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**FINAL PROGRAMMATIC ENVIRONMENTAL ASSESSMENT  
FOR  
VOLUNTARY PUBLIC ACCESS HABITAT INCENTIVE PROGRAM  
STATE OF NEBRASKA**

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**United States Department of Agriculture  
Farm Service Agency**

**April 2011**

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## **Finding of No Significant Impact**

### **Voluntary Public Access and Habitat Incentive Program State of Nebraska**

**April 2011**

#### **Introduction**

The United States Department of Agriculture Farm Service Agency proposes to implement a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) in the State of Nebraska. The Voluntary Public Access and Habitat Incentive Program (VPA-HIP) provides grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land. The VPA-HIP is administered by the State or tribal government that receives the grant funds.

The state of Nebraska, through the Nebraska Game and Parks Commission (NGPC), proposes to expand enrollment in the Open Fields and Waters public access program by offering increased payouts to landowners and potential habitat improvement as an incentive for landowner participation. NGPC also proposes to create a new Small Grain Stubble Management Program using VPA-HIP funding. Public access programs for hunting and fishing on private lands are extremely important to Nebraska due to its very limited amount of publicly owned land. Land in the state of Nebraska is approximately 97 percent privately owned.

#### **Preferred Alternative**

With VPA-HIP funds NGPC proposes to increase the total acres of private lands enrolled in the public access programs by utilizing grant funds to increase incentive payments, with emphasis on enrolling lands with multi-year contracts within the state of Nebraska. VPA-HIP funds would also be used to provide for habitat improvements on qualified lands where no other funding sources are available and to create a new public access program, the Small Grain Stubble Management Program. Additionally, VPA-HIP funds may be used to offer one-time bonus payments for enrollment in multi-year contracts (5 years or more). Increasing incentive payments would allow NGPC's public access programs to be more attractive to new enrollment, since payouts for public access have not kept pace with increased land values in Nebraska.

#### **Reasons for Finding of No Significant Impact**

In consideration of the analysis documented in the Programmatic Environmental Assessment (PEA) and in accordance with Council on Environmental Quality regulations 1508.27, the preferred alternative would not constitute a major State or Federal action affecting the human and natural environment. Therefore, this Finding of No Significant Impact (FONSI) has been prepared and an Environmental Impact Statement will not be prepared. This determination is based on the following:

1. Long-term beneficial impacts and short-term localized impacts would occur with the preferred alternative. Neither of these impacts would be considered significant.
2. The preferred alternative would not affect public health or safety.

3. Unique characteristics of the geographic area (cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas) would be preserved with implementation of the preferred alternative.
4. The potential impacts on the quality of the human environment are not considered highly controversial.
5. The potential impacts on the human environment as described in the PEA are not uncertain nor do they involve unique or unknown risks.
6. The preferred alternative would not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.
7. Cumulative impacts of the preferred alternative in combination with other recent, ongoing, or foreseeable future actions are not expected to be significant.
8. The preferred alternative would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.
9. The preferred alternative would have long-term beneficial impacts to wildlife and their habitats, including endangered and threatened species under the Endangered Species Act of 1973.
10. The preferred alternative does not threaten a violation of Federal, State, or local law imposed for the protection of the environment.

#### **Determination**

On the basis of the analysis and information contained in the PEA and FONSI, it is my determination that adoption of the preferred alternative does not constitute a major Federal action affecting the quality of the human and natural environment. Barring any new data identified during the public and agency review of the Final PEA that would dramatically change the analysis presented in the PEA or identification of a significant controversial issue, the PEA and this FONSI are considered Final 30 days after date of initial publication of the Notice of Availability.



APPROVED:

Signature

April 28, 2011

Date

## Cover Sheet

**Proposed Action:** The United States Department of Agriculture (USDA) Farm Service Agency (FSA) and the state of Nebraska have agreed to implement a new Voluntary Public Access – Habitat Incentive Program (VPA-HIP). USDA is provided the statutory authority by the provisions of the Food Security Act of 2008, and the Regulations at 7 Code of Federal Regulations (CFR) 1410. VPA-HIP provides grants to state and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land. The VPA-HIP is administered by the state or tribal government that receives the grant funds.

**Type of Document:** Programmatic Environmental Assessment

**Lead Agency:** USDA, FSA

**Sponsoring Agency:** Nebraska Game and Parks Commission

**Cooperating Agency:** None

**Comments:** This Programmatic Environmental Assessment was prepared in accordance with USDA FSA National Environmental Policy Act (NEPA) implementation procedures found in 7 CFR 799, as well as the NEPA of 1969, Public Law 91-190, 42 United States Code 4321-4347, 1 January 1970, as amended.

