

Response: A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform, received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act (FOIA) will apply to information submitted by tribes.

Response: The Service will work with the Tribes to ensure that sensitive information is protected.

Part III., Procedural Requirements, sections I., National Environmental Policy Act, drew one comment that asked the Service to better determine what is meant in the proposed guidelines by the phrase "Service will ensure that grants funded through the TLIP program are in compliance with NEPA."

Response: A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act, were not commented on.

Part IV., Native American Liaisons for the Fish and Wildlife Service, was not commented upon.

General Comments: Several comments did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

Response: The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. Two general comments stated that there should be no Service administrative cost associated with implementation of this program.

Response: There is no provision to fund the Service's administrative costs incurred in the implementation of this program elsewhere. Therefore, 3 percent of the available funds may be used to cover these costs.

3. One comment suggested that the funds for FY 02 and FY 03 be lumped

into one proposal period. This same comment recommends that the Service allow for multiyear projects.

Response: In the adoption of the Department of the Interior and Related Agencies Appropriations Act of 2003, FY 02 funds under the Landowner Incentive Program (including TLIP) were rescinded by Congress.

4. One respondent advocated for increasing the amount of available funds in TLIP, and three advocated for future funding.

Response: TLIP is a 10 percent internal earmark by the Service on the Landowner Incentive Program, which is a Congressional appropriation. The Service is committed under current funding conditions to continue to support the TLIP program.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

Response: The Service will work to address public comments with the intent of enhancing the administration of TLIP for the benefit of federally recognized tribes.

6. One comment suggested that the Service allow for proposals that combine TLIP and Tribal Wildlife Grant funds.

Response: The Service must administer each grant as directed by Congress, and each program differs to some degree, limiting our ability to establish identical criteria.

7. Two respondents stated that there should be no time limit on expenditure of funds.

Response: After appropriation, TLIP funds are available until expended. However, grant agreements will be written for an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

8. Two respondents suggested that the Service require postmarks on proposals showing the due date.

Response: Proposals postmarked, hand-delivered or otherwise sent in by the due date will be accepted for the grant review process.

9. One comment advocated allowing funds to roll over into the next fiscal year.

Response: This is allowable under Service guidelines and is recognized as a necessary option for the success of project initiatives.

10. One comment suggested that the Service allow for an 8-week response period for the Request For Proposals (RFP).

Response: In order to address the need to expedite the selection and

awarding of proposals, the Service has set the RFP period for the TLIP 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One comment suggested that the Service allocate funds as quickly as possible after awards are made.

Response: It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

12. One comment suggested that the Service apply the same criteria to both TLIP and TWG.

Response: The Service must administer each grant as directed by Congressional appropriation language which differ to some degree for each grant, thus limiting our ability to establish identical criteria for the two grant processes.

Dated: May 3, 2003.

H. Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 03-19120 Filed 7-25-03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[RIN 1018-AI58]

Fiscal Year 2003 Tribal Wildlife Grants; Request for Grant Proposals and Final Policy and Implementation Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals; final policy, and implementation guidelines.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Wildlife Grants program (TWG). This document describes how you can apply for funding under the TWG and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 authorized an appropriation of \$84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use \$5 million of the funds to establish a competitive grant program available to federally recognized Indian

tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grants program, or other requirements of the State Wildlife Grants portion of Pub. L. 107-63. In FY 2003, Congress appropriated \$59,800,000 for wildlife conservation grants and specified that the Service use \$4,967,500 for the TWG program as well, and we will combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing

implementation guidance for this combined \$9,967,500 TWG program.

DATES: Project proposals must be received by the appropriate Regional Office (see Table 1 in **ADDRESSES**) no later than September 11, 2003.

ADDRESSES: For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on

the TWG is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at <http://grants.fws.gov/tribal.html>.

