



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **U.S. Fish and Wildlife Service Grants Awarded to the Commonwealth of Pennsylvania's Game Commission, From July 1, 2016, Through June 30, 2018, Under the Wildlife and Sport Fish Restoration Program**

**This is a revised version of the report prepared for public release.**

In recognition of Secretarial Order No. 3380, we are providing estimated costs associated with certain work products. Applying a formula involving prior salary and benefit expenses, we estimate the cost of preparing this report to be \$149,000.

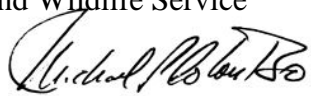


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**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

DEC 15 2020

Memorandum

To: Aurelia Skipwith  
Director, U.S. Fish and Wildlife Service

From: Michael P. Colombo   
Regional Manager, Western Region

Subject: Final Audit Report – *U.S. Fish and Wildlife Service Grants Awarded to the Commonwealth of Pennsylvania's Game Commission, From July 1, 2016, Through June 30, 2018, Under the Wildlife and Sport Fish Restoration Program*  
Report No. 2019-WR-005

This final report presents the results of our audit of costs claimed by the Commonwealth of Pennsylvania's Game Commission (Commission) under grants awarded by the U.S. Fish and Wildlife Service (FWS). The FWS provided the grants to the Commonwealth under the Wildlife and Sport Fish Restoration Program. The audit included claims totaling approximately \$82.7 million on 17 grants that were open during the State fiscal years that ended June 30, 2017, and June 30, 2018 (see Appendix 1). The audit also covered the Commission's compliance with applicable laws, regulations, and FWS guidelines, including those related to collecting and using hunting and fishing license revenues and reporting program income.

We determined that the Commission claimed ineligible and unsupported costs to Program grants totaling \$7,329,212 (\$1,127,981 Federal share). These questioned costs related to equipment usage rates, other direct costs, subaward costs, in-kind contributions, payroll costs, and program income.

We also determined that the Commission did not properly allocate credit card rebates among applicable grants, improperly classified subawards as contracts, did not adequately manage equipment, misused Program-funded real property, did not report barter transactions, and did not protect lands acquired or maintained with Program funds or license revenues against trespass and encroachment.

We made 29 recommendations and 1 repeat recommendation, and we provided a draft of this report to the FWS. The FWS did not opine whether it concurred with our findings and recommendations, but it provided a list of corrective actions and will work with the Commission to implement them. In this report, we summarize the Commission's and the FWS' responses to our recommendations, as well as our comments on their responses. The full responses from the Commission and the FWS are included in Appendix 4. We list the status of the recommendations in Appendix 5.

Please provide us with a corrective action plan based on our recommendations by March 15, 2021. The plan should provide information on actions taken or planned to address each recommendation, as well as target dates and titles of the officials responsible for implementation. Please send your response to [aie\\_reports@doioig.gov](mailto:aie_reports@doioig.gov).

If you have any questions regarding this report, please contact me at 916-978-6199.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented.

cc: Wendi Weber, Regional Director, Region 1, U.S. Fish and Wildlife Service

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# Introduction

## Background

The Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act<sup>1</sup> established the Wildlife and Sport Fish Restoration Program. Under the Program, the U.S. Fish and Wildlife Service (FWS) provides grants to States to restore, conserve, manage, and enhance their wildlife and sport fish resources. The Acts and Federal regulations contain provisions and principles on eligible costs and allow the FWS to reimburse States up to 75 percent of the eligible costs incurred under the grants. The Acts also require that hunting and fishing license revenues be used only for the administration of the States' fish and game agencies. Finally, Federal regulations and FWS guidance require States to account for any income they earn using grant funds.

## Objectives

In June 2016, we entered into an intra-agency agreement with the FWS to conduct audits of State agencies receiving grant funds under the Wildlife and Sport Fish Restoration Program. These audits fulfill the FWS' statutory responsibility to audit State agencies' use of these grant funds.

We conducted this audit to determine whether the Pennsylvania Game Commission (Commission):

- Claimed the costs incurred under the Program grants in accordance with the Acts and related regulations, FWS guidelines, and grant agreements
- Used Commonwealth hunting and fishing license revenues solely for fish and wildlife program activities
- Reported and used program income in accordance with Federal regulations

## Scope

Audit work included claims totaling approximately \$82.7 million on 17 grants open during the State fiscal years (SFYs) that ended June 30, 2017, and June 30, 2018 (see Appendix 1). We expanded our scope to include grants that were closed prior to June 30, 2017, as they related to a finding regarding equipment usage rates (see Finding A.1). We performed our audit at the Commission's headquarters in Harrisburg, PA, and visited 1 regional office, 12 wildlife management areas, 2 subrecipients, 1 tree nursery, and 1 pheasant farm (see Appendix 2).

We performed this audit to supplement—not replace—the audits required by the Single Audit Act.

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<sup>1</sup> 16 U.S.C. §§ 669 and 777, as amended, respectively.

## Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our tests and procedures included:

- Examining the evidence that supports selected expenditures charged to the grants by the Commission
- Reviewing transactions related to purchases, direct costs, drawdowns of reimbursements, in-kind contributions, and program income
- Interviewing Commission employees to ensure that personnel costs charged to the grants were supportable
- Conducting site visits to inspect equipment and other property
- Determining whether the Commission used hunting and fishing license revenues solely for the administration of fish and wildlife program activities
- Determining whether the Commonwealth passed required legislation assenting to the provisions of the Acts

We also identified the internal controls over transactions recorded in the labor and license-fee accounting systems and tested their operation and reliability. Based on the results of initial assessments, we assigned a level of risk to these systems and selected a judgmental sample of transactions for testing. We did not project the results of the tests to the total population of recorded transactions or evaluate the economy, efficiency, or effectiveness of the Commission's operations.

We relied on computer-generated data for other direct costs and personnel costs to the extent that we used these data to select Program costs for testing. Based on our test results, we either accepted the data or performed additional testing. For other direct costs, we took samples of costs and verified them against source documents such as purchase orders, invoices, receiving reports, and payment documentation. For personnel costs, we selected Commission employees who charged time to Program grants and verified their hours against timesheets and other supporting data.

## Prior Audit Coverage

On May 5, 2016, we issued *U.S. Fish and Wildlife Service Wildlife and Sport Fish Restoration Program Grants Awarded to the Commonwealth of Pennsylvania Game Commission From July 1, 2011, Through June 30, 2013* (Report No. R-GR-FWS-0011-2014).

We followed up on all 15 recommendations in the report and found that the U.S. Department of the Interior, Office of the Assistant Secretary for Policy Management and Budget, considered 14 recommendations to be resolved and implemented and 1 recommendation to be resolved but not yet implemented. As discussed in the “Findings and Recommendations” section of this report, we are repeating the unimplemented recommendation, which deals with certification that grant-funded real property is being used for its intended purposes (see Finding E).

We reviewed single audit reports for SFYs 2016 and 2017. Neither of these reports contained any findings that would directly affect the Program grants.

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# Results of Audit

## Audit Summary

We identified the following conditions and determined that the Commission claimed ineligible and unsupported costs to Program grants totaling \$7,329,212. Due to overmatch on some grants, the Federal share of these costs is \$1,127,981.

**A. Ineligible and Unsupported Costs—\$7,329,212 (Federal Share \$1,127,981).**

- 1. Ineligible Costs Related To Equipment Usage Rates—\$4,418,675.** We question costs for grant-funded expenditures, including equipment acquisition and maintenance costs, that were included in equipment usage rates charged to grants during our audit period.
- 2. Ineligible Other Direct Costs—\$1,905,811.** The Commission did not obtain prior approval for construction, equipment purchases, and a major repair, as required by regulations. We also question costs related to four other ineligible expenditures.
- 3. Ineligible and Unsupported Subaward Costs—\$582,647.** We question costs related to three subawards due to fixed-amount agreements and unsupported cost allocations.
- 4. Ineligible In-Kind Contributions—\$286,857.** The Commission failed to properly document in-kind contributions and included some ineligible in-kind contributions in its documentation.
- 5. Ineligible and Unsupported Payroll Costs—\$125,355.** We observed ineligible payroll charged to grants and unsigned timesheets.
- 6. Unreported Program Income—\$9,867.** The Commission failed to account for all sources of program income.

**B. Unallocated Credit Card Rebates.** The Commission had not allocated credit card rebates amongst applicable grants.

**C. Contract Agreements Not Properly Classified as Subawards.** The Commission failed to properly classify some contracts with external partners as subawards.

**D. Inadequate Equipment Management.** The Commission failed to follow Federal regulations and Commission policies for its asset management.

**E. Misuse of Program-Funded Real Property.** The Commission operated a portion of a State Game Land for unauthorized purposes inconsistent with the purpose listed in the purchasing Program grant.



**F. Failure To Report Barter.** The Commission failed to properly value and report barter transactions.

**G. Failure To Protect Against Trespass and Encroachment.** We observed multiple instances of encroachment or trespass on lands acquired or maintained with Program funds or license revenues.

We provided a draft of this report to the FWS for review. The FWS did not opine whether it concurred with our findings and recommendations, but it provided a list of corrective actions and will work with the Commission to implement them. In this report, we summarize the Commission's and the FWS' responses to our recommendations, as well as our comments on their responses.

## Findings and Recommendations

### A. Questioned Costs—\$7,329,212 (Federal Share \$1,127,981)

Figure 1 summarizes by issue the ineligible and unsupported costs detailed in the below findings.

**Figure 1: Summary of Ineligible and Unsupported Costs**

Issue	Ineligible Costs (\$)	Unsupported Costs (\$)	Total (\$)
Equipment usage rates	4,418,675	—	4,418,675
Other direct costs	1,905,811	—	1,905,811
Subaward costs	238,032	344,615	582,647
In-kind costs	286,857	—	286,857
Payroll	75,447	49,908	125,355
Program income	9,867	—	9,867
<b>Totals</b>	<b>\$6,934,689</b>	<b>\$394,523</b>	<b>\$7,329,212</b>

Source: OIG analysis of Commission data.

#### 1. Ineligible Costs Related To Equipment Usage Rates—\$4,418,675

During the audit period, the Commission charged equipment-related costs based on equipment usage rates. These rates estimate the costs incurred by the Commission to purchase, operate, and maintain the equipment. Usage rates include acquisition costs as well as costs of fuel, oil, and maintenance, and the rates were charged to the grants based on either a mileage or hourly basis. When analyzing the composition of the usage rates, we observed that costs used to calculate the rates were also charged to grants. For example, some of the equipment was purchased with prior and current Program grants, and the acquisition costs were included in the usage rates charged to current Program grants. This resulted in costs being double-charged to grants. If the Commission were to decide to no longer use equipment usage rates to charge grants for equipment activities,

these costs would otherwise be eligible as direct charges to grants.<sup>2</sup> However, if the Commission continues to charge equipment usage rates to grants, it should ensure the rates do not include costs that have already been charged to Federal awards.

We question acquisition costs and the costs of fuel, oil, and maintenance when these expenditures were charged to grants since the Commission was already accounting for those expenditures in the equipment usage rates. Some of the usage rates charged to grants during our audit scope included acquisition costs for equipment purchased on prior Program grants. Therefore, we expanded our issue scope to determine the value of equipment purchased on prior grants that was being charged to grants within our audit scope. Based on data provided by the Commission on equipment purchased using Program grant funds since July 1, 2013, we identified \$4,418,675 in equipment purchases, fuel, oil, and maintenance that was charged to Program grants and also included in equipment usage rates. Of that \$4,418,675, \$2,892,212 is related to vehicle acquisition costs charged to grants prior to our audit scope and included in equipment usage rates charged to grants within our audit scope.

Federal regulations at 2 C.F.R. § 200.403(a) state that to be allowable, costs must be necessary and reasonable for the performance of the Federal award and be allocable to the award. Equipment-related expenditures cannot be charged to a Federal award if they are later allocated to the award or other award via the application of an equipment usage rate.

Federal regulations at 2 C.F.R. § 200.436(c)(2) state that when computing depreciation, the acquisition cost must exclude any portion of the cost borne by the Federal Government. Furthermore, cost principles at 2 C.F.R. § 200.405(c) state that any cost allocable to a particular Federal award may not be charged to other Federal awards.

Because the Commission included purchase costs in its equipment usage rates—costs that were charged to prior Program grants—we determined that Program grants were overcharged by \$4,418,675.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ol style="list-style-type: none"><li>1. Resolve the Federal share of ineligible costs related to equipment usage rates charged to Program grants.</li><li>2. Require the Commission to develop policies and procedures that ensure costs included in vehicle usage rate calculations are not also charged to Program grants.</li></ol>



<sup>2</sup> Other Federal regulations may restrict the Commission's ability to charge grants for these costs, such as the requirement that grantees obtain the Federal entity's prior written approval before charging grants for equipment acquisitions.

