No. 25-410

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BOATERS RIGHTS ASSOCIATION, SCOTT PUTNAM, and SHALOE PUTNAM,

Plaintiffs-Appellants,

v.

LAURA JACKSON, in her official capacity as chair of the Oregon State Marine Board; CRAIG WITHEE, in his official capacity as a member of the Oregon State Marine Board; DAX MESSETT, in his official capacity as co-chair of the Oregon State Marine Board; JORGE GUZMAN, in his official capacity as member of the Oregon State Marine Board; and STEVEN LAMBERT, in his official capacity as a member of the Oregon State Marine Board,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Oregon
No. 6:23−cv−00333−MTK
Hon. Mustafa T. Kasubhai

APPELLANTS' OPENING BRIEF

Jill Gibson
Gibson P.C.
4248 Galewood Street
Lake Oswego, Oregon 97035
(503) 505-8998
jill@gibsonp-c.com

Attorney for Plaintiffs-Appellants Boaters Rights Association, Scott Putnam, and Shaloe Putnam

Denise Gale Fjordbeck, AAG
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301
(971) 673-1880
denise.fjordbeck@doj.oregon.gov

Attorney for Defendants-Appellees Laura Jackson, Craig Withee, Dax Messett, Jorge Guzman, and Steven Lambert

DISCLOSURE STATEMENT

Plaintiff-Appellant Boaters Rights Association states that it has no parent corporation and no publicly held corporation owns 10% or more of stock in Plaintiff-Appellant Boaters Rights Association.

Date: April 3, 2025

/s/ Jill Gibson
Jill Gibson

Attorney for Appellant Boaters Rights Association

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INTRODUCTION

In 1950, Congress enacted the Federal Aid in Sport Fish Restoration Act, 16 U.S.C. § 777 *et seq.*, (the "Act") to provide funds to states to restore and better manage American's declining fish resources. The program has been a huge success. According to the United States Fish and Wildlife Service ("USFW"), the Act has generated over $12 billion for fish conservation and management programs since 1952.[1] In 2025 alone, Oregon received $9,134,695 in federal funds from the Act.[2]

About half of the funding for these programs comes from motorboat fuel taxes imposed on recreational boaters.[3] As such, recreational boaters are critically important to the success of the fish conservation and management programs funded by the Act. Because of this, Congress requires states to use 15% of the federal funds they receive from the Act to benefit recreational boaters. These funds, from the Recreational Boating Access Subprogram, must be used to construct boating

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[1] https://www.fws.gov/program/sport-fish-restoration (follow "Sport Fish Restoration QuickSight page") (last visited 3/25/25).

[2] *Id*.

[3] United States Government Accountability Office, Report to Congressional Committees, *Recreational Boating*, at 15 (Dec. 2022), https://www.gao.gov/assets/gao-23-105729.pdf (motorboat fuel tax "contributed approximately 49 percent" of the revenue stream for fiscal years 2012 through 2021.

facilities that provide public access to U.S. waters and improve the suitability of such waters for recreational boating purposes.

The Ninth Circuit has held that the Act creates the right of recreational boating in U.S. waters benefitted by the Recreational Boating Access Subprogram. In other words, a state may not accept federal funds from the Act for the construction of a boat ramp and then prohibit recreational boating in the waters served by the boat ramp. As the Ninth Circuit stated, "[t]he state would have another boat launch facility, but a class of intended beneficiaries under the Act would be deprived of its use." *Buckley v. City of Redding, Cal.*, 66 F.3d 188, 193 (9th Cir. 1995).

This is what occurred in this case. The State of Oregon applied for and received federal funds to build recreational boating facilities on the Willamette River, and then prohibited several types of recreational boating in the U.S. waters benefited by those facilities. Plaintiffs-Appellants Boaters Rights Association, Scott Putnam, and Shaloe Putnam ("Putnam")[4] brought this §1983 action seeking declaratory and injunctive relief to enjoin enforcement of Oregon's recreational boating prohibitions that violate their federal statutory rights to recreational

[4] This brief refers to Plaintiffs-Appellants collectively as "Putnam." The Court found that Scott Putnam had standing and therefore dispensed with determining whether the other Plaintiffs also had standing. Shaloe Putnam is Scott's wife and Boaters Rights Association is a nonprofit organization that promotes and advocates for recreational boaters.

boating on the Willamette River, which has been aided by the Act's federal funding. Putnam respectfully appeals from the District Court's denial of his motion for summary judgment regarding the violation of his recreational boating rights.

JURISDICTIONAL STATEMENT

Putnam filed his complaint in the United States District Court for the District of Oregon pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. § 2201. The District Court had subject matter jurisdiction under 28 U.S.C. § 1331 because this action arose under a federal statute. The Ninth Circuit Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1291 because the present appeal is from a final decision, disposing of all the parties' claims, made by the District Court. The District Court entered its judgment granting Defendants'-Appellees' cross-motion for summary judgment, and denying Putnam's motion for summary judgment, on December 20, 2024. ER-4. Putnam filed a notice of appeal on January 17, 2025. ER-134. This appeal is timely pursuant to Fed. R. App. P. 3 and 4(a)(1)(A) because it was filed within thirty (30) days of the District Court's final judgment.

REQUEST FOR ATTORNEY FEES

In addition to seeking declaratory and injunctive relief in the underlying action, Putnam requested an award of reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

STATUTORY AND REGULATORY AUTHORITIES

16 U.S.C. § 777g - Maintenance of projects

(b) Funding requirements

(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under **section 777c** of this title for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

50 C.F.R. § 80.51 - What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act:

(b) Sport Fish Restoration—Recreational Boating Access subprogram

(1) Acquire land for new facilities, build new facilities, or acquire, renovate, or improve existing facilities to create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. A broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters. “Facilities” includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(2) Conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

517 FW 7

7.12 What must recreational boating access projects seek to accomplish to receive funds under the subprogram?

A. Recreational boating access projects must seek to acquire, develop, renovate, maintain, or improve facilities that create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. These facilities may include auxiliary structures to ensure safe use by recreational boaters. Projects may include surveys to determine information needed to plan for providing access to recreational waters for any size or type of recreational boat. **Exhibit 1** gives examples of the types of activities that are eligible and those that are not eligible.

B. A broad range of access facilities and associated amenities that benefit recreational boaters may qualify.

C. Facilities funded through the subprogram must be available to all recreational boaters, but States may restrict uses for public safety, property protection, noise abatement, or aquatic resource protection. Examples of restrictions include limiting the horsepower or types of boat motors and setting speed limits, no-wake zones, or hours of use.

ISSUE PRESENTED

Whether the District Court erred in determining that Putnam's federal statutory right to recreational boating in U.S. waters benefitted by the Recreational Boating Access Subprogram was not violated by Oregon's prohibition of various types of recreational boating in those waters.

STATEMENT OF THE CASE

I. Nature of the Case

This case arises from Oregon's decision to seek and accept grants under the Act's Recreational Boating Access Subprogram to construct boating facilities on the Willamette River, and then to prohibit various types of recreational boating on the U.S. waters served by those facilities, contrary to legal conditions imposed upon grant recipients. This appeal will determine whether Oregon, specifically Defendants-Appellees (members of the Oregon State Marine Board ("OSMB")), may continue to violate the Act's requirement that the federally-funded boating facilities provide benefits for recreational boaters and all sizes of boats in the adjacent navigable waters.

II. Legal Background

A. Federal Aid in Sport Fish Restoration Act

Congress enacted the Act to financially support states in "fish restoration and management projects." 16 U.S.C. § 777(a). "[E]ach State accepting the benefits of this chapter shall agree [with the Secretary of the Interior] upon the fish restoration and management projects to be aided in such State under the terms of this chapter, and all projects shall conform to the standards fixed by the Secretary of the Interior." *Id*. One of the requirements for a state accepting the benefits of the

Act's federal funding is that the state must allocate 15% of the funds to benefit recreational boaters. 16 U.S.C. § 777g(b)(1).

The Act established dedicated funding sources for the fish restoration and management projects by imposing excise taxes on motorboat fuel, fishing equipment, and related items. 26 U.S.C.A. §§ 9503(c)(4)(C), 9504(a). The revenue generated from these taxes is deposited into the Sport Fish Restoration and Boating Trust Fund (the "Fund"). 16 U.S.C. § 777b. In 2025, these taxes generated $416,382,754.00 nationwide to be deposited into the Fund.[5]

Fifty-eight percent of the Fund is distributed among the 50 states through the Sport Fish Restoration Account. 16 U.S.C. § 777c(c)(1). State fish and wildlife agencies that apply for and receive funds from the Sport Fish Restoration Account must comply with the Act's requirements. 16 U.S.C. § 777(a). One of the requirements is that states must allocate 15% of the federal funds they receive to benefit recreational boaters. 16 U.S.C. § 777g(b)(1). This is because taxes on motorboat fuel comprise a substantial source – approximately half – of the funding for the Act, and because Congress intended to benefit recreational motorboat users

[5] https://www.fws.gov/program/sport-fish-restoration (follow "Sport Fish Restoration QuickSight page") (last visited 3/25/25).

who pay such taxes.[6] The 15% earmarked for recreational boaters – called the Recreational Boating Access Program – provides funding for projects that improve access to U.S. waters for recreational boating, such as ramps, docks, and other boating infrastructure. 50 C.F.R. § 80.51(b)(1). The remaining funds provided to states are spent on a range of initiatives to support fish restoration and conservation efforts. 50 C.F.R. § 80.51.

Congress did not define "recreational boating" but the Act's plain language and legislative history show that Congress intended to protect a broad range of motorboat activities and intended to benefit boaters who pay motorboat fuel taxes. *See* 16 U.S.C. § 777g(g)(4) (refers to the 15% of funds used for recreational boating as "funding dedicated to motorboat access to recreational waters"); *see also* H.R. Rep. No. 133, 98th Congress, 1st Sess., pt. 1, 17-18 (1983) ("The intent of [the Amendments] is to ensure that a portion of the funds being derived from the motorboat fuels tax is used for projects that directly benefit the people who pay the tax."); 129 Cong. Rec. 18691 (daily ed. July 12, 1983) ("The boating and sport fishing enthusiasts of our Nation have and will continue to pay these taxes willingly and deserve to see them devoted to appropriate and beneficial purposes.").

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[6] United States Government Accountability Office, Report to Congressional Committees, *Recreational Boating*, at 15 (Dec. 2022), https://www.gao.gov/assets/gao-23-105729.pdf

The Act's implementing regulations reiterate that states must use funds from the Recreational Boating Access Subprogram to benefit recreational boaters. *See* 50 C.F.R. § 80.51(b) ("A broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters."). Rules promulgated by USFW state that recreational boating spending by states may include "surveys to determine information needed to plan for providing access to recreational waters for any size or type of recreational boat." 517 FW 7.12. The rule also states that facilities funded through the subprogram must be available to "all recreational boaters." *Id.*[7]

B. Oregon Regulation of Recreational Boating

1. 2019 Legislation

In 2019, the Oregon Legislature created the Towed Watersports Program, to be implemented by OSMB. ORS 830.640(1). The program requires motorboat operators to hold a towed watersports endorsement and motorboat owners to have a certificate decal affixed to their boat when engaged in towed watersports in Oregon. ORS 830.643. The Legislature named the section of the Willamette River from river mile 30 to 50 the "Newberg Pool" and created enhanced enforcement of

[7] The rule further provides that states may impose safety restrictions such as "limiting the horsepower or types of boat motors and setting speed limits, no-wake zones, or hours of use." 517 FW 7.12.

the requirements to have towed watersport endorsements and motorboat certificate decals in the Newberg Pool. ORS 830.649; ORS 830.652.

To implement the program, OSMB promulgated rules regarding "towed watersport education" and set a "minimum standard of competency" regarding towed watersports. ORS 830.640(2). OSMB also promulgated rules that established "slow-no wake" zones around docks and floating homes, established hours for motorboat usage, and created dedicated areas for wake surfing. *See*, e.g., OAR 250-020-0385 (2021). Putnam did not challenge these state laws.

2. 2022 Legislation (The Challenged State Law)

In 2022, the Oregon Legislature expanded the regulation of recreational boating in the Newberg Pool. It enlarged the geographic area of the Newberg Pool, prohibited boaters from engaging in towed watersports in boats exceeding 5,500 lbs., and prohibited all wake surfing regardless of the size of the boat. Chapter 119 of Oregon Laws 2022 (SB 1589) (the "State Law") A-2. "Towed watersports" means "activities that involve being towed by a vessel such as, but not limited to, water skiing, wakeboarding, and tubing." The State Law, Sec. 2(b), A-2; OAR 250-018-0010(16). "Wake surfing" means the "activity of propelling an individual forward on equipment similar to a surfboard, using a boat's wake. The person may be holding a rope or free riding. Equipment used in this activity may include but is

not limited to wake surf boards, wake boards, stand up paddleboards and hydrofoils." The State Law, Sec. 2(c), A-2.

III. The Present Litigation

Putnam lives on the banks of the Newberg Pool, which is an area of the Willamette River 28.4 miles long. He and wife bought a house on the river so they could easily wake surf and wakeboard with their young children. ER-28, Scott Putnam Decl. at 1. He used to engage in these activities four or five times a week until the Oregon Legislature passed the State Law, which prohibited these activities. ER-29. Putnam's boat exceeds the weight limit, so he may not pull his kids on a tube or wakeboard. ER-29, Scott Putnam Decl. at 2. He and his family greatly enjoyed engaging in recreational boating and miss having this family activity. ER-28 – ER 29, ER-24 – ER-26. The Putnams valued being able to enjoy water sports with their kids because it was a healthy, outdoor, and socially interactive alternative to television and video games. ER-24, Shaloe Putnam Decl. at 1-2. The Putnams still are able to ride in their boat and use their boat for transportation. ER-29, Scott Putnam Decl. at 2, ER-25, Shaloe Putnam Decl. at 2.

On March 8, 2023, Putnam filed a complaint against the members of the OSMB, in their official capacities, in the United States District Court of Oregon. OSMB is the state agency responsible for enforcing the State Law's prohibition of wake surfing and towed watersports in boats weighing 5,500 lbs. or more.

Putnam's complaint alleged that he had a federal statutory right pursuant to the Act to engage recreational boating activities in the Newberg Pool, and that OSMB was violating his rights by enforcing the recreational boating prohibitions. Putnam sought declaratory and injunctive relief from OSMB's violation of his federal statutory rights to recreationally boat in U.S. waters benefited by the Act.

On July 6, 2023, OSMB filed a motion to dismiss the complaint, arguing that the Act does not protect wake surfing or towed water sports in boats weighing over 5,500 lbs. and that the State Law does not violate the Act. ER-107. On January 5, 2024, the Court issued an order denying the motion to dismiss, finding that "the Act unambiguously confers the right that Plaintiffs seek to enforce under § 1983" and that it was premature to determine whether the State Law is consistent with the Act. ER-94.

On July 5, 2024, Putnam filed a motion for summary judgment seeking a determination that OSMB had violated his rights. ER-84. On August 2, 2024, OSMB filed a cross-motion for summary judgment seeking a determination that 1) all Plaintiffs lacked standing, 2) Plaintiffs do not have an enforceable right to recreate in the Newberg Pool, 3) and the State Law does not prohibit Plaintiffs from recreating in the Newberg Pool. ER-37.

On December 20, 2024, the Court denied Putnam's motion and granted OSMB's cross-motion, finding that: 1) Putnam had standing, thus it was

unnecessary to determine whether the other Plaintiffs had standing; 2) the Act conferred the right "to access certain waterways for specified recreational purposes"; and 3) the State Law's prohibition on wake surfing and towed watersports in boats weighing 5,500 lbs. or more is consistent with the that right. ER-6. On January 17, 2025, Putnam filed timely notice of appeal from the Court's Order. ER-134.

SUMMARY OF THE ARGUMENT

Oregon receives approximately $8 million annually in federal funds to build recreational boating facilities on U.S. waters in the state.[8] In return, Oregon is required to allow access the U.S. waters served by the facilities for recreational boating activities. However, Oregon took the federal funds, built recreational boating facilities on the Willamette River, and then prohibited wake surfing and other types of recreational boating in those waters, in violation of the statute.

The District Court ruled that this is allowable because the Act only protects "specified" recreational boating activities, and that Congress did not intend to protect skiing or tubing in boats that weigh 5,500 lbs., or wake surfing in any size boat. The Court committed reversible error because the Act expressly protects

[8] Dep't of the Interior, *Press Release - Sportsmen and Sportswomen Generate Nearly $1 Billion in Conservation Funding*,https://www.doi.gov/pressreleases/sportsmen-and-sportswomen-generate-nearly-1-billion-conservation-funding (last accessed 4/1/25)

recreational boating for "all sizes of boats" and did not limit the recreational boating activities protected by the Act.

STANDARD OF REVIEW

A district court's statutory interpretation is reviewed *de novo*. *See e.g. Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1086 (9th Cir. 2020) (district court's construction of Fair Credit Reporting Act reviewed *de novo*); *United States v. Gagarin*, 950 F.3d 596, 603 (9th Cir. 2020); *United States v. Kelly*, 874 F.3d 1037, 1046 (9th Cir. 2017). A district court's decision on cross motions for summary judgment is also reviewed *de novo*. *See Csutoras v. Paradise High Sch.*, 12 F.4th 960, 965 (9th Cir. 2021); *Innova Sols., Inc. v. Baran*, 983 F.3d 428, 431 (9th Cir. 2020); *Travelers Prop. Cas. Co. of Am. v. ConocoPhillips Co.*, 546 F.3d 1142, 1145 (9th Cir. 2008).

ARGUMENT

I. The District Court Erred in Concluding That the State Law Does Not Violate the Act.

In its summary judgment opinion, the Court acknowledged:

> The parties do not dispute that wake surfing is a recreational boating activity, that engaging in towed watersports in a boat weighing 5,500 pounds or more is a recreational activity, and that the State Law prohibits these activities in the Newberg Pool.

ER-21. There also was no dispute that the Willamette River, specifically the Newberg Pool, is U.S. waters and that the Act benefitted those waters by

providing funding for several recreational boating facilities. *See* ER-34, Gibson 2nd Decl.

Given these undisputed facts, the only way the Court could rule against Putnam was to determine that Congress did not intend to protect *all* recreational boating. The Court reached this determination by improperly inserting the word "specified" into the Act to limit the right created for recreational boaters; however, no such word appears in the Act. This was reversible error.

A. The Ninth Circuit Has Already Interpreted the Act Broadly

In 1995, the Ninth Circuit held that the Act created enforceable federal statutory rights for recreational boaters. *Buckley*, 66 F.3d at 192. The Ninth Circuit confirmed *Buckley* in *Save Our Valley v. Sound Transit*, 335 F.3d 932, 941-42 (9th Cir. 2003).[9] In *Buckley*, a recreational boater and an industry association filed a §1983 action against the City of Redding, California (the "City"), which had received funds under the Act to help construct a boat launch on the Sacramento River. After building the boat launch with federal funds, the City prohibited the operation of jet skis on the river.

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[9] *Buckley* cites to 50 C.F.R. § 80.24, which has been renumbered as § 80.51(b)(1) and expanded to state "A broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters." 76 FR 46153. The statutory provision at issue - 16 U.S.C. § 777g (b)(1) – has not substantively changed since *Buckley* was decided, except to benefit recreational boaters more by increasing the minimum funding for recreational boating from 10% to 15%.

Buckley clarified that the Act created the right to use the waterway served by the federally funded boating facility for recreational boating purposes, and that this right was not limited to the ability to use the boating facility. *Buckley* at 193. The City in *Buckley* argued that even though jet skis were prohibited in a section of the Sacramento River, the City had complied with the Act because the boat launch facility could physically accommodate jet skis. *Id.* at 193. The court rejected this "hypertechnical reading of the Act," stating:

> The City's reading of the Act would allow it to receive the benefit of its bargain with Congress, i.e., receiving funding to subsidize construction of a boat launch facility, while avoiding its obligations under the Act. Such a reading would frustrate the purpose of the legislative enactment. The state would have another boat launch facility, but a class of intended beneficiaries under the Act would be deprived of its use. *** [T]he City passed an ordinance restricting personal watercraft from using the waterway that was to benefit from the federal funding. In such a case, the City's restriction of the waterway is tantamount to restriction of the facility. To argue otherwise is simply disingenuous.

Id. This language shows that the Ninth Circuit rejects narrow, technical readings of the Act that result in frustrating the purpose of the Act.

B. The Court Erroneously Stated That the Act Benefits Only "Specified" Recreational Boating.

The Court misread *Buckley* and misquoted the Act. The Court stated that the Ninth Circuit "determined that the Act conferred the right 'to access certain waterways for specified recreational purposes.' *Id*. at 189." ER-21. This is

incorrect. The limiting word "specified" does not appear in *Buckley*'s holding, which was: "Thus, we conclude that the Act unambiguously creates a right enforceable under section 1983." *Buckley* at 192. *Buckley* only used the word "specified" once - when referring to jet-skiing, which was the activity specified by the plaintiffs in their complaint. *Buckley* at 189 ("In this case, we must determine whether the [Act] confers a right enforceable under 42 U.S.C. § 1983 to access certain waterways for specified recreational purposes."). The Ninth Circuit did not use "specified" in *Buckley* to convey that the Act protected only certain enumerated recreational boating activities. The word "specified" appears nowhere in the Act.

