granted to a State for management.

(2) The initial restoration of habitats on lands that have been transferred in fee title by the FSA to a State.

(3) When the purpose of the FSA conservation easement or fee title transfer is to restore the ecological integrity of the site for the benefit of Federal trust species.

F. FSA inventory properties. Partners for Fish and Wildlife 1121-HR funds may be used without restriction to improve FSA inventory properties where the Service has obtained either an easement or fee title to such properties.

G. Payment limitation. Generally, 1121-HR funding is limited to \$25,000 or less per project. However, the Director or his or her designee may approve Service funding of projects involving more than \$25,000. Such approval must be based on the predicted biological significance and cost effectiveness of the project.

H. Mitigation. 1121-HR funds may not be used on habitat improvement projects being implemented for compensatory mitigation under any Federal or State regulatory program. After expiration of a Partners for Fish and Wildlife Program agreement, Service mitigation policy will apply to the use of the property for mitigation credits. See National Policy Issuance #89-02 and Notice, "Final Policy on the National Wildlife Refuge System and Compensatory Mitigation under the Section 10/404 Program," 64 FR 49229, September 10, 1999. 1121-HR funds may not be used to support Service staff delivery of compensatory mitigation to meet any Federal or State regulatory program requirements, regardless of compensatory mitigation funding source. Service staff are encouraged, however, to provide Swampbuster technical

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assistance when requested, to assist USDA in meeting its responsibilities under the Food Security Act of 1985 (504 FW 4). Service staff may deliver projects funded through administrative penalty payments or other settlement funds not directly associated with compensation for specific adverse impacts/injuries to natural resources.

I. Cost-share and in-kind services. The goal of the Partners for Fish and Wildlife Program is to secure at least 50 percent of project costs, including cash and in-kind services, from non-Service sources. This goal applies to the Partners for Fish and Wildlife Program overall, and does not have to be achieved on a project-by-project basis. We recognize and appreciate the contributions made by landowners when they voluntarily withdraw lands from agricultural production. However, we do not consider income foregone or other opportunities lost as a result of Partners for Fish and Wildlife Program participation as cost-sharing for the purpose of determining project costs.

J. Land use payments. 1121-HR funds will not be used to lease or purchase interests in real property or to make rental or other land use incentive payments to landowners.

K. Program delivery integrity. Regional Directors are accountable for ensuring that 1121-HR funds are spent only on the delivery of Partners for Fish and Wildlife Program projects. The Regions will adopt Work Activity Guidance documents, program reviews of field stations, and other methods to reinforce this requirement, to ensure the integrity of program delivery.

L. USDA. USDA agencies are among our strongest partners in achieving fish and wildlife habitat objectives on private lands. In these partnerships, we seek to complement USDA conservation programs by providing Partners for Fish and Wildlife funds and technical assistance. These funds and technical assistance must be dedicated to meeting Service objectives and must result in demonstrable benefits to Federal trust species. When there will be a direct benefit to a Federal trust species that would not otherwise occur from the implementation of a USDA conservation program plan, 1121-HR funds may be used to benefit the Federal trust species. For example, we could contribute 1121-HR funds for plantings of specific vegetation that would not be necessary for a successful restoration but would add value to the site for a unique, declining, or listed species.

M. FSA inventory properties. 1121-HR funding is the primary source of money for the initial restoration of habitats on FSA easement and fee title transfer properties; however, the use of 1121-HR funds for ongoing operation and maintenance expenses beyond such initial habitat restoration associated with FSA inventory properties in the National Wildlife Refuge System is not authorized. See 504 FW 1 through 5 for specific information about conducting projects in association with USDA conservation programs.

N. Other funding sources. We encourage Service field offices to partner with and leverage the limited 1121-HR monies with other conservation funding initiatives such as those provided by State game and fish agencies, conservation districts, and private conservation groups. Various obstacles, including funding cycles and program objectives/eligibility requirements, are expected to present challenges that should be evaluated carefully to ensure compatibility with the Partners for Fish and Wildlife Program. Field offices will use existing, or develop new, Memoranda of Understanding/Agreement or cooperative agreements to facilitate partnerships with other agencies; e.g., Memorandum of Understanding between the National Association of Conservation Districts and the United States Department of the Interior, Fish and Wildlife Service, January 28, 1999.

1.17 Are there any limitations on the use of 1121-HR monies? One of the principal goals of the use of 1121-HR monies is to leverage project funds with funds from other partners to achieve greater benefits for the conservation of Federal trust species and their habitats. We require that 70 percent of 1121-HR funds be directed to on-the-ground projects to maximize the benefits of leveraging those funds (known as the 70 percent rule). However, in certain circumstances and in order to fully utilize certain monies received through grants, we may need to vary from this funding limitation. Such requests will be the exception rather than the rule.

1.18 When are waivers from the 70 percent limitation on the use of 1121-HR funds appropriate? Waivers from the 70 percent rule funding limitation on the use of 1121-HR funds are appropriate when additional funds, leveraged through grants and the funding partner(s), do not provide any administrative or technical assistance or do not authorize use of a portion of the funds provided for those purposes. For example, a Service field office receives a \$50,000 grant from the Ruddy Duck Foundation. As a grant condition, all grant dollars must be used for on-the-ground habitat improvement. The Ruddy Duck Foundation is supplying money but is not providing any form of administrative or technical assistance, and is prohibiting the use of grant funds for project support services. The Regional Office could request authority to use up to an additional \$15,000 of its 1121-HR on-the-ground funds for project support activities. The \$15,000 is equal to 30 percent of the \$50,000 grant.