### **Commission Response**

The Commission concurred with our finding and stated it implemented policies and procedures to ensure costs that make up the usage rate are not also charged to grant accounts. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share of ineligible costs related to this issue and is reviewing the policies and procedures the Commission developed to address the issue. See Appendix 4 for the FWS' full response.

### **OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendations 1 and 2 resolved but not implemented.

## **2. Ineligible Other Direct Costs—\$1,905,811**

The Commission charged \$1,887,319 in construction costs, equipment purchases, and a major equipment repair to grants during the audit period without prior FWS approval (these costs are not included in Finding A.1). Related grant applications did not contain language requesting approval for these expenditures. Furthermore, the grant approvals did not contain language mentioning the intended construction and equipment purchases.

We also observed the following additional ineligible grant charges, totaling \$18,492:

- The Commission charged \$5,453 to Grant No. F16AF00951 to purchase water control structures on State Game Land (SGL) 290. The Commission purchased the items on June 22, 2016, but the grant began on July 1, 2016, and pre-award costs were not authorized.
- The Commission charged \$5,960 to Grant No. F16AF01260 to purchase a monograph. The monograph was related to work performed under the grant, but the work was performed prior to the grant start date. According to the Commission, this expenditure should not have been charged to the grant.
- The Commission charged \$7,537 to Grant No. F16AF00920 to purchase 500 knives to award to outstanding hunter education instructors. The Commission awarded 110 of these knives. Therefore, we question the cost of 390 of the 500 knives purchased on this 1-year grant. The amount questioned is \$5,879.
- The Commission charged \$1,200 to Grant No. F17AF00950 for legal fees related to the resolution of a prior audit issue. The Commission reported that this expenditure should not have been charged to the grant.

Multiple Federal regulations apply to this issue. Regarding costs without prior FWS approval, Federal regulations at 2 C.F.R. § 200.439(b)(1) state that capital expenditures for general

purpose equipment, buildings, and land are unallowable as direct costs, except with the prior written approval of the Federal awarding agency. Federal regulations at 2 C.F.R. § 200.439(b)(3) state that capital expenditures for improvements to equipment that materially increase value or useful life are unallowable except with the prior written approval of the Federal awarding agency.

Federal regulations at 2 C.F.R. § 200.403(a) state that to be allowable, costs must be necessary and reasonable for the performance of the Federal award and be allocable to the award. Charges that should not have been charged to a grant per the Commission are not allocable to those grants. Charges for the extra 390 knives are questioned because they were not necessary for the award.

Regarding pre-award costs, Federal regulations at 2 C.F.R. § 200.458 state that pre-award costs are allowable only with the written approval of the Federal awarding agency. We did not observe any evidence of prior written approval for pre-award costs.

We therefore determined that Program grants were overcharged by \$1,905,811.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ol style="list-style-type: none"><li>3. Resolve the Federal share of ineligible other direct costs charged to Program grants.</li><li>4. Require the Commission to obtain FWS approval before incurring costs that require prior written approval from the Federal awarding agency.</li></ol>



### **Commission Response**

The Commission concurred with our finding and stated it is finalizing policies to request FWS approval on all equipment purchases of \$5,000 or greater. The Commission stated that although not all the knives purchased under the hunter education grant were used that year, they were used in subsequent years and that the bulk purchase was made to save money. The Commission also stated that it believes our inclusion of an equipment purchase under Grant No. F16AF00952 was in error, because the grant narrative contains approval for equipment purchases. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share of ineligible costs related to this issue and that the Commission implemented policies and procedures on February 6, 2020, for requesting written approval prior to incurring costs that require prior written approval from the FWS. The FWS also stated that the policies and procedures are currently being implemented on active grant segments. See Appendix 4 for the FWS' full response.

## **OIG Comment**

Although the hunter education grant is a continuous program at the Commission, it is funded by standalone annual grants. Because each grant is technically its own Federal grant, costs that would be incurred on subsequent grants should not be incurred on a current grant, even if doing so would provide overall cost savings to the agency.

We agree with the Commission's assertion that the narrative for Grant No. F16AF000952 contained approval for equipment purchases, but we did not include any equipment purchases made under that grant or its successor (Grant No. F17AF00958) in our finding. The questioned equipment purchases occurred on Grant Nos. F16AF00951 and F17AF00956, which did not contain similar approvals in their grant narratives. Based on the Commission's and the FWS' responses, we consider Recommendations 3 and 4 resolved but not implemented.

### **3. Ineligible and Unsupported Subaward Costs—\$582,647**

We identified that the Commission had made subawards, and we performed subaward site visits to assess the subrecipients' compliance with applicable Federal regulations. During our site visits, we tested accounting controls and a sample of direct costs charged to the awards. Based on our testing, we question all costs related to the following subawards:

- Subawards with the Pennsylvania Cooperative Fish and Wildlife Research Unit at Pennsylvania State University. The Commission issued two agreements under Grant No. F16AF00352 to the research unit. We observed that the research unit failed to properly separate costs between the two Commission agreements and a grant received from another entity, and as a result the costs claimed, totaling \$344,615, were unsupported. The research unit did not have a policy to determine how to properly allocate or split expenditures between the Commission projects and the separate grant. Therefore, work being performed for the separate grant is sometimes paid for by the Commission using Program funds.
- Subaward with the National Bobwhite Conservation Initiative (NBCI). The Commission entered into an agreement with the NBCI under Grant No. F14AF01303. This grant authorized 100 percent of the total grant funds (\$208,032 over 3 years) to go to the NBCI. During our site visit, we observed that the NBCI had very similar agreements with other States and external partners. The NBCI did not have a policy to allocate expenditures across all benefiting parties. Therefore, expenditures were charged to the Commission agreement that should have been allocated or charged to other agreements. We also observed an instance where the NBCI attempted to refund to the Commission the remaining amount of funding at the close of the 3-year agreement. The Commission refused to accept the remaining amount of \$22,334. Because the amount the Commission paid to the NBCI does not reflect the actual costs incurred, the agreement would constitute a fixed-amount subaward. Fixed-amount subawards are ineligible costs under Program grants.

During our analysis of other direct costs, we observed a payment of \$30,000 to the University of Georgia under Grant No. F13AF00975 for an assessment. Because the amount does not reflect

actual costs incurred by the University of Georgia in performance of the agreement, we consider this agreement a fixed-amount subaward. The costs of fixed-amount subawards are ineligible under Program grants. (Overall we determined that multiple agreements between the Commission and external partners were classified as contracts but should have been treated as subawards. We discuss this issue in Finding C.)

Federal regulations at 2 C.F.R. § 200.405 state that to be allowable under a Federal award, costs must be allocable to the award. A cost is allocable to a particular award if the goods and services involved are chargeable and assignable to that Federal award in accordance with the benefits received. We observed charges related to research unit work and charges related to NBCI work that were not properly allocated amongst all benefiting parties.

Fixed-amount awards are awards under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to the actual costs incurred under the Federal award. Federal regulations at 2 C.F.R. § 200.201(b)(2) state that fixed-amount awards cannot be used in programs that require mandatory cost-sharing or match. Program grants contain mandatory match requirements; therefore, fixed-amount awards are not allowable under these grants.

Because the subrecipients failed to follow Federal regulations regarding allocability, and because the Commission improperly issued fixed-amount subawards, Program grants were improperly charged for ineligible expenditures. As a result, we identified \$344,615 in unsupported costs under Grant No. F16AF00352, \$208,302 in ineligible costs under Grant No. F14AF01303, and \$30,000 in ineligible costs under Grant No. F13AF00975, for a total of \$582,647.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ol style="list-style-type: none"><li>5. Resolve the Federal share of questioned costs related to ineligible and unsupported subaward costs claimed.</li><li>6. Require the Commission to establish policies and procedures that ensure amounts charged to the Commission by subrecipients are allowable and allocable to Federal awards.</li><li>7. Require the Commission to discontinue the use of fixed-amount awards under Program grants.</li></ol>



### **Commission Response**

The Commission concurred with our finding regarding the NBCI and concurred with our determination that fixed-amount awards should not be issued under Program grants. However, the Commission did not concur with our finding of questioned costs on the other subawards.

The Commission mainly disagreed with our finding because it does not deem these agreements subawards. The Commission stated that it relied on guidance provided by the FWS when

determining whether an agreement was a subaward or a contract. The Commission does not believe these agreements result in a third party carrying out the public purpose of the Pittman-Robertson Wildlife Restoration Act, and it does not believe paying a third party based on actual costs should be a deciding factor when determining whether an agreement is a subaward.

Furthermore, the Commission stated that it had reviewed invoices from the Pennsylvania Cooperative Fish and Wildlife Research Unit and determined that funding from other agencies to the unit was not mixed with Commission funding. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share of ineligible and unsupported subaward costs claimed for the Pennsylvania Cooperative Fish and Wildlife Research Unit and the University of Georgia. The FWS also stated that it is working with the Commission to establish policies and procedures to ensure amounts charged by subrecipients are allowable and allocable to Federal awards. See Appendix 4 for the FWS' full response.

### **OIG Comment**

The Commission's main reason for not concurring with our finding related to the Pennsylvania Cooperative Fish and Wildlife Research Unit and the University of Georgia is that it does not believe these agreements are subawards.

The Commission stated that these third parties are not carrying out a public purpose. We disagree. The contents of the agreements between the Commission and the third parties indicate levels of participation that exceed those of a typical contract for purchase of goods or services. Particularly, these agreements include advanced research and wildlife data collection provided by institutions of higher learning. In the case of the research unit, one of the major deliverables is a report analyzing its findings. In the case of the University of Georgia, the scope of work included potential visits to conduct surveys related to wildlife morbidity and mortality. Conducting research into wildlife mortality factors to inform restoration programs would be, in our opinion, a public purpose.

Furthermore, we used source documents, interviews, and other audit evidence to support our finding that the research unit did not properly separate costs between the two Commission agreements and a grant received from another entity and did not have a policy to determine how to properly allocate or split expenditures between the Commission projects and the separate grant.

Based on the Commission's and the FWS' responses, we consider Recommendations 5 – 7 unresolved.

## **4. Ineligible In-Kind Contributions—\$286,857**

The Commission did not ensure that volunteer hours claimed as matching costs were sufficiently documented on two hunter education grants, Grant Nos. F16AF00920 and F17AF00954 (see

Figure 2 for a summary of ineligible costs by grant). During our review of in-kind documentation, we observed multiple issues with the supporting documentation for the volunteer hours charged to these grants. Specifically:

- Classes occurred outside of the grant term.
- Hours worked over multiple days were reported as a lump sum rather than by day.
- Commission officials did not consistently sign volunteers' timesheets to indicate approval.
- Volunteers claimed an excessive 15 to 50 hours in a single day.<sup>3</sup>
- Commission officials approved and signed timesheets prior to the class date.
- Volunteers listed a date other than the class date.
- Volunteer ID numbers were missing, which may indicate an unauthorized instructor.
- Commission officials failed to review and approve timesheets in a timely manner.
- A Commission official approved a timesheet listing their own hours as a volunteer.
- An approving official prepopulated the hours amounts for all volunteers.

We also observed instances where classes had an excessive number of volunteer instructors compared to what would reasonably be expected. We do not question hours related to this issue, but it could result in excessive volunteer in-kind hours.

Federal regulations at 2 C.F.R. § 200.403(g) require costs to be adequately documented to be allowable under Federal awards. In addition, 2 C.F.R. § 200.306(b)(1) states that third-party in-kind contributions satisfy a cost-sharing or matching requirement if they are verifiable from the records of grantees, among other requirements. Further guidance at 2 C.F.R. § 200.306(j) states that the value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

In our prior audit, we recommended that the Commission establish policies and procedures to ensure that claimed in-kind contributions are adequately documented.<sup>4</sup> Despite the Commission's issuance of Standard Operating Procedure (SOP) 10.40, "Hunter Education Volunteer Activity Reporting and Valuation," these issues still occurred because the policy does not adequately address the types of issues we observed during this audit.

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<sup>3</sup> We determined that a volunteer can reasonably donate a maximum of 14 hours per day.

<sup>4</sup> See Finding C in our prior audit report, OIG Report No. R-GR-FWS-0011-2014. The report also cited a lack of compliance with requirements for timely submittal of activity reports.



**Figure 2: Ineligible Costs Related To In-Kind Hours Claimed**

<b>Project</b>	<b>Grant No.</b>	<b>Ineligible Hours</b>	<b>Rate (\$)</b>	<b>Ineligible Costs (\$)</b>
Hunter Education	F16AF00920	6,128		211,600
Hunter Education	F17AF00954	2,182		75,257
<b>Totals</b>		<b>8,310</b>		<b>\$286,857</b>

Source: OIG analysis of Commission data.