Send your project proposal to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under **ADDRESSES**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone No.
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232-4181.	Scott L. Aikin (503) 231-6123.
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW, P.O. Box 1306, Albuquerque, NM 87103-1306.	John Antonio (505) 248-6810.
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111.	John Leonard (612) 713-5108.
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Rm. 410, Atlanta, GA 30345.	James D. Brown (404) 679-7125.
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589.	D.J. Monette (413) 253-8662.
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, CO 80225-0486.	David Redhorse (303) 236-7905.
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503-6199.	Tony DeGange (907) 786-3492.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208-4133.

SUPPLEMENTARY INFORMATION:

I. Request For Proposals

The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. This program

supports the efforts of federally recognized tribal governments in projects that develop or augment the capacity to manage, conserve, or protect fish and wildlife resources through the provision of funding and technical support.

II. Definitions

The following definitions apply:

1. *Conservation Recommendation*—The Fish and Wildlife Service's non-binding suggestions resulting from formal or informal consultation, under the Endangered Species Act, that: (1) Identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify

studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under section 7(a)(1) of the Endangered Species Act.

2. *Biological Opinion*—Any document that includes: (1) The opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed

discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Habitat*—The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

4. *Mitigation*—Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

III. Background

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 (Pub. L. 107-63) authorized an appropriation of \$84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use \$5 million of the funds to establish a competitive grant program available to federally recognized tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grant program, or other requirements of the State Wildlife Grants portion of Pub. L. 107-63. In FY 2003, Congress appropriated \$59,800,000 for wildlife conservation grants and specified that the Service use \$4,967,500 for the TWG program. We will combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing guidance in the administration of this combined \$9,967,500 Tribal Wildlife Grant program. The Service proposed guidance in a previous **Federal Register** notice (67 FR 79136; December 27, 2002), with the intent of gathering input from the affected communities. The

public comments have been carefully considered and incorporated into the following guidelines where appropriate. A series of questions and answers follows and describes the guidelines.

IV. Implementation Guidelines

A. Eligibility

1. Who May Participate in the TWG Program?

Federally recognized tribes in all parts of the United States, including federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-Recognized Tribes or Petitioning Tribes Eligible To Receive Grants Under This Program?

No, only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the **Federal Register** (67 FR 46328; July 12, 2002).

3. Can Tribal Organizations or Other Entities (Including Individual Indian Allottees) Receive Grants Under This Program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What Process Will the Service Use To Solicit and Receive Proposals for Funding?

The Service will request proposals through a **Federal Register** notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who Will Coordinate the Scoring of Grant Application Submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under **ADDRESSES** for additional assistance in submitting proposals.

6. How Will Grant Application Submissions Be Reviewed for Funding?

A national panel will review regionally scored proposals for recommendations to the Director of the Service (Director).

7. Who Will Serve as the National Review Panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate and as may be identified by the Director.

8. Will Tribal Representatives Be Involved in Reviewing or Ranking Proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who Will Make the Final Determination for Grant Approval?

The Director will make the final determination for grant award.

10. How Will the Tribes Be Notified Whether or Not They Have Been Awarded Grants.

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

B. Application Requirements

1. Is the TWG Program Exempt From Federal Grant Program Compliance?

No, the TWG program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12: OMB Circulars A-133, A-102, and A-87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What Must Proposals for Participation in the TWG Program Include?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF-424), and tribal resolution of support as described herein.

—A *cover letter* briefly states the main features of the proposed project.

—A *program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.

—A *program narrative* clearly identifies the problems that the proposal will correct or help solve as they relate to the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology,

geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TWG and relevant Service and tribal performance goals. The relevant Service goals are *Goal 1*, Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); *Goal 2*, Habitat Conservation; including Habitat Conservation off Service Lands (Goal 2.3); and *Mission Goal 4*, Partnerships in Natural Resources, including Tribal Governments (Goal 4.1), all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at <http://planning.fws.gov/USFWStrategicPlanv3.pdf>. Related Service planning and results can be found at <http://planning.fws.gov/>.

—A budget narrative clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.

