



**Midwest Association of Fish and Wildlife  
Agencies**

**Private and Public Lands Committee**

**Annual Report**

**2009**

**June 1, 2009**

**Respectfully submitted by**

**Mike McCulley, Gary E. Potts, and Connie Wieda-Stark  
Illinois Department of Natural Resources**

## **Meeting Time and Place**

The Illinois Department of Natural Resources hosted the annual joint meeting of the Private and Public Lands Committees on May 3-6, 2009 at the Rend Lake Resort in Whittington, Illinois.

## **Attendance**

State agency representatives from Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, and Wisconsin were present at the meeting. Agency representatives from Colorado, Ohio and South Dakota were unable to attend. Besides invited speakers, representatives from the Association of Fish and Wildlife Agencies, Eco-Associates, Pheasants Forever, Quail Unlimited, Southern Illinois University – Carbondale, and the Wildlife Management Institute were in attendance. (Please see attached attendance list). The meeting was held during a difficult fiscal period for many states. Illinois staff and the members of the two working groups thank the Directors for their continued support in allowing staff to attend this meeting.

## **Executive Summary**

The 18<sup>th</sup> annual meeting of the Midwest Private and Public Lands Working Group convened in Rend Lake Resort Conference Center May 3-6. A joint meeting with representatives from the Private and Public Lands Working groups was conducted covering the following topics: Public and Private Land Issues, CRP Mid-Contract Management Techniques, Wildlife Habitat Planning and Tracking System, and the History of Wetland Drainage. The Public and Private Land Work groups met separately and shared state reports and discussed issues that are detailed below in the Director Action and Information items. In addition, attendees enjoyed an evening reception on Sunday and a field trip to a Private Land Wildlife Cooperator, Pyramid State Park and the World Shooting Complex, guided and narrated by wildlife biologists and site superintendents.

## **Director Action Items – Public Lands Working Group**

### **1. ISSUE: Reinstatement of the Public Lands Technical Working Committee**

The Public Land committee is scheduled for abolishment on August 1, 2010 unless reinstated for another 3 years in the bylaws. Since all recommended bylaws changes have to be distributed to the Directors 30 days in advance of the annual meeting, the committee recommendation and justification needs to be made at this year's meeting.

The Public Land committee discussed the benefits of the working group. The committee believes it is in lock step with the mission of MAFWA which is to provide a forum for state and provincial fish and wildlife agencies to share ideas and information, pool resources, and initiate action to benefit the management and conservation of fish and wildlife resources in the Midwest. Benefits include:

- Sharing ideas and information on strategies for addressing mutual management issues
- Update of current projects in each state via state reports
- Networking and the opportunity to pool our collective resourcefulness if not resources, to solve problems

**ACTION:** The Committee recommends the Directors initiate and approve the reinstatement of the committee for another term of 3 years or longer.

### **2. ISSUE: Federal Highway Administration Section 4(f) Designation**

Discussion among committee members has revealed concern about the Federal Highway Administration's reluctance to apply the Section 4(f) designation to those state lands where a federal nexus exists (i.e. purchased, developed or managed with Wildlife and Sport Fish Restoration funds), and recreation and fish and wildlife values are being conserved and protected. States find it confusing that the FHWA will give a 4(f) designation to a dedicated recreation area or a "refuge", but fail to give the same designation to state wildlife lands that are designed to achieve essentially both purposes.

The 4(f) designation is important as it lends additional consideration and protection to conservation lands that are gradually being fragmented or otherwise negatively affected by major highway and other projects. Transportation Departments and outside consultants hired to do feasibility and impact studies frequently view these lands as the path of least resistance because of single ownership and their undeveloped nature. Our Missouri colleagues related a recent incident in which a major highway project went through part of two wildlife areas because FHWA would not grant a 4(f) designation to the properties.

A reading of the law and interpretations made by the U.S. Department of Transportation, FHWA in their policy paper dated March 1, 2005, suggests confusion in the use and application of certain terms (e.g., refuge), and further suggests that the language and related judgments are dated when compared with the intent of the original law.

***"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the***

*Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."*  
**23 U.S.C. 138**

**ACTION:** Request a letter be sent to the Director of the USFWS asking that the Service investigate application of the 4(f) designation to those state lands where a federal nexus exists (i.e., acquired or managed with federal aid), and pursue a national dialogue on the issue if warranted. Draft letter attached as appendix 5.

Lead: Dan Zekor, MO DOC

### **Director Information Items – Public Lands Working Group**

#### **ISSUE:** Allowable Uses of State Conservation Areas

The perennial topic of allowable uses of wildlife management/conservation areas was extensively discussed by the committee once again. Mr. Paul Glander from the FWS Region 3 office joined in the discussion to help answer federal related questions. There was consensus that public demand for using state wildlife lands is becoming more problematic with even bigger issues on the horizon (i.e., wind farms, highway construction, bio-fuels, various easements, etc.).

FWS rules and policy are helpful (522 FW 21 <http://www.fws.gov/policy/522fw21.html> and 522 FW 22 <http://www.fws.gov/policy/522fw22.html>), as is the willingness of the FWS to “weigh-in” on state issues when asked; however, the rules and policy put the burden on the states to decide whether a use is in conflict with primary purposes or not. States are not overly anxious for the FWS to dictate which activities may or may not be allowable, yet there is concern that states may be making inconsistent determinations, and that the individual states may not appreciate all the ramifications of these determinations.