The Commission used ineligible in-kind costs to satisfy its matching requirement. We question \$211,600 under Grant No. F16AF00920 and \$75,257 under Grant No. F17AF00954, for a total of \$286,857.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ol style="list-style-type: none"><li>8. Resolve the Federal share of questioned costs related to ineligible in-kind contributions.</li><li>9. Require the Commission to develop and implement policies and procedures for all volunteer programs claiming in-kind match to (a) restrict the number of hours that volunteers can reasonably donate in a single day, (b) define allowable activities that count toward a volunteer's total calculation of donated hours, (c) ensure that all timesheets are properly approved, and (d) require timely review of volunteer timesheets.</li><li>10. Require the Commission to develop and implement policies and procedures for the hunter education program that recommend the number of instructors per course.</li></ol>

### **Commission Response**

The Commission concurred with our finding and stated the steps it took to resolve this issue, including the implementation of policies and procedures and the revision of existing Commission policies. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share of questioned costs related to ineligible in-kind contributions. The FWS also stated it will require the Commission to develop and implement policies to resolve the issues we identified and to recommend the number of instructors per course. See Appendix 4 for the FWS' full response.

## **OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendations 8 – 10 resolved but not implemented.

### **5. Ineligible and Unsupported Payroll Costs—\$125,355**

We tested Commission timesheets and related documentation and question costs related to the following issues:

- Sixteen employees commissioned as law enforcement officers charged time to an activity code titled “Inspection of Federal Aid Areas” (code M30001902400). This is an allowable activity for non-law enforcement employees, but law enforcement activities charged under this code should be excluded from the grant (ineligible). We reviewed a timesheet of a law enforcement officer and found that the duties charged under this code were law enforcement in nature. Having both non-law enforcement and law enforcement employees charge the same activity code for different activities may make tracking of eligible versus ineligible costs more difficult. Revising the description for this activity code could prevent employees from incorrectly using it for law enforcement activities.
- Thirteen Cross Application Time Sheet (CATS) forms did not have required signatures (unsupported).
- A law enforcement employee charged time to a grant activity code for accident investigations, a law enforcement activity (ineligible).
- An employee charged time for a “timber sale meeting.” The associated grant narrative disallows such activities (ineligible).

In addition to the issues related to questioned costs, we discovered an instance of leave charged to grants that was not properly allocated. Some Commission employees are default-coded to grants, meaning their timesheets are automatically populated and fully costed to grant codes. However, these employees sometimes work on nongrant activities, and employees who are not default-coded to grants may occasionally work on grant activities. When an employee who is not default-coded to grants takes leave, that leave is not charged to grant codes; conversely, when an employee who is default-coded to grants takes leave, the leave is automatically charged to grant codes. To properly allocate the value of leave an employee who is not default-coded to grant codes earns by time spent working on grant activities, the Commission calculates the annual leave and associated fringe benefits for final drawdowns. However, there does not appear to be a similar function in place to properly allocate leave for default-coded grant employees who spend time on nongrant activities.

Furthermore, we observed that the time charged to Program grants for the Commission's Federal aid coordinator is overstated by an estimated 10 percent for work performed on other FWS grants, namely State Wildlife Grant Program grants. The Commission should ensure it properly allocates the Federal aid coordinator's time among the proper grants.

Multiple Federal and Commission criteria apply to timesheet issues. Federal regulations at 50 C.F.R. § 80.54 hold that law enforcement activities are ineligible for funding under the Pittman-Robertson Wildlife Restoration Act.

Regarding the charging of time to grant activities, Federal regulations at 2 C.F.R. § 200.430(a)(1) state that these charges are allowable to the extent that they are reasonable and conform to the established written policy of the non-Federal entity, and cost principles at 2 C.F.R. § 200.403(g) stipulate that costs must be adequately documented. In addition, the Commission's SOP 10.27 requires that both the employee and the immediate supervisor sign CATS forms by ink or electronically.

Federal regulations at 2 C.F.R. § 200.403 stipulate that costs must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity. In addition, the narrative of the grant for habitat management for wildlife (Grant No. F17AF00958) states that timber management activities conducted by Commission forestry staff performing commercial cuts are excluded from the grant.

Regarding employee leave coding, Federal regulations at 2 C.F.R. § 200.405(a) state that a cost is allocable to a particular Federal award or other cost objective if the services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. Leave earned from nongrant work is not allocable to a grant because it does not stem from the benefits the grant received.

Lastly, concerning time allocation for the Federal aid coordinator, criteria in the *FWS Manual* at 520 FW 1.9 state that the FWS may approve the use of funding from grants for a coordination project only if the State fish and wildlife agency prorates the coordinator's time and expenses as appropriate between Wildlife Restoration Program grants and State Wildlife Grant Program grants.

Because the Commission did not ensure payroll records were properly signed, and because the Commission did not ensure unallowable activities were not charged to Program grants, we are questioning \$97,412 in ineligible and unsupported charges under eight grants. In addition, since the Commission charges the FWS indirect costs based on the amount of payroll charges, we also question the associated indirect costs of \$27,943. We are not questioning costs related to leave coding or Federal aid coordinator time coding, but the Commission should ensure that it implements controls that resolve the identified issues.

## Recommendations

We recommend that the FWS:

11. Resolve the Federal share of ineligible and unsupported payroll charges claimed on grants.
12. Work with the Commission to revise the description of the grant activity code titled "Inspection of Federal Aid Areas" (M30001902400) to ensure that law enforcement activities are not charged to grants.
13. Work with the Commission to develop policies and procedures that ensure that leave charged by employees who are default-coded to grants is properly allocated based on actual work performed.
14. Work with the Commission to develop policies and procedures that ensure the Federal aid coordinator's time is appropriately prorated between the corresponding FWS program grants.

### Commission Response

The Commission concurred with our finding. The Commission stated it revised the activity code description to exclude the words "surveillance" and "patrol," and that its Federal aid coordinator is now properly allocating time amongst the appropriate grant programs and other funding sources. The Commission also detailed plans to implement policies and procedures to address the other aspects of our finding. See Appendix 4 for the Commission's full response.

### FWS Response

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share of ineligible and unsupported payroll charges claimed on grants. The FWS also stated that it will work with the Commission to develop policies and procedures that ensure leave charged by employees who are default-coded to grants is properly allocated based on actual work performed and the Federal aid coordinator's time is appropriately prorated. See Appendix 4 for the FWS' full response.

### OIG Comment

Based on the Commission's and the FWS' responses, we consider Recommendations 11 and 13 resolved but not implemented and Recommendations 12 and 14 resolved and implemented.

## 6. Unreported Program Income—\$9,867

Although the Commission claimed program income of \$8,175 on Grant No. F16AF00951 and \$8,054 on Grant No. F17AF00956 (both titled "Operation and Maintenance for Wildlife and Hunter Access"), we determined that each grant had additional unreported program income, namely \$3,780 and \$6,087, respectively, generated from the Middle Creek Visitor's Center at SGL 046.

In addition, the Commission was unable to provide a detailed report summarizing all revenue from the visitor's center from SAP, the Commonwealth's official accounting system. Furthermore, the Commission generated separate reports for mineral royalty program income that were not connected to SAP.

Federal regulations at 2 C.F.R. § 200.80 define program income as gross income a grantee receives that is directly generated by a grant-supported activity or earned only as a result of the grant agreement during the grant period. The narratives for Grant Nos. F16AF00951 and F17AF00956 both include costs associated with contracting out maintenance/repair projects at the Middle Creek Visitor's Center; we therefore concluded that any revenues generated from the visitor's center should be treated as program income.

The Commission's SOP 60.31 stipulates that the Federal aid coordinator is responsible for determining all grant-related expenditures through SAP and determining program income based on information from the appropriate reports and submissions from bureaus, divisions, and sections with the agency.

In addition, regulations at 2 C.F.R. § 200.302 require that State financial management systems (a) be sufficient to permit the preparation of reports required by general and program-specific terms and conditions, and (b) provide effective control over and accountability for all funds, property, and other assets. Furthermore, regulations at 50 C.F.R. § 80.121 require States to account for income received from grant activities in the project records and dispose of it according to the terms of the grant.

Because Commission employees did not consider income generated at Middle Creek Visitor's Center to be program income, the Commission did not properly credit the two grants for program income totaling \$9,867. The amount of claimed costs that this program income would offset is considered ineligible. In addition, because some sources of program income are not integrated into SAP, revenues that qualify as program income are not being adequately tracked or reported.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>15. Resolve the Federal share related to unreported program income of \$9,867.</li><li>16. Work with the Commission to implement controls that ensure program income is properly accounted and reported.</li></ul>

### **Commission Response**

The Commission concurred with our finding and stated it was unaware that program income was being generated from the visitor's center. The Commission stated that it would create a guidance document to address the issue. See Appendix 4 for the Commission's full response.

**FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to resolve the Federal share related to unreported program income and that it will work with the Commission to implement controls to ensure program income is properly accounted and reported. See Appendix 4 for the FWS' full response.

**OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendations 15 and 16 resolved but not implemented.

**B. Unallocated Credit Card Rebates**

During our testing of other direct costs transactions, we observed that the Commission received a credit card rebate of \$25,459 during SFY 2017. This amount was credited to the Commission's license revenue fund. Employees told us that the Commission receives credit card rebates from both the general purchase card and the corporate travel card. These rebates are provided by the card issuers and are based on the volume of transactions and the timeliness of payments. Some grant expenditures are charged to these cards; therefore, a portion of the rebate calculation is based on the grant expenditures.

Federal regulations at 2 C.F.R. § 200.406 state that credits received by the non-Federal entity must be credited to the Federal award—either as a cost reduction or cash refund—to the extent that such credits relate to allowable costs.

Because the Commission has been receiving credit card rebates related to federally funded purchases, the Program grants have been overcharged. Because this issue was systemic, we expanded our testing to identify all credit card rebates. We identified \$295,233 in credit card rebates received by the Commission during the audit period. We could not determine the amount of credit card rebates that should have been applied to individual grants; therefore, we cannot determine the excess reimbursements related to this issue.

<b>Recommendation</b>
<p>We recommend that the FWS:</p> <p>17. Work with the Commission to resolve the Federal share of questioned costs related to \$295,233 in credit card rebates.</p>

**Commission Response**

The Commission concurred with our finding and outlined a procedure it will use to allocate portions of credit card rebates to grants. It stated that it will begin this procedure for drawdowns for SFY 2020 and forward. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it will work with the Commission to resolve the Federal share of questioned costs related to credit card rebates. See Appendix 4 for the FWS' full response.

### **OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendation 17 resolved but not implemented.

## **C. Contract Agreements Not Properly Classified as Subawards**

We reviewed multiple agreements between the Commission and external partners that the Commission classified as contracts. Upon review, we determined that these agreements were subawards because the funded activities served the public purpose of the Pittman-Robertson Wildlife Restoration Act.

We based our determination on the following criteria:

- A subaward typically contains work that is highly specialized from nonprofit 501(c)(3) conservation organizations or public institutions of higher learning. A contract is more typical when the contractor operates in a competitive environment and provides goods or services similar to those of many different vendors and for the benefit of the pass-through entity.
- In the Commission agreements, the subrecipients used the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Commission.
- The Commission agreements indicated that the subrecipients were responsible for adherence to applicable Federal program requirements specified in the Federal award.
- Most of the agreements waived indirect costs to be used by the Commission as matching funds on the associated grant.

Federal regulations at 2 C.F.R. § 200.93 define a subrecipient as a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. Federal regulations at 2 C.F.R. § 200.330(a)(5) state that the characteristics that support the classification of a non-Federal entity as a subrecipient include when the non-Federal entity, in accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity. Furthermore, 2 C.F.R. §§ 200.330(b)(3) and 200.330(b)(5) state that a contractor is an entity that normally operates in a competitive environment, and a contractor is not typically subject to compliance requirements of the Federal program as a result of the agreement.

In addition, prime awardees on a Federal grant greater than or equal to \$25,000 are subject to subaward reporting requirements in the Federal Funding Accountability and Transparency Act

(FFATA). The prime awardee is required to file a FFATA subaward report by the end of the month that follows the month the subaward was made.

Federal regulations at 2 C.F.R. § 200.331(b) also require that the Commission, as the pass-through entity, must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.

Because the Commission did not properly classify some of its agreements as subawards, it failed to comply with Federal requirements for reporting, risk assessment, and monitoring.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>18. Work with the Commission to develop and implement more specific guidance for determining whether Program funds pass through as subawards or contracts.</li><li>19. Work with the Commission to develop and implement procedures to ensure compliance, where applicable, with 2 C.F.R. § 200.331 and FFATA requirements for the proper administration and reporting of subawards.</li></ul>

### **Commission Response**

The Commission concurred that the agreement with the NBCI should have been classified as a subaward. However, the Commission did not concur with our finding that several other contracts were subawards. The Commission stated its reasons for disagreeing with our determination in its response to Finding A.3. The Commission stated it is currently developing subaward processes to comply with Federal regulations and FFATA requirements. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to develop and implement more specific guidance for determining whether Program funds pass through as subawards or contracts. The FWS also stated it is working with the Commission to implement procedures to ensure compliance with Federal regulations and FFATA requirements. See Appendix 4 for the FWS' full response.