—An SF-424 form will be included with the Grant Application Package and is available on the internet at <http://training.fws.gov/fedaid/toolkit/sf424-f.pdf>.

—A resolution of support from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where Can Applicants Obtain a Grant Proposal Package?

Applicants can obtain a grant proposal package from the Native

American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or at the Service's Grants Web site <http://grants.fws.gov/tribal.html>.

4. Are Matching Funds Required?

No, Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

5. Are In-Kind Contributions Eligible as Matching Funds?

Yes, in-kind contributions provided by the tribe or a third party may be used as a match to improve the potential ranking of a proposal. The Service has defined "in-kind" as noncash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the program, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR 12.64. Additional information can be found at <http://training.fws.gov/fedaid/toolkit/inkind.pdf>.

6. Can a Tribe Submit More Than One Grant Proposal?

Tribes are encouraged to submit a single comprehensive grant proposal, but multiple proposals are allowable.

7. What Maximum Level of Project Funding Will Be Considered Under the TWG Program?

The Service will award grants up to a maximum of \$250,000. If more than one proposal is submitted by any one tribe, no more than \$250,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What Minimum Level of Project Funding That Will Be Considered Under the TWG Program?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

C. Ranking Criteria

What Ranking Criteria Will the Service Use?

The Service will score proposals based on the following criteria: The Proposed Guidelines (FR 79136; December 27, 2002) assigned specific

point values to these criteria for the purpose of gaining public comment. On the basis of public comments and our understanding of Congressional intent in creating this program, we assigned the following criteria relative values from 1 (lowest) to 5 (highest).

Benefit: What are the expected benefits to fish and wildlife resources, including species that are not hunted or fished, and their habitat if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives. *Relative Value:* 5.

Performance Measures: To what extent does the proposal provide obtainable and quantifiable performance measures and a means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear, and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TWG, the Service and the tribe. *Relative Value:* 4.

Work Plan: Are the program activities and objectives well-designed and achievable? *Relative Value:* 3.

Budget: Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? *Relative Value:* 3.

Capacity Building: To what extent does the program increase the grantee's capacity to provide for the benefit of wildlife and their habitat? *Relative Value:* 4.

Contributions and Partnerships: To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? *Relative Value:* 2.

D. TWG Operations and Management

1. In the Course of Implementing a TWG Project or Program, Can Grantees Use TWG Funds to Pay for Costs of Conservation Law Enforcement or Education?

Yes, if the law enforcement or education component is a minor or incidental activity that is considered critical to the success of a project which directly contributes to the conservation of wildlife species and their habitats with the greatest conservation need and is consistent with the development or implementation of the tribe's proposal.

2. What Activities Are Included in the "Development and Implementation of Programs for the Benefit of Wildlife," as Referenced in the Department of the Interior and Related Agencies Appropriations Act for FY 2002?

Activities may include, but are not limited to, planning for wildlife and habitat conservation, ongoing and/or new fish and wildlife management actions, fish and wildlife related laboratory and field research; natural history studies, habitat mapping, field surveys and population monitoring, habitat preservation, land acquisition, conservation easements, and outreach efforts. Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe.

3. Can Grantees Use TWG Funds To Cover Costs of Environmental Review, Habitat Evaluation, Permit Review (*e.g.*, section 404), and Other Environmental Compliance Activities Associated With a TWG Project?

Yes, they can fund these activities provided they are directly related to the TWG program or project being funded and are included in the budget and discussed in the program and budget narratives.

4. Are There Any Specific Activities That Are Not Allowable Under the Guidance of TWG?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (*e.g.*, mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

5. Is the TWG Program a Continuous Revenue Source for Tribal Wildlife Programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2002 and FY 2003 are available until spent.

6. Can the Grantee Hold TWG Funds in an Interest-Bearing Account?

Funds can be held in an interest-bearing account, although any interest earned in excess of \$100 must be

returned to the fiscally responsible Federal agency (43 CFR 12.64).

