

may arise therefrom; but this provision shall not be construed to extend to an agreement made with a corporation for its general benefit.

§ 82.19 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under cooperative agreements entered into pursuant to the Act shall be governed by the "Government Patent Policy," President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of government patent policy as printed in 36 FR 16889.

§ 82.20 Civil rights.

Each cooperative agreement shall be supported by a statement of assurance executed by the grantee providing that the project will be carried out in accordance with title VI, non-discrimination in federally assisted programs, of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-4, and with the Secretary's regulations promulgated thereunder, 43 CFR part 17.

§ 82.21 Copyrights.

Where research conducted under a grant issued pursuant to this part results in a book or other copyrightable material, the author or grantee, subject to the terms of the Cooperative Agreement, is encouraged to publish the work, but the Department of the Interior reserves a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Any publication by the grantee must bear in an appropriate place an acknowledgment of grant support under the Marine Mammal Act from the Department of the Interior. In addition, any publication must include a statement that the findings, conclusions, etc., do not necessarily represent the views of the Department of the Interior. At least two copies of any printed publications must be furnished to the U.S. Fish and Wildlife Service.

PART 83 [RESERVED]

PART 84—NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

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AUTHORITY: 16 U.S.C. 3951-3956.

SOURCE: 67 FR 49267, July 30, 2002, unless otherwise noted.

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). The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetlands ecosystems. It accomplishes this by helping States protect, restore, and enhance their coastal habitats through a competitive grants program. Results are measured in acres protected, restored, and enhanced.

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

Terms used have the following meaning in this part:

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, Dela-

ware, 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; and 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. 3951-3956).

Eligible applicant. Any agency or agencies 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 briars (*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 deep-water habitat. The program's strongest mandates come from the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901), 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 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 and the Federal Aid Grant Application Booklet (OMB Control Number 1018-0109), that includes statements of need and objective(s); a description of expected results or benefits; the approach to be used, such as procedures, schedules, key personnel and cooperators, location of the proposed action, and 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 of compliance with all applicable Federal laws, regulations, and policies (SF 424B or SF 424D); and

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

(6) A grant agreement form if the proposal is selected for an award (USFWS Form 3-1552); and

(7) A grant amendment form if the agreement is modified (USFWS Form 3-1591).

(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 and authorized by OMB through the Federal Aid Grant

Application Booklet (OMB Control Number 1018-0109).

Subpart B—Applying for Grants

§ 84.20 What are the grant eligibility requirements?

(a) Eligible grant activities include:

(1) Acquisition of a real property interest in coastal lands or waters from willing sellers or partners (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;

(6) Planning as a primary project focus (planning is allowable as a minimal component of project plan development);

(7) Operations and maintenance;

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

(9) Projects providing less than 20 years of conservation 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.

(1) Service Regional Wildlife and Sport Fish Restoration 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 grants; 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.

(2) Service Divisions of Ecological Services in the regions and field and Fisheries and Habitat Conservation in the national office provide technical assistance and work with Wildlife and Sport Fish Restoration to encourage State participation in this process.

(3) Send your proposal to "Regional Director (Attention: Wildlife and Sport Fish Restoration)" at the address of the appropriate regional office, as provided at 50 CFR 2.2.

(b) The Program operates on an annual cycle. Regional Wildlife and Sport Fish Restoration 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, DC, 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) More than one agency in a State may submit proposals to the Service if the Governor determines that more

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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. Obtaining money for one phase of a project will not be contingent upon acquiring money 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.

[67 FR 49267, July 30, 2002, as amended at 78 FR 35152, June 12, 2013]

§ 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 of compliance with applicable Federal laws, regulations, and policies (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, and verifiable objective(s) to be accomplished during a specified time period;

(3) Expected results or benefits, in terms of coastal lands and waters, the hydrology, water quality, or 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 grant money will not be used for lobbying activities;

(8) A concise statement, with documentation, of how the proposal addresses each of the 13 numeric criteria including a summary using FWS Form No. 3-2179 (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 inter-agency coordination on coastal wetlands conservation projects that has occurred or is planned that relates to this proposal (Specify the organizations 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 Wildlife and Sport Fish Restoration 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 Headquarters.

