

CMS Provider, the Participating CMS Provider must support CMAS alerts to the roaming subscriber to the extent the subscriber's mobile device is configured for and technically capable of receiving CMAS alerts.

### Subpart E—Equipment Requirements

#### § 10.500 General Requirements.

CMAS mobile device functionality is dependent on the capabilities of a Participating CMS Provider's delivery technologies. Mobile devices are required to perform the following functions:

- (a) Authentication of interactions with CMS Provider infrastructure.
- (b) Monitoring for Alert Messages.
- (c) Maintaining subscriber alert opt-out selections, if any.
- (d) Maintaining subscriber alert language preferences, if any.
- (e) Extraction of alert content in English or the subscriber's preferred language, if applicable.
- (f) Presentation of alert content to the device, consistent with subscriber opt-out selections. Presidential Alerts must always be presented.
- (g) Detection and suppression of presentation of duplicate alerts.

#### § 10.510 Call Preemption Prohibition.

Devices marketed for public use under part 10 must not enable an Alert Message to preempt an active voice or data session.

#### § 10.520 Common Audio Attention Signal.

A Participating CMS Provider and equipment manufacturers may only market devices for public use under part 10 that include an audio attention signal that meets the requirements of this section.

- (a) The audio attention signal must have a temporal pattern of one long tone of two (2) seconds, followed by two short tones of one (1) second each, with a half (0.5) second interval between each tone. The entire sequence must be repeated twice with a half (0.5) second interval between each repetition.
- (b) For devices that have polyphonic capabilities, the audio attention signal must consist of the fundamental frequencies of 853 Hz and 960 Hz transmitted simultaneously.
- (c) For devices with only a monophonic capability, the audio attention signal must be 960 Hz.
- (d) The audio attention signal must be restricted to use for Alert Messages under part 10.
- (e) A device may include the capability to mute the audio attention signal.

#### § 10.530 Common Vibration Cadence.

A Participating CMS Provider and equipment manufacturers may only market devices for public use under part 10 that include a vibration cadence capability that meets the requirements of this section.

- (a) The vibration cadence must have a temporal pattern of one long vibration of two (2) seconds, followed by two short vibrations of one (1) second each, with a half (0.5) second interval between each vibration. The entire sequence must be repeated twice with a half (0.5) second interval between each repetition.
- (b) The vibration cadence must be restricted to use for Alert Messages under part 10.
- (c) A device may include the capability to mute the vibration cadence.

#### § 10.540 Attestation Requirement [Reserved]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 80

[FWS-R9-WSR-2008-0035; 91400-5110-0000-7B]

RIN 1018-AV99

#### Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are revising certain provisions of the regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety financial assistance programs. These revisions: (a) Address changes in law and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations broadly applicable to financial assistance programs managed by the Department of the Interior; and (d) reword the regulations to make them easier to understand. The revisions will improve the regulations by making them more current and clear.

**DATES:** This rule is effective August 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-2156.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Department of the Interior's Fish and Wildlife Service (Service) manages 40 financial assistance programs, 14 of which are managed, in whole or in part, by the Service's Wildlife and Sport Fish Restoration Program. This final rule will revise title 50, part 80, of the Code of Federal Regulations (CFR), which contains the regulations that govern three programs: Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety. These programs provide financial assistance to the fish and wildlife agencies of States and other eligible jurisdictions to manage fish and wildlife and provide hunter education and safety programs. The Catalog of Federal Domestic Assistance at <http://www.cfda.gov> describes these programs under 15.611, 15.605, and 15.626.

The Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, as amended, established the programs affected by this rule. These Acts are more commonly known as the Pittman-Robertson Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669k) and the Dingell-Johnson Sport Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777n). They established a user-pay and user-benefit system in which the fish and wildlife agencies of the States, Commonwealths, and territories receive formula-based funding from a continuing appropriation. The District of Columbia also receives such funding, but only for managing fish resources. Industry partners pay taxes on equipment and gear purchased by hunters, anglers, boaters, archers, and recreational shooters. Taxes on fuel for motor boats and small engines are also a source of revenue. The Service then distributes these funds to the fish and wildlife agencies of States and other eligible jurisdictions. States must match these Federal funds by providing at least a 25-percent cost share. In fiscal year 2008, the States and other eligible jurisdictions received \$310 million through the Wildlife Restoration and Hunter Education and Safety programs and \$398 million through the Sport Fish Restoration program.

The Service revised two sections of 50 CFR 80 in 2001, but we have not reviewed other sections for revision

since the 1980's. Consequently, some provisions do not reflect:

(a) 43 CFR 12, subpart C "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments";

(b) The Transportation Equity Act for the 21st Century (1998) (Pub. L. [P.L.] 105-178);

(c) The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Pub. L. 106-408);

(d) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (2005) (Pub. L. 109-59); and

(e) The Presidential memorandum of June 1, 1998, that required the use of plain language in Government writing.

In addition, we must clarify 50 CFR 80.10 on certification of hunting and fishing licenses to address the greater number of licensing choices that some States and other jurisdictions have offered hunters and anglers in recent years.

On May 5, 2008, we published a proposed rule (73 FR 24524) to revise the regulations governing 50 CFR 80. We accepted public comments that we received or were postmarked during a 30-day period that ended on June 4, 2008. This final rule adopts the changes we proposed on May 5, 2008, with additional changes described below.

#### Updates of the Regulations

We are making nonsubstantive administrative changes in 50 CFR 80 to ensure that its provisions reflect changes in law and regulation over the past 20 years. An important change was the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, which amended the legal authorities that established the affected programs. We are updating the U.S. Code citations in 50 CFR 80.1 for the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act to reflect this amendment. The 2000 amendment also allows us to refer to the Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, by their more common names, "Pittman-Robertson Wildlife Restoration Act" and "Dingell-Johnson Sport Fish Restoration Act." We are changing the collective name of all activities associated with the affected financial assistance programs from "Federal Aid" to "Wildlife and Sport Fish Restoration Programs," which is consistent with the 2000 amendment.

