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From: Derickson, Craig
Sent: Tuesday, October 05, 2004 3:51 PM
To: FarmBillRules
Subject: FW: Conservation Security Program
Attachments: ATTACHMENT.TXT; CSP Interim Final Rule3.rtf

Attachment
coded

Thanks,

Craig Derickson

USDA - Natural Resources Cons. Service
Craig Derickson, CSP Program
14th and Independence SW, Room. 5230-S
Washington DC 20250
Phone 202-720-3524, Fax 202-720-4265

-----Original Message-----

From: ADelach@defenders.org%inter2 [mailto:ADelach@defenders.org]
Sent: Tuesday, October 05, 2004 3:23 PM
To: FarmBillRules
Cc: Derickson, Craig
Subject: Conservation Security Program

October 5, 2004

Comments Submitted by Defenders of Wildlife to the Natural Resources Conservation Service and the Commodity Credit Corporation in Response to the Proposed Interim Final Rule for the Conservation Security Program (7 CFR Part 1469)

Financial Assistance Programs Division
Natural Resources Conservation Division
P.O. Box 2890
Washington, DC.
Delivered via email to FarmBillRules@usda.gov

Attention: Conservation Security Program

Defenders of Wildlife welcomes this opportunity to comment on the Proposed Interim Final Rule for implementation of the Conservation Security Program. Defenders of Wildlife is a conservation organization with over 480,000 members and supporters nationwide, dedicated to the conservation of native species and the habitats upon which they depend. Defenders has been a vocal supporter of the Conservation Security Program since its inception, and we are committed to its successful implementation as a full, national entitlement program supporting producers who take measures to be good stewards on their lands.

Since the comment period ended for the Advanced Notice of Proposed Rule Making on March 2, 2004, it is apparent

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 that a lot of thought and work has gone into defining how the final Conservation Security Program rule would operate. However, the Interim Final Rule's basic premise is that financial and technical assistance funds will be limited and therefore the Natural Resources Conservation Service (the Service) must find mechanisms to limit participation. With full entitlement status confirmed for 2005, Defenders contends that in the Final Rule the CSP should treat the program as a full entitlement program for eligible producers. By full entitlement, we mean all those producers who meet the minimum criteria for entry are eligible to participate.

GENERAL COMMENTS

Our general comments are centered on three topics: 1) transitioning the CSP into an uncapped entitlement program, as it was originally intended in the enacting legislation; 2) the status of wildlife species and biodiversity conservation; and 3) giving landowners the flexibility to address problems in innovative ways.

1. Transitioning to implementation of CSP as a full, uncapped program

By Federal legislation in the FY 2005 budget, the CSP is no longer a capped program and there is no need to limit participation by watershed, producer categories, or lower payments. The Interim Final Rule should have been written with the assumption that funding caps would not continue into the future. Even with an uncapped program, the NRCS contends that it does not have the technical assistance capacity to implement a program that is available to all eligible producers. Defenders finds this rationale somewhat confusing, given that for FY 2004 sign-ups alone the Service appears to have allocated \$6 million for technical assistance for a limited program and that a great deal of technical assistance time and funds were saved with the Self-Assessment Tool.

The final interim rule limits participation and expenditures by: 1) limiting sign-up periods; 2) limiting participation to priority watersheds; 3) limiting participation to pre-defined enrollment categories and sub-categories; 4) reducing stewardship (base) payments by applying a reduction factor; and 5) limiting the type and number of existing and new practice payments. Furthermore, in the rules for the initial sign-up announcement in June 2004, and again in the Interim Final Rule, NRCS proposes to only pay a percentage of the total combined unadjusted stewardship payment, existing practice payment, and the enhancement payment that a producer would be eligible to receive. For Tier I this is a reduction of 85%, for Tier II 75%, and for Tier III 60%. In light of funding uncertainty, NRCS maintains that this approach will create an appropriate balance between allowing the largest number of participants and providing meaningful payments. Although we discuss this reduction mechanism further in our Specific Comments below, this arbitrary guidance clearly compromises the established legal maximum allowable in the statute of payments for each Tier (\$20,000 for Tier I, \$35,000 for Tier II, and \$45,000 for Tier III) and undermines the programmatic goal of adequately compensating producers and landowners in providing invaluable public goods of soil conservation, improved water quality and habitat and species protection on their private lands.

In general, the Rule as currently crafted, demands that producers and landowners to do more through high eligibility standards, but cuts back on the statutory level payments that they can receive in return. With the proposed minimum eligibility criteria combined with the imposition of enrollment categories, producers should be getting payments up to or near the maximum allowable.

1. Status of Wildlife and Biodiversity Conservation

The Interim Final Rule continues to place emphasis on improving soil and water quality as priority resources of concern, with the Chief of the NRCS given the discretion to assign priority to other resource concerns in any one particular sign-up. According to the background material, conservation of endangered species and their habits were considered important criteria in the selection of two of the watersheds selected for participation in the FY 2004 sign-up. While Defenders appreciates the need to protect soil and water quality resources, our organization also maintains that species and biodiversity restoration and conservation should be co-equal with other resources of concern, as stipulated in the authorizing legislation for the CSP. In the future, more and more effort will have to be directed at protecting threatened, endangered, candidate and at risk species on private working lands. We believe the CSP can make a significant contribution to this effort, producers are encouraged to address wildlife issues at all levels of program participation.

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In the discussion leading up to the Rule, NRCS indicated that it has deleted the term “at risk” to describe species that should be targeted as a priority resource of concern because the term is too vague and subject to several interpretations. In its place, the Service has substituted the language “important wildlife and fisheries” habitat (1469.6 (a) and (b)). The definition of “important” remains unclear. Defenders proposes that “important” be defined as either a federal Candidate species or a state protected species, or whatever the equivalent term for each state is. Without this clarification, there is a danger that the CSP will be interpreted solely applicable to game species, may not be applied to address the problem of invasive species, and would not help producers and landowners address problems of species and habitats that are clearly on the decline.

1. Local Flexibility

Although Defenders understands the need for the Service to provide guidance on acceptable management practices for resource conservation through the Field Office Technical Guides (FOTG), the predetermination of specific management practices *at the national level* that will be eligible for cost-share under each CSP sign-up is both economically inefficient and socially inequitable. There must be a great deal of flexibility at the state and local level as to which management practices and activities can successfully address the resources of most concern identified, including new and innovative practices that may not be in the FOTG. Producers and landowners need flexibility in meeting resource problems, and many may be implementing practices or activities that are more effective and efficient than those found in the FOTG. Furthermore, the imposition of pre-determined eligible management practices limits those who can apply to the program, even though those left out may be attaining a higher standard of conservation performance to important resource concerns in their area. The science of economics has long recognized, as have policy makers in the field of natural resource conservation, that instituting specific technical standards is far less efficient than allowing producers to choose from a menu of practices or setting a performance standard and allowing producers to choose the best way of getting there. Defenders believes that the selection of practices to meet specific resources of concern should not be pre-determined at the national level, but should be done at the state level through discussion between the State Conservation office and the producers. We see a role at the national level for review and concurrence, but not in the establishment of a predetermined list of eligible practices.

Specific Comments and Recommendations

Section 1469.1 Applicability

Include important wildlife and wildlife habitat as explicit resources of concern, in addition to those listed in the authorizing legislation.

Section 1469.2 Administration

No comment.

Section 1469.3 Definitions.

Defenders appreciates the inclusion of the definition of “Considered to be planted.”

Rangeland. Defenders of Wildlife suggests deletion of the specific reference to acreage planted in crested wheatgrass within the definition of rangeland. We recognize that non-native species cover can have forage and wildlife value, and lands containing non-native species will be counted among rangeland acreage. However, some research indicates that, compared to native cover, crested wheatgrass cover lowers soil carbon and nitrogen content (Christian and Wilson 1999), thus reducing soil quality, one of the main resources of concern of the CSP. Therefore we question its explicit inclusion in the definition of rangeland. Defenders believes that control of invasive species and restoration of native species on rangeland is an important goal and should be rewarded under the CSP; therefore we object to the emphasis on non-native species, particularly crested wheatgrass, within the definition of rangeland.

Section 1469.4 Significant resource concerns

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In the Interim Final Rule, NRCS retained soil and water quality as the two significant resource concerns because they are “essential to all agricultural operations and provide the best yardstick for measuring commitment to conservation.” Other proposed resource concerns, which included air quality, wildlife, fish, plant and animal germ plasma, energy conservation, and biodiversity were not added. The Rule does allow NRCS to designate additional resource concerns in the future if it so chooses.

Defenders is opposed to the selection of entry into the CSP based on meeting the quality criteria for only water and soil quality resource concerns for two basic reasons. First, the CSP was enacted to allow landowners choose those resource concerns they want and are eligible to address. Second, landowners who are implementing practices that address other resource concerns, for instance, those who are protecting and enhancing habitats for imperiled wildlife or innovatively managing invasive species, would be unfairly excluded from the program.