1.19 How do Regional Directors request a waiver? Regional Directors will send a written request for waiver from the 1121-HR 70 percent funding limitation to the Chief, Division of Fish and Wildlife Management and Habitat Restoration, Washington Office. Requests for waivers must be made in advance of project implementation; must include copies of all grants and agreements; and must specify the amount of 1121-HR funds in excess of the authorized 30 percent to be spent on project support.

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1.20 How does the Service provide technical assistance? We use the full range of biological and habitat improvement expertise and resources available through the Partners for Fish and Wildlife Program to provide conservation partners with technical assistance regarding fish and wildlife resources; habitat requirements; cost-effective habitat improvement techniques; management options; impacts of compatible and incompatible uses; and any other information that will enable partners to acquire, restore, and manage sites to maximize benefits to fish and wildlife. There are two general categories of technical assistance:

A. Partnerships with USDA. The Service utilizes 1121-TA funds each fiscal year to provide technical assistance to Federal and non-Federal agencies, private organizations, and individuals on a wide variety of habitat improvement/protection programs or interests. We provide much of this assistance to USDA agencies implementing conservation programs in order to maximize the benefits of those programs to Federal trust species and the Nation's wetland resources. The Service provides assistance on USDA policy development as well as delivery of programs in the field. Specific guidance on the Service's role in USDA conservation programs is provided in Part 504 of the Service Manual.

B. Private landowners and other conservation partners. We provide technical information to private landowners and other conservation partners; orchestrates the application of on-the-ground habitat restoration funds; develops cooperative agreements to leverage available technical and financial resources; identifies priority habitat improvement projects and opportunities; transfers information regarding state-of-the-art restoration techniques; and encourages additional partnerships. We also provide technical assistance to conservation partners at the National, Regional, State, and field office level to maximize benefits to Federal trust species and their habitats.

1.21 How are Partners for Fish and Wildlife - Technical Assistance (1121-TA) funds used?

A. Authorized use of funds. Partners for Fish and Wildlife - Technical Assistance (1121-TA) funds are used for fish and wildlife technical support to USDA agencies implementing Farm Bill conservation programs; to other agencies and entities implementing nonregulatory habitat improvement programs; and to private landowners who voluntarily implement habitat improvement projects on their lands. Partners for Fish and Wildlife - Technical Assistance (1121-TA) funds may not be used for any other purpose.

B. Program delivery integrity. Regional Directors are accountable for ensuring that 1121-TA funds are spent only in support of nonregulatory habitat improvement activities.

The Regions must adopt Regional Work Activity Guidance documents, program reviews of selected field stations, and other methods to ensure program delivery integrity.

1.22. What forms are used for program projects? Use the following forms, or similar forms that accomplish the same objective, in connection with all habitat improvement projects:

A. FWS Form 3-2185 (NEPA Compliance Checklist).

B. FWS Form 3-2255 (Project Plan). Use this form to record the initial understandings with landowners and to begin the process of documenting the file.

C. FWS Form 3-2256 (Findings and Determination to Support Habitat Development on Private Lands). Use this form to ensure that mandatory certifications of compliance regarding conditions in paragraph 1.11A, B, and C have been met. Other documentation methods that provide the same information as this recommended form are acceptable.

D. FWS Form 3-2257 (Wildlife Cooperative Extension Agreement). Use this form in habitat improvement projects with private landowners. Regions will use the title of this form as the preferred name for such agreements.

1.23 What are the documentation and recordkeeping requirements for program projects? Partners for Fish and Wildlife coordinators must keep adequate documentation regarding Partners for Fish and Wildlife program projects and 1121-HR fund expenditures. The use of 15 Percent Pilot Program funds will be tracked in HabITS, and the effectiveness of the 15 Percent Pilot Program will be evaluated at the end of Fiscal Year 2006 to determine if continuation of the program is warranted. The following is a list of basic items that must be kept with every project file:

A. Signed landowner agreement and any cooperative agreements.

B. Written description of the project, showing in detail: the work to be completed; a breakdown of project costs; matching funds and in-kind contributions; and appropriate maps of the project site.

C. A completed FWS Form 3-2185 (NEPA Compliance Checklist).

D. Written concurrence of the State Historic Preservation Office that consultation as required by section 106 of the National Historic Preservation Act has been completed.

E. Written evidence that the Endangered Species Act Intra-Service section 7 consultation has been completed.

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F. A completed section 404 Clean Water Act permit or section 10 Rivers and Harbors Act permit, if necessary.

G. Hazardous Materials Review (paragraph 1.13H).

H. Pesticide Use Proposal, if applicable (30 AM 12).

I. Any required State or local permits.

J. Copies of purchase orders; receipts for labor, materials, and supplies; and any additional information necessary to accurately account for expenditures made to complete the habitat improvement work for each project.

K. A breakout of expenditures by funding source, if a project is funded in part by other than 1121-HR funds.