We are deleting the definition and references to the Federal Aid Manual in § 80.1 and § 80.11 because it is no longer an official publication, and its successor

document, the Service Manual, addresses Service employees and not the general public.

We are also replacing the reference in § 80.14 to Office of Management and Budget (OMB) Circular A-102's Attachment N with 43 CFR 12.71 and 12.932 as sources of guidance on the use and disposition of unneeded real property. We are changing "aquatic education" to "aquatic resource education" in § 80.15 to reflect more accurately the language of the Dingell-Johnson Sport Fish Restoration Act.

The provisions of § 80.19 on records and § 80.22 on audits refer to subject matter that was in the 1971 version of A-102. We are deleting all the contents of these sections because 43 CFR 12.82 and 12.66 are applicable to the affected programs and they address these subjects adequately.

We are deleting the estimates of time to fill out forms in § 80.27. This information will change over time and is not appropriate for regulations.

We have applied plain language principles to those provisions where we have to change or clarify the content of the regulations. This conversion to plain language makes the affected provisions clearer as well as complies with the Service's plain language policy. More specifically, we are replacing words that are susceptible to different meanings with words that are more precise, e.g., we are changing "shall" to "must."

We refer to the territories, Commonwealths, and the District of Columbia in a consistent way throughout 50 CFR 80. Finally, we are alphabetizing the definitions in § 80.1 for ease of reference.

#### Clarifying the Requirements

We are adding the territory of American Samoa to the jurisdictions in § 80.2(b) that are eligible to participate in the benefits of the Pittman-Robertson Wildlife Restoration Act. This is consistent with section 4(c) and 8A of the Act.

We are making administrative changes in § 80.10 to ensure that the process for certifying the number of hunter and angler licenses provides accurate data that are comparable among the States ("States" includes Commonwealths, territories, and the District of Columbia in the context of license certification.). This change is important because we apportion funds to the States based in part on the numbers of these licenses. We are clarifying this process because, as States offered more licensing options, they began to use different approaches in counting the individuals who purchased licenses. We are making several changes

to resolve these differences. We are clarifying the timeframe during which a State's license year must occur for the State to use it as the State-specified license certification period. We are establishing a common approach for States to assign single-year license holders to a license year. Under this approach, States will assign single-year license holders only to the period in which they purchased the license instead of having the option of assigning them to the period in which their licenses are legal. Finally, we are clarifying that, under certain conditions, States may assign a person who purchases a multiyear license to each license period in which the license is legal.

We are revising § 80.12 to add the District of Columbia to the three territories and two Commonwealths subject to the cost-sharing requirements of that section. This revision will make § 80.12 consistent with section 12 of the Dingell-Johnson Sport Fish Restoration Act, which authorizes the Secretary of the Interior to cooperate with the six jurisdictions on fish restoration and management projects under terms and conditions that the Secretary finds fair, just, and equitable. The Act also states that the Secretary may not require these jurisdictions to pay an amount that exceeds 25 percent of any project. The current version of § 80.12 authorizes Regional Directors to waive non-Federal cost sharing at their discretion for the jurisdictions listed in the section. The final rule continues to provide Regional Directors with discretionary waiver authority.

We are revising § 80.24 to make it consistent with the following provisions of the Dingell-Johnson Sport Fish Restoration Act: (a) A State must allocate 15 percent of each annual apportionment for recreational boating access facilities; (b) a State may allocate more or less than 15 percent in a fiscal year provided that the total regional allocation averages 15 percent over a 5-year period; (c) any portion of a State's 15-percent set aside for recreational boating access that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States. To ensure that the total regional allocation averages 15 percent, we are requiring that a State obtain the approval of the Service's Regional Director to allocate more or less than 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act. We changed § 80.8 to indicate that the 5-year obligation period for recreational boating access funds is an exception to the general rule

of 2 years for the obligation or expenditure of funds.

### Response to Public Comments

We published the proposed rule in the May 5, 2008, **Federal Register** (73 FR 24524) and invited public comments. We reviewed and considered all comments that were delivered to the Service's Division of Policy and Directives Management from May 5 to June 4, 2008, and all comments that were entered on <http://www.regulations.gov> or postmarked during that period. We received 29 comments from 27 State agencies, 2 comments from nonprofit organizations, and 3 comments from individuals. Most commenters addressed several issues, many of which were also addressed by other commenters. We classified these issues and the general expressions of support or nonsupport into 29 comments that follow the order of the subject matter of 50 CFR 80.

### General

*Comment 1:* Three commenters expressed unqualified support for the proposed rule or major elements of it. They did not suggest any additions, deletions, or modifications.

*Response 1:* We did not change the proposed rule as a result of these comments.

*Comment 2:* Two commenters recommended that we withdraw the proposed rule to allow further consultations with State fish and wildlife agencies. Both listed specific provisions that they opposed.

*Response 2:* We did not accept the recommendation that we withdraw the proposed rule. We are responding to an urgent need to clarify how States can count individuals who purchased licenses under options that have become available in recent years. We are also updating 50 CFR 80 to reflect changes in law, regulatory format, and style. We addressed the commenters' specific issues in our responses below, and we accepted some of their recommendations on changing the proposed rule.

*Comment 3:* A commenter recommended that most funding for these programs should go to the State agencies that achieve the highest quality of hunter education and safety training.

*Response 3:* The Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act provide formulas for apportioning funds among the States. The commenter's recommendation is not an option under these formulas. We did not change the proposed rule as a result of this comment.

### Section 80.1 Definitions

*Comment 4:* A commenter recommended that we delete the definition of "resident hunter" from proposed § 80.1 because the term does not occur in 50 CFR 80.

*Response 4:* We changed the proposed rule to delete "resident hunter" from § 80.1.