E. Grant Award Procedures

1. What Additional Information Must Be Provided to the Service by the Grantees Once Awards Are Announced?

Once the Director notifies a grantee that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TWG agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A-87, A-102, and A-133 (*see* <http://www.whitehouse.gov/omb/circulars>).

2. Once Grants Are Awarded, Who Should the Grantee Consider as the Lead Contact Person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When Will the Service Award TWG Grants?

Once the Service has reviewed and ranked all eligible TWG grant proposals, the Director will make his final decision within 30 days of the recommendations of the national review panel.

4. How Will Funds Be Disbursed Once the Service Has Awarded TWG Grants?

Subsequent to funding approval, grant funds are electronically provided through the Health and Human Services' SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What Reporting Requirements Must Tribes Meet Once Funds Are Obligated Under a TWG Grant Agreement?

Quarterly Financial Status Reports (SF-272), which can be found at <http://www.whitehouse.gov/omb/grants/sf272.pdf> must be submitted electronically. A final Financial Status Report (SF-269), which can be found at <http://www.whitehouse.gov/omb/grants/sf269.pdf>, will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report—including a list of project accomplishments relative to those which were planned in the grant agreement—will also be required within 90 days of the end of each 12 month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is There a Limitation on the Amount of Funds That May Be Used for Administrative Costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

V. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

This policy document identifies eligibility criteria and selection factors that may be used to award grants under the TWG program. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. The TWG will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create the TWG program. In addition, grants that are funded will generate

other, secondary benefits, including benefits to natural systems (e.g., air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of \$100 million or more.

2. We do not believe the TWG program would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TWG program would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107-63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees that are selected to receive funding under the TWG program in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (e.g., small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of \$100 million or more. The yearly amount of TWG program funds is limited to \$5 million in FY 2002 and \$4,967,500 in FY 2003.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to programs under the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This guidance will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

E. Takings Implication Assessment (Executive Order 12630)

This implementation guidance does not have significant "takings" implications. This implementation guidance does not pertain to "taking" of private property interests, nor does it impact private property.

F. Executive Order 13211CEnergy Effects

On May 18, 2001, the President issued Executive Order 13211, which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

G. Executive Order 13132CFederalism

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

H. Civil Justice Reform (Executive Order 12988)

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

I. National Environmental Policy Act (NEPA)

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through the TWG program are in compliance with NEPA.

J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TWG program. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process and beyond in furthering our mutual goals for the TWG program.

K. Paperwork Reduction Act (44 U.S.C. 3501)

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018-1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to

the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant programs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Summary of Comments and Recommendations

On December 27, 2002, the Service published the proposed guidelines for the TWG with an open comment period of 1 month (67 FR 79136). On January 27, 2003, we had received a total of 48 comment submissions. Thirty five tribes, 4 tribal organizations, 2 private enterprises, 1 organization, 5 Federal entities, and 1 unaffiliated individual provided suggestions for these proposed guidelines. These comments are addressed below.

In *part I., Background*, we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TWG. The responses for comments are summarized in the corresponding sections below.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (1-3)*, we proposed a competitive program in which only federally recognized tribes would be able to apply for funding but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Eleven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term "federally recognized tribe" be fully explained by including federally recognized tribes; pueblos; rancherias; Alaska Native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA) such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although ten noted their

agreement with their exclusion from participating in TWG. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Ten comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TWG. Four comments advocated for the inclusion of consortia of federally recognized tribes to be eligible participants in TWG as direct applicants. One final suggestion was to clarify the inclusion of Alaska Native Villages and to state that when there exists an agreement with Native corporation landowners to manage their properties, these lands should be eligible for TWG projects.

Response: Congress specified the TWG program is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other nontribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. When an agreement to manage Native corporation lands has been approved by the corporation, these lands will be eligible for TWG projects. Individual Indian allottees are not eligible grantees through TWG but are encouraged to work with States and tribes as subgrantees or contractors.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (4)*, it was proposed that the Service would request proposals through a **Federal Register** notice and other forms of outreach and that proposals be received by the respective Regional Directors. There were no comments suggesting an alternative process.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5-9)*, we proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the regionally ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Six respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Eleven advocated for a geographic, land, or population based component to the disbursement of funds or the selection of proposals.