**ACTION:** No action for the Directors at this time, but the Committee decided to attempt to inventory the various types of activities/uses and assess how the MAFWA states are addressing each (e.g., allowable, prohibited, how regulated, etc.). After the assessment is complete, the information will be shared with the states and a determination will be made as to the need for further action by the Committee or Directors.

#### **ISSUE:** Restrictions on Consumptive Uses of National Wildlife Refuges (NWR)

Kansas noted that they are seeing more restrictions imposed on hunting on some of the NWR in their state. The group discussed this at length and noted the irony that States are expected to adhere to the allowable use chapters cited above to ensure that wildlife dependent activities such as hunting and trapping are not compromised by activities that conflict with the purpose for which the State acquired the land with federal funds. Yet it appears that the FWS may be

moving towards more restrictive regulations on hunting and other consumptive activities on their (FWS) properties.

**ACTION:** Update Directors on this disturbing trend. Possible item to discuss at future meetings with FWS?

**ISSUE:** Lead Shot for Hunting

Group discussed this high profile issue that is growing in importance nationwide. Illinois noted that they have been phasing in a requirement for non-toxic shot at dove hunting sites (46 to date) across the state with good success and acceptance by hunters. Gary Potts shared with the group some of the information presented at the Lead Poisoning Symposium at the Midwest Fish and Wildlife Conference in 2007.

**ACTION:** Ask Indiana to add this issue to next year's agenda. Ask states to be prepared to give an update of their current restrictions, planned actions and strategies that they are developing to address. Gary Potts will provide an update at the Director's meeting and provide copies of the summer issue of The Wildlife Professional Magazine which will feature the Lead Poisoning issue.

**ISSUE:** Prescribed Burning

This issue continues to generate discussion among the members about the different training requirements, permits, and equipment required by each state and federal government (on state managed federal lands).

**ACTION:** Illinois will circulate and ask each state representative to update the prescribed burning matrix developed a couple of years ago by Ohio. Information will be shared prior to next years meeting.

**ISSUE:** Urban Wildlife Issues

Nebraska asked members how they were handling urban wildlife conflicts. What role does staff play, permitting, etc? Members shared information about how they handled in their respective states. Illinois shared its new website developed in cooperation with the University of Illinois Extension office. The website was launched this year and is being expanded to provide more information on deer issues. [Living With Wildlife](#)

**ACTION:** Continue to discuss and share strategies at future meetings

**ISSUE:** GIS Application Development

Illinois shared information about the new GIS Tool being developed for staff to plan and document habitat planning on private and public lands. Different members noted that similar efforts were being pursued in their state.

**ACTION:** Illinois will request each state to share the contact information for the individual leading the effort in their state. Contact information will be shared with everyone to facilitate networking.

**ISSUE:** Biofuels

Minnesota and Wisconsin shared information about the discussions occurring in their state about the possible use of state lands to grow plant material for use as biofuel.

**ACTION:** Continue to share information as this issue develops

**ISSUE: Staff Workshop Ideas**

Illinois asked if other states had held recent workshops for staff on job related subjects incorporating new research or technology. Iowa noted that they had hosted a two day workshop in cooperation with the Southeastern Cooperative Wildlife Disease Study. Illinois contracted with a veterinarian from South Dakota that conducted two workshops on Avian Influenza.

**ACTION:** States are requested to share new training ideas at each meeting.

**ISSUE: Staffing Issues**

Minnesota asked if other states had completed a staffing analysis for their respective agency in the past few years. Other states shared information where such an effort occurred recently. An interesting issue that some states shared is that they are seeing more job applicants that do not hunt or fish than they have seen in the past. This trend along with decreasing numbers of hunters is concerning to many in the field. Illinois noted that it had contracted with the Illinois Trappers Association to put on a two day workshop for our site managers and district biologists. The workshop trained them on types of traps and trapping techniques. This aided staff in making informed regulation setting.

**ACTION:** Continue to discuss and share strategies to address.

**Director Action Items – Private Lands Working Group**

**1. ISSUE: Voluntary Access Program**

The Voluntary Public Access Program is part of the 2008 Farm Bill and authorized \$50M over 4 years to assist state fish and wildlife agencies with implementing programs for access on private lands. As of May 15, 2009, no interim rules have been established. Because most access programs are focused on the fall hunting season, enrollment in state programs must occur in the preceding spring. Thus, without a published rule most states won't be able to implement programs in 2009. Expediting the rules will help with planning for 2010.

**ACTION:** A letter was drafted for the Directors to send to the Secretary of Agriculture. Due to the time sensitive nature of the issue, the letter was submitted for a 3 June conference call of the Executive Committee.

Lead: Todd Bogenschutz, IA DNR

**2. ISSUE: Continuous Conservation Reserve Program (CCRP) Allocations and CP 38**

The CP38 practice has been useful for landowners to sign up critical habitat since there has not been a general CRP sign up since 2006. Much interest exists in CP38 and many states have used up most if not all of their CP38 allocations. Thus, how can states obtain additional allocation acres and get more wildlife habitat implemented?

**ACTION:** A letter was drafted for the Directors to send to the Farm Service Agency requesting flexibility on how CCRP acres will be allocated. Due to the time sensitive nature of the issue, the letter was submitted for a 3 June conference call of the Executive Committee.

Lead: Bill White, MO DOC.