Although neither the Ninth Circuit nor the Act limits the right to recreational boating to "specified" recreational boating, the Court's decision turns on this word. The Court stated: "The Act confers a right of access using federally funded facilities for 'specified' (as opposed to 'unspecified' or 'unlimited') recreational purposes." ER-22. This is incorrect. Tellingly, the Court did not provide a citation to the Act for the word "specified" and did not tell us what enumerated recreational boating is protected by the Act. ER-6 – ER-23.

Congress used no limiting language when creating the right to recreational boating and did not even provide a definition for the term. The absence of a limiting definition must be presumed to be intentional, especially since the Act

contains a definitions section for other terms. *Barnhart v. Sigmon Coal Co., Inc.*, 534 US 438, 440, 122 S Ct 941, 944, 151 L Ed 2d 908 (2002) ("it is presumed that Congress acted intentionally and purposely"); 16 U.S.C.A. § 777a (Definitions). If Congress wanted to define "recreational boating" in a way to limit its plain and unambiguous meaning, "it could have done so clearly and explicitly." *Barnhart*, 534 US at 440.

The plain language of the Act requires states to broadly benefit recreational boating:

- 16 U.S.C. § 777g(b)(1). Each state "shall allocate 15 percent of the funds apportioned to it" for facilities that "improve the suitability of such waters for recreational purposes".
- 16 U.S.C. § 777g(g)(4). This provision describes § 777g(b)(1) as "funding dedicated to motorboat access to recreational waters".
- 16 U.S.C. § 777g(g)(1). The Act places no size limit on the boats that can be used for recreational boating, as shown by the requirement of states that implement the national framework for boat access to "determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of boats."

- 16 U.S.C. § 777g(g)(2). States that do not adopt the national framework must ensure there is "public boat access adequate to meet the needs of recreational boaters on its waters."
- 16 U.S.C. § 777g-1(e)(1). The Act requires states to provide facilities for "recreational vessel[s] 26 feet in length or longer."

There is simply no indication that Congress intended to limit the recreational boating benefited by the Act. Additionally, the Act's implementing regulations state that "[a] broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters." 50 C.F.R. § 80.51(b)(1). The regulations also state that the Recreational Boating Access Subprogram may fund surveys regarding "access to recreational waters for all sizes of recreational boats." 50 C.F.R. § 80.51(b)(2). And a USFW rule states that recreational boating projects "may include surveys to determine information needed to plan for providing access to recreational waters for any size or type of recreational boat." 517 FW 7.12.

It is well-settled that courts are not to add words to statutes. *Borden v. United States*, 593 US 420, 436, 141 S Ct 1817, 1829, 210 L Ed 2d 63 (2021) ("A court does not get to delete inconvenient language and insert convenient language to yield the court's preferred meaning." Courts should not fill in gaps with rules of their own. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The*

Interpretation of Legal Texts at 93 (2012). General terms are to be given their general meaning and afforded their full and fair scope, without being arbitrarily limited. *Id*. at 101. The Court had no legitimate reason for adding the word "specified" to limit the rights created by the Act and recognized in *Buckley*. What makes this addition even more curious is the fact that this word, and whether it should be read into the Act, was not discussed in the summary judgment briefing or hearing before the Court.

Finally, its inclusion is counter to Congress's intent as shown by the Act's legislative history. Congress intended to benefit recreational boaters because approximately half of the monies in the Trust Fund come from motorboat fuel taxes imposed on recreational boaters.[10] Congress specifically intended to benefit boating "enthusiasts" who pay motorboat fuel taxes "willingly and deserve to see them devoted to appropriate and beneficial purposes." 129 Cong. Rec. 18691 (daily ed. July 12, 1983). Congress intended "to ensure that a portion of the funds being derived from the motorboat fuels tax is used for projects that directly benefit the people who pay the tax." H.R. Rep. No. 133, 98th Congress, 1st Sess., pt. 1, 17-18 (1983).

[10] United States Government Accountability Office, Report to Congressional Committees, *Recreational Boating*, at 15 (Dec. 2022), https://www.gao.gov/assets/gao-23-105729.pdf

C. The State Law violates the Act

It is undisputed that the State Law prohibits all towed watersports in a boat exceeding 5,500 lbs. and all wake surfing regardless of the weight of the boat. It is also undisputed that these activities are recreational boating activities. And as discussed above, the Act creates broad rights to recreational boating for "all sizes of boats." 16 U.S.C. § 777g(g)(1), A-32.

The State Law's prohibition of recreational boating is directly contrary to the Act's plain language and purpose, which is to "provide benefits to recreational boaters" and to "increase participation in sport fishing and boating." 50 C.F.R. § 80.51(b)(1) and (d). However, the boating facilities constructed with Recreational Boating Access Subprogram funds in the Newberg Pool do not benefit Putnam or other wake surfers because "the waterway in question is restricted and offers no practical accommodation to [their] vessels." *Buckley*, 66 F.3d at 193. And the boating facilities do not benefit Putnam and other owners of boats weighing 5,500 lbs. or more who want to ski, tube, or wake board because they are not allowed to do so in the waterway. As in *Buckley*, the "restriction of the waterway is tantamount to restriction of the facility. To argue otherwise is simply disingenuous." *Id*.

However, the Court did hold otherwise. The Court stated: "Contrary to Plaintiffs' allegation, the State Law does not prohibit Plaintiffs from using

federally funded facilities to access the Newberg Pool." ER-22. This is the same type of argument that the Ninth Circuit rejected in *Buckley*. There, the defendant argued that the Act was not violated because the boat ramp could physically accommodate jet-skis. The Ninth Circuit rejected this "hypertechnical" argument and stated that "the City's restriction of the waterway is tantamount to restriction of the facility." *Buckley* at 193. In the instant case, although all recreational boats can physically access the boating facilities and surrounding water, the State Law prohibits various types of recreational boating in those waters. However, the Act does not simply protect the right to access the water; it protects the right to access the water "for recreational boating purposes." 16 U.S.C.A § 777g(b)(1), A-30.

It was clear in *Buckley* that the plaintiffs were asserting their rights to engage in the *activity* of jet skiing; they were not wanting to just put their jet skis in the water and float around. And Congress intended to protect more than the ability to idle in a boat and socialize or anchor a boat and swim. The ability to do those things provides no real benefit to "boating enthusiasts," as they can already socialize on land and swim without a recreational boat. Moreover, these non-recreational boating activities, e.g. swimming, would not provide the funds necessary to protect fisheries and their habitats.

The Court also stated, "Nothing in the Act or the record before the Court suggests that the specific prohibitions imposed by the State Law, or even towed

watersports more broadly, are indispensable elements of recreational boating." ER-22. This statement imposed a higher standard to receive protection under the Act than Congress imposed. The Act does not narrowly protect only "indispensable elements of recreational boating"; rather the Act protects recreational boating - with no qualifiers.

The Court also stated: "Unlike in *Buckley*, the State Law does not restrict the type of vessel that can access the Newberg Pool via a federally funded facility. Boats of all sizes are permitted to use federally funded facilities to access the Newberg Pool." These statements show that the Court failed to recognize that the rights created by the Act can be violated in different ways - by restricting a type of boat, such as jet-skis (as in *Buckley*) or by restricting a type of recreational boating, such as wake surfing (as in the present case). Both restrictions violate the Act because they frustrate the Act's purpose and Congress's intent.

OSMB argued that the State Law does not violate the Act because Putnam can still picnic, sunbath, and socialize on their boats. But Congress intended to protect a broader range of activities and OSMB provided no support for their narrow view of recreational boating. An individual does not even need a boat to picnic, sunbath, or socialize and these activities certainly are not "indispensable elements of recreational boating." ER-22.

Any argument that a USFW internal policy, specifically 517 FW 7.12, allows OSMB to violate Putnam's rights should be rejected. This rule states:

> **7.12 What must recreational boating access projects seek to accomplish to receive funds under the subprogram?**
>
> A. Recreational boating access projects must seek to acquire, develop, renovate, maintain, or improve facilities that create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. These facilities may include auxiliary structures to ensure safe use by recreational boaters. Projects may include surveys to determine information needed to plan for providing access to recreational waters for any size or type of recreational boat. **Exhibit 1** gives examples of the types of activities that are eligible and those that are not eligible.
>
> B. A broad range of access facilities and associated amenities that benefit recreational boaters may qualify.
>
> C. Facilities funded through the subprogram must be available to all recreational boaters, but States may restrict uses for public safety, property protection, noise abatement, or aquatic resource protection. Examples of restrictions include limiting the horsepower or types of boat motors and setting speed limits, no-wake zones, or hours of use.

517 FW 7.12 (emphasis added). This rule does not support OSMB for several reasons. First, the rule overall supports a broad definition of recreational boating because it says funded projects "must be available to all recreational boaters" and may include surveys supporting "access to recreational waters for any size or type of recreational boat." *Id*. at (C) and (A), respectively.

Second, although the rule provides that states may restrict uses for public safety, property protection, noise abatement or aquatic resource protection, the

State Law does none of these things. The State Law does not identify itself as, and the Court did not find that the State Law was, a public safety law or environmental law. Moreover, examples of allowable public safety and property protection restrictions "include limiting the horsepower or types of boat motors and setting speed limits, no-wake zones, or hours of use." *Id*. at (C). As admitted by OSMB, the State Law does not limit the horsepower or type of boat motors, does not set speed limits, does not establish no-wake zones, and does not establish hours of use for boats. ER-80 – ER-81, Gibson 1st Decl. Ex. 1., pages 4-5. Oregon passed these types of restrictions in 2019, prior to the State Law, and Putnam did not challenge those restrictions.

Third, an agency's internal policies cannot extinguish statutory rights. Agency internal policies are not required to undergo the notice and comment procedures of the Administrative Procedure Act and, thus, are not given judicial deference. *Christensen v. Harris Cnty*., 529 U.S. 576, 587, 120 S.Ct. 1655, 1662, 146 L. Ed. 2d 621 (2000) ("interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant *Chevron*-style deference"). In any event, the Supreme Court overruled *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). Thus, this Court should give no

deference to 517 FW 7.12. The State Law is not exempt from the Act's requirements and it violates the Putnam's right to recreational boating in U.S. waters benefitted by the Act.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed and the case remanded with instructions to grant Putnam's motion for summary judgment and motion for attorney fees, and to deny OSMB's cross-motion for summary judgment.

Date: April 3, 2025

GIBSON P.C.

/s/ Jill O. Gibson
Jill O. Gibson, OSB # 973581

Attorneys for Plaintiffs-Appellants Boaters Rights Association, Scott Putnam, and Shaloe Putnam

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Signature /s/ Jill O. Gibson Date: April 3, 2025

ADDENDUM OF RULES AND OTHER AUTHORITIES

ADDENDUM OF RULES AND OTHER AUTHORITIES
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CHAPTER 119

AN ACT SB 1589

Relating to motorboats; creating new provisions; amending ORS 830.643, 830.649 and 830.652; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 830.643 is amended to read:

830.643. (1) A person may obtain a towed watersports endorsement if:

(a)(A) The person is a resident of this state and the person holds a boating safety [*certificate*] **education card** issued under ORS [*830.084*] **830.086**; or

(B) The person is not a resident of this state and the person holds a current out-of-state boating certificate;

(b) The person passes the towed watersports endorsement examination, or the equivalency examination, as described in ORS 830.640;

(c) The person pays the fee established by the State Marine Board under ORS 830.646; and

(d) The person provides any other information required by the board by rule.

(2) A person may obtain a towed watersports motorboat certificate if the person is the owner of a registered motorboat and:

(a) The person holds a towed watersports endorsement issued under this section;

[*(b) The motorboat loading weight meets the requirements for maximum loading weight established by the board by rule;*]

(b) The maximum loading weight of the motorboat is less than 5,500 pounds, which is the sum of the factory-specified dry gross weight of the motorboat and the factory-specified maximum factory ballast capacity of the motorboat;

(c) The person provides the board with information regarding the motorboat's make, model, length, dry gross weight and maximum factory ballast capacity specifications as listed by the manufacturer; and

(d) The person provides any other information required by the board by rule.

(3) A towed watersports endorsement and towed watersports motorboat certificate issued under this section starts on the day the endorsement or certificate is issued and expires on December 31 of the last year in the two-year period.

(4) A person issued a towed watersports endorsement or towed watersports motorboat certificate under this section may renew the endorsement or certificate by:

(a) Paying the towed watersports endorsement renewal fee established under ORS 830.646; and

(b) Completing an application in the form and manner required by the board by rule.

(5) The board shall issue a towed watersports motorboat certificate in the form of a decal. [*The decal must be affixed to the motorboat in accordance with rules adopted by the board.*] **The decal must be affixed to the forward portion of the motorboat, visible above the waterline and in accordance with rules adopted by the board.**

(6) The board may appoint agents to issue towed watersports endorsements and towed watersports motorboat certificates.

(7) Agents shall issue towed watersports endorsements and towed watersports motorboat certificates in accordance with procedures prescribed by the board by rule and shall charge and collect the endorsement fees prescribed by law.

(8) The board may authorize an agent other than a board employee to charge a service fee of $2, in addition to the towed watersports endorsement fee, for the issuance service performed by the agent.

(9) The board shall supply the agents with towed watersports endorsements and towed watersports motorboat certificates, if applicable.

SECTION 2. ORS 830.649 is amended to read:

830.649. (1) As used in this section[,]**:**

(a) "Newberg Pool Congested Zone" means the portion of the Willamette River beginning at **Willamette Falls,** river mile [*30*] **26.6,** and ending at **the mouth of the Yamhill River,** river mile [*50*] **55**.

(b) "Towed watersports" has the meaning given that term by the State Marine Board by rule, but does not include wake surfing.

(c) "Wake surfing" means the activity of propelling an individual forward on equipment similar to a surfboard, using a boat's wake. The person may be holding a rope or free riding. Equipment used in this activity may include but is not limited to wake surf boards, wake boards, stand up paddleboards and hydrofoils.

(2) **Subject to subsection (5) of this section,** a person shall carry a towed watersports endorsement if the person is:

(a) Engaged in **towed watersports** [*wake surfing or wakeboarding as defined by the State Marine Board*]; and

(b) On waters within the Newberg Pool Congested Zone.

(3) The owner of a motorboat shall display a towed watersports motorboat certificate decal if the motorboat is engaged in towed watersports within the Newberg Pool Congested Zone.

(4) The person shall present proof of a towed watersports endorsement and towed watersports motorboat certificate upon request by a peace officer.

(5) Within the Newberg Pool Congested Zone, a person may not:

(a) Use devices or individuals to increase wakes; and

(b) Engage in wake surfing.

SECTION 3. ORS 830.652 is amended to read:

830.652. (1) As used in this section, "Newberg Pool Congested Zone" means the portion of the Willamette River beginning at **Willamette Falls,** river

mile [*30*] **26.6** and ending at **the mouth of the Yamhill River,** river mile [*50*] **55**.

(2) Subject to subsection (3) of this section, the court shall, in addition to the penalties imposed under ORS 830.990 for the offenses listed in subsection (3) of this section:

(a) Order the person not to operate a boat for a period of one year after the date of conviction; and

(b) Order the person to complete a boating safety course approved by the State Marine Board.

(3) Subsection (2) of this section applies when:

(a) The peace officer who issued the citation notes on the citation that the offense occurred within the Newberg Pool Congested Zone; and

(b) The person has at least one prior conviction for violating any of the following statutes within a three-year period preceding the date of the person's current conviction and the prior offense also occurred within the Newberg Pool Congested Zone:

(A) ORS 830.305.
(B) ORS 830.315.
(C) ORS 830.335.
(D) ORS 830.340.
(E) ORS 830.345.
(F) ORS 830.355.
(G) ORS 830.360.
(H) ORS 830.362.
(I) ORS 830.365.

SECTION 4. (1) The State Marine Board may conduct a study on increasing or decreasing the maximum loading weight prescribed in ORS 830.643. If the board undertakes a study, the board shall determine on the basis of objective, peer-reviewed scientific research whether increasing or decreasing the maximum loading weight is likely to:

(a) Have an adverse effect on the waters, beds and banks of this state;

(b) Have an adverse effect on aquatic, nearshore and shoreline habitats, fish and wildlife habitats and salmonid habitats; or

(c) Exceed or violate state or federal turbidity limits.

(2) Before making a determination, the board shall consult with and receive comments from the Department of State Lands, the State Department of Fish and Wildlife and the Department of Environmental Quality.

(3) If the board undertakes a study under this section, the board shall report to the interim committees of the Legislative Assembly related to the environment, in the manner provided in ORS 192.245, on the board's research, findings, determinations and recommendations, including recommendations for legislative changes, if any.

SECTION 5. (1) The amendments to ORS 830.643 by section 1 of this 2022 Act apply to towed watersports motorboat certificates issued, renewed or replaced on or after the effective date of this 2022 Act.

(2) The amendments to ORS 830.649 and 830.652 by sections 2 and 3 of this 2022 Act apply to actions occurring on or after the effective date of this 2022 Act.

SECTION 6. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Approved by the Governor April 15, 2022
Filed in the office of Secretary of State April 19, 2022
Effective date April 15, 2022

16 U.S.C.
United States Code, 2019 Edition
Title 16 - CONSERVATION
CHAPTER 10B - FISH RESTORATION AND MANAGEMENT PROJECTS
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CHAPTER 10B—FISH RESTORATION AND MANAGEMENT PROJECTS

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§777. Federal-State relationships

(a) Cooperation between Federal Government and State fish and game departments; expenditure of funds

The Secretary of the Interior is authorized and directed to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this chapter to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this chapter and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that,

until the final adjournment of the first regular session of the legislature held after passage of this chapter, the assent of the governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this chapter shall agree upon the fish restoration and management projects to be aided in such State under the terms of this chapter, and all projects shall conform to the standards fixed by the Secretary of the Interior.

(b) Allocation of amounts by coastal States between marine fish projects and freshwater fish projects

(1) In general

Subject to paragraph (2), each coastal State, to the extent practicable, shall equitably allocate amounts apportioned to such State under this chapter between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State.

(2) Preservation of freshwater project allocation at 1988 level

(A) Subject to subparagraph (B), the amount allocated by a State pursuant to this subsection to freshwater fish projects for each fiscal year shall not be less than the amount allocated by such State to such projects for fiscal year 1988.

(B) Subparagraph (A) shall not apply to a State with respect to any fiscal year for which the amount apportioned to the State under this chapter is less than the amount apportioned to the State under this chapter for fiscal year 1988.

(3) "Coastal State" defined

As used in this subsection, the term "coastal State" means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Aug. 9, 1950, ch. 658, §1, 64 Stat. 430; Pub. L. 98–369, div. A, title X, §1014(a)(1), July 18, 1984, 98 Stat. 1015; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–448, §6(c)(1), Sept. 28, 1988, 102 Stat. 1840.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–448 substituted "Allocation of amounts by coastal States between marine fish projects and freshwater fish projects" for "Allocation of funds by coastal States; formula; 'coastal State' defined" in heading and amended text generally. Prior to amendment, text read as follows: "Each coastal State, to the extent practicable, shall equitably allocate the following sums between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident

marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State:

"(1) The additional sums apportioned to such State under this chapter as a result of the taxes imposed by the amendments made by section 1015 of the Tax Reform Act of 1984 on items not taxed under section 4161(a) of title 26 before October 1, 1984.

"(2) The sums apportioned to such State under this chapter that are not attributable to any tax imposed by such section 4161(a).

As used in this subsection, the term 'coastal State' means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas."

1986—Subsec. (b)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Pub. L. 98–369 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–448, §6(e), Sept. 28, 1988, 102 Stat. 1841, provided that: "This section [enacting section 777l of this title, amending this section, sections 9503 and 9504 of Title 26, Internal Revenue Code, and sections 13102 and 13106 of Title 46, Shipping, enacting provisions set out as a note under section 13101 of Title 46, and repealing provisions set out as a note under section 13103 of Title 46] shall take effect October 1, 1988."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1014(b), July 18, 1984, 98 Stat. 1016, provided that: "The amendments made by subsection (a) [amending this section and sections 777b, 777c to 777e, 777g, and 777k of this title] shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984."

EFFECTIVE DATE

Act Aug. 9, 1950, ch. 658, §13, 64 Stat. 434, which provided that the effective date of this chapter was July 1, 1950, was repealed by Pub. L. 106–408, title I, §122(a)(1), Nov. 1, 2000, 114 Stat. 1772.

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–141, div. C, title IV, §34001, July 6, 2012, 126 Stat. 841, provided that: "This title [amending section 777c of this title] may be cited as the 'Sport Fish Restoration and Recreational Boating Safety Act of 2012'."

