



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Washington D.C. 20240

In Response Reply to:
FWS/AWSR/078651

May 23, 2023

Mr. Tim Whitehouse
Executive Director
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, Maryland 20910

Dear Mr. Whitehouse:

Thank you for your letter of December 12, 2022, regarding your concern that Alaska Department of Fish and Game (ADFG) is misusing Federal financial assistance funds provided under the Pittman-Robertson Wildlife Restoration Act (Act). The U.S. Fish and Wildlife Service's (Service) Wildlife and Sport Fish Restoration program has reviewed your concerns and has determined that, under the Act (16 U.S.C. § 669 *et seq.*), the issues you raise do not constitute a misuse of funding from the Wildlife Restoration program (WR program).

The prerequisites for a State to receive WR program funding under the Act are that the State "shall have assented to the provision of this chapter and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department." As the Federal awarding agency, the Service's evaluation of a State's wildlife laws do not extend beyond the narrow questions of confirming that the legislation: assents to the provisions of the Act; governs the conservation of wildlife; and prohibits the diversion (50 CFR 80.2) of license revenue. Under the Act, there is no role for the Secretary of the Interior, or the Service Director acting for the Secretary, to evaluate the conservation value of State wildlife management programs if they are funding eligible activities and conforming to all award terms and conditions. We do not find that any of these requirements are violated by Alaska's Intensive Management program.

Moreover, Sections I and III of your letter contain statements and references interpreting requirements governing the WR program related to authorized uses and program purposes. However, the Act encompasses several distinct programs and subprograms, and those interpretations are only applicable to the Wildlife Conservation and Restoration Program (WCRP), and not the WR program. Although WCRP has not been funded by Congress since its inaugural year (2000), Section 902(f) (enacted by Title IX of Public Law 106-553) stipulated that all provisions amended into the Act under that Title applied *only* to the WCRP program, and not to the WR program.

Section I of your letter also states that predator or wildlife damage control are unauthorized uses of WR program funds. However, predator control is not prohibited by the Act or its implementing regulation (50 CFR 80). Instead, predator control or population reduction may be associated with the eligible purpose of restoring and managing wildlife for the benefit of the public (80.50(a)(1)) and are therefore eligible activities. You cite a Service Manual chapter (521 FW 1.8(H)) as a policy prohibiting predator-control activities for recipients of WR program funds. Please note that manual chapters are internal policy documents intended only to improve the internal management of Service employees and are not intended to create any right or benefit enforceable by law by outside parties, including financial-assistance recipients. In addition, the language from the Service Manual chapter at 521 FW 1.8(H) pertains to wildlife damage management, which is focused on private interests; involves monetary damage payments; is not used for restoring and managing wildlife species under the control of the State fish and wildlife agency; and/or is not for the purposes of information collection and assessment or technical assistance. Wildlife-damage-management activities are eligible when their primary purpose is eligible predator removal or control, or population reduction activities, for the restoration and management of a State's wildlife (521 FW 1.8H(1)(d)).

“Intensive management” is defined in Alaska Statute 16.05.225 and may include “control of predation and prescribed or planned use of fire and other habitat improvement techniques.” The ADFG does not use WR program funding to conduct its predator-control activities. When predator-control activities are conducted (with non-Federal funding), these activities are done by private citizens specially permitted by ADFG. The permitting and tracking of these activities are funded solely with non-Federal funding. ADFG uses WR program funds for population-research activities for many wildlife species. This may include research on predator and prey species populations, food availability, fecundity, and survival over time.

Regarding the final issue on non-compliant use of grant funds under the Act, the premise of the issue of non-compliance is based on the diversion of funds. However, as defined at 50 CFR 80.2 and described at 80.21, “diversion” only pertains to revenue from hunting and fishing licenses, not Federal funding under the program, and only occurs when those revenues are used “for a purpose other than administration of the State fish and wildlife agency.” Therefore, license revenues may be used for wildlife damage management, including predator control, when the agency has control and expenditure authority over those revenues and the management authority over the species in question (521 FW 1.9). Both of those conditions exist in Alaska.

Thank you for sharing your concerns with the Service. If you have further questions regarding this issue, please contact me at Paul_Rauch@fws.gov.

Sincerely,

**PAUL
RAUCH**

Digitally signed by
PAUL RAUCH
Date: 2023.05.23
13:37:56 -04'00'

Paul Rauch, Assistant Director
Wildlife and Sport Fish Restoration