**3. ISSUE: CRP Contract Extensions and the Environmental Impact Statement for new Rules**

The Farm Service Agency is currently offering extensions to CRP contracts for 1.5 million acres that are scheduled to expire 1 October 2009. Many landowners may not choose to extend their CRP contracts. Because FSA has not proceeded with new rulemaking and a new EIS, they can't produce new rules. Thus, current CRP landowners not offered an extension have no opportunity to compete in a general signup. Thus, the 1.5 million acre goal may not be achieved.

**ACTION:** A letter was drafted for the Directors to send to the USDA requesting that the FSA expedite the rulemaking process for the CRP. The change will enable FSA to offer contract extensions so the full 1.5 million acres can be re-enrolled. Due to the time sensitive nature of the issue, the letter was submitted for a 3 June conference call of the Executive Committee.

Lead: Tim McCoy, NE Game and Parks Commission and Kevin Kading, ND Game & Fish Department

**4. ISSUE: Sodbusting of Grasslands**

Recent high commodity prices have led to a rapid increase in the breaking of native sod in order to produce crops. Additionally, extensive acres of grasslands that were seeded and conserved via the Conservation Reserve Program are exiting the program and being brought back into crop production. The combined effect of new Sodbusting, and the loss of CRP acres have large implications for grassland-associated wildlife populations. In order to understand the potential impact of the loss of these grasslands, summary information on sodbusted acres and CRP acres brought back into production is needed. Without the data, state fish and wildlife agencies will not be able to accurately ascertain the current and future impacts on grassland wildlife.

**ACTION:** A letter was drafted for the Directors to send to the Secretary of Agriculture with a cc to FSA, requesting annual monitoring and reporting of land use changes.

Lead: Tim McCoy, NE Game and Parks Commission

**5. ISSUE: Wetland Reserve Program Eligibility**

The Wetland Reserve Program (WRP) has been an instrumental program in the Midwest for restoring and protecting wetland habitats. In the past, some landowners enrolled in the WRP have sold their property to state or local governments prior to the restoration of the wetland habitat. The government entity then completes the restoration. The interim final rule on WRP will actually exclude State and Local governments by design from any participation in the program. The rule changes will have negative impacts on State and Local governments from participating in WRP in the future and meeting their wetland restoration goals.

**ACTION:** A letter was drafted for the Directors to send to the Natural Resources Conservation Service requesting clarification on the exclusion of state and local governments from WRP eligibility.

Lead: Kevin Dacey, MO DOC

**All 5 letters are attached in appendix 5.**

## **Director Information Items – Private Lands Working Group**

### **1. ISSUE: National Pheasant Plan and National Bobwhite Conservation Initiative**

Both projects were discussed and many states in the Midwest will be involved.

**ACTION:** Both plans will involve staff from each State Wildlife Agency helping to identify opportunity areas and management challenges.

### **2. ISSUE: Mid-Contract Management (MCM) of CRP**

At the mid-contract term of some CRP practices, landowners are to be involved in habitat management practices to improve the habitat for wildlife. Currently, State Wildlife Agencies are not being made aware of MCM monitoring and compliance by the Farm Service Agency.

**ACTION:** Kelly Smith of the IA DNR will compile a list of management issues from each state and submit them to Jennifer Mock-Schaeffer of AFWA for her to use in discussions of CRP with the Farm Service Agency.

### **3. ISSUE: Monitoring the impacts of the Conservation Reserve Program**

Monitoring the impacts of habitat development and management on wildlife continue to be vital for verifying the importance of the CRP.

**ACTION:** Ray Evans of Eco-Associates, Inc. will work with AFWA and other groups to coordinate the types of monitoring being conducted.

## **Time and Place of Next Meeting**

Indiana – Date and exact location to be announced at a later date.

## **List of Appendices**

1. Meeting Agenda
2. Agenda – Public Land Group
3. Agenda – Private Land Group
4. List of Attendees
5. Public Lands Issues
  - a. Letter to the US FWS on 4(f) DesignationPrivate Lands Issues
  - b. Letter to the USDA on the Voluntary Access Program
  - c. Letter to the Farm Service Agency on CCRP and CP38
  - d. Letter to the USDA on Extensions to CRP Contracts
  - e. Letter to the USDA on Tracking & Reporting of Sodbusting in CRP
  - f. Letter to the Natural Resources Conservation Service on the Wetland Reserve Program
6. Group Photo
7. Public Land Group - State Reports
8. Private Land Group - State Reports

## Appendix 1

# Agenda

**MIDWEST ASSOCIATION OF FISH & WILDLIFE AGENCIES**  
**Midwest Private and Public Lands Working Group Meetings**  
**May 3-6, 2009**  
**Rend Lake Resort – Wayne Fitzgerald State Park**  
**Whittington, Illinois**

### Sunday May 3rd

4:00-8:00 pm Registration

6:00-8:00 pm Reception

### Monday May 4<sup>th</sup>

7:00 am Registration & Breakfast

8:00 am Welcome and Introductions  
Program Review - Mike McCulley/Gary Potts

8:15 am Public/Private Land Issues – Illinois DNR  
John Buhnerkempe, Chief, Division of Wildlife

9:00 am CRP Mid-Contract Management Techniques  
Doug Osborne – Southern Illinois University - Carbondale

9:45 am Break

10:00 am Wildlife Habitat Planning and Tracking System  
Chad Bartman, GIS Analyst – Illinois DNR

11:00 am Private Lands Breakout  
Public Lands Breakout -  
Statewide Public Lands Wildlife Habitat Development Project  
(federal aid project W-76-D) Paul Willms, Project Manager –  
Illinois DNR

