

or may be provided by a Safe Harbor Agreement (SHA) or CCAA directly between the HFRP participant and FWS or NMFS, as appropriate.

*Liquidated damages* means a sum of money stipulated in the HFRP restoration agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the restoration agreement. The sum represents an estimate of the expenses incurred by NRCS to service the restoration agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Measure* means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

*National Marine Fisheries Service* is an agency of the United States Department of Commerce.

*Natural Resources Conservation Service* is an agency of USDA which has the responsibility for administering HFRP.

*Participant* means a person, entity, or Indian tribe who is a party to a 10-year cost share agreement, 30-year contract, or an agreement to purchase an easement.

*Private land* means land that is not owned by a local, State, or Federal governmental entity, and includes land that meets the definition of "acreage owned by Indian tribes."

*Restoration* means implementing any conservation practice (vegetative, management, or structural) or measure that improves forest ecosystem values and functions (native and natural plant communities).

*Restoration agreement* means a cost-share agreement between the program participant and NRCS to restore, enhance, and protect the functions and values of a forest ecosystem for the purposes of HFRP under either an easement, 30-year contract, or a 10-year

cost-share agreement enrollment option.

*Safe Harbor Agreement* means a voluntary arrangement between FWS or NMFS and cooperating non-Federal landowners under the authority of section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1). Under the SHA and an associated enhancement of survival permit, the private property owner implements actions that are consistent with the conditions of the permit. SHAs with FWS are also subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

*State-listed species* means a species listed as threatened or endangered under State endangered species laws, a candidate for such listing, or a species listed in a State Wildlife Action Plan as a Species of Greatest Conservation Need.

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific HFRP sign-up.

*State Conservationist* means the NRCS employee authorized to implement HFRP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

*Technical service provider* means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of or on behalf of NRCS.

[75 FR 6546, Feb. 10, 2010, as amended at 79 FR 44640, Aug. 1, 2014]

### § 625.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) No delegation in this part to lower organizational levels will preclude the Chief from determining any issue arising under this part or from

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reversing or modifying any determination arising from this part.

(d) The State Conservationist will develop a list of eligible restoration practices, payment rates and cost-share percentages, a priority ranking process, and any related technical matters.

(e) NRCS will coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. In carrying out this program, NRCS may confer with private forest landowners, including Indian tribes, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies, and nonprofit conservation organizations. No determination by the FWS, NMFS, Forest Service, any Federal, State, or tribal agency, conservation district, or other organization will compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.

### § 625.4 Program requirements.

(a) *General.* Under the HFRP, NRCS will purchase conservation easements from, or enter into 30-year contracts or 10-year cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of forestlands and associated lands. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan, the effect of which is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the ESA, or measurably improve the well-being of species that are not listed as endangered or threatened under the ESA but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding. NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of forest ecosystem functions and values. Specific restoration, protection, enhancement, maintenance, and management activities may be undertaken by the landowner or other NRCS designee.

(1) Of the total amount of funds expended under the program for a fiscal year to acquire easements and enter into 10-year cost-share agreements, not more than 40 percent will be used for cost-share agreements, and not more than 60 percent will be used for easements.

(2) The Chief may use any funds that are not obligated by April 1 of the fiscal year for which the funds are made available to carry out a different method of enrollment during that fiscal year.

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, an individual or entity must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes; and

(3) 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.

(c) *Eligible land.* (1) NRCS, in coordination with FWS or NMFS, will determine whether land is eligible for enrollment and whether once found eligible, the lands may be included in the program based on the likelihood of successful restoration, enhancement, and protection of forest ecosystem functions and values when considering the cost of acquiring the easement, 30-year contract, or 10-year cost share agreement, and the restoration, protection, enhancement, maintenance, and management costs.

(2) Land will be considered eligible for enrollment in the HFRP only if NRCS determines that:

(i) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably increase the likelihood of recovery for a selected species listed under section 4 of the ESA; and

(ii) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably improve the well-being of a selected species not listed under section 4 of the