### Section 80.2 Eligibility

*Comment 5:* Several commenters recommended that we add programs on outreach and communications and aquatic resource education to § 80.5 on eligible undertakings.

*Response 5:* The Dingell-Johnson Sport Fish Restoration Act clearly authorizes these programs, and § 80.5 is not in conflict with the law as stated. Therefore, we will defer consideration of this issue to a future rulemaking process so that we can invite the public to review the proposed language and provide comments.

### Section 80.10 State Certification of Licenses

*Comment 6:* Several commenters recommended that we replace the word "accounting period" in § 80.10(a)(1) with "license certification period" or "enumeration period." One commenter recommended that we strike "12-month" between "State-specified" and "period" in several places in § 80.10(b).

*Response 6:* We replaced "accounting period" with "license certification period" in § 80.10(a)(1). We also replaced "State-specified period" in § 80.10(a)(2) (redesignated as § 80.10(a)(3) by Response 9) and "State-specified 12-month period" in § 80.10(b) with "State-specified license certification period."

*Comment 7:* A commenter recommended that we change § 80.10(a)(1)(ii) from "corresponds with or includes the State's fiscal year or license year" to "must be the State's fiscal year or license year."

*Response 7:* We changed the rule so that § 80.10(a)(1)(ii) now reads, "is either the State's fiscal year or license year," which closely follows the language of the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act.

*Comment 8:* A commenter stated that the certification period is too complicated, and recommended that we request data for the most recently completed license year (as defined by the State, but not to exceed 1 year) when the Service annually requests certified license numbers.

*Response 8:* Our ability to provide a less complicated license certification

period is limited by the apportionment formulas in the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. These formulas require that we use the number of paid license holders of each State "in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments. \* \* \*" The Acts clarify that the license certification period must be 12 consecutive months and "shall be a State's fiscal or license year." We did not change the proposed rule as a result of this comment.

*Comment 9:* A commenter expressed support for proposed § 80.10(a)(1), which requires that each director of a State fish and wildlife agency specify a 12-month license certification period. Another commenter stated that States should select the 12-month license certification period and it should be consistent from year to year. Another commenter recommended that the Service approve changes in the license certification period. Another commenter recommended that States notify the Service before any change in the license certification period and provide justification.

*Response 9:* The proposed rule provides that each director of a State fish and wildlife agency specify an accounting period within the timeframe provided by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. We redesignated proposed § 80.10(a)(1)(iii) as § 80.10(a)(1)(iv) and added a new § 80.10(a)(1)(iii) that reads, "Is consistent from year to year; and." We also redesignated proposed § 80.10(a)(2) as § 80.10(a)(3) and added a new § 80.10(a)(2) that states, "Obtain the Director's approval before changing the State-specified license certification period; and".

*Comment 10:* Nine commenters recommended that we allow the use of the most recent calendar year as the license certification year.

*Response 10:* We analyzed the wording necessary to implement the suggestion. Our review indicated that some State license certification periods are such that these States would not have sufficient time to obtain the license data, analyze it, and certify their numbers to the Director. Therefore, we did not make any changes in the proposed rule as a result of these comments.

*Comment 11:* Eight commenters recommended that we replace the term "purchased licenses" with "paid licenses" to conform to the term used in the Pittman-Robertson Wildlife

Restoration Act and the Dingell-Johnson Sport Fish Restoration Act.

*Response 11:* We accepted the recommendation and replaced “purchased licenses” with “paid licenses” in § 80.10(a) and (b) of the proposed rule.

*Comment 12:* Several commenters stated that the proposed timeframe for the license certification period and the transition from “year-valid” licenses to “year-sold” licenses will: (a) Cause inconsistencies with past reporting; (b) require the re-use of data during the transition year; or (c) significantly affect the certified numbers of license holders in the transition year.

*Response 12:* The commenters’ assessments may apply to some States and are the unavoidable results of making this transition to uniform certification standards. Their comments substantiated the need to bring a consistent timeframe to this process. We did not change the proposed rule as a result of these comments.

*Comment 13:* A commenter recommended that we rewrite § 80.10(a)(2) believing that it is awkward and inconsistent with § 80.10(b)(3). Another commenter stated that § 80.10(a)(2)’s reference to “The number of people in that State \* \* \* ” may unintentionally exclude nonresident license holders.

*Response 13:* We accepted the recommendations and changed the proposed rule by rewriting § 80.10(a)(2)(i) and (ii) (redesignated as § 80.10(a)(3)(i) and (ii) by Response 9) as follows:

“(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-specified license certification period.”

*Comment 14:* Several commenters recommended that we change § 80.10(b)(1) to indicate that a State may count (a) trapping licenses that also permit licensees to hunt furbearers and (b) commercial fishing licenses that also permit recreational fishing.

*Response 14:* We accepted the recommendation. We changed the proposed rule by changing the second sentence of § 80.10(b)(1) to: “The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.”

*Comment 15:* Two commenters specifically supported the proposed requirement that States count only those

persons who possess a license that produced net revenue, which is an amount of at least \$1 per year returned to the State fish and wildlife agency. Another commenter supported it for single-year licenses, but expressed concern about differences among the States in how they quantify annual net revenue for lifetime licenses. Another commenter recommended the removal of the \$1 minimum net revenue requirement and recommended that States be allowed to count licenses that produce any net revenue.

*Response 15:* Although the amount of net revenue would vary from State to State, we settled on \$1 as a reasonable, consistent benchmark amount to determine that net revenue accrues to a State. We did not change the proposed rule as a result of these comments.

*Comment 16:* Four commenters recommended changes in § 80.10(b)(2). Two of the four recommended that we not require that a license produce net revenue to be returned to the State fish and wildlife agency because this would allow a State to buy licenses to enhance the fish and wildlife agency’s apportionment. One stated that this could have unforeseen consequences, and the other stated that allowing the State to buy licenses was against Federal law. Two other commenters recommended that we clarify § 80.10(b)(2), and one recommended specific language indicating that the States may deduct average direct sales costs to arrive at a net revenue amount but may not deduct indirect sales costs.