(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;

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

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

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

(v) Identifies obtainable, quantified performance measures (acres enhanced, restored, or protected) that help achieve the management goals and objectives of the National Coastal Wetlands Conservation Grant Program. Through this program, the States' efforts and leadership will help the Service meet its Long-Term and Annual Performance Goals as expressed in the Service's Annual Performance Plan.¹

(3) The grant limit is \$1 million. Proposals requesting Program awards 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 Wildlife and Sport Fish Restoration Office sends the proposal to the National Wildlife and Sport Fish Restoration Office, which works with the National Office of the Fish and Wildlife Management and Habitat Restoration Program for distribution to a Review Panel. The Review Panel includes representation from our coastal Regions and from other Service Programs, for example, the Endangered Species Program. The Fisheries and Habitat Conservation 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.

¹The Service's Annual Performance Plan can be found on the Service's homepage at <http://www.fws.gov/r9gpra>. For more information you might also contact the Budget Office at 202-208-4596 or the Planning and Evaluation Staff at 202-208-2549.

The Director announces the selection by October 1.

[67 FR 49267, July 30, 2002, as amended at 78 FR 35152, June 12, 2013]

§ 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 provide grants, for example, for 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, we may factor additional considerations into the ranking decision at the national level. In case of a tie, we will use these additional considerations 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) A total of 64 points is possible under the scoring system.

(g) If a grant proposal is not selected, the State may resubmit it 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,² 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 types² (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

²These 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.

National Wetlands Inventory codes/information if available.

(iii) Wetlands benefited 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) We will award a full 7 points 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 questions arise 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 conservation 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 will receive more points than a plan containing 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 or 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 and 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. (Up to 5 points)

(ii) The project will provide, restore, or enhance important habitat for State-listed threatened and endangered species. (Up to 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 fisheries 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, inter-jurisdictional, 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)

(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 will, 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 projects that benefit coastal-dependent species identified in the North American Waterfowl Plan or listed as species of management concern.³ Proposals should also include information that demonstrates how the project will contribute to the regional goals developed under the U.S. Shorebird Conservation Plan, the North American Waterbird Conservation Plan, Partners in Flight, the North American Waterfowl Management Plan, or other bird conservation initiatives. 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 the applicant 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)

³For more information about species of management concern, visit the website migratorybirds.fws.gov or contact the Division of Migratory Bird Management at 703-358-1714.

(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 to a 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 requirement 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 money 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 money 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.⁴

(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.⁴

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

⁴From 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?*

receive full points. Programs supported by activities or funds from partners should be encouraged over use of project dollars. 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.* We will factor the following considerations 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 op-

posed to using lands already owned by the State or third party as part of the State matching share.

(c) All proposals must include the information described in paragraphs (b) (1)–(4) of this section. 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 selection.

Subpart D—Conditions on Acceptance/Use of Federal Money

§ 84.40 What conditions must I follow to accept Federal grant money?

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

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

Monies that have been allocated for a grant will be held until December 31 of the following year. If a grant agreement has not been signed by the State and the Service and, therefore, the money has not been obligated for the approved grant by that date, the funds automatically are returned to the Program account in Washington.

§ 84.43 How do States get the grant monies?

Funding to States is provided on a reimbursable basis. See § 84.47 for information on what costs can be reimbursed. 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. We will minimize the time elapsing between the transfer to the State and the State's need for the funds, and the time period will 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 provide specific information on methods and procedures for transferring funds.

§ 84.44 What is the timetable for the use of grant money?

Once money is granted to the coastal States, the money is available to those States for the time designated in the grant agreement. If a State needs more time, the State must apply for an extension of time by amending the grant agreement. If the Service does not extend the time, the unobligated monies return to the Service for expenditure on future grants. Also, if a State cannot spend the money on the approved project, the State must notify the appropriate Regional Director as soon as possible so that the money 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 a fund as defined in § 84.11. 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 a 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 noncash 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 1.13⁵ 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

⁵From the Fish and Wildlife Service Manual, available on-line at <http://www.fws.gov/directives/index.html>.

