

§ 636.5

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;