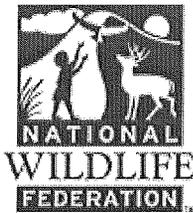


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Financial Assistance Programs Division
Natural Resources Conservation Service
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Via Electronic Submission

Comments on Wildlife Habitat Incentives Program Rules

I am writing to provide the comments of the National Wildlife Federation, Indiana Wildlife Federation, Louisiana Wildlife Federation, Nebraska Wildlife Federation, North Carolina Wildlife Federation, Planning and Conservation League, South Dakota Wildlife Federation, and Texas Conservation Alliance on the Interim Final Rule for the Wildlife Habitat Incentives Program.

National Wildlife Federation is America's largest member-supported conservation organization. Through our national organization and in partnership with our state affiliates, the National Wildlife Federation (NWF) works to actively educate, inspire, and promote achievable solutions to everyday Americans in communities from coast to coast.

Indiana Wildlife Federation is a state-wide organization that promotes the conservation, sound management, and sustainable use of Indiana's wildlife and wildlife habitat through education advocacy and action.

Louisiana Wildlife Federation is a statewide conservation education and advocacy organization with over 10,000 members and 20 affiliated groups throughout Louisiana. Established in 1940, it is affiliated with the National Wildlife Federation and represents a broad constituency of conservationists including hunters, fishers, birders, boaters and other outdoor enthusiasts.

Nebraska Wildlife Federation is a state-wide organization dedicated to Nebraska's wildlife and wild places, and has participated in the Nebraska USDA State Technical Committee deliberations for more than a decade.

North Carolina Wildlife Federation is the leading advocate for all North Carolina wildlife and its habitat. The Federation includes many affiliated wildlife and conservation entities across the state.

Planning and Conservation League works in the State Legislature and at the administrative level in state government to enact and implement policies to protect and restore the California environment.

South Dakota Wildlife Federation, founded in 1945, is the state's leading voice in fishing and outdoor recreation, with 23 affiliate clubs spread throughout the state. South Dakota Wildlife Federation has been very active in agricultural policy issues, including the South Dakota USDA State Technical Committee.

Texas Conservation Alliance and its member organizations have been safeguarding rivers, forests, coastlines, wildlife, and other natural habitats in Texas for more than forty years.

The Wildlife Habitat Incentives Program

The Wildlife Habitat Incentives Program has been the primary Department of Agriculture conservation program focused exclusively on fish and wildlife habitat, although other USDA conservation programs provide substantial benefits for fish and wildlife. The flexibility built into the program by statute in the past has allowed it to be used in a variety of ways to obtain many different kinds of habitat benefits.

In enacting the 2008 Farm Bill, Congress reduced the flexibility of the program, restricting its use to private land and imposing a \$50,000 annual payment cap on the program. However, it did not substantially change the overall purpose of the program, which is to provide cost-share for the development of upland wildlife habitat, wetland wildlife habitat, habitat for threatened and endangered species, fish habitat, and other types of wildlife habitat. NRCS rules should reflect these important purposes of the program, striving to promote fish and wildlife habitat as much as possible within the constraints of the law.

WHIP and Climate Change

In its March 12 notice extending the comment period on the rule, NRCS asked for comments on how WHIP can achieve its program purposes and further the Nation's efforts with respect to climate change. We recognize that climate change is one of the great challenges facing the United States and the world. We very much appreciate that USDA is adopting a proactive strategy to increase its ability to boost renewable energy production and energy conservation, mitigate the effects of climate change, facilitate adaptation, and reduce net carbon emissions.

Unlike some other USDA programs where Congress added explicit authority to fund alternative energy and energy conservation, Congress maintained the purposes of the Wildlife Habitat Incentives Program (WHIP) in the 2008 Farm Bill. Those purposes are to "make cost-share payments to landowners to develop—

- (A) upland wildlife habitat;
- (B) wetland wildlife habitat;

- (C) habitat for threatened and endangered species;
- (D) fish habitat; and
- (E) other types of wildlife habitat approved by the Secretary.”

The new law also allows USDA to give priority to proposals that “would address issues raised by State, regional, and national conservation initiatives.” In some cases, these initiatives may address climate change issues.

