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Executive Director

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

RE: Public comment on Wildlife Habitat Incentives Program interim final rule

Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to submit comments to the Natural Resources Conservation Service in response to the request for public comments regarding the Wildlife Habitat Incentive Program in the January 16, 2009 Federal Register (7 CFR Part 636)

As the primary state agency responsible for wildlife in Texas, TPWD recognizes the fact that the Wildlife Habitat Incentives Program (WHIP) targets at-risk wildlife habitat, allows long-term management contracts, and encourages landowner participation with higher levels of cost share funding compared to other farm bill programs. TPWD also greatly appreciates the excellent relationship we have had with state NRCS staff in aligning WHIP with the Texas Wildlife Action Plan. TPWD is concerned, however, about the lack of required coordination between NRCS and TPWD on federal candidate and state listed species and the ineligibility of vast acreages of privately held lands and state trust lands created by terminology in the current rule language. Attached are our suggested rule modifications to address these concerns

Please do not hesitate to contact Chuck Kowaleski, TPWD's Farm Bill Coordinator, at 254-742-9874, or [Chuck.Kowaleski@tpwd.state.tx.us](mailto:Chuck.Kowaleski@tpwd.state.tx.us) if you have any questions or need additional information. Thank you again for the opportunity to submit our comments.

Sincerely,

Carter Smith  
Executive Director

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Attachment

## Texas Parks & Wildlife Department's WHIP Interim Final Rule Comments

### Page 2795 § 636.3 Definitions

TPWD suggests the modification of the definition of *Agricultural lands* in such a way to include water courses and associated riparian areas and lands capable of agricultural production by adding the phrases "or have the potential to be", "waterways, riparian areas", "or surrounded by". Suggested wording:

*Agricultural lands* means cropland, grassland, rangeland, pasture, and other land determined by NRCS to be suitable for fish and wildlife habitat development, on which agricultural and forest-related products or livestock are or have the potential to be produced. Agricultural lands may include cropped woodland, marshes, waterways, riparian areas, incidental areas included in or surrounded by the agricultural operation, and other types of land used for production of livestock

This modification would allow greater flexibility of writing WHIP contracts that benefit fish habitat development such as bank stabilization or removal of fish passage barriers and corresponds to the national WHIP priority for protecting, restoring, developing and enhancing declining or important aquatic wildlife habitats found in § 636.5 (a)(4) National Priorities section of this rule. This suggested modification would also allow the inclusion of other land whose current primary function is wildlife production. In Texas many potential participants operations rely on the income produced by lease hunting and other wildlife related recreational opportunities to remain in business. Exclusion of the millions of acres through the currently restrictive language would severely impact state and federal species at-risk recovery efforts on these properties that could be benefitted by WHIP.

TPWD suggests deleting the current *At-risk species* definition and replacing it with a definition for *Species at-risk* that matches the language found in the recent MOU between AFWA, NRCS and FWS. Suggested new replacement definition:

*Species at-risk* –refers to plant and animal species that are: listed as endangered or threatened under ESA; proposed or candidates for listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern

This change would match the WHIP program delivery goals with the current MOU and provide better focus for the program at the state level.

### Page 2797 § 636.4 Program requirements

TPWD suggests adding an additional category under § 636.4 (b) Eligible land to read:

(4) Lands leased by private individuals who have control over the land for the contract period.

And changing the (c)(4) Ineligible land wording so that it now includes "excluding land owned by a state that are held in trust for the beneficiaries of a state education system."

Suggested new wording for § 636.4 (c)(4) would be:

That is public land-excluding lands owned by a state that are held in trust for the beneficiaries of a state's education system.

Texas has over 2 million acres of state school lands held in long term leases. While considered public land many of these properties have been leased to the same families for long periods of time, function more like private land and could benefit current species at-risk efforts through the use of WHIP contracts. The combination of the suggested changes above for § 636.4 (b)(4) and (c)(4) would allow such long term contract holders of school trust lands to participate in WHIP contracts.

#### **Page 2797 § 636.5 National priorities**

TPWD suggests adding pollinators to the list of national priorities under (a)(1).

Suggested new wording for § 636.5 (a)(1) would be:

Promote the restoration of declining or important native fish and wildlife habitats including those of pollinators;

This would be consistent with the farm bill managers' recommendations to improve pollinator habitats wherever possible in this farm bill.

#### **Page 2798 § 636.7 Cost-share payments**

TPWD suggests that the wording of (k) be modified by adding "national" in front of WHIP funds

Suggested new wording for § 636.7 (k) would be:

NRCS, for a fiscal year, may use up to 25 percent of national WHIP funds to carry out cost-share agreements described in § 636.9(c)

This modification would allow greater funding flexibility for states and allow maximum national WHIP funding for species at-risk.

**Page 2798 § 636.9 Cost-share agreements**

TPWD suggests that the wording of (8)(c)(2) be modified by replacing the term "critical" with the term "essential" to avoid confusion with the Endangered Species Act consultation process and adding the phrase "in coordination with FWS and state fish and wildlife agency."

Suggested new wording for § 636.9 (c)(2) would be:

Protects and restores essential plant or animal habitat, as determined by NRCS in coordination with FWS and state fish and wildlife agency.

Coordinating efforts with the state and federal fish and wildlife agencies responsible for species at-risk reduces unintended consequences, strengthens resource agency partnerships and increases the chances of developing synergistic cooperative efforts.

**Page 2799 § 636.17 Compliance with regulatory measures.**

TPWD suggests adding a (c) to this section.

Suggested wording for § 636.17 (c):

No cost share payment shall be made to participants until all local, state and federal permits are obtained.

NRCS would be in violation of NEPA regulations if they paid participants who had not obtained the required permits. Merely making participants responsible for obtaining permits as written in § 636.17 (a) does not absolve NRCS of its NEPA responsibilities.

**The following are minor suggested changes in rule wording to maintain consistency with WHIP program definitions:**

§ 636.11 (b) and 636.18 (c) the term "producers" should be changed to "participants".