Response: The Tribal Wildlife Grants Program is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 18 agreed and provided further suggestions as to what other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and another stated that Regional Liaisons should be excused from ranking Regional proposals. Eleven comments advocated the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

Response: The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

The Service has not developed a process for identifying participation of tribal representatives in the ranking process and did not receive specific comments on ways to involve tribal representatives. However, the Service will use the knowledge and experience gained in this initial year and public comments to consider changing the guidelines in future years to include

tribal representatives in the ranking process.

TWG proposed guidelines state that "the Director will make the final determination for grant approval." Six respondents stated their agreement with this language. One respondent disagreed. Three suggested that the national review team be capable of making the final decision on accepting proposals, and two others would like the Regional Native American Liaisons to rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

Response: Because this is a nationally competitive program, the Secretary's authority is delegated solely to the Director, who will review recommendations and make final selections. Submitters of proposals not selected will receive information to improve their chances of future selection.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (1), states that TWG is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A-102 and A-87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe's fiduciary responsibility over subgrantees and contractors.

Response: The language in the proposed notice will be amended to indicate Tribal grantees' responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (2),* general inclusions for proposals in the TWG program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received: one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

Response: Comments noted.

No comments were received on the requirement of a *Cover Letter* or *Program Summary*.

Sixteen respondents commented on the requirement of a *Program Narrative*. Eleven advocated for the inclusion and/or prioritization of tribal goals rather than "relevant Service performance

goals"; three asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included; and one respondent would like the inclusion of fish to be clearly articulated.

Response: The Service recognizes that the tribal grant funding is for the benefit of wildlife and their habitat, including species that are not hunted or fished. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final advice is modified to include Mission Goal 4.1, Tribal Partnerships and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5; 1.6, Sustainability of Fish and Wildlife Populations (<http://planning.fws.gov/tableofcon.html>).

Under the heading *Budget Narrative*, one respondent asked the Service to clarify the meaning of "administrative costs" to include or exclude indirect costs, and advocated excluding indirect costs. Another comment suggested a 15 percent maximum for Indirect Cost Rates.

Response: The Service determined that administrative costs are those that can be directly related to allowable costs as defined in 43 CFR 12.62, as well as in OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments). Indirect costs are also explained in OMB Circular A-87; indirect costs are allowable as direct costs if the applicant has an approved indirect cost agreement with its cognizant agency. All costs, whether direct or indirect, must be included in the grant proposal and are subject to the grant award maximum of 25 percent.

Nine comments were submitted regarding the requirement of a *Resolution of Support* from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Nine said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the "duly elected leader of the tribe" or the "Tribal Chair or Councilperson." Another suggested alternative was to allow for an extended open period to account for varying meeting schedules for tribal councils.

Response: The requirement for a *Resolution of Support* is an assurance that the tribal governing body supports

the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (3), states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet.

Response: The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at <http://grants.fws.gov/tribal.html>.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (4), states that matching funds are not required. However, they are encouraged and the proposed ranking criteria will consider them as an indication of commitment and to encourage partnerships. Two comments asked that the Service eliminate or decrease the value of this requirement.

Response: These comments are addressed in part II., C., Ranking Criteria.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (5),* the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind contributions. One respondent agreed, and one disagreed, pointing out that this would add no value to a proposal. Another asked that the Service clarify whether or not funds may be expended in multiyear projects and, if so, for how many years. One comment indicated that if matching funds are not required, then it is not fair to use them in ranking proposals for selection.