12:00 pm Lunch

1:00 pm Private Lands Breakout Continued  
Public Lands Breakout – State Reports

3:00 pm Break

3:30 pm Private Lands Breakout Continued  
Public Lands Breakout  
State Reports continued

4:30 pm Conclude Breakouts

5:00 pm Evening Meal - Cookout at Resort

**Tuesday May 5<sup>th</sup>**

7:00 am Breakfast

8:00 am History of Wetland Drainage - Thomas Biebighauser, Wildlife  
Biologist, US Forest Service

9:00 am Private Lands Breakout Continued  
Public Lands Breakout – Federal Aid Issues  
Paul Glander – U.S. Fish & Wildlife Service

10:00 am Break

10:30 am Breakout Sessions Continued

11:30 am End Breakouts – prepare to board buses

12:00 pm Box Lunch – on the Bus

12:30 pm Joint Public and Private Lands Field Trip  
Private Land Cooperator (12:45 – 1:00 pm)  
Pyramid State Park (2:30 – 3:45 pm)  
World Shooting Complex (4:30 – 9:00 pm)

7:00 pm Barbeque - World Shooting Complex

**Wednesday May 6<sup>th</sup>**

7:00 am Breakfast

8:00 am Private Lands Business Meeting  
Public Lands Business Meeting

11:00 am Adjourn

## Appendix 2

**Agenda**  
**Midwest Association of Fish & Wildlife Agencies**  
**Public Lands Working Group**  
**Spring Meeting, May 3-6, 2009**  
**Rend Lake Resort, Whittington, Illinois**  
**Moderator – Mike McCulley**

### Breakout Session – Monday, May 4

- IL Statewide Public Lands Wildlife Habitat Project - Paul Willms, IL DNR
- State Reports

### Wildlife and Habitat Session

- Invasive Species Management and Wildlife Diseases - How does each state handle? – Mike McCulley, IL DNR
  1. Animals – Feral Hogs, Others
  2. Plants – Autumn Olive, Bush Honeysuckle, Others
  3. Impacts of Wildlife Diseases – costs, staff time, etc.
- Urban Wildlife Problems – Canada geese, turkey, deer, etc. - Jeff Hoffman, NE G&P
- Problems/Opportunities on Public Lands – Mike McCulley, IL DNR
  1. Funding Staff
  2. Funding Projects
  3. Hunter Access
  4. Other Issues
- Other Issues

### Breakout Session – Tuesday, May 5

### Federal Aid Session

- Federal Aid Issues - Paul Glander – U.S. Fish & Wildlife Service, Region 3
- How does each state utilize Federal Aid Funding on Public Lands? – Mike McCulley, IL DNR

- Allowable Uses on Federal Aid Lands
  1. Overview of rules, regulations, and policy – Dan Zekor, MO DOC and Paul Glander, US F&WS
  2. Problems with application and consistency of rules – Dan Zekor, MO DOC
  3. Discussion of Remedy (Recommendations to Directors, and the Role of the Committee)
- Federal Prescribed Burning Training Standards – Scott Peterson, North Dakota Game and Fish Department
- Section 4(f) Designation by Federal Highways Administration - Highway impacts near state wildlife areas – Dan Zekor, MO DOC
- Other Issues – Added at meeting – Lead Poisoning Issue – Gary Potts, IL DNR

Breakout Session – Wednesday, May 6

Business Meeting

1. Reinstatement of Public Lands Committee?
2. Recommendations to Directors

## Appendix 3

**Agenda**  
**Midwest Association of Fish and Wildlife Agencies**  
**Private Lands Working Group**  
**Spring Meeting, May 3-6, 2009**  
**Rend Lake Resort, Whittington, Illinois**  
**Moderator – Gary E. Potts**

Breakout Sessions – Monday, May 4 and Tuesday, May 5

1. State Reports
2. 2008 Farm Bill, Biomass Production, Best Management Practices, NRCS – Jennifer Mock Schaeffer, AFWA
3. National Bobwhite Conservation Initiative – Dave Howell, Quail Unlimited
4. Review of 2008 MAFWA Action Items and Responses – Todd Bogenschutz, IA DNR and Tim McCoy, NE Game & Parks
5. National Pheasant Plan – Todd Bogenschutz, IA DNR
6. CRP – Mid-Contract Management, CP-25, CP-33, SAFE – Kelly Smith, IA DNR
7. Continuous CRP State Allocations – Bill White, MO DOC and Todd Bogenschutz, IA DNR
8. Open Field Access Program – Todd Bogenschutz, IA DNR
9. Alternative Funding for Private Land Work – ex. Habitat Stamp in IL – Gary Potts and Mike Wefer, IL DNR
10. Technology – Aids for Plan Writing, MATS, GIS, Delivery System Types, Habitat Plan Formats – Gary Potts and Mike Wefer, IL DNR
11. Monitoring the Benefits of Habitat Development – Mike Wefer, IL DNR  
Other Issues – Added at meeting – Wetland Reserve Program – Kevin Dacey, MO DOC

