



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240

IN REPLY REFER TO:

DIRECTOR'S ORDER NO: 167

Subject: Allowable Commercial Activities and Related Facilities on Federal Assistance Lands

**Sec. 1 What is the purpose of this Order?** This Order provides guidance on commercial activities conducted and related facilities constructed on lands acquired, developed, or managed with Federal Assistance funds under the Wildlife and Sport Fish Restoration Programs.

**Sec. 2 To whom does this Order apply?** This Order applies to all Service personnel who administer grants funded through the Wildlife and Sport Fish Restoration Programs.

**Sec. 3 To what lands does this guidance apply?** These guidelines apply to the following, unless otherwise mutually agreed to by the State fish and wildlife agency and the Service and specified in the grant agreement:

a. Lands acquired with Federal Assistance funds, regardless of when the lands were acquired.

b. Lands that have been developed or improved with Federal Assistance funds, as long as such improvement continues to be needed or useful for its original purpose.

c. Lands upon which any Federal Assistance-funded management activities were conducted during the defined grant period.

**Sec. 4 What are the authorities for taking this action?**

- a. 16 U.S.C. 777.
- b. 16 U.S.C. 669.
- c. 43 CFR 12.65(a).
- d. 50 CFR 80.14(b)(2) and (c).
- e. 50 CFR 80.18(c).
- f. 50 CFR 80.21.



**Sec. 5 What commercial activities are covered by this Order?** This Order applies to any activity or service that produces income to any entity or individual and that is conducted on lands or facilities acquired, developed, or managed with Federal Assistance funds. Examples include boat rentals, launching fees, camping fees, concessionaires, fees for guiding services, snowmobile fees, and professional photography.

**Sec. 6 Who determines what commercial activities and related facilities are allowed on lands acquired, developed, or managed with Federal Assistance funds?** Subject to the guidance in this Order, the State fish and wildlife agency determines what commercial activities and related facilities are allowed on Federal Assistance supported lands. The State agency may not allow a commercial activity or facility that will interfere with the fulfillment of the restoration, conservation, management, and enhancement grant objectives for sport fish, wild birds, or wild mammals on the area, and the provision for public use of and benefits from these resources. Therefore, commercial activities and related facilities that would interfere with the approved purpose for which the land was acquired, developed, or is managed are prohibited. At the request of the State fish and wildlife agency, the Service will confer on proposed commercial activities or construction of related facilities.

**Sec. 7 What is the Service's authority to review compliance with this guidance?** The State fish and wildlife agency has responsibility for the accountability and control of all assets, and has first responsibility to determine if a commercial activity or related facility interferes with the purpose for which the land was acquired or developed, or is managed (50 CFR 80.18). However, the Service has the right to review or inspect at any time to ensure compliance with Section 6 (50 CFR 80.21).

**Sec. 8 Are State fish and wildlife agency costs attributable to commercial activities and related facilities on lands acquired, developed, or managed with Federal Assistance funds eligible for Federal Assistance funding?** No. Costs associated with commercial activities on lands acquired, developed, or managed with Federal Assistance funds are not eligible Federal Assistance Program costs, unless the commercial activity supports a grant's primary purpose. Note: States may use contracts or other third-party agreements to fulfill grant objectives.

**Sec. 9 How should income generated by commercial activities on lands acquired, developed, or managed with Federal Assistance funds be treated?** Income received by the State or subgrantee is subject to the provisions of 43 CFR 12.65 and Director's Order 168. Income not received by a State or subgrantee is not subject to Federal oversight.

**Sec. 10 Must commercial activities and related facilities on lands acquired, developed, or managed with Federal Assistance funds be included in the grant agreement?** A description of commercial activities and related facilities on lands

acquired, developed, or managed with Federal Assistance funds does not need to be included in the grant agreement as long as:

a. The decision as to what commercial activities and related facilities will be allowed remains with the State fish and wildlife agency.

b. The activities and related facilities would not interfere with the purpose for which the lands were acquired or developed, or are managed.

c. The cost of the activities and related facilities will not be paid for with Federal Assistance funds.

**Sec. 11 What is the effective date of this Order?** This Order is effective immediately. We will include the contents of this Order in Part 522 of the Fish and Wildlife Service Manual. This Order will expire on March 31, 2005, unless amended, superseded, or revoked.



DIRECTOR

Date: March 11, 2004