As Defenders suggested in the APRM, states should be allowed to name up to three other resources of concern, such as wildlife habitat, air quality, and energy conservation. Then, Tier I and II applicants could choose to address two national or one national and one state resource of concern from among those five on parts (Tier I) or all (Tier II) of their operation. We feel that such a system would allow producers the flexibility they need to use CSP to address a wide range of natural resource concerns on their operations, and would ultimately generate higher public environmental benefit. Our suggestion is broader than NRCS’s proposed rule and allows for more locally led conservation, while still remaining more stringent than the original legislation, which required only one resource of concern to be addressed at Tier I and didn’t specify which resources producers should address. States could select up to 6, two of which must be soil quality and water quality, with producers choosing to address at least two to the non-degradation standard.

For soil quality, NRCS has set as a minimum requirement the achievement of a positive Soil Condition Index. For other resource concerns, we recommend that NRCS soon evaluate and choose similar performance-based indicators to measure resource conditions.

Section 1469.5 Eligibility requirements

The Rule states that the minimum requirement for wildlife resources to be eligible for Tier III is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5. This eligibility requirement needs further definition and clarification to include emphasis on endangered and at-risk species.

Section 1469.6 Enrollment criteria and selection

In the discussion leading up to the Rule, NRCS stipulated that there would be two key eligibility provisions: enrolling only selected watersheds (the watershed approach) and delimiting enrollment categories. These limitations were justified in light of the fiscal constraints imposed on the FY 2004 CSP budget. However, NRCS also indicated that “Prompt use of these elements provides a practical means of implementing the program in FY 2004 and staying within the statutory funding and technical assistance constraints. NRCS has invited comment for using these criteria for administering CSP in 2005 and future years. In the Rule, NRCS states that if there are no budget caps, then all watersheds, and presumably all producers in those watersheds meeting minimum entry criteria set for each Tier, would be able to apply and receive the program. This needs to be stipulated more clearly in terms of defining a Rule based on two scenarios: with and without budget limitations.

Section 1469.6(a) Priority Watersheds

Without Budget Caps

All producers meeting the minimum conservation criteria in all watersheds would be eligible for enrollment, as intended in the authorizing legislation. With an uncapped CSP, Defenders opposes the proposed use of priority watersheds. Nationwide availability is a cornerstone of the Conservation Security Program as drafted into law. The proposed priority watersheds approach, in our understanding, would mean that any given producer would have the opportunity to apply for the CSP only once over a 5 to 9 year period, depending on the rotation of watershed selection. For those producers with Tier I contracts limited to five years, this would mean that some willing producers might have

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to wait up to four years to apply for renewal. Combined with the current language in the proposed rule related to the stringent requirements for renewing contracts (NRCS Chief's approval only), the watershed approach violates an underlying principle of the CSP to *maintain environmental improvements over the long term*.

With Budget Caps

In circumstances where the CSP financial assistance remains capped, NRCS through the Interim Final Rule has indicated that it will maintain the watershed approach for two reasons: to focus on the most achievable environmental performance areas and to deal with management constraints due to limits on technical assistance. With more funding, NRCS has indicated that more watersheds included. NRCS contends that using the watershed approach allows for improved watershed-scale planning, program execution, and monitoring and evaluation of results.

NRCS has indicated that the criteria for prioritizing watersheds (as was done in the FY 2004 sign-up) will include existing natural resources, the level of existing conservation activity (as measured by enrollment in NRCS conservation programs), some measure of environmental quality, and agricultural activity data. Several other factors will include, but not be limited to: the potential for surface or groundwater degradation; the potential for soil degradation, state or national conservation and environmental issues, (i.e. location of air non-attainment zones or important wildlife habitat); and local availability of management tools (i.e. adequate quantity and quality of NRCS staff) needed to more efficiently operate the program. For the first sign-up, preferences for watershed selection also included the potential for assisting in the recovery of threatened or endangered species or adding measurably to critical resource recovery efforts.

In instituting the watershed approach, Defenders recognizes several potential problems that must be recognized and resolved.

1. By selecting priority watersheds on the basis of vulnerability, it would target farms in the watersheds with the most problems, rather than taking the "reward the best" stewards approach promised in the original law. A perfect example of this problem was the selection of the Blue Earth Watershed in Minnesota for the FY 2004 sign-up. The Blue Earth is extremely impaired and very few producers were excluded. Nearly 80% of the producers that were enrolled in the program were only at Tier I. That has allowed some producers to get into the program that may have had a history of damaging the water resources in the region. Logically, one would not expect that the watersheds with the most natural resource concerns will have the best stewards. We suggest that NRCS (and FSA through CRP continuous sign-up) devote its substantial resources from other incentive programs (EQIP, WRP, etc) to those watersheds that are highly impaired and apply CSP funding to support those producers who are already engaged in viable and beneficial resource protection, irrespective of where they are located.
2. Without open or year-round enrollment, the watershed approach could result in sign-up periods that coincide with planting or harvesting seasons and thus result in producers missing a chance to enroll. If watersheds are only eligible in a rotation of every 5-8 years, then one missed sign-up could be very discouraging for producer participation. This is a real problem. Defenders has heard from producers in Oregon that because the Umatilla watershed 2004 sign-up took place during wheat harvesting season, many eligible producers found it difficult to take the time to sign-up. This may have been a problem in other watersheds as well. Even in the event of a budget cap, NRCS could operate the program with a continuous application process and periodic selection of program participants, much as it currently administers the EQIP program.
3. Producers in a nominated watershed who are eligible, but not selected, may have little incentive to continue or improve their stewardship practices into the future, since they would not be able to apply again for many years. This approach could create perverse incentives that encourage good stewards to abandon any practices that take time or money to maintain. For those producers not selected for CSP, NRCS must have other program options available, and should inform and assist both unsuccessful applicants, and those producers who choose not to apply on the basis of the self-assessment process.
4. The watershed approach would seemingly make it nearly impossible to achieve the enhancement payment criteria for "cooperating with other producers to implement watershed or regional resource conservation plans that involve at least

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75% of the producers in the targeted area.” Since it is unlikely that 75 percent of producers in a targeted area or watershed would participate in CSP in a single year, the watersheds approach removes this enhancement payment and incentive. For example, only 50% of the producers in the Umatilla watershed were signed-up. This is particularly important because NRCS has repeatedly emphasized the importance of enhancement payments within the overall payment structure.

5. Unless the watershed rotation matches the contract renewal cycle, producers whose contracts are ending would have to wait until their watershed came up again before re-enrolling in the program. This situation would fail to create the incentive for producers to maintain practices in place, and thus fail to achieve the goals of the CSP to *effectively* address *over the long term* major resource concerns and improvements.

In the event of program budget caps, Defenders recommends the following watershed selection criteria:

1. Choose watersheds in which farmers and ranchers are already moving toward good stewardship. In particular, NRCS should focus on watershed with a concentration of commodities/trade groups that have already put together sustainable standards for stewardship. This kind of targeting will increase the likelihood that funding will go toward the best stewards.
1. Choose watersheds in which there is a strong chance that farmers and ranchers will work together to maximize scale effect. For example, NRCS should look at already existing watershed groups or Resource Conservation Districts with strong participation.
1. Choose watersheds in which farmers and ranchers are not receiving much in conservation dollars. In particular, watersheds receiving a great deal of EQIP funding should be given lower priority for CSP funding. CSP is intended to reward good stewardship, not to provide assistance in complying with existing laws.
1. Choose watersheds in which there are the best documented impacts (e.g., threatened and endangered species, water quality impacts, air quality, loss of particular land types such as riparian areas and oak woodlands) and the best potential for improvement. This will focus CSP dollars in areas that maximize the opportunity for success.
1. Choose watersheds with a greater concentration of low income farmers. This will provide an opportunity to maximize the direct individual economic benefit of the CSP dollars.

Section 1469.6(b) Enrollment Categories and Subcategories

On May 4, 2004 NRCS announced its intention to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion. The enrollment categories add an entire system of complexity that was not envisioned by the law, and it was implemented with little opportunity for public analysis and comment. There were eight enrollment categories, designated as A-H, for cropland, pasture land, and rangeland. Generally, category H represents the minimum eligibility criteria for each Tier, and category A represents the minimum criteria plus the current use of two additional conservation practices *and activities*. Eligible conservation practices and activities are pre-defined. Other enrollment categories include the specific resource concerns treated and a producer's willingness to achieve additional environmental performance or conduct enhancement activities. The Interim Final rule states that “The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures.”

In addition to enrollment categories, NRCS further states that it may use sub-categories to further distinguish who is eligible to participate and who is not. These sub-categories include the willingness of participants to participate in local conservation enhancement activities; limited resource producers, water quality priority areas for nutrient or pest management; locally important wildlife/fisheries habitat creation and protection or other categories as determined by the Secretary.

Although Defenders understands that NRCS would like to select farmers for participation in the CSP based on a high level conservation effort (Category A signifying more effort and activity beyond the minimum required to get into the program at Category H), Defenders also believes that the existing eligibility criteria at each Tier is stringent enough for entry. For example, for existing Tier I eligibility, a producer must already be meeting soil and water quality resource concerns at the non-degradation level over part of the farm, which involves implementing several management practices and activities. While it is understandable to want to include growers who may be doing more than the minimum (but who are not at Tier II), it would be unfair to exclude those growers that qualified for entry at the Category H level. Defenders recommends that for those producers implementing the above-minimum activities and practices defined in Categories G through A, that those activities be considered as the basis for graduated enhancement payments. In this way, if funding precluded enrollment of all qualified applicants within a given Tier, NRCS could prioritize those applications that have the highest number of enhancement activities (as defined by the Categories).

