

imports and exports justify the proposed designation of the port of Anchorage. This change will improve service to international mail carriers, small businesses, and the public while maintaining effective regulation of U.S. wildlife trade.

### Notice of Public Hearing

Section 9(f) of the Endangered Species Act, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service has scheduled a public hearing for September 17, 2001, from 6 PM to 8 PM. The hearing will be held at the U.S. Fish and Wildlife Service conference room located at 1011 East Tudor Road, Room 157, Anchorage, Alaska, 99503, (907) 786-3311. All interested persons wishing to present oral or written comments at this hearing should request approval in writing by August 30, 2001. The address for requesting approval is: Assistant Regional Director for Law Enforcement, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Room 155, Anchorage, Alaska 99503. If they desire, persons requesting approval may submit a written copy of their proposed oral comments.

### Required Determinations

This rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action.

The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Service anticipates that the addition of the port of Anchorage to the list of Service designated ports for the importation and exportation of wildlife will have no adverse effect upon individual industries and cause no demographic changes in populations. In addition, the Service anticipates that this proposal will not increase direct costs for small entities and will have no effect upon information collection and record keeping requirements. In light of this analysis, the Service has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

This proposed rule has no private property takings implications as defined

in Executive Order 12630. The only effect of this rule will be to make it easier for businesses to import and export wildlife directly through Anchorage, Alaska.

This action does not contain any federalism impacts as described in Executive Order 13132.

This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The proposed changes in the regulations in part 14 are regulatory and enforcement actions covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Department Manual, Chapter 2, Appendix 1.10.

The proposed changes have no environmental justice implications under Executive Order 12988.

A determination has been made under Section 7 of the Endangered Species Act that the proposed revision of Part 14 will not affect federally listed species.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule, as proposed, will not "significantly or uniquely" affect small governments.

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Act.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. Individual tribal members are subject to the same regulatory requirements as other individuals who engage in the import and export of wildlife.

### Author

The originator of this proposed rule is Special Agent Steve Oberholtzer, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

### List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and record keeping requirements, Transportation, Wildlife.

### Proposed Regulation Promulgation

For the reasons set out in the preamble, the Service proposes to amend Chapter I, subchapter B of Title 50 of the Code of Federal Regulations as set forth below.

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 continues to read as follows:

**Authority:** 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Amend § 14.12 by adding paragraph (n) to read as follows:

### § 14.12 Designated ports.

\* \* \* \* \*

(n) Anchorage, Alaska.

Dated: July 20, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–20870 Filed 8–17–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 84

### RIN 1018–AF51

### National Coastal Wetlands Conservation Grant Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule establishes the requirements for participation in the National Coastal Wetlands Conservation Grant Program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and provides guidance for the program's administration by the U.S. Fish and Wildlife Service (referred to as "Service" and "us" within this rule). It replaces interim procedures and clarifies guidance for preparation, submission, and evaluation of proposed projects and administration of funded projects.

**DATES:** Comments on this proposed rule must be submitted on or before October 4, 2001.

**ADDRESSES:** If you wish to comment, you may submit your comments by mail, hand delivery, fax, or email. To submit comments on the proposed rule for the grant Program:

(1) *Mail:* You may mail comments on the proposed rule to Sally Valdes-Cogliano, Division of Fish and Wildlife Management Assistance and Habitat Restoration, Fish and Wildlife Service, U.S. Department of the Interior, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(2) *Hand delivery*: You may hand-deliver comments to us at the above address.

(3) *Fax*: Fax comments to Sally Valdes-Cogliano, Division of Fish and Wildlife Management Assistance and Habitat Restoration, (703) 358-2232.

(4) *Email*: Please submit email comments to <sally\_valdescogliano@fws.gov>. Please include your name and return address in your email message. If you do not receive confirmation that we have received your email message, contact us directly at (703) 358-2201.

If you wish to comment on the information collection aspects of this proposed rule, please send your comments to the attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. A copy of these comments should also be sent to the Service.

**FOR FURTHER INFORMATION CONTACT:** Gary Reinitz, Division of Federal Aid, by telephone (703) 358-2159; fax (703) 358-1837; email gary\_reinitz@fws.gov or Sally Valdes-Cogliano, Division of Fish and Wildlife Management Assistance and Habitat Restoration, by telephone (703) 358-2201; fax (703) 358-2232; email sally\_valdescogliano@fws.gov.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

##### *What Is the National Coastal Wetlands Conservation Grant Program?*

The Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951-3956) authorizes the Director of the U.S. Fish and Wildlife Service to make matching grants to coastal States for acquisition, restoration, enhancement, management, and preservation of coastal wetlands. Grants are available annually on a competitive basis to coastal States. Funding for this program comes from the Sport Fish Restoration Account, which is supported by excise taxes on fishing equipment and motorboat and small engine fuels.

##### *Why Protect Coastal Wetlands?*

Coastal wetlands provide essential fish and wildlife habitat. Coastal ecosystems comprise less than 10 percent of the Nation's land area, but support a much higher proportion of our living resources. Specifically, coastal areas support a high percentage of our threatened and endangered species, fishery resources, migratory songbirds, and migrating and wintering waterfowl.

In addition to wildlife benefits, wetlands provide substantial flood and storm control values and can reduce the need to construct expensive flood control structures. They make an important contribution to water quality by recharging groundwater, filtering surface runoff, and treating waste, and they provide natural areas important for recreational and aesthetic purposes. Uplands associated with wetlands provide food and cover to wildlife and buffer wetlands from soil erosion and contaminants. In the coterminous United States, more than half of the estimated original 221 million acres of American wetlands have been destroyed since European settlement. The concentration of the U.S. population in coastal areas is a continuing source of development pressure on the remaining coastal wetlands.

##### *What Has the Program Accomplished?*

Since the Service began awarding grants in 1992, we have awarded about \$90 million to 25 States and 1 U.S. territory to protect and/or restore about 105,000 acres of coastal wetland ecosystems. The program's emphasis on encouraging partnerships, supporting watershed planning, and leveraging ongoing projects has helped stretch program funds. The resource benefits of this program have included habitat protection and restoration for migratory birds, shorebirds, waterfowl, endangered and threatened species, and fish and shellfish.

##### *Why Do We Need This Rule?*

The National Coastal Wetlands Conservation Grant Program is currently being administered using internal interim program guidance and the standard grant administration policies of our Federal Aid Program. We believe administration of the program could be improved through regulations specifically tailored to meet the needs of the program. Accordingly, the proposed rule uses a plain English style, provides examples to illustrate concepts, and combines current guidance in one place. It should result in a stream-lined proposal preparation and review and grant administration process.

Currently, grant requests received from the State agencies are evaluated on an annual schedule. In the last few years the number of proposals received annually by the National Office has ranged from 29 to 36. A review panel consisting of Service personnel representing the coastal Regions of the Service and specific program areas (for example, the Fish and Wildlife Management Assistance and Habitat Restoration, Endangered Species, and

Refuges Programs) review and rank all proposals. Based on the rankings of the panel, recommendations are sent to the Director of the Service. The basic schedule and procedures will not change significantly with the proposed rule.

The criteria for selecting proposals in this proposed rule have been modified from the interim guidance. For example, a new criterion has been added to give credit to projects that provide benefits to migratory birds. Also, we have expanded the discussion of each criterion to clarify project scoring. These proposed changes are based on comments provided by Service personnel who have reviewed National Coastal Wetlands Conservation Grant proposals. These criteria can be found in the rule portion of this document.

