

WHIP plan of operations means the document that identifies the location and timing of conservation activities that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WHIP plan of operations is a part of the WHIP cost-share agreement.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

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.

§ 636.4 Program requirements.

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WHIP plan of operations and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control of land for the term of the proposed cost-share agreement, including the 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;

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;

(7) 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;

(8) 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 another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by the BIA, payments exceeding the payment limitation may be made to the tribal 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 BIA or 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 related to conservation activity implementation;

(10) 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, Adjusted Gross Income (AGI);

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170.

(b) Eligible land includes:

(1) Private agricultural land;

(2) NIPF;

(3) Indian land; and

(4) Trust land owned in fee title by a State, including an agency or subdivision of a State, when such trust land is held under a long-term lease by a person or nongovernmental entity and

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when the Chief determines that (i) by the nature of the lease, such land is tantamount to private agricultural land; (ii) the duration of the lease is at least the length of any WHIP agreement; and (iii) no funds under the WHIP program are paid to a governmental entity.

(c) *Ineligible land.* NRCS will not provide cost-share assistance with respect to land:

(1) Enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS;

(2) With onsite or offsite conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) On which habitat for threatened or endangered species, as defined in section 3 of the ESA, 16 U.S.C. 1532, would be adversely affected; or

(4) That is owned in fee title by an agency of the United States, other than:

(i) Land held in trust for Indian tribes, and

(ii) Lands owned in fee title by a State, including an agency or subdivision of a State or a unit of government except as provided in § 636.4(b)(4).

§ 636.5 National priorities.

(a) The following national priorities will be used in WHIP implementation:

(1) Promote the restoration of declining or important native fish and wildlife habitats;

(2) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species;

(3) Reduce the impacts of invasive species on fish and wildlife habitats;

(4) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats; and

(5) Protect, restore, develop, or enhance important migration and other movement corridors for wildlife.

(b) NRCS, with advice of other Federal agencies, will undertake periodic reviews of the national priorities and the effects of program delivery at the State, tribal, and local levels to adapt the program to address emerging resource issues. NRCS will:

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(1) Use the national priorities to guide the allocation of WHIP funds to the State offices;

(2) Use the national priorities in conjunction with State, tribal, and local priorities to assist with prioritization and selection of WHIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian tribes, and affected stakeholders to ensure that the program continues to address priority resource concerns.

§ 636.6 Establishing priority for enrollment in WHIP.

(a) NRCS, in consultation with Federal and State agencies, tribal, and conservation partners, may identify priorities for enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, tribal land, or national levels. In response to national, tribal, regional, or State fish and wildlife habitat concerns, the Chief may focus program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, with recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), may give priority to WHIP projects that will address unique habitats or special geographic areas identified in the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat concern of national, tribal, regional, or State importance including at-risk species;

(2) Relationship to any established wildlife or conservation priority areas;