*Response 16:* We accepted the first two commenters’ recommendation and deleted the words “fish and wildlife agency” from proposed § 80.10(b)(2). We did not accept the specific language offered by one commenter on average direct sales costs and indirect sales costs. However, we replaced the language of proposed § 80.10(b)(2) with: “The State may count only those persons who possess a license that produced net revenue of at least \$1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents’ or sellers’ fees and the cost of printing, distribution, and control.” We also changed “people” to “persons” wherever it occurs in § 80.10(b) for purposes of consistent usage.

*Comment 17:* A commenter recommended that we clarify the proposed rule to ensure that hunters and anglers who have free licenses, but also have revenue-generating game tags, bird stamps, or fish tags/harvest cards will count as persons possessing paid licenses for license certification.

*Response 17:* We will request a Solicitor’s interpretation on this State-specific issue and distribute it to the affected States. We did not change the proposed rule as a result of this comment.

*Comment 18:* Three commenters disagreed with or had concerns about proposed § 80.10(b)(3). This provision would allow State fish and wildlife agencies to count only those persons possessing a single-year license in the license certification year in which it was purchased. One of the three commenters stated that the proposed rule goes beyond the law on this point because the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act refer to “paid license holders,” but do not refer to when the license holders purchased their licenses. This commenter also stated that the proposed rule was arbitrary by applying one set of conditions to persons possessing licenses valid for less than 2 years and a different set of conditions to persons possessing licenses valid for more than 2 years. One of the three commenters stated that reporting license sales in the year sold would require a separate tracking process. Two other commenters stated that this proposed requirement would not allow States to count licensees who renew their licenses immediately before expiration. Finally, two other commenters specifically supported the proposed requirement that States count only those persons possessing a single-year license in the license certification year in which it was purchased.

*Response 18:* We do not believe that proposed § 80.10(b)(3) is inconsistent with the language of the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act. This effort to reduce inconsistencies among the States may affect some States more than others during the transition period. However, we do not believe that any losses that may result from this final rule will be significant. We did not change the proposed rule as a result of these comments.

*Comment 19:* Three commenters supported the proposed requirement in § 80.10(b)(4) to count only those persons who possess multiyear licenses and who would otherwise be required to have a license. Another commenter supported the proposed requirement, but only if the license revenues from persons not counted as certified license holders are protected by § 80.4 on diversion of license fees. Twelve commenters did not agree with the proposed requirement. Two of the 12 stated that

by counting only those persons who possess multiyear licenses and who would otherwise be required to have a license, we would negatively affect efforts to get seniors and young people to buy licenses to support wildlife conservation. One of the 12 commenters stated that the proposed requirement would cause many hunters and anglers to be excluded from the certified number of license holders. This would result in a loss of funds for the agency. The same commenter also stated that trying to determine if a multiyear license holder would otherwise be required to have a license would be a burdensome new compliance cost. Several commenters recommended that we remove “anywhere” from § 80.10(b)(4)(i–iii). Most expressed concern about the implications of the use of “anywhere” for counting fishing licenses specific to freshwater or saltwater. Finally, several commenters recommended that we clarify the meaning of “commensurate” in § 80.10(b)(4)(ii) on multiyear licenses.

*Response 19:* In response to the expressed concerns, we removed the requirement that a multiyear licensee would otherwise be required to have a paid license to hunt or fish anywhere in the State. We also replaced “commensurate” in proposed § 80.10(b)(4)(ii) with “in close approximation.” To make the final rule reflect these changes, we deleted proposed § 80.10(b)(4)(i), redesignated proposed § 80.10(b)(4)(ii) as § 80.10(b)(4)(i), and redesignated proposed § 80.10(b)(4)(iii) as § 80.10(b)(4)(ii). We changed the redesignated § 80.10(b)(4)(i) to read, “The net revenue from the license is in close approximation with the number of years in which the license is legal.” We changed “valid” to “legal” in § 80.10(b)(3) for purposes of consistency with the change in the redesignated § 80.10(b)(4)(i). For the same reason, we changed the introductory statement of § 80.10(b)(4) to read, “The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal whether it is legal for a specific or indeterminate number of years.” Finally, we changed the redesignated § 80.10(b)(4)(ii) to read, “The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.” (See Response 20 on the use of “other techniques approved by the Director.”)

*Comment 20:* Several commenters said that the “statistical sampling or other appropriate techniques” required

in § 80.10(b)(4)(iii) (redesignated as § 80.10(b)(4)(ii) by Response 19) and § 80.10(c) is either unnecessary, too expensive, or vague. One commenter recommended the use of life expectancy tables. Another recommended that a joint Federal/State committee be charged with developing a fair and simple technique for determining license status that would include clarifying or replacing “statistical sampling or other appropriate techniques.”

*Response 20:* We do not agree that statistically valid samples are unnecessary or too expensive. We agree that “other appropriate techniques” may be too vague. We replaced “other appropriate techniques” in proposed § 80.10(b)(4)(iii) (redesignated as § 80.10(b)(4)(ii) by Response 19) and proposed § 80.10(c) with “other techniques approved by the Director.” Under this change, States may seek the Director’s approval for the use of life expectancy tables.

*Comment 21:* A commenter expressed support for § 80.10(b)(5) on combination licenses. Another commenter recommended that we count a combination license to fish or hunt only if the State provides an option to purchase a less-expensive license to hunt or fish. If a separate less-expensive license is not available, a State would, by design, force persons who might not hunt or fish to be counted as hunters or anglers, in effect giving this privilege free to those who might not want or need it. If there is not an option to purchase a less-expensive separate hunting or fishing license, the State would have to use a survey or other means to determine what proportion bought the license to fish and what proportion bought the license to hunt.

