



**THE WILDLIFE SOCIETY**

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JUL 11

July 8, 1988

The Honorable E (Kika) de la Garza, Chairman  
 Committee on Agriculture  
 1301 Longworth House Office Building  
 Washington, DC 20515

Dear Chairman de la Garza:

The Wildlife Society appreciates this opportunity to present the enclosed comments and recommendations regarding the implementation of the Swampbuster, Conservation Reserve, multiyear set-asides, and Conservation Compliance provisions of the 1985 Food Security Act. The Wildlife Society is an international association of professional wildlife managers working in the public and private sectors to promote wise stewardship of our natural resources.

Please enter the attached testimony into the official record of the June 24 field hearing on the review of implementation of swampbuster and sodbuster provisions of the Food Security Act of 1985 and current agricultural issues.

Sincerely,

*Harry E. Hodgdon*

Harry E. Hodgdon  
 Executive Director

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## SWAMPBUSTER

### The Need for Swampbuster

The intent of Congress to impede the destruction of wetlands resulting from agricultural conversion was made clear with the enactment of the Swampbuster provision of the 1985 Food Security Act. By denying eligibility to farmers for certain federal assistance programs if they drain wetlands to produce agricultural commodities, Congress has unequivocally expressed its unwillingness to allow federal subsidies to continue to finance agriculturally related wetland destruction.

Nearly half a million acres of U.S. wetlands are being destroyed annually, primarily as the result of agricultural practices (Tiner 1984). Thus, the passage of Swampbuster was timely, and as such, the need for its enforced implementation is imperative.

### Benefits of Wetlands

The reliance of wildlife on wetlands has been well documented. While furbearers such as mink, muskrats, beaver and otter are commonly associated with wetland habitats, deer, rabbits, song and marsh birds, pheasants, grouse, and a variety of reptiles, amphibians and fish also depend on these areas. Wetland vegetation generally provides necessary food and cover, while aquatic invertebrates often provide an additional source of food (Larson 1973).

Perhaps of paramount importance is the impact of wetlands loss on the breeding, migrating and wintering habitats of North American waterfowl populations. Tiner (1984) concluded that the Prairie Pothole Region of the Upper Midwest provides the most important non-coastal marsh areas for North American waterfowl production. Although only 10 percent of North American ducks breed in this area, the area produces a disproportionate percentage of the continent's waterfowl (50% or greater; Tiner 1984).

The United States and Canada signed the North American Waterfowl Management Plan in May, 1986. This joint agreement recognizes the importance of the North American waterfowl resource, and outlines steps for waterfowl conservation through population and habitat objectives. The protection of existing wetlands, as well as the slowing of wetland conversion (as called for by Swampbuster) will serve to promote the goals of this international plan.

The benefits of wetlands are not limited to wildlife. As an integral link in the hydrologic cycle, wetlands provide other important functions such as providing ground water recharge, water quality improvement through retention of sediment,

fertilizer and pesticides, and erosion and flood control (Larson 1973).

#### Concerns About the Final Rules

While the final rules for implementing the 1985 Food Security Act are a considerable improvement from the interim rules, there remains some inherent problems. First, under the final rules, a farmer who drains wetlands for alleged weed control, field convenience, or other perceived problems is not considered to be in violation of Swampbuster. As a result, allowing wetland drainage for the sake of drainage needs to be corrected. This could be accomplished through sanctions against operators draining wetlands but not planting them with agricultural commodities.

Second, the continued practice of allowing maintenance of existing drainage on converted wetlands is contrary to the purpose of the legislation. While the final rules explicitly preclude bringing new, additional wetland acreage into production under the semblance of maintenance and improvement, this is insufficient. Continued wetland conversion through maintenance should be disallowed. Those lands should be permitted to again become functioning wetlands.

#### Prairie Potholes

There has been some dispute, particularly among North Dakota farmers, as to whether or not Swampbuster was intended to apply to prairie pothole wetlands. The language of the final rules expressly state "... potholes and playas and other seasonally flooded or ponded wetlands, retain significant wetland functions even if the water regime was modified before December 23, 1985." Thus, they are not to be considered previously converted wetlands if these areas continue to meet the wetland criteria. Furthermore, the final rules state that no further action can be taken to increase effects in the water regime of these areas unless the Soil Conservation Service makes a minimal effects determination.

It should be made clear that Type I wetlands are not synonymous with Class I wetlands. The Type I wetland designation originated in a 1959 U.S. Fish and Wildlife Service (FWS) publication (Circular 39) that described Type I wetlands as shallow seasonally flooded wetlands, including the smaller temporary prairie potholes, hardwood flooded plains along major river systems, and the playa lakes. Class I wetlands refer to a complex system developed for use on wetlands in the prairie pothole region by FWS researchers Stewart and Kantrud in the 1960's. Exclusion of "Type I" wetlands from Swampbuster protection would make 30 percent of the wetland acreage in North Dakota, and a comparable number of acres in other pothole states,

subject to drainage. Clearly, it was the intent of Congress to include the protection of prairie pothole wetlands under Swampbuster.

#### Enforcement

Successful implementation of Swampbuster hinges on producer compliance and agency enforcement. The current lack of enforcement and virtual non-compliance under this provision is a problem that demands immediate attention.

For example, while hundreds of potential swampbuster violations have been reported to FWS officials, only a handful of producers have had their benefits withheld to date.