Response: The Service has identified those costs that are considered allowable as in-kind contributions or matching funds. These have been identified in Service Manual 522 FW 1

and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (6)*, the Service indicates that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient as long as the tribe can bundle several projects, with the understanding that portions may be rejected. Two stated that a single proposal is a good target but that the Service should not exclude multiple proposals outright. Three advocated for multiple proposals, and one asked the Service to definitively state whether one or multiple proposals are allowable. One comment asks the Service to explain how excess funds will be handled.

Response: Tribes are encouraged to submit one proposal, but multiple proposals are allowable. The Service does not anticipate that excess funds will be available.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (7 and 8), recommends no minimum and that a maximum of approximately 5 percent of available funds (\$250,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each proposal, some applicants may receive greater amounts. One recommendation stated that a \$5,000 minimum be placed on proposals to relieve administrative burden on the Service. Eighteen comments supported 5 percent as a non-binding target but not as a strict cap. Other comments recommended a \$75,000 and \$100,000 limit on proposals, and four advocated for no cap at all. Others suggested a 1, 2, or 2.5 percent cap on proposals. One comment advocated for a cap based on the land base of projects but did not offer any further explanation. It was also suggested that the Service state clearly whether a suggested limit is an actual cap or simply a target.

Response: The Service will award grants up to a maximum of \$250,000 per proposal with no more than \$250,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could

result in an undue administrative burden.

Several other comments were received that offered additional feedback. One suggested allowance for partial funding of proposals. Another offered that the TWG could be divided into a large and small grants program to ensure greater participation.

Response: Proposals will be scored and ranked on the relative merit of each proposal. The Service may need to partially fund one or more proposals to fully allocate the funds. Small-grant and large-grant programs may be considered in the future.

Part II., Proposed Implementation Guidelines, section C., Ranking Criteria, offers a proposed weighting system by which the Service can determine a relative score for proposals including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. Two general comments on the Ranking Criteria advised the Service to make them as close as possible to those of the State Wildlife Grants program. One agreed with the proposed criteria but, encouraged consultation with tribes to ensure adequate knowledge of Service goals and strategies. An additional comment asked that the Service better define this program's priorities.

Response: Ranking criteria will be clearly defined in the TWG guidance. The State Wildlife Grants Program is not a competitive grant program and has no ranking criteria.

Regarding the *Benefit* of proposals, 12 comments advocate for adding emphasis to this criterion. Four agreed with this criterion if tribes set their own goals and priorities to determine which species are to benefit. Two respondents asked further that the Service define what is meant by the language "including species that are not hunted or fished," and stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (Endangered Species Act), and another specifically suggested that no special preference be placed on them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans (IRMPs) or Natural Resource Management Plans.

Response: The cumulative maximum of 25 points for *Benefit* (0–25) and 20 points for *Performance Measures* (0–20) already places high value on the extent to which the project will benefit fish and wildlife resources. The Service agrees that benefits will be measured against Tribal fish and wildlife goals. The Service requires that tribes

articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives.

By including species that are not hunted or fished, the Service provides tribes with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species, as this is not the purpose of this grant program. These funds may be used to develop IRMPs (or equivalent); therefore, to give preference to those tribes that already have IRMPs is not appropriate.

Under the heading *Performance Measures*, four comments call for an emphasis to this criterion. Two suggested that the Service de-emphasize or delete it, but suggested that if tribal goals rather than the Service's goals were prioritized, "Performance Measures" would be an acceptable criterion. Four additional comments suggested that tribal goals be included, and three others call for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

Response: The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives in the *Benefit* criterion.

Seven comments suggested an added emphasis to the *Work Plan* criterion, and one supported the proposed emphasis on the *Budget* criterion.

Response: The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the *Capacity Building* criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and one agrees with it as proposed.