*Response 21:* We reviewed the hunting, fishing, and combination license fees for several States. Based on that review, we have not seen any indication that a State is using combination licenses to increase the numbers of hunters or anglers for license certification purposes. Until we determine that this practice is occurring, we will not address this issue through regulation. We did not change the proposed rule as a result of this comment.

*Comment 22:* A commenter recommended that we add language to ensure that the Service remains the lead in initiating the certification process.

*Response 22:* We deleted proposed § 80.10(d) and changed § 80.10(c) to the following: “The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to

the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.” The above change required the redesignation of proposed § 80.10(e) as § 80.10(d).

*Comment 23:* A commenter recommended that the Service adjust the certified information on persons holding hunting and fishing licenses if the Service made an error.

*Response 23:* We accepted the recommendation and added this sentence to the redesignated § 80.10(d): “However, the Director may correct an error made by the Service.”

#### **Section 80.14 Application of Wildlife and Sport Fish Restoration Program Funds**

*Comment 24:* A commenter recommended that we revise the first sentence in proposed § 80.14(b)(1) so that it would read: “When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds not derived from license revenues.”

*Response 24:* We changed the proposed rule as recommended.

*Comment 25:* A commenter asked that we change the proposed rule to add language referenced in a 2002 Director’s memorandum on revenues generated by timber sales on lands acquired under financial assistance awards in the Wildlife Restoration and Sport Fish Restoration programs.

*Response 25:* The proposed rule did not address this issue. We will defer it to a future rulemaking process so that we can invite the public to review the proposed language and provide comments.

#### **Section 80.15 Allowable Costs**

*Comment 26:* A commenter stated that the question-and-answer format of § 80.15 on allowable costs is inconsistent with other sections of 50 CFR 80.

*Response 26:* The proposed rule did not address this issue. We will defer consideration of a format change to a future rulemaking process so that we can invite the public to review the

proposed changes and provide comments.

### Section 80.24 Recreational Boating Access Facilities

*Comment 27:* Eight commenters recommended that we add to § 80.24, “The State may fund access facilities for nonmotorized boats where use of power boats is restricted or sites for power boats are not available.” Another commenter indicated that the proposed rule had moved away from the language and intent of the Dingell-Johnson Sport Fish Restoration Act by limiting funding to power boats. Another commenter stated that we should allow funding for non-motor boats and replace the last sentence of § 80.24 with, “Any portion of the 15-percent set aside for the above purposes that remains unexpended or unobligated after 2 years be allowed for the State to obligate for nonmotorized projects that support recreational sport fishing.” Another commenter recommended that we rewrite § 80.24 to reflect the requirements of the Act and how these requirements are administered by the Service and the States. This same commenter recommended that a new version of § 80.24 be reviewed again through public comment before being finalized. Another commenter recommended that we address only the time-sensitive and noncontroversial issues, such as State certification of licenses, and withdraw § 80.24 and § 80.28. The commenter recommended that we refer these issues to the Joint Federal/State Task Force on Federal Assistance Policy for further review.

*Response 27:* The language on power boats has been in 50 CFR 80 since 1985. We will defer consideration of any changes in the recreational and power boating language to a future rulemaking process. This will allow us to consult with others on the proposed language and invite the public to review the proposed language and provide comments.

*Comment 28:* One commenter stated that the first sentence of § 80.24 in the proposed rule is incorrect. It reads, “The State must allocate at least 15 percent of each annual apportionment under the annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities.” The commenter suggested that we change the proposed rule to make it consistent with the following language of section 8(b)(1) of the Dingell-Johnson Sport Fish Restoration Act, “States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that

the total regional allocation averages 15 percent over a 5-year period.” Nine commenters also pointed out that the last sentence of proposed § 80.24 should specify 5 years instead of 2 years to be consistent with the Dingell-Johnson Sport Fish Restoration Act.

*Response 28:* In response to the comments, we added the following sentence immediately after the first sentence of proposed § 80.24, “However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service’s Regional Director.” We replaced the last sentence of proposed § 80.24 with the following: “Any portion of a State’s 15-percent set aside for the above purposes that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.” We also added “except as provided in § 80.24” to the end of the first sentence in § 80.8, which will now read, “Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24.” Finally, we changed the second sentence of § 80.8 to read, “For the purposes of this section, funds become available when the Regional Director approves the grant.” We made this change because the wording of that sentence in the current regulations does not adequately describe when obligation occurs, and the term “project agreement” is not a standard term.

### Section 80.28 Exceptions

*Comment 29:* Eleven commenters recommended that we withdraw proposed § 80.28, which would allow the Director to authorize exceptions to any provisions of 50 CFR 80 that are not explicitly required by law. Two commenters recommended that we withdraw § 80.28 to allow for further discussion. Five commenters recommended that we modify the exception authority with one or more of the following: (a) Add specific qualifiers; (b) limit and specify circumstances in which the Director can make exceptions; (c) include standards and triggering events that would establish parameters for exercising this authority; (d) indicate which provisions of 50 CFR 80 that the Director’s exception authority would apply to and which are required by law; and (e) include the process and criteria to be followed for making exceptions including feedback from the States and the process for notifying States of exceptions. Three commenters

expressed unqualified support for proposed § 80.28.

*Response 29:* We deleted proposed § 80.28 in response to the expressed concerns.