### **OIG Comment**

In its response to Finding A.3, the Commission gave specific reasons as to why it believed the agreements with the Pennsylvania Cooperative Fish and Wildlife Research Unit and the University of Georgia were contracts and not subawards. We address those comments in that section.



In this finding, we have outlined some of the reasons agreements that the Commission considered to be contracts are subawards. During our audit, we observed other agreements—in addition to those listed in Finding A.3—that should have been classified as subawards. The purpose of reporting this finding is to highlight the Commission’s ineffective classification process and to recommend that it work with the FWS to review and improve the process.

Based on the Commission’s and the FWS’ responses, we consider Recommendation 18 unresolved and Recommendation 19 resolved but not implemented.

#### **D. Inadequate Equipment Management**

We noted the following equipment management deficiencies when we tested equipment items from an inventory list provided by the Commission during our visits to various Commission properties:

- Items observed on site were not listed on the Commission’s inventory.
- Items marked as funded by the Pittman-Robertson Wildlife Restoration Act were not listed on the Commission’s inventory.
- Items that should have both a Pittman-Robertson funding marker and asset identification number were missing one or the other.
- Items listed on the inventory as Commission-funded lacked asset identification tags.
- Items with a Pittman-Robertson funding marker were listed as Commission-funded in the inventory.

In addition, during site visits, Commission employees noted that since they were informed of our visit, they had manually applied property tags and markers to equipment where identification numbers were missing.

Our review also identified issues with the Commission’s inventory tracking system:

- The Commission’s inventory list did not indicate a Federal Award Identification Number for each item.
- The Commission’s inventory list had more than 2,000 items marked as purchased on January 1, 1900. This is contrary to item descriptions.
- A review of transactions made by the Commission during the audit period revealed some equipment purchased using Pittman-Robertson funding was listed as purchased with Commission funds on the Commission’s inventory list.

Our prior OIG audit (Report No. R-GR-FWS-0011-2014) highlighted inadequate equipment management by the Commission.

Federal regulations at 50 C.F.R. § 80.90(f) require each State fish and wildlife agency to be responsible for the control of all assets acquired under Program grants to ensure that they serve the purpose for which acquired throughout their useful life.

Regulations at 2 C.F.R. § 200.313(b) require a State to use, manage, and dispose of equipment acquired under a Federal award by the State in accordance with State laws and procedures. The Commission's SOP 10.1 requires equipment purchased with Pittman-Robertson funding to be identified with an asset identification number and an identifiable funding program sticker, logo, or marker. Furthermore, SOP 10.1 specifies that for automotive assets, an asset identification number and a Pittman-Robertson sticker (if applicable) must be placed on the frame in the door jamb area near the VIN and serial number.

Regulations at 50 C.F.R. § 80.20(b) state that license revenue includes equipment acquired with license revenue. This follows 50 C.F.R. § 80.11(c), which specifies that a State becomes ineligible to receive the benefits of the Acts if it diverts hunting license revenue from the control of the State agency or purposes other than the agency's administration.

Regulations at 2 C.F.R. § 200.313(d)(1) require that property records be maintained and include the source of funding for the property (including the Federal Award Identification Number).

Because the Commission failed to properly manage its equipment, the equipment is at risk of loss and misuse. The FWS has no assurance that Program-funded equipment is used for its originally intended purpose. Commission-funded equipment is vulnerable to diversion. Furthermore, marking grant-funded equipment as Commission-funded in the inventory system could cause errors when calculating applicable equipment usage rates.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>20. Work with the Commission to ensure it follows Federal regulations and Commission policies for its asset management.</li><li>21. Work with the Commission to strengthen its asset management system and inventory policies, including developing written policies for tagging non-federally-funded equipment.</li></ul>

**Commission Response**

The Commission concurred with our finding and listed multiple actions it took to resolve the issues we identified and to improve its asset management program. See Appendix 4 for the Commission's full response.

**FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is working with the Commission to strengthen its asset management system and inventory policies to ensure it follows Federal regulations and Commission policies. See Appendix 4 for the FWS' full response.

**OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendations 20 and 21 resolved and implemented.

**E. Misuse of Program-Funded Real Property**

State Game Land (SGL) 290 was purchased under a Program grant (Project No. W-68-L-1) approved September 5, 1978. The grant narrative cited a need for acreage for hunting, described the proposed land purchase as "potentially prime small game and waterfowl habitat," and noted that the purchase would protect the "environmentally fragile real estate" from further degradation. The narrative also contained documentation stating that a summer cottage and storage buildings would be removed. During site visits, we observed a portion of SGL 290 containing a summer cottage and storage buildings. The area near the cottage contained a dog agility course and low grass mowing. Commission personnel told us the cottage is used for Commission headquarters executive meetings and that the headquarters grounds staff are responsible for mowing the area surrounding the cottage and dog agility course. These uses are for purposes not supported by the original purchasing grant.

Federal regulations at 50 C.F.R. § 80.134 require State fish and wildlife agencies to use grant-funded land parcels for only the purposes authorized in the grant. When an agency allows use of real property that interferes with its authorized purpose under a grant, regulations at 50 C.F.R. § 80.125 require the agency to restore the real property to its authorized purpose. If the agency cannot restore the property to its authorized purpose, it must replace the real property using non-Federal funds. The agency is allowed up to 3 years from the date of notification to restore the real property to its authorized use or acquire replacement property, or the agency may be declared ineligible to receive new grant funding.

Because the Commission is using a portion of SGL 290 for executive meetings and dog training, we believe the primary purpose for purchasing the property has been compromised. Potentially prime small game and waterfowl habitat may have been infringed upon, and the Commission has failed to remove buildings as stated in its grant narrative.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>22. Work with the Commission to resolve the improper use of land that conflicts with the original purpose for which the land was purchased with grant funds.</li><li>23. Work with the Commission to remove the dog agility course from Program-funded property.</li><li>24. Work with the Commission to implement policies and procedures to ensure the Commission does not use Program-funded properties for purposes other than those contained in FWS-approved grant narratives.</li></ul>

**Commission Response**

The Commission concurred with our finding that the buildings located on SGL 290 need to be removed from the site. The Commission stated that it has agreed with the FWS to remove the structures within 3 years because it needs the additional office space until it can potentially construct an addition to its headquarters building in Harrisburg, PA. The Commission also stated that it has already removed the dog agility course from the property.

The Commission stated it plans to develop processes that ensure operations on Program-funded properties are consistent with the intended purposes. See Appendix 4 for the Commission's full response.

**FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it will work with the Commission to ensure the cottage is removed within 3 years of the final audit report issuance. The FWS also stated it is working with the Commission to implement policies and procedures to resolve the issues we identified. See Appendix 4 for the FWS' full response.

**OIG Comment**

We do not find a need for office space is a compelling justification for 3 years of continued misuse of land purchased and maintained with Program funds. Based on the Commission's and the FWS' responses, we consider Recommendation 22 unresolved, Recommendation 23 resolved and implemented, and Recommendation 24 resolved but not implemented.

*Repeat Recommendation: Certification of Use of Program-Funded Real Property*

In our prior audit (Report No. R-GR-FWS-0011-2014), we noted that the Commission had not reconciled its Program-funded, real property records with those of the FWS. We recommended that the FWS require the Commission to certify that grant-funded real property is being used for its intended purposes.

Federal regulations at 50 C.F.R. § 80.90(f) require that the Commission maintain control of all assets acquired under Program grants to ensure that they serve the acquired purpose throughout their useful life.

At the time of our current audit, that recommendation had not yet been implemented. We observed the same condition and are therefore repeating Recommendation 15 from that report.

<b>Repeat Recommendation</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>• Require the Commission to certify that grant-funded real property is being used for its intended purposes.</li></ul>

#### **Commission Response**

The Commission concurred with our finding and stated that it will discuss and develop a certification process. See Appendix 4 for the Commission's full response.

#### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it will require the Commission to certify that grant-funded real property is being used for its intended purposes. See Appendix 4 for the FWS' full response.

#### **OIG Comment**

Based on the Commission's and the FWS' responses, we consider this recommendation resolved but not implemented.

### **F. Failure To Report Barter**

We observed the Commission engaged in barter transactions through its Hunter Access Program and through the use of sharecropping agreements.

The Commission administers a Hunter Access Program in which private landowners allow the general public to hunt and trap on more than 2.5 million acres of land. The program is described in the narratives for Grant Nos. F16AF00901 and F17AF00951. In exchange for hunting rights, the Commission provides a variety of services and benefits to the private landowners:

- Technical assistance related to habitat improvements and enhancements
- Free nesting structures and bird boxes built at Howard Nursery
- Free seedlings

- Free subscription to the Commission’s *Game News* magazine
- Increased law enforcement protection
- In some cases, labor and equipment to help develop wildlife habitat

Enrollment in the Hunter Access Program also provides the private landowner with liability protection in the case of injury to persons using the private property for hunting. Some of these benefits are paid with Program funds (nesting structures and seedlings are produced at the Howard Nursery and costed to Grant Nos. F16AF00952 and F17AF00958). Grant No. F17AF00951 estimated labor costs related to the program totaling \$354,914.44, but these costs were not estimated at this cost level for the SFY 2017 version of the grant, Grant No. F16AF00901.

The Commission also uses sharecropping in performance of its grants for habitat management, Grant Nos. F16AF00952 and F17AF00958.

Federal regulations at 50 C.F.R. § 80.98 detail how an agency must report barter transactions. Depending on the value of goods and services received compared to the goods and services relinquished, the barter transaction may need to be reported as either an expense or program income.

Because the Commission did not report barter transactions in the “Remarks” sections of the SF-425s on Grant Nos. F16AF00901, F16AF00952, F17AF00951, and F17AF00958, it did not comply with Federal regulations detailing how an agency must report barter transactions.

Recommendations
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"> <li>25. Work with the Commission to develop a reasonable methodology to value the goods and services received from the Commission’s Hunter Access Program.</li> <li>26. Work with the Commission to determine whether program income or an expense related to barter transactions is reportable. If it is determined that the Commission incurred program income as a result of the barter transactions during the audit period, resolve any excess reimbursement received as a result of the program income.</li> <li>27. Work with the Commission to develop policies and procedures to accurately report barter transactions on Program grants.</li> </ul>

### Commission Response

The Commission did not concur with our finding that the Hunter Access Program is a reportable barter transaction. The Commission stated that it does not agree that the Hunter Access Program

constitutes a barter transaction because it does not believe a sale or exchange of goods and services has occurred. The Commission also described potential negative consequences of deeming this a barter transaction. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it is communicating with the Commission regarding this issue. See Appendix 4 for the FWS' full response.

### **OIG Comment**

The Commission stated in its response that it has a statutory duty to serve sportsmen and ensure adequate opportunities to hunt and trap. One way the Commission provides for hunting and trapping opportunities is by allowing hunting and trapping on State Game Lands. Some of these lands are maintained with Program funds. The Commission also uses Program funds to acquire lands to expand its offering of hunting and trapping opportunities. When private landowners coordinate with the Commission to make their lands available for public hunting, they are assisting the Commission in performing its statutory duty and thereby providing something of value to the Commission. In return, the Commission provides a variety of services and benefits to these landowners. Because private landowners are providing something of value to the Commission and receiving something of value in return, we concluded that this is a barter transaction.

Based on the Commission's and the FWS' responses, we consider Recommendations 25 – 27 unresolved.

## **G. Failure To Protect Against Trespass and Encroachment**

During our site visits to Pennsylvania State Game Lands, we observed multiple instances of encroachment or trespass on lands acquired or maintained with Program funds or license revenues. Of the 12 State Game Lands we visited, 4 showed evidence of encroachment, described below. Appendix 3 provides photos that illustrate the encroachment and trespass issues we found.

At SGL 242, we observed "Private Property" signs posted on the property near a private residence. The private residence is located near the game land boundary, but the signs were on the game land property. SGL 242 does not have a fenced boundary. This issue causes a loss of potential use because the public may be confused about the boundary of the game land.

At SGL 214, we observed that a mobile home neighborhood bordered the property near a body of water. Areas of game land property between the neighborhood and the body of water were being used for personal uses and had some personal buildings, such as storage sheds, on game land property. Domesticated livestock (chickens and ducks) were damaging the property at this location because they were not kept in pens. Furthermore, we observed a burn pit at this location. (See Photos 1 and 2 in Appendix 3.)

