



## International Association of Fish and Wildlife Agencies

444 North Capitol Street, NW, Suite 544  
Washington, DC 20001  
Telephone 202-624-7890 \* Fax 202-624-7891

\*\*\*\*\*

July 20, 2004

Mr. Richard Swenson  
Director, Easement Division  
Natural Resources Conservation Service  
P.O. Box 2890  
Washington, DC 20013-2890

Dear Mr. Swenson:

### **Attn: Grassland Reserve Program**

The International Association of Fish and Wildlife Agencies (Association) appreciates the opportunity to provide comments on the Interim Final Rule for the Grassland Reserve Program (GRP) as published in the Federal Register on May 21, 2004 (Vol. 69, No. 99). The Association is an organization of public agencies charged with the protection and management of North America's fish and wildlife resources. Members include all 50 state fish and wildlife agencies. The Association's member state agencies have a keen interest in working closely with the Natural Resources Conservation Service (NRCS) as full resource management partners in the implementation of the new GRP. We believe the GRP has tremendous potential to conserve and restore grasslands of high biodiversity that will benefit a wide array of grassland species now in decline, while at the same time supporting grazing operations and reducing threats of grassland conversion. The following comments are offered for your consideration in development of a final rule that will allow the program to achieve its full potential.

When establishing criteria to evaluate and rank applications for GRP easements and rental agreements, the 2002 Farm Bill requires the Secretary to emphasize support for grazing operations; plant and animal biodiversity; and eligible land under the greatest threat of conversion. The statute places equal emphasis on each of these three areas and the discussion of the selected option on page 29174 of the Interim Final Rule reiterates this point by "...recognizing the implicit equality given the three program objectives by the statute." By recognizing biodiversity of plants and animals as co-equal to the other two emphasis areas when ranking applications, USDA can make more effective use of available funds to achieve all program purposes.

The GRP Interim Final Rule adopts the three emphasis areas as program objectives, and then adds a fourth overriding objective for GRP to "...Emphasize preservation of native and natural grasslands and shrublands, first and foremost..." This objective is not mentioned in the statute, which established GRP "...to assist owners in restoring and conserving eligible land." Using the definition of "natural" included in the Interim Final Rule would allow GRP to emphasize enrollment of monocultures of

introduced species that do not support or contribute to plant and animal biodiversity. This sets the stage for fundamental inconsistencies between the foremost program objective identified through rulemaking (to preserve native and natural grasslands) and one of the three objectives identified in statute (to support plant and animal biodiversity). Our concern is that without requiring both native and introduced or nonnative grasslands to be consistent with the GRP objective of supporting plant and animal diversity and with the statutory language identifying land eligible for restoration as land that can "...serve as habitat for animal or plant populations of significant ecological value...", limited program funds will be used to enroll monocultures that do not serve all of the intended program purposes. Without modification, we question whether the Interim Final Rule will allow implementation of a program that preserves "...the nation's *most critical* grassland resources, both native and natural, and shrublands." (emphasis added) as described by USDA on page 29175.

Please see the attachment for our section-specific comments on the GRP Interim Final Rule, many of which relate to the issue described above.

Thank you for your consideration of these comments and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "John Baughman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Baughman  
Executive Vice-President

**Section-Specific Comments**  
**Submitted by**  
**International Association of Fish and Wildlife Agencies**

July 20, 2004

**Section 1415.1 Purpose**

The purpose of GRP according to statute differs from what is written in this section. The purpose of the program is to "assist owners in restoring and conserving eligible land" (subtitle E, Sec. 1238N). The addition of "protection" to the intended purposes in 1415.1(a) and the first objective under 1415.1(b) establish the primary intent of the program as preservation of native and "natural" grasslands and shrublands. This interpretation of Congressional intent regarding the purpose of GRP is unsupported. The word "preservation" under 1415.1(b)1 needs to be changed to "restoration and conservation" to reflect the Congressional intent and the law. Secondly, the objectives under 1415.1(b)(1) and (b)(2) are repetitive, further indicating the need for 1415.1(b)(1) to be changed to reflect Congressional intent. Many "natural" grasslands or shrublands, as defined by this rule, are not consistent with objective (b)(4).

**Section 1415.2 Administration**

The demand factor proposal in this section must place demand in context of acres that achieve all of the program areas of emphasis (supporting biodiversity of plants and animals, grasslands under threat of conversion, and grazing operations). "Interest within a state" could be counter to conservation if it is based on overall interest. That interest could be a desire to enroll many acres that lack biodiversity, have little threat of conversion or not be used in a grazing operation.

**Section 1415.3 Definitions**

Because the definition of "natural" offered in the Final Interim Rule applies to either native or introduced species and becomes redundant when used in the same sentence with the term "native", we suggest the term "natural" be eliminated and replaced by nonnative or introduced. In addition, the word "natural", when used in conjunction with "native" could mislead some to think that "natural" grasses would achieve the biodiversity emphasis of GRP established in the Farm Bill. If the term is retained in the Final Rule, USDA should correct any chance of misdirecting the program by defining natural to include *an introduced species that is adapted to the ecological site, can perpetuate itself in the community without cultural treatment, and its growth and structure are consistent with all other objectives of the program (i.e. can maintain and improve plant and animal biodiversity, and can support grazing or haying operations)*. Without this modification, objectives (b)(1) and (b)(4) may be in direct conflict with each other.

To help clarify the meaning of biodiversity in the context of GRP implementation, we recommend the following definition:

*Biodiversity means grasslands or shrublands composed of many plant species, particularly native plants, that provide habitat for many species of wildlife. Biodiversity benefits are greatest where plant and animal species diversity is highest and benefits diminish as species diversity declines.*

When the rule refers to "...maintaining the viability of the grassland..." viability needs to be defined to include grassland species diversity present on enrollment in the program. The term restoration should be redefined to mean improvements to the grassland in the direction of the functions and values that would have been provided by native grasslands in the area. We recommend broadening the definition of restored grassland to include conversion of grasslands dominated by introduced species to diverse native species.