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–74, §1, Sept. 29, 2005, 119 Stat. 2030, provided that: "This Act [amending sections 777c and 777n of this title, section 9504 of Title 26, Internal Revenue Code, and section 13106 of Title 46, Shipping, enacting provisions set out as notes under section 777b of this title and section 9504 of Title 26, and repealing provisions set out as a note under section 777b of this title] may be cited as the 'Sportfishing and Recreational Boating Safety Amendments Act of 2005'."

Pub. L. 109–59, title X, §10101, Aug. 10, 2005, 119 Stat. 1926, provided that: "This subtitle [subtitle A (§§10101–10143) of title X of Pub. L. 109–59, enacting section 777n of this title, amending sections 777b, 777c, 777g, 777g–1, 777h, 777k, and 777m of this title and sections 13102, 13104, and 13106 of Title 46, Shipping, enacting provisions set out as a note under section 777b of this title, and amending provisions set out as a note under this section and section 1322 of Title 33, Navigation and Navigable Waters] may be cited as the 'Sportfishing and Recreational Boating Safety Act of 2005'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–178, title VII, §7401(a), June 9, 1998, 112 Stat. 482, provided that: "This subtitle [subtitle D (§§7401–7405) of title VII of Pub. L. 105–178, enacting section 777g–1 of this title and amending sections 777a, 777c, and 777g of this title and sections 13104 and 13106 of Title 46, Shipping] may be cited as the 'Sportfishing and Boating Safety Act of 1998'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–503, title II, §204, Oct. 23, 1970, 84 Stat. 1104, provided that: "This title [amending sections 777c, 777e to 777g, and 777k of this title] may be cited as the 'Federal Aid in Fish Restoration Act Amendments of 1970'."

SHORT TITLE

Act Aug. 9, 1950, ch. 658, §15, formerly §16, formerly §15, as added by Pub. L. 106–408, title I, §101(c), Nov. 1, 2000, 114 Stat. 1763; renumbered §16, Pub. L. 109–59, title X, §10119, Aug. 10, 2005, 119 Stat. 1929; renumbered §15, Pub. L. 114–94, div. A, title X, §10001(g)(2), Dec. 4, 2015, 129 Stat. 1621, provided that: "This Act [enacting this chapter] may be cited as the 'Dingell-Johnson Sport Fish Restoration Act'."

Act Aug. 9, 1950, ch. 658, as amended, is also popularly known as the "Federal Aid in Fish Restoration Act" and the "Fish Restoration and Management Projects Act".

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf-Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

FISHERIES RESTORATION AND IRRIGATION MITIGATION

Pub. L. 106–502, Nov. 13, 2000, 114 Stat. 2294, as amended by Pub. L. 111–11, title XIII, §13002, Mar. 30, 2009, 123 Stat. 1447; Pub. L. 114–322, title III, §4010(b)(7), Dec. 16, 2016, 130 Stat. 1874, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Fisheries Restoration and Irrigation Mitigation Act of 2000'.

"SEC. 2. DEFINITIONS.

"In this Act:

"(1) Pacific ocean drainage area.—The term 'Pacific Ocean drainage area' means the area comprised of portions of the States of Oregon, Washington, Montana, Idaho, and California from which water drains into the Pacific Ocean.

"(2) Program.—The term 'Program' means the Fisheries Restoration and Irrigation Mitigation Program established by section 3(a).

"(3) Secretary.—The term 'Secretary' means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

"SEC. 3. ESTABLISHMENT OF THE PROGRAM.

"(a) Establishment.—There is established the Fisheries Restoration and Irrigation Mitigation Program within the Department of the Interior.

"(b) Goals.—The goals of the Program are—

"(1) to decrease fish mortality associated with the withdrawal of water for irrigation and other purposes without impairing the continued withdrawal of water for those purposes; and

"(2) to decrease the incidence of juvenile and adult fish entering water supply systems.

"(c) Impacts on Fisheries.—

"(1) In general.—Under the Program, the Secretary, in consultation with the heads of other appropriate agencies, shall develop and implement projects to mitigate impacts to fisheries resulting from the construction and operation of water diversions by local governmental entities (including soil and water conservation districts) in the Pacific Ocean drainage area.

"(2) Types of projects.—Projects eligible under the Program may include—

"(A) the development, improvement, or installation of—

"(i) fish screens;

"(ii) fish passage devices; and

"(iii) other related features agreed to by non-Federal interests, relevant Federal and tribal agencies, and affected States; and

"(B) inventories by the States on the need and priority for projects described in clauses (i) through (iii).

"(3) Priority.—The Secretary shall give priority to any project that has a total cost of less than $2,500,000.

"SEC. 4. PARTICIPATION IN THE PROGRAM.

"(a) Non-Federal.—

"(1) In general.—Non-Federal participation in the Program shall be voluntary.

"(2) Federal action.—The Secretary shall take no action that would result in any non-Federal entity being held financially responsible for any action under the Program, unless the entity applies to participate in the Program.

"(b) Federal.—Development and implementation of projects under the Program on land or facilities owned by the United States shall be nonreimbursable Federal expenditures.

"SEC. 5. EVALUATION AND PRIORITIZATION OF PROJECTS.

"Evaluation and prioritization of projects for development under the Program shall be conducted on the basis of—

"(1) benefits to fish species native to the project area, particularly to species that are listed as being, or considered by Federal or State authorities to be, endangered, threatened, or sensitive;

"(2) the size and type of water diversion;

"(3) the availability of other funding sources;

"(4) cost effectiveness; and

"(5) additional opportunities for biological or water delivery system benefits.

"SEC. 6. ELIGIBILITY REQUIREMENTS.

"(a) In General.—A project carried out under the Program shall not be eligible for funding unless—

"(1) the project meets the requirements of the Secretary, as applicable, and any applicable State requirements; and

"(2) the project is agreed to by all Federal and non-Federal entities with authority and responsibility for the project.

"(b) Determination of Eligibility.—In determining the eligibility of a project under this Act, the Secretary shall—

"(1) consult with other Federal, State, tribal, and local agencies; and

"(2) make maximum use of all available data.

"SEC. 7. COST SHARING.

"(a) Non-Federal Share.—The non-Federal share of the cost of development and implementation of any project under the Program on land or at a facility that is not owned by the United States shall be 35 percent.

"(b) Non-Federal Contributions.—The non-Federal participants in any project under the Program on land or at a facility that is not owned by the United States shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project.

"(c) Credit for Contributions.—

"(1) In general.—The value of land, easements, rights-of-way, dredged material disposal areas, and relocations provided under subsection (b) for a project shall be credited toward the non-Federal share of the costs of the project.

"(2) Bonneville Power Administration.—

"(A) In general.—The Secretary may, without further appropriation and without fiscal year limitation, accept any amounts provided to the Secretary by the Administrator of the Bonneville Power Administration.

"(B) Non-federal share.—Any amounts provided by the Bonneville Power Administration directly or through a grant to another entity for a project carried under the Program shall be credited toward the non-Federal share of the costs of the project.

"(d) Additional Costs.—

"(1) Non-federal responsibilities.—The non-Federal participants in any project carried out under the Program on land or at a facility that is not owned by the United States shall be responsible for all costs associated with operating, maintaining, repairing, rehabilitating, and replacing the project.

"(2) Federal responsibility.—The Federal Government shall be responsible for costs referred to in paragraph (1) for projects carried out on Federal land or at a Federal facility.

"SEC. 8. LIMITATION ON ELIGIBILITY FOR FUNDING.

"A project that receives funds under this Act shall be ineligible to receive Federal funds from any other source for the same purpose.

"SEC. 9. REPORT.

"On the expiration of the third fiscal year for which any amounts are made available to carry out this Act, the Secretary shall, after partnering with local governmental entities and the States in the Pacific Ocean drainage area, submit to Congress a report describing—

"(1) the projects that have been completed under this Act;

"(2) the projects that will be completed with amounts made available under this Act during the remaining fiscal years for which amounts are authorized to be appropriated under section 10; and

"(3) recommended changes to the Program as a result of projects that have been carried out under this Act.

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"(a) In General.—There is authorized to be appropriated to carry out this Act $15 million through 2021.

"(b) Limitations.—

"(1) Single state.—

"(A) In general.—Except as provided in subparagraph (B), not more than 25 percent of the total amount of funds made available under this section may be used for one or more projects in any single State.

"(B) Waiver.—On notification to Congress, the Secretary may waive the limitation under subparagraph (A) if a State is unable to use the entire amount of funding made available to the State under this Act.

"(2) Administrative expenses.—

"(A) Definition of administrative expense.—In this paragraph, the term 'administrative expense' means, except as provided in subparagraph (B)(iii)(II), any expenditure relating to—

"(i) staffing and overhead, such as the rental of office space and the acquisition of office equipment; and

"(ii) the review, processing, and provision of applications for funding under the Program.

"(B) Limitation.—

"(i) In general.—Not more than 6 percent of amounts made available to carry out this Act for each fiscal year may be used for Federal and State administrative expenses of carrying out this Act.

"(ii) Federal and state shares.—To the maximum extent practicable, of the amounts made available for administrative expenses under clause (i)—

"(I) 50 percent shall be provided to the State agencies provided assistance under the Program; and

"(II) an amount equal to the cost of 1 full-time equivalent Federal employee, as determined by the Secretary, shall be provided to the Federal agency carrying out the Program.

"(iii) State expenses.—Amounts made available to States for administrative expenses under clause (i)—

"(I) shall be divided evenly among all States provided assistance under the Program; and

"(II) may be used by a State to provide technical assistance relating to the program, including any staffing expenditures (including staff travel expenses) associated with—

"(aa) arranging meetings to promote the Program to potential applicants;

"(bb) assisting applicants with the preparation of applications for funding under the Program; and

"(cc) visiting construction sites to provide technical assistance, if requested by the applicant."

[Pub. L. 114–322, title III, §4010(b)(7)(A), Dec. 16, 2016, 130 Stat. 1874, which directed the amendment of section 10(a) of Pub. L. 106–502, set out above, by substituting "$15 million through 2021" for "$25 million for each of fiscal years 2009 through 2015", was executed by making the substitution for "$25,000,000 for each of fiscal years 2009 through 2015" to reflect the probable intent of Congress.]

§777a. Definitions

For purposes of this chapter—

(1) the term "fish restoration and management projects" shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with sport or recreation in the marine and/or fresh waters of the United States and include—

(A) such research into problems of fish management and culture as may be necessary to efficient administration affecting fish resources;

(B) the acquisition of such facts as are necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;

(C) the formulation and adoption of plans of restocking waters with food and game fishes according to natural areas or districts to which such plans are

applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing the efficacy of such plans;

(D) the selection, restoration, rehabilitation, and improvement of areas of water or land adaptable as hatching, feeding, resting, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes, and such preliminary or incidental costs and expenses as may be incurred in and about such works; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department;

(2) the term "outreach and communications program" means a program to improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating; and

(3) the term "aquatic resource education program" means a program designed to enhance the public's understanding of aquatic resources and sportfishing, and to promote the development of responsible attitudes and ethics toward the aquatic environment.

(Aug. 9, 1950, ch. 658, §2, 64 Stat. 431; July 2, 1956, ch. 489, §3, 70 Stat. 473; Pub. L. 86–624, §12, July 12, 1960, 74 Stat. 413; Pub. L. 105–178, title VII, §7402(a), June 9, 1998, 112 Stat. 483.)

AMENDMENTS

1998—Pub. L. 105–178 inserted introductory provisions "For purposes of this chapter—", designated existing provisions as par. (1), substituted "the term" for "For the purpose of this chapter the term", redesignated subsecs. (a) to (d) as subpars. (A) to (D), respectively, of par. (1), substituted "department;" for "department." at end of subpar. (D), realigned margins, and added pars. (2) and (3).

1960—Subsec. (d). Pub. L. 86–624 struck out provisions which defined "State" as including the several States and the Territory of Hawaii.

1956—Act July 2, 1956, included definition of "State".

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 2, 1956, as applicable only with respect to fiscal years beginning after July 2, 1956, see section 5 of act July 2, 1956, set out as a note under section 669a of this title.

§777b. Authorization of appropriations

To carry out the provisions of this chapter for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration and Boating Trust Fund established by section 9504(a) of title 26 the amounts paid, transferred, or

otherwise credited to that Trust Fund, except as provided in section 9504(c) of title 26. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during succeeding fiscal years. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this chapter which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior to supplement the 58.012 percent of the balance of each annual appropriation to be apportioned among the States, as provided for in section 777c(c) of this title.

(Aug. 9, 1950, ch. 658, §3, 64 Stat. 431; Pub. L. 98–369, div. A, title X, §1014(a)(2), July 18, 1984, 98 Stat. 1015; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 109–59, title X, §10112(a), (b)(1), Aug. 10, 2005, 119 Stat. 1927; Pub. L. 114–94, div. A, title X, §10001(a), Dec. 4, 2015, 129 Stat. 1619.)

REFERENCES IN TEXT

The provision of the Act of August 31, 1951, referred to in text, is set out as a note below.

AMENDMENTS

2015—Pub. L. 114–94 substituted "58.012 percent" for "57 percent".

2005—Pub. L. 109–59 substituted "Sport Fish Restoration and Boating Trust Fund" for "Sport Fish Restoration Account", "that Trust Fund, except as provided in section 9504(c) of title 26" for "that Account", "during succeeding fiscal years" for "during the succeeding fiscal year", and "to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided for in section 777c(c) of this title" for "in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation".

1986—Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Pub. L. 98–369 substituted "To carry out the provisions of this chapter for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of title 26 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section" for "To carry out the provisions of this chapter, there is hereby authorized to be appropriated an amount equal to the revenue accruing from tax imposed by section 3406 of the Internal Revenue Code, as heretofore of hereafter extended and amended, on fishing rods, creels, reels, and artificial lures, baits, and flies during the fiscal year ending June 30, 1951, and each fiscal year thereafter".

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–74, title I, §101(b), Sept. 29, 2005, 119 Stat. 2030, provided that: "Except as provided by the amendments made by title II of this Act [amending section 777c of this title and section 13106 of Title 46, Shipping], during the period beginning on the date of the enactment of the Sportfishing and Recreational Boating Safety Act of 2005 [Aug. 10, 2005], and ending upon the expiration of fiscal year 2005, the provisions of law amended by the Sportfishing and Recreational Boating Safety Act of 2005 [see Short Title of 2005 Amendments note set out under section 777 of this title] (as amended by this Act) shall be considered to read as such laws read immediately before the enactment of that Act."

Pub. L. 109–59, title X, §10102, as added by Pub. L. 109–74, title I, §101(a)(2), Sept. 29, 2005, 119 Stat. 2030, provided that: "The amendments made by this subtitle [subtitle A (§§10101–10143) of title X of Pub. L. 109–59, see Short Title of 2005 Amendments note set out under section 777 of this title] shall take effect October 1, 2005."

Pub. L. 109–59, title X, §10112(b)(2), Aug. 10, 2005, 119 Stat. 1927, which provided that the amendments made by section 10112(b)(1) of Pub. L. 109–59 (amending this section) would take effect on Oct. 1, 2005, was repealed by Pub. L. 109–74, title I, §101(a)(1), Sept. 29, 2005, 119 Stat. 2030. See section 10102 of Pub. L. 109–59, set out above.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

AVAILABILITY OF FUNDS UNTIL EXPENDED

Act Aug. 31, 1951, ch. 375, title I, §101, 65 Stat. 262, provided that: "For carrying out the provisions of the Act of August 9, 1950 (Public Law 681) [this chapter], amounts equal to the revenues described in section 3 of said Act [this section] and credited during the next preceding fiscal year and each fiscal year thereafter, to remain available until expended."

§777c. Division of annual appropriations

(a) In general

For each fiscal year through fiscal year 2021, the balance of each annual appropriation made in accordance with the provisions of section 777b of this title remaining after the distributions for administrative expenses and other purposes under subsection (b) and for activities under section 777m(e) of this title shall be distributed as follows:

(1) Coastal wetlands

An amount equal to 18.673 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection,[1] and Restoration Act (16 U.S.C. 3951 et seq.).

(2) Boating safety

An amount equal to 17.315 percent to the Secretary of the department in which the Coast Guard is operating for State recreational boating safety programs under section 13107 of title 46.

(3) Boating infrastructure improvement

(A) In general

An amount equal to 4 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note) and section 777g–1(d) of this title.

(B) Limitation

Not more than 75 percent of the amount under subparagraph (A) shall be available for projects under either of the sections referred to in subparagraph (A).

(4) National outreach and communications

An amount equal to 2.0 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 777g(d) of this title. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (c) of this section.

(b) Set-aside for expenses for administration of this chapter

(1) In general

(A) Set-aside for administration

From the annual appropriation made in accordance with section 777b of this title, for each fiscal year through fiscal year 2021, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this chapter, in accordance with this section and section 777h of this title. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

(B) Available amounts

The available amount referred to in subparagraph (A) is—

(i) for each of fiscal years 2001 and 2002, $9,000,000;

(ii) for fiscal year 2003, $8,212,000; and

(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) Set-aside for Coast Guard administration

(A) In general

From the annual appropriation made in accordance with section 777b of this title, for each of fiscal years 2016 through 2021, the Secretary of the department in which the Coast Guard is operating may use no more than the amount specified in subparagraph (B) for the fiscal year for the purposes set forth in section 13107(c) of title 46. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

(B) Available amounts

The available amount referred to in subparagraph (A) is—

(i) for fiscal year 2016, $7,700,000; and

(ii) for fiscal year 2017 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(3) Period of availability; apportionment of unobligated amounts

(A) Period of availability

For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the subsequent fiscal year.

(B) Apportionment of unobligated amounts

Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this chapter are apportioned among the States under subsection (c) for the fiscal year.

(c) Apportionment among States

(1) The Secretary, after the distribution, transfer, use and deduction under subsection (b), and after deducting amounts used for activities under section 777m(e) of this title, shall apportion 58.012 percent of the balance of each such annual appropriation among the several States in the following manner: 40 percent in the

ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 percent in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 percent nor more than 5 percent of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this chapter when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount of said purposes.

(2) The Secretary shall deduct from the amount to be apportioned under paragraph (1) the amounts used for grants under section 777m(a) of this title.

(d) Unallocated funds

So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this chapter until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

(e) Expenses for administration of certain programs

(1) In general

For each fiscal year, of the amounts appropriated under section 777b of this title, the Secretary of the Interior shall use only funds authorized for use under paragraphs (1), (3), (4), and (5) of subsection (a) to pay the expenses for administration incurred in carrying out the provisions of law referred to in those paragraphs, respectively.

(2) Maximum amount

For each fiscal year, the Secretary of the Interior may use not more than $900,000 in accordance with paragraph (1).

(f) Transfer of certain funds

Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of the department in which the Coast Guard is operating and shall be expended for State recreational boating safety programs under section 13107(a) of title 46.

(Aug. 9, 1950, ch. 658, §4, 64 Stat. 432; Pub. L. 91–503, title II, §201, Oct. 23, 1970, 84 Stat. 1101; Pub. L. 94–273, §4(2), Apr. 21, 1976, 90 Stat. 377; Pub. L. 98–369, div. A, title X, §1014(a)(3), July 18, 1984, 98 Stat. 1015; Pub. L. 101–646, title III, §308, Nov. 29, 1990, 104 Stat. 4787; Pub. L. 102–587, title V, §5604(a), Nov. 4, 1992, 106 Stat. 5087; Pub. L. 105–178, title VII, §§7402(b), 7403, June 9, 1998, 112 Stat. 483, 485; Pub. L. 105–206, title IX, §9012(b), July 22, 1998, 112 Stat. 864; Pub. L. 106–74, title IV, §430, Oct. 20, 1999, 113 Stat. 1096; Pub. L. 106–377, §1(a)(2) [title VI, §605], Oct. 27, 2000, 114 Stat. 1441, 1441A–85; Pub. L. 106–408, title I, §§121(a), (c), 122(b)–124, Nov. 1, 2000, 114 Stat. 1769, 1772, 1774; Pub. L. 108–88, §9(a), (b), Sept. 30, 2003, 117 Stat. 1126; Pub. L. 108–202, §7(a), (b), Feb. 29, 2004, 118 Stat. 483; Pub. L. 108–224, §6(a), (b), Apr. 30, 2004, 118 Stat. 632; Pub. L. 108–263, §6(a), (b), June 30, 2004, 118 Stat. 703; Pub. L. 108–280, §6(a), (b), July 30, 2004, 118 Stat. 881, 882; Pub. L. 108–310, §9(a), (b), Sept. 30, 2004, 118 Stat. 1159; Pub. L. 108–447, div. C, title I, §114(b), Dec. 8, 2004, 118 Stat. 2944; Pub. L. 109–14, §8(a), (b), May 31, 2005, 119 Stat. 334; Pub. L. 109–20, §8(a), (b), July 1, 2005, 119 Stat. 356; Pub. L. 109–35, §8(a), (b), July 20, 2005, 119 Stat. 389; Pub. L. 109–37, §8(a), (b), July 22, 2005, 119 Stat. 404, 405; Pub. L. 109–40, §8(a), (b), July 28, 2005, 119 Stat. 421; Pub. L. 109–59, title X, §10113, Aug. 10, 2005, 119 Stat. 1927; Pub. L. 109–74, title II, §§201, 202, Sept. 29, 2005, 119 Stat. 2031; Pub. L. 109–241, title IX, §901(r)(1), July 11, 2006, 120 Stat. 566; Pub. L. 109–304, §16(c)(1), Oct. 6, 2006, 120 Stat. 1705; Pub. L. 111–68, div. B, §160, Oct. 1, 2009, 123 Stat. 2052; Pub. L. 111–147, title IV, §423(b), Mar. 18, 2010, 124 Stat. 87; Pub. L. 111–322, title II, §2203(b), Dec. 22, 2010, 124 Stat. 3526; Pub. L. 112–5, title II, §203(b), Mar. 4, 2011, 125 Stat. 17; Pub. L. 112–30, title I, §123(b), Sept. 16, 2011, 125 Stat. 349; Pub. L. 112–102, title II, §203(b), Mar. 30, 2012, 126 Stat. 275; Pub. L. 112–140, title II, §203(b), June 29, 2012, 126 Stat. 395; Pub. L. 112–141, div. C, title IV, §34002, July 6, 2012, 126 Stat. 842; Pub. L. 113–159, title I, §1103, Aug. 8, 2014, 128 Stat. 1845; Pub. L. 114–21, title I, §1103, May 29, 2015, 129 Stat. 222; Pub. L. 114–41, title I, §1103, July 31, 2015, 129 Stat. 449; Pub. L. 114–73, title I, §1103, Oct. 29, 2015, 129 Stat. 572; Pub. L. 114–87, title I, §1103, Nov. 20, 2015, 129 Stat. 681; Pub. L. 114–94, div. A, title X, §10001(b), Dec. 4, 2015, 129 Stat. 1619.)