### Changes of the Proposed Rule

We are making 25 changes in this final rule as a result of the public comments that we summarized in the preceding section:

1. Delete “(U.S. Fish and Wildlife Service)” from the definition of “Director.” and replace it with “Service.” in § 80.1.
2. Delete “Resident hunter. One who hunts within the same State where legal residence is maintained.” in § 80.1. (Response 4)
3. Add “Service. The U.S. Fish and Wildlife Service.” to § 80.1.
4. Change § 80.8 to read “Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24. For the purposes of this section, funds become available when the Regional Director approves the grant.” (Response 28)
5. Change the section heading of § 80.10 from “State Certification of Licenses.” to “State certification of licenses.”
6. Replace “accounting period” with “license certification period” in § 80.10(a)(1). (Response 6)
7. Replace “State-specified period” in § 80.10(a)(2) (redesignated as § 80.10(a)(3) by Response 9) and “State specified 12-month period” in § 80.10(b) with “State-specified license certification period.” (Response 6)
8. Change § 80.10(a)(1)(ii) from “corresponds with or includes the State’s fiscal year or license year” to “Is either the State’s fiscal year or license year.” (Response 7)
9. Delete “and” at the end of § 80.10(a)(1)(ii); redesignate § 80.10(a)(1)(iii) as § 80.10(a)(1)(iv); and add a new § 80.10(a)(1)(iii) that reads, “Is consistent from year to year; and”. (Response 9)
10. Delete “and” at the end of the redesignated § 80.10(a)(1)(iv); redesignate § 80.10(a)(2) as § 80.10(a)(3); and add a new § 80.10(a)(2) that reads, “Obtain the Director’s approval before changing the State-specified license certification period; and”. (Response 9)
11. Replace “purchased licenses” with “paid licenses” in § 80.10(a) and (b). (Response 11)
12. Change redesignated § 80.10(a)(3)(i) and (ii) to:
  - “(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during

the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-certified license certification period." (Response 13)

13. Change "people" to "persons" in the introductory statement of § 80.10(b) and in § 80.10(b)(5)." (Response 16)

14. Change the second sentence of § 80.10(b)(1) to: "The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities." (Response 14)

15. Delete the words "fish and wildlife agency" from § 80.10(b)(2). (Response 16)

16. Replace § 80.10(b)(2) with: "The State may count only those persons who possess a license that produced net revenue of at least \$1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents' or sellers' fees and the cost of printing, distribution, and control." (Response 16)

17. Change "valid" to "legal" in § 80.10(b)(3). (Response 19)

18. Replace that part of the introductory sentence before the colon in § 80.10(b)(4) with, "The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal whether it is legal for a specific or indeterminate number of years." (Response 19)

19. Delete § 80.10(b)(4)(i). Redesignate § 80.10(b)(4)(ii) as § 80.10(b)(4)(i). Redesignate § 80.10(b)(4)(iii) as § 80.10(b)(4)(ii). Change redesignated § 80.10(b)(4)(i) to read, "The net revenue from the license is in close approximation with the number of years in which the license is legal; and". Change redesignated § 80.10(b)(4)(ii) to read, "The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder." (Response 19)

20. Delete proposed § 80.10(d) and change § 80.10(c) to the following: "The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple

counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose." Redesignate § 80.10(e) as § 80.10(d). (Responses 20 and 22)

21. Delete "State fish and wildlife" after "other than the" in redesignated § 80.10(d) and add this sentence to the end of § 80.10(d): "However, the Director may correct an error made by the Service." (Response 23)

22. Add to the first sentence in § 80.14(b)(1) "not derived from license revenues." (Response 24)

23. Add the following sentence immediately after the first sentence of proposed § 80.24, "However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director." (Response 28)

24. Replace the last sentence of § 80.24 with the following, "Any portion of a State's 15-percent set aside for the above purposes that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States." (Response 28)

25. Delete § 80.28, Exceptions. (Response 29)

#### Required Determinations

##### *Regulatory Planning and Review* (Executive Order 12866)

OMB has determined that this rule is not a significant regulatory action under the criteria in Executive Order (E.O.) 12866. These criteria are:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), 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 effect of the rule on small entities, i.e.,

small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that the rule will not have a significant economic impact on small entities because the changes we are making are intended to: (a) Address changes in law and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States and other jurisdictions have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations; and (d) reword the regulations to make them easier to understand. No costs are associated with this regulatory change. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

(a) This rule will not have an annual effect on the economy of \$100 million or more.

(b) This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

(c) This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

(a) This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. The programs governed by the current regulations assist small governments financially, and this rule will simply improve these regulations.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a

“significant regulatory action” under the Unfunded Mandates Reform Act.

#### *Takings (E.O. 12630)*

In accordance with E.O. 12630, this rule will not have significant takings implications because it does not contain a provision for taking private property. Therefore, a takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States’ ability to manage themselves or their funds. We work closely with the States in administration of these programs. The rule will benefit recipients in three grant programs by establishing a common approach and clarifying the rules applicable to grant recipients’ legally required annual certification of the number of hunters and anglers who purchased licenses.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule will also benefit grantees by eliminating unnecessary or outdated elements of the regulations governing the affected programs and by making the regulations easier to understand.

#### *Paperwork Reduction Act*

We examined the rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number. The rule will clarify 50 CFR 80.10, which requires States to submit information on the number of persons holding hunting and fishing licenses. On January 25, 2007, OMB approved our collection of information from States based on the requirements of 50 CFR 80.10. OMB approved this information collection on forms FWS 3–154a and 3–154b under control number 1018–0007. The rule will not change the information items required on forms FWS 3–154a and 3–154b. It will only establish a common approach for States to assign license holders to a license year for purposes of the information collection. The rule will also remove outdated information in 50 CFR 80.27.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National

Environmental Policy Act, 42 U.S.C. 432–437(f), and part 516 of the Departmental Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes provided at 516 DM 2, Appendix 1, section 1.10.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we evaluated potential effects on federally recognized Indian Tribes and determined that there are no potential effects. This rule will not interfere with the Tribes’ ability to manage themselves or their funds.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **List of Subjects in 50 CFR Part 80**

Aquatic resource education, Boating access, Fish, Grant programs—natural resources, Hunter education and safety, License certification, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

#### **Final Regulation**

■ For the reasons stated in the preamble, we amend part 80 of subchapter F, chapter I, title 50 of the Code of Federal Regulations, as follows:

#### **Subchapter F—Financial Assistance—Wildlife and Sport Fish Restoration Program**

■ 1. Revise the heading of subchapter F to read as set forth above.