Defenders recommends that a thorough analysis of the FY 2004 enrollment be conducted to determine the numbers of producers that were funded at each Tier level in each watershed by the Category in which they were accepted. For example, for the Umatilla watershed we know that there are 26 Tier I contracts, 883 Tier 2 contracts, and 505 Tier 3 contracts. Within each Tier, what was the distribution of selected Categories, and how many applications were turned down because they were only in category H?

There are other disadvantages to enrollment categories that we see. First, it complicates the program rules and may discourage producers from enrolling. Second, those activities and practices currently accepted are based on existing NRCS FOTG specifications. We believe the eligible practices and activities should be based on a broader list than those contained in the FOTG. Furthermore, as defined, the categories favored the enrollment of crop monocultures or simple rotational systems, with assumptions about climatic and soil conditions that are not appropriate for many regions. Overall, the enrollment categories paid little attention to the wide diversity of agricultural operations, soil conditions, climatic conditions and other variables in the wide area and nationwide area that the CSP is intended to serve.

Section 1469.7 Benchmark condition inventory and conservation stewardship plan

The Interim Final Rule states as part of the benchmark condition inventory and conservation stewardship plan that a producer will provide information that will “enable evaluation of the effectiveness of the plan in achieving environmental objectives” and include, “to the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract would achieve.” Defenders supports both of these requirements and encourages the Service to develop a system of biological, physical, and economic indicators for evaluating the performance of conservation activities and practices.

Section 1469.8 Conservation practices and activities

In Defenders’ view, the current language describing how conservation practices and activities is too restrictive: “The Chief will provide a list of structural and land management activities and practices eligible for each CSP payment component.” In our view, the states should have the primary input into which practices are more relevant to their specific resource concerns, with the national office taking on more of an oversight role. In addition, producers will have more flexibility in addressing the resource concerns on their farms and ranches.

As we have noted above with respect to enrollment categories, some of the listed stewardship activities favor crop monocultures over diversified systems. In the 2004 signup, areas in the Umatilla with less common crop types (watermelons, onions, orchards, weekend farmers) had lower rates of participation because of the specified conservation practices and activities were not relevant to their farm operations. Less attention was given to identifying suitable practices for specialty crops. Furthermore, inclusion of “Minimize the use of pesticides by using pest resistant plant varieties” as a cropland stewardship activity, while not mentioning other ways to minimize pesticide use, such as organic production systems and integrated pest management, will potentially direct CSP away from the best stewards. Thus, practice standards need to be developed for a larger category of crops if farmers in other areas of the country are going to benefit.

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In addition, Defenders believes it is important to make explicit partial field practices eligible for CSP including, but not limited to windbreaks, grass waterways, shelter belts, filter strips, riparian buffers, wetland buffers, contour buffer strips, living snow fences, crosswind trap strips, field borders, grass terraces, wildlife corridors, and critical area planting appropriate to agricultural operation.

Section 1469.9 Technical Assistance

NRCS is seeking comment on what should be the appropriate tasks of certified Technical Assistance Providers (TSP). The possible roles of the TSP as outlined in Section 1469.9(b) are adequate, with the possible exception of assessing applications. Defenders believes that TSP may assist producers to assess an application for completeness of information, but that any ranking or acceptance of producer application must be done by NRCS staff. Defenders also believes that only NRCS should evaluate of project outcomes and performance. Both assessment and evaluation are public trust activities that NRCS should implement.

With respect to evaluation and assessment of an individual's or general CSP program performance, this activity should be carried-out by a team of NRCS, non-governmental conservation organizations and university experts in cooperation with producers and landowners. Overall program performance evaluation should not be assigned to private TSP that have been involved in installing CSP practices.

Section 1469.20 Application for Contracts

No Comment

Section 1469.23 Contract Requirements

No Comment

Section 1469.22 Conservation practice operation and maintenance

No Comment

Section 1469.23 Program Payments

There are four components to the proposed CSP payment structure outlined in the Interim Final Rule, plus an overall adjustment factor. The four components include a stewardship component (formerly called the "base" payment), an existing practice payment, a new practice payment, and the enhancement payment. The adjustment factor is calculated by taking the combined unadjusted stewardship payment, existing practice, and enhancement payment and reducing the amount by a selected percentage rate. Each of these components is discussed separately, below.

By statute, total CSP contract amounts allowable are limited for Tier I at \$20,000 per year; Tier II at \$35,000 per year; Tier III at \$45,000 per year. Defenders believes that for those producers meeting both minimum conditions and implementing several enhancement practices or activities, the producer's actual annual payments should approach these statutory maximums. In the 2004 sign-up, average contract amount was far below the maximum in nearly all watersheds and tier levels. Defenders believes that NRCS should implement CSP with a focus on real rewards for stewardship, rather than using complicated mathematical formulae to limit payments.

1469.23(a) Stewardship (Base) Payment

By authorizing legislation, the Stewardship payment component cannot exceed \$5,000 per for Tier I, \$10,500 for Tier II and \$13,500 for Tier III. Furthermore, the statute very clearly calculates how rental rates are to be converted into the stewardship payment: for Tier I, the producer gets "an amount equal to 5 percent of the applicable base payment for land covered by the contract {1238C (1)(C)(I)}; at Tier II, "an amount equal to 10 percent of the applicable base

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payment for land covered by the conservation security contract” {§1238C(1)(D)(I)}; and at Tier III, “An amount equal to 15 percent of the base payment for land covered by the conservation security contract” {§1238C(1)(E)(I)}. For example, if land rented for \$50 per acre, the maximum amount that a producer could receive per acre for the stewardship payment would be \$2.50 under Tier I, \$5.00 under Tier II, and \$7.50 under Tier III. Recall that the stewardship payment is designed to compensate the landowner for the opportunity cost of his land and expenditures that provide public benefits in the form of resource conservation. Furthermore, the stewardship payment is based on local land *rental* rates, not land *values*, the latter of which can be quite a bit higher and reflect the true opportunity cost of land in many places.

In the APRM, NRCS proposed rule that to institute an additional 90% reduction factor for the stewardship payment. That is, the stewardship payment would only be 10% of the amount calculated for each Tier. For the example given above, this would mean that a landowner/producer would only receive \$0.25 per acre per year for the stewardship component of the CSP payment. In response to this proposal, Defenders provided detailed calculations and comments showing that landowners would not be attracted into the program at such low rates and that these rates did not adequately reflect the conservation contribution of landowners.

In response to the many comments received by NRCS regarding this reduction factor, the Service changed the reduction factor for all tiers from .1 in the APRM to .25 for Tier I, .5 for Tier II, and .75 for Tier III. In the narrative to the Interim Final Rule, NRCS gave two reasons for using these reduction factors in the stewardship payment: “First, this will provide incentives for producers to move to higher tiers which will provide significantly higher benefits. Second, the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate to the payment scheme.”

Defenders finds these reasons unconvincing. First, the limits set on the total payment allowable under the stewardship component already provides an incentive for producers to move to higher tiers, as does the increased percentage of the per acre stewardship payment that a landowner can receive. Second, in many areas of high development pressure, the use of agricultural land rental rates undervalues the actual opportunity cost of land that stays in production.

Defenders strongly supports the stewardship payment structure enacted in the authorizing legislation, without NRCS’ proposed reduction factors. The reduction factors not only make program application and administration more complicated, but could eventually discourage producers from applying. The objective of the CSP is to reward the best, not to cut payment levels in order to reduce budgetary impacts.

Defenders of Wildlife recognizes that another possible structure for stewardship payments would be to set them with respect to local agricultural land values instead of cash rental rates. If land values were used, we would agree that it would be useful to explore the use of reduction factors at least as high as those suggested in the Interim Final Rule, and would welcome the opportunity to work with NRCS to arrive at an equitable figure for the reduction.

Section 1469.23(b) Existing Practice Component of the CSP

The Interim Final Rule proposes that the Chief will determine which practices will be eligible for existing practice payments and the payments will be based on a percentage of the 2001 county cost. Furthermore, the Chief may offer alternative payment methods, such as percentage of the stewardship payment (not to exceed 75%, or 90% for beginning farmers).

Defenders believes that payments for existing practices should not be based on Stewardship payments that are themselves based on land rental rates (or values), but on the actual cost of technology or management practice used. Land rental or value rates are not an adequate proxy for the actual costs of implementing and maintaining management practices, especially labor costs.

The Interim Final Rule also proposes that the Chief may reduce the existing payment practice rates in any given sign-up notice. Defenders believes that this is arbitrary and will discourage producers from enrolling in the program because of uncertainty over which practices will be eligible and which are not. There is no incentive for producers to adopt practices prior to signing up if there is no guarantee that the practice will qualify for payment in future years.

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Section 1469.23(c) New Practice Payments

The Interim Final Rule states that the Chief of the NRCS may determine which practices are eligible for new practice payments. These payments are not to exceed 50% of average county costs for the 2001 crop year. "NRCS intends to set appropriate cost-share practice payments at rates similar to or less than the EQIP rates, but no more than 50%". Furthermore, the Chief can reduce the rates in any given sign up.