##### *What Are the Environmental Effects of This Regulation?*

This proposed rule is a regulation of an administrative and financial nature. Therefore, the action is categorically excluded under 516 DM 2, Appendix 1.10 from any environmental documentation pursuant to the National Environmental Policy Act (NEPA). However, subsequent actions involved with acquisition, restoration, or enhancement will require further compliance with NEPA on a case-by-case basis.

Compliance with NEPA and other environmental laws and Executive Orders such as the Endangered Species Act, Coastal Barrier Resources Act, Coastal Barrier Improvement Act, Coastal Zone Management Act, Executive Orders on Floodplains (E.O. 11988) and Wetlands (E.O. 11990), other applicable executive orders on historic/cultural resources, prime and unique farmlands, and the Clean Water Act will be satisfied before we approve grant agreements for any project.

##### *Does This Rule Have Any Information Collection Requirements?*

This rule's information collection requirements include those necessary to fulfill applicable requirements of 43 CFR part 12, and these have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*). This section of the Code of Federal Regulations provides the uniform administrative requirements for grants and cooperative agreements to States and local governments. The required forms include an application for Federal Assistance (Standard Form 424); assurances of compliance with Federal laws, regulations and policies (SF 424B or SF424D); a grant agreement

form, USFWS Form 3-1552 (OMB approval 1018-0049); an amendment to the grant agreement form, USFWS Form 1591 (OMB approval 1018-0049); a Federal Aid Grant Application Booklet (OMB approval 1018-0109), which was submitted to OMB for review and approval December 6, 2000 (see 65 FR 53737, September 15, 2000); and the NEPA Compliance Checklist, USFWS Form 3-2185 (OMB approval 1018-0110, 65 FR 55032, September 12, 2000).

This proposed rule also contains new information collection, and we have submitted the information collection requirements to OMB for review and approval under the Paperwork Reduction Act. This new information collection is a form titled: Summary Information for Ranking National Coastal Wetlands Grant Program Proposals (USFWS Form 3-2179). The purpose of this form is to summarize

information contained in the grant proposal in a way that allows a fair comparison and ranking of different grant proposals.

If you have any comments on the information collection requirements, please send these comments to OMB at the address indicated in the **ADDRESSES** section of the preamble. Please also send a copy of your comments to the Service.

*Comments are invited on:* (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use

of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The form may be viewed at the National Coastal Wetlands Conservation Grant Program web site at: <http://www.fws.gov/cep/cwgcover.html> or you may request a copy of the form using the contact information in the **ADDRESSES** section of this notice.

*Frequency:* The form will generally be used once a year.

*Description of respondents:* States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa will use the form if they wish to apply for grants under this program.

*Completion time and annual response and burden estimate:*

| Form name                                                                                            | Completion time per form | Annual response | Annual burden |
|------------------------------------------------------------------------------------------------------|--------------------------|-----------------|---------------|
| Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals ..... | ½ Hour                   | 34 Forms        | 17 Hours      |

While the summary form is five pages long, the ½ hour burden is accurate. Agencies applying for grants will have all of the information readily available in the proposals they have prepared.

A notice of this information collection and request for comments was previously published in the **Federal Register**, Vol. 65, No. 180, Friday, September 15, 2000. No comments were received.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Required Determinations

### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

This proposed rule will not have an annual effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The entities affected by this proposed rule are State natural resource agencies. The primary intended effect is to augment State efforts to conserve their coastal wetland resources. The program is completely voluntary; States

choose whether to submit proposals for matching grants. New funds available each year are determined as a percentage of monies received by the Sport Fish Restoration Fund.

However, the total receipts for a given year for this program are limited by the Coastal Wetlands Planning, Protection and Restoration Act to \$15 million. Receipts for the last few years have been in the \$10 million to \$12 million range. This last grant cycle included \$11 million in new money and \$4.1 million available as carryover from previous years.

This proposed rule will not create inconsistencies with other agencies' actions. The Service is charged with administering the National Coastal Wetlands Conservation Program by the Coastal Wetlands Planning, Protection and Restoration Act. This program supports and augments State efforts to conserve their resources. States voluntarily choose to participate, and no other Federal agencies have responsibilities associated with this grant program. Some Federal agencies have participated voluntarily on specific projects as cooperators with the State agencies.

This proposed rule will not affect entitlements, user fees, loan programs, or the rights and obligations of their recipients. It will have a limited effect on this specific grant program. The Service has been giving out matching

grants to States under the National Coastal Wetlands Conservation Grant Program since 1992. If we continue to operate with interim procedures and general Federal Aid grant administration, the same amount of grant assistance will be given to coastal States. The main effect that we expect from this rulemaking is a streamlined proposal preparation and review and grant administration process.

This proposed rule will not raise novel legal or policy issues. As stated above, the Service has been awarding grants to States and administering this program under the authority of the Coastal Wetlands Planning, Protection and Restoration Act since 1992. The purpose of this rule is to improve the process.

### Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). By law, the only eligible recipients of this grant program are coastal State and territory government agencies. Operating with interim guidance, we have given out grants since 1992. This proposed rule should not result in a major change to the Program. The Coastal Wetlands Planning, Protection and Restoration Act specifies an annual cap of \$15 million that can be allocated to this

program. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is also not required.

#### *Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

As stated above, the maximum amount, by law, that can be directed to this grant program is \$15 million per year. This program is directed exclusively at State governments. This proposed rule might provide some contracting work at a local level for restoration projects, creating a minor positive effect on the local economy. All land purchased under this program is paid at fair market value from willing sellers. The land involved is a relatively small amount spread over the 10 to 15 States and Territories that typically receive grants in a given year. All lands acquired will be put under long-term conservation protection by the States. Some of the grants are for restoration work on lands already owned by the States.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not significantly or uniquely affect small governments and will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Act. A Small Government Agency Plan is not required. As stated above, this proposed rule pertains to a grant program directed at State governments. In a few cases, local governments have chosen to partner in a grant program proposed by the State. Participation in the program is entirely voluntary. The program income is limited to \$15 million per year by the Coastal Wetlands Planning, Protection and Restoration Act.

#### *Takings*

In accordance with Executive Order 12630, the proposed rule does not have

significant takings implications. A takings implication assessment is not required. The proposed rule specifies that all acquisitions under this program are from willing sellers. No private property will be taken from unwilling owners for the furtherance of this program, and just compensation will be provided to willing owners.

#### *Federalism*

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. The rule allows eligible coastal States to make decisions regarding the selection of properties for acquisition, plan restoration projects, and take protective measures.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. To the extent of our knowledge, no legal cases have ever been associated with this grant program. The proposed rule should actually serve to reduce the possibility of litigation by establishing specific requirements for participation in the National Coastal Wetlands Conservation Grant Program and guidance for its administration by the Service. The proposed rule will establish a clear legal standard for affected conduct.

#### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and Part 512, Chapter 2 of the Department of the Interior Manual, we have evaluated potential effects on federally recognized Indian tribes and have determined that the effects are minimal. The Coastal Wetlands Planning, Protection and Restoration Act specifies the States that can participate in this grant program. The Act does not provide for grants directly to Indian tribes. Tribes have, in a few cases, participated as cooperators on projects.

#### *How Does the Intergovernmental Review of Federal Programs Work?*

This National Coastal Wetlands Conservation Grant Program is covered under Executive Order (Order) 12372 "Intergovernmental Review of Federal Programs" and 43 CFR Part 9 "Intergovernmental Review of

Department of the Interior Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Coastal States and Territories that have chosen to participate in the Executive Order process have established Single Points of Contact (SPOCs). Applicants from jurisdictions that do not participate do not need to take any action regarding E.O. 12372. All other applicants should alert their SPOCs early in the application process. This step will insure that applicants find out about any SPOC requirements. If you as an applicant are required to submit materials to the SPOC, indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424.

