

Subpart A - General Information

517.0 General

A. Introduction

- (1) The Wildlife Habitat Incentive Program (WHIP) is administered by the Natural Resources Conservation Service (NRCS). The program offers technical and financial assistance to protect, restore, develop, and enhance wildlife habitat.
- (2) For the purposes of this program, the term "wildlife" means nondomesticated birds, fish, reptiles, amphibians, invertebrates, and mammals. The term "wildlife habitat" means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.
- (3) The Chief of NRCS may implement WHIP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (4) Policy set forth in this part is specific to WHIP, Title 440, Conservation Programs Manual (440-CPM), Part 512, which provides general policy for conservation program contracting.

B. Purpose

The purpose of WHIP is to help participants develop fish and wildlife habitat on private agricultural land, nonindustrial private forest land, and Indian land.

C. Objective

The objective of WHIP is to help participants protect, restore, develop, or enhance habitat for upland wildlife, wetland wildlife, threatened and endangered species, fisheries, and other types of wildlife.

D. National Priorities

In order to provide direction to the State and local levels for implementing WHIP and achieving its objective, NRCS has established the following national priorities:

- (i) Promote the restoration of declining or important native fish and wildlife habitats.
- (ii) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species.
- (iii) Reduce the impacts of invasive species on fish and wildlife habitats.
- (iv) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats.

E. Source of Authority

The sources of authority for the policies and procedures contained in this manual are as follows:

Section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Farm Bill), 16 U.S.C. Section 3836a. Section 2502 of Public Law 107-171, the [Farm Security and Rural Investment Act of 2002](#) (the 2002 Farm Bill), repealed the WHIP statute and amended title XII of the Food Security Act of 1985 (the 1985 Farm Bill) to add a new Section, 1240N, as the authority for WHIP. [Section 2602 of the Food, Conservation, and Energy Act of 2008](#) (the 2008 Farm Bill) reauthorized the program.

F. Freedom of Information Act

See 440-CPM, Part 512, Subpart A, Section 512.6.

G. Related Manuals and Handbooks

The following agency policy and technical references have topics related to WHIP:

- (i) Title 180, [National Planning Procedures Handbook](#) (NPPH), Part 600
- (ii) Title 180, [National Food Security Act Manual](#) (NFSAM), Parts 510 to 520
- (iii) Title 180, [General Manual](#) (GM), Part 409, "Conservation Planning Policy"
- (iv) Title 190-GM, Part 410, "Compliance with NEPA"
- (v) Title 420-GM, Part 401, "Cultural Resources"
- (vi) 440-CPM, Part 509, "Equitable Relief from Ineligibility for Conservation Programs"
- (vii) 440-CPM, Part 510, "Appeals and Mediation"
- (viii) 440-CPM, Part 512, "Conservation Program Contracting"
- (ix) Title 450-GM, Part 407, "Documentation, Certification, and Spot Checking"
- (x) Title 190, [National Biology Manual](#) (NBM), Parts 510 to 514
- (xi) Title 210, [National Engineering Manual](#) (NEM)
- (xii) [Field Office Technical Guides](#) (FOTG)

H. Technical Assistance

- (1) NRCS has responsibility for administering WHIP, including providing technical assistance. The phrase "technical assistance" means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agriculture, forestry, or related

- uses. Technical assistance may include, but is not limited to, any of the following activities:
- (i) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning; technical consultation; conservation practice survey, layout, design, installation, and certification; and information, education, and training for participants.
 - (ii) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, data, technology, monitoring, and effects analyses.
 - (iii) Quality assurance reviews of contracts.
- (2) NRCS may enter into agreements with Federal and State agencies, Indian Tribes, conservation districts, local units of government, public and private organizations, and individuals to assist with program implementation, including the provision of technical assistance (see [440-CPM, Part 504](#)). NRCS may make payment pursuant to said agreements for program implementation and for other goals consistent with the program provided for in this part. NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.
- (3) Specifically, the Federal agencies that may provide technical or financial assistance to program participants in order to achieve the goals consistent with WHIP include the U.S. Fish and Wildlife Service (FWS), the U.S. Department of Agriculture's Forest Service (FS), the U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA), and other Federal and State agencies.
- (4) Technical assistance does not include research and development.

I. Supplements to this Part

State policy for WHIP must be established by means of supplements to this part. A copy of all State supplements to this part must be submitted to the Deputy Chief for Programs for review. State supplements must neither conflict with nor be less restrictive than statutory or regulatory WHIP provisions. The final version of all State amendments must be submitted to the Deputy Chief for Management for posting in the electronic directives system. See also 440-CPM, Part 512, Subpart A, Sections 512.OJ–512.OK.

J. Distributing IRS Forms

See 440-CPM, Part 512, Subpart A, Section 512.1.

517.1 Required State Actions

See 440-CPM, Part 512, Subpart A, Section 512.1.

517.2 Definitions

See [440-CPM, Part 502](#).

517.3 NRCS Responsibilities

See 440-CPM, Part 512, Subpart A, Section 512.3.

A. National Headquarters – [Click here for a copy of the responsibilities of NRCS National Headquarters](#).

B. State Conservationists – The State Conservationist will be responsible for implementing WHIP by directing and supervising NRCS activities, and delegating the responsibilities for management of the WHIP at the State level, in accordance with 440-CPM, Part 512, Subpart A, Section 512.3. [Click here for a copy of the responsibilities for the State Conservationists](#).

C. Field Offices – [Click here for a copy of the responsibilities for the Field Offices](#).

Subpart B - Conservation Plan Schedule of Operation

517.10 General Program Requirements

A. Conservation Planning

(1) Conservation planning for fish and wildlife habitat must consider the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, including air, food, water, and spatial requirements. The Customer Service Toolkit is the officially required conservation planning software for NRCS. A conservation plan which, at a minimum, addresses wildlife habitat as the primary resource concern will be developed and serve as a Wildlife Habitat Incentive Program (WHIP) Plan of Operations (WPO). The WPO can serve as either of the following:

(i) The sole conservation plan for the planning area, in which case it will include other practices selected by the participant in addition to those addressing the primary resource concerns of the wildlife habitat.

(ii) A component of a comprehensive conservation plan that addresses the wildlife resource concerns of the planning area.

(2) The WPO may include relevant partnership arrangements needed to implement conservation treatment utilizing WHIP technical and financial assistance.

(3) It is agency policy that technical assistance and the conservation practices identified within the WPO must—

(i) Meet the [standard and specifications](#) developed for the Field Office Technical Guide (FOTG), including any interim standards recommended by the State Technical Committee and approved by the State Conservationist.

(ii) Comply with the National Environmental Policy Act (NEPA) and [Title 190, General Manual \(GM\), Part 410](#), including procedures found in [420-GM, Part 401](#), for cultural resources.

(4) For information on permitting, see 440-CPM, Part 512, Subpart B, Section 512.10D.

B. WHIP Cost-Share Agreements

NRCS will enter into WHIP cost-share agreements with eligible applicants based on the WPO. WHIP planning data will—

(i) Be entered into the Customer Service Toolkit as the official conservation planning software for NRCS.

(ii) Follow procedures as set forth in 440-CPM, Part 512, Subpart E, Section 512.42. ProTracts is the official NRCS contracting software.

C. Forms

See 440-CPM, Part 512, Subpart J, Section 512.90.

D. Technical Assistance Sources

In addition to NRCS, participants may utilize conservation planning, practice implementation, and practice certification services from NRCS-approved sources, as determined by the Secretary (see 440-CPM, Part 504), including—

(i) Other Federal, State, or local government sources.

(ii) Private businesses.

(iii) Nongovernmental organizations.

E. Technical References to Assist in Wildlife Habitat Conservation Planning and WPO Development:

(1) NRCS home page: Technical Resources—Biology: <http://www.nrcs.usda.gov/technical/biology.html>.

(2) Electronic Toolbox for Fish and Wildlife Habitat Management: <http://www.whmi.nrcs.usda.gov/technical/etool.html>.

(3) Title 190, [National Biology Handbook](#) (NBH), Parts 600.00 to 641.00

(4) NRCS FOTG.

(5) [State Comprehensive Wildlife Conservation Strategies](#).

(6) [Stream Corridor Restoration Handbook](#).