Response: The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs to benefit fish, wildlife, and their habitats, and the TWG program provides an excellent opportunity to increase their capacity. The Service believes that the TWG program can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading *Commitment*, the Service asks to what extent the applicant displays commitment to the proposed project through in-kind or matching funds. Sixteen respondents asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

Response: Although Congress did not include a matching requirement for the TWG program, the Service believes that tribes making a commitment in their proposals to provide a match should be rewarded in the competitive ranking process. In addition, the Service will accept other forms of support from the tribes to meet the match requirement including cash, in-kind support, equipment, and materials. Matching contributions are non-Federal (tribal or partner) cash or in-kind contributions. Funds derived from Pub. L. 93-638 contracts are allowable as matching funds.

Eighteen comments on the *Partnerships* criterion asked that the Service remove or de-emphasize this criterion, and one agreed with it as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for "partnerships" that includes non-Federal partners.

Response: Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TWG should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this category. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance, *Partnerships* and *Commitment* criteria have been combined into a new category, *Contributions and Partnerships*.

Two comments asked that the Service remove, and six asked that the Service de-emphasize, the proposed *Administrative Costs* criterion. One agreed with it as proposed. Seven comments advocated not considering tribal indirect cost rate as administrative cost, with one seeking to place a 15 percent maximum allowable for indirect cost rates. One comment suggested a limit on allowable administrative costs. Eight comments advocated making an allowance for staff or seasonal employees by removing the word "staff" from the proposed language.

Response: *Administrative Costs* is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administration costs to 12 percent unless a waiver is granted by the Regional Director.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (1), allows that TWG funds can be used to cover the costs of Conservation Law Enforcement. The Service received no comments.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (2), broadly outlines the activities that are eligible for funding under TWG. Three comments proposed language to better define wildlife, conservation, Tribal Fish and Game Department or Tribal Fish and Wildlife Department, and wildlife-restoration project. The respondent advocated for inserting the following: "Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe." Another comment suggested that the Service better define the purpose of the TWG program.

Response: The Service appreciates these thorough and constructive comments, and has used them in revising the program guidance and in developing a *Definitions* section. The Service agrees with and has incorporated the proposed statement.

As defined by Congress, the intent of the TWG program is "for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished."

One comment suggested that the Service consider a cap on land purchase and that projects with land acquisitions in the match category should be encouraged. One comment proposed that research projects should receive equal consideration in the ranking process. One requested clarification on whether TWG funds can be used for conducting archeological surveys by Tribal Historic Preservation Officers to comply with the NHPA for a TWG project; one advocated for habitat improvement projects; and one advocated "culturally acceptable projects."

Response: Land acquisition is an eligible activity under TWG. The Service has capped all projects under TWG, including lands acquired with TWG funds, at \$250,000. The associated value of certain land acquisitions can be used as match to aid in the scoring of the proposal.

Research, habitat improvement, and "culturally acceptable" projects are

eligible for funding given their relative applicability to the guidelines established for TWG.

Under Section 106 of the National Historic Preservation Act, projects must comply with the Act. If it is known before project implementation that an archaeological investigation is warranted, then the cost for such investigation or survey can be included in the overall project proposal when submitted to the Service.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (3), proposes that TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. One comment agreed with this proposed explanation, and two asked that the allowable activities further specify that TWG funds may be used to address the costs of adhering to tribal environmental compliance activities.

Response: TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project provided they are included in the budget and discussed in the Program and Budget Narratives of the project proposal.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (4), defines which activities are not allowable under TWG. It states that a proposal may not include activities required to comply with a Biological Opinion or activities required to comply with a permit (e.g., mitigation activities). However, a proposal can include activities that implement conservation recommendations. Several comments said that no TWG funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility and suggested that this section be strengthened by indicating so. Two comments agreed with this section, with the inclusion of "court directive and Federal agency mandate or directive" to those activities that cannot be included in a proposal. Some respondents agreed that mitigation under a Biological Opinion should not be funded through TWG. Recommended language from one comment: "A proposal cannot include activities required to comply with a BO, court directive, Federal agency mandate or directive, or include activities required to comply with a permit (mitigation

responsibilities). However, a proposal can include activities to implement conservation recommendations." One comment asked that "Biological Opinion" be further defined.

