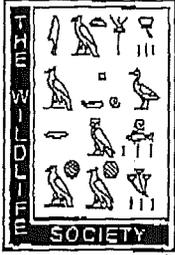


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**THE WILDLIFE SOCIETY**

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FROM: The Wildlife Society  
Bethesda, MD 20814

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MESSAGE:

Interim final rule for Environmental Quality Incentives  
Program - Docket Number NRCS-IFR-09005



## THE WILDLIFE SOCIETY

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10 April 2009

Financial Assistance Programs Division  
Natural Resources Conservation Service  
1400 Independence Avenue, SW.  
Room 5237S  
Washington, DC 20250-2890

The Wildlife Society appreciates the opportunity to provide comments on the interim final rule for the Environmental Quality Incentives Program (Docket Number NRCS-IFR-08005). The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association representing over 8,000 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve wildlife professionals—the scientists, technicians, and practitioners actively working to study, manage, and conserve native and desired non-native wildlife and their habitats worldwide.

The Environmental Quality Incentives Program is USDA's primary cost-share program for assisting farmers and ranchers in their efforts to address natural resource issues on working croplands and rangelands they own and manage. All land-management actions have the potential to affect fish and wildlife resources in some way. Targeted toward America's production-oriented cropland, rangelands, and forests, EQIP has the potential to provide significant benefits to fish and wildlife associated with these largely private lands. Indeed, EQIP has been used to implement a wide variety of practices that are considered beneficial to many species of fish and wildlife. The NRCS is also beginning to use EQIP to address the needs of declining and other at-risk fish and wildlife species. There is often little economic incentive for agricultural producers to do this work without financial assistance. Therefore, fish and wildlife opportunities under EQIP should be maximized.

In the 2008 Farm Bill, Congress clearly meant to increase attention to forest resources through EQIP as well as other Conservation, Energy and Forestry Title programs and initiatives and NRCS is to be applauded for elevating attention to forest land in EQIP. Forests provide important agricultural products and will also be an increasingly important source of cellulosic material for biofuel production. Forests also help conserve soil, contribute to water quality, sequester carbon, and provide essential habitat for many species of terrestrial wildlife as well as contribute to the quality and quantity of water for aquatic species.

The Explanatory Statement of the Committee of Conference for the 2008 Farm Bill stated that fuel and forest management is added to the list of activities for which the Secretary will assist producers in making cost-effective changes. However, the interim rule does not mention fuels management. Therefore, the rule should be amended to include fuels management. This provides

an opportunity to reduce losses through catastrophic wildfires while also improving fish and wildlife habitat.

The Interim Final Rule requests comments on the definition of at-risk species that USDA has been using for implementing EQIP. We recommend **at-risk species** be defined as:

Any plant and animal species that are: listed as endangered or threatened under ESA; proposed or candidates for listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern.

At risk species should be listed as a conservation need where the State Conservationist can give higher priority for income forgone. Specifically, declining species are an important focus of society and EQIP. However, landowners have little economic incentive to manage for these species because of costs of practices and management activities. Cost share and incentive payments should be maximized to help agricultural producers further the conservation of these species. Higher payment rates are integral in affecting the conservation of species in most need.

Comprehensive planning activities including forest management plans and invasive species treatment plans should be eligible for payment. Management plans for forest resources should be complex and address the full range of resource needs as forest land is managed for production. Forests can be managed to provide agricultural products such as lumber and biomass for energy purposes as well as conserve soil, improve water quality, recharge groundwater and provide habitat for many species of wildlife. In addition, mistakes in management of forest resources can take decades to rectify and up-front planning is the path to wise use. It is appropriate for EQIP to help landowners pay for preparation of comprehensive management plans for forest land.

Comprehensive planning activities including invasive species treatment plans should be another eligible activity, as effectively treating invasive species requires sustained approaches with follow-up monitoring and treatment activities. The current approach being used by EQIP to deal with invasive species does not provide the participating landowner with a plan or assistance after initial treatments of invasive species problems. Given the impact of invasive species on agricultural production, soil and water resources, and fish and wildlife habitat, comprehensive planning efforts are warranted and should be eligible for payment under EQIP.

### **Economic Analysis**

Rather than simply mentioning the Conservation Effects Assessment Project (CEAP) in the rule and in the Environmental Assessment and how CEAP will help with long-term planning, the EQIP rules should explicitly state how it will use the models and information from CEAP to follow the legislative mandate to "optimize benefits, address natural resource concerns and problems, establish an open participatory process..." Currently, the rule does not indicate how NRCS will do its business differently in order to meet the legislative intent.

**Sec. 1466.1 – Applicability**

It is appropriate to elevate attention to forest management EQIP, but this should be done in ways that sustain native forests and incorporate needs of fish and wildlife species associated with those lands.