REFERENCES IN TEXT

The Coastal Wetlands Planning, Protection and Restoration Act, referred to in subsec. (a)(1), is title III of Pub. L. 101–646, Nov. 29, 1990, 104 Stat. 4778, which enacted chapter 59A (§3951 et seq.) of this title and amended this section. For complete classification of this Act to the Code, see Short Title note set out under section 3951 of this title and Tables.

Section 5604(c) of the Clean Vessel Act of 1992, referred to in subsec. (a)(3)(A), is section 5604(c) of Pub. L. 102–587, which is set out as a note under section 1322 of Title 33, Navigation and Navigable Waters.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–94, §10001(b)(1)(A), substituted "For each fiscal year through fiscal year 2021, the balance" for "For each fiscal year through 2015 and for the period beginning on October 1, 2015, and ending on October 29, 2015, the balance" and "activities under section 777m(e) of this title" for "multistate conservation grants under section 777m of this title" in introductory provisions.

Pub. L. 114–87, §1103(1), which directed substitution of "December 4, 2015" for "November 20, 2015" in introductory provisions, could not be executed due to intervening amendment by Pub. L. 114–94, effective Oct. 1, 2015. See Amendment note above and Effective Date of 2015 Amendment note below.

Pub. L. 114–73, §1103(1), which directed substitution of "November 20, 2015" for "October 29, 2015" in introductory provisions, could not be executed due to intervening amendment by Pub. L. 114–94, effective Oct. 1, 2015. See Amendment note above and Effective Date of 2015 Amendment note below.

Pub. L. 114–41, §1103(1), substituted "each fiscal year through 2015 and for the period beginning on October 1, 2015, and ending on October 29, 2015" for "each fiscal year through 2014 and for the period beginning on October 1, 2014, and ending on July 31, 2015" in introductory provisions.

Pub. L. 114–21, §1103(1), substituted "July 31, 2015" for "May 31, 2015" in introductory provisions.

Subsec. (a)(1). Pub. L. 114–94, §10001(b)(1)(B), substituted "18.673 percent" for "18.5 percent".

Subsec. (a)(2). Pub. L. 114–94, §10001(b)(1)(C), substituted "17.315 percent" for "18.5 percent".

Subsec. (a)(3) to (5). Pub. L. 114–94, §10001(b)(1)(D)–(F), added par. (3), redesignated par. (5) as (4), and struck out former pars. (3) and (4) which related to Clean Vessel Act and boating infrastructure, respectively.

Subsec. (b)(1)(A). Pub. L. 114–94, §10001(b)(2)(A), substituted "for each fiscal year through fiscal year 2021, the Secretary" for "for each fiscal year ending before October 1, 2015, and for the period beginning on October 1, 2015, and ending on October 29, 2015, the Secretary".

Pub. L. 114–87, §1103(2), which directed substitution of "December 4, 2015," for "November 20, 2015,", could not be executed due to intervening amendment by Pub. L. 114–94, effective Oct. 1, 2015. See Amendment note above and Effective Date of 2015 Amendment note below.

Pub. L. 114–73, §1103(2), which directed substitution of "November 20, 2015," for "October 29, 2015,", could not be executed due to intervening amendment by Pub. L. 114–94, effective Oct. 1, 2015. See Amendment note above and Effective Date of 2015 Amendment note below.

Pub. L. 114–41, §1103(2), substituted "for each fiscal year ending before October 1, 2015, and for the period beginning on October 1, 2015, and ending on October 29, 2015," for "for each fiscal year ending before October 1, 2014, and for the period beginning on October 1, 2014, and ending on July 31, 2015,".

Pub. L. 114–21, §1103(2), substituted "July 31, 2015," for "May 31, 2015,".

Subsec. (b)(2). Pub. L. 114–94, §10001(b)(2)(C), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 114–94, §10001(b)(2)(B), redesignated par. (2) as (3).

Subsec. (b)(3)(A). Pub. L. 114–94, §10001(b)(2)(D)(i), substituted "until the end of the subsequent fiscal year." for "until the end of the fiscal year."

Subsec. (b)(3)(B). Pub. L. 114–94, §10001(b)(2)(D)(ii), substituted "under subsection (c)" for "under subsection (e)".

Subsec. (c). Pub. L. 114–94, §10001(b)(3), designated existing provisions as par. (1), inserted comma after "The Secretary", substituted "activities under section 777m(e) of this title" for "grants under section 777m of this title" and "58.012 percent" for "57 percent", and added par. (2).

Subsec. (e)(1). Pub. L. 114–94, §10001(b)(4), substituted "those paragraphs," for "those subsections,".

2014—Subsec. (a). Pub. L. 113–159, §1103(1), inserted "and for the period beginning on October 1, 2014, and ending on May 31, 2015" after "2014" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 113–159, §1103(2), substituted "for each fiscal year ending before October 1, 2014, and for the period beginning on October 1, 2014, and ending on May 31, 2015," for "for each fiscal year through 2014,".

2012—Subsec. (a). Pub. L. 112–141, §34002(1), substituted "fiscal year through 2014," for "of fiscal years 2006 through 2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012," in introductory provisions.

Pub. L. 112–140, §§1(c), 203(b)(1), temporarily substituted "ending on July 6, 2012," for "ending on June 30, 2012," in introductory provisions. See Termination Date of 2012 Amendment note below.

Pub. L. 112–102, §203(b)(1), substituted "2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012," for "2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012," in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 112–141, §34002(2), which directed substitution of "fiscal year through 2014," for "of fiscal years 2006 through 2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012,", was executed by making the substitution for "of fiscal years 2006 through 2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012," to reflect the probable intent of Congress and amendment by Pub. L. 112–102, §203(b)(2). See below.

Pub. L. 112–140, §§1(c), 203(b)(2), temporarily substituted "ending on July 6, 2012," for "ending on June 30, 2012,". See Termination Date of 2012 Amendment note below.

Pub. L. 112–102, §203(b)(2), substituted "2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012," for "2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012,".

2011—Subsec. (a). Pub. L. 112–30, §123(b)(1), substituted "2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012," for "2011," in introductory provisions.

Pub. L. 112–5, §203(b)(1), substituted "through 2011," for "through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011," in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 112–30, §123(b)(2), substituted "2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012," for "2011,".

Pub. L. 112–5, §203(b)(2), substituted "through 2011," for "through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011,".

2010—Subsec. (a). Pub. L. 111–322, §2203(b), substituted "For each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011, the balance of each annual appropriation made in accordance with the provisions of section 777b of this title remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 777m of this title shall be distributed as follows:" for introductory provisions which read as follows: "For each of fiscal years 2006 through 2010 and for the period beginning on October 1, 2010, and ending on December 31, 2010, and the period from October 1, 2009, through the date specified in section 106(3) of the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law, the balance of each annual appropriation made in accordance with the provisions of section 777b of this title remaining after the distributions for administrative expenses and other purposes under subsection (b) of this section and for multistate conservation grants under section 777m of this title shall be distributed as follows:".

Pub. L. 111–147, §423(b)(1), which directed substitution of "2010 and for the period beginning on October 1, 2010, and ending on December 31, 2010," for "2009," in introductory provisions, was executed by making the substitution for "2009," the first place it appeared.

Subsec. (b)(1)(A). Pub. L. 111–322, §2203(b)(2), substituted "From the annual appropriation made in accordance with section 777b of this title, for each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this chapter, in accordance with this section and section 777h of this title." for "From the annual appropriation made in accordance with section 777b of this title, for each of fiscal years 2006 through 2009 and the period from October 1, 2009, through the date specified in section 106(3) of the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law,, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal

year for expenses for administration incurred in the implementation of this chapter, in accordance with this section and section 777h of this title."

Pub. L. 111–147, §423(b)(2), which directed substitution of "and for the period beginning on October 1, 2010, and ending on December 31, 2010," for "2010,", could not be executed because "2010," did not appear.

2009—Subsec. (a). Pub. L. 111–68, §160(1), inserted "and the period from October 1, 2009, through the date specified in section 106(3) of the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law," after "2009," in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 111–68, §160(2), inserted "and the period from October 1, 2009, through the date specified in section 106(3) of the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law," after "2009".

2006—Subsec. (a)(2). Pub. L. 109–304 substituted "13107" for "13106".

Subsec. (c). Pub. L. 109–241 struck out ", for each of fiscal years 2006 through 2009," after "The Secretary".

Subsec. (f). Pub. L. 109–304 substituted "13107(a)" for "13106(a)".

2005—Subsec. (a). Pub. L. 109–59, §10113(1), (2), added subsec. (a) and struck out former subsec. (a) which read as follows: "The Secretary of the Interior shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (title III, Public Law 101–646). Notwithstanding the provisions of section 777b of this title, such sums shall remain available to carry out such Act through fiscal year 2019."

Subsec. (b). Pub. L. 109–59, §10113(1), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to use of the balance of each annual appropriation remaining after making the distribution under subsec. (a) in fiscal years 1998 through 2005.

Subsec. (b)(1)(A). Pub. L. 109–59, §10113(3), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 777m of this title, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this chapter, in accordance with this subsection and section 777h of this title."

Subsec. (b)(4). Pub. L. 109–74, §202, substituted "Fiscal" for "First 303 days of fiscal" in heading, "September 30, 2005" for "July 30, 2005" and "$82,000,000" for "$68,071,233" in introductory provisions, "$10,000,000" for "$8,301,370" in subpar. (A), and "$8,000,000" for "$6,641,096" in subpar. (B).

Pub. L. 109–40, §8(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 303 days of fiscal year 2005 for similar provisions relating to use of funds for first 300 days of fiscal year 2005.

Pub. L. 109–37, §8(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 300 days of fiscal year 2005 for similar provisions relating to use of funds for first 42 weeks of fiscal year 2005.

Pub. L. 109–35, §8(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 42 weeks of fiscal year 2005 for similar provisions relating to use of funds for first 292 days of fiscal year 2005.

Pub. L. 109–20, §8(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 292 days of fiscal year 2005 for similar provisions relating to use of funds for first 9 months of fiscal year 2005.

Pub. L. 109–14, §8(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 9 months of fiscal year 2005 for similar provisions relating to use of funds for fiscal year 2004.

Subsec. (c). Pub. L. 109–59, §10113(4), (5), substituted "Secretary, for each of fiscal years 2006 through 2009, after the distribution, transfer, use and deduction under subsection (b), and after deducting

amounts used for grants under section 777m of this title, shall apportion 57 percent of the balance" for "Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 777m of this title, shall apportion the remainder" and "percent" for "per centum" after "40", "60", "1", and "5".

Pub. L. 109–59, §10113(1), redesignated subsec. (e) as (c) and struck out former subsec. (c) which obligated amounts for the National Outreach and Communications Program for fiscal years 1999 through 2005.

Subsec. (c)(7). Pub. L. 109–74, §201, amended par. (7) generally, substituting "$10,000,000 for fiscal year 2005;" for "$8,301,370 for the period of October 1, 2004, through July 30, 2005;".

Pub. L. 109–40, §8(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "$8,219,180 for the period of October 1, 2004, through July 27, 2005;".

Pub. L. 109–37, §8(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "$8,099,997 for the period of October 1, 2004, through July 21, 2005;".

Pub. L. 109–35, §8(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "$8,000,000 for the period of October 1, 2004, through July 19, 2005;".

Pub. L. 109–20, §8(a), substituted "(7) $8,000,000 for the period of October 1, 2004, through July 19, 2005;" for "(6) $7,499,997 for the period of October 1, 2004, through June 30, 2005;".

Pub. L. 109–14, §8(a), directed amendment of par. (7) generally by substituting "(6) $7,499,997 for the period of October 1, 2004, through June 30, 2005;" for "(7) $6,666,664 for the period of October 1, 2004, through May 31, 2005;". See above.

Subsec. (d). Pub. L. 109–59, §10113(1), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 109–59, §10113(1), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 109–59, §10113(6), substituted "paragraphs (1), (3), (4), and (5) of subsection (a)" for "subsections (a), (b)(3)(A), (b)(3)(B), and (c)".

Subsec. (f). Pub. L. 109–59, §10113(7), added subsec. (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 109–59, §10113(1), redesignated subsec. (g) as (e).

2004—Subsec. (a). Pub. L. 108–447 substituted "2019" for "2009".

Subsec. (b)(4). Pub. L. 108–310, §9(b)(1), inserted heading and struck out former heading which read "First 10 months of fiscal year 2004".

Pub. L. 108–280, §6(b), substituted "fiscal year 2004" for "the period of October 1, 2003, through July 31, 2004" and "$82,000,000" for "$68,333,332" in introductory provisions, "$10,000,000" for "$8,333,332" in subpar. (A), and "$8,000,000" for "$6,666,668" in subpar. (B) and directed amendment of heading by striking "First 9 months of", which could not be executed.

Pub. L. 108–263, §6(b), substituted "10 months" for "9 months" in heading, "July 31" for "April 30" and "$68,333,332" for "$61,499,999" in introductory provisions, "$8,333,332" for "$7,499,999" in subpar. (A), and "$6,666,668" for "$6,000,001" in subpar. (B).

Pub. L. 108–224, §6(b), substituted "9 months" for "7 months" in heading, "$61,499,999" for "$47,833,333" in introductory provisions, "$7,499,999" for "$5,833,333" in subpar. (A), and "$6,000,001" for "$4,666,667" in subpar. (B).

Pub. L. 108–202, §7(b), amended heading and text of par. (4) generally, substituting provisions relating to use of funds for first 7 months of fiscal year 2004 for similar provisions relating to use of funds for first 5 months of fiscal year 2004.

Subsec. (b)(5), (6). Pub. L. 108–310, §9(b)(2), (3), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 108–280, §6(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "$8,333,332 for the period of October 1, 2003, through July 31, 2004;".

Pub. L. 108–263, §6(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "$7,499,999 for the period of October 1, 2003, through June 30, 2004;".

Pub. L. 108–224, §6(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "$5,833,333 for the period of October 1, 2003, through April 30, 2004;".

Pub. L. 108–202, §7(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "$4,166,667 for the period of October 1, 2003, through February 29, 2004;".

Subsec. (c)(7). Pub. L. 108–310, §9(a), added par. (7).

2003—Subsec. (b)(4), (5). Pub. L. 108–88, §9(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(6). Pub. L. 108–88, §9(a), added par. (6).

2000—Subsec. (a). Pub. L. 106–377 and Pub. L. 106–408, §123, amended subsec. (a) identically, substituting "fiscal year 2009" for "fiscal year 2000".

Subsec. (d). Pub. L. 106–408, §121(a), added subsec. (d) and struck out former subsec. (d) which read as follows: "Of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c), respectively, so much, not to exceed 6 per centum of such balance, as the Secretary of the Interior may estimate to be necessary for his or her expenses in the conduct of necessary investigations, administration, and the execution of this chapter, for an outreach and communications program and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters, shall be deducted for that purpose, and such sum is authorized to be made available until the expiration of the next succeeding fiscal year. Of the sum available to the Secretary of the Interior under this subsection for any fiscal year, up to $2,500,000 may be used for the National Outreach and Communications Program under section 777g(d) of this title in addition to the amount available for that program under subsection (c). No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this chapter. The Secretary shall publish a detailed accounting of the projects, programs, and activities funded under this subsection annually in the Federal Register."

Subsec. (e). Pub. L. 106–408, §122(b), inserted "and after deducting amounts used for grants under section 777m of this title," after "respectively," in first sentence.

Subsec. (f). Pub. L. 106–408, §124, struck out before period at end of first sentence ", and if unexpended or unobligated at the end of such year, such sum is hereby authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation".

Subsec. (g). Pub. L. 106–408, §121(c), added subsec. (g).

1999—Subsec. (a). Pub. L. 106–74 substituted "fiscal year 2000" for "fiscal year 1999" in second sentence.

1998—Subsec. (b). Pub. L. 105–178, §7403(a), as amended by Pub. L. 105–206, §9012(b)(1), inserted heading and amended text generally, substituting provisions relating to fiscal years 1998 to 2003 for provisions relating to fiscal years 1993 to 1998.

Subsec. (b)(3)(B). Pub. L. 105–178, §7403(b), as added by Pub. L. 105–206, §9012(b)(2), made a technical amendment to reference in original act which appears in text as reference to section 777g–1(d) of this title.

Subsec. (c). Pub. L. 105–178, §7402(b)(1), (2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–178, §7402(b)(3)–(5), substituted "subsections (a), (b), and (c)," for "subsections (a) and (b),", inserted ", for an outreach and communications program" after "chapter", and inserted at end "Of the sum available to the Secretary of the Interior under this subsection for any fiscal year, up to $2,500,000 may be used for the National Outreach and Communications Program under section 777g(d) of this title in addition to the amount available for that program under subsection (c). No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this chapter. The Secretary shall publish a detailed accounting of the projects, programs, and activities funded under this subsection annually in the Federal Register."

Pub. L. 105–178, §7402(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–178, §7402(b)(6), substituted "subsections (a), (b), (c), and (d)" for "subsections (a), (b), and (c)".

Pub. L. 105–178, §7402(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–178, §7402(b)(1), redesignated subsec. (e) as (f).

1992—Pub. L. 102–587 added subsecs. (a) to (c), inserted subsec. (d) designation and substituted "The Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), and (c), respectively, shall apportion the remainder of each such annual appropriation among the several States" for "So much, not to exceed 6 per centum, of each annual appropriation made in accordance with the provisions of section 777b of this title as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this chapter and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year. The Secretary shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection and Restoration Act: *Provided*, That, notwithstanding the provisions of section 777b of this title, such sums shall remain available to carry out such Act through fiscal year 1999. The Secretary of the Interior, after making the aforesaid deduction, shall apportion the remainder of the appropriation for each fiscal year among the several States", and inserted subsec. (e) designation.

1990—Pub. L. 101–646 inserted after first sentence "The Secretary shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection and Restoration Act: *Provided*, That, notwithstanding the provisions of section 777b of this title, such sums shall remain available to carry out such Act through fiscal year 1999."

1984—Pub. L. 98–369 revised deductible amount from not to exceed 8 per centum to not to exceed 6 per centum.

1976—Pub. L. 94–273 substituted "September" for "June", and "October" for "July".

1970—Pub. L. 91–503 changed method of apportionment of funds by striking out reference to "to all the States" and inserted definition of "fiscal year".

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

TERMINATION DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, section considered to read as immediately before enactment of Pub. L. 109–59, except as provided by the amendments by sections 201 and 202 of Pub. L. 109–74, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in

effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

[1] *So in original. The comma probably should not appear.*

§777d. Certification of funds deducted for expenses and amounts apportioned to States

For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering this chapter and the sum which he has apportioned to each State for such fiscal year.

(Aug. 9, 1950, ch. 658, §5, 64 Stat. 432; Pub. L. 98–369, div. A, title X, §1014(a)(4), July 18, 1984, 98 Stat. 1015; Pub. L. 106–408, title I, §125, Nov. 1, 2000, 114 Stat. 1775.)

AMENDMENTS

2000—Pub. L. 106–408 inserted ", at the time at which a deduction or apportionment is made," after "certify" and struck out "and executing" after "administering".

1984—Pub. L. 98–369 struck out provisions relating to notice by the State to the Secretary of intention to accept, and use of funds where the State fails to accept.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

§777e. Submission and approval of plans and projects

(a) Apportionment of funds

Any State desiring to avail itself of the benefits of this chapter shall, by its State fish and game department, submit programs or projects for fish restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the

perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this chapter from funds apportioned under this chapter upon his approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this chapter by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any fish restoration and management project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said appropriation as represents the share of the United States payable under this chapter on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive fishery plan or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this chapter. No payment of any money apportioned under this chapter shall be made on any comprehensive fishery plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) "Project" defined

If the State elects to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purpose of this chapter as a fishery program, all other definitions notwithstanding.