#### **PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS**

■ 2. The authority citation for part 80 is revised to read as follows:

**Authority:** 16 U.S.C. 777–777n; 16 U.S.C. 669–669k; 18 U.S.C. 701.

■ 3. Revise the heading of part 80 to read as set forth above.

■ 4. Revise § 80.1 to read as follows:

#### **§ 80.1 Definitions.**

As used in this part, the following terms have these meanings:

*Common horsepower.* Any size motor that can be reasonably accommodated on the body of water slated for development.

*Comprehensive fish and wildlife management plan.* A document describing the State’s plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

*Director.* The Director of the Service, or his or her designated representative. The Director serves as the Secretary’s representative in matters relating to the administration and execution of the Wildlife and Sport Fish Restoration Acts.

*Project.* One or more related undertakings necessary to fulfill a need or needs, as defined by the State, and consistent with the purposes of the appropriate Act.

*Regional Director.* The regional director of any region of the Service, or his or her designated representative.

*Resident angler.* One who fishes within the same State where legal residence is maintained.

*Secretary.* The Secretary of the Interior or his or her designated representative.

*Service.* The U.S. Fish and Wildlife Service.

*State.* Any State of the United States and the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. References to “the 50 States” pertain only to the 50 States of the United States and do not include these other six areas.

*State fish and wildlife agency.* The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife resources of the State. Such an agency or official also designated to exercise collateral responsibilities, e.g., a State



Department of Natural Resources, will be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

*Wildlife and Sport Fish Restoration Acts or the Acts.* Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777–777n).

*Wildlife and Sport Fish Restoration Program Funds.* Funds provided under the Acts.

■ 5. Amend § 80.2 by revising paragraphs (a) and (b) to read as follows:

**§ 80.2 Eligibility.**

\* \* \* \* \*

(a) Dingell-Johnson Sport Fish Restoration—Any of the States as defined in § 80.1.

(b) Pittman-Robertson Wildlife Restoration—Any of the States as defined in § 80.1, except the District of Columbia.

**§ 80.4 [Amended]**

■ 6. Amend paragraph (a)(4) of § 80.4 by removing the words “Federal Aid project” and adding in their place the word “Project”.

**§ 80.5 [Amended]**

■ 7. Amend § 80.5 by:

■ a. In paragraph (a), removing the words “Federal Aid in” and adding in their place the words “Pittman-Robertson”; and

■ b. In paragraph (b), removing the words “Federal Aid in” and adding in their place the words “Dingell-Johnson”.

■ 8. Revise § 80.8 to read as follows:

**§ 80.8 Availability of funds.**

Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24. For the purposes of this section, funds become available when the Regional Director approves the grant.

**§ 80.9 [Amended]**

■ 9. Amend paragraph (b) of § 80.9 by removing the words “Federal Aid” and adding in their place the words “Wildlife and Sport Fish Restoration Program”.

■ 10. Revise § 80.10 including the section heading to read as follows:

**§ 80.10 State certification of licenses.**

(a) To ensure proper apportionment of Federal funds, the Service requires that

each director of a State fish and wildlife agency:

(1) Specify a license certification period that:

(i) Is 12 consecutive months in length;

(ii) Is either the State’s fiscal year or license year;

(iii) Is consistent from year to year; and

(iv) Ends no less than 1 year and no more than 2 years before the beginning of the Federal fiscal year that the apportioned funds first become available for expenditure;

(2) Obtain the Director’s approval before changing the State-specified license certification period; and

(3) Annually provide to the Service the following data:

(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-specified license certification period.

(b) When counting persons holding paid hunting or fishing licenses in a State-specified license certification period, a State fish and wildlife agency must abide by the following requirements:

(1) The State may count all persons who possess a paid license that allows the licensee to hunt or fish for sport or recreation. The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.

(2) The State may count only those persons who possess a license that produced net revenue of at least \$1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents’ or sellers’ fees and the cost of printing, distribution, and control.

(3) The State may count persons possessing a single-year license (one that is legal for less than 2 years) only in the State-specified license certification period in which the license was purchased.

(4) The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal, whether it is legal for a specific or indeterminate number of years, only if:

(i) The net revenue from the license is in close approximation with the number of years in which the license is legal, and

(ii) The State fish and wildlife agency uses statistical sampling or other

techniques approved by the Director to determine whether the licensee remains a license holder.

(5) The State may count persons possessing a combination license (one that permits the licensee to both hunt and fish) with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(6) The State may count persons possessing multiple hunting or fishing licenses (in States that require or permit more than one license to hunt or more than one license to fish) only once with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(c) The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.

(d) Once the Director approves the certified information required in paragraphs (a) and (b) of this section, the Service must not adjust the numbers if such adjustment would adversely impact any apportionment of funds to a State fish and wildlife agency other than the agency whose certified numbers are being adjusted. However, the Director may correct an error made by the Service.

■ 11. Revise § 80.11 to read as follows:

**§ 80.11 Submission of proposals.**

A State may apply to use funds apportioned under the Acts by submitting to the Regional Director either a comprehensive fish and wildlife management plan or grant proposal.

(a) Each application must contain such information as the Regional Director may require to determine if the proposed activities are in accordance with the Acts and the provisions of this part.

(b) The State must submit each application and amendments of scope to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A-95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or an official delegated to exercise the authority and responsibilities of the State director in committing the State to participate under the Acts. The director of each State fish and wildlife agency must notify the Regional Director, in writing, of the official(s) authorized to sign the Wildlife and Sport Fish Restoration Program documents, and any changes in such authorizations.