Defenders recommends that the CSP cost-share payment rates be equivalent to those found in EQIP and related conservation programs for any particular practice. Defenders opposes a lower CSP cost share on the grounds that it will discourage participation in the program. This approach will not encourage participants to install practices using EQIP because of the higher transaction costs in carrying-out the administrative requirements to apply to two programs versus one. Furthermore this approach serves as a dis-incentive to producers who have enacted stewardship practices on their own rather than through EQIP. If NRCS wishes producers to install practices using cost-share money from other programs, such as EQIP, it should take an incentive-based rather than proscriptive approach. For instance, rather than demand that producers apply for other programs in order to become eligible for CSP, NRCS could revise the EQIP rule to treat preferentially those applications whose implementation will qualify them for CSP, or for Tier advancement for those producers who are already enrolled in CSP.

NRCS should also consider setting adjustable cost-share rates based on annual county costs. For example, instead of using 2001 figures, cost-share rates should be calculated on the basis of the previous year before enrollment, thus taking into account inflation factors. In addition, the Final Rule should address how expenses related to on-farm testing and demonstration of innovative technologies will be reimbursed.

1469.23(d) Enhancement Payments

The statute authorizing the CSP authorizes payments for the following types of enhancement activities: (a) the improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements; (b) an improvement in a priority local resource condition; (c) participation in an on-farm conservation research, demonstration or pilot project; (d) cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area; and (e) implementation of assessment and evaluation activities relating to practices included in the CSP. These activities are acknowledged in the Interim Final Rule.

Section 1469.23(d)(1) stipulates that the Chief of the NRCS will establish a list of conservation activities that are eligible for enhancement payments for a given sign-up and will tailor the list to the needs of selected watersheds. Defenders recommends that practices and activities related to resource-conserving crop rotations, rotational grazing, and buffers be explicitly listed as enhancement activities, as specified in the authorizing legislation.

While selection of enhancement practices and utilities by the Chief may add flexibility to the program, it also is a source of uncertainty for producers over what practices and activities will be eligible. Defenders recommends that practices and activities be announced as far in advance as possible of actual sign-ups.

NRCS as indicated that it will not limit enhancement payments for preservation of threatened and endangered species. However, NRCS has said that CSP will provide enhancements for improving wildlife habitat for a broad range of plant and animal species, including threatened and endangered species. Defenders recommends that because agricultural land owners are very important in preventing habitat degradation that those landowners/producers proposing to improve species and wildlife habitat be given preferential consideration.

Defenders strongly supports the enhancement activities associated with research and demonstration and assessment (monitoring) and evaluation or CSP projects. Particularly in the case of evaluation, indicators of environmental improvement will have to be developed in order to go to the eventual "performance-based" agro-environmental policy that the CSP embodies. To this end, Defenders recommends that the proposed "performance or index outcomes scale" for all resources of concern be better defined. For species and wildlife habitat conservation activities Defenders offers

its services in defining what performance or outcome indicators may be most appropriate.

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Section 1469.23(e) Contract Limitations

In addition to the statutory limits for total CSP payments by Tier, and the amounts allowed for the stewardship component, NRCS is proposing in the Interim Final Rule to further limit CSP payments by providing that the combination of the non-reduced stewardship, existing management, and enhancement payments not exceed the a pre-determined percentage. New practice payments are not included in the adjustment. For Tier I this percentage is set at 15%, 25% for Tier II, and 40% for Tier III. These adjustment factors were implemented during the FY 2004 sign-up across the 18 pilot watersheds.

The reason given by NRCS in the Interim Final Rule narrative was that there was a need to reduce contract payments in order to avoid distortions to land prices. Such distortions would be caused by conservation payments being capitalized into land rental rates. This analysis and conclusion is unsound at the best. Land rental rates are determined by their potential for agricultural or development potential, not the level of resource conservation activity taking place on those lands. The CSP provides payments that reward producers for being good land stewards and for providing non-market environmental benefits to the public. To claim that CSP conservation payments would have the same effect on land prices as commodity price support payments is misleading and incorrect.

In addition to false land price issue, further payment reductions embodied in the proposed payment and contract limitations are entirely contradictory to the statute and spirit of the CSP. Defenders recommends that they be dropped immediately in the Final Rule. It is Defenders' understanding that those producers that signed up in the Umatilla watershed for FY 2004 were very unhappy with these reductions. The reductions make it mathematically impossible for a producer to reach the statutory caps. Furthermore, NRCS staff were placed in an awkward position of having to explain why the Interim Final Rule reduced the amount of payment a landowner could get to below the statutory limit. Producers felt cheated by the contradictory rules, which may influence future sign-ups.

Section 1469.23(h) Pro-Rating Payments

This section states that "In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year." Defenders is opposed to pro-rating for two basic reasons. First, once NRCS has signed a binding and legal contract for the provision of specified conservation activities and performance, it is obligated to pay the amount agreed to over the life of the contract. Producers/landowners are not allowed to "pro-rate" the conservation requirements they are being given payment for. Second, pro-rating sends the wrong signal to producers wanting to enroll in the CSP. If producers are uncertain over receiving the contracted amount in future years, especially given the reduction factors discussed in the previous section, we see little incentive for producers to enroll in the program. This clause on pro-rating payments should be deleted in the Final Rule. NRCS should reimburse current contracts first before accepting any new applications.

Other Significant Issues

(1) Periodic versus Continuous Sign-ups and Renewals

In the Interim Final Rule, NRCS has indicated that it will only offer discrete, periodic sign-ups: "In order to manage the program, NRCS will continue to offer discrete sign-up periods initially," with an option of moving to year-round sign-ups. Based upon the experience in the Umatilla watershed, Defenders understands that the FY 2004 sign-up was a challenge for producers, coming at the time of the mid-summer wheat harvest. Because of this constraint, some landowners didn't take the time to apply and invest the significant amount of time in doing so because of the uncertainty of receiving funding.

As we noted in our comments on the Proposed Rule, Defenders of Wildlife opposes the concept of periodic CSP signups. CSP will operate most efficiently, and with the least burden on NRCS staff and technical assistance providers, if producers have the flexibility to submit their applications year-round. NRCS could run CSP similar to its application acceptance process for EQIP, where applications are accepted on a continuing basis, but with a set and widely

publicized date for evaluations to take place each year.

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With respect to contract renewal in the Interim Final Rule, the NRCS response was that “Although a subsection was considered, there is no need to repeat direction from the statute.” The language in Final Rule should be more explicit than this vague statement.

One of the major beneficial features of the CSP law is to reward landowners who practice effective conservation and to continue to reward them as they continue to do so. Failing to provide *explicit* provisions for contract renewal goes against the intent of the legislation. The process for renewal of contracts (renewal approved only by the Chief of the NRCS) defeats the purpose of the CSP to provide *and maintain* long term resource protection activities. Without the positive and certain option of renewal to continue resource conservation, CSP becomes just another practice-based, short-term program. Defenders strongly recommends that as long as producer-contractors are in compliance with all contract provisions and continue to provide environmental benefits, their contracts should be renewed. This should be made *explicit* in the Final Rule.

(2) Monitoring and Evaluation of Environmental Performance

Self-Assessment Screening Tool

In general, the self-assessment screening tool adopted by NRCS for producers to gauge their initial eligibility has been a success. In the Umatilla watershed, the self-assessment tool provided by the Oregon Food Alliance proved to be easier for landowners to follow. After careful scrutiny, the Oregon NRCS staff found that a grower certified under the Oregon Food Alliance would meet program qualifications for Tier III. Thus, consideration should be given in the Final Rule to the use of assessment methods other than the NRCS screening tool.

Monitoring and Evaluation

The Final Interim Rule states that “Quantifying the natural resource and environmental improvements delivered will be achieved at the micro and macro scales over time. At the field level, environmental performance will be observed and documented through producer-based studies and evaluation and assessment components of CSP.” Defenders supports these goals because they will increase future program effectiveness and efficiency. In order to achieve these benefits, however, financial resources must be provided and the Final Rule should stipulate how much funding will be allocated to this effort.

NRCS should encourage the development and testing of farm-level indicators to measure environmental quality improvements as a result of participation in the CSP program. Monitoring activities should take place on a sample of operations that are stratified by resource of concern, ecological zone, management practices implemented, and Tier of participation. Assessment projects in which participants would be actively engaged could include habitat and at-risk wildlife monitoring, periodic measurement of water quality, soil nutrient testing, and progress in controlling soil erosion. An adequate level of on-farm training in these skills may be necessary.

On-Farm Research and Demonstration

The final interim rule is silent on research and demonstration. Defenders believes that the Final Rule should reference more detailed on-farm research and demonstration information and protocols that should be made available through additional, forthcoming materials. Those materials should include instructions for establishing cooperative agreements with entities with demonstrated capabilities coordinating and providing technical assistance for on-farm conservation research and demonstration. Farmers should be encouraged to undertake CSP on-farm research projects and demonstrations in coordination with non-governmental organizations with experience in running on-farm research programs and/or in cooperation with other USDA, land grant or cooperative extension on-farm research initiatives.