#### *Clarity of this Regulation*

Executive Order 12866 requires that each agency write regulations that are easy to understand. We invite your comments on how to make this regulation easier to understand, including answers to questions like the following:

(a) Are the requirements in the regulation clearly stated?

(b) Does the regulation contain technical language or jargon that interferes with its clarity?

(c) Does the format of the regulation (e.g., grouping and order of sections, use of headings, and paragraphing) make it easier or harder to understand?

(d) Would the regulation be easier to understand if we divided it into more (but shorter) sections?

(e) Does the description of the regulation in the "Summary" section of the preamble do a good job of explaining the regulation? and,

(f) What else could we do to make the regulation easier to understand?

We will take into consideration public comments and any additional information received during the 45-day comment period. When completed, this regulation will be incorporated into Title 50 of the Code of Federal Regulations (50 CFR), Part 84.

Our practice is to make comments, including in most cases names and addresses of respondents, available for public review during regular business hours. Individual commenters may ask that we withhold their home address from the rule-making record, which we will honor to the extent allowable by law. If you wish for us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We

will make all submissions from organizations or businesses available for public inspection.

#### List of Subjects in 50 CFR Part 84

Coastal zone—wetlands, Environmental protection—natural resources, Fisheries, Grant administration, Grant programs—natural resources, Intergovernmental relations, Marine resources, Natural resources, Reporting and record keeping requirements, and Wildlife.

For the reasons discussed in the supplementary information, we propose to amend Subchapter F of Chapter I, Title 50 of the Code of Federal Regulations, by adding a new Part 84, to read as follows:

#### PART 84—NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

##### Subpart A—General Background

- § 84.10 What is the purpose and scope of this rule?
- § 84.11 How does the Service define the terms used in this rule?
- § 84.12 What are the information collection, record keeping, and reporting requirements?

##### Subpart B—Applying for Grants

- § 84.20 What are the grant eligibility requirements?
- § 84.21 How do I apply for a National Coastal Wetlands Conservation Grant?
- § 84.22 What needs to be included in grant proposals?

##### Subpart C—Project Selection

- § 84.30 How are projects selected for grants?
- § 84.31 An overview of the ranking criteria
- § 84.32 What are the ranking criteria?

##### Subpart D—Conditions on Acceptance/Use of Funds

- § 84.40 What conditions must I follow to accept Federal funds?
- § 84.41 Who prepares a grant agreement? What needs to be included?
- § 84.42 What if a grant agreement is not signed?
- § 84.43 How do States get the grant monies?
- § 84.44 What is the timetable for use of grant funds?
- § 84.45 How do I amend a proposal?
- § 84.46 What are the cost-sharing requirements?
- § 84.47 What are allowable costs?
- § 84.48 What are the procedures for acquiring, maintaining and disposing of real property?
- § 84.49 What if the project costs more or less than originally expected?
- § 84.50 How does a State certify compliance with Federal laws, regulations, and policies?

**Authority:** 16 U.S.C. 3951–3956.

#### Subpart A—General Background

##### § 84.10 What is the purpose and scope of this rule?

The regulations in this part establish the requirements for coastal State participation in the National Coastal Wetlands Conservation Grant Program authorized by Section 305 of the Coastal Wetlands Planning, Protection and Restoration Act (Pub L. 101–646, title III, 16 U.S.C. 3954).

##### § 84.11 How does the Service define the terms used in this rule?

Terms used have the following meaning:

**Coastal barrier.** A depositional geologic feature that is subject to wave, tidal, and wind energies; protects landward aquatic habitats from direct wave attack; and includes all associated aquatic habitats such as adjacent wetlands, marshes, estuaries, inlets, and nearshore waters. These can include: islands; spits of land connected to a mainland at one end; sand bars that connect two headlands and enclose aquatic habitat; broad sandy, dune beaches; or fringing mangroves. Coastal barriers are found on coastlines including major embayments and the Great Lakes of the United States and its territories.

**Coastal Barrier Resources System.** A defined set of undeveloped coastal areas, designated by the Coastal Barrier Resources Act of 1982 (Pub. L. 97–348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591). Within these defined units of the System, Federal expenditures are restricted to discourage development of coastal barriers.

**Coastal States.** States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin); States bordering the Atlantic, Gulf (except Louisiana), and Pacific coasts (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); and American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. Louisiana is not included because it has its own wetlands conservation program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and implemented by the Corps of Engineers with assistance from the State of Louisiana, the Environmental Protection Agency, and the Departments

of the Interior, Agriculture, and Commerce.

##### *Coastal wetland ecosystems.*

Ecosystems that consist of multiple, interrelated coastal land features. They include wetlands in drainage basins of estuaries or coastal waters that contain: saline, brackish, and nearshore waters; coastlines and adjacent lands; adjacent freshwater and intermediate wetlands that interact as an ecological unit; river mouths and those portions of major river systems affected by tidal influence—all of which interact as an integrated ecological unit. Shorelands, dunes, nearshore islands, barrier islands and associated headlands, and freshwater wetlands within estuarine drainages are included in the definition since these interrelated features are critical to coastal fish, wildlife, and their habitats.

The definition of a coastal wetland ecosystem also applies to the Great Lakes and their watersheds, where freshwater plays a similar hydrologic role. The Great Lakes coastal wetland ecosystem is made up of multiple interrelated coastal landscape features along the Great Lakes. The Great Lakes coastal wetland ecosystem includes wetlands located adjacent to any of the Great Lakes including Lake St. Clair and connecting waters, and mouths of river or stream systems draining directly into the Great Lakes. Shorelands, dunes, offshore islands, and barrier islands and associated headlands are included in the definition since these interrelated features are critical to Great Lakes fish, wildlife, and their habitats.

**Coastal Wetlands Act or Act.** The Coastal Wetlands Planning, Protection and Restoration Act of 1990 (16 U.S.C. 3951–56).

**Eligible applicant.** Any agency of a coastal State designated by the Governor. It is usually a State natural resource or fish and wildlife agency.

**Enhancement.** The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

**Fund.** A fund established and used by a coastal State for acquiring coastal wetlands, other natural areas, or open spaces. The fund can be a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees.

*Grant.* An award of financial assistance by the Federal Government to an eligible applicant.

*Long-term conservation.* Protecting and restoring terrestrial and aquatic environments for at least 20 years. This includes the hydrology, water quality, and fish and wildlife that depend on these environments.

*Maintenance.* (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Maintenance includes those activities necessary for upkeep of a facility or habitat. These activities include routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is nonroutine cyclical maintenance to keep facilities or habitat improvements fully functional. Cyclical maintenance is major maintenance or renovation activities conducted at intervals normally greater than 1 year.

*Management.* (Includes habitat management only.) Habitat management includes vegetation manipulation and restoration of habitat to support fish and wildlife populations. Creation of wetlands where they did not previously exist is not included in the definition of management.