#### **Section 1415.4 Program Requirements**

According to Subsection (b), GRP agreements will require maintenance in accordance with GRP goals and objectives, "...including the conservation, protection, and restoration of the grassland functions and values." From the request for comments on this issue in the Supplementary Information, USDA appears to interpret this section to mean that only protection is required. Conservation and restoration are specifically identified as program purposes by Congress, therefore every GRP agreement must include restoration activities to the extent practicable.

Subsection (c) addresses the contents of the conservation plan. In the Summary of Provisions and Request for Comment for this section, USDA seeks input on "whether a participant should be able to maintain the current cover even if it contains a monoculture of less desirable species." We suggest that consistency with the purpose and objectives of the program requires restoration of sites that contain a monoculture of less desirable species. This section goes on to state "USDA is reluctant to require participants to fully restore project acreage to native species because of the extreme cost and in some localities, it is impractical to do so." We would like to point out the costs to restore native grassland species are much less than the cost to restore many of the wetlands USDA pays to restore in the Wetland Reserve Program. Most importantly, it is clear Congress intended for this program to conserve and restore healthy grassland systems that are productive for the producer and at the same time biologically diverse. Therefore, we strongly encourage USDA to require restoration to native species whenever necessary to meet the criteria set forth by Congress. The steps necessary to complete the restoration process should be detailed in the conservation plan.

Subsection (h) allows for (1) common grazing, (2) haying, mowing, or haying for seed production, and (3) fire, fences, watering facilities, and any other practices necessary to protect and restore the grassland functions and values. We agree that grazing, haying, mowing, or haying for seed production, when done properly, are allowed and can even benefit biodiversity. However, if done incorrectly, grazing can be as detrimental to nesting birds as haying, mowing, or haying for seed production can be. Therefore, we recommend subsections (1) and (2) be combined as follows: "(1) Common grazing practices, haying, mowing, or haying for seed production on the land in a manner that are consistent with maintaining the viability of native grass and shrub species, except that such uses shall have certain restrictions determined appropriate by the NRCS State Conservationist to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law;"

#### **Section 1415.11 Restoration Agreements**

The 3rd sentence should under subsection (a) should be removed. The public law indicates that conservation and restoration are the purposes of the program. This sentence indicates that restoration and conservation value are only secondary to funding, while preservation is not. This is clearly inconsistent with Congressional intent. Furthermore, the Supplementary Information on page 29176 indicates that restoration will be required to move enrolled grasslands to higher levels of function and

value, and to maximize wildlife habitat over time. If grassland resources do not meet the purposes of the program, the agreement must include restoration in order to meet program objectives; otherwise, applications that do not meet all purposes of the program should be considered ineligible.

### **Additional Comments**

Since GRP easements will represent a considerable investment of public funds as well as an ongoing commitment by USDA to manage easements, it makes sense to focus this aspect of GRP on grasslands of highest biodiversity and at greatest risk of conversion, such as native prairie that has never been cultivated. The rule allows for USDA to obtain longer term protection through easements on “lands considered valuable”. Presently, the formula used for calculating easement payments has made easements less financially attractive to producers than a shorter rental agreement. It would be in the best interest of the resource (long-term protection) to change the formula to make easements more attractive financially. Language to this effect should be contained in the Final Rule.

States should be encouraged to develop partnerships for both cost-share and program evaluation. Pursuing partnership opportunities will help make the most of limited program funding. In addition, states have technical expertise that can be useful in developing a robust evaluation and monitoring of program benefits.

Under Background (page 29175) there is reference to grassland conversion in a general sense but the issue of intentional conversion of native grasslands to introduced species is overlooked and needs to be discussed in the Final Rule as a conversion pressure.

Under Provisions that Apply (page 29178) there is reference to protection for nesting birds that are in significant decline and USDA decides whether there are such birds that need protection. State and Federal listed ground nesting birds are well documented and should be recognized by USDA. Management protections should be incorporated in the plan of operation for each GRP tract consistent with direction in the Farm Bill. The Interim Final Rule should reiterate the intent of Congress regarding the need for appropriate restrictions on lands enrolled in GRP to protect birds during the nesting season. Congressional intent is made clear in the 2002 Farm Bill Managers Statement:

*“...that the Secretary will permit haying, mowing or harvesting for seed production, subject to appropriate restrictions for completion of the nesting season for birds in the local area which are in significant decline or are conserved pursuant to state or federal law, as determined by the NRCS State Conservationist.”*

Respecting the State fish and wildlife agency authority and responsibility for managing birds in the local area and the management authority shared by the States and the U.S. Fish and Wildlife Service (USFWS) for migratory birds and those species federally listed as threatened or endangered, we recommend the GRP rule include the following:

- a. In determining which birds are in significant decline or are conserved pursuant to state or federal law, the NRCS State Conservationist will consult with the State fish and wildlife agency and the USFWS.

- b. The State fish and wildlife agency, in coordination with the USFWS, will provide to the NRCS State Conservationist and the State Technical Committee the dates when nesting is completed for birds in the area that are identified by the NRCS State Conservationist as subject to appropriate restrictions.
- c. The State Conservationist will cooperate with and request the recommendations of the State fish and wildlife agency and USFWS regarding establishment of appropriate restrictions for haying, mowing or harvesting for seed production during the nesting season.
- d. The State Conservationist will provide justification, consistent with purposes of GRP, for decisions concerning items a, b or c above whenever they differ from the recommendations provided by the State fish and wildlife agency and the USFWS.