Thank you for your attention to the comments of Defenders of Wildlife.

Sincerely,

Frank Casey, Ph.D.
Director, Conservation Economics Program

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Aimee Delach
Senior Program Associate

References:

Christian, J.M. and S.D. Wilson. 1999. Long-term ecosystem impacts of an introduced grass in the northern Great Plains. *Ecology* 80(7):2397-2407.

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Aimee Delach
Senior Associate, Species Conservation Division
Defenders of Wildlife
1130 17th Street NW
Washington, DC 20036
202-772-0271

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October 5, 2004

Comments Submitted by Defenders of Wildlife to the Natural Resources Conservation Service and the Commodity Credit Corporation in Response to the Proposed Interim Final Rule for the Conservation Security Program (7 CFR Part 1469)

Financial Assistance Programs Division
Natural Resources Conservation Division
P.O. Box 2890
Washington, DC.
Delivered via email to FarmBillRules@usda.gov

Attention: Conservation Security Program

Defenders of Wildlife welcomes this opportunity to comment on the Proposed Interim Final Rule for implementation of the Conservation Security Program. Defenders of Wildlife is a conservation organization with over 480,000 members and supporters nationwide, dedicated to the conservation of native species and the habitats upon which they depend. Defenders has been a vocal supporter of the Conservation Security Program since its inception, and we are committed to its successful implementation as a full, national entitlement program supporting producers who take measures to be good stewards on their lands.

Since the comment period ended for the Advanced Notice of Proposed Rule Making on March 2, 2004, it is apparent that a lot of thought and work has gone into defining how the final Conservation Security Program rule would operate. However, the Interim Final Rule's basic premise is that financial and technical assistance funds will be limited and therefore the Natural Resources Conservation Service (the Service) must find mechanisms to limit participation. With full entitlement status confirmed for 2005, Defenders contends that in the Final Rule the CSP should treat the program as a full entitlement program for eligible producers. By full entitlement, we mean all those producers who meet the minimum criteria for entry are eligible to participate.

GENERAL COMMENTS

Our general comments are centered on three topics: 1) transitioning the CSP into an uncapped entitlement program, as it was originally intended in the enacting legislation; 2) the status of wildlife species and biodiversity conservation; and 3) giving landowners the flexibility to address problems in innovative ways.

(1) Transitioning to implementation of CSP as a full, uncapped program

By Federal legislation in the FY 2005 budget, the CSP is no longer a capped program and there is no need to limit participation by watershed, producer

categories, or lower payments. The Interim Final Rule should have been written with the assumption that funding caps would not continue into the future. Even with an uncapped program, the NRCS contends that it does not have the technical assistance capacity to implement a program that is available to all eligible producers. Defenders finds this rationale somewhat confusing, given that for FY 2004 sign-ups alone the Service appears to have allocated \$6 million for technical assistance for a limited program and that a great deal of technical assistance time and funds were saved with the Self-Assessment Tool.

The final interim rule limits participation and expenditures by: 1) limiting sign-up periods; 2) limiting participation to priority watersheds; 3) limiting participation to pre-defined enrollment categories and sub-categories; 4) reducing stewardship (base) payments by applying a reduction factor; and 5) limiting the type and number of existing and new practice payments. Furthermore, in the rules for the initial sign-up announcement in June 2004, and again in the Interim Final Rule, NRCS proposes to only pay a percentage of the total combined unadjusted stewardship payment, existing practice payment, and the enhancement payment that a producer would be eligible to receive. For Tier I this is a reduction of 85%, for Tier II 75%, and for Tier III 60%. In light of funding uncertainty, NRCS maintains that this approach will create an appropriate balance between allowing the largest number of participants and providing meaningful payments. Although we discuss this reduction mechanism further in our Specific Comments below, this arbitrary guidance clearly compromises the established legal maximum allowable in the statute of payments for each Tier (\$20,000 for Tier I, \$35,000 for Tier II, and \$45,000 for Tier III) and undermines the programmatic goal of adequately compensating producers and landowners in providing invaluable public goods of soil conservation, improved water quality and habitat and species protection on their private lands.

In general, the Rule as currently crafted, demands that producers and landowners to do more through high eligibility standards, but cuts back on the statutory level payments that they can receive in return. With the proposed minimum eligibility criteria combined with the imposition of enrollment categories, producers should be getting payments up to or near the maximum allowable.

(2) Status of Wildlife and Biodiversity Conservation

The Interim Final Rule continues to place emphasis on improving soil and water quality as priority resources of concern, with the Chief of the NRCS given the discretion to assign priority to other resource concerns in any one particular sign-up. According to the background material, conservation of endangered species and their habits were considered important criteria in the selection of two of the watersheds selected for participation in the FY 2004 sign-up. While Defenders appreciates the need to protect soil and water quality resources, our organization also maintains that species and biodiversity restoration and conservation should be co-equal with other resources of concern, as stipulated in the authorizing legislation for the CSP. In the

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future, more and more effort will have to be directed at protecting threatened, endangered, candidate and at risk species on private working lands. We believe the CSP can make a significant contribution to this effort, producers are encouraged to address wildlife issues at all levels of program participation.

In the discussion leading up to the Rule, NRCS indicated that it has deleted the term "at risk" to describe species that should be targeted as a priority resource of concern because the term is too vague and subject to several interpretations. In its place, the Service has substituted the language "important wildlife and fisheries" habitat (1469.6 (a) and (b)). The definition of "important" remains unclear. Defenders proposes that "important" be defined as either a federal Candidate species or a state protected species, or whatever the equivalent term for each state is. Without this clarification, there is a danger that the CSP will be interpreted solely applicable to game species, may not be applied to address the problem of invasive species, and would not help producers and landowners address problems of species and habitats that are clearly on the decline.

(3) Local Flexibility

Although Defenders understands the need for the Service to provide guidance on acceptable management practices for resource conservation through the Field Office Technical Guides (FOTG), the predetermination of specific management practices *at the national level* that will be eligible for cost-share under each CSP sign-up is both economic inefficient and socially inequitable. There must be a great deal of flexibility at the state and local level as to which management practices and activities can successfully address the resources of most concern identified, including new and innovative practices that may not be in the FOTG. Producers and landowners need flexibility in meeting resource problems, and many may be implementing practices or activities that are more effective and efficient than those found in the FOTG. Furthermore, the imposition of pre-determined eligible management practices limits those who can apply to the program, even though those left out may be attaining a higher standard of conservation performance to important resource concerns in their area. The science of economics has long recognized, as have policy makers in the field of natural resource conservation, that instituting specific technical standards is far less efficient than allowing producers to choose from a menu of practices or setting a performance standard and allowing producers to choose the best way of getting there. Defenders believes that the selection of practices to meet specific resources of concern should not be pre-determined at the national level, but should be done at the state level through discussion between the State Conservation office and the producers. We see a role at the national level for review and concurrence, but not in the establishment of a predetermined list of eligible practices.

Specific Comments and Recommendations

Section 1469.1 Applicability

Include important wildlife and wildlife habitat as explicit resources of concern, in addition to those listed in the authorizing legislation.

Section 1469.2 Administration

No comment.

Section 1469.3 Definitions.

Defenders appreciates the inclusion of the definition of “Considered to be planted.”

Rangeland. Defenders of Wildlife suggests deletion of the specific reference to acreage planted in crested wheatgrass within the definition of rangeland. We recognize that non-native species cover can have forage and wildlife value, and lands containing non-native species will be counted among rangeland acreage. However, some research indicates that, compared to native cover, crested wheatgrass cover lowers soil carbon and nitrogen content (Christian and Wilson 1999), thus reducing soil quality, one of the main resources of concern of the CSP. Therefore we question its explicit inclusion in the definition of rangeland. Defenders believes that control of invasive species and restoration of native species on rangeland is an important goal and should be rewarded under the CSP; therefore we object to the emphasis on non-native species, particularly crested wheatgrass, within the definition of rangeland.

Section 1469.4 Significant resource concerns

In the Interim Final Rule, NRCS retained soil and water quality as the two significant resource concerns because they are “essential to all agricultural operations and provide the best yardstick for measuring commitment to conservation.” Other proposed resource concerns, which included air quality, wildlife, fish, plant and animal germ plasma, energy conservation, and biodiversity were not added. The Rule does allow NRCS to designate additional resource concerns in the future if it so chooses.

Defenders is opposed to the selection of entry into the CSP based on meeting the quality criteria for only water and soil quality resource concerns for two basic reasons. First, the CSP was enacted to allow landowners choose those resource concerns they want and are eligible to address. Second, landowners who are implementing practices that address other resource concerns, for instance, those who are protecting and enhancing habitats for imperiled wildlife or innovatively managing invasive species, would be unfairly excluded from the program.

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As Defenders suggested in the APRM, states should be allowed to name up to three other resources of concern, such as wildlife habitat, air quality, and energy conservation. Then, Tier I and II applicants could choose to address two national or one national and one state resource of concern from among those five on parts (Tier I) or all (Tier II) of their operation. We feel that such a system would allow producers the flexibility they need to use CSP to address a wide range of natural resource concerns on their operations, and would ultimately generate higher public environmental benefit. Our suggestion is broader than NRCS's proposed rule and allows for more locally led conservation, while still remaining more stringent than the original legislation, which required only one resource of concern to be addressed at Tier I and didn't specify which resources producers should address. States could select up to 6, two of which must be soil quality and water quality, with producers choosing to address at least two to the non-degradation standard.