F. Policy for Guiding Conservation Planning includes, but not limited to the following References:

(1) Title 180, [General Manual \(GM\), Part 600, "National Planning Procedures Handbook"](#)

(2) 180-GM, Part 409, ["Conservation Planning Policy"](#)

(3) 440-CPM, Part 505, Subpart A, ["Conservation Planning and Conservation Practices"](#)

(4) Title 190 [National Biology Handbook](#), Subpart B [Conservation Planning](#), Part 611, ["Conservation Planning for Integrating Biological Resources"](#)

(5) 440-CPM, Part 512, Subpart B, ["Conservation Programs Cost-share agreements"](#)

(6) 190-GM, Part 410, ["Compliance with NEPA"](#)

(7) [Field Office Technical Guide \(FOTG and eFOTG\)](#)

(8) 450-GM, Part 406, ["National Handbook of Conservation Practices"](#)

(9) Title 180, [National Food Security Act Manual \(NFSAM\)](#), Part 510

(10) 440-CPM, Part 500, ["Locally Led Conservation"](#)

(11) 420-GM, Part 401, ["Cultural Resources"](#)

(12) 450-GM, Part 401, "Technical Guides, Developing Interim Standards"

G. Working with Multiple Participants

When appropriate, the WPO plan portion of the cost-share agreement may be used to pool or group participants to accommodate resource conservation practices that overlay lands owned or controlled by more than one participant. Conservation plans with groups must be developed with the consent of all participants. Follow the guidance in 440-CPM, Part 512, Subpart E, Sections 512.41 and 512.42 (see also 440-CPM, Part 517, Subpart C, Section 517.22).

517.11 Level of Natural Resource Treatment for the Wildlife Habitat Incentive Program Plan of Operation (WPO)

A. Primary Focus: Resource Concerns

- (1) The WPO portion of the cost-share agreement must meet identified wildlife resource conservation needs. The WPO may cover all or part of the participant's land base.
- (2) In many cases, the WPO portion of the cost-share agreement may be a part of a complete conservation plan. When participants agree, NRCS should help develop a conservation plan. All conservation practices and management systems in the WPO must be approved by NRCS and developed and carried out in accordance with the applicable NRCS FOTG for treating soil, water, air, plant, and animal resources, in addition to enhancing wildlife habitat.
- (3) Restoration of native habitats for prioritized wildlife is encouraged.

B. WPO Requirements

- (1) The participant develops a WPO with the assistance of NRCS or other NRCS-approved public or private natural resource professionals. A WPO encompasses the parcel of the land where habitat will be established, improved, protected, enhanced, or restored. The WPO must be approved by NRCS and address at least one of the following:
 - (i) Fish and wildlife habitat conditions that are of concern to the participant.
 - (ii) Fish and wildlife habitat concerns identified in State, regional, and national conservation initiatives.
 - (iii) Fish and wildlife habitat concerns identified in an approved area-wide plan that addresses the wildlife resource habitat concern.
- (2) The WPO forms the basis for the WHIP cost-share agreement and must be attached and included as part of the cost-share agreement, along with the operations and maintenance (O&M) agreement. The WPO includes a schedule for installation and maintenance of the conservation practices as determined by NRCS.
- (3) The WPO may be modified in accordance with 440-CPM, Part 517, Subpart F, Section 517.50.
- (4) The participant is responsible for the implementation of the WPO.
- (5) The WPO portion of the cost-share agreement must meet the objective of WHIP. The designated conservationist, with the assistance of conservation partners, as appropriate, will—
 - (i) Consider the applicant's objectives and goals.
 - (ii) Assist the applicant in determining the essential practices, extent, and schedule for applying the practices necessary to establish, improve, protect, enhance, or restore wildlife habitat on the acres under application. This information can be used in the cost-share agreement.
 - (iii) List the estimated payments for installing the planned conservation practices and the approximate payment rates to be provided.
 - (iv) Ensure fish and wildlife habitat conservation is the primary purpose of WHIP projects. Education cannot be the primary purpose of WHIP projects. Education in schools should be provided by partners.
 - (v) Ensure that cost-share agreements that will benefit essential plants include documentation of the essential fish or wildlife species that will be benefited in the WPO (see 440-CPM, Part 517, Subpart C, Section 517.22 (H)(vi), and Subpart E, 517.45 (B)(2)).
 - (vi) Ensure that any other provisions or documentation determined to be necessary or required according to Title 180, [National Planning Procedures Handbook \(NPPH\)](#), Part 600, Subpart C, Section 600.31, are included.
- (6) The designated conservationist, with the assistance of conservation partners, as appropriate, will complete the following in the WPO:
 - (i) Complete a benchmark wildlife habitat inventory and an assessment of wildlife biological requirements (food, cover, and water), identifying only essential needs.
 - (ii) Verify the accuracy of existing wetland determinations and delineations for the acres under application. Any errors found must be corrected with the applicant.
 - (iii) Identify requirements for preservation of cultural resources, where applicable.
 - (iv) Document how habitat will be established, improved, protected, enhanced, or restored over the life of the cost-share agreement. The WPO portion of the cost-share agreement must specify all essential treatment practices.
 - (v) Describe new technologies or interim practices that will be implemented (for example field tested) to establish, improve, protect, enhance, or restore the wildlife habitat over

the life of the cost-share agreement. Implementation of new technologies not in the FOTG must have State Conservationist concurrence.

C. WPO Map

See Title [180-NPPH, Part 600](#), Section 600.31 and 440-CPM, Part 512, Subpart E, Section 512.43.

D. Signature Requirements

See 440-CPM, Part 512, Subpart E, Section 512.46.

E. Definition of Conservation Practices (See also [440-CPM, Part 502](#).) Conservation practices are—

- (1) Commonly used to meet specific natural resource needs.
- (2) Science-based and field-tested over a number of years and for which standards and specifications have been developed.
- (3) New information and technologies identified in the FOTG as interim standards and specifications.
- (4) Part of a conservation system.

Note: New technologies not in the FOTG may be implemented with the concurrence of the State Conservationist and consistent with agency policy for establishing interim conservation practices (see GM-450, Part 401, Subpart B, Section 401.17).

F. Practice Life

See 440-CPM, Part 512, Subpart B, Section 512.11.

G. Essential Practices

- (1) Essential practices are those that must be included in the WPO portion of the cost-share agreement for the protection, restoration, development, enhancement, or management of identified fish and wildlife habitat components, including non-cost-share items. Non-cost-share items may be management practices (for example, 645 – Upland Wildlife Habitat Management). Essential practices must be—
 - (i) Technically feasible, based on the site evaluation.
 - (ii) Properly operated and maintained for a duration as determined in the O&M agreement.
 - (iii) Identified in the WPO as numbered items.

Note: Recurring practices may be considered essential practices in the WPO, but only on a very limited basis and where there is an identifiable cost to the participant.

- (2) Recurring practices are limited to those that must be applied on a regular, scheduled basis to maintain the desired ecological or serial stage of wildlife habitat vegetation. Examples of this may be found in the various components of [Brush Management \(Practice Standard 314\)](#) in [section IV of the FOTG](#).

H. Supplemental Practices

Supplemental treatment practices are not required for protecting, restoring, developing, enhancing, or managing identified fish and wildlife habitat components. However, they may enhance habitat quality. Supplemental practices—

- (i) Are not eligible for WHIP financial assistance, but they may be financed by other partners or other programs.
- (ii) Are not required to be operated and maintained for the life of the agreement.
- (iii) Must be identified in the plan as non-cost-shared.
- (iv) Must not adversely impact the functioning of essential practices.

Note: Annual food plots may be considered a supplemental practice, but they are not eligible for NRCS cost-share assistance under WHIP.

I. Ineligible Practices

Ineligible practices are those practices that—

- (i) Have the primary purpose of promoting or enhancing agricultural productivity or a goal other than fish or wildlife habitat.
- (ii) The participant has already implemented.
- (iii) Will not meet fish or wildlife habitat needs.
- (iv) Were cost-shared under any other conservation program administered by USDA.
- (v) Do not meet FOTG standards and specifications.

J. Incompatible Activities

Incompatible activities are those determined by NRCS to be in conflict with the purpose and intent of WHIP, the WPO, and the O&M agreement. These activities may be prohibited or limited in timing, intensity, location, or frequency. These activities may include, but are not limited to—

- (i) Construction
- (ii) Developed recreational uses, such as boardwalks or permanent blinds
- (iii) Vehicle traffic

517.12 Reserved

517.13 Reserved

Subpart C - Application for Assistance

517.20 General

See Title 440, Conservation Programs Manual (CPM), Part 512, Subpart C, Section 512.20.