*Maritime forest.* Maritime forests are defined, for the purposes of this regulation, as broad-leaved forests that occur on barrier islands and along the mainland coast from Delaware to Texas. Examples are primarily characterized by a closed canopy of various combinations of live oak (*Quercus virginiana*), upland laurel oak (*Quercus hemisphaerica*), pignut hickory (*Carya glabra*), southern magnolia (*Magnolia grandiflora*), sugarberry (*Celtis laevigata*), and cabbage palm (*Sabal palmetto*). Shrubs and smaller trees typical of the understory include live oak, upland laurel oak, pignut hickory, red mulberry (*Morus rubra*), wild olive (*Osmanthus americanus*), American holly (*Ilex opaca*), yaupon (*Ilex vomitoria*), beautyberry (*Callicarpa americana*), bumelia (*Sideroxylon spp.*), and small-flowered pawpaw (*Asimina parviflora*). The herb layer is generally rich and diverse, typically including partridgeberry (*Mitchella repens*), coralbean (*Erythrina herbacea*), small-leaved milk pea (*Galactia microphylla*), tick trefoils (*Desmodium spp.*), and spikegrass (*Chasmanthium sessiliflorum*). Vines are represented by muscadine grape (*Vitis rotundifolia*), Virginia creeper (*Parrhenocissus*

*quinquefolia*), and various briers (*Smilax spp.*).

This natural community type becomes established on old coastal dunes that have been stabilized long enough to sustain forests. In time, the accumulation of humus contributes to moisture retention of soils, while the canopy minimizes temperature fluctuations by reducing soil warming during the day and heat loss at night. Because of the underlying deep sands, maritime forests are generally well-drained.

Maritime forests have become prime resort and residential property because of their relatively protected locations along the coast. Although this community type originally occurred in virtually continuous strips along the Atlantic and Gulf Coasts, residential developments and infrastructure encroachments have severely fragmented most occurrences.

*National Wetlands Inventory.* A Service program that produces information on the characteristics, extent, and status of the Nation's wetlands and deepwater habitat. The program's strongest mandates come from the Emergency Wetlands Resources Act of 1986, which directs the Service to map wetlands, conduct wetlands status and trends studies, and disseminate the information produced.

*National Wetlands Priority Conservation Plan.* A plan developed by the Fish and Wildlife Service for the U.S. Department of the Interior at the direction of Congress through the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901). The plan provides the criteria and guidance for identifying wetlands that warrant attention for Federal and State acquisition using Land and Water Conservation Fund appropriations.

*Operations.* (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Operations include activities necessary for the functioning of a facility or habitat to produce desired results. These include public use management and facility management.

*Program.* The National Coastal Wetlands Conservation Grant Program. A program administered by the Service that awards Federal grants through a competitive process to State agencies for projects to acquire, restore, manage, or enhance coastal wetlands.

*Project.* One or more related activities necessary to fulfill a stated objective to provide for the long-term conservation of coastal wetlands including the lands

and waters, hydrology, water quality, and wetland-dependent wildlife. These activities can include acquisition, restoration, enhancement, or management of coastal wetlands.

*Restoration.* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded wetland.

#### **§ 84.12 What are the information collection, record keeping, and reporting requirements?**

(a) Information collection requirements include:

(1) An Application for Federal Assistance (Standard Form 424);

(2) A proposal, following the guidance of OMB Circular A-102, that includes statements of need and objective(s), description of expected results or benefits, approach to be used, such as procedures, schedules, key personnel and cooperators, location of the proposed action, estimated costs to accomplish the objective(s), identification of any other actions that may relate to the grant, and a description of public involvement and interagency coordination;

(3) Discussion of ranking criteria, including a completed summary information form (USFWS Form 3-2179);

(4) Assurances (SF 424B or SF 424D);

(5) Documents, as appropriate, supporting the proposal; for example, environmental assessments (including the NEPA compliance checklist, USFWS 3-2185) and evaluations of effects on threatened and endangered species;

(6) A grant agreement form if the proposal is funded (USFWS Form 3-1552); and

(7) A grant amendment form if the agreement is modified (USFWS Form 1591).

(b) Record keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81). The project report should include information about the acres conserved, with a breakdown by conservation method (for example, acquired, restored, or both) and type of habitat (list habitat types and include the acreage of each). Are the results of the project being monitored? Is there evidence that the resources targeted in the proposal (for example, anadromous fish, threatened and endangered species, and migratory birds) have benefited?

(c) Reporting requirements include retention and access requirements as specified in 43 CFR 12.82.

**Subpart B—Applying for Grants****§ 84.20 What are the grant eligibility requirements?**

(a) Eligible grant activities include:

(1) Obtaining a real property interest in coastal lands or waters (coastal wetlands ecosystems), providing that the terms and conditions will ensure the real property will be administered for long-term conservation.

(2) The restoration, enhancement, or management of coastal wetlands ecosystems, providing restoration, enhancement, or management will be administered for long-term conservation.

(b) Ineligible activities include but are not limited to:

(1) Projects that primarily benefit navigation, irrigation, flood control, or mariculture;

(2) Acquisition, restoration, enhancement, or management of lands to mitigate recent or pending habitat losses resulting from the actions of

agencies, organizations, companies, or individuals;

(3) Creation of wetlands by humans where wetlands did not previously exist;

(4) Enforcement of fish and wildlife laws and regulations, except when necessary for the accomplishment of approved project purposes;

(5) Research or planning;

(6) Operations and maintenance;

(7) Acquiring and/or restoring upper portions of watersheds where benefits to the coastal wetlands ecosystem are not significant and direct; and

(8) Projects providing less than 20 years of benefits.

**§ 84.21 How do I apply for a National Coastal Wetlands Conservation Grant?**

(a) Eligible applicants should submit their proposals to the appropriate Regional Director of the U.S. Fish and Wildlife Service. Proposals must be complete upon submission, and must include the information outlined in

§ 84.22 to be complete. Regional Federal Aid Offices' responsibilities for administration of this grant program include: notifying the States of the program, its requirements, and any changes that occur; determining the State agencies designated by the Governor as eligible applicants; ensuring that only eligible applicants apply for grant funds; coordinating with various Service programs to ensure that sound and consistent guidance is communicated to the States; determining proposal eligibility and substantiality; and determining 75 percent match eligibility and notifying the States of approved and disapproved proposals. Ecological Services in the Regions and Field and Fisheries and Habitat Conservation in the National Office provide technical assistance and work with Federal Aid to encourage State participation in this process. Send your proposals to the appropriate Regional Offices, as follows:

| Coastal States by service regions                                                                                                                                                                                                                      | Regional contact information                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Oregon, Washington (Region 1).                                                                                                                                 | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181, (503) 231-6128.                   |
| Texas (Region 2) .....                                                                                                                                                                                                                                 | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103, (505) 248-7450.                           |
| Illinois, Indiana, Michigan, Minnesota, Ohio, and Regional Wisconsin (Region 3).                                                                                                                                                                       | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, (612) 713-5130. |
| Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, and the Virgin Islands. Louisiana is not eligible to participate under Section 305 of 16 U.S.C. 3954, because Louisiana has its own separate program. (Region 4). | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 240, Atlanta, Georgia 30345, (404) 679-4159.                                   |
| Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia (Region 5).                                                                                                       | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589, (413) 253-8200.                                 |
| Alaska (Region 7) .....                                                                                                                                                                                                                                | Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786-3435.                                               |

(b) This grant program operates on an annual cycle. Regional Federal Aid Offices request proposals from the States in early April. Proposals must be received by the Regional Director on or before a due date set in early June in order to be considered for funding in the following fiscal year. Check with your Regional Office each year for the exact due dates. Regions review proposals for eligibility and substantiality. Regions may rank eligible and substantial proposals and submit them to the national office of the Service in Washington, D.C., by a date set in late June. A Review Panel coordinated by the Service's National Office of Fisheries and Habitat Conservation reviews and ranks proposals in early August using the criteria established in

this rule. The Director selects the proposals and announces the grant recipients at the beginning of the new fiscal year (October 1).