Breakout Session – Wednesday Morning, May 6

## Appendix 4

### 2009 Midwest Association of Fish and Wildlife Agencies Spring Meeting Attendees May 3-6, 2009

<b>Name</b>	<b>State</b>
Mock-Schaeffer, Jennifer	Association of Fish & Wildlife Agencies - Washington, D.C.
Bartman, Chad	Illinois
Buhnerkempe, John	Illinois
Caughran, Tim	Illinois - Pheasants Forever
Cole, John	Illinois (Retired)
Emken, Claudia	Illinois - Environmental Defense Fund
Gajewski, Mel	Illinois - Quail Unlimited
Kuehl, Aaron	Illinois - Pheasants Forever
McCulley, Mike	Illinois
Nielsen, Clayton K.	Illinois - SIU-C
Osborne, Doug	Illinois (Speaker) - SIU-C
Potts, Gary	Illinois
Sparling, Donald W,	Illinois - SIU-C
Wefer, Mike	Illinois
Whitton, Richard	Illinois
Wieda-Stark, Connie	Illinois
Wilcockson, Shawn	Illinois
Willms, Paul	Illinois
Woolard, Dan	Illinois
Howell, Dave	Indiana - Quail Unlimited

**2009 Midwest Association of Fish and Wildlife Agencies  
Spring Meeting  
Attendees  
May 3-6, 2009**

Name	State
Reiter, Mark	Indiana
Bogenschutz, Todd	Iowa
Jansen, Jim	Iowa
Smith, Kelly	Iowa
Barbee, Robert	Kansas
George, Jake	Kansas
Hedges, Lance	Kansas
Mitchener, Mike	Kansas
Silovsky, John	Kansas
Simpson, Brad	Kansas
Smith, Matt	Kansas
Biebighauser, Tom	Kentucky – US Forest Service (Speaker)
Black, Tony	Kentucky
Figert, Dan	Kentucky
Tangora, Susan	Michigan
Glander, Paul	Minnesota
Penning, Bill	Minnesota
Willhite, Suzann	Minnesota
Dacey, Kevin	Missouri
Evans, Ray	Eco-Associates – Missouri(Retired)
Porath, Joel	Missouri
White, Bill	Missouri
Zekor, Dan	Missouri
Kading, Kevin	North Dakota
Peterson, Scott	North Dakota
Hoffman, Jeff	Nebraska
McCoy, Tim	Nebraska
Ruble, Pat	Wildlife Management Institute - Ohio
Crossley, Alan	Wisconsin

## Appendix 5.a.

Director  
United States Fish and Wildlife Service

Dear:

Discussion between state fish and wildlife agencies has revealed concern about the Federal Highway Administration's reluctance to apply the Section 4(f) designation to those state lands where a federal nexus exists (i.e. purchased, developed or managed with Wildlife and Sport Fish Restoration funds), and recreation and fish and wildlife values are being conserved and protected. States find it confusing that the FHWA will give a 4(f) designation to a dedicated recreation area or a "refuge", but fail to give the same designation to state wildlife lands that are designed to achieve essentially both purposes.

The 4(f) designation is important as it lends additional consideration and protection to conservation lands that are gradually being fragmented or otherwise negatively affected by major highway and other projects. Transportation Departments and outside consultants hired to do feasibility and impact studies frequently view these lands as the path of least resistance because of single ownership and their undeveloped nature. State agencies and FWS federal aid staff has suggested 4(f) designations on various projects, but our calls go unheard, lost in a discussion of poorly defined terms and archaic interpretations.

The Midwest Association of Fish and Wildlife Agencies respectfully request you to investigate the question of whether application of Section 4(f) designations on state fish and wildlife lands with a federal nexus coincides with the standards and interpretation of the FWS and Department of Interior, and to advise the states on your findings and suggestions for future action.

We look forward to your response and attention to this very important matter.

Sincerely,

President, MAFWA

**Appendix 5.b.**

[Date]

The Honorable Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Av., S.W.  
Washington DC, 220250

Dear Secretary Vilsack,

The Midwest Association of Fish and Wildlife Agencies (MAFWA) was formed in 1934 to provide a common forum for the 14 state and 3 provincial Midwest fish and wildlife agencies to share ideas, information, pool resources, and form action initiatives to better the management and conservation of fish and wildlife resources in the Midwest.

I am contacting you today regarding the Voluntary Public Access (VPA) and Habitat Incentive Program included as part of the 2008 Farm Bill (Sec. 1240R). The VPA authorized \$50M over 4 years to assist state fish and wildlife agencies with implementing programs for public access on private lands. As of May 15, 2009 no interim rules had been published. Because most access programs are focused on the fall hunting season, enrollment in state programs should occur in the preceding spring.

Without a published rule most states in the Midwest will not be able to take advantage of funds in VPA for the 2009 fall hunting season even if USDA makes the funds available in the summer or fall of 2009. States have not established programs, or expanded existing programs, because funding and mechanisms are unknown at this time. I understand the new administration and new staff have probably made it a challenge to expedite program rules. However, due to the lack of rules, state agencies have had no ability to plan for, and will have very limited ability to use, VPA funds until the fall of 2010.

I encourage you to move this rule as quickly as possible, with the understanding that most of the \$50M in funding for the program will be spent by the states in 3 fiscal years (2010-12). Several of the Midwest states assisted FSA with preliminary input at the Max McGraw foundation last fall. If the MAFWA can be of any further assistance to FSA in developing or delivering this new program, please do not hesitate to contact Jen Mock-Schaffer at (202) 624-7890.

Thank you for your consideration of our request. The Association and our state fish and wildlife agencies look forward to your response and in working with FSA to make this a very successful program for USDA.