517.21 Signature Authority for Businesses

See 440-CPM, Part 512, Subpart C, Section 512.21.

517.22 Eligibility

A. Who May Be Eligible

To be eligible, applicants must meet requirements as set forth in 440-CPM, Part 512, Subpart C, Section 512.22, and—

- (i) Applicant must be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party, such as Agricultural Management Assistance (AMA), Environmental Quality Incentives Program (EQIP), WHIP, Conservation Innovation Grants (CIG), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP, etc.
- (ii) Provide NRCS with written evidence of ownership or legal control of private agricultural land, nonindustrial private forestland, or Indian land for the term of the proposed cost-share agreement, including the operation and maintenance (O&M) agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA) or Indian land where there is sufficient assurance of control.
- (iii) Agree to provide NRCS with all information NRCS determines to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance.
- (iv) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this part.
- (v) Provide a list of all members of the legal entity and embedded entities, along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use other unique identification number for each individual eligible for payment.
- (vi) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR Part 1400.
- (vii) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant must utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party.

B. Acceptable Evidence of Control or Ownership

- (1) Acceptable evidence of control or ownership includes, but is not limited to, the any of following:
 - (i) Title.
 - (ii) Land cost-share agreement or deed.
 - (iii) County Farm Service Agency (FSA) land ownership records.
 - (iv) Valid lease for the length of the cost-share agreement.
 - (v) Notarized statement signed by the owner that the operator will have control of the land for the length of the cost-share agreement.
 - (vi) History of use, by documents provided, that indicates that future control of the land is likely for the term of the cost-share agreement, including the O&M agreement.
 - (vii) Other documentation, such as power of attorney, executorships, trusteeships, corporations, etc.
 - (viii) An applicant proposing to implement a structural or vegetative practice funded through a WHIP cost-share agreement on rented or leased land must sign the application and submit written concurrence by the landowner at time of application specifically granting the applicant permission to install, operate, and maintain the conservation practice for the lifespan of the conservation practice, as defined in the cost-share agreement.
- (2) An exception may be made by the Chief for enrollment of Indian land, BIA allotted lands, or other special cases.
- (3) In special cases, such as land subject to multiple owners, the designated conservationist will determine eligibility with the concurrence of the State Conservationist.
- (4) Acceptable evidence of control of water or other surface and subsurface rights may be required.

- (5) The designated conservationist must document in writing how it is known that the applicant has control of the land and verify that the land is eligible, placing the documentation in the cost-share agreement file. The designated conservationist will also determine if existing easements or rights held by entities other than the participant will place constraints on the proposed WPO objectives.
- (6) See 440-CPM, Part 512, Subpart C, Section 512.22, for more information.

C. Nongovernmental Organizations

Nongovernmental organizations (NGOs) are eligible to participate in WHIP. If the organization owns the land, an authorized representative must sign all necessary forms. If the organization does not own or control the land, the landowner must provide written documentation signifying the acceptance of responsibility to comply with the WHIP cost-share agreement (see 440-CPM, Part 512, Subpart C, Section 512.22).

D. Commercial Enterprises

Commercial hunting, fishing, recreation, and aquaculture enterprises are eligible to participate in WHIP. However, cost-share payments will be limited to essential practices installed to benefit free-ranging wildlife as determined by the State Conservationist.

E. Group Agreements

If the designated conservationist determines that benefits to fish or wildlife habitat would be sufficiently greater if multiple applicants entered into cooperative efforts to install conservation practices, then those applicants may develop a multitract or multifarm WPO to address the larger project. This multiple-participant project may be assessed and ranked as one project, although separate cost-share agreements must be developed with each applicant. This type of project may be appropriate where a number of adjacent tracts are under separate management (see [section 517.10G](#) of this manual). (See 440-CPM, Part 512, Subpart E, Sections 512.41 and 512.42, for more information.)

F. Participation by NRCS Employees

See 440-CPM, Part 512, Subpart C, Section 512.22B.

G. Ineligible Applicants

Federal agencies, State and local governments and political subdivisions, and agencies thereof, are not eligible for payments or benefits under WHIP.

H. Eligible Land

The following types of land are eligible for WHIP:

- (i) **Agricultural land** – 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 produced or have the potential to be produced. Agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.
- (ii) **Nonindustrial private forestland** – Rural land, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.
- (iii) **Indian land, defined as any of the following:**
 - Land held in trust by the United States for individual Indians or Indian Tribes.
 - Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance.
 - Land that is subject to rights of use, occupancy, benefit of certain Indian Tribes, or some combination of these.
 - Land held in fee title by an Indian, Indian family, or Indian Tribe.

Note: When land is suitable for wetland restoration and the acreage is eligible for both WHIP and the Wetland Reserve Program (WRP), the wetland should be restored using WRP funds, if they are available.

I. Ineligible Land

The following lands are ineligible for WHIP:

- (i) Publicly owned lands (Federal, State, county, or local government-owned lands).

Note: States should obtain documentation from the public entity that has authority to manage and oversee public waters designating what is public and therefore ineligible for WHIP funding (that is, a map designating private and public waters or written letter noting size of streams that are public or private). This documentation should be retained in the contract file for audit purposes.

- (ii) Land currently enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS, including—

Water Bank Program (WBP).
Emergency Watershed Protection Program (EWPP) that are subject to flood plain easements.
Conservation Reserve Program (CRP).
Wetland Reserve Program (WRP).
Healthy Forests Reserve Program (HFRP).
Grassland Reserve Program (GRP).

Exception: The State Conservationist may fund a WHIP cost-share agreement along with a GRP cost-share agreement if the following requirements are both met:

- Wildlife habitat is the primary resource concern.
- The GRP cost-share agreement is for an easement.
To determine program participation on a tract of land:
 - WBP – Look in Toolkit; see contract file; see also <http://ncgcws.ftw.nrcs.usda.gov/easements/imagery/>.
 - EWPP – Look in Toolkit; see contract file.
 - CRP – In Toolkit look on the FSA Common Land Unit layer; see FSA; see also <http://ncgcws.ftw.nrcs.usda.gov/easements/imagery/>.
 - WRP – Look in Toolkit; see contract file.
 - HFRP – Look in Toolkit for fund code (HFRP); see contract file.
 - GRP – Look in Toolkit; see contract file.
- (iii) Land with onsite or offsite conditions that would undermine the benefits of the habitat development (such as a nearby contaminant source), degrade the area, or otherwise reduce its value.
- (iv) Land that is smaller than the minimum acreage, if established by the State Conservationist, and other requirements which may include advice from the State Technical Committee as indicated in the State WHIP plan (may consider prioritized habitat needs, connectivity of habitats, etc.).
- (v) Land enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved.
- (vi) Land where the benefited essential plants in a proposal do not benefit an essential fish or wildlife species (see Sections 517.11 (B)(x) and 517.45 (B)(2) of this Part).
- (vii) Land on which habitat for threatened or endangered species would be adversely affected.

Note: Exceptions may be made by the director of the Financial Assistance Programs Division.

Note: A WHIP participant may have more than one WHIP cost-share agreement, though not on the same acreage. Multiple cost-share agreements may be allowed on the same acreage by the State Conservationist under special circumstances on a case-by-case basis, although the participant will be subject to the annual payment limitation.

517.23 WHIP application Procedure

A. Applications

WHIP participation will be encouraged locally by the NRCS, in cooperation with the Conservation Districts and other partners through announcements and news releases.

B. Application Process

The WHIP signup is conducted on a continuous basis. The NRCS State Conservationist, with recommendations from the State Technical Committee, will—

- (i) Develop and publicize a procedure for processing WHIP applications for funding.
- (ii) Develop a process and timeframe to—
 - Review and compare applications.
 - Determine which applications will be funded.

C. Who Can Apply

Applications will be accepted from any person or legal entity wishing to apply. Applicants will be required to provide acceptable evidence of ownership or control of the land, in accordance with 440-CPM, Part 517, Subpart C, Section 517.22.

D. Submitting Applications

See 440-CPM, Part 512, Subpart C, Section 512.23.

E. Required Information

See 440-CPM, Part 512, Subpart C, Section 512.23A.