(c) Costs

Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this chapter shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

(d) Agreements to finance initial costs of acquisition of lands and construction of structures

The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities from appropriations currently available for the purposes of this chapter; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this chapter.

(Aug. 9, 1950, ch. 658, §6, 64 Stat. 432; Pub. L. 91–503, title II, §202, Oct. 23, 1970, 84 Stat. 1102; Pub. L. 98–369, div. A, title X, §1014(a)(5), July 18, 1984, 98 Stat. 1016; Pub. L. 114–94, div. A, title X, §10001(c), Dec. 4, 2015, 129 Stat. 1621.)

AMENDMENTS

2015—Subsec. (d). Pub. L. 114–94 substituted "from appropriations" for "for appropriations".

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–503 added an alternative method of application for funds by submission of a comprehensive fish and wildlife resource management plan for a period of five years based on projections for fifteen years, to be updated every three years, laid down a maximum limit of assistance of 75 percent of the estimated cost of the implementation of plan, and in existing method of application struck out reference to Secretary of the Treasury and requirement that State pay 10 percent of costs.

Subsecs. (b), (c). Pub. L. 91–503 added subsecs. (b) and (c).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

§777e–1. New England Fishery Resources Restoration Act of 1990

(a) Short title

This section may be cited as the "New England Fishery Resources Restoration Act of 1990".

(b) Purposes

The purposes of this section are to—

(1) ensure timely and effective implementation of restoration plans and programs for Atlantic salmon and other fishery resources of selected river systems in New England;

(2) complete a study of fish passage impediments and requirements on small streams and rivers in New England; and

(3) develop an inventory of important fish and wildlife habitat and other natural areas of river basins in New England.

(c) Implementation of fishery resource restoration plans

The Director of the United States Fish and Wildlife Service, hereinafter referred to as the Director, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall formulate, establish and implement programs to restore and maintain nationally significant, interjurisdictional fishery resources originating in New England river systems, including the Connecticut, Thames, Pawcatuck, Merrimack, Saco, Androscoggin, Kennebec, Sheepscot, Duck Trap, St. George, Penobscot, Union, Narraguagus, Pleasant, Machias, Dennys, St. Croix, Meduxnekeag and Aroostock and their tributaries. These programs shall be in accordance with the schedule and responsibilities established in comprehensive basin-wide restoration plans prepared by the Director in cooperation with State, local, and other entities involved and interested in the conservation and management of the affected fishery resources. Preparation and periodic revision of restoration plans, and their implementation, shall be based on a Memorandum of Agreement for each restoration program which shall be entered into by the Director and cooperating entities. The Director shall prepare and submit to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works an annual report documenting activities undertaken and accomplishments achieved in fulfillment of this section, including an assessment of the prognosis for restoration of each of the stocks and species involved.

(d) Fish passage study

The Director shall conduct a study to identify impediments to upstream and downstream passage of fish in rivers and streams in the New England States due to dams that are not licensed by the Federal Energy Regulatory Commission or other human-caused obstructions. In addition, the study shall identify actions needed to alleviate those impediments where desirable and feasible. The study shall include, but not be limited to, identifying—

(1) all dams not licensed by the Federal Energy Regulatory Commission and other human-caused obstructions on New England rivers and streams where construction of upstream or downstream fish passage facilities or their removal would benefit fishery resources, including an estimate of the degree of benefits expected; and

(2) the proposed nature and size and estimated cost of appropriate fish passage facilities or other actions determined to be necessary and feasible or each dam or other obstruction identified in response to paragraph (1).

The Director shall provide notice to the public of the extent and nature of the study by publication of such information in major newspapers in the region and by other appropriate means. Within three years of November 16, 1990, the Director shall submit a report containing the findings, conclusions and recommendations of the study to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

(e) New England rivers fish and wildlife inventory

The Director shall inventory the natural values of river basins in New England, including the Connecticut, Pawcatuck, Acushnet, North and South (in Plymouth County, Massachusetts), Charles, Merrimack, Saco, Androscoggin, Kennebec, Penobscot, Union, St. Croix, and Aroostock Rivers and their tributaries, and identify fish and wildlife habitat in most need of protection or where public access to the rivers should be provided. In addition, the Director shall, in cooperation with appropriate State agencies and local governments and after providing notice and opportunity for public comment, identify appropriate public or private measures for providing the necessary protection or access for each area included in the inventory. Within two years of November 16, 1990, the Director shall submit a report containing the findings, conclusions, and recommendations of the inventory and assessment to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

(f) Authorization of appropriations

There are authorized to be appropriated to the Director—

(1) $5,000,000 per year for fiscal years 1991, 1992, 1993, 1994, and 1995 to implement fishery resource restoration plans and programs, except for activities related to the design and construction of fish passage facilities, as directed by subsection (c);

(2) $500,000 per year for fiscal years 1991, 1992, and 1993 to conduct the study required under subsection (d); and

(3) $500,000 to conduct the inventory and assessment required under section [1] (e).

(Pub. L. 101–593, title I, §111, Nov. 16, 1990, 104 Stat. 2960.)

REFERENCES IN TEXT

This section, referred to in subsec. (b), was in the original "this Act", which probably was intended as a reference to New England Fishery Resources Restoration Act of 1990, section 111 of Pub. L. 101–593, title I, Nov. 16, 1990, 104 Stat. 2960, which is classified generally to this section.

CODIFICATION

Section was enacted as the New England Fishery Resources Restoration Act of 1990, and not as part of the Fish Restoration and Management Projects Act which comprises this chapter.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

[1] *So in original. Probably should be "subsection".*

§777f. Payments by United States

(a) Payments and advances to States

When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to fish, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 777e of this title, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations, as he may prescribe, advance funds to the State for financing the United States' pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Construction work; joint payments

Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with the rules and regulations made pursuant to this chapter. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this chapter. Such payments shall be made against the said appropriation to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

(Aug. 9, 1950, ch. 658, §7, 64 Stat. 433; Pub. L. 91–503, title II, §202, Oct. 23, 1970, 84 Stat. 1103.)

AMENDMENTS

1970—Pub. L. 91–503 divided existing provisions into subsecs. (a) and (b) and authorized advance payments by the Secretary to the States for financing the United States' pro rata share of the comprehensive fish and wildlife plan.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

§777g. Maintenance of projects

(a) Duty of States; status of projects; title to property

To maintain fish-restoration and management projects established under the provisions of this chapter shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this chapter may be considered as projects under this chapter. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this chapter, shall be vested in such State.

(b) Funding requirements

(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under section 777c of this title for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding four fiscal years, but any portion of such funds that remain unexpended or unobligated at the close of such period are authorized to be made available for expenditure by the Secretary of the Interior to supplement the 58.012 percent of the balance of each annual appropriation to be apportioned among the States under section 777c(c) of this title.

(c) Aquatic resource education program; funding, etc.

Each State may use not to exceed 15 percent of the funds apportioned to it under section 777c of this title to pay up to 75 per centum of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant

programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(d) National Outreach and Communications Program

(1) Implementation

Within 1 year after June 9, 1998, the Secretary of the Interior shall develop and implement, in cooperation and consultation with the Sport Fishing and Boating Partnership Council, a national plan for outreach and communications.

(2) Content

The plan shall provide—

(A) guidance, including guidance on the development of an administrative process and funding priorities, for outreach and communications programs; and

(B) for the establishment of a national program.

(3) Secretary may match or fund programs

Under the plan, the Secretary may obligate amounts available under subsection (a)(5) or subsection (b) of section 777c of this title—

(A) to make grants to any State or private entity to pay all or any portion of the cost of carrying out any outreach and communications program under the plan; or

(B) to fund contracts with States or private entities to carry out such a program.

(4) Review

The plan shall be reviewed periodically, but not less frequently than once every 3 years.

(e) State outreach and communications program

Within 12 months after the completion of the national plan under subsection (d)(1), a State shall develop a plan for an outreach and communications program and submit it to the Secretary. In developing the plan, a State shall—

(1) review the national plan developed under subsection (d);

(2) consult with anglers, boaters, the sportfishing and boating industries, and the general public; and

(3) establish priorities for the State outreach and communications program proposed for implementation.

(f) Pumpout stations and waste reception facilities

Amounts apportioned to States under section 777c of this title may be used to pay not more than 75 percent of the costs of constructing, renovating, operating, or maintaining pumpout stations and waste reception facilities (as those terms are defined in the Clean Vessel Act of 1992).

(g) Surveys

(1) National framework

Within 6 months after June 9, 1998, the Secretary, in consultation with the States, shall adopt a national framework for a public boat access needs assessment which may be used by States to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(2) State surveys

Within 18 months after June 9, 1998, each State that agrees to conduct a public boat access needs survey following the recommended national framework shall report its findings to the Secretary for use in the development of a comprehensive national assessment of recreational boat access needs and facilities.

(3) Exception

Paragraph (2) does not apply to a State if, within 18 months after June 9, 1998, the Secretary certifies that the State has developed and is implementing a plan that ensures there are and will be public boat access adequate to meet the needs of recreational boaters on its waters.

(4) Funding

A State that conducts a public boat access needs survey under paragraph (2) may fund the costs of conducting that assessment out of amounts allocated to it as funding dedicated to motorboat access to recreational waters under subsection (b)(1) of this section.

(Aug. 9, 1950, ch. 658, §8, 64 Stat. 433; Pub. L. 91–503, title II, §202, Oct. 23, 1970, 84 Stat. 1103; Pub. L. 98–369, div. A, title X, §1014(a)(6), July 18, 1984, 98 Stat. 1016; Pub. L. 102–587, title V, §5604(b), Nov. 4, 1992, 106 Stat. 5088; Pub. L. 105–178, title VII, §§7402(c), 7404(b), June 9, 1998, 112 Stat. 484, 486; Pub. L. 105–206, title IX, §9012(c), July 22, 1998, 112 Stat. 864; Pub. L. 109–59, title X, §10114, Aug. 10, 2005, 119 Stat. 1928; Pub. L. 114–94, div. A, title X, §10001(d), Dec. 4, 2015, 129 Stat. 1621.)

REFERENCES IN TEXT

For effective date of this subsection, referred to in subsec. (c), see Effective Date of 1984 Amendment note below.

The Clean Vessel Act of 1992, referred to in subsec. (f), is subtitle F of title V of Pub. L. 102–587, Nov. 4, 1992, 106 Stat. 5086, which amended this section and section 777c of this title and enacted provisions set out as a note under section 1322 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1322 of Title 33 and Tables.

AMENDMENTS

2015—Subsec. (b)(2). Pub. L. 114–94 substituted "58.012 percent" for "57 percent".

2005—Subsec. (b)(2). Pub. L. 109–59, §10114(1), substituted "to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 777c(c) of this title" for "in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation".

Subsec. (d)(3). Pub. L. 109–59, §10114(2), substituted "subsection (a)(5) or subsection (b)" for "subsection (c) or (d)" in introductory provisions.

1998—Subsec. (b)(1). Pub. L. 105–178, §7402(c)(1), which directed the substitution of "15 percent" for "12½ percentum" wherever appearing, was executed by making the substitution for "12½ per centum" to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 105–178, §7402(c)(3), inserted "and communications" after "outreach".

Pub. L. 105–178, §7402(c)(2), which directed the substitution of "15 percent" for "10 percentum", was executed by making the substitution for "10 per centum" to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 105–178, §7402(c)(4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

Subsec. (g). Pub. L. 105–178, §7404(b), as amended by Pub. L. 105–206, §9012(c), added subsec. (g).

1992—Subsec. (b)(1). Pub. L. 102–587, §5604(b)(1), substituted "12½ per centum" for "10 per centum" after "allocate" and inserted at end "Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 12½ per centum in a fiscal year, provided that the total regional allocation averages 12½ per centum over a 5 year period."

Subsec. (b)(2). Pub. L. 102–587, §5604(b)(2), substituted "four fiscal years" for "fiscal year" after first reference to "succeeding" and "period" for second reference to "succeeding fiscal year".

Subsec. (c). Pub. L. 102–587, §5604(b)(3), inserted "and outreach" after "education".

Subsec. (d). Pub. L. 102–587, §5604(b)(4), added subsec. (d).

1984—Pub. L. 98–369 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1970—Pub. L. 91–503 struck out restriction that not more than 25 percent of the Federal funds be set aside for maintenance projects.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsecs. (b)(2) and (d)(3) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

§777g–1. Boating infrastructure

(a) Purpose

The purpose of this section is to provide funds to States for the development and maintenance of facilities for transient nontrailerable recreational vessels.

(b) Omitted

(c) Plan

Within 6 months after submitting a survey to the Secretary under section 777g(g) of this title, a State may develop and submit to the Secretary a plan for the construction, renovation, and maintenance of facilities for transient nontrailerable recreational vessels, and access to those facilities, to meet the needs of nontrailerable recreational vessels operating on navigable waters in the State.

(d) Grant program

(1) Matching grants

The Secretary of the Interior shall obligate amounts made available under section 777c(a)(4) [1] of this title to make grants to any State to pay not more than 75 percent of the cost to a State of constructing, renovating, or maintaining facilities for transient nontrailerable recreational vessels.

(2) Priorities

In awarding grants under paragraph (1), the Secretary shall give priority to projects that—

(A) consist of the construction, renovation, or maintenance of facilities for transient nontrailerable recreational vessels in accordance with a plan submitted by a State under subsection (c);

(B) provide for public/private partnership efforts to develop, maintain, and operate facilities for transient nontrailerable recreational vessels; and

(C) propose innovative ways to increase the availability of facilities for transient nontrailerable recreational vessels.

(e) Definitions

For purposes of this section, the term—

(1) "nontrailerable recreational vessel" means a recreational vessel 26 feet in length or longer—

(A) operated primarily for pleasure; or

(B) leased, rented, or chartered to another for the latter's pleasure;

(2) "facilities for transient nontrailerable recreational vessels" includes mooring buoys, day-docks, navigational aids, seasonal slips, safe harbors, or similar structures located on navigable waters, that are available to the general public (as

determined by the Secretary of the Interior) and designed for temporary use by nontrailerable recreational vessels; and

(3) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 105–178, title VII, §7404, June 9, 1998, 112 Stat. 486; Pub. L. 105–206, title IX, §9012(c), July 22, 1998, 112 Stat. 864; Pub. L. 109–59, title X, §10115, Aug. 10, 2005, 119 Stat. 1928.)

REFERENCES IN TEXT

Paragraph (4) of section 777c(a), referred to in subsec. (d)(1), was repealed by Pub. L. 114–94, div. A, title X, §10001(b)(1)(D), Dec. 4, 2015, 129 Stat. 1620. See section 777c(a)(3)(A) of this title.

CODIFICATION

Section is comprised of section 7404 of Pub. L. 105–178. Subsec. (b) of section 7404 of Pub. L. 105–178, as amended by Pub. L. 105–206, §9012(c), amended section 777g of this title.

Section was enacted as part of the Sportfishing and Boating Safety Act of 1998, and also as part of the Transportation Equity Act for the 21st Century, and not as part of the Fish Restoration and Management Projects Act which comprises this chapter.

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–59 substituted "section 777c(a)(4) of this title" for "section 777c(b)(3)(B) of this title".

1998—Subsec. (b). Pub. L. 105–206, §9012(c), made a technical amendment to directory language of Pub. L. 105–178, §7404(b). See Codification note above.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsec. (d)(1) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

[1] *See References in Text note below.*

§777h. Requirements and restrictions concerning use of amounts for expenses for administration

(a) Authorized expenses for administration

Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 777c(b) of this title only for expenses for administration that directly support the implementation of this chapter that consist of—

(1) personnel costs of employees who directly administer this chapter on a full-time basis;

(2) personnel costs of employees who directly administer this chapter on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this chapter, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this chapter;

(4) costs of determining under section 777e(a) of this title whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this chapter and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 777e of this title by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this chapter to improve administration of this chapter;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this chapter on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 777e or 777m of this title;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this chapter on a full-time basis, for purposes that directly relate to administration of this chapter and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this chapter on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 777e and 777m of this title.

(b) Reporting of other uses

(1) In general

Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under section 777c(b) of this title should be used for an expense for administration other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) Maximum amount

For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than $25,000.

(c) Restriction on use to supplement general appropriations

The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) Audit requirement

(1) In general

The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this chapter.

(2) Auditor

(A) In general

An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 132 of title 41) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) Supervision of auditor

The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) Report to Congress

The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

(Aug. 9, 1950, ch. 658, §9, 64 Stat. 433; Pub. L. 106–408, title I, §121(b), Nov. 1, 2000, 114 Stat. 1770; Pub. L. 109–59, title X, §10116, Aug. 10, 2005, 119 Stat. 1929.)

CODIFICATION

In subsec. (d)(2)(A), "section 132 of title 41" substituted for "section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2005—Subsecs. (a), (b)(1). Pub. L. 109–59 substituted "section 777c(b)" for "section 777c(d)(1)" in introductory provisions.

2000—Pub. L. 106–408 amended section generally. Prior to amendment, section read as follows: "Out of the deductions set aside for administering and executing this chapter the Secretary of the Interior is authorized to employ such assistants, clerks, and other persons in the District of Columbia and elsewhere, to be taken from the eligible lists of the civil service; to rent or construct buildings outside of the District of Columbia; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including publication of technical and administrative reports, purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the provisions of this chapter."

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsecs. (a) and (b)(1) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

§777i. Rules and regulations

The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this chapter.

(Aug. 9, 1950, ch. 658, §10, 64 Stat. 434.)

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

§777j. Repealed. Pub. L. 89–348, §1(14), Nov. 8, 1965, 79 Stat. 1311

Section, act Aug. 9, 1950, ch. 658, §11, 64 Stat. 434, required the Secretary of the Interior to make an annual report to the Congress giving detailed information as to the projects established under this chapter and expenditures therefor.

§777k. Payments of funds to and cooperation with Puerto Rico, the District of Columbia, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and Virgin Islands

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in section 777a of this title, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior to supplement the 58.012 percent of the balance of each annual appropriation to be apportioned among the States under section 777c(c) of this title.

(Aug. 9, 1950, ch. 658, §12, 64 Stat. 434; July 2, 1956, ch. 489, §4, 70 Stat. 473; Aug. 1, 1956, ch. 852, §8, 70 Stat. 908; Pub. L. 86–70, §16, June 25, 1959, 73 Stat. 143; Pub. L. 91–503, title II, §203, Oct. 23, 1970, 84 Stat. 1103; Pub. L. 96–597, title III, §302(a), Dec. 24, 1980, 94 Stat. 3477; Pub. L. 98–369, div. A, title X, §1014(a)(7), July 18, 1984, 98 Stat. 1016; Pub. L. 109–59, title X, §10117, Aug. 10, 2005, 119 Stat. 1929; Pub. L. 114–94, div. A, title X, §10001(e), Dec. 4, 2015, 129 Stat. 1621.)

AMENDMENTS

2015—Pub. L. 114–94 substituted "58.012 percent" for "57 percent" and "under section 777c(c) of this title" for "under section 777c(b) of this title".

2005—Pub. L. 109–59 substituted "to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 777c(b) of this title" for "in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation" before period at end.

1984—Pub. L. 98–369 inserted "the Mayor of the District of Columbia," after "the Secretary of Agriculture of Puerto Rico,", "for the District of Columbia one-third of 1 per centum," after "for Puerto Rico 1 per centum," and "the District of Columbia," after "Puerto Rico," in two places.

1980—Pub. L. 96–597 inserted references to the Governor and the Commonwealth of the Northern Mariana Islands.

1970—Pub. L. 91–503 substituted "Secretary of Agriculture of Puerto Rico" for "Commissioner of Agriculture and Commerce of Puerto Rico", added American Samoa to the list of recipients, and substituted maximum limits of apportionment of one percent for Puerto Rico, one-third of one percent for Guam, one-third of one percent for American Samoa and one-third of one percent for Virgin Islands for maximum limit of $10,000 for Puerto Rico, Guam and Virgin Islands together.

1959—Pub. L. 86–70 struck out provisions which authorized cooperation with the Alaska Game Commission and permitted apportionment of not more than $75,000 in any one year to the Territory of Alaska.

1956—Act Aug. 1, 1956, inserted "the Governor of Guam" after "Commissioner of Agriculture and Commerce of Puerto Rico," and "Guam" after "Puerto Rico" in three remaining places those words appear.

Act July 2, 1956, struck out provisions which authorized the Secretary to cooperate with the Division of Game and Fish of the Board of Commissioners of Agriculture and Forestry of Hawaii, struck out limitation of $25,000 on the amount of funds which could be apportioned to Hawaii in any one year, and substituted "Territory of Alaska" for "Territories" in two places.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98–369, set out as a note under section 777 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 2, 1956, as applicable only with respect to fiscal years beginning after July 2, 1956, see section 5 of act July 2, 1956, set out as a note under section 669a of this title.