A Notice of Availability was released on May 6, 2011 announcing a 30-day comment period. A copy of the document can be found on the USDA FSA website: [www.fsa.usda.gov](http://www.fsa.usda.gov). Comments will be accepted until June 7, 2011. Comments may be submitted via e-mail to: [dhbanwart@tecinc.com](mailto:dhbanwart@tecinc.com)

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## **EXECUTIVE SUMMARY**

The United States Department of Agriculture Farm Service Agency proposes to implement a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) in the state of Nebraska. The Voluntary Public Access and Habitat Incentive Program (VPA-HIP) provides grants to state and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land. The VPA-HIP is administered by the state or tribal government that receives the grant funds.

### **Proposed Action**

With VPA-HIP grant funds and supplemental state and private funds, the Nebraska Game and Parks Commission (NGPC) proposes to expand enrollment in the Open Fields and Waters public access program by offering increased payouts to landowners and potential habitat improvements as an incentive for landowner participation. NGPC also proposes to create a new Small Grain Stubble Management Program using VPA-HIP funding.

### **Purpose and Need**

The purpose of the Proposed Action is to increase the total acres of private lands enrolled in public access programs in Nebraska by utilizing VPA-HIP grant funds to increase incentive payments, with emphasis on enrolling lands with multi-year contracts. VPA-HIP funds would also be used to provide for potential habitat improvements on qualified lands where no other funding sources are available. Additionally, VPA-HIP funds may be used to offer one-time bonus payments for enrollment in multi-year contracts. The need for the Proposed Action is to meet demand for public access for hunting and fishing in Nebraska, which is 97 percent privately owned. Also, increased incentive payments are needed to update payout rates that have not kept pace with current land values.

### **Environmental Consequences**

This Programmatic Environmental Assessment has been prepared to analyze the potential environmental consequences associated with implementing the Proposed Action (Preferred Alternative) or the No Action Alternative. Under the Proposed Action, NGPC would utilize VPA-HIP funds to expand enrollment in public access programs by offering increased landowner payouts and potential habitat improvement projects when funding is available. Under the No Action Alternative, NGPC's public access programs would continue as they are currently administered. The potential environmental consequences of implementing the Proposed Action would be beneficial overall to the natural environment and increase hunting and fishing recreational opportunities in the state. A summary of environmental consequences is provided in Table ES-1.

**Table ES-1 Summary of Environmental Consequences**

<b>Resource</b>	<b>Proposed Action (Preferred Alternative)</b>	<b>No Action Alternative</b>
Biological Resources (Vegetation, Terrestrial and Aquatic Wildlife, and Protected Species)	Any habitat improvement projects would have minor short-term adverse impacts to biological resources from the disturbance of soils and habitats. However, this would be more than offset by the beneficial impacts from creating higher quality habitat for wildlife. NGPC would ensure that any increased hunting or fishing pressure from newly accessible lands would not cause population impacts to game species.	Habitat improvement activities would still occur, but the funding sources would be limited. Public access programs would continue as they are currently administered and enrollment would not be expanded. Any of the beneficial impacts to wildlife habitat from the Proposed Action would not be realized.
Recreation	Recreational hunting and fishing opportunities would be increased through the increased public access enrollment. If habitat improvement activities occur, some temporary limitation to public entry may be necessary until the project is firmly established. However, long term beneficial impacts to recreation are expected due to improved habitat quality for wildlife.	Public access programs would continue to be administered as they are currently, with limited funding for expansion. Any of the beneficial impacts from VPA-HIP funding to recreational hunting and fishing opportunities would not be realized.
Socioeconomics and Environmental Justice	Direct slight beneficial impacts to the local economy would come from payouts to landowners and the goods and services purchased for habitat improvement projects. Utilization of the land for hunting and fishing recreation would also be slightly beneficial due to purchases (lodging, meals, and goods) from traveling sportsmen. There would be no disproportionate impacts to minority or low income populations; therefore, there are no environmental justice concerns.	Increased enrollment in public access programs would not occur and there would be no VPA-HIP grant funding. No direct negative impacts would occur to local economies. Any beneficial impacts from the spending of VPA-HIP funds for increased landowner payouts and habitat improvements would not be realized. No Environmental Justice impacts would occur.
Water Resources (Surface Water and Wetlands)	Short-term, localized impacts to water quality could occur from habitat improvement projects that disturb soil. However, long-term, beneficial impacts to water quality would be realized from restoring vegetation cover, establishing native riparian vegetation, and stabilizing banks and streambeds.	Increasing enrollment in public access programs would not occur and the additional funding for VPA-HIP would not be available for habitat improvement projects. Long-term benefits to water resources from increased funding for habitat improvement would not be realized.