F. Beginning Practices

- (1) A practice initiated prior to application for WHIP or cost-share agreement approval is ineligible for financial assistance. However the State Conservationist or designated

conservationist may waive this provision in accordance with 440-CPM, Part 512, Subpart C, Section 512.23C, and when the following requirements are met:

- (i) The practice is included in the WPO.
 - (ii) The practice was not started prior to the date the waiver is approved.
- (2) Applicants who request a waiver must be notified by NRCS that they may be ineligible to receive payment if any of the following occur:
- (i) The cost-share agreement is not approved.
 - (ii) The practice does not meet NRCS standards and specifications.
 - (iii) The requested practice is not included in the WPO.
- (3) The waiver is approved when the applicant receives an approval letter as shown in 440-CPM, Part 512, Subpart J, Section 512.91E.

G. Additional Information

Additional information determined to be necessary to assess the merits of an application may be required by NRCS to complete the application evaluation. This information may include:

- (i) Wildlife species or habitat of concern.
- (ii) The participant's objective(s).
- (iii) The practice(s) desired.
- (iv) The standing of all other USDA-administered conservation program cost-share agreements to which the applicant is a party.

H. Signature Requirement

See 440-CPM, Part 512, Subpart C, Section 512.23B.

517.24 Processing Applications

A. Processing Applications

ProTracts application entry page:

- (i) **Treated Acres** – Enter the total acreage for the cost-share agreement.
- (ii) **Habitat Type** – Select predominant habitat that is targeted in the contract (upland, wetland, aquatic, pollinator, or threatened and endangered).
- (iii) **Habitat Acres** – Enter acres of the priority habitat selected that will be benefited. This acreage must be less than or equal to the treated acres, but never more.
- (iv) **Acres of Invasive Species Controlled or Eradicated** – Enter acres.
- (v) **Number of T&E Species Likely to Benefit** – Enter the number of species.
- (vi) **Number of At-Risk Species Likely to Benefit** – Enter the number of species. See 440-CPM, Part 512, Subpart C, Section 512.24.

B. Evaluation of Eligible Applications

NRCS and its designated partners will work with eligible applicants to gather the information needed to evaluate and rank applications in accordance with the application process established by the State Conservationist under section 517.23 (B) of this Part. It will use the approved State WHIP ranking criteria (see section 517.25 (D) of this Part) and the agency-approved Application Evaluation and Ranking Tool (AERT). Partners may be included in the process. (See 440-CPM, Part 512, Subpart C, Sections 512.24 and 512.25 for more information.)

If the application...	Then NRCS will...
Has the highest ranking or meets or exceeds the minimum ranking threshold established by the State Conservationist.	Approve the application, unless limited by available funding.
Would exceed or overobligate available funds.	Not approve the application.

517.25 Evaluating Applications

See 440-CPM, Part 512, Subpart C, Section 512.25.

A. Purpose

A ranking process allows NRCS to prioritize WHIP applications at the local level based on ecological, economic, and social factors. Each State will develop a ranking process to ensure consistent and efficient WHIP implementation within the State and will use the agency-approved AERT to implement the process.

B. State Conservationist's Role

The State Conservationist, who may include recommendations from the State Technical Committee, will—

- (i) Coordinate development of ranking criteria based on locally developed conservation needs assessments and other information.
- (ii) Ensure that the ranking process is consistent with National and State wildlife priorities identified in the State WHIP plan.
- (iii) Establish a minimum ranking threshold to identify applications to be funded (that is, applications that meet a minimum score to ensure high-quality applications are funded. If applications do not meet the minimum score they are not funded).
- (iv) Rank applications based on documentation received from field offices.
- (v) Develop and implement a quality assurance process to ensure that resources used are consistent with the established ranking process.
- (vi) Ensure use of the agency-approved AERT.

C. Designated Conservationist's Role

The designated conservationist will—

- (i) Provide leadership for the USDA local working group to conduct and update a conservation needs assessment that considers area-wide wildlife habitat needs. Assessments are forwarded to the State Conservationist as they are completed or revised.
- (ii) Prepare applications for ranking based on a field visit, the ranking worksheet, and the draft WPO portion of the conservation plan.

D. Ranking Criteria

(1) The State Conservationist will identify appropriate ranking criteria and use the agency-approved AERT to prioritize all eligible applications. The ranking criteria may include advice from the State Technical Committee. Ranking priority must be given to those applications that complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, and national levels. Examples of the initiatives that could be included are—

- (i) The [North American Waterfowl Management Plan](#)
- (ii) The [National Fish Habitat Action Plan](#)
- (iii) The [Greater Sage Grouse Conservation Strategy](#)
- (iv) [State Comprehensive Wildlife Conservation Strategies](#) (also referred to as the [State Wildlife Action Plans](#))
- (v) The [Northern Bobwhite Conservation Initiative](#)
- (vi) The [Gulf of Hypoxia Action Plan 2008](#) (and associated annual operating plans)
- (vii) [State forest resource strategies](#)

(2) The point spread on the ranking system should be of sufficient size to differentiate among applications. At a minimum, the process will consider using some or all of the guidelines. [Click here for a copy of the guidelines.](#)

E. Maintaining Ranking Criteria Data

The State Conservationist will maintain the ranking criteria and the associated scores for each offer received for a minimum of 1 year, in accordance with [Title 120, General Manual \(GM\), Part 408, Subpart D](#). The filing code will be "Wildlife Habitat Incentive Program, Ranking Criteria, Fiscal Year XX (where XX equals year), Records Guide 300-21-5."

F. Special Projects

(1) The State Conservationist, who may seek recommendations from the State Technical Committee, may approve special projects requested through the Local Working Groups or a similar locally led process, provided they meet WHIP purposes (see [440-CPM, Part 517, Subpart C, Section 517.25 \(D\)](#), for list of initiative examples).

(2) Special projects may be approved by the State Conservationist in cases where the infrastructure for carrying out the local ranking process is not present, such as when there

is no

Conservation District or Local Working Group, provided they meet WHIP purposes.

517.26 Status of Applications

See 440-CPM, Part 512, Subpart C, Section 512.26.

517.27 Servicing Unfunded Applications

See 440-CPM, Part 512, Subpart C, Section 512.27.

517.28 Public Access to Data

See 440-CPM, Part 512, Subpart A, Section 512.6.

517.29 Appeals

A. Appeal Process

All WHIP appeals will be handled in accordance with [440-CPM, Part 510](#), and, if appropriate, the FSA [Handbook 1-APP](#). The applicable regulations for appeals are: [7 CFR Part 614, "NRCS Appeals Procedures"](#); [7 CFR Part 780, "FSA Appeals Procedures"](#); and [7 CFR Part 11, "National Appeals Division \(NAD\) Rules of Procedure."](#) (see also [440-CPM, Part 512, Subpart C, Section 512.24](#))

B. Actions Not Appealable

In accordance with the provisions of Public Law 103-354, the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. Section 6901, et seq.), and as set forth in the National Appeals Division Rules of Procedure, [7 CFR Section 11.6\(a\)\(2\)](#), it "...shall [be] determined whether the decision is adverse to the individual participant, and thus appealable, or is a matter of general applicability, and thus not subject to appeal..." Actions and decisions that are generally applicable to all participants in the Nation, State, or Tribes and are not specifically adverse to a participant in WHIP are not appealable (see [440-CPM, Part 510, Subpart A, Section 510.2 \(B\)\(1\)](#)). Examples of actions and decisions that are not subject to appeal include—

- (i) Payment rates, payment limits, payment computations, and cost-share percentages
- (ii) The designation of approved fish and wildlife priority areas, habitats or practices
- (iii) Identification of priority natural resource concerns or areas in the ranking criteria
- (iv) NRCS program funding decisions (that is, funding allocations, funding levels, and funding decisions)
- (v) Eligibility of conservation practices.
- (vi) NRCS conservation practice standards and specifications and other technical criteria.
- (vii) The application ranking and the screening process.
- (viii) Science-based formulae and criteria.
- (ix) Matters of regulation and law that expressly provide for the action taken.
- (x) Denial of program participation due to a current lack of program funds.
- (xi) Other matters of general applicability.

C. Handling Adverse Decisions

Adverse Decisions

(i) NRCS may make different types of decisions for a WHIP participant depending on the basis for the decision. Many of the decisions that will be issued to a program participant will be about cost-share agreement or program administration, and thus are considered as program decisions, (for example, eligibility, violation, loss of control of the land under cost-share agreement, payment ineligibility). However, some adverse decisions issued for WHIP may be strictly technical in nature (for example, failure to complete a conservation practice according to FOTG standards). There are significant differences in the appeals procedures used for technical determinations as opposed to program decisions.

