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## Resolution 1999-03-04 Reform of Sport Fish and Wildlife Restoration Administrative Funds Use

Association of Fish and Wildlife Agencies

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**Resolution 1999-03-04**

**REFORM OF SPORT FISH AND WILDLIFE RESTORATION  
ADMINISTRATIVE FUNDS USE**

**WHEREAS**, for more than half of this century the Federal Aid in Wildlife and Sport Fish Restoration Programs (Pittman-Robertson and Dingell-Johnson/Wallop-Breaux) have delivered to the nation a broad array of fish and wildlife benefits. A legacy of sound administration and oversight by the Fish and Wildlife Service, care by the States in selecting and implementing projects, and the continuing support of hunters, anglers, shooters, boaters and manufacturers have made these programs successful and durable; and

**WHEREAS**, the Association has had occasion in recent years to protest decisions by the US Fish and Wildlife Service (Service) to use administrative funds for purposes related only tangentially to "administration and execution" of these programs. Congress authorized the Secretary of the Interior to expend up to 8 percent on the wildlife side (6 percent on the sport fish side) for purposes of administration and execution with the remainder, after deduction for specific purposes established by Congress, followed by mandatory apportionment to the States. By degrees, the Service arrived at the position that unused amounts within the 6 and 8 percent ceilings may be expended at the discretion of the Director for fish and wildlife purposes bearing some relation to State programs, whether or not the States themselves consented<sup>1</sup>; and

**WHEREAS**, related to the use of funds for purposes not clearly within the "administration and execution" authority, for the past two years the Association has listened attentively on behalf of the States, developed proposals, studied alternatives, and sent delegations of Association officers to Washington in an effort to address the Service's concern that its efforts in carrying out the administrative grant program (a \$4 million program) are too time-consuming in relation to the much larger state grant program (\$450 million); and

**WHEREAS**, these Association efforts were nullified when the Service made the sudden discovery of a projected deficit in FY 1999 administrative funds, leading the Acting Director on July 26, 1999, to announce the cancellation of sport fish and wildlife restoration administrative project funding<sup>2</sup>; and

**WHEREAS**, following cancellation of the administrative grant program, the Association was invited by the Service "to join in a comprehensive review of the federal aid process with the goal of making the entire program more responsive and efficient," and it promptly accepted the Service invitation because of the critical importance to state government members of fish and wildlife restoration funds; and

**WHEREAS**, certain uses of administrative funds by the Service, as well as the methodology by which the Department of the Interior assesses charges against sport fish and wildlife restoration administrative funds for Service overhead, are now being questioned in investigations underway by the General Accounting Office and the House Committee on Resources.

**NOW, THEREFORE, BE IT RESOLVED**, that the International Association of Fish and Wildlife Agencies hereby

1. Reaffirms its longstanding commitment to the principle that, in the final analysis, excise taxes are available under these programs because of the willingness of hunters, anglers, other recreationists and manufacturers to be taxed in order to support State programs to restore fish and wildlife resources and associated recreation;

2. Stresses that, in pursuance of that trust, unused administrative funds ought either to be apportioned to the States or expended to undertake projects, to which the States give their consent through the Association, that provide fish and wildlife conservation benefits to a majority of the States and which no single State, or even several States, could undertake on its own;

3. Expresses deep dissatisfaction that the administrative grant program, an adjunct of the sport fish and wildlife restoration programs of unique value to the States, has been cancelled, in part because funds have been diverted to questionable uses including projects for which State consent was not given;

4. Urges the Congress to remove any ambiguity in the statutes relating to program administration that has served as a hinge for attempts to enlarge the discretion of the Director or the Secretary with respect to amounts within the statutory ceilings, including a tightening of what it means to administer and execute these programs, and to establish on a firmer footing the multi-state projects that benefit a majority of States; and

**BE IT FURTHER RESOLVED**, that the International Association of Fish and Wildlife Agencies supports oversight by the Fish and Wildlife Service and the states as safeguards essential to the continued success of these programs, including periodic audits of the States, federal-state policy clarification, and conduct of a comprehensive review of ways to streamline the administration of the wildlife and sportfish restoration programs.

#### **END NOTES**

<sup>1</sup> (a) In 1988 the Director proposed to use administrative funds to support joint venture projects under the North American Waterfowl Plan without observing established procedures for securing state concurrence. On further review, the Director assured Association President Doig that "No administrative funds will be used to substitute for regular appropriations."

(b) In 1993 a GAO report recommended that, in expending funds for special investigations (administrative grants), established policies and procedures be followed by the Service in considering priority needs of States.

(c) In 1994, without notice or request for comment, the Director's Conservation Fund was established, drawing up to \$500,000 each year from P-R administrative funds and a like amount from D-JW-B administrative funds. From its inception, 35 grants totaling \$3.8 million have been made under the Director's discretionary fund. Established procedures for identifying State concurrence were not employed.