At SGL 095, we observed a basketball goal, building, electrified horse pasture, boat storage, dumping, and personal mowing on the property. The land manager told us he was aware of the

situation and that a local game warden was currently working on the issue. (See Photos 3 and 4 in Appendix 3.)

At SGL 042, a neighborhood borders part of the game land. There is significant encroachment at this border, including a building on a foundation crossing over the boundary. Other observed issues included mowing, dumping, and stacks of wood for personal use on the game land side of the boundary. (See Photos 5, 6, 7, and 8 in Appendix 3.)

Federal regulations at 50 C.F.R. § 80.18(c) require States to maintain accountability and control of all assets to assure they serve the purpose for which they were acquired throughout their useful life. Furthermore, given that lands purchased with license revenues are considered to be license revenues for the purposes of the Acts, 50 C.F.R. § 80.4 states that revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency. Part (c) states that if a diversion of license revenues occurs, the State becomes ineligible to participate under the Acts from the date the diversion is declared by the FWS Director until restoration occurs.

The public is trespassing on Commission land because the game land boundaries are unclear. Because the Commission does not use border fencing, it faces challenges enforcing hard boundaries near neighborhood areas. In addition, the Commission does not have policies that clearly mark and monitor boundaries at higher risk of encroachment, specifically those boundaries near neighborhoods. Due to these issues, lands acquired or maintained with Program funds or license revenues are being misused and supplanted for personal use.

<b>Recommendations</b>
<p>We recommend that the FWS:</p> <ul style="list-style-type: none"><li>28. Work with the Commission to resolve the encroachment and trespass issues.</li><li>29. Work with the Commission to develop policies and procedures to ensure the Commission clearly marks and delineates boundaries in areas where State Game Lands border neighborhoods.</li></ul>

### **Commission Response**

The Commission concurred with our finding and stated that this is an ongoing issue. The Commission stated that it resolved some of the reported issues and is working on resolving others. The Commission also stated it is in the process of rewriting its boundary line procedure to address concerns regarding borders in areas most at risk of encroachment. See Appendix 4 for the Commission's full response.

### **FWS Response**

The FWS did not state whether it concurred with our finding, but stated that it will work with the Commission to resolve the identified issues and to develop policies and procedures regarding boundary issues. See Appendix 4 for the FWS' full response.



**OIG Comment**

Based on the Commission's and the FWS' responses, we consider Recommendations 28 and 29 resolved but not implemented.

# Appendix 1

**Commonwealth of Pennsylvania  
Game Commission  
Grants Open During the Audit Period  
July 1, 2016, Through June 30, 2018**

FBMS Grant No.	Grant Amount	Claimed Costs (\$)	Questioned Costs		Federal Share (\$) *
			Ineligible Costs (\$)	Unsupported Costs (\$)	
F13AF00975	5,794,363	6,893,514	53,786	2,167	0
F14AF01010	517,896	467,475	8,000	56	6,042
F14AF01303	208,032	208,032	208,032	—	156,000
F16AF00352	2,242,147	2,066,334	14,134	355,426	178,761
F16AF00899	748,996	748,996	55,881	—	12,072
F16AF00901	882,000	882,000	7,420	—	5,565
F16AF00920	2,760,000	2,490,726	217,611	—	163,208
F16AF00951	11,059,600	16,049,120	1,008,682	—	0
F16AF00952	15,450,000	15,565,211	550,686	—	441,817
F16AF01260	6,027,123	6,090,061	23,708	36,874	0
F17AF00950	775,000	612,700	19,272	—	14,454
F17AF00951	882,667	639,290	6,020	—	4,515
F17AF00954	2,531,000	2,681,921	136,336	—	0
F17AF00956	11,059,600	12,403,510	981,499	—	0
F17AF00958	15,450,000	14,803,171	751,339	—	145,547
F17AF01019	125,000	132,375	0	—	0
F18AF00060	1,094,722	72,303	71	—	0
Subtotals	\$77,608,146	\$82,806,739	\$4,042,477	\$394,523	\$1,127,981
Other grants†			2,892,212		**
<b>Totals</b>	<b>\$77,608,146</b>	<b>\$82,806,739</b>	<b>\$6,934,689</b>	<b>\$394,523</b>	<b>\$1,127,981</b>

\* Reported grant overmatch was considered in the calculation of the Federal share of questioned costs.

† In Finding A.1, we question costs related to vehicle acquisitions included in equipment usage rates. These grants occurred outside our audit scope and incurred the acquisition costs for equipment with usage rates charged to grants within our audit scope.

\*\* We did not determine the Federal share of questioned costs (effect on reimbursement) on grants that were closed prior to our scope, as resolution of Finding A.1 would affect the amounts.

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## Appendix 2

### **Commonwealth of Pennsylvania Game Commission Sites Visited**

#### **Headquarters**

Harrisburg, Pennsylvania

#### **Regional Office**

Southwest Regional Office

#### **Wildlife Management Areas**

State Game Land 42

State Game Land 46

State Game Land 95

State Game Land 108

State Game Land 109

State Game Land 176

State Game Land 203

State Game Land 214

State Game Land 218

State Game Land 242

State Game Land 290

State Game Land 311

#### **Subrecipients**

National Bobwhite Conservation Initiative

Pennsylvania Cooperative Fish and Wildlife Research Unit

#### **Other**

Howard Nursery

Southwest Pheasant Farm

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## Appendix 3

### Commonwealth of Pennsylvania Game Commission Photos Related To Finding H

Photo 1: State Game Land (SGL) 214 livestock encroachment.  
The white stake on the left-hand side of the picture marks the game land boundary line, which runs almost straight up the picture from the stake.





Photo 2: SGL 214 encroachment. Note the white stake marking the boundary at the bottom of the picture. A red line has been drawn to approximate the game land boundary (the other end of the line is the white stake shown in Photo 1). Observable in this picture are the storage sheds and burn pit on game land property.





Photo 3: SGL 095. The boundary roughly goes from point-of-view in line with the front end of the boat trailer back through the woods. The storage items on the left-hand side of the photo are positioned on game land property.





Photo 4: SGL 095. A red line is drawn that approximates the game land boundary. Note the trash and dumping visible on game land property (right side of the red line). This area was also mowed.





Photo 5: SGL 042. The red sign (see Photo 6 for a close-up) denotes the game land boundary. The part of the building behind the sign is on the game land.





Photo 6: Close-up of the boundary line sign on SGL 042 near the building on a foundation.



Photo 7: Dumping on SGL 042.





Photo 8: Mowing and wood stacked on SGL 042.



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## Appendix 4

### **Commonwealth of Pennsylvania Game Commission Responses to Draft Report**

The Commonwealth of Pennsylvania's Game Commission's response to our draft report follows on page 41. The U.S. Fish and Wildlife Service's response to our draft report follows on page 46.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

300 Westgate Center Drive  
Hadley, MA 01035-9589



September 3, 2020

In Reply Refer To:  
FWS/WSFR – North Atlantic - Appalachian Region

Michael P. Colombo, Regional Manager, Western Region  
U.S. Department of the Interior  
Office of Inspector General

Dear Mr. Colombo:

Attached is the Commonwealth of Pennsylvania's, Pennsylvania Game Commission's (Commission), response to the Office of Inspector General's Draft Audit Report No. 2019-WR-005. The Service has confirmed with the State these are the only comments they have on this Draft Report.

The Service has reviewed the auditor's recommendations and acknowledges the State's response.

The Service will work closely with the Commission staff in developing and implementing a corrective action plan that will resolve all of the findings and recommendations (see details on each recommendation attached).

Sincerely,

Colleen E. Sculley  
Chief, Division of Wildlife  
and Sport Fish Restoration

Attachments:  
Pennsylvania Game Commissions Response  
Details on Each Recommendation



## **Details on Each Recommendation:**

### **A.**

#### **1. Ineligible Costs Related to Equipment Usage Rates**

The Service is working with the Commission to resolve the federal share of ineligible costs related to equipment usage rates charged to Program Grants. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Commission has developed policies and procedures that ensure costs included in the vehicle usage rate calculations are not also charged to program grants. These policies and procedures and updated usage are being reviewed by Service staff. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

#### **2. Ineligible Other Direct Costs**

The Service is working with the Commission to resolve the Federal share of the ineligible other direct costs charge to Program Grants. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service will require the Commission to obtain approval before incurring costs that require prior written approval from the Federal awarding agency. The Commission has developed a Purchasing Guidance Document (Appendix 2) which describes a process for requesting prior written approval prior to incurring costs. This guidance document was distributed to staff and implemented on February 6, 2020 and is currently being implemented on active grant segments.

#### **3. Ineligible and Unsupported Subaward Costs**

The Service is working with the Commission to resolve the Federal share of the questioned costs related to ineligible and unsupported subaward costs claimed for Pennsylvania Cooperative Fish and Wildlife Research Unit and University of Georgia. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service will be responsible for working with the National Bobwhite Conservation Initiative on a resolution. The individual responsible for the resolution will be Paul Rauch.

The Service is working with the Commission to establish policies and procedures that ensure amounts charged to the Commission by subrecipients are allowable and allocable to Federal awards. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

#### **4. Ineligible In-Kind Contributions**

The Service is working with the Commission to resolve the Federal share of questioned costs related to ineligible in-kind contributions. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service will require the Commission to develop and implement policies and procedures for all volunteer programs claiming in-kind match to (a) restrict the number of hours that volunteers can reasonably donate in a single day, (b) define allowable activities that count toward a volunteer's total calculation of donated hours, (c) ensure that all timesheets are properly approved, and (d) require timely review of volunteer timesheets. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service will require the Commission to develop and implement policies and procedures for the hunter education program that recommend the number of instructors per course. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

#### **5. Ineligible and Unsupported Payroll Costs.**

The Service is working with the Commission to resolve the Federal share of ineligible and unsupported payroll charges claimed on grants. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Commission has revised the description of the grant activity code titled "Inspection of Federal Aid Areas" (M30001902400) to ensure that law enforcement activities are not charged to grants (see the Commissions response). The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission.

The Service will work with the Commission to develop policies and procedures that ensure that leave charged by employees who are default-coded to grants is properly allocated based on actual work performed. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The Target date for implementation is June 30, 2021.

The Service will work with the Commission to develop policies and procedures that ensure that the Federal Aid coordinators time is appropriately prorated between corresponding FWS grant programs. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The Target date for implementation is June 30, 2021.

#### **6. Unreported Program Income**

The Service is working with the Commission to resolve the Federal share related to unreported program income. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The Target date for implementation is June 30, 2021.

The Service is working with the Commission to implement controls to ensure program income is properly accounted and reported. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The Target date for implementation is June 30, 2021.

**B. Unallocated Credit Card Rebates**

The Service will work with the Commission to resolve the Federal share of questioned costs related to credit card rebates. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

**C. Contract Agreements Not Properly Classified as Subawards**

The Service is working with the Commission to develop and implement more specific guidance for determining whether Program funds pass through as subawards or contracts. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service is working with the Commission to develop and implement procedures to ensure compliance, where applicable, with 2 C.F.R. § 200.331 and FFATA requirements for the proper administration and reporting of subawards. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

**D. Inadequate Equipment Management**

The Service is working with the Commission to ensure it follows Federal regulations and Commission policies for its asset management. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

The Service is working with the Commission to strengthen its asset management system and inventory policies, including developing written policies for tagging non-federally-funded equipment. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

**E. Misuse of Program-Funded Real Property**

The Service will work with the Commission to ensure that the Cottage on Haldeman Island is removed within three years of the final audit report. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission.

The Commission has removed the dog agility course from Program-funded property.



The Service is working with the Commission to implement policies and procedures to ensure the Commission does not use Program-funded properties for purposes other than those contained in FWS-approved grant narratives. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is January 1, 2021.

The Service will require the Commission to certify that grant-funded real property is being used for its intended purposes. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is three years from the date of the final audit report.

**F. Failure to Report Barter**

The Service is communicating with the Commission regarding this issue. No responsible party has been identified at this time.

**G. Failure to Protect Against Trespass and Encroachment**

The Service will work with the Commission to resolve the encroachment and trespass issues. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation cannot be determined at this time as resolutions may involve legal actions.

The Service will work with the Commission to develop policies and procedures to ensure the Commission clearly marks and delineates boundaries in areas where State Game Lands border neighborhoods. The official responsible for implementing these actions is Ronald S. Gensil, Federal Aid Coordinator, for the Commission. The target date for implementation is June 30, 2021.

# **Pennsylvania Game Commission Responses to Department of Interior – Office of Inspector General Federal Audit 2019-WR-005**

## **Findings and Recommendations**

### **A. Questioned Costs—\$7,329,212 (Federal Share \$1,127,981)**

#### **1. Ineligible Costs Related To Equipment Usage Rates—\$4,418,675**

PGC has determined the Federal share of ineligible costs related to equipment usage rates charged to Program Grants and we have included an analysis as to overmatch provided for each grant that should be considered in determining Federal share of ineligible costs [in a separate attachment].