(ii) Technical Determinations

These types of decisions must include appeal rights specified in [7 CFR Sections 614.7 \(preliminary technical determination\) and 614.8 \(final technical determination\)](#), which provide for review and reconsideration, mediation, or expedited finality at the preliminary determination level and an informal appeal hearing by either the FSA County Committee (COC) or a formal appeal review by the National Appeals Division (NAD) at the final technical determination level. It is important that all steps be completely and correctly followed so that the participant cannot claim that the proper appeal rights were not accorded for a particular determination.

Preliminary technical determinations must also undergo a review by the NRCS State Conservationist if, upon reconsideration, the determination remains adverse to the participant. This review will ensure that the technical determination—

- Is fully supported by the record.
- Conforms to the specific program regulation.

If one or both of these items are found to be in question, the State Conservationist may either remand the determination to the field office to redo the determination or have another employee conduct a new determination.

(iii) Program Decisions

Program decisions are defined as "...written decision[s] by NRCS concerning eligibility for program benefits, program administration or program implementation and [are] based upon applicable regulations and program instructions ([7 CFR Section 614.2 \(o\), "NRCS Appeals Procedure"](#))."

Program decisions are issued as final decisions that achieve finality upon receipt by the program participant.

Program decisions can be based on a technical aspect, yet, due to the nature of the decision, be considered to be a program decision. Examples of program decisions include, but are not limited to, program eligibility decisions, program ranking decisions, program violations (even if they have a technical basis), recovery of costs due to loss of control of the cost-share agreement acreage, and failure to start a cost-share practice within 12 months.

The appeal rights for a program decision according to [7 CFR Section 614.9](#) include mediation, informal appeal to either the FSA COC or the State Conservationist, or formal

appeal to NAD.

Note: Only those actions that are considered to be appealable will be given appeal rights. See 440-CPM, Part 517, Subpart C, Section 517.29 (B), for a list of WHIP actions not subject to appeal. The WHIP participant has the right to request a NAD appealability review for determinations or decisions that NRCS has determined are not subject to appeal (see 440-CPM, Part 517, Subpart C, Section 517.29 (B)).

D. Appeals and Decisions

- (1) Reserved
- (2) FSA Determination Appeals:

FSA committee responsibilities are defined in 440-CPM, Part 512, Subpart A, Section 512.4 (D). Eligibility decisions rendered by the FSA committee will be included in the overall eligibility decision issued by NRCS. These decisions are not appealable because they were issued by another Federal agency at the request of NRCS [7 CFR Section 614.4\(b\)\(6\)](#).

- (3) Reserved

E. Notification Requirements

- (1) Notification of Nonappealable Issues – Participants must be notified in writing by NRCS if the action is nonappealable. The notice must include both of the following:
 - (i) The participant's right to request a NAD appealability review within 30 calendar days of receipt of the determination that the action is not appealable.
 - (ii) The address of the NAD regional director.
- (2) Appeals in Writing
 - (i) All adverse decisions, except those that are not appealable as provided in Section 517.29 (E) of this Part, must be provided to the WHIP participant in writing no later than 10 calendar days after the decision has been reached. Appeal rights must be provided on all adverse decisions or determinations, as provided for in Sections 517.29 (C)(1)(A) or (B).
 - (ii) A participant's request for appeal is considered filed when the participant makes a written request by hand to any of the appeal venues provided or when NRCS receives a properly addressed appeal in a postage-paid envelope postmarked no later than 30 days after the date that the participant received the adverse decision. All requests for appeal must include a copy of the adverse decision being appealed.

Note: If NRCS did not send the adverse decision with delivery notification, then timeliness is calculated using the date of the adverse decision plus 7 days for mailing.

Subpart D - Program Payment Schedules

517.30 Method of Making Conservation Program Payments

A. Payment Methods

See Title 440, Conservation Programs Manual (CPM), Part 512, Subpart D, Section 512.30, for information on payment methods.

B. Limitations

Cost-share assistance must be limited to the minimum number of essential practices needed to obtain the desired habitat response.

517.31 Payment Schedules

A. Practice List

See 440-CPM, Part 512, Subpart D, Section 512.31, for information on developing an eligible practice list.

B. Payment Schedules

The State Conservationist, with advice from the State Technical Committee, will develop WHIP payment schedules in accordance with 440-CPM, Part 512, Subpart D, Sections 512.31 to 512.33. Any eligible practice, including interim practices, must be included in the local Field Office Technical Guide (FOTG) prior to use of the practice.

C. Essential Plant and Animal Habitat WHIP Plan of Operations (WPO)

Separate payment schedules will be developed for 15-year cost-share agreement payments up to 90 percent of the cost of installation (see 440-CPM, Part 517, Subpart E, Section 517.45).

517.32 Cost Data

A. Cost Data

See 440-CPM, Part 512, Subpart D, Section 512.32, for information on cost data.

B. Payment

Subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs. Adjustment of payment schedules will be with the "index payment rate" (see 440-CPM, Part 512, Subpart G, Section 512.60 (H)).

C. Incentive Payments

Section 1240N of title XII of the Food Security Act of 1985, as amended (section 2602 of the 2008 Farm Bill), does not authorize incentive payments using Federal WHIP funds. However, participants may receive incentive payments from other partners, such as State, private, or nonprofit sources. In the context of payment schedules, foregone income is considered an incentive payment and therefore not allowed in WHIP, as discussed in 440-CPM, Part 512, Subpart D, Section 512.34.

D. Eligible Costs

(1) Payment rates are limited to the least-cost alternative to achieve the minimum practice standards and specifications needed to address the resource concerns. The least-cost alternative limitation is only applicable to payment rates and does not limit choice of treatment options.

Example: If minimum standards and specifications require a three-wire fence and the participant wants to install a woven wire fence that costs twice as much as the minimum acceptable standard, WHIP will pay the minimum payment rate and any additional costs are borne by the participant.

(2) The individual or entity is responsible for the expense of conservation practice installation. The participant receiving the program benefit must also be the individual or entity that directly incurred the cost of the practice installation.

(3) Items eligible to establish levels and rates include the cost of any direct or significant factors necessary to perform the practice, such as:

- (i) New, donated, or used materials (in accordance with NRCS policy)
- (ii) Services and labor from the participant or others
- (iii) Sales tax

Note: Used materials may be authorized if the criteria set forth in Title 210, [National Engineering Manual](#) (NEM), and 440-CPM, Part 512, Subpart C, are met. The determination that used materials meet NRCS requirements rests with the individual having job approval authority.

E. Ineligible Costs – [Click here for a copy of the Ineligible Costs.](#)

517.33 Payment Rates

- A. NRCS will pay up to 75 percent of the cost for establishing essential practices for maximum 10-year cost-share agreements.
- B. Historically, the category “underserved participants” includes: beginning farmers and ranchers, limited-resource farmers and ranchers, socially disadvantaged farmers and ranchers, and Indian tribes. Participants qualifying for these designations may receive the applicable payment rate and an additional rate that is 25 percent above the applicable rate; provided that this increase does not exceed 90 percent of the incurred estimated costs associated with the conservation practice (see 440-CPM, Part 512, Subpart A, Section 512.5, and Subpart D, 512.33).
- C. The 90-percent cost-share rate applies to 15-year cost-share agreements (see [440-CPM, Part 517, Subpart E, Section 517.45B](#)).

517.34 Maintaining Cost Data and Payment Schedules

See 440-CPM, Part 512, Subpart D, Section 512.34.

517.35 Management Practices and Forgone Income

See 440-CPM, Part 512, Subpart D, Section 512.35.

517.36 Use of Other Funds

A. Public or Private Fund Sources

Partners may provide financial assistance to support the WPO. Such agreements are considered separate from the NRCS cost-share agreement. Participants will comply with the policies and provisions of the partnering agency, as appropriate. The policy regarding total Federal cost-share contributions continues to apply (see 440-CPM, Part 512, Subpart G, Section 512.60G).

B. Other Federal Funds

- (1) WHIP, alone or in combination with other direct Federal sources, may not exceed 75 percent of the cost for essential practices in habitat development. See 440-CPM, Part 512, Subpart G, Section 512.60G, for use of other funds.
- (2) In special cases, when the State Conservationist determines that additional cost share is needed to achieve the intended goals of the program, the State Conservationist may allow direct Federal sources to contribute to the cost of the practice above the 75-percent limit. The decision to exceed the 75-percent Federal limitation will be made on a case-by-case basis. Reasons for exceeding the Federal limitation should be clearly documented.