■ 12. Amend § 80.12 by revising the introductory paragraph and paragraph (b) as follows:

**§ 80.12 Cost sharing.**

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the grant, whichever is less, except that the non-Federal cost sharing for the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa must not exceed 25 percent and may be waived at the discretion of the Regional Director.

\* \* \* \* \*

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions.

\* \* \* \* \*

■ 13. Revise § 80.14 to read as follows:

**§ 80.14 Application of Wildlife and Sport Fish Restoration Program funds.**

(a) States must apply Wildlife and Sport Fish Restoration Program funds only to activities or purposes approved by the Regional Director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Wildlife and Sport Fish Restoration Program funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds not derived from license revenues. Replacement property must be of equal value at current market prices and with equal benefits as the

original property. The State may have up to 3 years from the date of notification by the Regional Director to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes that interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the Regional Director, the property must be used or disposed of as provided by 43 CFR 12.71 or 43 CFR 12.932.

(c) Wildlife and Sport Fish Restoration Program funds cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities must be accounted for in the project records and disposed of as directed by the Director.

■ 14. Amend § 80.15 by revising paragraphs (c), (d), and (f) to read as follows:

**§ 80.15 Allowable costs.**

\* \* \* \* \*

(c) *Are costs allowable if they are incurred prior to the date of the grant?* Costs incurred prior to the effective date of the grant are allowable only when specifically provided for in the grant.

(d) *How are costs allocated in multipurpose projects or facilities?* Projects or facilities designed to include purposes other than those eligible under either the Dingell-Johnson Sport Fish Restoration or Pittman-Robertson Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

\* \* \* \* \*

(f) *How much money may be obligated for aquatic resource education and outreach and communications?*

(1) Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under the provisions of the Dingell-Johnson Sport Fish Restoration Act for an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms.

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the

territories of Guam, the U.S. Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

**§ 80.16 Payments.**

- 15. Amend § 80.16 by:
  - a. Revising the section heading as set forth above;
  - b. Removing the word "shall" wherever it appears and adding in its place the word "must"; and
  - c. Removing the words "regional director" and "region director" wherever they appear and adding in their place the words "Regional Director".
- 16. Revise § 80.17 to read as follows:

**§ 80.17 Maintenance.**

The State is responsible for maintenance of all capital improvements acquired or constructed with Wildlife and Sport Fish Restoration Program funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with funds other than funds from the Wildlife and Sport Fish Restoration Program are allowable costs when such improvements are necessary for accomplishment of project purposes as approved by the Regional Director and when such costs are otherwise allowable by law.

**§ 80.19 [Removed]**

■ 17. Remove and reserve § 80.19.

**§ 80.20 [Amended]**

■ 18. Amend § 80.20 by removing the words "Federal Aid" and adding in their place the words "Wildlife and Sport Fish Restoration Program".

**§ 80.22 [Removed]**

- 19. Remove and reserve § 80.22.
- 20. Amend § 80.23 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 80.23 Allocation of funds between marine and freshwater fishery projects.**

(a) Each coastal State, to the extent practicable, must equitably allocate those funds specified by the Secretary, in the apportionment of the Dingell-Johnson Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut,

Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

\* \* \* \* \*

■ 21. Revise § 80.24 to read as follows:

**§ 80.24 Recreational boating access facilities.**

The State must allocate 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities. However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director. Although a broad range of access facilities and associated amenities can qualify for funding under the 15-percent provision, the State must accommodate power boats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.

**§ 80.25 [Amended]**

■ 22. Amend § 80.25 by:

- a. In the section heading and paragraph (a), removing the words "Federal Aid in" and adding in their place the words "Dingell-Johnson"; and
- b. In paragraphs (a)(1) and (a)(2), removing the word "Aid".

■ 23. Amend § 80.26 by revising the text of the introductory paragraph and paragraphs (b), (f) introductory text, (g) introductory text, and (h) introductory text to read as set forth below:

**§ 80.26 Symbols.**

We have prescribed distinctive symbols to identify projects funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act and items on which taxes and duties have been collected to support the respective Acts.

\* \* \* \* \*

(b) Other persons or organizations may use the symbol(s) for purposes related to the Wildlife and Sport Fish Restoration Program as authorized by the Director. Authorization for the use of the symbol(s) will be by written

agreement executed by the Service and the user. To obtain authorization, submit a written request stating the specific use and items to which the symbol(s) will be applied to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

\* \* \* \* \*

(f) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act is below. \* \* \*

(g) The symbol pertaining to the Dingell-Johnson Sport Fish Restoration Act is below. \* \* \*

(h) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act when used in combination is below.

\* \* \*

■ 24. Revise § 80.27 to read as follows:

**§ 80.27 Information collection requirements.**

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777-777n) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669k). The Service may not conduct or sponsor, and applicants or grantees are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. OMB has approved our collection of information under OMB control number 1018-0007. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Wildlife and Sport Fish Restoration Program.

(b) Submit comments on the accuracy of the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: July 14, 2008.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 080220219-8829-02]

RIN 0648-AT77

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to a U.S. Navy Shock Trial**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Navy (Navy), issues regulations to govern the unintentional taking of marine mammals incidental to conducting a Full Ship Shock Trial (FSST) of the USS MESA VERDE (LPD 19) in the waters of the Atlantic Ocean offshore of Mayport, FL. Authorization of incidental take is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for taking for subsistence uses. These regulations set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat, as well as monitoring and reporting requirements.

**DATES:** July 18, 2008 through July 18, 2013.

**ADDRESSES:** A copy of the Navy's MMPA application, containing a list of references used in this document, NMFS' Record of Decision (ROD), and other documents cited herein, may be obtained by writing to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

A copy of the Navy's Final Environmental Impact Statement/ Overseas Environmental Impact Statement (Final EIS/OEIS) can be downloaded at: <http://www.mesaverdeeis.com>. A copy of the Navy's documents cited in this final rule may also be viewed, by