

August 15, 2006

Via e-mail

Robin Heard
Director, Easement Programs Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013-2890

Dear Ms. Heard:

**Re: Interim Final Rule - Healthy Forests Reserve Program, 71 Fed. Reg. 28547
(May 17, 2006)**

Please accept the following comments by the Hardwood Federation (HF) on the interim final rule for the Healthy Forests Reserve Program, 71 Fed. Reg. 28547 (May 17, 2006). The HF is the national trade association of the hardwood timber industry. The HF represents over 9,000 companies engaged in manufacturing, wholesaling, or distribution of North American hardwood lumber, veneer, plywood, flooring, pallets and related products.

The U.S. hardwood industry is comprised of thousands of primarily small to medium family-owned businesses, many of which have been handed down from one generation to the next. These businesses rely on healthy private and public forests to ensure a reliable supply of high quality hardwoods to produce our products. Hardwood forestry is proud to have maintained thousands of acres of U.S. lands in active forest management and has a longstanding tradition of sustainable forest management.

Congress established the Healthy Forests Reserve Program (HFRP) in Title V of the Healthy Forests Restoration Act of 2003, 16 U.S.C. §§ 6571-6578, and authorized funding for fiscal years 2004 through 2008. The HFRP is a voluntary program for the purpose of restoring and enhancing forest ecosystems to: 1) promote the recovery of threatened and endangered species, 2) improve biodiversity; and 3) enhance carbon sequestration. 16 U.S.C. § 6571(a).

The HFRP offers three enrollment options: 1) a 10-year cost-share agreement; for which the landowner may receive 50 percent of the cost of the approved conservation practices; 2) a 30-year easement, for which the landowner may receive 75 percent of the market value of the enrolled land plus 75 percent of the cost of the approved conservation practices; or 3) an easement of not more than 99-years, for which landowners may receive 100 percent of the

easement value of the enrolled land plus 100 percent of the cost of the approved conservation practices.

Cooperative Conservation. President Bush, in Executive Order 13352 (August 26, 2004), directed federal agencies, “to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate,” to “implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation.” Congress established the HFRP on precisely the same principle – “The Secretary of Agriculture shall carry out the healthy forests reserve program in coordination with the Secretary of the Interior and the Secretary of Commerce.” 16 U.S.C. § 6571(b). The HFRP requires substantial cooperation between NRCS, the Fish and Wildlife Service and the National Marine Fisheries Service. NRCS recognizes this requirement in the preamble to the interim rules. Nonetheless, in the over two and one-half years since enactment of the law and in the two years since issuance of the executive order, there should have been considerably greater “coordination” among the three agencies.

We recognize the importance of NRCS being the final decision maker with respect to the program. However, “cooperative coordination” is critical if this program is to provide the benefits to landowners, and the accompanying benefits to species. NRCS recognizes the need for incidental take protection under the two relevant provisions of the Endangered Species Act, sections 7(b)(4) and 10(a)(1), in the preamble. While NRCS offers landowners the use of any incidental take statement it might obtain in an ESA consultation, the preamble discussion lacks a sense of agency cooperation in developing an approach that would incorporate the safe harbor concept with the incidental take statement.

Essential terms of Safe Harbor Agreements or Candidate Conservation Agreements can be developed in coordination by all agencies prior to the announcement of a specific program sign-up and should be included in the enrollment specifications. Required consultations for any specific enrollment might occur before or during the enrollment period, and any terms and conditions resulting from the biological opinion could be incorporated in habitat restoration plans that must accompany an enrollment. With coordination and section 7 consultations having occurred as early in the process as possible, any necessary conditions can be included in the restoration plans instead of requiring their amendment. NRCS should pursue mutual agreements with the Fish and Wildlife Service and the National Marine Fisheries Service to establish guidelines in advance that will assure appropriate cooperation in processing landowner applications.

Assistance for Landowners. The law specifies that the restoration plan be developed jointly by NRCS and the landowner, “in coordination with the Secretary of the Interior.” 16 U.S.C. § 6573(a). The interim rule, 625.12, provides little explanation how this “coordination” will occur. This seems to us to be an excellent opportunity to combine the directive in section 506(a), 16 U.S.C. § 6576(a), to the Secretary of Agriculture to “make available to the landowner safe harbor or similar assurances and protection” and achieve the President’s goal of cooperative conservation. Instead, NRCS has described the availability of these assurances and protections under rule 625.10 entitled “Cost-share payments.” No rule has a heading identifying these essential components nor does rule 625.12 specifically explain that ESA assurances and protections should be addressed in the development of the restoration plan. In contrast, the preamble to the interim rule does state that “NRCS will provide technical assistance to the HFRP

program participant to enter into a Safe Harbor Agreement (SHA) with FWS or NMFS under section 10 of the ESA, 16 U.S.C. 1539.” 71 Fed. Reg. at 28549. We urge NRCS to provide a similar assistance commitment *in the rules* and also to provide in the rules a more detailed explanation of how the agencies will cooperate to assure that landowners receive the proper assistance to include appropriate assurances and protections under the ESA in their restoration plans.

Section 505, 16 U.S.C. § 6575, directs NRCS to provide “technical assistance” to help landowners comply with the terms of their restoration plans. This statutory requirement does not seem to be addressed in the interim rule. The only reference to “technical assistance” is quoted above with regard to *developing* Safe Harbor Agreements, not implementing the restoration plan. Even though there are no existing plans at this time, there should be some indication how the agency will carry out this responsibility.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in cursive script that reads "Betsy Ward". The signature is written in black ink and is positioned above the typed name and title.

Betsy Ward
Executive Director
Hardwood Federation