Response: All TWG funds will be awarded to tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of "court directive and Federal agency mandate or directive" as excluded activities in a grant project, because doing so would place additional restrictions on tribal proposals. "Biological Opinion" refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the "Definitions" section.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (5), states that TWG is not a continuous revenue source, and one comment advocated for making the TWG program a continuing source for funding.

Response: Because TWG is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source of funding.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (6), stated that TWG funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

Response: Federal law allows funds to be held in an interest-bearing account although any interest earned on such funds in excess of \$100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1), defines which additional information must be included by the grantees once awards are announced. The Service received no comments.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2), states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact.

Response: The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principle financial contact.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3), stated that the Service will award grants within 30 days of the

recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

Response: A timeline for acceptance and selection of awards is included in the Grant Application Package.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4), states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer system (EFT). And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

Four comments stated that if the Service has the ability to advance 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggests 40 percent and the other is nonspecific.

Response: The Service will advance up to 25 percent of the total award upon request by the tribe.

Four disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. One comment asked if all tribes are electronic funds transfer (EFT) compliant.

Response: Further clarification of the proposed EFT is necessary to explain that funds will be "reimbursed" as needed rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All tribes are capable of EFT. As a grantee incurs expenses, funds to pay these can be drawn down via SMARTLINK.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5), addresses the reporting requirements tribes must meet once funds are obligated under a TWG grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

Response: TWG projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

Response: A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform, received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act will apply to information submitted by the tribes.

Response: The Service will work with the tribes to ensure that sensitive information is protected.

Part III., Procedural Requirements, section I. National Environmental Policy Act, drew one comment asking that the Service better determine what is meant by the phrase "Service will ensure (that grants funded through TWG are in compliance with the National Environmental Policy Act)" in the proposed guidelines.

Response: A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act were not commented upon.

Part IV., Native American Liaisons for the Fish and Wildlife Service, was not commented upon.

General Comments: We received several comments that did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

Response: The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. One respondent advocated for the inclusion of nontrust tribal lands in TWG projects.

Response: This is an allowable request under TWG.

3. Four general comments stated that there should be no Service administrative cost associated with implementation of this program's \$5 million allocation.

Response: Service administrative costs will not be charged against the \$5 million allocation.

4. One comment suggested that the funds for FY02 and FY03 be combined into one proposal period. This same comment recommended that the Service allow for multiple-year projects.

Response: FY02 and FY03 funds will be combined and disbursed through one proposal period. A grant award can provide for multiple-year projects. Multiple-year projects still require annual performance and financial reports. The performance reports should be submitted to the Native American Liaison and the financial reports to the Federal Aid Office.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

Response: The Service will work to address public comments with the intent of enhancing the administration of the Tribal Wildlife Grants as Congress intended for the benefit of federally recognized tribes.

6. Two respondents suggested that the Service require postmarks on proposals showing the due date.

Response: Proposals postmarked, hand-delivered, or otherwise sent in by the due date will be accepted for the grant review process.

7. A comment suggested that the Service allow for proposals that combine TWG and the Tribal-Landowner Incentive Program (TLIP) and apply the same criteria to both TLIP and TWG.

Response: The Service must administer each grant as directed by Congress, and each program differs to some degree, thus limiting our ability to establish identical criteria.

8. Three comments advocated for future funding of the TWG program and one respondent advocated for increasing the amount of available funds in the TWG program.

Response: The President's budget request to Congress for FY04 includes \$5 million for TWG.

9. One respondent suggested that there should be no time limit on expenditure of funds, and a similar response advocated for allowance for rollover into the next fiscal year.

Response: After appropriation, TWG funds are available until expended. However, grant agreements will be

written to allow an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

10. One respondent asked that an 8 week response period be invoked for the open Request For Proposals period (RFP).

Response: In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TWG program at 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One respondent asked that the Service allocate funds as quickly as possible after awards are made.

Response: It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

Dated: May 2, 2003.

H. Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

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