(c) Proposals from more than one State agency may be submitted to the Service if the Governor determines that more than one agency has responsibility for coastal wetlands.

(d) A project proposal that includes several separate and distinct phases may be submitted in phases, but any succeeding phases must compete against other proposals in the year submitted. Funding for one phase of a project will not be contingent upon acquiring funding for another phase of that same project.

(e) The Federal (Program) share will not exceed \$1 million per project.

(f) The percentage of non-Federal match (cash or in-kind) must not be less than 25 percent of the total costs if the State has a designated Fund or not less than 50 percent without a Fund.

**§ 84.22 What needs to be included in grant proposals?**

Proposals must include the following:

(a) Application for Federal Assistance (Standard Form 424);

(b) A Statement of Assurances (either Standard Form 424B or 424D); and

(c) A project statement that identifies and describes:

(1) The need within the purposes of the Act;

(2) Discrete, quantifiable, or verifiable objective(s) to be accomplished during a specified time period;

(3) Expected results or benefits, in terms of coastal lands and waters, and the hydrology, water quality, and fish and wildlife dependent on the wetlands;

(4) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, and cooperators;

(5) A project location, including two maps: a map of the State showing the general location of the proposal, and a map of the project site;

(6) Estimated costs to attain the objective(s) (the various activities or components of each project should be broken down by cost and by cooperator);

(7) If the request is more than \$100,000 (Federal share), the applicant must submit a Form DI-2010, certifying that the funds will not be used for lobbying activities;

(8) A concise statement, with documentation, of how the proposal addresses each of the 13 numeric criteria (see § 84.32);

(9) A description of the State trust fund that supports a request for a 75 percent Federal share in sufficient detail for the Service to make an eligibility determination, or a statement that eligibility has been previously approved and no change has occurred in the fund;

(10) A list of other current coastal acquisition, restoration, enhancement, and management actions; agency(ies) involved; relationship to the proposed grant; and how the proposal fits into comprehensive natural resource plans for the area, if any; and

(11) Public involvement or interagency coordination on coastal wetlands conservation projects that has occurred or is planned that relates to this proposal (Specify the publics or agencies involved and dates of involvement.).

### Subpart C—Project Selection

#### § 84.30 How are projects selected for grants?

Project selection is a three-step process: proposal acceptance, proposal ranking, and proposal selection.

##### (a) *Proposal acceptance.*

(1) The Regional Federal Aid Offices decide whether a proposal should be accepted for consideration by determining if the proposal is complete, substantial, and contains activities that are eligible. Proposals that do not qualify are immediately returned to the State. Revision and resubmission of returned proposals is allowable during this period, which is in June (check with your Regional Office for the exact dates each year). If any of the factors of completeness, substantiality, or

eligibility are not met, the Regions should not forward the proposal to the Washington Office.

(2) To be considered for acceptance, the proposal must be substantial in character and design. A substantial proposal is one that:

(i) Identifies and describes a need within the purposes of the Act;

(ii) Identifies the objective to be accomplished based on the stated need;

(iii) Uses accepted principles, sound design, and appropriate procedures;

(iv) Provides public benefits that are cost effective and long-term, i.e., at least 20 years; and

(v) Identifies obtainable, quantified performance measures that help achieve the management goals and objectives of the National Coastal Wetlands Conservation Grant Program and the Service's Long-Term and Annual Performance Goals.

(3) The grant limit is \$1 million. Proposals requesting Program funds that exceed \$1 million will be returned to the appropriate State. Similarly, individual projects that have clearly been divided into multiple proposals for submission in one grant cycle to avoid this limit will be returned to the appropriate State. The State can revise and resubmit the proposal so that the request does not exceed the \$1 million limit.

(b) *Proposal ranking.* Once a proposal is accepted by the Region, the Regional Federal Aid Office sends the proposal to the National Federal Aid Office, which works with the National Office of Fish and Wildlife Management Assistance and Habitat Restoration Program for distribution to a Review Panel. The Review Panel includes representation from our coastal Regions and from our Programs, for example, the Endangered Species Program. The Fish and Wildlife Management Assistance and Habitat Restoration Program is responsible for coordinating the review and ranking of proposals according to the established criteria, a process that usually involves a national meeting.

(c) *Proposal selection.* The Review Panel's recommendations are forwarded to the Director of the Service for a final review and project selection. The Director announces the selection by October 1.

#### § 84.31 An overview of the ranking criteria.

(a) The primary objective of the proposal will be to acquire, restore, enhance, or manage coastal wetlands to benefit coastal wetlands and the hydrology, water quality, and fish and wildlife dependent upon them. The Program will not fund, for example, construction or repair of boat ramps or

docks for recreational purposes and construction or support of research facilities or activities. The purpose of the ranking criteria is to provide a means for selecting the best projects—those that produce the maximum benefits to coastal wetlands and the fish and wildlife that depend on them.

##### (b) *Proposal ranking factors.*

(1) *Ranking criteria.* As explained in § 84.32, we will evaluate proposals according to 13 ranking criteria. These criteria have varying point values. Proposals must address each of these 13 criteria.

(2) *Additional considerations.* Even though the criteria provide the primary evaluation of proposals, additional considerations may be factored into the ranking decision at the national level. In case of a tie, these additional considerations will be used to rank proposals having identical scores.

(c) The criteria in § 84.32 are not listed in priority order.

(d) Points are assigned on the basis of a completed project, rather than current conditions, e.g., count 50 acres of estuarine emergent wetlands if 50 acres of that habitat type will be restored when the project is completed.

(e) A range of points rather than a set point value allows the reviewer to distinguish between, for example, a proposal that provides some foraging habitat for a threatened species versus one that provides critical nesting habitat of several endangered species. Scoring guidance is included with the individual criteria.

(f) If a grant proposal is not selected for funding, it may be resubmitted for reconsideration in subsequent fiscal years. Resubmission of a grant proposal is the responsibility of the applicant.

#### § 84.32 What are the ranking criteria?

(a) The U.S. Fish and Wildlife Service will rank proposals using the 13 criteria listed below. In the following list, a description of each criterion is followed by examples and the points they would receive for that criterion.

(1) *Wetlands conservation.* Will the project reverse coastal wetland loss or habitat degradation in decreasing or stable coastal wetland types? Will it conserve wetlands to prevent losses of decreasing or stable wetland types? (Maximum: 7 points)

(i) The majority of the project area (over 50 percent) is nationally decreasing coastal wetland types<sup>1</sup> or the majority is regionally decreasing wetlands types in which the case for regionally decreasing is well-documented (Up to 7 points). The nationally decreasing types are: estuarine intertidal emergent; estuarine

intertidal forested; estuarine intertidal scrub-shrub; marine intertidal; palustrine emergent; palustrine forested; and palustrine scrub-shrub. Describe the wetlands using terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in decreasing types. Provide National Wetlands Inventory codes/information if available. Information about these can be found on the National Wetland Inventory's web site at <http://wetlands.fws.gov>.

(ii) The majority of the project area (over 50 percent) is nationally stable coastal wetlands types<sup>1</sup> (Up to 5 points). The nationally stable types are: estuarine intertidal non-vegetated and estuarine subtidal. Describe the wetlands using the terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in stable types. Provide National Wetlands Inventory codes/information if available.