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

§777*l*. State use of contributions

A State may use contributions of funds, real property, materials, and services to carry out an activity under this chapter in lieu of payment by the State of the State share of the cost of such activity. Such a State share shall be considered to be paid in an amount equal to the fair market value of any contribution so used.

(Aug. 9, 1950, ch. 658, §13, as added Pub. L. 100–448, §6(c)(2), Sept. 28, 1988, 102 Stat. 1841.)

CODIFICATION

Another section 13 of act Aug. 9, 1950, ch. 658, which was classified as a note under section 777 of this title, was repealed by Pub. L. 106–408, title I, §122(a)(1), Nov. 1, 2000, 114 Stat. 1772.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 6(e) of Pub. L. 100–448, set out as an Effective Date of 1988 Amendment note under section 777 of this title.

§777m. Multistate conservation grant program

(a) In general

(1) Amount for grants

Not more than $3,000,000 shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) Period of availability; apportionment

(A) Period of availability

Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) Apportionment

At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in section 777c(c) of this title for use by the States in the same manner as funds apportioned under section 777c(c) of this title.

(b) Selection of projects

(1) States or entities to be benefited

A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) Use of submitted priority list of projects

The Secretary of the Interior may make grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) Priority list of projects

A priority list referred to in paragraph (2) is a priority list of sport fish restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this chapter;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) Publication

The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) Eligible grantees

(1) In general

The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) Nongovernmental organizations

(A) In general

Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated taking of fish; and

(ii) will use the grant funds in compliance with subsection (d).

(B) Penalties for certain activities

Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) Use of grants

A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) Funding for other activities

Not more than $1,200,000 of each annual appropriation made in accordance with the provisions of section 777b of this title shall be distributed to the Secretary of the Interior for use as follows:

(1) $200,000 shall be made available for each of—

(A) the Atlantic States Marine Fisheries Commission;

(B) the Gulf States Marine Fisheries Commission;

(C) the Pacific States Marine Fisheries Commission; and

(D) the Great Lakes Fisheries Commission.

(2) $400,000 shall be made available for the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service.

(f) Nonapplicability of Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

(Aug. 9, 1950, ch. 658, §14, as added Pub. L. 106–408, title I, §122(a), Nov. 1, 2000, 114 Stat. 1772; amended Pub. L. 109–59, title X, §10118, Aug. 10, 2005, 119 Stat. 1929; Pub. L. 109–241, title IX, §901(r)(2), July 11, 2006, 120 Stat. 566; Pub. L. 111–281, title IX, §903(a)(3), Oct. 15, 2010, 124 Stat. 3010; Pub. L. 114–94, div. A, title X, §10001(f), Dec. 4, 2015, 129 Stat. 1621.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–94, §10001(f)(1), struck out "of each annual appropriation made in accordance with the provisions of section 777b of this title" after "$3,000,000".

Subsec. (e). Pub. L. 114–94, §10001(f)(2)(A), in introductory provisions, substituted "Not more than $1,200,000 of each annual appropriation made in accordance with the provisions of section 777b of this title shall be distributed to the Secretary of the Interior for use as follows:" for "Of amounts made available under section 777c(b) of this title for each fiscal year—".

Subsec. (e)(1)(D). Pub. L. 114–94, §10001(f)(2)(B), substituted period at end for "; and".

2010—Subsec. (a)(1). Pub. L. 111–281 made technical correction to directory language of Pub. L. 109–241, §901(r)(2). See 2006 Amendment note below.

2006—Subsec. (a)(1). Pub. L. 109–241, §901(r)(2), as amended by Pub. L. 111–281, substituted "Not more than" for "For each of fiscal years 2006 through 2009, not more than".

2005—Subsec. (a)(1). Pub. L. 109–59, §10118(1), reenacted subsec. (a) and par. (1) headings without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "Of the balance of each annual appropriation made under section 777b of this title remaining after the distribution and use under subsections (a), (b), and (c) of section 777c of this title in a fiscal year, not more than $3,000,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section."

Subsec. (a)(2)(B). Pub. L. 109–59, §10118(2), substituted "section 777c(c)" for "section 777c(e)" in two places.

Subsec. (e). Pub. L. 109–59, §10118(3), added introductory provisions and struck out former introductory provisions which read as follows: "Of the balance of each annual appropriation made under section 777b of this title remaining after the distribution and use under subsections (a), (b), and (c) of section 777c of this title for each fiscal year and after deducting amounts used for grants under subsection (a) of this section—".

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–281, title IX, §903(a), Oct. 15, 2010, 124 Stat. 3010, provided that the amendment by section 903(a)(3) is effective with enactment of Pub. L. 109–241.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsecs. (a)(1), (2)(B) and (e) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of this title.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of this title.

§777n. Repealed. Pub. L. 114–94, div. A, title X, §10001(g)(1), Dec. 4, 2015, 129 Stat. 1621

Section, act Aug. 9, 1950, ch. 658, §15, as added Pub. L. 109–59, title X, §10119, Aug. 10, 2005, 119 Stat. 1929; amended Pub. L. 109–74, title I, §103, Sept. 29, 2005, 119 Stat. 2031, related to expenditure of remaining balance in the Boat Safety Account.

A prior section 15 of act Aug. 9, 1950, was renumbered section 16 and is set out as a note under section 777 of this title.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

This content is from the eCFR and is authoritative but unofficial.

Title 50 —Wildlife and Fisheries
Chapter I —United States Fish and Wildlife Service, Department of the Interior
Subchapter F —Financial Assistance—Wildlife and Sport Fish Restoration Program

Part 80 Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts

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PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

Authority: 16 U.S.C. 669-669k and 777-777n, except 777e-1 and g-1.

Source: 76 FR 46156, Aug. 1, 2011, unless otherwise noted.

Subpart A—General

§ 80.1 What does this part do?

This part of the Code of Federal Regulations tells States how they may:

(a) Use revenues derived from State hunting and fishing licenses in compliance with the Acts.

(b) Receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669(b)), if authorized, and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C 9504).

(c) Receive financial assistance from the Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety grant program, if authorized.

(d) Receive financial assistance from the Sport Fish Restoration program, the Recreational Boating Access subprogram, the Aquatic Resources Education subprogram, and the Outreach and Communications subprogram.

(e) Comply with the requirements of the Acts.

§ 80.2 What terms do I need to know?

The terms in this section pertain only to the regulations in this part.

Acts means the Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (16 U.S.C. 669-669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (16 U.S.C. 777-777n, except 777e-1 and g-1).

Agency means a State fish and wildlife agency.

Angler means a person who fishes for sport fish for recreational purposes as permitted by State law.

Asset means all tangible and intangible real and personal property of monetary value. This includes *Capital assets* as defined at 2 CFR 200.12, *Equipment* as defined at 2 CFR 200.33, and real property of any value.

Capital improvement or *capital expenditure for improvement* means:

(1) A structure that costs at least $25,000 to build, acquire, or install; or the alteration or repair of a structure or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least $25,000.

(2) An agency may use its own definition of capital improvement if its definition includes all capital improvements as defined here.

Comprehensive management system is a State fish and wildlife agency's method of operations that links programs, financial systems, human resources, goals, products, and services. It assesses the current, projected, and desired status of fish and wildlife; it develops a strategic plan and carries it out through an operational planning process; and it evaluates results. The planning period is at least 5 years using a minimum 15-year projection of the desires and needs of the State's citizens. A comprehensive-management-system grant funds all or part of a State's comprehensive management system.

Construction means the act of building or significantly renovating, altering, or repairing a structure. Acquiring, clearing, and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, roads, parking lots, utility lines, fences, piers, wells, pump stations, ditches, dams, dikes, water-control structures, fish-hatchery raceways, and shooting ranges.

Director means:

(1) The person whom the Secretary:

(i) Appointed as the chief executive official of the U.S. Fish and Wildlife Service, and

(ii) Delegated authority to administer the Acts nationally; or

(2) A deputy or another person authorized temporarily to administer the Acts nationally.

Diversion means any use of revenue from hunting and fishing licenses for a purpose other than administration of the State fish and wildlife agency.

Fee interest means the right to possession, use, and enjoyment of a parcel of land or water for an indefinite period. A fee interest, as used in this part, may be the:

(1) Fee simple, which includes all possible interests or rights that a person can hold in a parcel of land or water; or

(2) Fee with exceptions to title, which excludes one or more real property interests that would otherwise be part of the fee simple.

Grant means an award of money, the principal purpose of which is to transfer funds or property from a Federal agency to a grantee to support or stimulate an authorized public purpose under the Acts. This part uses the term grant for both a grant and a cooperative agreement for convenience of reference. This use does not affect the legal distinction between the two instruments. The meaning of grant in the terms *grant funds, grant-funded, under a grant,* and *under the grant* includes the matching cash and any matching in-kind contributions in addition to the Federal award of money.

Grantee means the State fish and wildlife agency that applies for the grant and carries out grant-funded activities in programs authorized by the Acts. The State fish and wildlife agency acts on behalf of the State government, which is the legal entity and is accountable for the use of Federal funds, matching funds, and matching in-kind contributions.

Lease means an agreement in which the owner of a fee interest transfers to a lessee the right of exclusive possession and use of an area of land or water for a fixed period, which may be renewable. The lessor cannot readily revoke the lease at his or her discretion. The lessee pays rent periodically or as a single payment. The lessor must be able to regain possession of the lessee's interest (*leasehold interest*) at the end of the lease term. An agreement that does not correspond to this definition is not a lease even if it is labeled as one.

Match or cost share means the non-Federal portion of project costs or value of any non-Federal in-kind contributions of a grant-funded project, unless a Federal statute authorizes match using Federal funds. Match must meet the requirements at 2 CFR 200.306(b)(1)-(7).

Obligation has two meanings depending on the context:

(1) When a grantee of Federal financial assistance commits funds by incurring costs for purposes of the grant, the definition at 2 CFR 200.71 applies.

(2) When the Service sets aside funds for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at 50 CFR 80.91 applies.

Personal property means anything tangible or intangible that is not real property.

(1) Tangible personal property includes:

(i) Objects, such as equipment and supplies, that are moveable without substantive damage to the land or any structure to which they may be attached;

(ii) Soil, rock, gravel, minerals, gas, oil, or water after excavation or extraction from the surface or subsurface;

(iii) Commodities derived from trees or other vegetation after harvest or separation from the land; and

(iv) Annual crops before or after harvest.

(2) Intangible personal property includes:

(i) Intellectual property, such as patents or copyrights;

(ii) Securities, such as bonds and interest-bearing accounts; and

(iii) Licenses, which are personal privileges to use an area of land or water with at least one of the following attributes:

(A) Are revocable at the landowner's discretion;

(B) Terminate when the landowner dies or the area of land or water passes to another owner; or

(C) Do not transfer a right of exclusive use and possession of an area of land or water.

Project means one or more related undertakings in a project-by-project grant that are necessary to fulfill a need or needs, as defined by a State fish and wildlife agency, consistent with the purposes of the appropriate Act. For convenience of reference in this part, the meaning of project includes an agency's fish and wildlife program under a comprehensive management system grant.

Project-by-project grant means an award of money based on a detailed statement of a project or projects and other supporting documentation.

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fee, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.

(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.

(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing permit is often incorrectly labeled a lease, which can be real property, but most grazing permits are actually licenses, which are not real property.

Regional Director means the person appointed by the Director to be the chief executive official of one of the Service's geographic Regions, or a deputy or another person temporarily authorized to exercise the authority of the chief executive official of one of the Service's geographic Regions. This person's responsibility does not extend to any administrative units that the Service's Headquarters supervises directly in that geographic Region.

Secretary means the person appointed by the President to direct the operation of the Department of the Interior, or a deputy or another person who is temporarily authorized to direct the operation of the Department.

Service means the U.S. Fish and Wildlife Service.

Sport fish means aquatic, gill-breathing, vertebrate animals with paired fins, having material value for recreation in the marine and fresh waters of the United States.

State means any State of the United States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. *State* also includes the District of Columbia for purposes of the Dingell-Johnson Sport Fish Restoration Act, the Sport Fish Restoration program, and its subprograms. *State* does not include the District of Columbia for purposes of the Pittman-Robertson Wildlife Restoration Act and the programs and subprogram under the Act because the Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District. References to "the 50 States" apply only to the 50 States of the United States and do not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, or the territories of Guam, the U.S. Virgin Islands, and American Samoa.

State fish and wildlife agency means the administrative unit designated by State law or regulation to carry out State laws for management of fish and wildlife resources. If an agency has other jurisdictional responsibilities, the agency is considered the State fish and wildlife agency only when exercising responsibilities specific to management of the State's fish and wildlife resources.

Subaccount means a record of financial transactions for groups of similar activities based on programs and subprograms. Each group has a unique number. Different subaccounts also distinguish between benefits to marine or freshwater fisheries in the programs and subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act.

Useful life means the period during which a federally funded capital improvement is capable of fulfilling its intended purpose with adequate routine maintenance.

Wildlife means the indigenous or naturalized species of birds or mammals that are either:

(1) Wild and free-ranging;

(2) Held in a captive breeding program established to reintroduce individuals of a depleted indigenous species into previously occupied range; or

(3) Under the jurisdiction of a State fish and wildlife agency.

[76 FR 46156, Aug. 1, 2011, as amended at 78 FR 35152, June 12, 2013; 84 FR 44784, Aug. 27, 2019]

Subpart B—State Fish and Wildlife Agency Eligibility

§ 80.10 Who is eligible to receive the benefits of the Acts?

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:

(a) Assents to the provisions of the Acts;

(b) Ensures the conservation of fish and wildlife; and

(c) Requires that revenue from hunting and fishing licenses be:

(1) Controlled only by the State fish and wildlife agency; and

(2) Used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law.

§ 80.11 How does a State become ineligible to receive the benefits of the Acts?

A State becomes ineligible to receive the benefits of the Acts if it:

(a) Fails materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts;

(b) Does not have legislation required at § 80.10 or passes legislation contrary to the Acts; or

(c) Diverts hunting and fishing license revenue from:

(1) The control of the State fish and wildlife agency; or

(2) Purposes other than the agency's administration.

§ 80.12 Does an agency have to confirm that it wants to receive an annual apportionment of funds?

No. However, if a State fish and wildlife agency does not want to receive the annual apportionment of funds, it must notify the Service in writing within 60 days after receiving a preliminary certificate of apportionment.

Subpart C—License Revenue

§ 80.20 What does revenue from hunting and fishing licenses include?

Hunting and fishing license revenue includes:

(a) All proceeds from State-issued general or special hunting and fishing licenses, permits, stamps, tags, access and use fees, and other State charges to hunt or fish for recreational purposes. Revenue from licenses sold by vendors is net income to the State after deducting reasonable sales fees or similar amounts retained by vendors.

(b) Real or personal property acquired with license revenue.

(c) Income from the sale, lease, or rental of, granting rights to, or a fee for access to real or personal property acquired or constructed with license revenue.

(d) Income from the sale, lease, or rental of, granting rights to, or a fee for access to a recreational opportunity, product, or commodity derived from real or personal property acquired, managed, maintained, or produced by using license revenue.

(e) Interest, dividends, or other income earned on license revenue.

(f) Reimbursements for expenditures originally paid with license revenue.

(g) Payments received for services funded by license revenue.

§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

The Director may declare a State to be in diversion if it violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration. The State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the State resolves the diversion. Only the Director may declare a State to be in diversion, and only the Director may rescind the declaration.

§ 80.22 What must a State do to resolve a declaration of diversion?

The State must complete the actions in paragraphs (a) through (e) of this section to resolve a declaration of diversion. The State must use a source of funds other than license revenue to fund the replacement of license revenue.

(a) If necessary, the State must enact adequate legislative prohibitions to prevent diversions of license revenue.

(b) The State fish and wildlife agency must replace all diverted cash derived from license revenue and the interest lost up to the date of repayment. It must enter into State records the receipt of this cash and interest.

(c) The agency must receive either the revenue earned from diverted property during the period of diversion or the current market rental rate of any diverted property, whichever is greater.

(d) The agency must take one of the following actions to resolve a diversion of real, personal, or intellectual property:

(1) Regain management control of the property, which must be in about the same condition as before diversion;

(2) Receive replacement property that meets the criteria in paragraph (e) of this section; or

(3) Receive a cash amount at least equal to the current market value of the diverted property only if the Director agrees that the actions described in paragraphs (d)(1) and (d)(2) of this section are impractical.

(e) To be acceptable under paragraph (d)(2) of this section:

(1) Replacement property must have both:

(i) Market value that at least equals the current market value of the diverted property; and

(ii) Fish or wildlife benefits that at least equal those of the property diverted.

(2) The Director must agree that the replacement property meets the requirements of paragraph (e)(1) of this section.

§ 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

No. Federal funds obligated before the date that the Director declares a diversion remain available for expenditure without regard to the intervening period of the State's ineligibility. See § 80.91 for when a Federal obligation occurs.

Subpart D—License Holder Certification

Source: 84 FR 44784, Aug. 27, 2019, unless otherwise noted.

§ 80.30 Why must an agency certify the number of paid license holders?

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

§ 80.31 How does an agency certify the number of paid license holders?

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following information:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The agency director or his or her designee:

(1) Must certify the information at paragraph (a) of this section in the format that the Director specifies;

(2) Must provide documentation to support the accuracy of this information at the Director's request;

(3) Is responsible for eliminating multiple counting of the same individuals in the information that he or she certifies; and

(4) May use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If an agency director uses statistical sampling to eliminate multiple counting of the same individuals, he or she must ensure that the sampling is complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

§ 80.32 What is the certification period?

A certification period must:

(a) Be 12 consecutive months;

(b) Correspond to the State's fiscal year or license year;

(c) Be consistent from year to year unless the Director approves a change; and

(d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the apportioned funds first become available for expenditure.

§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?

(a) A State fish and wildlife agency must count only those people who have a license issued:

(1) In the license holder's name; or

(2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) A State fish and wildlife agency must count a person holding a single-year license only once in the certification period in which the license first becomes valid. (Single-year licenses are valid for any length of time less than 2 years.)

(c) A person is counted as a valid license holder even if the person is not required to have a paid license or is unable to hunt or fish.

(d) A person having more than one valid hunting license is counted only once each certification period as a hunter. A person having more than one valid fishing license is counted only once each certification period as an angler. A person having both a valid hunting license and a valid fishing license, or a valid combination hunting/fishing license, may be counted once each certification period as a hunter and once each certification period as an angler. The license holder may have voluntarily obtained them or was required to have them in order to obtain a different privilege.

(e) A person who has a license that allows the license holder only to trap animals or only to engage in commercial fishing or other commercial activities must not be counted.

§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

(a) For the State fish and wildlife agency to certify a license holder, the agency must establish that it receives the following minimum gross revenue:

(1) $2 for each year the license is valid, for either the privilege to hunt or the privilege to fish; and

(2) $4 for each year the license is valid for a combination license that gives privileges to both hunt and fish.

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but no later than September 27, 2021.

(c) A State may apply these standards to all licenses certified in the license certification period that this rule becomes effective.

§ 80.35 What additional requirements apply to certifying multiyear licenses?

The following additional requirements apply to certifying multiyear licenses:

(a) A State fish and wildlife agency must follow the requirement at § 80.34(a) for all multiyear licenses sold before and after the date that the agency adopts the new standard, unless following the exception at paragraph (c) of this section.

(b) If an agency is using an investment, annuity, or similar method to fulfill the net-revenue requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until September 26, 2019, the agency must discontinue that method and convert to the new standard, unless following the exception at paragraph (c) of this section.

(1) If the revenue collected at the time of sale has not been spent, the agency must begin to use the new standard by applying the total amount the agency received at the time of sale.

(2) If the revenue collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for $100 in 2014, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency (4 years × $2 = $8) and the license holder may be counted for up to 46 more years ($100 − $8 = $92/$2 = 46).

(c) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until September 26, 2019, for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

(1) Notifies the Director of the agency's intention to do so;

(2) Describes how the new requirement will cause financial or operational harm to the agency when applied to licenses sold before the effective date of these regulations; and

(3) Commits to follow the current standard for those multiyear licenses sold after the date specified at § 80.34(b).

(d) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(e) The agency may count the license for all certification periods for which it received the minimum required revenue, as long as the license holder meets all other requirements of this subpart. For example, an agency may count a single-privilege, multiyear license that sells for $25 for 12 certification periods. However, if the license exceeds the life expectancy or the license is valid for only 5 years, it may be counted only for the number of years it is valid.

(f) An agency may spend a multiyear license fee as soon as the agency receives it.

(g) The agency must count only the licenses that meet the minimum required revenue for the license period based on:

(1) The duration of the license in the case of a multiyear license with a specified ending date; or

(2) Whether the license holder remains alive.

(h) The agency must use and document a reasonable technique for deciding how many multiyear-license holders remain alive in the certification period. Some examples of reasonable techniques are specific identification of license holders, statistical sampling, life-expectancy tables, and mortality tables. The agency may instead use 80 years of age as a default for life expectancy.

§ 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

If a State fish and wildlife agency receives funds from the State or other entity to cover fees for some license holders, the agency may count those license holders in the annual certification only under the following conditions:

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

(d) The agency must receive and account for the State or other entity funds as license revenue.