The Pennsylvania Game Commission (PGC) does not disagree with the finding that ineligible costs related to equipment usage rates occurred. The Game Commission has implemented guidance to ensure costs included in the vehicle usage rate calculations are not also charged to Program Costs. Please see the attached document: Coding Guidance for Equipment and Maintenance Cost Allocation. Further Guidance is being developed to address several similar-type findings and this information will be provided upon completion.

We have also investigated and resolved any future issues relative to equipment usage rate calculations. We have been in discussions with WSFR staff reviewing current equipment usage rate calculation methodology. We eliminated several charges that could possibly be construed as impacting Indirect Rate information as it was not positively determined, following fairly extensive discussions with outside agency staff, what two of these charges from outside agencies were addressing. PGC then recalculated equipment usage rates for Fiscal Years 2013 to 2019 with PR purchased equipment removed from those revised rate calculations. Documentation is currently under review by WSFR staff in Hadley, MA.

#### **2. Ineligible Other Direct Costs—\$1,905,811**

The PGC cannot disagree with the findings that multiple expenditures of construction costs, equipment purchases, and a major equipment repair was charged to grants during the audit period without prior FWS approval. PGC cannot disagree that multiple charges occurred outside of grant start dates without pre-award costs authorization. PGC cannot disagree that a bulk purchase of items occurred in a given fiscal year and not all of the items were utilized in that grant period of one year without FWS approval. However, the Hunter Education Grant has been a continuous grant with annual segments for the past 20 years with one segment extended to two-years to address contracted program development issues. The knives purchased and not utilized in the year they were purchased have continued to be presented annually. The large purchase was made to save money by bulk purchasing and no diversion of funds has occurred.

PGC also cannot disagree that charges have occurred to grants that should not have occurred.

PGC has found instances in the supporting information for draft audit findings that some of the items selected as issues under this finding were not accurate. The FY 2016 grant W-75-D- 16, Award #F16AF00952, identified a debris blower/leaf blower attachment for a small CAT 299 utilized for firebreak clearing of leaf litter and such. The grant information stated, "Purchases of fixed assets may occur for this project segment in the form of farm equipment." While the specific piece of equipment was not identified, a general statement was listed in the grant. The grant approval special Conditions also made note of equipment being purchased under Special Conditions and Provisions, (4) "Equipment purchased with grant funds must be used to meet grant objectives during and after the grant period...The current status of the equipment and anticipated use or disposition of the equipment during its expected useful life must be described in the final performance report."

The final performance report for this grant specifically listed the blower unit purchased on Page 5, under Prescribed Fire Treatments and discussion: "Pittman-Robertson Funds continue to be instrumental in building the agency's prescribed fire program. This year, P-R funds were used to purchase radios and fire communications equipment... and a hydraulic blower for clearing fire lines."

While this piece of equipment was only \$5,245.00 purchased new, its value midway through the year was less than \$5,000.00 dollars but was operational and useful throughout the year and is still functional.

The PGC is reviewing documentation and file information and is working toward resolving the Federal share of ineligible other direct costs charged to Program grants. We have also developed guidance documents relative to the purchase of fixed assets equipment and services which would be considered capital expenditures. PGC is currently requesting USFWS approval on all equipment purchases of \$5,000.00 or greater and is finalizing guidance on such. Upon final approval by PGC Executive Office staff of all suitable documents and procedures, region staff will be appropriately trained regarding such information and implementation. Presently all requests for grant funding of equipment acquisition are routed through the Federal Aid Coordinator for e-mail submission to USFWS for approval before being sent to the Division Chief of Purchasing and Procurement.

### **3. Ineligible and Unsupported Subaward Costs—\$582,647**

The PGC does not disagree that fixed amount awards occurred under Program grants. PGC made the determination that several of the above listed grant funded agreements were contracts and therefore not subject to the grant subrecipient requirements under 2 CFR 200.

However, PGC also does not agree that all research projects funded by Program grant funds serve the public purpose of the Pittman-Robertson Wildlife Restoration Act (ACT) simply because they are research. Many projects provide specific information that the PGC requires and requests from third parties in order to make its own decisions on wildlife and habitat management, which serve the public purpose of the Act. These services are provided, under contract, for the benefit of the PGC in order to make better decisions in wildlife (White-tailed Deer population management for example) management which is the public purpose specified in authorizing statute.

16 U.S. Code 669a. Definitions (9) states the term "wildlife conservation and restoration program" means a program developed by a State fish and wildlife department and approved by the Secretary under section 669c(d) [1] of this title, the projects that constitute such a program, which may be implemented in whole or part through grants and contracts by a State to other State, Federal, or local

agencies (including those that gather, evaluate, and disseminate information on wildlife and their habitats), wildlife conservation organizations, and outdoor recreation and conservation education entities from funds apportioned under this chapter,[1] and maintenance of such projects;”

The statute specifies project activities include acquisition and improvement of wildlife habitat, introduction of wildlife into suitable habitat, research into wildlife problems, surveys and inventories of wildlife problems, acquisition and development of access facilities for public use, and hunter education programs, including construction and operation of public target ranges. See the discussion below from PGC Chief Counsel.

“The auditors identified subawards questioned costs in Section A. pages 8 through 10, as well as raised the issue that contract agreements were determined to actually be subawards in Section C, pages 16-17. These two issues cannot be discretely analyzed in this manner, as the ineligibility of costs depends in part or in whole on the classification of the contract. This writing will discuss both issues.

For Section A, ineligible costs, the auditors recommended Fish and Wildlife Service (FWS) resolve the federal share of questioned costs, require the PGC to establish policies and procedures that ensure amounts charged to the Commission by subrecipients are allowable and allocable to federal awards, and require the PGC to discontinue the use of fixed amount awards under Program grants.

For Section C, improper classification, the auditor recommended that FWS work with the PGC to develop and implement more specific guidance for determining whether program funds pass through as subawards or contracts, and to work with the PGC to develop and implement procedures to ensure compliance, where applicable, with 2 CFR Section 200.331 and FFATA requirements for the proper administration and reporting of subawards.

IN ESSENCE, the recommendations involve three areas:

1. The development of procedures and guidance to identify subawards, and ensure compliance with federal regulations; and
2. Resolve questioned costs; and
3. Discontinue use of fixed amount subawards.

The PGC does not disagree that standards, procedures and guidance should be more fully developed. This will be set out in Section 1, below.

The PGC does not disagree with some questioned costs, but does not agree with others, as set out in Section 2, below.

The PGC does not disagree with the statement the fixed amount subawards should be discontinued, but disagrees with the application of this statement, as will be set out in Section 3, below.

During the audit period, the PGC’s preference was to not have subawards, but to have contracts. This is for various reasons, not the least of which was so as not to lose management control or program control of federal aid projects. For this reason, all agreements were drawn with identifiable goals and deliverables at identified costs. Despite this preference and the work of the PGC to maintain management and program control, the auditors determined that several agreements were subawards.

The PGC submits it is not the title of a given agreement that controls, but the substance of that agreement.

During the audit period, the guidance for determining subawards was remarkably similar to that in the attachment, 2020 WSFR 001. This document identifies that September 2019 guidance was unclear, meaning that during the audit period two years prior, guidance was also unclear. However, the PGC has always considered the guidance finally issued in 2020 as at least close to what was being followed.

This WSFR guidance defines the following terms:

Contract means a legal instrument by which a recipient purchases property or services needed to carry out a project or program under a Federal award (see also 2 CFR [section]200.22). A recipient awards a contract for the purpose of obtaining goods and services for their own use and establishes a procurement relationship with the contractor (see also 2 CFR [section]200- 330).

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. (see 2 CFR 200.92) A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity calls a contract. Just because a State enters into an agreement that it calls a contract, does not make the third-party a contractor.

2020 WSFR 001 further provides a list of questions to help agencies determine if a relationship is a contract or subaward. First is whether the third party is carrying out, in whole or in part, one or more of the authorized or identified public purposes of the Act. The second is the extent to which the third party is developing the project statement or scope of work or, whether the third party is solely providing goods and services to the recipient. The third question is the method of payment. If the recipient is only being reimbursed for actual costs, the guidance indicates the relationship is a subaward. HOWEVER, the guidance further states if the recipient will pay a fixed price, the third party is a contractor. The fourth question is whether the third party must report on actual costs. The fifth question is whether the third party is providing cost sharing or matching funds. These questions are not a checklist where if one condition is met, the contract is a subaward. These questions are to help agencies identify the substance of agreements.

Of note, the auditors based their findings in Section C on similar, although not identical, criteria.

SECTION 1 - The development of procedures and guidance to identify subawards, and ensure compliance with federal regulations,

The PGC does not disagree with this finding and is actively seeking to implement the finding.

During the audit period, guidance was at best confusing. The Federal Aid Coordinator, as well as the Chief Counsel, would review agreements to be paid using federal funds and would try to make a determination based on the definitions above whether a contractor was providing a good or service, or carrying out a program for a public purpose specified in the authorizing statute. For the specific agreements questioned, the PGC will discuss these in Section 2. But for this recommendation (or set of recommendations), the PGC finds this process to be inadequate.

The newly issued 2020 guidance gives the PGC a chance to reinvent its process to a more formalized process.

## SECTION 2 - Resolve questioned costs.

The PGC does not agree with all questioned costs. Specifically, the PGC does not agree with the categorization of two of the three agreements as subawards.

There are three agreements identified. First is with the Pennsylvania Cooperative Fish and Wildlife Research Unit at Pennsylvania State University (the "COOP"). The second is an agreement with the National Bobwhite Conservation Initiative (NBCI), the third is with the University of Georgia for necropsies.

The COOP:

Two project agreements were issued under Grant No. F16AF00352 to the COOP. A copy of the grant narrative for these projects is attached. This is Grant Narrative W-81-R-5 White Tailed Deer Research (the Narrative). The purpose of this Project is to collect the data necessary to strengthen understanding and acceptance of current deer management measures. The objectives of this project are divided into two jobs, one focusing on deer-forest relationships, the other on fawn survival and mortality.

These are important.

The Narrative goes on to state responsibility for the two jobs. For Job 1, the deer-forest relationships, the bulk of the work is to be conducted by PGC personnel, see pages 3 and 4. Discretely, the COOP was to be contracted to, and includes support for, a Ph. D. graduate student coordinating the project, primary responsibility for data analysis, purchasing of GPS collars and satellite fees to retrieve deer locations and modify location intervals, and conducting DNA analyses. All of these items are either goods or services. The services of a Ph.D. student to coordinate, the services of the COOP to analyze data, the purchase of collars and satellite fees, and the purchase of DNA analysis. The COOP offers these services to other entities.

### Job 1

In no case in Job 1 does the COOP actually perform the public purpose of the grant, which is to collect the data, or to determine deer-forest relationships. This alone should make the agreement a contract as opposed to a subaward.

However, there are other questions under the 2020 guidance to be looked at. For instance, the second question is the extent to which the contractor is developing the project statement or scope of work or, whether the third party is solely providing goods and services to the recipient. We submit it is the PGC that drove the desire for the project, the project statement and the scope of work. The PGC does not have the ability to analyze DNA without a third party. The PGC does not have the capability to independently analyze data once collected. However, that analysis is driven by a deer management team (set out on page 8 of the Narrative) almost wholly comprised of PGC personnel, including administration and oversight by PGC personnel. Many of these people are foremost leaders in the field of research and deer management across the country. The contributions of one member of the

team from the COOP does not change the fact the project is proposed, driven and managed by the PGC.

The third question is the method of payment. If the recipient is only being reimbursed for actual costs, the guidance indicates the relationship is a subaward. HOWEVER, the guidance further states if the recipient will pay a fixed price, the third party is a contractor. This is a self-licking ice cream cone. Under no circumstances does the PGC desire to pay for work it does not receive. Therefore, it is highly unlikely there would be fixed price contracts for data analysis or any of the other goods and services. To do so, would mean there would be no way of ensuring the services were actually being received. While it is true this is a question to ask, the desire to only pay for those services received should not, in any way, be the deciding factor of whether something is a contract or subaward.

The fourth question is whether the third party must report on actual costs. Once again, that is a bootstrap method of determining status of a contract. To use an example, if the PGC required services to clean a building at \$10.00 per hour, it would also require proof of the actual costs, i.e. number of hours, before paying. That does not change the nature of the relationship.

The fifth question is whether the third party is providing cost sharing or matching funds. It is unclear to me, but it seems that the COOP was providing waived indirect costs. It was our understanding that this was allowable, and to the extent contractors may not supply this match, these costs may have been inappropriate under this contract. Far from changing the nature of the contract, this was a problem of the guidance under which the PGC operated and its understanding of that guidance. FWS did not bring this up when it approved the project and the PGC was unaware this was an issue.