(iii) Wetlands benefitted are less than 50 percent of the project area. (Up to 3 points)

(iv) If the project would benefit wetlands in the upper portion of the coastal watershed, but does not demonstrate significant and direct benefits to coastal wetlands, the proposal will not receive any points. (0 points)

(v) A full 7 points would be awarded to proposals that document that over 50 percent of their project area would be, upon project completion, decreasing coastal wetland types. A combination of decreasing and stable types that is over 50 percent of the project area could receive an intermediate score of 4, 5, or 6 points depending on the balance between decreasing and stable types. If wetlands are 50 percent or less of the project area, use the following guide for allocating points: 25 to 50 percent of the project area is decreasing or stable wetlands, 2, 3, or 4 points; 5 to 24 percent, 1 or 2 points; and less than 5 percent, 0 points.

(2) *Maritime forests on coastal barriers.* Will the proposal significantly benefit maritime forests on coastal barriers? The coastal barrier does not need to be a unit of the Coastal Barrier Resources System. (Maximum: 7 points)

(i) The proposal documents significant benefit to maritime forests on a coastal barrier. Describe the forest in sufficient detail so reviewers can determine whether it meets the

definition of "maritime forest." (Up to 7 points)

(ii) The proposal does not benefit maritime forests on a coastal barrier. (0 points)

(iii) For this criterion most scores should be either 0 or 7. If there are questions about the significance of the benefit or whether the forests meet the strict definition, an intermediate score could be given.

(3) *Long-term conservation.* Does the project ensure long-term conservation of coastal wetland functions? The project must provide at least 20 years of benefits to be eligible. (Maximum: 7 points)

(i) Once the project is complete, the project will provide continuing coastal wetlands benefits in perpetuity (100 years or longer). (7 points)

(ii) Once the project is complete, the project will provide continuing coastal wetland benefits for 50–99 years. (3 to 6 points)

(iii) Once the project is complete, the proposal will provide continuing coastal wetlands benefits for 20–49 years. (1 to 3 points)

(iv) The proposal should show how the project will be maintained and the benefits sustained over time. Proposals must include adequate documentation of long-term conservation of coastal wetland values, such as a 25-year easement, to receive points for this criterion. If part of the project's benefits will be perpetual (owned in fee title, for example) and part is estimated to last 20 years, reviewers should weigh the different elements of the project and give an intermediate score.

(4) *Coastal watershed management.* Would the completed project help accomplish the natural resource goals and objectives of one or more formal, ongoing coastal ecosystem or coastal watershed management plan(s) or effort(s)? Describe the management plan or effort(s). (Maximum: 3 points)

(i) The project supports the natural resource goals of identified formal, ongoing coastal ecosystem or coastal watershed management plans or efforts. Describe the management plan(s) and/or effort(s) and explain how this project relates to its objectives. A plan that very specifically identifies the site should receive more points than many generic references. (Up to 3 points)

(ii) The project does not support the natural resource goals and objectives of a formal, ongoing coastal ecosystem or coastal watershed management effort. If the proposal benefits the upper portions of coastal watersheds, but provides no significant and direct benefits to the coastal wetlands ecosystems, the

proposal will not receive points. (0 points)

(5) *Conservation of threatened and endangered species.* Will the project benefit any federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species, or designated/proposed critical habitat in coastal wetlands? Will it benefit State-listed threatened and endangered species? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (e.g., nesting, breeding, feeding, nursery areas) for federally listed or proposed endangered or threatened species that use the coastal area project site for at least part of their life cycle. The project will benefit recently delisted species and habitat conservation plans developed under the auspices of the Endangered Species Act. List the species, their status (e.g., threatened or endangered) and provide documentation (e.g., cite recovery plan, attach letter from species expert) of current or recent species occurrence in the coastal area project site. Describe the importance of the habitat. (0 to 5 points)

(ii) The project will provide, restore, or enhance important habitat for State-listed threatened and endangered species. (0–2 points)

(iii) The project will not provide, restore, or enhance important habitat for federally or State-listed or proposed endangered or threatened species in the coastal area project site for any part of their life cycle. If the proposal provides benefits to threatened and endangered species in the upper portion of the coastal watershed, but provides no significant and direct benefits to threatened and endangered species using coastal wetlands ecosystem habitat, the proposal will not receive any points. (0 points)

(iv) The combined scores of subparagraphs (a)(5)(i) and (a)(5)(ii) of this section cannot exceed the 5-point maximum.

(6) *Benefits to fish.* Will the project provide, restore, or enhance important fish habitat? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (i.e., spawning, nursery, juvenile, or foraging habitat) for specific species that use the coastal area project site for at least part of their life cycle. These species may include anadromous, interjurisdictional, or other important species. List species, habitat types, and benefits to each species. (Up to 5 points)

(ii) The project does not document current or future benefits to fish species and their habitat. (0 points)

<sup>1</sup> These designations are based on the National Wetlands Priority Conservation Plan. For more information about the plan, or to receive a copy of the document, refer to the contact information provided in § 84.21.

(iii) The more specific the information is on the use of the area and the importance of the habitat, the greater the points. An area specifically identified as critical for conservation in a fisheries management plan should, for example, receive more points than one which is not.

(7) *Benefits to coastal-dependent or migratory birds.* Will the project provide, restore, or enhance important habitat for coastal-dependent or migratory birds?

(i) The project will provide, restore, or enhance important habitat (i.e., breeding, staging, foraging, wintering/summering habitat) benefits for at least part of the life cycle of coastal dependent or migratory birds. List the species and habitat types, and describe the benefits to each. (Up to 5 points)

(ii) The project will not significantly benefit coastal-dependent or migratory birds. (0 points)

(iii) We will give maximum points to critical migratory pathways or wintering or summering grounds specifically identified in a management effort. Proposals should also include information about the size of populations and the diversity of species; proposals that fail to do so will not receive maximum points. Indicate if the proposed area has been specifically identified by any program or agency for its migratory bird values.

(8) *Prevent or reduce contamination.* Will the project prevent or reduce input of contaminants to the coastal wetlands and associated coastal waters, or restore coastal wetlands and other associated coastal waters that are already contaminated? (Maximum: 5 points)

(i) The project will prevent significant inputs of contaminants or will provide significant improvements to the quality of the coastal wetland and associated waters through protection from contaminants or restoration, including assimilation of nutrients and nonpersistent toxic substances. Describe the types and sources of possible or current impairment to the coastal wetland and other associated coastal waters (e.g., to water quality, sediments, flora, or fauna). Describe how contaminant inputs or residues will be prevented, reduced, or eliminated. Preventing contaminants by precluding residential development through acquisition will not normally warrant full points unless it can be shown that significant contamination would have occurred otherwise. (Up to 5 points)

(ii) The proposal will not significantly prevent impairment or improve the quality of the coastal wetland and associated coastal waters. If the proposal provides positive water quality benefits

in the upper portions of watersheds, but provides no significant and direct positive water quality benefits to coastal wetland ecosystems, the proposal will not receive points. (0 points)

(iii) Show direct links between contamination and wildlife and aquatic habitats. To receive full points, you should provide documentation of the linkage. Reviewers may consider the extent of contaminants prevention/reduction when assigning points. Proposals having the potential to produce an attractive nuisance (e.g., acquiring and/or restoring a wetland that will be attractive to wildlife and that also has the potential to accumulate high levels of persistent toxic metals or hydrocarbon compounds) will not receive points.