(e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.

(f) The license fees must meet all other requirements in this part.

§ 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

Yes. A State fish and wildlife agency may certify a license that is sold at a discount when combined with another license or privilege as long as the agency meets the rules for minimum revenue at § 80.34 for each privilege.

§ 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

(a) An entity other than the agency may offer the public a license that costs less than the regulated price and a State fish and wildlife agency may certify the license holder only if:

(1) The license is issued to the individual according to the requirements at § 80.33;

(2) The amount received by the agency meets all other requirements in this subpart; and

(3) The agency agrees to the amount of revenue it will receive.

(b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

§ 80.39 What must an agency do if it becomes aware of errors in its certified license data?

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after the agency becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

§ 80.40 May the Service recalculate an apportionment if an agency submits revised data?

The Service may recalculate an apportionment of funds based on revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of the apportionment, the Service may recalculate the apportionment only if doing so would not reduce funds to other State fish and wildlife agencies.

§ 80.41 May the Director correct a Service error in apportioning funds?

Yes. The Director may correct any error that the Service makes in apportioning funds.

Subpart E—Eligible Activities

§ 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

The following activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act:

(a) ***Wildlife Restoration program.***

(1) Restore and manage wildlife for the benefit of the public.

(2) Conduct research on the problems of managing wildlife and its habitat if necessary to administer wildlife resources efficiently.

(3) Obtain data to guide and direct the regulation of hunting.

(4) Acquire real property suitable or capable of being made suitable for:

(i) Wildlife habitat; or

(ii) Public access for hunting or other wildlife-oriented recreation.

(5) Restore, rehabilitate, improve, or manage areas of lands or waters as wildlife habitat.

(6) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve lands and waters as wildlife habitat; or

(ii) Provide public access for hunting or other wildlife-oriented recreation.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

(7) Operate or maintain:

(i) Projects that the State fish and wildlife agency completed under the Pittman-Robertson Wildlife Restoration Act; or

(ii) Facilities that the agency acquired or constructed with funds other than those authorized under the Pittman-Robertson Wildlife Restoration Act if these facilities are necessary to carry out activities authorized by the Pittman-Robertson Wildlife Restoration Act.

(8) Coordinate grants in the Wildlife Restoration program and related programs and subprograms.

(9) Provide technical assistance.

(10) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(b) *Wildlife Restoration—Basic Hunter Education and Safety subprogram.*

(1) Teach the skills, knowledge, and attitudes necessary to be a responsible hunter.

(2) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

(3) Construct, operate, or maintain firearm and archery ranges for public use.

(c) *Enhanced Hunter Education and Safety program.*

(1) Enhance programs for hunter education, hunter development, and firearm and archery safety. Hunter-development programs introduce individuals to and recruit them to take part in hunting, bow hunting, target shooting, or archery.

(2) Enhance interstate coordination of hunter-education and firearm- and archery-range programs.

(3) Enhance programs for education, safety, or development of bow hunters, archers, and shooters.

(4) Enhance construction and development of firearm and archery ranges.

(5) Update safety features of firearm and archery ranges.

(6) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

[76 FR 46156, Aug. 1, 2011, as amended at 84 FR 44786, Aug. 27, 2019]

§ 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

The following activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act:

(a) *Sport Fish Restoration program.*

(1) Restore and manage sport fish for the benefit of the public.

(2) Conduct research on the problems of managing fish and their habitat and the problems of fish culture if necessary to administer sport fish resources efficiently.

(3) Obtain data to guide and direct the regulation of fishing. These data may be on:

(i) Size and geographic range of sport fish populations;

(ii) Changes in sport fish populations due to fishing, other human activities, or natural causes; and

(iii) Effects of any measures or regulations applied.

(4) Develop and adopt plans to restock sport fish and forage fish in the natural areas or districts covered by the plans; and obtain data to develop, carry out, and test the effectiveness of the plans.

(5) Stock fish for recreational purposes.

(6) Acquire real property suitable or capable of being made suitable for:

(i) Sport fish habitat or as a buffer to protect that habitat; or

(ii) Public access for sport fishing. Closures to sport fishing must be based on the recommendations of the State fish and wildlife agency for fish and wildlife management purposes.

(7) Restore, rehabilitate, improve, or manage:

(i) Aquatic areas adaptable for sport fish habitat; or

(ii) Land adaptable as a buffer to protect sport fish habitat.

(8) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve aquatic habitat for sport fish, or land as a buffer to protect aquatic habitat for sport fish; or

(ii) Provide public access for sport fishing.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

(9) Construct, renovate, operate, or maintain pumpout and dump stations. A pumpout station is a facility that pumps or receives sewage from a type III marine sanitation device that the U.S. Coast Guard requires on some vessels. A dump station, also referred to as a "waste reception facility," is specifically designed to receive waste from portable toilets on vessels.

(10) Operate or maintain:

(i) Projects that the State fish and wildlife agency completed under the Dingell-Johnson Sport Fish Restoration Act; or

(ii) Facilities that the agency acquired or constructed with funds other than those authorized by the Dingell-Johnson Sport Fish Restoration Act if these facilities are necessary to carry out activities authorized by the Act.

(11) Coordinate grants in the Sport Fish Restoration program and related programs and subprograms.

(12) Provide technical assistance.

(13) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(b) *Sport Fish Restoration—Recreational Boating Access subprogram.*

(1) Acquire land for new facilities, build new facilities, or acquire, renovate, or improve existing facilities to create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. A broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters. "Facilities" includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(2) Conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(c) ***Sport Fish Restoration—Aquatic Resource Education subprogram.*** Enhance the public's understanding of water resources, aquatic life forms, and sport fishing, and develop responsible attitudes and ethics toward the aquatic environment.

(d) ***Sport Fish Restoration—Outreach and Communications subprogram.***

(1) Improve communications with anglers, boaters, and the general public on sport fishing and boating opportunities.

(2) Increase participation in sport fishing and boating.

(3) Advance the adoption of sound fishing and boating practices including safety.

(4) Promote conservation and responsible use of the aquatic resources of the United States.

[76 FR 46156, Aug. 1, 2011, as amended at 84 FR 44786, Aug. 27, 2019]

§ 80.52 May an activity be eligible for funding if it is not explicitly eligible in this part?

An activity may be eligible for funding even if this part does not explicitly designate it as an eligible activity if:

(a) The State fish and wildlife agency justifies in the project statement how the activity will help carry out the purposes of the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act; and

(b) The Regional Director concurs with the justification.

§ 80.53 Are costs of State central services eligible for funding?

Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency are eligible for funding under the Acts and must follow an approved cost allocation plan. These expenses must not exceed 3 percent of the funds apportioned annually to the State under the Acts.

§ 80.54 What activities are ineligible for funding?

The following activities are ineligible for funding under the Acts, except when necessary to carry out project purposes approved by the Regional Director:

(a) Law enforcement activities.

(b) Public relations activities to promote the State fish and wildlife agency, other State administrative units, or the State.

(c) Activities conducted for the primary purpose of producing income.

(d) Activities, projects, or programs that promote or encourage opposition to the regulated taking of fish, hunting, or the trapping of wildlife.

§ 80.55 May an agency receive a grant to carry out part of a larger project?

A State fish and wildlife agency may receive a grant to carry out part of a larger project that uses funds unrelated to the grant. The grant-funded part of the larger project must:

(a) Result in an identifiable outcome consistent with the purposes of the grant program;

(b) Be substantial in character and design;

(c) Meet the requirements of §§ 80.130 through 80.136 for any real property acquired under the grant and any capital improvements completed under the grant; and

(d) Meet all other requirements of the grant program.

§ 80.56 How does a proposed project qualify as substantial in character and design?

A proposed project qualifies as substantial in character and design if it:

(a) Describes a need consistent with the Acts;

(b) States a purpose and sets objectives, both of which are based on the need;

(c) Uses a planned approach, appropriate procedures, and accepted principles of fish and wildlife conservation and management, research, or education; and

(d) Is cost effective.

Subpart F—Allocation of Funds by an Agency

§ 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

The relationship between the Basic Hunter Education and Safety subprogram (Basic Hunter Education) and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) is in table 1 to § 80.60:

Table 1 to § 80.60

	Basic Hunter Education funds	Enhanced Hunter Education funds
(a) Which activities are eligible for funding?	Those listed at § 80.50(a) and (b)	Those listed at 80.50(c), but see 80.60(d) under Basic Hunter Education funds.
(b) How long are funds	Two Federal fiscal years	One Federal fiscal year.

	Basic Hunter Education funds	Enhanced Hunter Education funds
available for obligation?		
(c) What if funds are not fully obligated during the period of availability?	The Service may use unobligated funds to carry out the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*).	The Service reapportions unobligated funds to eligible States as Wildlife Restoration funds for the following fiscal year. States are eligible to receive funds only if their Basic Hunter Education funds were fully obligated in the preceding fiscal year for activities at § 80.50(b).
(d) What if funds are fully obligated during the period of availability?	If Basic Hunter Education funds are fully obligated for activities listed at 80.50(b), the agency may use that fiscal year's Enhanced Hunter Education funds for eligible activities related to Basic Hunter Education, Enhanced Hunter Education, or the Wildlife Restoration program.	No special provisions apply.

[76 FR 46156, Aug. 1, 2011, as amended at 84 FR 44787, Aug. 27, 2019]

§ 80.61 What requirements apply to funds for the Recreational Boating Access subprogram?

The requirements of this section apply to allocating and obligating funds for the Recreational Boating Access subprogram.

(a) A State fish and wildlife agency must allocate funds from each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for use in the subprogram.

(b) Over each 5-year period, the total allocation for the subprogram in each of the Service's geographic regions must average at least 15 percent of the Sport Fish Restoration funds apportioned to the States in that Region. As long as this requirement is met, an individual State agency may allocate more or less than 15 percent of its annual apportionment in a single Federal fiscal year with the Regional Director's approval.

(c) The Regional Director calculates Regional allocation averages for separate 5-year periods that coincide with Federal fiscal years 2008-2012, 2013-2017, 2018-2022, and each subsequent 5-year period.

(d) If the total Regional allocation for a 5-year period is less than 15 percent, the State agencies may, in a memorandum of understanding, agree among themselves which of them will make the additional allocations to eliminate the Regional shortfall.

(e) This paragraph applies if State fish and wildlife agencies do not agree on which of them will make additional allocations to bring the average Regional allocation to at least 15 percent over a 5-year period. If the agencies do not agree:

(1) The Regional Director may require States in the Region to make changes needed to achieve the minimum 15-percent Regional average before the end of the fifth year; and

(2) The Regional Director must not require a State to increase or decrease its allocation if the State has allocated at least 15 percent over the 5-year period.

(f) A Federal obligation of these allocated funds must occur by the end of the fourth consecutive Federal fiscal year after the Federal fiscal year in which the funds first became available for allocation.

(g) If the agency's application to use these funds has not led to a Federal obligation by that time, these allocated funds become available for reapportionment among the State fish and wildlife agencies for the following fiscal year.

§ 80.62 What limitations apply to spending on the Aquatic Resource Education and the Outreach and Communications subprograms?

The limitations in this section apply to State fish and wildlife agency spending on the Aquatic Resource Education and Outreach and Communications subprograms.

(a) Each State's fish and wildlife agency may spend a maximum of 15 percent of the annual amount apportioned to the State from the Sport Fish Restoration and Boating Trust Fund for activities in both subprograms. The 15-percent maximum applies to both subprograms as if they were one.

(b) The 15-percent maximum for the subprograms does not apply to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. These jurisdictions may spend more than 15 percent of their annual apportionments for both subprograms with the approval of the Regional Director.

§ 80.63 Does an agency have to allocate costs in multipurpose projects and facilities?

Yes. A State fish and wildlife agency must allocate costs in multipurpose projects and facilities. A grant-funded project or facility is multipurpose if it carries out the purposes of:

(a) A single grant program under the Acts; and

(b) Another grant program under the Acts, a grant program not under the Acts, or an activity unrelated to grants.

§ 80.64 How does an agency allocate costs in multipurpose projects and facilities?

A State fish and wildlife agency must allocate costs in multipurpose projects based on the uses or benefits for each purpose that will result from the completed project or facility. The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the grant application.

§ 80.65 Does an agency have to allocate funds between marine and freshwater fisheries projects?

Yes. Each coastal State's fish and wildlife agency must equitably allocate the funds apportioned under the Dingell-Johnson Sport Fish Restoration Act between projects with benefits for marine fisheries and projects with benefits for freshwater fisheries.

(a) The subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act do not have to allocate funding in the same manner as long as the State fish and wildlife agency equitably allocates Dingell-Johnson Sport Fish Restoration funds as a whole between marine and freshwater fisheries.

(b) The coastal States for purposes of this allocation are:

(1) Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington;

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(3) The territories of Guam, the U.S. Virgin Islands, and American Samoa.

§ 80.66 What requirements apply to allocation of funds between marine and freshwater fisheries projects?

The requirements of this section apply to allocation of funds between marine and freshwater fisheries projects.

(a) When a State fish and wildlife agency allocates and obligates funds it must meet the following requirements:

(1) The ratio of total funds obligated for marine fisheries projects to total funds obligated for marine and freshwater fisheries projects combined must equal the ratio of resident marine anglers to the total number of resident anglers in the State; and

(2) The ratio of total funds obligated for freshwater fisheries projects to total funds obligated for marine and freshwater fisheries projects combined must equal the ratio of resident freshwater anglers to the total number of resident anglers in the State.

(b) A resident angler is one who fishes for recreational purposes in the same State where he or she maintains legal residence.

(c) Agencies must determine the relative distribution of resident anglers in the State between those that fish in marine environments and those that fish in freshwater environments. Agencies must use the National Survey of Fishing, Hunting, and Wildlife-associated Recreation or another statistically reliable survey or technique approved by the Regional Director for this purpose.

(d) If an agency uses statistical sampling to determine the relative distribution of resident anglers in the State between those that fish in marine environments and those that fish in freshwater environments, the sampling must be complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of sportfishing license holders.

(e) The amounts allocated from each year's apportionment do not necessarily have to result in an equitable allocation for each year. However, the amounts allocated over a variable period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(f) Agencies that fail to allocate funds equitably between marine and freshwater fisheries projects may become ineligible to use Sport Fish Restoration program funds. These agencies must remain ineligible until they demonstrate to the Director that they have allocated the funds equitably.

§ 80.67 May an agency finance an activity from more than one annual apportionment?

A State fish and wildlife agency may use funds from more than one annual apportionment to finance high-cost projects, such as construction or acquisition of lands or interests in lands, including water rights. An agency may do this in either of the following ways:

(a) Finance the entire cost of the acquisition or construction from a non-Federal funding source. The Service will reimburse funds to the agency in succeeding apportionment years according to a plan approved by the Regional Director and subject to the availability of funds.

(b) Negotiate an installment purchase or contract in which the agency pays periodic and specified amounts to the seller or contractor according to a plan that schedules either reimbursements or advances of funds immediately before need. The Service will reimburse or advance funds to the agency according to a plan approved by the Regional Director and subject to the availability of funds.

§ 80.68 What requirements apply to financing an activity from more than one annual apportionment?

The following conditions apply to financing an activity from more than one annual apportionment:

(a) A State fish and wildlife agency must agree to complete the project even if Federal funds are not available. If an agency does not complete the project, it must recover any expended Federal funds that did not result in commensurate wildlife or sport-fishery benefits. The agency must then reallocate the recovered funds to approved projects in the same program.

(b) The project statement included with the application must have a complete schedule of payments to finish the project.

(c) Interest and other financing costs may be allowable subject to the restrictions in the applicable Federal Cost Principles.

Subpart G—Application for a Grant

§ 80.80 How does an agency apply for a grant?

(a) An agency applies for a grant by sending the Regional Director:

(1) Completed standard forms that are:

(i) Approved by the Office of Management and Budget for the grant application process; and

(ii) Available on the Federal Web site for electronic grant applications at *http://www.grants.gov;* and

(2) Information required for a comprehensive-management-system grant or a project-by-project grant.

(b) The director of the State fish and wildlife agency or his or her designee must sign all standard forms submitted in the application process.

(c) The agency must send copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact before sending it to the Regional Director if the State supports this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 80.81 What must an agency submit when applying for a comprehensive-management-system grant?

A State fish and wildlife agency must submit the following documents when applying for a comprehensive-management-system grant:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) The standard forms for assurances for nonconstruction programs and construction programs as applicable. Agencies may submit these standard forms for assurances annually to the Regional Director for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(c) A statement of cost estimates by subaccount. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(d) Supporting documentation explaining how the proposed work complies with the Acts, the provisions of this part, and other applicable laws and regulations.

(e) A statement of the agency's intent to carry out and fund part or all of its comprehensive management system through a grant.

(f) A description of the agency's comprehensive management system including inventory, strategic plan, operational plan, and evaluation. “Inventory” refers to the process or processes that an agency uses to:

(1) Determine actual, projected, and desired resource and asset status; and

(2) Identify management problems, issues, needs, and opportunities.

(g) A description of the State fish and wildlife agency program covered by the comprehensive management system.

(h) Contact information for the State fish and wildlife agency employee who is directly responsible for the integrity and operation of the comprehensive management system.

(i) A description of how the public can take part in decisionmaking for the comprehensive management system.

§ 80.82 What must an agency submit when applying for a project-by-project grant?

A State fish and wildlife agency must submit the following documents when applying for a project-by-project grant:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) The standard forms for assurances for nonconstruction programs and construction programs as applicable. Agencies may submit these standard forms for assurances annually to the Regional Director for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(c) A project statement that describes each proposed project and provides the following information:

(1) ***Need.*** Explain why the project is necessary and how it fulfills the purposes of the relevant Act.

(2) ***Purpose.*** State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) ***Objectives.*** State the objectives and base them on the need. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

(4) ***Results or benefits expected.***

(5) ***Approach.*** Describe the methods used to achieve the stated objectives.

(6) ***Useful life.*** Propose a useful life for each capital improvement, and reference the method used to determine the useful life of a capital improvement with a value greater than $100,000.

(7) ***Geographic location.***

(8) ***Principal investigator for research projects.*** Record the principal investigator's name, work address, and work telephone number.

(9) ***Program income.***

(i) Estimate the amount of program income that the project is likely to generate.

(ii) Indicate the method or combination of methods (deduction, addition, or matching) of applying program income to Federal and non-Federal outlays.

(iii) Request the Regional Director's approval for the additive or matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as match.

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as either license revenue or additional funding for purposes consistent with the grant terms and conditions or program regulations.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(10) ***Budget narrative.***

(i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements or expenditures, real property acquisitions, or equipment purchases.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

(11) ***Multipurpose projects.*** Describe the method for allocating costs in multipurpose projects and facilities as described in §§ 80.63 and 80.64.

(12) ***Relationship with other grants.*** Describe any relationship between this project and other work funded by Federal grants that is planned, anticipated, or underway.

(13) ***Timeline.*** Describe significant milestones in completing the project and any accomplishments to date.

(14) ***General.*** Provide information in the project statement that:

(i) Shows that the proposed activities are eligible for funding and substantial in character and design; and

(ii) Enables the Service to comply with the applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and 4331-4347), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470s), and other laws, regulations, and policies.

[76 FR 46156, Aug. 1, 2011, as amended at 84 FR 44787, Aug. 27, 2019]

§ 80.83 What is the Federal share of allowable costs?

(a) The Regional Director must provide at least 10 percent and no more than 75 percent of the allowable costs of a grant-funded project to the fish and wildlife agencies of the 50 States. The Regional Director generally approves any Federal share from 10 to 75 percent as proposed by one of the 50 States if the:

(1) Funds are available; and

(2) Application is complete and consistent with laws, regulations, and policies.

(b) The Regional Director may provide funds to the District of Columbia to pay 75 to 100 percent of the allowable costs of a grant-funded project in a program or subprogram authorized by the Dingell-Johnson Sport Fish Restoration Act. The Regional Director decides on the specific Federal share between 75 and 100 percent based on what he or she decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the District of Columbia voluntarily provides match to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless he or she follows the procedure at paragraph (d) of this section.

(c) The Regional Director may provide funds to pay 75 to 100 percent of the allowable costs of a project funded by a grant to a fish and wildlife agency of the Commonwealths of Puerto Rico and the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. The Regional Director decides on the specific Federal share between 75 and 100 percent based on what he or she decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the Commonwealth or territorial fish and wildlife agency voluntarily provides match to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless he or she follows the procedure at paragraph (d) of this section. The Federal share of allowable costs for a grant-funded project for the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa may be affected by the waiver process described at § 80.84(c).

(d) The Regional Director may waive the 10-percent minimum Federal share of allowable costs if the State, District of Columbia, Commonwealth, or territory requests a waiver and provides compelling reasons to justify why it is necessary for the Federal government to fund less than 10 percent of the allowable costs of a project.

§ 80.84 How does the Service establish the non-Federal share of allowable costs?

(a) To establish the non-Federal share of a grant-funded project for the 50 States, the Regional Director approves an application for Federal assistance in which the State fish and wildlife agency proposes the specific non-Federal share by estimating the Federal and match dollars, consistent with § 80.83(a).

