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TO: Financial Assistance Program Division
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FROM: The Office of Governmental Affairs
The Wildlife Society

We are transmitting 6 pages (including this cover letter).

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Thank you.

MESSAGE:

Interim final rule for the Wildlife Habitat Incentives
Program - published 4/10/09 in Federal Register



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10 April 2009

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

The Wildlife Society appreciates the opportunity to provide comments on the interim final rule for the Wildlife Habitat Incentives Program (published 1/16/09 in the Federal Register). The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association representing over 8,000 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve wildlife professionals—the scientists, technicians, and practitioners actively working to study, manage, and conserve native and desired non-native wildlife and their habitats worldwide. The Wildlife Habitat Incentives Program (WHIP) encourages the establishment and enhancement of a wide variety of fish and wildlife habitats of national, state, tribal, or local significance. A wide range of habitat-enhancement actions are cost-shared through the program, affecting hundreds of target and non-target species.

Section 636.1 – Applicability

The Interim Final Rule emphasizes the need to use WHIP for the conservation of pollinators. We commend this emphasis but stress that the focus should be on “native” pollinators and not “managed” pollinators, which are non-native (thus do not meet the rules correct definition of wildlife) and often require non-native habitats to sustain them. Other programs such as EQIP could be used to further managed pollinators. In addition, WHIP should continue its emphasis on native habitats that will support pollinators.

Section 636.3 – Definitions

We support the effort to make the definition of **agricultural lands** as inclusive of the agricultural operation as possible. However, the Interim Rule’s definition of agricultural lands should be broadened to include areas other than just those “on which agricultural and forest related products or livestock are produced.” Many critical landscapes such as wetlands, riparian areas, streams, and aspen groves should also be eligible for cost share payments. These important landscapes are often within lands that are being used for agriculture. We recommend you strike “on which agricultural and forest related produced or livestock are produced.” We also

recommend that you replace "marshes" with "wetlands, riparian areas, in-stream" and replace "production of livestock" with "agricultural production."

Recommended definition: Agricultural land means cropland, grassland, rangeland, pasture, and other associated land determined by NRCS to be suitable for fish and wildlife habitat development. Other associated agricultural lands may include but are not limited to cropped woodland, wetlands, riparian areas, in-stream, incidental areas, and other types of land suitable for agricultural production.

We recommend **at-risk species** be defined as:

Any 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.

In the definition of **resource concern**, we recommend that you strike "by producers" at the end of the definition and replace it with "by participant," which would make this definition more consistent with the rest of language in the rule.

Section 636.4 – Program requirements

We recommend that NRCS add a new type of eligible land to (b). In some States, the stream bottom is under jurisdiction of the state or federal government and according to the rule is not eligible for WHIP funding. However, these streams are integral parts of farming and ranching operations and provide critical habitat for many at-risk species. Private landowners have taken responsibility for management of these stream systems, which are critical to their agricultural operations. In-stream habitat practices can often both benefit at-risk fish and other aquatic species and help protect the viability of the land for food and fiber production. We recommend that NRCS allow these stream systems to be eligible for cost-share when the landowner who operates agricultural operations within these landscapes is willing to participate.

In 636.4(c)(1) and (2), NRCS should make these determinations in coordination with the state fish and wildlife agency and the USFWS, as NRCS may not have the capacity or expertise to make these decisions without consultation on varied, diverse, and often-complicated at-risk species issues.

Add "currently" at the beginning of (c)(1).

Broaden the scope of (c)(3) to include not just threatened and endangered species, but at-risk species as well.

Section 636.5 – National Priorities

We commend NRCS' identified national priorities for WHIP as identified in the Interim Final Rule, and we appreciate the focus on native fish and wildlife in priority 1.