(9) *Catalyst for future conservation.* Is the project proposal designed to leverage other ongoing coastal wetlands protection projects in the area, such as acquisition of areas to add to already acquired coastal lands, or provide impetus for additional restoration? (Maximum: 4 points)

(i) The project will be essential (e.g., key to completion or implementation of a greater conservation plan) to further advance or promote other coastal projects under way. Explain why. (Up to 4 points)

(ii) The project proposal does not demonstrate a positive impact on other coastal projects. (0 points)

(iii) To receive the maximum number of points, the proposal should be essential to the initiation or completion of a larger project. Examples may include acquisition of key in-holdings within a larger protected area, funds necessary to acquire fee simple interest in properties where a conservation easement has already been secured, and funds necessary to complete restoration activities on an otherwise protected area.

(10) *Partners in conservation.* Will the proposal receive financial support, including in-kind match, from private, local, or other Federal interests? (Maximum: 4 points)

(i) The proposal includes the State applicant plus one or more non-State financial partners. (Up to 4 points)

(ii) The proposal includes only financial support from the State applicant. (0 points)

(iii) A written description of commitment of funds or in-kind match from the partners must accompany the proposal. (This is in addition to signing the Assurances Form.) The purpose of this criterion is to promote partnerships with private, local, or other Federal agencies rather than to increase the dollar amount of the matching share.

Therefore, no specific minimum amount is indicated here. At least two partners, in addition to the State applicant, should have committed funds to the project to receive maximum points.

(11) *Federal share reduced.* Does the proposal significantly reduce the Federal share by providing more than the required match amount? In the case of a Territory or Commonwealth that does not require match funds, does the proposal include financial support from sources other than the Territory or Commonwealth? (Maximum: 5 points)

(i) The State, Territory, or Commonwealth applicant must have a *non-Federal funding source* (in-kind match does not count for this criterion) that reduces the Federal share. (Up to 5 points)

(ii) The maximum Federal share is requested by the proposal. (0 points)

(iii) The purpose of this criterion is to increase the amount of dollars from non-Federal sources. This increase decreases the need for Federal match dollars, so that Federal dollars can help more projects. Documentation of each partner's financial commitment must accompany the proposal to receive points. If the State itself provides the excess match, the State should receive credit for reducing the Federal share. Each 5 percent above the required State match would be approximately equal to 1 point. The following two examples, using both a 50 and 75 percent Federal match share, define a 10 percent increase in a State's match amount.

*(A) Example 1.—50 Percent Federal Match*

If the total project costs are: \$100,000,  
Then the required State match share is:  
\$50,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the \$50,000: \$5,000.  
This is defined as a 10 percent increase in the State match.<sup>2</sup>

*(B) Example 2.—75 Percent Federal Match*

If the total project costs are: \$100,000,  
Then the required State match share is:  
\$25,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the \$25,000: \$2,500.  
This is defined as a 10 percent increase in the State match.<sup>2</sup>

(12) *Education/outreach program or wildlife-oriented recreation.* Is the project designed to increase environmental awareness and develop support for coastal wetlands

<sup>2</sup> From sources other than Federal agencies. Natural Resource Damage Assessment funds may in some cases be defined as "non-Federal." See discussion under § 84.46 on *What are the cost-sharing requirements?*

conservation? Does it provide recreational opportunities that are consistent with the conservation goals of the site? (Maximum: 3 points)

(i) The proposal includes a site-specific, substantive education/outreach or wildlife-oriented recreation program. (Up to 3 points)

(ii) The proposal does not include a substantive education/outreach or wildlife-oriented recreation program. (0 points)

(iii) The proposal must describe what makes this program substantive and link it closely with the specific site to receive full points. Programs supported by activities or funds from partners should be encouraged over use of project funds. Project proposals may include substantive education/outreach components necessary for the completion of the project. However, these should be activities that complement or support the primary goal of the project.

(13) *Other factors.* Do any other factors, not covered in the previous criteria, make this project or site particularly unique and valuable? Does the project offer important benefits that are not reflected in the other criteria? The following list includes examples of projects that provide benefits not reflected in other criteria. (Maximum: 4 points)

(i) The project might provide significant benefits to, for example: rare or threatened habitat types; biodiverse habitats; rare and declining species; and the local community.

(ii) The project would be particularly cost-effective, providing very significant resource benefits for the cost.

(iii) The project would assist in the prevention or control of invasive species.

(iv) The project would provide important cultural or historical resource benefits.

(v) The project would provide other benefits.

(vi) Reviewers should not assign points to resource values covered by other criteria. The proposal should provide a short narrative to support claims to *Other Factors* points.

(b) *Additional considerations.* The following considerations will be factored into the ranking process if two or more proposals have the same point totals. The tie-breaking factors are as follows:

(1) The project would prevent the destruction or degradation of habitat from pending sale of property, from adverse effects of current activities such as draining of wetlands, or from natural processes such as erosion at excessive rates;

(2) The project would protect unique and significant biological diversity;

(3) The project has lower costs per acre conserved; and

(4) In the project proposal the State or third party provides lands as opposed to using lands already owned by the State or third party as part of the State matching share.

(5) All proposals must include this information. If a tie occurs between two or more proposals, the reviewers need to have this information available immediately to decide which proposal or proposals should be recommended for funding.

#### **Subpart D—Conditions on Acceptance/Use of Funds**

##### **§ 84.40 What conditions must I follow to accept Federal funds?**

(a) The audit requirements for State and local governments (43 CFR 12), and

(b) The uniform administrative requirements for grants and cooperative agreements with State and local governments (43 CFR 12).

##### **§ 84.41 Who prepares a grant agreement? What needs to be included?**

The coastal State and the Fish and Wildlife Service work together to develop a Grant Agreement (Form 3–1552) upon completion of the review by the Regional Director to determine compliance with applicable Federal laws and regulations. The Grant Agreement includes the grant title, the grant cost distribution, the agreement period, other grant provisions, and special grant conditions. If a Coastal Barrier Unit is affected, the Service must conduct internal consultations pursuant to Section 6 of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act, prior to providing any grant monies to that State.

##### **§ 84.42 What if a grant agreement is not signed?**

Funds that have been allocated for a grant will be held until December 31. If a grant agreement has not been signed by the State and the Service and thus the funds have not been obligated for the approved grant by that date, the funds automatically are returned to the Program fund in Washington.

##### **§ 84.43 How do States get the grant monies?**

Funding to States is provided on a reimbursable basis. The Service may reimburse the State for projects completed, or make payments as the project progresses. For construction work and labor, the Service and the State may jointly determine, on a case-

by-case basis, that payments may be made in advance. The time elapsing between the transfer to the State and the State's need for the funds will be minimized and be subject to a specific determined need for the funds in advance. Except for extenuating circumstances, a reasonable time period to advance funds to a State is up to 3 days. OMB Circular A–102, Parts II and III, 43 CFR Part 12, and 31 CFR Part 205 should all be reviewed for specific information on methods and procedures for transferring funds.

##### **§ 84.44 What is the timetable for the use of grant funds?**

Once funds are granted to the coastal States, the funds are available to those States for the time designated in the grant agreement. If a State needs more time, that State must apply for an extension of time by amending the grant agreement. If the Service does not extend the time, the unobligated funds return to the Service for expenditure on future grants. Also, if a State cannot spend the funds on the approved project, that State must notify the appropriate Regional Director as soon as possible so that the funds can revert back to the Service for future grants.

##### **§ 84.45 How do I amend a proposal?**

Following procedures in 43 CFR 12.70, you must submit a signed original and two copies of the revised SF–424, the revised portion of the project statement if appropriate, and an explanation of the reason for the revision to the Regional Director (Federal Aid).