(b) To establish the non-Federal share of a grant-funded project for the District of Columbia and the Commonwealth of Puerto Rico, the Regional Director:

(1) Decides which percentage is fair, just, and equitable for the Federal share consistent with § 80.83(b) through (d);

(2) Subtracts the Federal share percentage from 100 percent to determine the percentage of non-Federal share; and

(3) Applies the percentage of non-Federal share to the allowable costs of a grant-funded project to determine the match requirement.

(c) To establish the non-Federal share of a grant-funded project for the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa, the Regional Director must first calculate a preliminary percentage of non-Federal share in the same manner as described in paragraph (b) of this section. Following 48 U.S.C. 1469a, the Regional Director must then waive the first $200,000 of match to establish the final non-Federal match requirement for a project that includes funding from only one grant program or subprogram. If a project includes funds from more than one grant program or subprogram, the Regional Director must waive the first $200,000 of match applied to the funds for each program and subprogram.

§ 80.85 What requirements apply to match?

The requirements that apply to match include:

(a) Match may be in the form of cash or in-kind contributions.

(b) Unless authorized by Federal law, the State fish and wildlife agency or any other entity must not:

(1) Use as match Federal funds or the value of an in-kind contribution acquired with Federal funds; or

(2) Use the cost or value of an in-kind contribution to satisfy a match requirement if the cost or value has been or will be used to satisfy a match requirement of another Federal grant, cooperative agreement, or contract.

(c) The agency must fulfill match requirements at the:

(1) Grant level if the grant has funds from a single subaccount; or

(2) Subaccount level if the grant has funds from more than one subaccount.

Subpart H—General Grant Administration

§ 80.90 What are the grantee's responsibilities?

A State fish and wildlife agency as a grantee is responsible for all of the actions required by this section.

(a) Compliance with all applicable Federal, State, and local laws and regulations.

(b) Supervision to ensure that the work follows the terms of the grant, including:

(1) Proper and effective use of funds;

(2) Maintenance of records;

(3) Submission of complete and accurate Federal financial reports and performance reports by the due dates in the terms and conditions of the grant; and

(4) Regular inspection and monitoring of work in progress.

(c) Selection and supervision of personnel to ensure that:

(1) Adequate and competent personnel are available to complete the grant-funded work on schedule; and

(2) Project personnel meet time schedules, accomplish the proposed work, meet objectives, and submit the required reports.

(d) Settlement of all procurement-related contractual and administrative issues.

(e) Giving reasonable access to work sites and records by employees and contractual auditors of the Service, the Department of the Interior, and the Comptroller General of the United States.

(1) Access is for the purpose of:

(i) Monitoring progress, conducting audits, or other reviews of grant-funded projects; and

(ii) Monitoring the use of license revenue.

(2) Regulations on the uniform administrative requirements for grants awarded by the Department of the Interior describe the records that are subject to these access requirements.

(3) The closeout of an award does not affect the grantee's responsibilities described in this section.

(f) Control of all assets acquired under the grant to ensure that they serve the purpose for which acquired throughout their useful life.

§ 80.91 What is a Federal obligation of funds and how does it occur?

An obligation of funds is a legal liability to disburse funds immediately or at a later date as a result of a series of actions. All of these actions must occur to obligate funds for the formula-based grant programs authorized by the Acts:

(a) The Service sends an annual certificate of apportionment to a State fish and wildlife agency, which tells the agency how much funding is available according to formulas in the Acts.

(b) The agency sends the Regional Director an application for Federal assistance to use the funds available to it under the Acts and commits to provide the required match to carry out projects that are substantial in character and design.

(c) The Regional Director notifies the agency that he or she approves the application for Federal assistance and states the terms and conditions of the grant.

(d) The agency accepts the terms and conditions of the grant in one of the following ways:

(1) Starts work on the grant-funded project by placing an order, entering into a contract, awarding a subgrant, receiving goods or services, or otherwise incurring allowable costs during the grant period that will require payment immediately or in the future;

(2) Draws down funds for an allowable activity under the grant; or

(3) Sends the Regional Director a letter, fax, or e-mail accepting the terms and conditions of the grant.

§ 80.92 How long are funds available for a Federal obligation?

Funds are available for a Federal obligation during the fiscal year for which they are apportioned and until the close of the following fiscal year except for funds in the Enhanced Hunter Education and Safety program and the Recreational Boating Access subprogram. See §§ 80.60 and 80.61 for the length of time that funds are available in this program and subprogram.

§ 80.93 When may an agency incur costs under a grant?

A State fish and wildlife agency may incur costs under a grant from the effective date of the grant period to the end of the grant period except for preaward costs that meet the conditions in § 80.94.

§ 80.94 May an agency incur costs before the beginning of the grant period?

(a) A State fish and wildlife agency may incur costs of a proposed project before the beginning of the grant period (preaward costs). However, the agency has no assurance that it will receive reimbursement until the Regional Director awards a grant that incorporates a project statement demonstrating that the preaward costs conform to all of the conditions in paragraph (b) of this section.

(b) Preaward costs must meet the following requirements:

(1) The costs are necessary and reasonable for accomplishing the grant objectives.

(2) The Regional Director would have approved the costs if the State fish and wildlife agency incurred them during the grant period.

(3) The agency incurs these costs in anticipation of the grant and in conformity with the negotiation of the award with the Regional Director.

(4) The activities associated with the preaward costs comply with all laws, regulations, and policies applicable to a grant-funded project.

(5) The agency must:

(i) Obtain the Regional Director's concurrence that the Service will be able to comply with the applicable laws, regulations, and policies before the agency starts work on the ground; and

(ii) Provide the Service with all the information it needs with enough lead time for it to comply with the applicable laws, regulations, and policies.

(6) The agency must not complete the project before the beginning of the grant period unless the Regional Director concurs that doing so is necessary to take advantage of temporary circumstances favorable to the project or to meet legal deadlines. An agency completes a project when it incurs all costs and finishes all work necessary to achieve the project objectives.

(c) The agency can receive reimbursement for preaward costs only after the beginning of the grant period.

§ 80.95 How does an agency receive Federal grant funds?

(a) A State fish and wildlife agency may receive Federal grant funds through either:

(1) A request for reimbursement; or

(2) A request for an advance of funds if the agency maintains or demonstrates that it will maintain procedures to minimize time between transfer of funds and disbursement by the agency or its subgrantee.

(b) An agency must use the following procedures to receive a reimbursement or an advance of funds:

(1) Request funds through an electronic payment system designated by the Regional Director; or

(2) Request funds on a standard form for that purpose only if the agency is unable to use the electronic payment system.

(c) The Regional Director will reimburse or advance funds only to the office or official designated by the agency and authorized by State law to receive public funds for the State.

(d) All payments are subject to final determination of allowability based on audit or a Service review. The State fish and wildlife agency must repay any overpayment as directed by the Regional Director.

(e) The Regional Director may withhold payments pending receipt of all required reports or documentation for the project.

§ 80.96 May an agency use Federal funds without using match?

(a) The State fish and wildlife agency must not draw down any Federal funds for a grant-funded project under the Acts in greater proportion to the use of match than total Federal funds bear to total match unless:

(1) The grantee draws down Federal grant funds to pay for construction, including land acquisition;

(2) An in-kind contribution of match is not yet available for delivery to the grantee or subgrantee; or

(3) The project is not at the point where it can accommodate an in-kind contribution.

(b) If an agency draws down Federal funds in greater proportion to the use of match than total Federal funds bear to total match under the conditions described at paragraphs (a)(1) through (a)(3) of this section, the agency must:

(1) Obtain the Regional Director's prior approval, and

(2) Satisfy the project's match requirement before it submits the final Federal financial report.

§ 80.97 May an agency barter goods or services to carry out a grant-funded project?

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the cost principles at 2 CFR part 200.

[84 FR 44787, Aug. 27, 2019]

§ 80.98 How must an agency report barter transactions?

(a) A State fish and wildlife agency must follow the requirements in table 1 to § 80.98(a) when reporting barter transactions in the Federal financial report:

Table 1 to § 80.98(a)

(a) A State fish and wildlife agency must follow the requirements in the following table when reporting barter transactions in the Federal financial report:

If * * *	Then the agency * * *
(1) The goods or services exchanged have the same market value,	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and state what was bartered in the Remarks section of the report.
(2) The market value of the goods or services relinquished exceeds the market value of the goods and services received,	Must report the difference in market value as grant expenses in the Federal financial report.
(3) The market value of the goods or services received exceeds the market value of the goods and services relinquished,	Must report the difference in market value as program income in the Federal financial report.
(4) The barter transaction was part of a cooperative farming or grazing arrangement meeting the requirements in paragraph (b) of this section,	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and identify what was bartered in the Remarks section of the Federal financial report.

(b) For purposes of paragraph (a)(4) of this section, cooperative farming or grazing is an arrangement in which an agency:

(1) Allows an agricultural producer to farm or graze livestock on land under the agency's control; and

(2) Designs the farming or grazing to advance the agency's fish and wildlife management objectives.

[76 FR 46156, Aug. 1, 2011, as amended at 84 FR 44786, Aug. 27, 2019]

§ 80.99 Are symbols available to identify projects?

Yes. The following distinctive symbols are available to identify projects funded by the Acts and products on which taxes and duties have been collected to support the Acts:

(a) The symbol of the Pittman-Robertson Wildlife Restoration Act follows:

(b) The symbol of the Dingell-Johnson Sport Fish Restoration Act follows:

(c) The symbol of the Acts when used in combination follows:

[76 FR 46156, Aug. 1, 2011, as amended at 79 FR 54668, Sept. 12, 2014]

§ 80.100 Does an agency have to display one of the symbols in this part on a completed project?

No. A State fish and wildlife agency does not have to display one of the symbols in § 80.99 on a project completed under the Acts. However, the Service encourages agencies to display the appropriate symbol following these requirements or guidelines:

(a) An agency may display the appropriate symbol(s) on:

(1) Areas such as wildlife-management areas, shooting ranges, and sportfishing and boating-access facilities that were acquired, developed, operated, or maintained with funds authorized by the Acts; and

(2) Printed or Web-based material or other visual representations of project accomplishments.

(b) An agency may require a subgrantee to display the appropriate symbol or symbols in the places described in paragraph (a) of this section.

(c) The Director or Regional Director may authorize an agency to use the symbols in a manner other than as described in paragraph (a) of this section.

(d) The Director or Regional Director may authorize other persons, organizations, agencies, or governments to use the symbols for purposes related to the Acts by entering into a written agreement with the user. An applicant must state how it intends to use the symbol(s), to what it will attach the symbol(s), and the relationship to the specific Act.

(e) The user of the symbol(s) must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(1) Any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the symbol(s), or any other alleged action of the user; and

(2) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).

(f) The appearance of the symbol(s) on projects or products indicates that the manufacturer of the product pays excise taxes in support of the respective Act(s), and that the project was funded under the respective Act(s) (26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504). The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability, or safety of any product, service, or project associated with the symbol(s).

(g) No one may use any of the symbols in any other manner unless the Director or Regional Director authorizes it. Unauthorized use of the symbol(s) is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

Subpart I—Program Income

§ 80.120 What is program income?

(a) Program income is gross income received by the grantee or subgrantee and earned only as a result of the grant during the grant period. Upon request from the State agency and approval of the Service, the option at 2 CFR 200.307(b) may be allowed.

(b) Program income includes revenue from any of the following:

(1) Services performed under a grant.

(2) Use or rental of real or personal property acquired, constructed, or managed with grant funds.

(3) Payments by concessioners or contractors under an arrangement with the agency or subgrantee to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(4) Sale of items produced under a grant.

(5) Fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses.

(6) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant.

(7) Sale of a product of mining, drilling, forestry, or agriculture during the period of a grant that supports the:

(i) Mining, drilling, forestry, or agriculture; or

(ii) Acquisition of the land on which these activities occurred.

(c) Program income does not include any of the following:

(1) Interest on grant funds, rebates, credits, discounts, or refunds.

(2) Sales receipts retained by concessioners or contractors under an arrangement with the agency to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(3) Cash received by the agency or by volunteer instructors to cover incidental costs of a hunter education, aquatic education, or other classes. Incidental costs are small amounts and typically not essential to the training delivery. Materials purchased at cost by the student, separate from course fees, are incidental costs.

(4) Cooperative farming or grazing arrangements as described at § 80.98.

(5) Proceeds from the sale of real property, equipment, or supplies.

[84 FR 44787, Aug. 27, 2019]

§ 80.121 May an agency earn program income?

A State fish and wildlife agency may earn income from activities incidental to the grant purposes as long as producing income is not a primary purpose. The agency must account for income received from these activities in the project records and dispose of it according to the terms of the grant.

§ 80.122 May an agency deduct the costs of generating program income from gross income?

(a) A State fish and wildlife agency may deduct the costs of generating program income from gross income when it calculates program income as long as the agency does not:

(1) Pay these costs with:

(i) Federal or matching cash under a Federal grant; or

(ii) Federal cash unrelated to a grant.

(2) Cover these costs by accepting:

(i) Matching in-kind contributions for a Federal grant; or

(ii) Donations of services, personal property, or real property unrelated to a Federal grant.

(b) Examples of costs of generating program income that may qualify for deduction from gross income if they are consistent with paragraph (a) of this section are:

(1) Cost of estimating the amount of commercially acceptable timber in a forest and marking it for harvest if the commercial harvest is incidental to a grant-funded habitat-management or facilities-construction project.

(2) Cost of publishing research results as a pamphlet or book for sale if the publication is incidental to a grant-funded research project.

§ 80.123 How may an agency use program income?

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method or methods that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) Program income must be spent within the grant period and program in which it is earned and before requesting additional Federal funds for the activity for which the program income is earned.

(c) The three methods for applying program income to Federal and non-Federal outlays are in table 1 to § 80.123(c):

TABLE 1 TO § 80.123(c)

Method	Requirements for using method
(1) Deduction	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency may add the program income to the Federal and non-Federal funds under the grant. (iii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
(3) Cost	(i) The agency must request the Regional Director's approval in the project statement.

Method	Requirements for using method
sharing or matching	(ii) The agency must explain in the project statement the expected program income, how the agency proposes to use the program income to satisfy matching requirements, how the agency will use program income earned in excess of required match, and the primary conservation or recreation objective sufficient to show program income as a secondary benefit. (iii) If neither the agency's project statement nor the award indicates how program income in excess of matching requirements will be applied, the agency must use the deduction method.

[84 FR 44787, Aug. 27, 2019]

§ 80.124 How may an agency use unexpended program income?

A State fish and wildlife agency must spend program income before requesting additional payments under an award. If the agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income.

[84 FR 44788, Aug. 27, 2019]

§ 80.125 How must an agency treat income that it earns after the grant period?

(a) The State fish and wildlife agency must treat program income that it earns after the grant period as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the grant or the program.

(b) The agency must indicate its choice of one of the alternatives in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the grant period as license revenue.

§ 80.126 How must an agency treat income earned by a subgrantee after the grant period?

(a) The State fish and wildlife agency must treat income earned by a subgrantee after the grant period as:

(1) License revenue for the administration of the agency;

(2) Additional funding for purposes consistent with the grant or the program; or

(3) Income subject only to the terms of the subgrant agreement and any subsequent contractual agreements between the agency and the subgrantee.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that it submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subgrantee does not have to account for any income that it earns after the grant period unless required to do so in the subgrant agreement or in any subsequent contractual agreement.

Subpart J—Real Property

§ 80.130 Does an agency have to hold title to real property acquired under a grant?

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

(a) Some States do not authorize their fish and wildlife agency to hold the title to real property that the agency manages. In these cases, the State or one of its administrative units may hold the title to grant-funded real property as long as the agency has the authority to manage the real property for its authorized purpose under the grant. The agency, the State, or another administrative unit of State government must not hold title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Ownership interests include fee and leasehold interests but not easements.

§ 80.131 Does an agency have to hold an easement acquired under a grant?

A State fish and wildlife agency must hold an easement acquired under a grant, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share holding or enforcement of an easement only in the following situations:

(1) The State or another administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may subgrant the concurrent right to hold the easement to a nonprofit organization or to a local or tribal government. A concurrent right to hold an easement means that both the State agency and the subgrantee hold the easement and share its rights and responsibilities.

(3) The agency may subgrant a right of enforcement to a nonprofit organization or to a local or tribal government. This right of enforcement may allow the subgrantee to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subgrantee's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

§ 80.132 Does an agency have to control the land or water where it completes capital improvements?

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

§ 80.133 Does an agency have to maintain acquired or completed capital improvements?

Yes. A State fish and wildlife agency is responsible for maintaining capital improvements acquired or completed under a grant to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

§ 80.134 How must an agency use real property?

(a) If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant.

(b) If a grant funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the grant during the useful life of the capital improvement. The agency must do this even if it did not use grant funds to:

(1) Acquire the parcel on which the capital improvement is located; or

(2) Build the structure in which the capital improvement is a component.

(c) If a grant funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use it for the purpose authorized in the grant during the grant period. The agency must do this even if it did not acquire the parcel or construct the capital improvement with grant funds.

(d) A State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the grant.

§ 80.135 What if an agency allows a use of real property that interferes with its authorized purpose?

(a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose.

(b) If the agency cannot fully restore the real property to its authorized purpose, it must replace the real property using non-Federal funds.

(c) The agency must determine that the replacement property:

(1) Is of at least equal value at current market prices; and

(2) Has fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.

(e) The agency must obtain the Regional Director's approval of:

(1) Its determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new grants in the program or programs that funded the original acquisition.

§ 80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?

If a State fish and wildlife agency does not use grant-acquired real property for its authorized purpose, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as match for the grant; and

(b) The unauthorized use is for a purpose other than management of the fish- and wildlife-related resources for which the agency has authority under State law.

§ 80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that real property acquired with grant funds is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Follow the regulations at 2 CFR 200.311 and consult with the Regional Director on how to treat proceeds from the disposition of real property.

[84 FR 44788, Aug. 27, 2019]

Subpart K—Revisions and Appeals

§ 80.150 How does an agency ask for revision of a grant?

(a) A State fish and wildlife agency must ask for revision of a project or grant by sending the Service the following documents:

(1) The standard form approved by the Office of Management and Budget as an application for Federal assistance. The agency may use this form to update or request a change in the information that it submitted in an approved application. The director of the agency or his or her designee must sign this form.

(2) A statement attached to the application for Federal assistance that explains:

(i) How the requested revision would affect the information that the agency submitted with the original grant application; and

(ii) Why the requested revision is necessary.

(b) An agency must send any requested revision of the purpose or objectives of a project or grant to the State Clearinghouse or Single Point of Contact if the State maintains this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 80.151 May an agency appeal a decision?

An agency may appeal the Director's or Regional Director's decision on any matter subject to this part.

(a) The State fish and wildlife agency must send the appeal to the Director within 30 days of the date that the Director or Regional Director mails or otherwise informs an agency of a decision.

(b) The agency may appeal the Director's decision under paragraph (a) of this section to the Secretary within 30 days of the date that the Director mailed the decision. An appeal to the Secretary must follow procedures in 43 CFR part 4, subpart G, "Special Rules Applicable to other Appeals and Hearings."

Subpart L—Information Collection

§ 80.160 What are the information collection requirements of this part?

(a) This part requires each State fish and wildlife agency to provide the following information to the Service. The State agency must:

(1) Certify the number of people who have paid licenses to hunt and the number of people who have paid licenses to fish in a State during the State-specified certification period (OMB control number 1018-0007).

(2) Provide information for a grant application on a Governmentwide standard form (OMB control number 4040-0002).

(3) Certify on a Governmentwide standard form that it:

(i) Has the authority to apply for the grant;

(ii) Has the capability to complete the project; and

(iii) Will comply with the laws, regulations, and policies applicable to nonconstruction projects, construction projects, or both (OMB control numbers 4040-0007 and 4040-0009).

(4) Provide a project statement that describes the need, purpose and objectives, results or benefits expected, approach, geographic location, explanation of costs, and other information that demonstrates that the project is eligible under the Acts and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB Control Number 1018-0100).

(5) Change or update information provided to the Service in a previously approved application (OMB Control Number 1018-0100).

(6) Report on a Governmentwide standard form on the status of Federal grant funds and any program income earned (OMB control number 0348-0061).

(7) Report as a grantee on progress in completing the grant-funded project (OMB Control Number 1018-0100).

(b) The authorizations for information collection under this part are in the Acts and in 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 5275 Leesburg Pike, MS: BPHC, Falls Church, Virginia 22041-3803.

[76 FR 46156, Aug. 1, 2011, as amended at 79 FR 43967, July 29, 2014, 84 FR 44788, Aug. 27, 2019]

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I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

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Denise Gale Fjordbeck, AAG
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301
(971) 673-1880
denise.fjordbeck@doj.oregon.gov

Attorney for Defendants-Appellees Laura Jackson, Craig Withee, Dax Messett, Jorge Guzman, and Steven Lambert

Description of Document(s) (required for all documents):

APPELLANTS' OPENING BRIEF

Signature /s/ Jill O. Gibson Date: April 3, 2025