(d) In February 1995 the Service proposed to use \$2 million of sport fish administrative funds to support fish hatchery transfers to the States because operational funds for the purpose had not been requested in the administration's FY 1996 budget.

(e) In March 1995 the Office of the Solicitor, post hac, confirmed the Director's proposed use of administrative funds to support hatchery transfers. In a draft memorandum notably short on analysis, the Assistant Solicitor-Fish and Wildlife concluded that the Director enjoys discretion to fund activities using administrative funds and, if expenditures do not exceed the 6 percent statutory ceiling, no legal impediment exists to funding hatchery transfers to the States.

(f) In March 1999, after questions were raised by GAO, the Service terminated the Director's Conservation Fund.

<sup>2</sup> In April 1998 the Service identified focus areas in soliciting proposals for administrative grants and restated established procedures for selecting projects. 63 Fed. Reg. 17882 (April 10, 1998). In July 1999 the Service cancelled the administrative grant program. 64 Fed Reg. 40386 (July 26, 1999). In between those dates:

(a) On May 26, 1998, the Service gave notice of intent to reconsider procedures for funding national administrative grants, advising that the Service would develop a full range of options for funding future national conservation priorities. 63 Fed. Reg. 28514 (May 26, 1998).

(b) On September 16, 1998, the Service invited comment on five alternatives to the administrative grant process then in existence on grounds the program is too time consuming and is inefficient for the Service to administer given the size of the administrative fund program (\$4 million) in relation to the much larger state grant program (\$425 million). 63 Fed. Reg. 49606 (September 16, 1998).

(c) At the Association's September 1998 meeting in Savannah, the Grants-in-Aid Committee recommended and the Association approved Alternative 3, under which the Association would take over solicitation, ranking and approval of projects, with final approval by the Director and administration of grants by the Division of Federal Aid.

(d) On December 14, 1998, the Association was notified that the Service had selected Alternative 5, a single annual grant proposal by the Association listing specific fish and wildlife conservation action needs which, if approved by the Director, would be administered by the Association.

(e) Following the Service's selection of Alternative 5, the Association assembled a team to work with the Office of Federal Aid to modify Alternatives 3 and 5 to address the desire of the Service to reduce its time-consuming involvement in the administrative grant program.

(f) On January 25, 1999, the Executive Committee agreed that the Association would administer the national administrative grant program under a modified Alternative 5.

(g) By letter dated February 17, 1999, Association technical committee chairs and regional association presidents were advised that the Association had been working for ten months to resolve administration of the national administrative grant program. The Association solicited committee and regional association recommendations for priority conservation needs, on an expedited schedule, by March 15, 1999.

(h) At the Executive Committee meeting of March 27, 1999, the Director agreed to meet with State representatives in early April to set administrative program funding priorities.

(i) During the meeting of April 6, 1999, the Director advised that the sudden discovery of a projected deficit in FY 1999 administrative funds would require prompt action to reduce expenditures, and the Director agreed to consult with State representatives before taking final decisions. A report to State fish and wildlife directors advised them to ignore rumors about the future of the administrative grant program. The projected deficit was attributed to:

- Costs of administering small grant programs. Sometime in early 1999 the Service concluded that the costs of administering small grant programs created by amendments to the Sport Fish Restoration Act (Clean Vessel Act Pumpout Program, the Boating Infrastructure Program, and the Coastal Wetlands Planning, Protection and Restoration Program) could not be assessed against the grant amounts authorized by statute but must instead be absorbed out of Sport Fish Restoration Act administrative funds. Additional cost: \$1 million per annum.

- Costs of state audits by Defense Contract Audit Agency. A substantial amount not present prior to FY 1997. Additional cost per annum not revealed in the public notice of cancellation.

- Costs of automating the grants delivery system (Federal Aid Information Management System). Costs are said to be much greater than two years ago when the Service began this process. Additional cost per annum not revealed in the public notice of cancellation.

(j) By letter dated May 12, 1999, the Director advised that the Service would be unable to offer a national administrative grant program for FY 2000.

(k) By letter dated May 25, 1999, Association President Holmes expressed appreciation to Director Clark for her agreement "to back up and take another look" at the reductions in administrative funds spelled out in the Director's letter dated May 12, 1999.

(l) By letter dated May 28, 1999, Director Clark advised President Holmes that no good options exist in the short term and further review of administrative funding decisions taken by the Service would be a futile exercise.

(m) By notice of July 26, 1999, the Service announced the cancellation of Federal Aid in Sport Fish and Wildlife Restoration Administrative Project Funding. 64 Fed. Reg. 40386 (July 26, 1999).