##### **§ 84.46 What are the cost-sharing requirements?**

(a) Except for certain insular areas, the Federal share of an approved grant will not exceed 50 percent of approved costs incurred. However, the Federal share may be increased to 75 percent for coastal States that have established and are using, for the purpose of acquiring coastal wetlands, other natural areas, or open spaces, either a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees, or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees. The Regions must certify the eligibility of the fund in order for the State to qualify for the 75 percent matching share.

(b) The following insular areas: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, have been exempted from the matching share, as provided in Pub. L. 95–134,

amended by Pub. L. 95–348, Pub. L. 96–205, Pub. L. 98–213, and Pub. L. 98–454 (48 U.S.C. 1469a). Puerto Rico is not exempt from the match requirements of this program.

(c) The State may provide materials (e.g., heavy equipment) or other services as noncash match for portions of the State's matching share. The State may also provide the value of land, including the land proposed for restoration, enhancement, or management as a non-cash match, provided that the land is necessary and reasonable for completing the project. For example, if a State proposes to manage a contiguous wetland of 100 acres, and already owns 10 of the 100 acres, the State can apply the current value of the 10 acres, provided that the 10 acres are necessary to manage the entire 100 acres. If the 10-acre wetland were not contiguous and no connection could be made that the 10 acres were needed to manage the proposed wetland, the State could not use the 10 acres as a noncash match. Review 43 CFR 12.64 for determining the value of in-kind contributions.

(d) The requirements in 43 CFR 12.64 and Service Manual Part 522 FW 1.13<sup>3</sup> apply to in-kind matches or cost-sharing involving third parties. Third party in-kind contributions must represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual. In-kind matches must be necessary and reasonable to accomplish grant objectives.

(e) Coastal States must commit to their matching share of the total costs by signing the Application for Federal Assistance (SF 424), the Assurances (SF424B or SF424D), and the Grant Agreement (USFWS Form 3–1552).

(f) No Federal funds, non-Federal funds, in-kind contributions, or National Fish and Wildlife Foundation grant program funds that will be or have been previously used to satisfy the matching requirement of another Federal grant can be used as part of the coastal State's matching share.

(g) The coastal State is responsible for ensuring the full amount of that State's matching requirement, either with State funds or from contributions toward the proposal from other agencies, groups, or individuals. Sources other than State applicant funds must be documented and approved as eligible.

(h) Total Federal funding (including all Federal sources outside of the Program) may not exceed the maximum

eligible Federal share under the Program. This includes monies provided to the State by other Federal programs. If the amount of Federal funds available to the project is more than the maximum allowed, we will reduce the Program funds by the amount in excess.

(i) Natural Resource Damage Assessment funds that are managed by a non-Federal trustee are considered to be non-Federal, even if these damages were once deposited in the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, provided the following criteria are met:

(1) The monies were deposited pursuant to a joint and indivisible recovery by the Department of the Interior and non-Federal trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Oil Pollution Act (OPA);

(2) The non-Federal trustee has joint and binding control over the funds;

(3) The co-trustees agree that monies from the fund should be available to the non-Federal trustee and can be used as a non-Federal match to support a project consistent with the settlement agreement, CERCLA, and OPA; and

(4) The monies have been transferred to the non-Federal trustee.

#### **§ 84.47 What are allowable costs?**

(a) Allowable grant costs are limited to costs necessary and reasonable to achieve approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.62 (b).

(b) If a project or facility is designed to include purposes other than those eligible under the Act, the costs must be prorated among the various purposes.

(c) If you incur costs before the effective date of the grant, they cannot be reimbursed with the exception that preliminary costs can be allowed, but only with the approval of the appropriate Regional Director.

Preliminary costs may include costs necessary for preparing the grant proposal, such as feasibility surveys, engineering design, biological reconnaissance, appraisals, or preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act.

#### **§ 84.48 What are the procedures for acquiring, maintaining, and disposing of real property?**

(a) Acquisition, maintenance, and disposal of real property must follow the rules established in 43 CFR 12.71.

(1) Title to real property acquired under a grant or subgrant must be vested

in the State or subgrantee, including local governments and nonprofit organizations. Appraisals and review appraisals must be submitted and approved by the Regional Director before the State becomes legally obligated for the purchase. Title vesting evidence and summary of land costs will be provided upon completion of the acquisition. The State or subgrantee may not dispose of or encumber its title or other interest in real property without prior approval of the appropriate Regional Director. Appropriate language in the grant agreement and any deed to third parties (e.g., conservation easement or other lien on a third-party property) must be included to ensure that the lands and/or interests would revert back to the State or Federal Government if the conditions of the grant were no longer being implemented.

(2) In cases where the interest obtained is less than fee simple title, the interest must be sufficient for long-term conservation of the specified wetlands resources.

(3) If acquired property is used for reasons inconsistent with the purpose(s) for which acquired, such activities must cease and any adverse effects on the property must be corrected with non-Federal funds.

(4) Coastal wetland property must continue to serve the purposes for which it was acquired. If property that is acquired as a coastal wetland is no longer needed or useful for the intended purpose, the coastal State will request disposition instructions from the appropriate Regional Director.

(5) If rights or interests obtained with the acquisition of coastal wetlands generate revenue, the revenue will be treated as program income and used to manage the acquired properties. If real property is sold or leased, the proceeds must be treated as program income and returned to the Federal Aid program regardless of the grant period.

(b) A coastal State is responsible for design, supervision, and inspection of all major construction projects in accordance with accepted engineering standards.

(1) The coastal State must have adequate rights to lands or waters where restoration or enhancement projects are planned to ensure protection and use of the facilities or structures throughout their useful life.

(2) The construction, enlargement, or rehabilitation of dams are subject to Federal standards for dam design. If requested, written certification that the proposed dam meets Federal standards will be provided to the Regional Office by the coastal State.

<sup>3</sup> From the Fish and Wildlife Service Manual, available on-line at <http://www.fws.gov/directives/index.html>.

(3) The coastal State must operate and maintain facilities, structures, or related assets to ensure their use for the stated project purpose and that they are adequately protected.

(c) Acquisition, property records, maintenance, and disposal of equipment must be made following the regulations in 43 CFR 12.72.

**§ 84.49 What if the project costs more or less than originally expected?**

All requests for additional funding for approved coastal wetland grants will be subject to the entire review process along with new grants. Any funds left over after the project is complete, or if the project is not completed, should be returned to the Washington Office for use in following years. If a State has lands it wishes to acquire, restore, or

enhance in close proximity to the original project, and the Region deems that spending project funds in these areas would provide similar benefits, the Region may use unspent balances to fund these projects with prior approval from the Washington Office. States must provide adequate justification and documentation to the Regions that the lands acquired, restored, or enhanced are similar to those in the original proposal and provide similar benefits to fish and wildlife.

**§ 84.50 How should the States certify compliance with Federal laws, regulations, and policies?**

(a) In accepting Federal funds, coastal State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies.

The applicant will need to submit a Statement of Assurances (SF424B or SF424D) signed and dated by an authorized agency representative as part of the proposal.

(b) Compliance with environmental and other laws, as defined in the Service Manual 523 FW Chapter 1,<sup>4</sup> may require additional documentation. Consult with Regional Offices for how this applies to a specific project.

Dated: February 23, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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<sup>4</sup> The Fish and Wildlife Service Manual, see footnote 3 for availability.