In most cases, restoring or developing wildlife habitat will have a positive net impact on the carbon balance. For example, planting native grasses or trees on cropland should result in the storage of more carbon in the plants and soil. In general, restoring or developing wildlife habitat should also help fish and wildlife adapt to climate change by providing additional available high quality habitat that can substitute for marginal habitat most likely to be impacted by changes in climate.

Simply by fully funding the Wildlife Habitat Incentives Program, and aggressively implementing it to restore and develop wildlife habitat, USDA (and Congress) should be furthering the Nation’s interest with respect to climate change, while achieving the purposes of the program.

However, we recognize that different kinds of habitat restoration can have different relative impacts with respect to greenhouse gases, carbon sequestration, and adaptation of natural systems. We suggest that NRCS consider adding points in WHIP project selection criteria that would -- other wildlife habitat benefits being equal -- provide a preference for projects that reduce net carbon emissions or boost carbon storage, or that help natural systems adapt to climate change. The process for awarding such points needs to be based on a careful review of the science at a regional level, so that if points are awarded they are based on reasonable expectations for benefits that are grounded in reality, and the practices and systems adopted are relevant to the fish or wildlife benefits of the location (for example, we would *not* want to encourage people to plant trees in a native prairie habitat just because it might boost carbon storage).

We would not support the use of WHIP funds for projects like renewable energy or energy conservation that, while contributing to efforts to address climate change, would not provide directly for the restoration or development of fish or wildlife habitat. We do not believe the law would allow for such a use of WHIP funds.

Eligible Land

Section 2602(a) of the new Farm Bill changes the purpose of WHIP funding to be “the development of wildlife habitat on private agricultural land, nonindustrial private forest land, and tribal lands”. The Managers Report explains that the new law “focuses the program on agricultural and nonindustrial private lands.”

The proposed rule defines “agricultural lands” and “nonindustrial private forest land” in Sec. 636.3, and prohibits funding for practices on land “that is public land” under Section 636.4(c). We are concerned that defining “private agricultural lands” too narrowly could eliminate from eligibility lands associated with agricultural production and that are part of the agricultural

landscape, and that often represent the best opportunity to provide fish and wildlife habitat in rural America.

For example, WHIP in the past has funded stream habitat restoration, wetland restoration, and habitat on marginal and other “waste land” that is part of a farm or ranch but not necessarily best suited for or currently used for crop or livestock production. We believe these are all appropriate examples of “agricultural land” that should be eligible for WHIP. We also think the question of whether such land is suitable for fish or wildlife habitat is best left for the enrollment criteria.

• ***We recommend that NRCS revise the definition of “agricultural lands” in Section 636.3 to read as follows: “Agricultural lands means cropland, grassland, rangeland, pasture, cropped woodland, and other land associated with a farm or ranch operation including wetlands, streams, riparian areas, irrigation canals, shelterbelts, buffer strips, waste land, pivot corners and irregular areas.”***

This definition would allow for broad inclusion of lands generally considered to be “agricultural lands,” and that are part of an agricultural operation, but that may not necessarily be used to directly produce crops or livestock at the current time. It would allow for WHIP to continue to be used to restore in-stream fishery habitat on farms or ranches, provide habitat on unused pivot corners, place fish screens on irrigation water intakes, plant buffer strips and shelterbelts in marginal areas, remove fish migration barriers, and generally provide fish or wildlife habitat on working farms and ranches in the places that may intrude the least on the landowner’s earning capacity.

Section 636.4(c) outlines what land is *not* eligible for cost-share assistance, including land “that is public land.” We believe the intent of the law was to eliminate the use of WHIP funds on publicly owned parks or wildlife areas (an occasional practice in the past). We do not believe the intent was to limit its use, for example, in states where streambeds under navigable streams are considered “public land” or at least land with a public use easement. We prefer the language similar to what NRCS used to define ineligible (public) land in its Wetlands Reserve Program Interim Final Rule (Sec. 1467.4(g)).

• ***We recommend that NRCS revise Section 363.4(c)(4) regarding ineligible land to read: “(i) Lands owned in fee title by an agency of the United States, other than land held in trust for Indian Tribes, and (ii) lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government.”***

Definition of At-Risk Species

The new Farm Bill does not change the kinds of projects eligible for WHIP, including upland habitat, wetland habitat, “habitat for threatened and endangered species”, fish habitat, and other types of wildlife habitat approved by USDA. The new rule Section 636.3 adds a definition for “at risk species” which leaves this decision to each State Conservationist, with input from the State Technical Committee, based on species that need direct intervention to halt its population decline.