## Job 2

In no case in Job 2 does the COOP actually perform the public purpose of the grant which is to collect the data, or to determine fawn survival and mortality, or have primary responsibility for communication. This alone should make the agreement a contract as opposed to a subaward. The narrative does not specifically list what activities the COOP will perform for Job 2, but does specifically show PGC personnel performing the bulk of work and determinations, with only DNA analysis pursuant to a process laid out in Kilgo et al (2012) as presumably within the scope of the COOP work. Again, this alone should make the agreement a contract.

Analysis of the remaining questions is remarkably similar to that for Job 1.

The PGC would like to point out that when making these contracts, it has been FWS that **REQUIRES** a budget table and the showing that payment is for “actual costs,” not for some other purpose. The PGC has argued strenuously that these contracts should be allowed to be fixed amounts for deliverables, and FWS has insisted those are not approvable. In essence, they insist the payment method and reporting on actual costs be done in a certain manner over objection and now the PGC is being penalized because FWS tried to drive the PGC project in a certain manner which was not contemplated by the PGC.

Upon a complete fiscal analysis of invoices and payments along with a breakdown of actual costs from PSU Accounting for the COOP, all payments match costs totals provided for all invoices and there is no indication additional funding from DCNR provided to the COOP for similar project activities was mixed with PGC funding and COOP requests for payment of invoices.

NBCI:

The PGC does not disagree that the NBCI contract should be classified as a subaward. Under the guidance as it existed, the PGC believes it erred when classifying this agreement as a contract. The Commission entered into an agreement with the National Bobwhite Conservation Initiative (NBCI) under Grant No. F14AF01303. This grant authorized grant funds of (\$156,000.00 over 3 years) to be paid to the NBCI. NBCI was paid 75% of the total grant amount of \$208,032.00 or \$156,000.00 and that amount is the Federal Share. PGC assumed the recipient share of \$52,032.00. This project was funded, and decision-making authority was delegated to NBCI with the understanding wild quail would be available to PGC for restocking efforts at a later date on properties, provided suitable habitat existed and was managed under a plan developed/approved through NBCI.

University of Georgia:

The PGC does not agree with the determination that this agreement is a subaward.

The agreement was entered pursuant to Grant No. F13AF00975, a copy of the grant narrative for these projects is attached. This is Grant Narrative W-81-R-2 Wildlife Health Program II (the Narrative). The purpose of this Project is broad ranging and includes determining the causes of morbidity for various wildlife. However, the role of the University of Georgia is specifically in the field of animal disease research, surveillance, and diagnostics. For all intents and purposes, the University of Georgia is analyzing samples for CWD, as is evident by the revised grant narrative.

The problem as identified by this contract is that the University of Georgia offers these diagnostic services through the Southeastern Cooperative Wildlife Disease Study and College of Veterinary Medicine (SCWDS). The PGC does not have the ability to conduct CWD tests on its own. SCWDS is a membership type organization. It offers services such as CWD testing to its members, but the number and amount of tests is dependent on the number submitted. The only way to take advantage of this testing is by being a member. Essentially, there is a “profit” built into the contract.

With respect to the public purpose, it is clear the University of Georgia and SCWDS does not perform the public function of the grant itself. Personnel listed on page 12 of the narrative do not even name any persons from SCWDS, and the tasks identified as being those for SCWDS are all diagnostic in terms of testing samples.

For this reason alone, this should be a contract for a service.

Again, there are more questions. The development of the grant proposal or scope of work appears to be wholly independent of SCWDS or the University, as the four “jobs” listed in the grant narrative are all performed by the PGC, with the exception of diagnostics which can go multiple places, ostensibly based on convenience of the PGC.

The method of payment is by lump sum for all work to be done. This is the identified problem by the auditors. BECAUSE it was lump sum, the auditors determined it was a subaward, and therefore illegal. Conversely, the PGC posits that there are multiple places to get these diagnostic tests and that this is the method by which SCWDS is paid. It is a contract, just with a lump sum, and not a subaward, and therefore not an illegal fixed price subaward. In fact, one of the characteristics of a contract vs. subaward is that contracts are not based on costs. This contract clearly is not.



The next question illustrates this perfectly. The (fourth) question is whether actual costs are used for billing, which would indicate a subaward. Actual costs are not used (indicating a contract).

The last question involves cost sharing or match. A review of the SCWDS contract reveals there is no cost sharing or match coming from the University of Georgia or SCWDS. (The audit report notes that the Commission agreements indicated that the “subrecipients” were responsible for adherence to applicable Federal program requirements specified in the Federal award. To the contrary, the contract only generally required adherence to law, and attached the boilerplate Exhibits requiring nondiscrimination, no lobbying, etc. applicable to all contracts that utilize any federal monies. The University of Georgia or SCWDS was NOT required to adhere to requirements in the federal award, but generally required federal laws, which are attached to EVERY contract utilizing federal funds, whether stone for road maintenance, laptops for Hunter Education, or services for CWD detection. The auditors simply decided if the PGC contracted appropriately it was evidence that the PGC made subawards.

Based on the totality of the circumstances, the PGC disagrees with the costs questioned and the finding and positively states this was a contract for services. While the backup indicated how the contractor chose to value its services, they did not change the nature of the relationship. The PGC got the services contracted for, namely CWD sample testing.

#### CONCLUSION:

Essentially, the auditors evaluated whether work to be done under these research projects benefitted the PGC in meeting the public purposes stated in the project goals. If they did, then the auditors determined these were subawards. The PGC understands this differently. If the PGC is being benefitted, the agreement is a contract. It is only in the case where the contractor is actually performing the project and benefitting the public purpose that there is a subaward. So, for instance, in the case of NBCI, NBCI did most of the work associated with the project and the money was passed through to NBCI as the recipient (or more precisely subrecipient).

The PGC agrees that a more robust process to identify these instances should be developed, especially in light of the 2020 guidance which can now be used. However, using a rear-view mirror is unfair. The PGC was specifically told the COOP unit would not be considered a subrecipient. (We offer this could have been earlier determined by the FWS that since the COOP was partially a federal organization as it is funded by USGS, Federal Program grant funds cannot be provided to other federal agencies.) The PGC was specifically given guidance that contracted services on a lump sum basis would indicate a contract instead of a subrecipient relationship. The PGC was specifically REQUIRED to include certain budget items in some contracts, when the PGC did not feel they were necessary or appropriate. Then, in hindsight, the PGC is penalized for that inclusion.

While the PGC agrees that under the rules in place the NBCI contract should have been deemed a subaward and is taking steps to correct that issue, the PGC does not agree that the COOP Unit work or the University of Georgia would be a subaward, either under the rules in place in the audit period, or pursuant to the guidance issued in 2020. To do so would turn every contract for goods or services where contractors were required to follow the law and only to be paid for services rendered a subaward. That is a result that is neither warranted nor appropriate.

#### **4. Ineligible In-Kind Contributions—\$286.857**

The Pennsylvania Game Commission does not disagree with the auditor's findings and will address the Federal Share of questioned costs. We have taken several steps to rectify some of the items of concern noted by the auditor including:

- Additional directions printed directly on the Instructor Activity Report (IAR) Form regarding types of reportable activities, limits on activity hours, limits on daily hours, who may approve hours listed, and limits on form submission timeframes.
- A new format to the IAR Form to encourage hourly reporting of each type of activity and on the date the activity occurs, rather than a lump sum of all types of activity hours being reported on a single date.
- Development of changes to the Instructor Guidebooks and Hunter Education Policies to reflect the changes made to the IAR Form. These have not been finalized but are in the final stages of development.
- The PGC will rewrite the existing SOP 10.40 to specifically address the concerns and audit findings relative to the match program and other internal operating policies of the PGC for the Hunter Education Program grants.

The Pennsylvania Game Commission is determining the federal share of questioned costs related to ineligible in-kind contributions.

#### **5. Ineligible and Unsupported Payroll Costs—\$125.355**

The Pennsylvania Game Commission does not disagree with the auditor findings. PGC has and will continue to take steps to rectify the items of concern noted by the auditor including:

The PGC is currently reviewing records and files to determine the Federal share of ineligible and unsupported payroll charges claimed on grants.

The grant activity code titled Inspection of Federal Aid Areas (M30001902400) is being revised. The description in WR-1-C-17 was "Inspection of Federal Aid Areas includes all costs for surveillance, inspection and patrol of all areas either purchased or developed with Federal Aid funds to assure that the lands are being used for approved project purposes and to protect the capital investment for wildlife purposes."

The new description in Grant WR-1-C-20 is:

"Inspection of Federal Aid Areas includes all costs for inspections and field reviews of all areas either purchased or developed with Federal Aid funds to assure that the lands are being used for approved project purposes and to protect the capital investment for wildlife purposes."

The terms surveillance and patrol were removed from the description.

In addition, the grant narrative has been revised to explain this grant activity further:

“The project will cover the costs for field reviews and inspection of all areas either purchased or developed with Federal Aid funds to assure that the lands are being used for approved project purposes by distinguishing signs of any activity that is contrary to normal use of the game lands and to protect the capital investment for wildlife purposes. These non-law enforcement activities, such as walking State Game Lands boundary lines to check for encroachment, garbage dumping, cutting of trees, gates being vandalized and/or open, tire tracks in fields from non-Game Commission activities and performing visual inspections of the area for those activities which are not permitted to occur on game lands managed by PGC, are conducted by Habitat Management Crews and Land Managers. For example, if staff is driving a tractor to a remote location of the game lands and they observe evidence of activity that should not be happening there, they will investigate to ascertain what has occurred and report it to their supervisor. If they see a neighbor is conducting activities on SGL property, they will stop at the residence and inform them to cease that activity.

A frequent example is when horseback riders or cyclists are utilizing the SGL illegally by riding in restricted areas or on trails closed to them. Sometimes people will cut firewood on SGLs and while this is rarely permitted, it occurs illegally. The supervisor is informed who is responsible for addressing the problem from that point forward. When the term “boundary surveys” is used in this grant, it refers to visual inspections of boundary areas on SGLs. This is no different than a person taking a ride into the SGL on roads open to public travel and looking around to see that everything is as it should be. This may involve walking a distance along SGL perimeters such as done when painting boundary line markers and looking for encroachments while performing another duty. There is no field disturbance occurring, it is simply visual inspection of the area for activities that are not permitted. Note that all Land Managers are trained law enforcement officers. However, most of their time is spent performing their wildlife habitat management duties and no law enforcement time is charged to the grant. Further, per PGC Standard Operating Procedure, no driving time by Land Managers is charged to the grant. Inspections for timber trespass and other illegal activities will insure the protection of these valuable wildlife assets under our control and management. Any incidents discovered will be investigated by law enforcement staff and coded to non-grant funded activity codes.”

- Coding time to an incorrect activity code either by way of clerical error or other cause is an ongoing concern. PGC is continuously conducting timesheet and coding training for employees completing timesheets as well as supervisors reviewing and approving timesheets. We will modify an SOP 10.27 accordingly regarding such and the importance of any timesheet containing a hard or digital signature prior to advancing such document to region office timekeepers for entry into the SAP system in order to maximize accuracy. PGC will begin an internal sampling protocol of timesheets already entered into SAP for conformance to proper coding and the supervisor signature requirement. If a region shows an issue exists, the timekeeper and responsible supervisor as well as offending staff will be required to retrain through central office either digitally (during COVID-19 shutdown) or possibly with a trip to Harrisburg for such training. Multiple staff from different Bureaus and Divisions will be involved in such activities regarding selection of the “training staff” for these specific instances.
- PGC is reviewing and revising the procedure of allocating employee leave time for employees who are default coded to grants but allocate time to non-grant activity. The PGC plans to implement a similar function to the procedure for calculating leave costs for non-grant coded employees and allocating leave to specific grants based upon hourly earning rates.

- The Commission's Federal Aid Coordinator is now coding non-grant time to non-grant codes to address any overstatement and properly allocate time among the proper grants programs such as SWG and other grant funding sources.

#### **6. Unreported Program Income—\$9,867**

The Pennsylvania Game Commission does not disagree with the findings as the Federal Aid Coordinator and Region Office was unaware that certain unidentified income was being generated from Middle Creek based on a lack of reporting such by local facility staff. We will create an appropriate guidance document regarding reporting any income collected or generated at PGC public facilities such as the Middle Creek Visitor's Center other than license revenue and provide such to facility managers.