Example: The Fish and Wildlife Service, through the Partners for Fish and Wildlife Program, wants to contribute cost-share assistance above the 75-percent limit to encourage landowners to restore endangered species habitat identified in the WHIP state plan as a priority.

- (3) The 25-percent contribution can be met from other sources, such as State, private or nonprofit entities, or the participant. Such arrangements must be worked out in development of the WHIP agreement, and must be appropriate in meeting the WHIP objectives.

C. Mitigation and Environmental Violations

WHIP is a voluntary wildlife habitat improvement program and mitigation and actions needed to correct violations of State, Federal, or local law are not voluntary activities. Therefore, WHIP funds may not be used to mitigate an activity or to remedy an existing violation. Such activities may be included in the WHIP cost-share agreement; however, cost-share funds cannot be expended for mitigation or remediation. This includes wetland mitigation banking. Additionally, mitigation or remediation cannot be the basis for using matching WHIP funding.

Subpart E - Contracting

517.40 General Provisions

Policy

The administrative policy for Wildlife Habitat Incentive Program (WHIP) contracts is set forth in Title 440, Conservation Programs Manual (CPM), Part 512, Subpart E, Section 512.40. Only the unique aspects of the administration of WHIP contracts are presented in this section. ProTracts is the required contracting software for all WHIP contracts (see 440-CPM, Part 512, Subpart A, Section 512.0). Some special provisions apply to WHIP agreements (see 440-CPM, Part 512, Subpart E, Section 512.44, "Special Provisions for Conservation Program Contracts").

517.41 Joint Agreements

See 440-CPM, Part 512, Subpart E, Section 512.41.

517.42 Establishing Conservation Program Contracts in ProTracts

See 440-CPM, Part 512, Subpart E, Section 512.42.

517.43 Components and Assembly of Contract File

Maintaining and Filing the Agreement – All WHIP contract files will be maintained and filed in accordance with 440-CPM, Part 512, Subpart E, Section 512.43.

Note: The location of the official files will be readily available when required for any agency-approved purpose.

517.44 Special Provisions for Conservation Program Contracts

See 440-CPM, Part 512, Subpart E, Section 512.44.

517.45 Contract Period and Limitations

A. Length

(1) Contract length for WHIP will be for a time period agreed to by the participant and NRCS, with a minimum duration of 1 year after the completion of conservation practices identified in the WPO and a maximum duration of 10 years (see 440-CPM, Part 512, Subpart E, Section 512.45). At least one essential practice must be commenced within the first 12 months of the contract approval (the State Conservationist may waive this requirement at the request of the participant (see 440-CPM, Part 512, Subpart E, Section 512.45C)). All essential practices must be implemented at least one (1) year before the contract expires.

(2) The length of the contract should be determined based on the participant's desire and ability to complete the needed work, partner contributions, and other items determined appropriate by the State Conservationist.

B. Essential Plant and Animal Habitat Contracts – 15-Year Cost-Share Agreements:

(1) Up to 25 percent of funds made available annually to a State may be used for increased payments to participants who restore and protect essential plant and animal habitat using a WHIP long-term agreement with a duration of at least 15 years. The essential plant and animal habitats should be clearly documented in the State WHIP plan.

(2) The State Conservationist, who may seek recommendations from the State Technical Committee, will identify specific plant and animal habitat that is critical, and therefore eligible for increased payment under this provision, in the State WHIP plan. An essential plant can be cost-shared if it benefits an essential fish or wildlife species (see 440-CPM, Part 517, Subpart C, Section 517.22H(vi), and Subpart B, Section 517.11B(5)(v)). Plant and animal habitat can be considered essential if it is designated "essential habitat" by the Fish and Wildlife Service (FWS) or National Oceanic and Atmospheric Administration Fisheries Service (NOAAFS) as critical to the conservation of a federally listed fish and wildlife species, similarly designated habitat by the State wildlife agency for State-designated fish and wildlife species, known locations of listed or candidate fish and wildlife species that can be improved with specific practices, or particularly rare and unique habitats that could support at-risk fish and wildlife species.

(3) WHIP may pay up to 90 percent for 15-year cost-share agreements or cost-share agreements with historically underserved participants of the eligible costs associated with implementation of practices that develop, protect, enhance, or restore essential plant or animal habitat. The State Conservationist, who may seek recommendations from the State

Technical Committee, will establish the payment rate that will be used within the State for practices that develop, protect, enhance, or restore essential plant or animal habitat. Any other practice under the 15-year long term agreement will be paid at the standard rate as identified under paragraph 440-CPM, Part 512, Subpart D, Section 512.33.

(4) Example: A WHIP participant wishes to remove a barrier to passage by a threatened species of salmon, plant a riparian buffer along the stream, and plant native grass in an adjacent pasture to benefit elk. The stream was designated by NOAAFS as critical habitat, and temperature is a limiting factor for that stream. The streambed has also been determined to be private land. Elk in the area are not considered an at-risk species. NRCS may pay up to 90 percent of the costs associated with the removal of the barrier to passage and the riparian buffer establishment to benefit salmon. However, NRCS may only pay up to 75 percent of the costs associated with the native grass seeding to benefit elk.

(5) The State Conservationist, with recommendations from the State Technical Committee, will identify the appropriate ranking criteria and develop a separate ranking process to prioritize all eligible applications for 15-year or greater duration WHIP agreements. In addition to the criteria found in 440-CPM, Part 517, Subpart C, Section 517.25D, the ranking priority will be given to those applications that help further the objectives of a recovery plan developed under the Endangered Species Act for the conservation and survival of an endangered or threatened species.

(6) Where appropriate, NRCS may provide technical assistance to program participants who seek a Safe Harbor Agreement or a Candidate Conservation Agreement with Assurance for habitat developed under a WHIP agreement.

C. Invasive Species

(1) WHIP is a habitat for wildlife program. Contracts may include conservation practices to address invasive species when the following criteria are met:

(i) The invasive species include:

Nonnative or native plants that are affecting the habitat of a prioritized wildlife species; displacing plants that are the habitat of a prioritized wildlife species (e.g., Bog turtle) or,

Nonnative or native wildlife that is affecting the habitats of prioritized wildlife species; displacing native habitat faster than it can be restored, affecting the prioritized wildlife species.

(ii) Eradication or control of the invasive species on the contracted acres, during the period of a contract is highly probable.

(2) Treatments ineligible for WHIP. A plant that is a federally listed threatened and endangered species, but not habitat for a prioritized wildlife species is ineligible for payment under WHIP.

D. Payment Limitations

(1) The total WHIP payments made or attributed per person or legal entity (participant) directly or indirectly may not exceed in the aggregate \$50,000 for any fiscal year (see 440-CPM, Part 512, Subpart E, Section 512.45).

(i) WHIP 2008 Farm Bill

The \$50,000 payment limitation is on a fiscal year basis.

Annual payment limitations may not be waived.

Split payments are not allowed. When payment requests for completed practices exceed the annual limitation for a person or legal entity, that portion which exceeds the limitation will not be deferred to the next fiscal year. The balance must be deobligated.

Incremental payments are not allowed. Participants may work ahead of schedule, but certification of satisfactorily completed practices may not be delayed or postponed to circumvent the annual payment limitations.

When scheduled practices exceed the annual payment limitation, Form NRCS-CPA-1155, "Conservation Plan and Schedule of Operations," or Form NRCS-CPA-1156, "Modification," will show the capped practice cost.

Participants who are in multiple contracts and have reached the annual payment limitation will have reductions made at payment.

ProTracts business rules look at the date of approval for the annual payment limitation which has to be completed before September 30, 2009.

Payments from pre-FY 2009 contracts do NOT count toward the \$50,000 payment limit of a FY 2009 WHIP contract.

(ii) WHIP 2002 Farm Bill – No national limit exists. The State Conservationist, with advice from the State Technical Committee, may establish State-level payment limitation.

(2) With regard to cost-share agreements with individual Indians or Indians represented by BIA, payments exceeding the payment limitation may be made to the Indian participant if a BIA or Tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall

payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation practice implementation.

517.46 Signing and Approving Contract Documents

A. Approval

See 440-CPM, Part 512, Subpart E, Section 512.46.

