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The Nature Conservancy offers the following comments on the Interim Final Rule for the Wildlife Habitat Incentive Program (WHIP) as published January 16, 2009 in the Federal Register, Volume 74, No. 11.

Working with the Natural Resources Conservation Service, the Conservancy has used WHIP to carry out important habitat restoration, carrying out projects such as removing and controlling invasive species, planting trees, providing wildlife and improving aquatic connectivity, among other activities. Although the amount of WHIP funds to each project is not large, the Program has been critical for restoring and stewarding wildlife habitat around the country, particularly in the east. Thanks to WHIP, the Conservancy has been able to carry-out significant habitat restoration work.

However, as amended in Section 2602 of the Food, Conservation and Energy Act of 2008, and in the proposed rule, it is now not practical for the Conservancy, and other organizations with the some of the broadest experience in the protection of wildlife habitat, to use the WHIP program. The new annual \$50,000 cap (per entity) is the most troubling to us.

The Conservancy offers the following comments on the WHIP Interim Final Rule. Specifically, we oppose:

1. The new \$50,000 cap, which effectively eliminates the Conservancy as a direct participant in WHIP projects. The Conservancy currently uses WHIP funds for a variety of activities. For example, for phragmites control in Maryland and Delaware alone we have received approximately \$25,000 annually in recent years. In the Berkshire-Taconic landscape, a large forested landscape at the Connecticut, New York, and Massachusetts border, the Conservancy is in the final stages of a five-year \$1 million WHIP project for innovative large-scale invasives control; we will not be able to do further work of this kind under the new rule. In Vermont, we had planned to carry out forest restoration on floodplains and upland clay-plains, at a cost of \$20,000. In Ohio we have been using \$15,000 in WHIP funds to pay seasonal staff for oak restoration; unless we can find a new source, this project, and the associated jobs, will end. In West Virginia, we used \$21,000 in WHIP fund to undertake extensive habitat restoration on the Dolly Sods landscape to protect a globally rare cranberry bog. In Maine, funds have been used for culvert replacement to improve

aquatic passage and NRCS would like to use WHIP funds on Conservancy lands to manage early successional forests for New England Cottontail habitat. These are just a small sample of the kinds of WHIP projects that will now not go forward under the national funding cap.

We recommend that USDA provide an exception to this funding cap for non-profit entities where the benefit to wildlife habitat is substantial.

2. The new provision that limits eligibility to private agricultural land, nonindustrial private forest land, and Indian land. This eliminates projects on public lands. It means; for example, that the Conservancy will not be able to complete current, shovel-ready projects that would improve the design of culverts for aquatic organism passage in Vermont. In this case the Conservancy and the US Fish and Wildlife Service are identifying and redesigning culverts that block wildlife passage and planned to use WHIP to fund the implementation of the recommended changes. Because the owners of the culverts are mostly municipalities, and therefore are now not eligible to receive WHIP funds, this work will not go forward.

We recommend that the rule be revised to allow for exceptions when significant wildlife habitat gains could only be achieved by installing practices on non-Federal public land.

The Conservancy supports:

1. The increase in the percentage of programs funds from 15% to 25% for cost-share agreements lasting more than 15 years. These longer term agreements are a better investment of public dollars and result in better outcomes for wildlife habitat. We also commend new language that gives consideration to applicant willingness to complete habitat development quickly – within 2 years of the cost-share agreement.
2. The requirement that NRCS consult with state and federal agencies to establish national priorities to address in WHIP projects. However, we do not believe it is appropriate to establish these priorities through regulation, as it currently shown in the Interim Final Rule. Instead, the regulations should establish the process for identifying, implementing, reviewing and revising WHIP priorities. We support the additional emphasis on coordination with state wildlife action plans.
3. The new performance measures to assess whether actions funded by the program are providing long term benefits.