For soil quality, NRCS has set as a minimum requirement the achievement of a positive Soil Condition Index. For other resource concerns, we recommend that NRCS soon evaluate and choose similar performance-based indicators to measure resource conditions.

Section 1469.5 Eligibility requirements

The Rule states that the minimum requirement for wildlife resources to be eligible for Tier III is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5. This eligibility requirement needs further definition and clarification to include emphasis on endangered and at-risk species.

Section 1469.6 Enrollment criteria and selection

In the discussion leading up to the Rule, NRCS stipulated that there would be two key eligibility provisions: enrolling only selected watersheds (the watershed approach) and delimiting enrollment categories. These limitations were justified in light of the fiscal constraints imposed on the FY 2004 CSP budget. However, NRCS also indicated that "Prompt use of these elements provides a practical means of implementing the program in FY 2004 and staying within the statutory funding and technical assistance constraints. NRCS has invited comment for using these criteria for administering CSP in 2005 and future years. In the Rule, NRCS states that if there are no budget caps, then all watersheds, and presumably all producers in those watersheds meeting minimum entry criteria set for each Tier, would be able to apply and receive the program. This needs to be stipulated more clearly in terms of defining a Rule based on two scenarios: with and without budget limitations.

Section 1469.6(a) Priority Watersheds

Without Budget Caps

All producers meeting the minimum conservation criteria in all watersheds would be eligible for enrollment, as intended in the authorizing legislation. With an uncapped CSP, Defenders opposes the proposed use of priority watersheds. Nationwide availability is a cornerstone of the Conservation Security Program as drafted into law. The proposed priority watersheds approach, in our understanding, would mean that any given producer would have the opportunity to apply for the CSP only once over a 5 to 9 year period, depending on the rotation of watershed selection. For those producers with Tier I contracts limited to five years, this would mean that some willing producers might have to wait up to four years to apply for renewal. Combined with the current language in the proposed rule related to the stringent requirements for renewing contracts (NRCS Chief's approval only), the watershed approach violates an underlying principle of the CSP to *maintain environmental improvements over the long term*.

With Budget Caps

In circumstances where the CSP financial assistance remains capped, NRCS through the Interim Final Rule has indicated that it will maintain the watershed approach for two reasons: to focus on the most achievable environmental performance areas and to deal with management constraints due to limits on technical assistance. With more funding, NRCS has indicated that more watersheds included. NRCS contends that using the watershed approach allows for improved watershed-scale planning, program execution, and monitoring and evaluation of results.

NRCS has indicated that the criteria for prioritizing watersheds (as was done in the FY 2004 sign-up) will include existing natural resources, the level of existing conservation activity (as measured by enrollment in NRCS conservation programs), some measure of environmental quality, and agricultural activity data. Several other factors will include, but not be limited to: the potential for surface or groundwater degradation; the potential for soil degradation, state or national conservation and environmental issues, (i.e. location of air non-attainment zones or important wildlife habitat); and local availability of management tools (i.e. adequate quantity and quality of NRCS staff) needed to more efficiently operate the program. For the first sign-up, preferences for watershed selection also included the potential for assisting in the recovery of threatened or endangered species or adding measurably to critical resource recovery efforts.

In instituting the watershed approach, Defenders recognizes several potential problems that must be recognized and resolved.

1. By selecting priority watersheds on the basis of vulnerability, it would target farms in the watersheds with the most problems, rather than taking the "reward the best" stewards approach promised in the original law. A perfect example of this problem was the selection of the Blue Earth Watershed in Minnesota for the FY 2004 sign-up. The Blue Earth is extremely impaired and very few producers were excluded. Nearly 80% of the producers that were enrolled in the program were only at Tier I. That has allowed some producers to get into the program that

may have had a history of damaging the water resources in the region. Logically, one would not expect that the watersheds with the most natural resource concerns will have the best stewards. We suggest that NRCS (and FSA through CRP continuous sign-up) devote its substantial resources from other incentive programs (EQIP, WRP, etc) to those watersheds that are highly impaired and apply CSP funding to support those producers who are already engaged in viable and beneficial resource protection, irrespective of where they are located.

2. Without open or year-round enrollment, the watershed approach could result in sign-up periods that coincide with planting or harvesting seasons and thus result in producers missing a chance to enroll. If watersheds are only eligible in a rotation of every 5-8 years, then one missed sign-up could be very discouraging for producer participation. This is a real problem. Defenders has heard from producers in Oregon that because the Umatilla watershed 2004 sign-up took place during wheat harvesting season, many eligible producers found it difficult to take the time to sign-up. This may have been a problem in other watersheds as well. Even in the event of a budget cap, NRCS could operate the program with a continuous application process and periodic selection of program participants, much as it currently administers the EQIP program.

3. Producers in a nominated watershed who are eligible, but not selected, may have little incentive to continue or improve their stewardship practices into the future, since they would not be able to apply again for many years. This approach could create perverse incentives that encourage good stewards to abandon any practices that take time or money to maintain. For those producers not selected for CSP, NRCS must have other program options available, and should inform and assist both unsuccessful applicants, and those producers who choose not to apply on the basis of the self-assessment process.

4. The watershed approach would seemingly make it nearly impossible to achieve the enhancement payment criteria for “cooperating with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area.” Since it is unlikely that 75 percent of producers in a targeted area or watershed would participate in CSP in a single year, the watershed approach removes this enhancement payment and incentive. For example, only 50% of the producers in the Umatilla watershed were signed-up. This is particularly important because NRCS has repeatedly emphasized the importance of enhancement payments within the overall payment structure.

5. Unless the watershed rotation matches the contract renewal cycle, producers whose contracts are ending would have to wait until their watershed came up again before re-enrolling in the program. This situation would fail to create the incentive for producers to maintain practices in place, and thus fail to achieve the goals of the CSP to *effectively address over the long term* major resource concerns and improvements.

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In the event of program budget caps, Defenders recommends the following watershed selection criteria:

1. Choose watersheds in which farmers and ranchers are already moving toward good stewardship. In particular, NRCS should focus on watershed with a concentration of commodities/trade groups that have already put together sustainable standards for stewardship. This kind of targeting will increase the likelihood that funding will go toward the best stewards.
2. Choose watersheds in which there is a strong chance that farmers and ranchers will work together to maximize scale effect. For example, NRCS should look at already existing watershed groups or Resource Conservation Districts with strong participation.
3. Choose watersheds in which farmers and ranchers are not receiving much in conservation dollars. In particular, watersheds receiving a great deal of EQIP funding should be given lower priority for CSP funding. CSP is intended to reward good stewardship, not to provide assistance in complying with existing laws.
4. Choose watersheds in which there are the best documented impacts (e.g., threatened and endangered species, water quality impacts, air quality, loss of particular land types such as riparian areas and oak woodlands) and the best potential for improvement. This will focus CSP dollars in areas that maximize the opportunity for success.
5. Choose watersheds with a greater concentration of low income farmers. This will provide an opportunity to maximize the direct individual economic benefit of the CSP dollars.

Section 1469.6(b) Enrollment Categories and Subcategories

On May 4, 2004 NRCS announced its intention to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion. The enrollment categories add an entire system of complexity that was not envisioned by the law, and it was implemented with little opportunity for public analysis and comment. There were eight enrollment categories, designated as A-H, for cropland, pasture land, and rangeland. Generally, category H represents the minimum eligibility criteria for each Tier, and category A represents the minimum criteria plus the current use of two additional conservation practices *and activities*. Eligible conservation practices and activities are pre-defined. Other enrollment categories include the specific resource concerns treated and a producer's willingness to achieve additional environmental performance or conduct enhancement activities. The Interim Final rule states that "The Chief may limit new program enrollments in any fiscal year to

enrollment categories designed to focus on priority conservation concerns and enhancement measures.”

In addition to enrollment categories, NRCS further states that it may use sub-categories to further distinguish who is eligible to participate and who is not. These sub-categories include the willingness of participants to participate in local conservation enhancement activities; limited resource producers, water quality priority areas for nutrient or pest management; locally important wildlife/fisheries habitat creation and protection or other categories as determined by the Secretary.

Although Defenders understands that NRCS would like to select farmers for participation in the CSP based on a high level conservation effort (Category A signifying more effort and activity beyond the minimum required to get into the program at Category H), Defenders also believes that the existing eligibility criteria at each Tier is stringent enough for entry. For example, for existing Tier I eligibility, a producer must already be meeting soil and water quality resource concerns at the non-degradation level over part of the farm, which involves implementing several management practices and activities. While it is understandable to want to include growers who may be doing more than the minimum (but who are not at Tier II), it would be unfair to exclude those growers that qualified for entry at the Category H level. Defenders recommends that for those producers implementing the above-minimum activities and practices defined in Categories G through A, that those activities be considered as the basis for graduated enhancement payments. In this way, if funding precluded enrollment of all qualified applicants within a given Tier, NRCS could prioritize those applications that have the highest number of enhancement activities (as defined by the Categories).