B. Reserved

C. Reserved

D. NRCS Approving Official

See 440-CPM, Part 512, Subpart E, Section 512.46D. There is no national payment limitation per contract for WHIP. State Conservationists, who may seek advice from the State Technical Committee, may establish a State-level payment limitation per contract. Contract obligations in excess of an amount designated by the Chief annually through the NRCS Directives System (for example \$150,000) will be approved by the Regional Conservationist as outlined in [440-CPM, Part 517, Subpart A, Section 517.3A](#).

517.47 Numbering and Distributing Contracts

See 440-CPM, Part 512, Subpart E, Section 512.47.

Subpart F - Contract Administration

517.50 Modifications

A. Modification of Contracts

(1) The participant and NRCS may modify a cost-share agreement if both parties agree to the modification, the WPO is revised in accordance with NRCS requirements, and the agreement is approved by the designated conservationist. The policy for preparing modifications is set forth in Title 440, Conservation Programs Manual (CPM), Part 512, Subpart F, Section 512.50.

(2) A contract cannot be modified to extend beyond the maximum 10-year period. Cost-share agreements cannot be modified to extend beyond the maximum 15-year period or the period stated in the essential plant and animal cost-share agreement.

(3) Any modifications made must meet WHIP objectives.

(4) Cost-share payments may be made for the establishment and installation of additional eligible conservation practices, or the maintenance or replacement of an eligible conservation practice, but only if NRCS determines that the conservation practice is needed to meet the objectives of the program, or that the failure of the original project was due to reasons beyond the control of the participant (see 440-CPM, Part 512, Subpart F, Section 512.53).

B. Reserved

C. Reserved

517.51 Modification Procedures

See 440-CPM, Part 512, Subpart F, Section 512.51.

517.52 Destruction of Practices

See 440-CPM, Part 512, Subpart F, Section 512.52.

517.53 Reapplication of Conservation Treatment

See 440-CPM, Part 512, Subpart F, Section 512.53.

517.54 Transfer of Land

See 440-CPM, Part 512, Subpart F, Section 512.54.

517.55 Contract Reviews

See 440-CPM, Part 512, Subpart F, Section 512.55.

517.56 Quality Assurance

See 440-CPM, Part 512, Subpart F, Sections 512.55 to 512.56.

517.57 Cancelling and Terminating Contracts

See 440-CPM, Part 512, Subpart F, Section 512.57.

517.58 Recovery of Costs and Liquidated Damages

NRCS may terminate a contract and require the participant to refund all or part of any assistance earned under that contract, plus interest; pay liquidated damages; and forfeit all rights for future payment under the contract. The State Conservationist will waive liquidated damages assessed, depending upon the circumstances of the case (see 440-CPM, Part 512, Subpart F, Section 512.58).

517.59 Environmental Services Credits for Conservation Improvements

A. NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through WHIP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. These environmental credits must be compatible with the purposes of the program contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operations and maintenance (O&M) requirements for WHIP-funded improvements are met. Where activities may have

an impact on the land and conservation practices under a cost-share agreement, participants are strongly encouraged to request an O&M compatibility assessment from NRCS prior to entering into any credit agreement.

B. This assessment would be a simple evaluation to determine if the actions to be taken would jeopardize compliance with a cost-share agreement, including O&M requirements of a practice or system funded by NRCS. This assessment will be documented in the assistance notes and a letter provided to the client (see sample letter in 440-CPM, Part 512, Subpart J, Section 512.91). No new tools or forms will be needed. We already do these types of assessments in our normal planning and contract management processes.

Subpart G - Conservation Program Payment

517.60 Cost-Share Payments

See Title 440, Conservation Programs Manual (CPM), Part 512, Subpart G, Section 512.60.

517.61 Reserved

517.62 Payment Assignments

See 440-CPM, Part 512, Subpart G, Section 512.62.

517.63 Technical Service Provider (TSP) Payments

See 440-CPM, Part 512, Subpart G, Section 512.63.

517.64 Disapproval of Payments Applications

See 440-CPM, Part 512, Subpart G, Section 512.64.

517.65 Payments Not Authorized

A participant is not eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice on the same land under any other conservation program administered by USDA (see 440-CPM, Part 512, Subpart G, Section 512.65).

517.66 Designing Payment Shares

See 440-CPM, Part 512, Subpart G, Section 512.66.

517.67 Partial and Advance Payments

See 440-CPM, Part 512, Subpart G, Section 512.67.

517.68 Claims, Collections, and Offsets

See 440-CPM, Part 512, Subpart G, Section 512.68.

517.69 Special Payments

See 440-CPM, Part 512, Subpart G, Section 512.69.

Subpart H - Violations

517.70 Handling Contract Violations

Correcting Contract Violations

- (1) If NRCS determines that a participant is in violation of a cost-share agreement, NRCS must give the parties to the cost-share agreement notice of the violation and a minimum of 60 days to correct the violation and comply with the terms of the cost-share agreement and attachments thereto.
- (2) If the participant fails to correct the violation of a cost-share agreement within the period provided by NRCS under paragraph 517.70 (A) (1) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and assessed liquidated damages, as well as require the participant to forfeit all rights to any future payment under the agreement (see 440-CPM, Part 512, Subpart H, Section 512.70).

Subpart I - Fund Management

517.80 General

See Title 440, Conservation Programs Manual, Part 512, Subpart I, Section 512.80.

Subpart J - Exhibits

517.90 Forms

See Title 440, Conservation Programs Manual (CPM), Part 512, Subpart J, Section 512.90.

Subpart K - Program Delivery, Information, and Outreach

517.100 WHIP Information and Outreach

A. General

Information and outreach are frequently managed similarly and may have common purposes and activities. Procedures will adhere to public information policy guidance in [Title 260, General Manual \(GM\), Part 400](#). The following are general explanations of information, outreach, and education:

- (i) Information includes those activities to develop, produce, and deliver general news, knowledge, and facts about the program. Information is delivered extensively to a wide audience. NRCS will use all available media to provide full disclosure of ranking criteria, eligible practices, payment rates, and program descriptions.
- (ii) Outreach includes those activities to develop, produce, and deliver general news, knowledge, and facts about the program to a specific audience. Outreach efforts are typically aimed at participants who have been historically underserved, have not historically participated in conservation programs, or who require special emphasis or accommodations. The intent of outreach activities is to ensure that the targeted participants are aware and informed of program opportunities and have access to program participation.
- (iii) Training and education include those activities to develop, produce, and deliver technical news, knowledge, and facts to participants to help them identify and understand their natural resource and environmental conditions, and to know how to develop, implement, and maintain a conservation system.

B. Special Emphasis

Special emphasis will be made in all information activities to provide conservation assistance and program outreach, and access to historically underserved groups, which includes beginning farmers and ranchers, limited-resource farmers and ranchers, socially disadvantaged farmers or ranchers, Indian Tribes, and other participants with historically low conservation program participation rates. Procedures will adhere to national outreach policy guidance in [180-GM, Part 406](#). Special outreach efforts could include, but are not limited to—

- (i) Establishing special outreach activities at the national, State, and local levels.
- (ii) Ensuring that participants are aware, informed, and have access to information and assistance by providing, to the extent possible, special accommodations, such as—
 - Using language spoken by the intended audience.
 - Using appropriate media sources to reach the intended audience.

517.101 Web page

See the [WHIP Web page](#) or <http://www.nrcs.usda.gov/programs/whip/> on the National and State NRCS Web sites for the most up-to-date fact sheets and other information.

Subpart L - Program Evaluation

517.110 Evaluation

A. Information Collection

The State Conservationist will develop a monitoring program that must be part of the State quality assurance plan. This monitoring program may consider advice from the State Technical Committee. It may include the State's approved wildlife habitat assessment procedure, which was developed under the guidelines of [Title 190, National Biology Manual \(NBM\), Part 511, Section 511.04\(c\)](#), and retained in section III of the Field Office Technical Guide (FOTG). The monitoring information will be used to—

- (i) Assess workload conditions.
- (ii) Evaluate the effectiveness of the implemented plans.
- (iii) Monitor program implementation progress.
- (iv) Aid in the future allocation of funds.

B. Wildlife Habitat Evaluations

Complete benchmark wildlife habitat evaluations at the time the conservation plan is developed. These are used to compare the condition of a wildlife habitat resource to the quality criteria and help determine what habitat elements can be improved by implementing the conservation plan. Follow-up evaluations must be conducted—

- (i) Throughout the life of the WHIP agreement, as appropriate.
- (ii) In the final year of the WHIP agreement.