#### **B. Unallocated Credit Card Rebates**

The Pennsylvania Game Commission does not disagree that the Federal share of credit card rebates should be treated as a cost reduction or cash refund. As such, going forward, Game Commission will run a report in SAP (Commonwealth's accounting software system) that depicts the credit card rebates for that year, along with another report in SAP that shows the total credit card spend detail. Game Commission will categorize the spend by Grant and non- Grant. The Grant credit card spend will be further defined by each Grant. An allocation of the credit card rebate will be prorated by Grant and shown as a cost reduction for the Grant drawdown or program income under the additive method if so desired by FWS. This corrective action is planned for the drawdowns for the 2020 fiscal year and forward. The SAP reports are included as worksheets within the excel template attached at the end of this report.

In regard to the Federal share of the audit adjustment, PGC has sufficient overmatch for the grants highlighted in the excel workbook for each of the audit years to offset the Federal share adjustment. Game Commission did not pursue any adjustment under \$1k for state overmatch. If need be, Game Commission will pursue and report accordingly.

#### **C. Contract Agreements Not Properly Classified as Subawards**

The Pennsylvania Game Commission does not disagree that one contract written with third parties should have been considered a subrecipient agreement. However, we strongly disagree with determinations made by the auditor that several of our contracts should have been written as subrecipient agreements for the reasons stated previously in the PGC response to issue A.3.

The PGC is currently developing its subrecipient/subaward processes to comply with applicable federal regulations and applying the information provided by the auditor to this process. Realizing that PGC should be treating certain services agreements as subrecipient/grant subawards, we have been developing such programmatic processes and information analysis in conformity with 2 CFR 200.331 and FFATA requirements.

#### **D. Inadequate Equipment Management**

The Pennsylvania Game Commission does not disagree with the findings. In order to rectify the deficiencies listed above, the PGC has taken several actions. We have added a new position

dedicating a portion of their time to help internally audit and monitor equipment listed in our asset management system. We have revised SOP 10.1 Asset Management System on 2/6/20 to ensure that all federally funded purchases notate the Federal Award Identification Number (FAIN) within the Asset Management System. Also, the PGC has revised the purchase amount minimum limit to \$5,000.00 and listed this in the SOP such that inventoried items match Pennsylvania's state and federal requirements of \$5,000 or greater unless required by management such as is the case for firearms and electronic equipment. To alleviate the multiple issues listed by the auditors, we are also providing separate guidance to have all items valued at \$5,000 or greater include photos of the items, photos of the serial numbers or vehicle identification numbers, and a photo of the identifiable markings for PR purchased items located in the asset management system.

In regard to the more than 2000 items marked as purchased on January 1, 1900, these items were from a prior inventory system that did not have a date of purchase associated with them so it was determined to give those items the 01/01/1900 date to identify them as inventoried from an older system.

#### **E. Misuse of Program-Funded Real Property**

The Pennsylvania Game Commission does not disagree with this finding. A review of file information concurs with the findings and we agree that the building needs removed from this site. A prior discussion with FWS staff indicates they will work with us and we have 3 years to remove the structure. We are currently utilizing the cottage building for statewide region office and Harrisburg office staff meetings as we are short on office space in Harrisburg. Plans have already been submitted to Pennsylvania Department of General Services to enlarge the Harrisburg Office with a rear addition and this will occur over the next several years. Please provide PGC with a removal deadline for the cottage building so as to clarify any misunderstanding on our part.

The dog agility course was removed from the premises following the auditor's visit to SGL 290.

With increases in GIS capabilities throughout the agency, parcels are more easily identifiable as PR purchased. This allows field staff and Harrisburg level staff to better understand the implication of any activity that is performed and brings about an awareness that coordination with the USFWS must occur prior to any activity occurring on those properties that may be in conflict with the USFWS or any grant acquisition documents.

PGC staff in Harrisburg and the regions will further discuss and develop a certification process that shows operational consistency with property usage and its original intended purpose. This may take the form of a Land Manager and Region Director signed certification to the Executive Director that the SGL has been field reviewed for consistency with the intended purposes of acquisition for management of wildlife populations and hunting access and no other uses are present that conflict with that purpose.

#### **F. Failure To Report Barter**

The Pennsylvania Game Commission strongly does not agree with the auditor determination that the Commission's Hunter Access Program is a barter program.

The term “barter” is not defined in 50 CFR. The dictionary defines “barter” to mean, “[t]o trade by exchanging one commodity for another: to trade goods or services in exchange for other goods or services.” Merriam Webster Dictionary.

In the case of the Hunter Access Program, there is no barter. Creating and maintaining a list of persons who would ostensibly permit persons to hunt on their property is the fulfillment of the Commission’s statutory duty to serve sportsmen and ensure adequate opportunity to hunt and trap. See, 34 Pa. C. S. §322 (c)(13). Enrolled landowners retain the right to lawfully exclude hunters, trappers, and anyone else from their land. The Hunter Access program is not a business transaction, much less a “barter:” there is neither the sale nor exchange of things of value.

As a “Commonwealth,” Pennsylvania has a longstanding culture and tradition that game and wildlife belong to all the people. Article I, Section 27 of the Pennsylvania Constitution, the Environmental Rights Amendment, states:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

There is judicial recognition that the Game Commission is a trustee of Pennsylvania’s natural resources under the state Constitution. *Commonwealth, Pennsylvania Game Commission v. Department of Environmental Resources*, 521 Pa. 121, 555 A. 2d 812 (1988). Consistent with trust principles, the public-at-large is the beneficiary. *Id.*

Historically, the Commonwealth of Pennsylvania has treated hunting and furtaking as a privilege -- not a “right.” This longstanding cultural precept has its legal roots in the adoption of the Constitution in 1790. In its application, the Courts and General Assembly consistently treat recreational hunting and fishing as privileges that must be carefully regulated under the Public Trust Doctrine. The Pennsylvania Supreme Court held, “[t]he right to hunt game is but a privilege given by the Legislature, not an inherent right in the residents of the state.” *Commonwealth v. Patsone*, 231 Pa. 46, 48. Similarly, in *Pennsylvania Game Commission v. Marich* and *Pennsylvania Game Commission v. Engleka*, 666 A. 2d 253 (Pa. 1995) the Supreme Court pointed out that: “[t]he recreational sport of hunting has not been recognized as a constitutionally protected liberty or property interest by state or federal law.” *Id.* at 255.

The General Assembly has also consistently treated hunting as a privilege – not a “right.” For example, Game and Wildlife Code Sections 929, 930, 2310, 2312, 2522, and 2741 all refer to hunting as a “privilege.” See, 34 Pa. C. S. §§ 929, 930, 2310, 2312, 2522 and 2741. Indeed, throughout the Game and Wildlife Code, hunting is never referred to as a right.

It follows then that the “grant” of “hunting and fishing rights” referenced in the hunter access agreement is not a grant to the Commission of a commodity, a good, or a service. One may only hunt or trap in Pennsylvania as allowed by law, or as allowed by license or permit from the Pennsylvania Game Commission. This is so because the Commission already holds hunting and furtaking rights as trustee for the public. The landowner has no hunting rights to give.

Nor can the “grant” of “hunting and furtaking rights” be considered a grant of access. The landowner retains the access rights to determine who can hunt what species and when. The Commission can neither own or dispose of such rights, nor can it agree to accept any such rights to “access.”

The agreements at issue call for the Commission to “give” Game News, or seedlings, or enforcement presence. As a general matter, each of those items is subject to availability of funds, availability of seedlings, and the general workload of law enforcement. Indeed, every caller to Game Commission law enforcement, whether an enrolled landowner or not, can expect a response. Significantly, the liability protection referenced in the Agreement is available to any landowner that allows public recreation, whether or not she is enrolled in the Hunter Access program. The Recreational Use of Land and Water Act (RULWA) was aimed at encouraging landowners to make their lands available to the public for recreational use without charge. 68 P.S. § 477-1. This public policy is also in furtherance of the longstanding cultural traditions that hunting and furtaking are a privilege.

At its core, the Hunter Access Program is a list of [some] persons who support the public policy of allowing hunting and furtaking on private land, in accordance with the law and any license and permit privileges granted.

Just as landowners may sign up, they may quickly and unconditionally cancel at any time. Absent from this relationship is any express or implied authority to seek recourse under the terms of the “agreement” in equity or at law. The only “remedy” for failing to follow the principles laid out, is to remove the property from the list of “supporters.” In short, the Hunter Access Program and Agreement evidence support of Commonwealth policy and allow the Commission to concomitantly support the landowners. It fulfills a statutory mandate, furthers public policy, and directs the public to places where wildlife habitat work would have the most impact. However, it barter or trades nothing of commercial or economic value.

There are negative consequences of deeming these agreements Barter Agreements. The General Assembly, in the enactment of RUWLA, furthered Commonwealth public policy towards open lands and public access. In some states, leasing land for hunting and furtaking is the norm, and there is a value associated with those leases. Those leases allow Lessees to exclude others from hunting or furtaking, and Lessees pay for that privilege. The access rights of the landowner are transferred to the Lessee. The Commonwealth chose to enact a statute that encourages landowners to open land to recreation at no charge, i.e., NOT leasing, is Commonwealth policy. The placement of “value” upon these Agreements turns public support for longstanding tradition into an exchange of commodities, contrary to Commonwealth statute and public policy.

In addition, the list of supporters acreage under agreement is approximately 2.2 million acres. Valued at a modest \$10.00 per acre, this amounts to \$22 million dollars. The whole allocation of Pitman Robertson dollars to Pennsylvania was \$29.7 million. If treated as Program Income, it would effectively gut the ability to use restoration funds. It would also destroy a program begun in Pennsylvania in the 1930’s to provide a connection to wildlife and an appreciation for the land that supports it by hunters and non-consumptive wildlife recreationists.

This action would also have negative consequences for those Hunter Access Program cooperators as they may lose RUWLA protection on their land as a result of receiving “Payments” in the form of barter in whatever amount was determined, not to mention instantly become responsible to the federal government for income tax liability. This alone would cause practically every landowner enrolled in

the program to end their association with the Pennsylvania Game Commission as well as close most of those lands to public hunting. This action would end a longstanding tradition and “institution” in Pennsylvania and make it more likely that fewer hunters would participate in the sport as their favorite hunting areas became posted or removed from areas open to hunting and identified as such.

#### **G. Failure To Protect Against Trespass and Encroachment**

The Pennsylvania Game Commission does not disagree that multiple encroachments have occurred on State Game Lands by neighboring property owners. This is an ongoing issue and we continue to address these occurrences as we become aware of them. The issues listed above from field reviews have already been partially resolved. The Encroachment on SGL 242 is resolved. The encroachment on SGL 214 is in the process of being resolved. The encroachments on SGL 095 are resolved. The encroachments on SGL 042 are mostly resolved. Follow-up has been occurring relative to the shed located on the SGL 042 property.

The commission is currently in the process of re-writing the boundary line SOP 60.23 and also adding GIS capabilities to boundary line applications and reporting. The new SOP calls for reducing boundary line tag distances between markers in areas most at risk of encroachment and also for providing a better workflow to be able to identify those areas and transfer information to our survey section for review and resolution. The new boundary line GIS application identifies areas at greater risk of encroachment, as well as an intuitive workflow application for all involved in its subsequent resolution.

\* It should be noted that encroachment issues and resolution happen regularly and are dealt with when staff become aware of the issue. The level of effort varies in intensity, depending on the circumstance and adjacent landowners willingness to comply.

The Pennsylvania Game Commission is also currently resolving the land reconciliation issues dealing with State Game lands 240. Appraisers are under contract and currently moving forward on providing the necessary information for PGC to submit to USFWS regarding valuation of the tracts of land involved in that land exchange. We have been working with USFWS diligently and continuously through the Covid-19 pandemic.



## Appendix 5

### Commonwealth of Pennsylvania Game Commission Status of Audit Recommendations

Recommendation	Status	Action Required
12, 14, 20, 21, and 23	We consider the recommendations resolved and implemented.	No further action is required.
1 – 4, 8 – 11, 13, 15 – 17, 19, 24, 28, 29, and Repeat Recommendation (Finding E)	<p>We consider the recommendations resolved but not implemented.</p> <p>U.S. Fish and Wildlife Service (FWS) regional officials stated they will work with the Pennsylvania Game Commission to develop and implement a corrective action plan.</p>	<p>Complete a corrective action plan that includes information on actions taken or planned to address the recommendations, target dates and titles of the officials responsible for implementation, and verification that FWS headquarters officials reviewed and approved the actions the State has taken or planned.</p> <p>We will refer the recommendations not implemented at the end of 90 days (after March 15, 2021) to the Assistant Secretary for Policy, Management and Budget to track implementation.</p>
5 – 7, 18, 22, and 25 – 27	<p>We consider the recommendations unresolved.</p> <p>▪</p>	<p>We will refer the recommendations not implemented at the end of 90 days (after March 15, 2021) to the Assistant Secretary for Policy, Management and Budget for resolution</p> <p>▪</p>

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