Defenders recommends that a thorough analysis of the FY 2004 enrollment be conducted to determine the numbers of producers that were funded at each Tier level in each watershed by the Category in which they were accepted. For example, for the Umatilla watershed we know that there are 26 Tier I contracts, 883 Tier 2 contracts, and 505 Tier 3 contracts. Within each Tier, what was the distribution of selected Categories, and how many applications were turned down because they were only in category H?

There are other disadvantages to enrollment categories that we see. First, it complicates the program rules and may discourage producers from enrolling. Second, those activities and practices currently accepted are based on existing NRCS FOTG specifications. We believe the eligible practices and activities should be based on a broader list than those contained in the FOTG. Furthermore, as defined, the categories favored the enrollment of crop monocultures or simple rotational systems, with assumptions about climatic and soil conditions that are not appropriate for many regions. Overall, the enrollment categories paid little attention to the wide diversity of agricultural operations, soil conditions, climatic conditions and other variables in the wide area and nationwide area that the CSP is intended to serve.

Section 1469.7 Benchmark condition inventory and conservation stewardship plan

The Interim Final Rule states as part of the benchmark condition inventory and conservation stewardship plan that a producer will provide information that will “enable evaluation of the effectiveness of the plan in achieving environmental objectives” and include, “to the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract would achieve.” Defenders supports both of these requirements and encourages the Service to develop a system of biological, physical, and economic indicators for evaluating the performance of conservation activities and practices.

Section 1469.8 Conservation practices and activities

In Defenders’ view, the current language describing how conservation practices and activities is too restrictive: “The Chief will provide a list of structural and land management activities and practices eligible for each CSP payment component.” In our view, the states should have the primary input into which practices are more relevant to their specific resource concerns, with the national office taking on more of an oversight role. In addition, producers will have more flexibility in addressing the resource concerns on their farms and ranches.

As we have noted above with respect to enrollment categories, some of the listed stewardship activities favor crop monocultures over diversified systems. In the 2004 sign-up, areas in the Umatilla with less common crop types (watermelons, onions, orchards, weekend farmers) had lower rates of participation because of the specified conservation practices and activities were not relevant to their farm operations. Less attention was given to identifying suitable practices for specialty crops. Furthermore, inclusion of “Minimize the use of pesticides by using pest resistant plant varieties” as a cropland stewardship activity, while not mentioning other ways to minimize pesticide use, such as organic production systems and integrated pest management, will potentially direct CSP away from the best stewards. Thus, practice standards need to be developed for a larger category of crops if farmers in other areas of the country are going to benefit.

In addition, Defenders believes it is important to make explicit partial field practices eligible for CSP including, but not limited to windbreaks, grass waterways, shelter belts, filter strips, riparian buffers, wetland buffers, contour buffer strips, living snow fences, crosswind trap strips, field borders, grass terraces, wildlife corridors, and critical area planting appropriate to agricultural operation.

Section 1469.9 Technical Assistance

NRCS is seeking comment on what should be the appropriate tasks of certified Technical Assistance Providers (TSP). The possible roles of the TSP as outlined in Section 1469.9(b) are adequate, with the possible exception of assessing applications. Defenders

believes that TSP may assist producers to assess an application for completeness of information, but that any ranking or acceptance of producer application must be done by NRCS staff. Defenders also believes that only NRCS should evaluate of project outcomes and performance. Both assessment and evaluation are public trust activities that NRCS should implement.

With respect to evaluation and assessment of an individual's or general CSP program performance, this activity should be carried-out by a team of NRCS, non-governmental conservation organizations and university experts in cooperation with producers and landowners. Overall program performance evaluation should not be assigned to private TSP that have been involved in installing CSP practices.

Section 1469.20 Application for Contracts

No Comment

Section 1469.23 Contract Requirements

No Comment

Section 1469.22 Conservation practice operation and maintenance

No Comment

Section 1469.23 Program Payments

There are four components to the proposed CSP payment structure outlined in the Interim Final Rule, plus an overall adjustment factor. The four components include a stewardship component (formerly called the "base" payment), an existing practice payment, a new practice payment, and the enhancement payment. The adjustment factor is calculated by taking the combined unadjusted stewardship payment, existing practice, and enhancement payment and reducing the amount by a selected percentage rate. Each of these components is discussed separately, below.

By statute, total CSP contract amounts allowable are limited for Tier I at \$20,000 per year; Tier II at \$35,000 per year; Tier III at \$45,000 per year. Defenders believes that for those producers meeting both minimum conditions and implementing several enhancement practices or activities, the producer's actual annual payments should approach these statutory maximums. In the 2004 signup, average contract amount was far below the maximum in nearly all watersheds and tier levels. Defenders believes that NRCS should implement CSP with a focus on real rewards for stewardship, rather than using complicated mathematical formulae to limit payments.

1469.23(a) Stewardship (Base) Payment

By authorizing legislation, the Stewardship payment component cannot exceed \$5,000 per for Tier I, \$10,500 for Tier II and \$13,500 for Tier III. Furthermore, the statute very clearly calculates how rental rates are to be converted into the stewardship payment: for Tier I, the producer gets “an amount equal to 5 percent of the applicable base payment for land covered by the contract {1238C(1)(C)(I)}; at Tier II, “an amount equal to 10 percent of the applicable base payment for land covered by the conservation security contract” {§1238C(1)(D)(I)}; and at Tier III, “An amount equal to 15 percent of the base payment for land covered by the conservation security contract” {§1238C(1)(E)(I)}. For example, if land rented for \$50 per acre, the maximum amount that a producer could receive per acre for the stewardship payment would be \$2.50 under Tier I, \$5.00 under Tier II, and \$7.50 under Tier III. Recall that the stewardship payment is designed to compensate the landowner for the opportunity cost of his land and expenditures that provide public benefits in the form of resource conservation. Furthermore, the stewardship payment is based on local land *rental* rates, not land *values*, the latter of which can be quite a bit higher and reflect the true opportunity cost of land in many places.

In the APRM, NRCS proposed rule that to institute an additional 90% reduction factor for the stewardship payment. That is, the stewardship payment would only be 10% of the amount calculated for each Tier. For the example given above, this would mean that a landowner/producer would only receive \$0.25 per acre per year for the stewardship component of the CSP payment. In response to this proposal, Defenders provided detailed calculations and comments showing that landowners would not be attracted into the program at such low rates and that these rates did not adequately reflect the conservation contribution of landowners.

In response to the many comments received by NRCS regarding this reduction factor, the Service changed the reduction factor for all tiers from .1 in the APRM to .25 for Tier I, .5 for Tier II, and .75 for Tier III. In the narrative to the Interim Final Rule, NRCS gave two reasons for using these reduction factors in the stewardship payment: “First, this will provide incentives for producers to move to higher tiers which will provide significantly higher benefits. Second, the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate to the payment scheme.”

Defenders finds these reasons unconvincing. First, the limits set on the total payment allowable under the stewardship component already provides an incentive for producers to move to higher tiers, as does the increased percentage of the per acre stewardship payment that a landowner can receive. Second, in many areas of high development pressure, the use of agricultural land rental rates undervalues the actual opportunity cost of land that stays in production.

Defenders strongly supports the stewardship payment structure enacted in the authorizing legislation, without NRCS’ proposed reduction factors. The reduction factors not only make program application and administration more complicated, but could eventually

discourage producers from applying. The objective of the CSP is to reward the best, not to cut payment levels in order to reduce budgetary impacts.

Defenders of Wildlife recognizes that another possible structure for stewardship payments would be to set them with respect to local agricultural land values instead of cash rental rates. If land values were used, we would agree that it would be useful to explore the use of reduction factors at least as high as those suggested in the Interim Final Rule, and would welcome the opportunity to work with NRCS to arrive at an equitable figure for the reduction.

Section 1469.23(b) Existing Practice Component of the CSP

The Interim Final Rule proposes that the Chief will determine which practices will be eligible for existing practice payments and the payments will be based on a percentage of the 2001 county cost. Furthermore, the Chief may offer alternative payment methods, such as percentage of the stewardship payment (not to exceed 75%, or 90% for beginning farmers).

Defenders believes that payments for existing practices should not be based on Stewardship payments that are themselves based on land rental rates (or values), but on the actual cost of technology or management practice used. Land rental or value rates are not an adequate proxy for the actual costs of implementing and maintaining management practices, especially labor costs.

The Interim Final Rule also proposes that the Chief may reduce the existing payment practice rates in any given sign-up notice. Defenders believes that this is arbitrary and will discourage producers from enrolling in the program because of uncertainty over which practices will be eligible and which are not. There is no incentive for producers to adopt practices prior to signing up if there is no guarantee that the practice will qualify for payment in future years.

Section 1469.23(c) New Practice Payments

The Interim Final Rule states that the Chief of the NRCS may determine which practices are eligible for new practice payments. These payments are not to exceed 50% of average county costs for the 2001 crop year. "NRCS intends to set appropriate cost-share practice payments at rates similar to or less than the EQIP rates, but no more than 50%". Furthermore, the Chief can reduce the rates in any given sign up.