Section 636.6 – Establishing priority for enrollment in WHIP

NRCS states that new program requirements are added to “improve program administration and to ensure WHIP program goals are met” and “conservation practices undertaken by participants are the basis for measuring program performance.” However in 636.6(b) NRCS proposes to strike the term “species” from the purpose of development of wildlife habitat, shifting the program focus to land and water resources. We are concerned that this approach will strengthen motivation for NRCS to continue to report only WHIP acres as a performance standard, as the lack of species priorities will further allow “wildlife habitat” to remain an ambiguous, but well intended, objective. Without specific identification of species and their unique habitat needs, objectives become difficult to identify. Without specific species objectives, quantitative results become impossible to identify and measure. Adaptation of such an ambiguous standard will not help the Conservation Effects Assessment Program quantify effects of conservation practices established under WHIP or any other NRCS program.

The Interim Rule allows for the NRCS State Conservationist, in consultation with the State Technical Committee, to give priority to WHIP practices that address unique habitats, or special geographic areas identified in a State. This will help focus resources, both staffing and funding, to maximize benefits where most needed. We are willing to work with you to achieve this end result.

The requirement in (c)(8), willingness to complete improvements in first two years, is difficult to judge and too vague to be effective. Instead, consider allowing states to offer higher cost-share rates during the first 2 years of survey completion of the contract to encourage landowners to implement conservation practices.

Section 636.7 – Cost-share payments

In this section, (a)(1) states that “The cost-share payment to a participant shall be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program.” We recommend that NRCS readily grant this waiver, particularly as it relates to declining or at-risk species because there is often little financial incentive for an agricultural producer to participate in these activities. If NRCS and other partners can eliminate the cost of this type of habitat work the landowner may be willing to allow the habitat to be restored or enhance and thus move these species away from listing under the Endangered Species Act.

We also recommend that you add a new 636.7(l): “At least for 5 year contracts that are tied to federal/state T&E recovery plan, shall allow up to 90% cost-share if the conservation practice is tied to a federal or state T&E recovery plan, including those cost-share agreements that are less than 15 years.”

We recommend that you change 636.7(d) to read: “NRCS, in consultation with the State Technical Committee, will identify and provide public notice of the conservation practices

eligible for payment under the program. **Conservation practices eligible for payment under the program may include grazing, haying and stubble management and forestry planning and management.**"

Section 636.9 – Cost-share agreements

In (c)(2), the use of "critical habitat" could lead readers to assume the rule is referring to critical habitat under the Endangered Species Act. Change this to "essential plant and animal habitat."

Also, at the end of (c)(2), after "NRCS" add "as determined in coordination with FWS and state fish and wildlife agency."

Section 636.10 – Modifications

We appreciate the statement in (b) that modifications must be consistent with program objectives.

Section 636.11 – Transfer of interest in a cost-share agreement

In (b), change "producer" to "participant" to be consistent with the rest of the rule.

Section 636.17 – Compliance with regulatory measures

This section should make it clear that no cost share payment shall be made to participants until ~~all local, state, and federal permits are obtained.~~

Section 636.18 – Technical services provided by qualified personnel not affiliated with USDA

In (c), change "producer" to "participant" to be consistent with the rest of the rule.

Section 636.19 – Access to operating unit

In the first sentence, add including TSPs," after "NRCS representative."

Section 636.21 Environmental services credits for conservation improvements

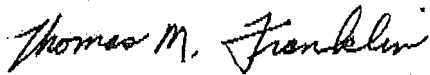
We recommend the language be amended to make it consistent with similar language in the proposed rule for the Healthy Forest Reserve Program as follows: "Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, **an amendment to the agreement may be required** and participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such environmental credit agreements."

Changes in WHIP resulting from the 2008 Farm Bill require more creativity in implementing WHIP in order to fulfill Congressional intent. With an apparent shift in how wildlife practices

are focused, from habitat/species/priority area-based system to a landownership-based system, to that the program benefits fish and wildlife without placing an unfair burden on producers. For example, consider offering incentive payments to agricultural operators; wildlife practices are often neutral for producers and may not "benefit" the operation, although they provide benefits to fish and wildlife. An incentive payment would make these practices more appealing and make it financially beneficial for the producer to implement wildlife practices and help at-risk species or natural resource priorities.

Thank you for considering the views of wildlife professionals.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Franklin".

Thomas M. Franklin
President