**Sec. 1466.3 – Definitions**

**Agricultural land:** In the second sentence, marshes should be replaced with “wetlands” to be more accurate. Marshes are specific types of wetlands. At the end of that sentence, include “other types of agricultural land used for or suitable for the production livestock.”

**Recommended definition** “Agricultural land means cropland, grassland, pasture, and other agricultural land, on which agricultural forest-related products, or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, **wetlands**, incidental areas included in the agricultural operation, and other types of agricultural land **used for or suitable for the production of livestock.**”

**Livestock**-reword to “means all animals produced on farms or ranches **or other agricultural lands suitable for the production of livestock, as determined by the authority given within each state by the state Department of Agriculture**”

**Livestock production:** include “or capable of producing livestock.”

**Non-industrial private forest land:** This definition includes the phrase “or is suitable for growing trees” which should be removed or qualified to preclude the planting of trees in places that will further diminish habitat for at-risk species. An example is that some prairie soils can support some kinds of trees but the introduction of trees can fragment prairie landscapes and cause prairie species to move elsewhere or be at greater risk of predation than they would be if trees were absent. Include “...by the Secretary, that has **existing tree cover or soils derived under trees or forest**, or is suitable for growing trees; and...”

**Section 1466.4 – National Priorities**

At-risk species should continue to be a national priority of EQIP – this is essential to achieve sustainability of wildlife species that rely on agricultural landscapes for habitat, whether aquatic or terrestrial.

**Recommendation:** add ‘forest health’ and/or ‘conserving and managing working forest landscapes for multiple values and uses, including fish and wildlife conservation’ as an EQIP national priority.

Congress, in the crafting of the 2008 Farm Bill, clearly meant to elevate attention to forest land in EQIP and other Farm Bill programs. This is evident in the Farm Bill enacted into law as well as the Managers Report. Forest lands are increasingly important to society for lumber and other wood products as well as for carbon sequestration, energy, and wildlife habitat. Very little

private non-industrial forest land is managed with benefit of advice a comprehensive management plan and mistakes in management can take decades or more to correct. Fish and wildlife needs should be addressed in all forest management plans. Our nation's forests are of strategic importance and deserving of national priority status in EQIP.

**Recommendation:** in (a) add **plant health**; it has been a National Priority in the past, and it should be formalized in the rule.

### **Section 1466.8 – Program Requirements**

The EQIP program has been used on federal and state lands that are part of a landowner's agricultural operations. These funds in conjunction with other Federal land State funding have improved watershed health and fish and wildlife habitat at the landscape scale. Therefore, we recommend that NRCS continue to allow this opportunity to persist.

### **Section 1466.10 – Conservation Practices**

*The Joint Explanatory Statement of the Committee of Conference* states that "the Managers recognize that proactive, non-lethal options to deter predators protected by the Endangered Species Act of 1973, as well as delisted populations of gray wolves, grizzly bear, and black bears are consistent with the purposes of EQIP." The EQIP Final Rule should clarify that EQIP can help producers through financial assistance for conservation practices to deter some predators – otherwise, many will not recognize this is an option. This will also help illuminate the intent that EQIP help achieve the new pollinator emphasis in that conflicts associated with black bear often involve beehive/pollinator situations. Add language "...to deter predator species protected by the ESA of 1973, as well as other species at the State Tech Committee's discretion."

The wording of 1466.10 (c) needs clarification so that water conservation practice payments are not limited only to land that has recent irrigation history.

**Recommendation: 1466.10(c)** A participant will be eligible for payments for water conservation in irrigation related conservation practices only on land that has been irrigated for two of the last five years prior to application for assistance.

### **Section 1466.20 – Applications for contracts and selecting applications**

NRCS is commended for continuing to allow the advent of ranking pools to focus on key conservation issues. This allows the State Conservationist, with advice from the State Technical Committee, to establish strategic geographical habitat initiatives to address fish and wildlife concerns. In prior years this has been an effective tool to further the conservation of species in greatest conservation need and we encourage NRCS to continue this approach. This section is important, provides flexibility, and must be kept in the final rule.

The final phrase of 1466.20(b)(2)(i), "other than incidental land needed for efficient operations," should be stricken, as this should be dealt with in ranking and prioritizing applications. If the producer is bringing incidental land into irrigated production for efficiency as part of the project,

any irrigation water that would have been saved and is applied to those new acres should apply against the reduction in water use from the practice.

Section 1466(b)(2)(ii) should be stricken or rewritten. In current form, the current rule could allow EQIP contracts for water conservation or irrigation efficiency to be put in place without any net gain in water conserved, because additional acres are brought into production using that water. This section only requires a comprehensive assessment, have a project plan with management strategies, and consultation with relevant agencies; it does not require that net water conservation occur in the watershed as a result of an EQIP contract. If water is not being conserved, then those applications should not receive any priority.