Defenders recommends that the CSP cost-share payment rates be equivalent to those found in EQIP and related conservation programs for any particular practice. Defenders opposes a lower CSP cost share on the grounds that it will discourage participation in the program. This approach will not encourage participants to install practices using EQIP because of the higher transaction costs in carrying-out the administrative requirements to apply to two programs versus one. Furthermore this approach serves as a dis-incentive to

producers who have enacted stewardship practices on their own rather than through EQIP. If NRCS wishes producers to install practices using cost-share money from other programs, such as EQIP, it should take an incentive-based rather than proscriptive approach. For instance, rather than demand that producers apply for other programs in order to become eligible for CSP, NRCS could revise the EQIP rule to treat preferentially those applications whose implementation will qualify them for CSP, or for Tier advancement for those producers who are already enrolled in CSP.

NRCS should also consider setting adjustable cost-share rates based on annual county costs. For example, instead of using 2001 figures, cost-share rates should be calculated on the basis of the previous year before enrollment, thus taking into account inflation factors. In addition, the Final Rule should address how expenses related to on-farm testing and demonstration of innovative technologies will be reimbursed.

1469.23(d) Enhancement Payments

The statute authorizing the CSP authorizes payments for the following types of enhancement activities: (a) the improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements; (b) an improvement in a priority local resource condition; (c) participation in an on-farm conservation research, demonstration or pilot project; (d) cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area; and (e) implementation of assessment and evaluation activities relating to practices included in the CSP. These activities are acknowledged in the Interim Final Rule.

Section 1469.23(d)(1) stipulates that the Chief of the NRCS will establish a list of conservation activities that are eligible for enhancement payments for a given sign-up and will tailor the list to the needs of selected watersheds. Defenders recommends that practices and activities related to resource-conserving crop rotations, rotational grazing, and buffers be explicitly listed as enhancement activities, as specified in the authorizing legislation.

While selection of enhancement practices and utilities by the Chief may add flexibility to the program, it also is a source of uncertainty for producers over what practices and activities will be eligible. Defenders recommends that practices and activities be announced as far in advance as possible of actual sign-ups.

NRCS as indicated that it will not limit enhancement payments for preservation of threatened and endangered species. However, NRCS has said that CSP will provide enhancements for improving wildlife habitat for a broad range of plant and animal species, including threatened and endangered species. Defenders recommends that because agricultural land owners are very important in preventing habitat degradation that those landowners/producers proposing to improve species and wildlife habitat be given preferential consideration.

Defenders strongly supports the enhancement activities associated with research and demonstration and assessment (monitoring) and evaluation of CSP projects. Particularly in the case of evaluation, indicators of environmental improvement will have to be developed in order to go to the eventual “performance-based” agro-environmental policy that the CSP embodies. To this end, Defenders recommends that the proposed “performance or index outcomes scale” for all resources of concern be better defined. For species and wildlife habitat conservation activities Defenders offers its services in defining what performance or outcome indicators may be most appropriate.

Section 1469.23(e) Contract Limitations

In addition to the statutory limits for total CSP payments by Tier, and the amounts allowed for the stewardship component, NRCS is proposing in the Interim Final Rule to further limit CSP payments by providing that the combination of the non-reduced stewardship, existing management, and enhancement payments not exceed the a pre-determined percentage. New practice payments are not included in the adjustment. For Tier I this percentage is set at 15%, 25% for Tier II, and 40% for Tier III. These adjustment factors were implemented during the FY 2004 sign-up across the 18 pilot watersheds.

The reason given by NRCS in the Interim Final Rule narrative was that there was a need to reduce contract payments in order to avoid distortions to land prices. Such distortions would be caused by conservation payments being capitalized into land rental rates. This analysis and conclusion is unsound at the best. Land rental rates are determined by their potential for agricultural or development potential, not the level of resource conservation activity taking place on those lands. The CSP provides payments that reward producers for being good land stewards and for providing non-market environmental benefits to the public. To claim that CSP conservation payments would have the same effect on land prices as commodity price support payments is misleading and incorrect.

In addition to false land price issue, further payment reductions embodied in the proposed payment and contract limitations are entirely contradictory to the statute and spirit of the CSP. Defenders recommends that they be dropped immediately in the Final Rule. It is Defenders’ understanding that those producers that signed up in the Umatilla watershed for FY 2004 were very unhappy with these reductions. The reductions make it mathematically impossible for a producer to reach the statutory caps. Furthermore, NRCS staff were placed in an awkward position of having to explain why the Interim Final Rule reduced the amount of payment a landowner could get to below the statutory limit. Producers felt cheated by the contradictory rules, which may influence future sign-ups.

Section 1469.23(h) Pro-Rating Payments

This section states that “In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.”

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Defenders is opposed to pro-rating for two basic reasons. First, once NRCS has signed a binding and legal contract for the provision of specified conservation activities and performance, it is obligated to pay the amount agreed to over the life of the contract. Producers/landowners are not allowed to “pro-rate” the conservation requirements they are being given payment for. Second, pro-rating sends the wrong signal to producers wanting to enroll in the CSP. If producers are uncertain over receiving the contracted amount in future years, especially given the reduction factors discussed in the previous section, we see little incentive for producers to enroll in the program. This clause on pro-rating payments should be deleted in the Final Rule. NRCS should reimburse current contracts first before accepting any new applications.

Other Significant Issues

(1) Periodic versus Continuous Sign-ups and Renewals

In the Interim Final Rule, NRCS has indicated that it will only offer discrete, periodic sign-ups: “In order to manage the program, NRCS will continue to offer discrete sign-up periods initially,” with an option of moving to year-round sign-ups. Based upon the experience in the Umatilla watershed, Defenders understands that the FY 2004 sign-up was a challenge for producers, coming at the time of the mid-summer wheat harvest. Because of this constraint, some landowners didn’t take the time to apply and invest the significant amount of time in doing so because of the uncertainty of receiving funding.

As we noted in our comments on the Proposed Rule, Defenders of Wildlife opposes the concept of periodic CSP signups. CSP will operate most efficiently, and with the least burden on NRCS staff and technical assistance providers, if producers have the flexibility to submit their applications year-round. NRCS could run CSP similar to its application acceptance process for EQIP, where applications are accepted on a continuing basis, but with a set and widely publicized date for evaluations to take place each year.

With respect to contract renewal in the Interim Final Rule, the NRCS response was that “Although a subsection was considered, there is no need to repeat direction from the statute.” The language in Final Rule should be more explicit than this vague statement. One of the major beneficial features of the CSP law is to reward landowners who practice effective conservation and to continue to reward them as they continue to do so. Failing to provide *explicit* provisions for contract renewal goes against the intent of the legislation. The process for renewal of contracts (renewal approved only by the Chief of the NRCS) defeats the purpose of the CSP to provide *and maintain* long term resource protection activities. Without the positive and certain option of renewal to continue resource conservation, CSP becomes just another practice-based, short-term program. Defenders strongly recommends that as long as producer-contractors are in compliance with all contract provisions and continue to provide environmental benefits, their contracts should be renewed. This should be made *explicit* in the Final Rule.

(2) Monitoring and Evaluation of Environmental Performance

Self-Assessment Screening Tool

In general, the self-assessment screening tool adopted by NRCS for producers to gauge their initial eligibility has been a success. In the Umatilla watershed, the self-assessment tool provided by the Oregon Food Alliance proved to be easier for landowners to follow. After careful scrutiny, the Oregon NRCS staff found that a grower certified under the Oregon Food Alliance would meet program qualifications for Tier III. Thus, consideration should be given in the Final Rule to the use of assessment methods other than the NRCS screening tool.

Monitoring and Evaluation

The Final Interim Rule states that “Quantifying the natural resource and environmental improvements delivered will be achieved at the micro and macro scales over time. At the field level, environmental performance will be observed and documented through producer-based studies and evaluation and assessment components of CSP.” Defenders supports these goals because they will increase future program effectiveness and efficiency. In order to achieve these benefits, however, financial resources must be provided and the Final Rule should stipulate how much funding will be allocated to this effort.

NRCS should encourage the development and testing of farm-level indicators to measure environmental quality improvements as a result of participation in the CSP program. Monitoring activities should take place on a sample of operations that are stratified by resource of concern, ecological zone, management practices implemented, and Tier of participation. Assessment projects in which participants would be actively engaged could include habitat and at-risk wildlife monitoring, periodic measurement of water quality, soil nutrient testing, and progress in controlling soil erosion. An adequate level of on-farm training in these skills may be necessary.

On-Farm Research and Demonstration

The final interim rule is silent on research and demonstration. Defenders believes that the Final Rule should reference more detailed on-farm research and demonstration information and protocols that should be made available through additional, forthcoming materials. Those materials should include instructions for establishing cooperative agreements with entities with demonstrated capabilities coordinating and providing technical assistance for on-farm conservation research and demonstration. Farmers should be encouraged to undertake CSP on-farm research projects and demonstrations in coordination with non-governmental organizations with experience in running on-farm research programs and/or in cooperation with other USDA, land grant or cooperative extension on-farm research initiatives.

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Thank you for your attention to the comments of Defenders of Wildlife.

Sincerely,

Frank Casey, Ph.D.
Director, Conservation Economics Program

Aimee Delach
Senior Program Associate

References:

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