Sincerely,

[Name]

President, MAFWA

cc: President(s) of AFWA, SEAFWA, WAFWA and NEAFWA  
MAFWA Board of Directors

**Appendix 5.c.**

(Date)

Jonathan Coppess  
Deputy Administrator for Farm Programs  
USDA Farm Service Agency  
USDA/FSA/DAFP/STOP 0510  
1400 Independence Avenue, S.W.  
Washington, DC 20250

Dear,

I am contacting you today to express the interest of the Midwest Association of Fish and Wildlife Agencies (MAFWA) regarding the Conservation Reserve Program CP38 practice. It has turned into a successful continuous signup practice for many of the states within the Midwest. MAFWA is an organization of 14 state fish and wildlife agencies in the Midwest. Formed in 1934, MAFWA provides a common forum for state fish and wildlife agencies to share ideas, pool resources and form action initiatives to better the management and conservation of fish and wildlife resources in the Midwest. The MAFWA is very appreciative of FSA's willingness to create a continuous signup practice that addresses state's priority wildlife resource concerns. The development of renewable energy, particularly corn ethanol, has put tremendous pressure on landowners in the Midwest to seek out more acres to farm. The CP38 practice has helped mitigate some of the loss of Midwest grassland habitat (hay, small grains, pasture, and rangeland). The CP38 practice has also been very important to landowners in general CRP since they have not had an opportunity to re-enroll land since 2006. In spite of record commodity prices last year, the states of IA, MN, MO, NE and SD used up most, if not all, their CP38 allocations in record time. Many of these states also have a waiting list of landowners still interested in the practice.

This success has created a problem for several states: How to obtain additional acres? When practices reach their acreage allocation and there are delays in obtaining additional acres, interest from agency and partner staff as well as from producers' declines significantly. This results in less potential for conservation to be applied to the land, and less ability to meet national and state objectives. FSA discussed this issue in the overview section of Notice CRP-535.

Therefore, we offer the following ideas to help resolve this issue:

1. FSA consider a process to allow each state to pool acres for all of the CCRP practices which have prescribed state allocations. Each state would still have an overall cap, but much greater flexibility with CCRP practices. This would allow producers to use the practices that work best for them and avoid unnecessary delays with shifting or reallocating acres. It would provide FSA the ability to fully utilize the 3.4 million acres reserved for CCRP practices.

**Or** FSA provide a process for states to shift acres from underutilized CCRP practices with allocations to other CCRP practices that are acceptable to producers and where participation is limited by acreage caps.

2. Additionally, FSA should consider giving each state a pool of acres with no specific assignment of acres to individual SAFE project areas. This will allow the acres to be used in the projects with landowner interest and where the stakeholders are promoting the practice and eliminate the delay in reassigning acres between projects.

**Or** FSA simply consider an expedited process to allow individual states the ability to switch acres back and forth between CP38 practices within the state. Such permission could be granted within a matter of hours upon written consent of partners involved in the practice proposal and evidence of practices not being readily accepted by producers even after practice promotion.

CCRP acres will better meet USDA and state partner goals if they are used on practices which are deemed a priority instead of not being utilized at all. This will result in more targeted conservation applied on the landscape while meeting the national and state program objectives and assist FSA in meeting the goals of Notice CRP-535.

Reallocation of existing CP38 acres between states should not come until all states have had sufficient time and opportunity to promote the practice and adjust specifications as needed to make the practice work for the intended purposes. We suggest FSA consider a 3-year window to allow states to deliver the program. After 3 years FSA should sweep acres and re-issue the acres to successful or new proposals. The winter of 2009/2010 will provide a picture of which states are grossly over prescribed in CP38 allocations.

Thank you for the opportunity to provide input and comments on the delivery and implementation of CP38 and for your consideration of this request. MAFWA and our state fish and wildlife agencies look forward to your response, and in working with FSA to help landowners meet our shared interest in fish and wildlife conservation.  
Sincerely,

President, Midwest Association of Fish and Wildlife Agencies

**Appendix 5.d.**  
May 15, 2009

The Honorable Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250.

Dear Secretary Vilsack:

The Midwest Association of Fish and Wildlife Agencies (MAFWA) was formed in 1934 to provide a common forum for the 14 state and 3 provincial Midwest fish and wildlife agencies to share ideas, information, pool resources, and form action initiatives to better the management and conservation of fish and wildlife resources in the Midwest. MAFWA has been a strong supporter of an effective and fully enrolled Conservation Reserve Program (CRP), which is important in the Midwest for producing waterfowl and wildlife and protecting soil and water resources.

USDA's Farm Service's Agency (FSA Notice CRP-634) is currently offering extensions to contracts for 1.5 million acres of CRP that were scheduled to expire on October 1, 2009. We are encouraged by FSA's stated interest in fully enrolling CRP up to the 32 million acre cap to the extent possible. However, we are concerned that the notice for extensions only identifies an initial offering for 1.5 million acres. In many areas and for a variety of reasons, landowners may not choose to extend their CRP contracts, especially in areas where 10+ year old CRP rental rates do not reflect current cropland rental rates. To ensure maximum wildlife benefits from CRP are continued and environmentally sensitive lands are offered an extension, we request that as extension offers are declined, FSA continue to make new extension offers for expiring contracts within national and state conservation priority areas until extensions are in place on the full 1.5 million CRP acres.

We appreciate and agree with the comments you made at the North American Wildlife and Natural Resources Conference that agricultural landowners need options provided by a strong and fully enrolled CRP. Furthermore, because FSA has not proceeded with new rulemaking, and the undertaking of an EIS in order to be able to produce rules, current CRP landowners that are not offered an extension have no opportunity to compete in a general signup. Thus, FSA must take actions to fully subscribe the 1.5 million acres of CRP that can be extended.