We commend NRCS for including (b) (1) (iii). This provision is critical to fish and wildlife conservation success; it will help ensure that effective conservation measures are deployed to benefit the resource concern and not just deploy the cheapest practice without affecting the resource concerns. In context with the preceding two bullets, this provision takes into account the resource benefits, but also allows for the most effective methods to address the resource concerns.

#### **Section 1466.21 – Contract Requirements:**

We are pleased with the inclusion of (2)(i) and would like to see it kept in the final rule. We encourage further clarification to specifically state that practices that do not encourage or that result in the degradation or conversion of native prairie, wetland, savanna, forest, or other native habitats to grassland, cropland, monoculture plantings, or other uses, should not be implemented. EQIP should result in sustainable management when native habitats are managed for agricultural purposes.

Section 1466.21(3)(i) is needed to prevent practices that would defeat the purposes of the program, by focusing only on one resource need while ignoring another. This must be kept in final rule and we recommend additional clarification that EQIP practices will not degrade or convert existing native habitats.

**Recommendation: 1466.21(3)(i)** Not implement any practices within the agricultural or forestry operation that would defeat the program's purposes, **including degrading or converting native habitats on the operation.** We encourage further clarification to state specifically that there should not be implementation of practices that do not encourage or result in the degradation or conversion of native prairie, wetland, savanna, forest, or other native habitats to grassland, cropland, monoculture plantings, or other uses. EQIP should result in sustainable management when native habitats are managed for agricultural purposes.

#### **Sec. 1466.23 – Payment Rates**

In (a), after "designated conservationist," insert "with advice from the State Technical Committee and local working groups" [as stated in (b)].

In (c)(iv), at-risk species should be listed as a conservation need where the State Conservationist can give higher priority for income forgone. Specifically, declining species are an important focus of society and EQIP. However, landowners have little economic incentive to manage for these species because of costs that they can not afford. Cost share and incentive payments should be maximized to help agricultural producers further the conservation of these species. Higher payment rates are key to affecting the conservation of species in most need.

The legislative intent is not to indirectly subsidize the vertical integrators who contract with CAFO owners and operators. The rules should state how NRCS will assure that EQIP funds will not indirectly offset costs in which firms that issue the contracts with CAFOs otherwise would assume in order to do business in specific areas that are subject to environmental regulations.

The rule should state how NRCS will ensure that EQIP does not indirectly subsidize firms whose average gross income exceeds \$1,000,000 that contract with CAFOs or AFOs by paying for practices that would otherwise be paid for by the contracting firms as the prices of doing business within watersheds or certain geographic areas that are subject to environmental regulations.

#### **Section 1466.24 – EQIP payments**

For consistency in application of the program, we recommend insertion of language as in (a) to clarify “any 6-year period”; specifically we recommend that the sentence “For the purpose of applying this requirement, the 6-year period will include those payments made in fiscal years 2009-2014.” should be inserted after “any 6-year period.”

#### **Section 1466.25 – Contract modifications and transfers of land**

Any modifications should be specifically consistent with and supportive of program purposes. We recommend NRCS change the language in (a) to read “The participant and NRCS may modify a contract **provided that modifications are consistent with and will contribute to program purposes** if both parties agree to the contract modification...”

For program consistency and to ease burden on NRCS staff, modified contracts should be re-ranked to ensure that the modifications will not result in a score that falls below the State’s threshold. We recommend that a new subsection be added here, but it should remain tied to part (a) to avoid confusion.

#### **Sec. 1466.36 Environmental credits for conservation improvements.**

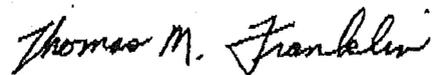
We recommend that language more consistent with that used in the Healthy Forest Reserve Program (HFRP) should be used in place of the language used in this section. Insert “program purposes as well as” between “that” and “operation” in the third sentence.

The rules should state how NRCS will assure that recipients can only benefit from the sale of co-benefits from EQIP funded conservation practices. For example, an EQIP practice is funded that addresses a water quality problem. A co-benefit of the practice is sequestration of carbon that can constitute a credit in an environmental market. The farmer should be free to sell the carbon

credit. He should, however, not be free to sell a water quality credit for any reduction of a pollutant loading as a consequence of the installation of the practice. Moreover, the rules should specify that EQIP funds will not be used to offset the costs of or create a credit for practices that would otherwise be implemented as a consequence of environmental regulations for which the farmer is subject and thus would incur without EQIP funds.

Thank you for considering the views of wildlife professionals.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Franklin".

Thomas M. Franklin  
President