C. Types of Information to be collected

States should partner with universities; other local, State, and Federal agencies; and nongovernment organizations to measure the effectiveness of the habitat improvements and conservation practices implemented. At a minimum, the following information should be collected:

- (i) A measure of the conservation effects from systems applied under the WHIP contract through established reporting methods.
- (ii) A completion of the wildlife habitat assessments for benchmark, interim, and applied conditions.
- (iii) A measure of the effectiveness of the wildlife habitat improvement and partner participation in program implementation.

Subpart M - Cooperative Conservation Partnership Initiative

517.120 General Information

Background and Purpose

- (1) The Cooperative Conservation Partnership Initiative (CCPI) is a voluntary conservation initiative that enables the use of certain conservation programs along with resources of eligible partners to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands. Eligible producers, who participate in a project area identified in an approved partner agreement and have an active application in one of the following approved programs, may be approved for assistance. Eligible programs include: Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentive Program (WHIP), and the Conservation Stewardship Program (CSP). Under CCPI, the Natural Resources Conservation Service (NRCS) enters into partnership agreements with eligible entities that want to enhance conservation outcomes on agricultural and nonindustrial private forest lands. The Secretary of Agriculture has delegated the authority for CCPI to the NRCS Chief, found in section 2707 of the Food, Conservation, and Energy Act of 2008, which establishes the CCPI by amending Section 1243 of the Food Security Act of 1985 (16 U.S.C. Section 3843).
- (2) NRCS will make WHIP benefits to owners and operators of agricultural and nonindustrial private forest lands who participate in CCPI project areas. As authorized by Congress, this is not a grant program to eligible partners. This is a program whereby approved eligible partners will enter into multiyear agreements with NRCS to help enhance conservation outcomes on agricultural lands and private nonindustrial private forest lands. The intent of CCPI is for the Federal Government to leverage investment in natural resources conservation along with services and resources of non-Federal partners.
- (3) The purposes of a CCPI partnership agreement are to—
 - (i) Address conservation priorities involving agriculture and nonindustrial private forest land on a local, State, multistate, or regional level.
 - (ii) Encourage producers to cooperate in meeting applicable Federal, State, and local regulatory requirements related to production.
 - (iii) Encourage producers to cooperate in the installation and maintenance of conservation practices that affect multiple agricultural or nonindustrial private forest land.
 - (iv) Promote the development and demonstration of innovative conservation practices and delivery methods, including those for specialty crop and organic production, and precision agriculture producers.

517.121 Contracting Directly with Eligible Applicants

Eligible Applicants

Only producers who are eligible for an approved program may receive financial assistance. In order for an applicant to be considered for financial assistance through WHIP, a program CCPI partner proposal or application must have been submitted and approved by the NRCS Chief. Producers meeting WHIP eligibility criteria and wishing to apply for CCPI in an approved project area may do so at their local NRCS office, subject to availability of funds.

517.122 Partnership Agreements

A. Purpose

The Chief or State Conservationist may enter into partnership agreements in order to leverage available resources to achieve a shared conservation goal consistent with the purposes of the CCPI. Partners and approved project areas will be selected on a competitive basis, for all proposals sent directly to the State Conservationist or the Chief for multistate proposals. If the project proposal is multistate in scope, all State Conservationists in the project area must be sent the proposal for review. State Conservationists must submit letters of review to the Chief as outlined in the current fiscal year CCPI Notice of Request for Proposals (RFP). The Chief will review and evaluate the proposals based on the criteria included in the RFP notice. Potential partners should consult with the appropriate State Conservationist(s) during proposal development to discuss the letter of review.

B. Eligible Partners

The word "partner" means an entity that enters into a partnership agreement with NRCS to carry out the CCPI activities. Eligible partners include federally recognized Indian Tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, or nongovernmental organizations with a history of working cooperatively with producers.

C. Process

A Notice of RFP will be advertised each FY the partnership approach is offered as part of CCPI. Interested parties should follow the protocols issued in the RFP.

D. Partnership Proposal Content

Prospective partners submit complete proposals to the appropriate State Conservationist (State initiatives) or the Chief (if the project is multistate or national). In order to receive consideration, the proposal must—

- (i) Describe the partners' history of working with producers to address the conservation objectives to be achieved.
- (ii) Describe the geographic area covered by the proposal, conservation priorities in the area, conservation objectives to be achieved, and the expected level of participation by producers.
- (iii) Describe the partner, or partners, collaborating to achieve the objectives of the agreement, and the roles, responsibilities, and capabilities of each partner.
- (iv) Describe the project duration (not to exceed 5 years in length) and schedule that details when the potential partner anticipates finishing the project and submitting a final report.
- (v) Describe the resources that are requested from the Secretary, and the non-Federal resources that will be leveraged by the Federal contribution.
- (vi) Describe the plan for monitoring, evaluating, and reporting on progress made towards achieving the objectives of the agreement.
- (vii) List the criteria to be used to prioritize individual producer applications to ensure that applications most aligned with the proposal's objectives receive priority.
- (viii) Estimate the percentage of producers, including nonindustrial private forest landowners, in the project area that are likely to participate in the project.
- (ix) Describe the conservation practices and activities to be applied on the landscape within the project timeframe.
- (x) Estimate the financial assistance program funds and acres needed to implement the conservation practices and activities within the project area (for multistate or national projects provide the funds and acres by State).
- (xi) Describe any requested program adjustments, by program, and explain why the adjustment is needed in order to achieve the objectives of the project. If a partner is requesting specific program flexibilities that depend on detailed participant or project information, the proposal must provide the needed information. Partners should contact their local NRCS office to determine the specific information required.
- (xii) Describe how the partner will provide for outreach to beginning, limited-resource, and small and disadvantaged farmers and ranchers and Indian Tribes.
- (xiii) Describe how the proposal's objectives further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration, if applicable.

E. Evaluation

Once the Chief or appropriate State Conservationist has assessed the merits of each proposal, the Chief or appropriate State Conservationist will rank the proposals via a competitive process. The Chief or State Conservationist must give a higher priority to proposals that meet one or more of the following criteria:

- (i) Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the area covered by the agreement.
- (ii) Complete the application of the conservation practices, activities, or both on all of the covered program contracts or cost-share agreements in 5 years or less.
- (iii) Assist the participants in meeting local, State, and Federal regulatory requirements.
- (iv) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts.
- (v) Provide for matching technical assistance funds to assist participants with the implementation of their EQIP contracts and WHIP cost-share agreements.
- (vi) Deliver high percentages of applied conservation to address water quality, water conservation, or State, regional, or national conservation initiatives.
- (vii) Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods.
- (viii) Further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration.
- (ix) Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian Tribes within the area covered by the agreement.
- (x) Each fiscal year that the CCPI program is available, the NRCS National Headquarters (NHQ) will establish a process to evaluate the partner proposal applications and provide recommendations to the Chief or appropriate State Conservationist. For multistate projects, after selection and approval by the Chief, NHQ will allocate CCPI funding to States where projects have been approved, along with the approved partner agreements. For within-State projects, the STC will utilize reserved CCPI program funds to support

approved projects.

F. Partnership Agreements

NRCS will enter into a partnership agreement with a selected partner as the mechanism for participation in CCPI. The partnership agreement will not obligate funds, but will address, among other things—

- (i) The role of the partner
- (ii) The role of NRCS
- (iii) The responsibilities of the partner as it relates to the monitoring and evaluation
- (iv) The format and frequency of reports (semiannual, annual, and final) that are required as a condition of the agreement
- (v) The frequency and duration of the monitoring and evaluation that will take place within the project area
- (vi) Plan of work and budget to identify other funding sources (if applicable) for financial assistance, technical assistance, or both
- (vii) The specified project timeframe
- (viii) Other requirements deemed necessary by NRCS to further the purposes of the CCPI project

G. Waiver Authority

Adjusted Gross Income Limitation (AGI) Waiver—To assist in the implementation of CCPI, the Chief may waive the eligibility requirement for the AGI on a case-by-case basis, in accordance with policy and processes cited in 7 CFR Part 1400. Requests for AGI waivers are made in writing by the State Conservationist, through the Regional Conservationist, Office to the Chief.

H. Limitation on Administrative Expenses

None of the funds made available under the CPPI may be used for a partner's administrative expenses. All CPPI funds will be administered directly through CCPI contracts between NRCS and program participants.