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*Watershed Programs Director &  
Midwest Conservation Director*

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Financial Assistance Programs Division  
Natural Resources Conservation Service  
Wildlife Habitat Incentive Program Comments  
P.O. Box 2890  
Room 5237-S  
Washington, DC 20013

Dear Sir or Madam:

On behalf of Trout Unlimited's 140,000 members nationwide, we thank you for the opportunity to comment on the interim-final rule that will guide the Wildlife Habitat Incentive Program (WHIP). The mission of Trout Unlimited (TU) is to conserve, protect, and restore coldwater resources and their watersheds. Partnering with farmers and ranchers to protect, re-connect, and restore habitat on their lands is one of the most important aspects of our conservation efforts.

Thus, Farm Bill conservation programs, and WHIP in particular, are vital to TU's conservation work. We are heavily invested in helping make sure this program remains successful. In the past our local chapters and professional conservation staff have partnered with numerous landowners and NRCS offices across the country to help implement critical aquatic habitat restoration projects. These efforts almost always leverage additional significant resources from other state, local government, and private entities. WHIP fills an important niche in restoring fish and wildlife habitat on private lands and we hope our specific comments below are useful in shaping the program to be the most constructive and useful as possible.

Because WHIP has been so valuable to us, we were disappointed by the major limitations that were placed on the program by provisions of the 2008 Farm Bill. Specifically, 1) narrowing the program's eligibility to only private agricultural lands, nonindustrial private forest lands and Tribal lands; and 2) requiring a \$50,000 payment limitation for projects, undermines the longstanding fish and wildlife conservation purposes of the program. Allowing for at least a small number of strategically-located projects on private nonagricultural or on state or local public lands, as WHIP allowed prior to the 2008 Farm Bill amendments, served the program and the nation well. Some of the very best fish habitat restoration WHIP projects were on lands that will now be off limits under the new WHIP.

**America's Leading Coldwater Fisheries Conservation Organization**

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Similarly, the \$50,000 payment limitation will eliminate opportunities for larger-scale fish habitat projects that would have provided some of the best resource returns on WHIP dollars. Again, some of the larger, more expensive WHIP projects authorized under earlier versions of WHIP provided some of the highest fisheries benefits.

We urge NRCS, USDA and the Obama Administration to go to Congress and seek practical fixes to WHIP that will reduce the harm of the new limitations. NRCS should have flexibility to allow at least limited use of WHIP dollars for larger projects that are not on agricultural lands.

The following are our comments on the interim final rule.

- **Priorities:** We commend NRCS' identified national priorities for WHIP as identified in the Interim Final Rule (i.e., promote the restoration of declining or important native fish and wildlife habitats; protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species). Also, we strongly agree with giving the Secretary authority to set priorities that will help fulfill state, regional and national habitat initiatives, such as the National Fish Habitat Action Plan (NFHAP) and the State Wildlife Action Plans. TU is an active participant in several of the regional Fish Habitat Partnerships created under NFHAP, such as the Eastern Brook Trout, Driftless Area, and Western Native Trout partnerships. WHIP dollars spent on projects identified by these initiatives will help maximize the resource gains, as WHIP dollars will work synergistically with an array of other funding sources.
- **Definition of *agricultural lands*:** It should be clarified in the definition that "incidental areas included in the agricultural operation" should be interpreted to explicitly include streams, riparian areas, wetlands, woodlands and other areas that provide ecological and other services to the agricultural operation such as surface water filtration, groundwater recharge, pollinator habitat, and visual buffers, etc...
- **Definition of *applicant*:** The interim final rule definition of applicant "means a person, legal entity or joint operation that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in WHIP." The phrase "private non-industrial forest land or" should be included before "an agricultural operation." The inclusion of private non-industrial forest landowners is clearly the intent of the statutory language and is explicit or implied through the rest of the WHIP rules. As currently stated however, it is ambiguous at best whether private non-industrial landowners are eligible to apply. A very narrow interpretation of those eligible to apply could exclude many potential program participants.
- **Definition of *at-risk species*:** NRCS explicitly requested in the Federal Register input on the definition of "at-risk species," which in the current interim rule is determined by the respective State Conservationist. TU recommends that "at-risk

species” instead be defined as any species that is listed, a candidate, or proposed for listing under the federal Endangered Species Act or an analogous state species of concern designation; or is identified in any regional, state, or local plan as declining or otherwise at-risk in a portion or all of its native range. The intent here is to link the determination to a scientifically-defensible plan but be broad enough to allow for at-risk species to include those that may be in decline in a localized area but perhaps not at a state or larger level.

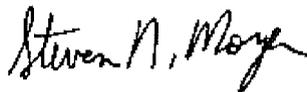
- **Ineligibility of public lands:** The new statutory intent of WHIP is clearly to exclude public lands from a program designed to benefit fish and wildlife habitat on private lands. However, this could result in an unintended consequence that would disallow certain stream projects on private lands. The status of ownership of stream and river bottoms varies and in some states are under the jurisdiction of the state or federal government. TU doubts that it was intent of the lawmakers to exclude potentially good projects on agricultural lands as a result of the legal status of stream bottoms. We recommend that NRCS include some clarifying language that would ensure that common sense prevail and allow stream and wetland restoration projects on private land proceed regardless of the jurisdiction or ownership status of the wetted bottoms. This could be accomplished by adding a phrase after § 636.4 (c)(4) describing ineligible public land such as “except for streams and river bottoms that are determined by state statute to be under the jurisdiction of the state but are otherwise adjacent to private land.”
- **Cost-share payments:** Section 636.7 Cost-share Payments states that “The cost-share payment to a participant shall be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program...” We recommend that NRCS readily grant this waiver, particularly as it relates to declining or at-risk species, because there is often little financial incentive for an agricultural producer to participate in activities that do not, inherently, result in increased agricultural profitability. If NRCS and other partners can eliminate the cost of this type of habitat work the landowner may be willing to allow the habitat to be restored or enhanced. This can help recover declining species and prevent Endangered Species Act listings.

We commend NRCS for its good work on the interim final rule. Thank you for the opportunity to comment on it.

Sincerely,



Laura Hewitt  
Watershed Programs Director



Steve Moyer  
Vice-President of Government Affairs