§ 84.47

by signing the Application for Federal Assistance (SF 424), the Assurances (SF 424B or SF 424D), and the Grant Agreement (Form 3-1552).

(f) No Federal monies, non-Federal monies, in-kind contributions, or National Fish and Wildlife Foundation grant program monies 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 contributions (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 money available to the project is more than the maximum allowed, we will reduce the Program contribution 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 monies 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.

50 CFR Ch. I (10-1-13 Edition)

§ 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 we can allow preliminary costs, 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 and 50 CFR 80.14.

(1) Title to real property acquired under a grant or subgrant must be vested in the State or subgrantee, including local governments and non-profit organizations. States must submit documentation (e.g., appraisals and appraisal reviews) to the Regional Director who must approve it before the State becomes legally obligated for the purchase. States will provide title vesting evidence and summary of land costs upon completion of the acquisition. The grant agreement and any deed to third parties (e.g., conservation easement or other lien on a third-party property) must include appropriate language 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) Real property acquired with National Coastal Wetlands Conservation Grant funds must continue to serve the purpose for which it was acquired. 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 by the State or subgrantee with non-Federal monies in accordance with 50 CFR 80.14.

(4) 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 of the Service. Real property includes, but is not limited to, lands, buildings, minerals, energy resources, timber, grazing, and animal products. If real property is sold, the State or subgrantee must compensate the Service in accordance with 43 CFR 12.71(c)(2).

(5) If rights or interests obtained with the acquisition of coastal wetlands generate revenue during the Grant Agreement period, the State will treat the revenue as program income and use it to manage the acquired properties. If the State sells or leases real property, the State must treat the proceeds as program income and return the money to the Wildlife and Sport Fish Restoration program regardless of the grant period.

(6) Inconsistent use that is not corrected can be grounds for denying a State future grants under this Program.

(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, the State must provide to the Regional Office written certification that any proposed changes to a dam meet Federal standards.

(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 in accordance with 43 CFR 12.72.

[67 FR 49267, July 30, 2002, as amended at 78 FR 35153, June 12, 2013]

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

All requests for additional monies for approved coastal wetland grants will be subject to the entire review process along with new grants. Any monies left over after the project is complete, or if the project is not completed, should be returned to Headquarters 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 monies in these areas would provide similar benefits, the Region may use unspent balances to pay for these projects with prior approval from Headquarters. 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.

[67 FR 49267, July 30, 2002, as amended at 78 FR 35153, June 12, 2013]

§ 84.50 How does a State certify compliance with Federal laws, regulations, and policies?

(a) In accepting Federal money, 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 (either SF 424B or SF 424D) 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 1,⁶ may require additional documentation. Consult with Regional Offices for how this applies to a specific project.

PART 85—CLEAN VESSEL ACT GRANT PROGRAM

Subpart A—General

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AUTHORITY: 16 U.S.C. 777g(c).

SOURCE: 59 FR 11206, Mar. 10, 1994, unless otherwise noted.

Subpart A—General

§ 85.10 Purpose and scope.

The purpose of this part is to establish requirements for state participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act (Public Law 102–587, Subtitle F).

⁶The Fish and Wildlife Service Manual, see footnote 3 for availability.

§ 85.11 Definitions.

Terms used in this part shall have the following meaning:

Clean Vessel Act or Act. The Clean Vessel Act (Pub. L. 102–587, subtitle F).

Coastal State. A State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. The term excludes Alaska and American Samoa because these States have a ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in § 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), of less than one.

Costal waters. In the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes. In other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bays, lagoons, bayous, ponds, and estuaries.

Coastal zone. Coastal zone has the same meaning that the term has in section 304(1) of the Coastal Zone Management Act of 1992 (16 U.S.C. 1453(1)). The coastal zone consists of coastal waters (including the lands therein and thereunder) and the adjacent shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands and protect coastal waters.

Construction. Activities which produce new capital improvements and increase the value of usefulness of existing property.