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Easements Program Division
Natural Resources Conservation Service
Healthy Forests Reserve Program
P.O. Box 2890
Room 6819-S
Washington, D.C. 20013

We are second year International Business entrepreneur students at Florida International University. We would like to comment on the Proposed Rule for the Healthy Forests Reserve Program, published January 14, 2009, in the Federal Register.

State listed species and other species of concern

The proposed rule does not clarify how some of the wildlife mentioned in the Endangered Species Act will be protected through this program.

In our opinion this should be done as follows:

1. Clearly specifying the "State-listed species" in order to contain them in the State Wildlife Action Plans as species of Greatest Conservation Need
 2. Clarifying that the species "identified by the Chief for special consideration for funding" ought to be innate species qualified on a Conservation Need basis.
- Thus leaving us to conclude that the language used in the sections to be mentioned ought to be changed.

For Section 625.2 (Definitions): The definition for State-listed species ought to be as follows: A species believed to be threatened or endangered as classified under State endangered species laws, a qualified species for such a listing, or a species listed in the State Wildlife Action Plan as one of Greatest Conservation Need.

For Section 625.3 (Administration): A new subsection ought to be added. This subsection must state: "The Chief" shall identify the native species for special consideration for funding after consulting with the State Conservationist, the FWS, the NMFS, the State Fish and Wildlife Agencies, and the State Technical Committees. Said species ought to be identified by:

1. Population decline
2. Conservation concerns related to population

3. Endangerment at the regional, state or federal level. This can include but is not limited to climate sensitivity, natural disasters, habitat degradation, pollution, and /or pest/pathogen outbreaks.

For Section 625.5 part (a) (Sign-up procedures): Clarify that the project proposals from State Conservationists ought to be to use HFRP to enlist willing landowners in areas of the state where such enlistments will do the most to benefit the national priority forest types, such as the longleaf pine ecosystem and the mesic hardwood systems of the Appalachian region, including the Cumberland Plateau, or will do the most to support the program purpose of benefitting endangered species or species threatened under section 4 of the Endangered Species Act, or candidate species, state-listed species, or species of special concern.

Due to the lack of Program resources we strongly advise the agency to allocate their resources only in those states that have developed proposals that will more than likely benefit the forest ecosystems and species in the most significant and cost-effective manner.

For Section 625.6: There ought to be a clarification of the different ranking considerations and how they will be weighted. Also, right after the improvement of biodiversity and increased capability of carbon sequestration the statement "If enrolled..." is made. This statement implies that the considerations are not primary ranking factors but that they are only used to prioritize between the applicants. There ought to be a clarification of the primary ranking considerations and the secondary ranking considerations

It is also important to urge the NRCS to synchronize with the State Fish and Wildlife Agencies when developing the ranking criteria in order to combine the expertise of both agencies for the greater good.

For section 625.6:

(a) Primary ranking considerations.

The NRCS, the FWS, the NMFS and the State Fish and Wildlife Agencies need to consider the following points in order to rank the properties:

1. The estimated conservation benefit to the habitat and how much is required by the threatened or endangered species listed under Section 4 of the ESA.
2. The estimated conservation benefit to the habitat and how much is required by species not listed under section 4 of the ESA but seen as candidates for such a listing. This can include but is not limited to State-listed species, and species identified by the Chief for special consideration for funding.
3. The estimated cost-effectiveness of the restoration cost-share agreement, and the associated HFRP restoration plan.

(b) Secondary Ranking Considerations.

Based on the specific criteria set forth in the enlistment form the NRCS, the FWS, the NMFS, and the State Fish and Wildlife Agencies, also ought to consider the following Points when ranking properties:

1. Estimated improvement of biodiversity, if enrolled;
2. Potential for increased capability of carbon sequestration, if enrolled;

3. Availability of contribution of nonfederal funds;
4. Significance of forest ecosystem functions and values; and
5. Other factors identified in an HFRP sign-up notice.

At this point the statute includes cost effectiveness as a primary ranking consideration however the rule does not explain how the cost effectiveness will be estimated. We recommend that the cost effectiveness of the restoration cost-share agreement, contract, or easement and associated HFRP restoration plan be calculated by dividing the total expected environmental benefits by the total expected cost of the project. Separate ranking pools should be used to fairly evaluate the cost effectiveness of short term and long term agreements.

For section 625.13 (d) is extremely ambiguous. Beginning with "An HFRP participant who enrolls land in HFRP and whose conservation treatment results in a net conservation benefit for listed, candidate, or other species.." This statement can be interpreted to imply that it is referring to the people who Landowner protections will be presented to however the sentence is not conclusive.

This statement thus ought to be modified to crystallize that the Landowner Protections discussed in the section are referring to the HFRP participants.

Furthermore within Section 625.13 pertaining to the modification of restoration plans there is another inconsistency. The first sentence of that Section says that "modifications may be approved if they do not modify or void provisions of the assessment..." However, shortly after the rule says that some modifications "may require execution of an amended easement..."

These two sentences are obviously paradoxical. A restoration plan that does not modify or void provisions of the easement cannot also require execution of an amended easement.

For section 625.14 the proposed rule requires the restoration plan to also result in equal or greater wildlife benefits and ecological and economic values to the United States. However economic benefits are not a stated program purpose and they are not included in the stated program purpose nor are they mentioned in the description of the HFRP restoration plan development in section 625.13. Thus it is only routine to recommend that the standard governing modifications of a restoration plan ought to be modifications that have no adverse effect on the forest ecosystem and result in net conservation benefits (related to the program purpose) still expected to be achieved.

For section 625.11: Regarding compatible uses for easement of Section 625.10, which applies to 10-year cost share agreements.

The proposed rule does not say anything about compatible use determinations for 10-year cost share agreements. Thus it seems that it may be more important to address the issue of compatible uses in the context of 10-year agreements than in the context of easements, particularly if the standard "negative restricted easement deed" is used. For those properties enrolled in the Program through easements, what is essential is that:

1. The easement clearly specifies those uses that are prohibited
2. The easement clearly obligates the landowner to manage his property in accordance with the restoration plan. For properties enrolled in the Program through 10-year cost share agreements, there may be a need for the agreement to include a provision by which the landowner agrees not to engage in any use of the property that is incompatible with the objectives of the restoration plan.

Sincerely,

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