The FSA needs to expedite the rulemaking process for the CRP. Clearly, not all of the changes in the CRP from the "Food, Conservation, and Energy Act of 2008" require the full EIS process in order to proceed. We recommend the agency move forward in developing interim rules for those changes as soon as possible. We are also concerned that nearly one year after the 2008 Act passed; FSA has yet to begin the formal scoping process for a full EIS. It is paramount that FSA provide landowners equal opportunities to enroll in the general CRP through a competitive process. This is the most cost

efficient, fair, and equitable way to deal with landowners and the large numbers of expiring acres in the next several years. Rules need to be in place to allow for a competitive signup when over 4 million acres expire in 2010.

Thank you for your consideration of our request. The CRP is the most successful conservation program ever implemented by USDA. If the MAFWA can be of any assistance in this process, please do not hesitate to contact Jen Mock-Schaffer at (202) 624-7890.

Sincerely,

President, Midwest Association of Fish and Wildlife Agencies

cc: Doug Caruso, FSA Administrator  
Jonathan Coppess, FSA Deputy Administrator

## **Appendix 5.e.**

May 29, 2009

The Honorable Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250.

Dear Secretary Vilsack:

I am contacting you today to express the concern of the Midwest Association of Fish and Wildlife Agencies (MAFWA) regarding the tracking and reporting of Sodbusting through much of the Midwest. Last year, high commodity prices led to a rapid increase in the breaking of native sod in order to produce crops. From the standpoint of conserving populations of prairie waterfowl, upland game birds, grassland songbirds, and a host of other wildlife and native plants, the increased loss of native grasslands is troubling.

At the same time we are losing native sod, extensive acres of grassland that were seeded and conserved through the Conservation Reserve Program (CRP) are also exiting the program and being brought back into production. The combined effect of new sodbusting, and the loss of CRP acres have large implications for grassland-associated wildlife populations.

State fish and wildlife agencies that have statutory authority for fish and wildlife are attempting to understand the extent and potential impact of the loss of these grasslands. In order to understand the potential impact, summary information on sodbusted acres and CRP acres brought back into production is needed. Without that information, states are unable to understand what the potential impact is, inform the public on wildlife impacts to expect, and to plan conservation actions, where needed, to meet critical grassland wildlife needs.

We request that USDA make available to state fish and wildlife agencies, and the public, state and county level summary statistics for newly sodbusted acres and CRP acres that were brought back into production starting in 2005, and that this information be provided annually. By reporting this information at these levels, no information would be provided that could be tied back to any individual landowners. Without this information, state fish and wildlife agencies in the Midwest will be not be able to accurately assess the current and future impacts on grassland wildlife.

Furthermore, from the standpoint of current and future development of biofuels, there is now an even greater need for consistent and transparent reporting of land use changes. We suggest it would be valuable for NASS to collect and report summary information on agricultural grasslands (including rangeland) and forestland, just as they collect information on cropland acres. Having comparable and consistently collected data on all agricultural land uses will be critical for accurate analysis of the impacts of expanding biofuels and bioenergy on wildlife and ecosystems.

Sincerely,

President, Midwest Association of Fish and Wildlife Agencies

cc: Dave White, Chief NRCS  
Doug Caruso, FSA Administrator  
Jonathan Coppess, FSA Deputy Administrator  
President(s) of SEAFWA, WAFWA, and NEAFWA

**Appendix 5.f.**  
May 28, 2009

The Honorable David White, Chief  
Natural Resources Conservation Service  
U.S. Department of Agriculture  
1400 Independence Ave., SW, Room 5105-A  
Washington, DC 20250.

Dear Chief White:

The Midwest Association of Fish and Wildlife Agencies (MAFWA) was formed in 1934 to provide a common forum for the 14 state and 3 provincial Midwest fish and wildlife agencies to share ideas, information, pool resources, and form action initiatives to better the management and conservation of fish and wildlife resources in the Midwest.

The Wetlands Reserve Program (WRP) has been an instrumental program in the Midwest for restoring and protecting wetland habitats. As you are aware, there were several proposed changes to the Wetlands Reserve Program (WRP) rules regarding the eligibility of states to receive benefits including WRP restoration payments. This will have direct negative impacts on landowners and State and Local governments who share NRCS's objective of restoring our nation's wetlands and providing important wetland wildlife habitat. The interim final rule actually excludes States and local governments by design from any participation in the program. Previously, State entities and Local governments were not eligible for WRP enrollment and subsequent easement payments, but were eligible to receive WRP restoration payments. There appears to be some concern about States receiving direct payment from NRCS. To alleviate these concerns, States could be allowed to purchase WRP easements before restoration occurs as done in the past, and the WRP restoration payments could go to private contractors, not directly to State or Local governments. Restoration could be accomplished by a third-party contractor (e.g., a federal contract) which would create shovel ready green jobs, boost local economies, and subsequently, States would not receive direct payments. Midwest states share the same important wetland conservation goals and objectives with respect to this NRCS program. State ownership of WRP easements also provide producers with a viable option for selling WRP easement land when it is beneficial to their agricultural operation.

We request the USDA provision that restricts the use of WRP restoration funds based on eligibility of the subsequent owner be removed from the WRP rule. We are in no way requesting that USDA make any payments to ineligible entities, but request that USDA continue to proceed with full hydrologic restoration on enrolled WRP properties after they change hands (using the existing federal contracting system used for the majority of WRP restoration).