We do not believe this is the appropriate way to define “at risk species” for USDA conservation program purposes. Federal and state agencies responsible for federal and state threatened and endangered species laws have the responsibility and expertise for determining which species are threatened, endangered, and most in need of conservation. These agencies have developed public lists of the species which meet specific criteria developed over decades of careful research. Recently completed State Wildlife Action Plans document each state’s at-risk species, together with the strategies needed to conserve them. We believe NRCS should rely on those documents (and subsequent amendments) and those agencies and their expertise in defining at-risk species.

• *We recommend that USDA change the rule to use the following definition of at-risk species: "At-risk species means any plant or wildlife species, as determined by the State Conservationist, that is listed as endangered or threatened under the federal Endangered Species Act (ESA); proposed or a candidate for listing under ESA, or likely to become a candidate for listing in the near future; species listed as endangered or threatened (or a similar classification) under State law; and species of conservation concern identified by the state fish and wildlife agency or in the State Wildlife Action Plan."*

Payment Limitations in Cost-Share Agreements

Section 2602(d) of the new Farm Bill includes a new paragraph which says “payments made to a person or legal entity, directly or indirectly, under the program may not exceed, in the aggregate, \$50,000 per year.” The new rules reflect this change in the law.

• *We urge USDA to provide enough flexibility in approving WHIP agreements so that multi-year habitat agreements can be carried out using up to \$50,000 each year over several years, if needed to complete a large habitat project involving a single or multiple landowners.*

We support language in Section 636.6(b) that also appears to anticipate and promote these larger projects on adjoining land or complimentary projects on the same land that could accomplish large or expensive habitat work (“Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority considerations for participation.”)

Priority for Enrollment in WHIP

The new Farm Bill (Section 2602(d)) provides that “the Secretary may give priority to projects that would address issues raised by State, regional and national conservation initiatives.” This language was explained in the Managers Report, which cited specific national and regional initiatives like the North American Waterfowl Management Plan, National Fish Habitat Action Plan, Greater Sage-Grouse Conservation Strategy, Northern Bobwhite Conservation Initiative, State Wildlife Action Plans, and State forest resource strategies. The legislation’s clear intent is to focus WHIP especially, and other USDA programs more generally, to complement and implement these conservation plans.

While many NRCS state-level WHIP plans already consider or incorporate State Wildlife Action Plans, we believe it should be explicit in the rule that every state-level WHIP plan be focused on practices and strategies that would implement the respective State Wildlife Action Plan. We

believe the state-level WHIP plans should also consider and incorporate practices and strategies identified in regional and national conservation plans like those noted above, that are relevant in that state.

• *We suggest the following language to replace the first sentence of Section 636.6(b) of the rule: “The State Conservationist, in consultation with the State Technical Committee, shall give priority to WHIP projects that address the priority habitats, geographic areas, strategies and practices identified in the State Wildlife Action Plan established under the federal Wildlife Conservation and Restoration Program and may give priority to WHIP projects that will address the priority habitats, geographic areas, strategies and practices identified in regional and national conservation initiatives including the North American Waterfowl Management Plan, National Fish Habitat Action Plan, Greater Sage-Grouse Conservation Strategy, Northern Bobwhite Conservation Initiative, state forest resource strategies, and other conservation plans designated by the Chief. Subsequent cost-share agreement offers...”*

Section 636.6(a) of the rule provides that “In response to national, regional, and state fish and wildlife habitat concerns, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs.” This language appears to contemplate focusing WHIP dollars in a specific region or states to the exclusion of others, which is inconsistent with the current practice of allocating WHIP dollars to each state.

• *We recommend that the language in Section 636.6(a) be revised to read: “...the Chief may focus program implementation in any given year on specific geographic areas...”*

Other Issues

Section 636.3 of the rule defines “livestock” as “all animals produced on farms and ranches, as determined by the Chief.” The rule should recognize a clear distinction between livestock and wild animals, both of which may live on farms and ranches. We suggest NRCS change the definition of “livestock” to read: “Livestock means all domesticated animals kept on farms and ranches for the production of agricultural goods, as determined by the Chief.”

Thank you for the opportunity to provide comments on these important issues.

Yours in Conservation

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