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STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
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DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

April 17, 2009

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

4/19/09

RE: Federal Register Docket Number RIN 0578-AA49, Interim Final Rule affecting changes to the Wildlife Habitat Incentive Program

Dear Sir or Madam:

The Iowa Department of Natural Resources (DNR) appreciates the opportunity to comment on the interim rule affecting the Wildlife Habitat Incentive Program (WHIP) as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

Specific Recommendations by Section of the Rule:**636.3 Definitions.**

- **Agricultural lands:** As written; this definition will limit the program's utility and leave holes where conservation practices are desperately needed to address wildlife habitat needs but no tool is available for deployment. The DNR recommends the following modifications to the definition for incorporation into the final rule:
 - *Agricultural lands* means cropland, grassland, rangeland, pasture, and other associated land determined by NRCS to be suitable for fish and wildlife habitat development. ~~on which agricultural and forest related products or livestock are produced.~~ Agricultural lands may include but is not restricted to associated cropped woodland, ~~marshes,~~ wetlands, riparian areas, and in-stream conditions, and other incidental areas, ~~included in the agricultural operation,~~ and other types of land used for agricultural production of livestock or land that is suitable for the agricultural production of livestock.
- **At-risk species:** The DNR appreciates its close-working relationship with NRCS and the increased benefits delivered for fish, wildlife, and their habitats through our conservation partnership. To advance our mutual conservation goals and priorities, the DNR recommends using the definition jointly developed and used in the MOU between The Association of Fish and Wildlife Agencies, NRCS and USFWS to proactively conserve at-risk species and their habitats. Based on that definition, the DNR supports the incorporation of the following definition of at-risk species into the final rule:
 - *At-risk species* means 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.

- **Wildlife:** To be as inclusive as possible, we recommend adding "including mollusks" to the definition.

636.4 Program requirements.

- **(b) Eligible land includes:** The DNR recognizes some critical gaps in land eligibility that needs to be clarified in the final rule or it could be problematic for both participants and NRCS staff in program implementation. The Manager's Report provides guidance to the Secretary to "provide priority to projects that address issues raised by State, regional, and national conservation initiatives," and "Intend the Secretary to consider the goals and objectives identified in relevant fish and wildlife conservation initiatives when establishing State and national program priorities, scoring criteria, focus areas, or other special initiatives." Streams, rivers and waterways on private land provide important habitat for many wildlife species (including species of greatest conservation need). They are vital to ecosystem health and often require management to provide important wildlife species habitat while maintaining the integrity of a participant's land, field, and profitability. Therefore, streams, rivers, in-stream modifications must be included as eligible land because they are an integral part of private lands and must be included in the conservation plan. The DNR recommends adding the following provision to the final rule to address these problems:
 - Recommendation, add: "(b)(4) The land and waterways therein is a working component of the participant's agricultural or forestry operation, and is private land on which habitat development would benefit wildlife."
- **(c) Ineligible land.** NRCS does not have the staffing capacity or extensive expertise required to make decisions about land ineligibility that could affect species of greatest conservation need without collaboration with state and federal fish and wildlife professionals on the varied, diverse, and often-complicated at-risk species issues. In cases where NRCS would make ineligible land determinations, the DNR recommends NRCS coordinate with the state fish and wildlife agency and the USFWS to ensure at-risk species, conservation practices or important habitat component would not be adversely affected by a land ineligibility determination. We recommend modifying this provision as follows to reflect the needed coordination with other government agencies who can assist NRCS in this process:
 - NRCS shall not provide cost-share assistance, if after coordination with the state fish and wildlife agency and the USFWS, with respect to conservation practices on land:
- **(c)(3) To help address issues raised by state, regional and national wildlife conservation initiatives and to preclude the need to list more species under the Endangered Species Act, we recommend modifying this provision so that it reads:**
 - "On which habitat for threatened or endangered species, as defined in Section 3 of the Endangered Species Act (ESA); plant or animal species that are proposed or candidates for listing under the ESA; species likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; State species of conservation concern; or species of greatest conservation need as listed in State Wildlife Action Plans, would be adversely affected."

636.6 Establishing priority for enrollment in WHIP.

- **(c)(8):** This provision will penalize potential participants whose project could take more than 2 years to complete in order to address the needs wildlife. There are times when it is more appropriate to have slower restoration of a remnant habitat type. Slower restoration could prevent erosion, the establishment of invasive species, and provide refuge for at-risk species during restoration practices such as prescribed fire. Consequently, the DNR recommends striking this provision as written.

636.7 cost-share payments

- **(a)(1)** The DNR commends NRCS for the forethought of the language in this provision and strongly supports the flexibility granted to State Conservationists to provide "... additional cost-share assistance to achieve the intended goals of the program" where merits warrant such actions. We recommend maintaining this language as currently written in the final rule.
- **(d)** We recommend NRCS modify this provision to allow input from the State Technical Committee:
 - Recommendation: **(d)** NRCS, in consultation with the STC, 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.
- **(h)** The DNR commends NRCS for the forethought of the language in this provision and strongly supports its incorporation as written in the final rule. This flexibility is much needed and will be much appreciated by program participants.

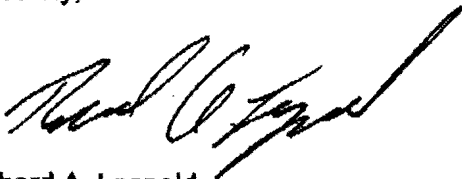
636.9 Cost-share agreements.

- **(c)(2):** The term "critical habitat" often invokes thoughts and actions associated with implementation of the ESA. To reduce confusion, avoid formal "consultations" under the ESA where they are not warranted, and to avoid unintentionally limiting the program to only species listed under the ESA, the DNR recommends using the phrase "essential or important plant and animal habitat" instead of "critical plant or animal habitat." Furthermore, NRCS actions should be coordinated with the State fish and wildlife agency and the FWS, and we offer the following modifications for incorporation into the final rule:
 - Recommendation: **(2)** Protects and restores essential or important plant and animal habitat, as determined by NRCS, in coordination with the State fish and wildlife agency and the FWS; and
- **(8)** Under this provision, we encourage NRCS to include in policy language that deferment shall be eligible for cost-share when deferment of use is needed to meet habitat needs and achieve the objectives of the program.

336.19 Access to operating unit.

- For clarification purposes, we recommend adding "including TSPs" after "NRCS representative in the first sentence" so that program participants know TSPs shall have the right to enter the premises.

Sincerely,



Richard A. Leopold
Director