In a recent meeting of the MAFWA private lands working group, State representatives voiced concerns of their respective State agency's ability to attain several goals associated with restoring wetlands. Some States have based their wetland restoration goals on State Action Plans or Coordinated Wildlife Strategy Plans. There were five particular States that would realize

negative impacts and difficulties in bolstering critical wetland resources within their respective State if this WRP interim final rule provision was incorporated into the final rule. The following are these examples:

- Missouri utilizes WRP to increase its wetland ownership and management capabilities by purchasing these tracts from willing sellers and transferring fee title from private landowners to the State at the time of closing (simultaneous closings). Missouri has developed a Coordinated Wildlife Strategy Plan identifying nine “Conservation Opportunity Areas” to emphasize wetlands in the State. WRP has been instrumental in attaining these State critical areas. In fact, fifty-seven percent of WRP is located in these Conservation Opportunity Areas within the state. To date, Missouri has acquired from willing sellers almost 30,000 acres of WRP. The current WRP rules prohibit the state’s ability to purchase a WRP tract, prior to restoration, from a willing private landowner. This aspect of the WRP interim final rule will have significant impacts on wetland restoration, development, enhancement, protection, public use and education in Missouri.
- Iowa also uses WRP to acquire wetlands similar to Missouri. When a private landowner from Iowa enrolls their land into WRP and is accepted, in several Iowa counties the landowner’s tax rate is not reduced despite never being able to farm or produce a crop on the WRP easement once closed. Many of the landowners are looking to defray the cost of this tax rate by offering to sell the remaining fee title (residual value) to the State. The State has the opportunity to purchase land at a more affordable rate for public use and attain goal orientated wetland habitat restoration acreage. Landowners benefit from this exchange also because they have the opportunity to dispose of marginal acreages with the possibility of farming a more productive, suitable site. Unfortunately, current WRP rules prevent landowners from selling their land to the Iowa DNR. The impacts are significant because this limits the landowner’s disposal options for marginal land and limits the State’s attainment of wetland restoration goals as well as their ability to provide lands for public use which continues to increase.
- Wisconsin’s DNR has been successful in purchasing tracts from private landowners and by working with partners to attain fee title of tracts enrolled in WRP. The State agency would not be able to meet wetland habitat goals without the ability to partner with landowners willing to sell to the State. Wisconsin has, in many examples, partnered with The Nature Conservancy (TNC) or Pheasants Forever (PF) to purchase existing 30-year WRP easements from private landowners. The landowner, at the time of closing, receives only 75% of the value of the land as per WRP policy. A conservation partner would offer the remaining 25% of the land’s value and would often then donate it to Wisconsin DNR for public use and management. Zeloski Marsh in Jefferson County and Turtle Valley in Walworth County are examples of these successful partnerships and transfers of ownership from private landowners to a State agency. Wisconsin’s efforts to supplement the historical wetland losses (estimated at a 46% loss) would be severely curtailed and their State Action Plan conservation needs would also be at risk.
- Kentucky and Nebraska have both utilized the Cost Share agreement portion of the WRP to avoid the easement restrictions but also to defer the initial cost of wetland restoration in their respective states. In both states, these enrollments have only been done when private landowner interest in the program was low and state level WRP funds were

unobligated. Both states were rich in wetlands historically and have had 81% and 35% loss in wetland acres, respectively. WRP has been an economic way of attaining critical wetland resources to add to each state's Action Plan and attain goals in resource management and public use activities. Kentucky is moving more in the direction of how Missouri and Iowa utilize WRP to add to their state wetland resources. Nebraska has purchased WRP properties for public ownership, and in nearly all cases the landowner is interested in selling the property after the easement is perfected and before restoration is completed. The current rules reduce the ability of both States to purchase properties enrolled in WRP in the time and manner that willing agricultural sellers wish to make the sale.

These are powerful examples of how State agencies are successfully attaining wetland restoration goals as developed in State Action Plans. These State agencies are able to offer quality public use while being able to protect, enhance and perpetuate the wetland resources in their individual state which are often critically recognized in the North American Waterfowl Management Plan (NAWMP). State agencies are better equipped for the long term management and protection of these seasonally critical habitats for suites of migratory birds and other wetland wildlife. If these provisions in the interim final rule are allowed to persist in the final rule, the ability of many Midwestern states to maintain their individual wetland restoration goals will be in severe jeopardy.

In some cases, the language changes may be perceived as a disservice to a willing landowner who is denied the ability to sell marginal land enrolled in WRP to a State agency for resource management and public use before restoration has been completed. The WRP rules, as currently written, can now be perceived as dictating to whom a willing WRP landowner is able to convey title. This is also a disincentive for landowners wanting to sell marginal production land enrolled in WRP in hopes to purchase more suitable farmland. The final objective in Midwest WRP applications is to remove marginal agricultural land from production and convert those unproductive areas back into wetlands, especially in riverine and playa wetland scenarios. Therefore, the interim final rule must change if we are to successfully implement the WRP.

We appreciate your consideration and subsequent changes to the WRP rule that would allow states to continue to work with WRP to further the shared goals of wetland resources and habitat gains.

Sincerely,

President, Midwest Association of Fish and Wildlife Agencies

cc: The Honorable Tom Vilsack  
WAFWA President  
SEAFWA President  
NEAFWRA President

## Appendix 6



Midwest Association of Fish and Wildlife Agencies  
Spring Meeting of the Public and Private Lands Working Groups  
May 3-6, 2009, Host Illinois