#### Commenced Conversion Determinations

It has come to our attention that the commenced conversion determination regulations are being interpreted inappropriately. Items such as ditch viewers' reports and preliminary engineering reports are being used as sufficient evidence of commenced conversion. Clearly, these are inadequate to demonstrate that substantial investment and/or work had been done prior to December 1985.

ASCS must require appropriate and adequate evidence necessary to enforce conversion determination regulations and to strictly interpret these regulations.

#### Self-Certification

Allowing the use of Form AD-1026, whereby farmers self-certify that they will not produce an agricultural crop on converted wetlands during the crop year they wish to receive benefits, is not appropriate. Periodic monitoring by officials is insufficient to ensure producer compliance. Rather, SCS, in consultation with the U.S. Fish and Wildlife Service, should be responsible for making wetland determinations without depending on the producer.

#### Appeals

Under section 12.12 of the final rules, farmers may appeal a wetland determination if they feel it to be erroneous. However, there is no mechanism for the public to appeal "minimal effects determinations" made by SCS. Thus, a procedure must be established to permit concerned individuals to question "minimal effects determinations."

CONSERVATION RESERVE PROGRAMInclusion of Wetlands

The intent of the Conservation Reserve Program (CRP) is to convert 40 to 45 million acres of highly erodible cropland into permanent cover through the establishment of grass, trees or wildlife cover under 10-year contracts. In addition to lands already eligible under this provision, the inclusion of wetlands that have prior cropping histories, or that were converted prior to the passage of the Act, also should be eligible for enrollment. Providing financial incentives to farmers for restoring wetland values to previously converted lands makes sense from both conservation and economic standpoints. Furthermore, an increase in the 45 million acre ceiling imposed on the CRP enrollment to 65 million acres would better serve the ultimate goals of reducing soil erosion and long-term commodity surplus.

Tree and Shrub Plantings

An increased focus on tree plantings also is highly desirable. By encouraging the planting of trees and shrubs where suitable, ASCS could contribute to reducing soil erosion, increasing timber supplies, and enhancing wildlife and water quality values. Acreage that has been planted to trees and shrubs also is more likely to remain out of agricultural production longer than lands that have been planted with grasses.

Extension of the CRP

Although the objectives of the CRP are commendable, the question remains as to how to ensure that the CRP benefits are maintained beyond the 10-yr contract period. While lands enrolled in the CRP program subsequently will become subject to conservation compliance, a preferable alternative would be to continue funding for the CRP, providing benefits as an incentive to permanently keep these fragile lands out of agricultural production.

MULTIYEAR SET-ASIDES

Although there is an existing provision in the Food Security Act that permits the Secretary of Agriculture to enter into multiyear set-aside contracts, to date the Secretary has not implemented this option. As a result, producers are reluctant to commit funds to establishing long-term cover on annual set-aside lands. Thus, this acreage often lays fallow, lacking the benefits of vegetative cover to reduce erosion and provide wildlife habitats.

S. 2106 would amend the Food Security Act to require the Secretary of Agriculture to use multiyear set-asides to establish wildlife habitats and feeding areas. This bill calls for 3 year set-aside contracts that have "vegetative cover that is capable of maintaining itself through the contract period to provide improved soil tilth and fertility, water quality enhancement, wildlife habitat, and natural beauty." Additionally, S. 2106 provides for cost-sharing incentives for producers establishing appropriate vegetative cover on these lands. The Wildlife Society fully supports this bill.

#### CONSERVATION COMPLIANCE

##### Alternative Conservation Systems

While the final rules provide for the implementation of Alternative Conservation Systems (ACS) "based upon the SCS field office technical guide, addressing considerations of economic and technical feasibility and other related factors." However, in practice, the levels of allowable soil loss adopted by many ACSs do not come close to approaching [T]. According to the final rules, "the T value represents the maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity." This practice is of great concern. SCS must decrease the leniency of standards used when making field office determinations of allowable soil loss limits.

#### CONCLUSIONS

Due to the imperiled nature of America's wetland resources, the protection against further loss and degradation afforded by the Swampbuster provision of the 1985 Food Security Act is an idea whose time has come. The ASCS, SCS, and FWS must continue to coordinate their activities and efforts to ensure that the actions of agricultural producers that participate in USDA programs do not further endanger our already depleted wetlands. Steps must be taken to improve Swampbuster, ensure its enforcement, and correct the deficiencies present in the field implementation of the final rules.

In addition, increased attention should be focused on how the objectives of the Conservation Reserve Program can best be achieved, including an increase in the total acreage scheduled for enrollment, inclusion of wetlands in the reserve program, increased emphasis on tree and shrub planting, and an examination of mechanisms to extend enrollment of reserve lands following the conclusion of the 10-year contracts. Furthermore, action should be taken to establish multiyear set-asides, strengthen standards of allowable soil loss limits, and use more appropriate requirements of proof for commenced conversion determinations.

## Literature Cited

- Larson, J.S. 1973. A guide to important characteristics and values of freshwater wetlands in the Northeast. Water Resources Center, University of Massachusetts, Amherst, MA. 35pp.
- Tiner, R.W., Jr. 1984. Wetlands of the United States: current status and recent trends. U.S. Fish and Wildlife Service, National Wetlands Inventory. Government Printing Office. 59pp.