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## **ACRONYMS AND ABBREVIATIONS**

CEQ	Council on Environmental Quality	OFW	Open Fields and Waters
CFR	Code of Federal Regulations	PEA	Programmatic Environmental
CRP	Conservation Reserve Program		Assessment
CRP-MAP	Conservation Reserve Program – Management Access Program	SHPO	State Historic Preservation Officer
		U.S.	United States
EA	Environmental Assessment	USACE	U.S. Army Corps of Engineers
EO	Executive Order	USCB	U.S. Census Bureau
FSA	Farm Service Agency	USDA	U.S. Department of Agriculture
NEPA	National Environmental Policy Act	USFWS	U.S. Fish and Wildlife Service
NGPC	Nebraska Game and Parks Commission	VPA-HIP	Voluntary Public Access and Habitat Incentive Program

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## **CHAPTER 1.0 INTRODUCTION**

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The United States (U.S.) Department of Agriculture (USDA) Farm Service Agency (FSA) proposes to implement a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) in the state of Nebraska. The Voluntary Public Access and Habitat Incentive Program (VPA-HIP) provides grants to state and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land. The VPA-HIP is administered by the state or tribal government that receives the grant funds.

The VPA-HIP is a competitive grants program that is only available for state and tribal governments. The grant funding may be used to expand existing public access programs or create new public access programs, or provide incentives to improve wildlife habitat on enrolled lands. Applicable program objectives in the state of Nebraska are to:

- Maximize participation by landowners;
- Ensure that land enrolled in the program has appropriate wildlife habitat;
- Provide incentives to improve wildlife habitat on Conservation Reserve Enhancement Program (CREP) lands, if available;
- Supplement funding and services from other Federal, state, or tribal government or private resources; and
- Inform the public about the location of public access land.

The state of Nebraska, through the Nebraska Game and Parks Commission (NGPC), proposes to use VPA-HIP grant funds to expand its existing public access programs to provide the public with more opportunities to hunt, fish, and improve wildlife habitat on private lands.

### **1.1 BACKGROUND**

Public access programs for hunting and fishing on private lands are extremely important to Nebraska due to its very limited amount of publicly owned land. Land in the state of Nebraska is approximately 97 percent privately owned. This severely limits the available lands that the public can use for hunting, fishing, or other wildlife related outdoor recreational activities.

The NGPC works closely with many private landowners who voluntarily participate in private land access programs within the state. Historically, there were three public access programs available to private land owners with eligible lands: the Conservation Reserve Program – Management Access Program (CRP-MAP); Open Fields and Waters (OFW); and the Tall Wheat Stubble Management Program. NGPC has recently retired and restructured these programs for various reasons and currently CRP-MAP has merged into OFW. The Tall Wheat Stubble Management Program was a pilot program in 2002, but even after a few years of success was ultimately ended due to funding limitations and prolonged drought. All of the programs provide financial incentives for allowing public access and the opportunity for private

landowners to work with state employed biologists to improve wildlife habitat. These programs have opened almost 200,000 acres of private land to hunting and fishing by the public in Nebraska (Figure 1). Though the programs are available statewide, approximately 89 percent of Nebraska's population is located within the Population/Platte River Zone shown in Figure 1. Demand for public access to private lands in these areas is highest due to higher population density. Public access programs have increased public awareness about the importance of private lands to individuals who hunt, fish, and enjoy wildlife-related recreation, and motivated landowners to conserve wildlife species.

#### **1.1.1 Conservation Reserve Program – Management Access Program**

CRP-MAP began in 1997 and opened almost 20,000 acres of private land in 23 counties to hunting and fishing in its first year. To be eligible for this program, land must be enrolled in the Conservation Reserve Program (CRP). Since 2000, approximately 15 percent of CRP land in Nebraska has been enrolled in CRP-MAP annually. At its peak, the program had almost 800 landowner contracts comprising over 185,000 acres of private land enrolled. In many years since the program's inception, available funding has limited the number of acres that could be enrolled in CRP-MAP, and has limited the ability of NGPC to expand the program. The program allows public use for walk-in hunting and trapping during all seasons from August 31 to July 1, with parking and driving trails provided on individual sites as needed. Though funding has been an issue, the program has paid private landowners over \$6.1 million for allowing public access over the 13-year history of the program.

As stated above, CRP-MAP is now being merged with OFW due to the need to update CRP-MAP and as an effort to streamline program administration. CRP-MAP payment rates for public access have not changed since 1997 and remain at \$1 to \$5 an acre. This has not kept pace with the increasing land values within Nebraska, nor has it kept pace with CRP rental rates offered by USDA. The program has managed to maintain currently enrolled lands but the incentive payouts are not attractive for new enrollment.

CRP-MAP also allowed for habitat management for enrolled lands. The program was integral in developing the mid-contract management requirements that now exist under CRP. Costs for effective habitat management activities have increased to a range of approximately \$50 to \$90 per acre. All of these cost issues have created a funding need for this type of public access program.

#### **1.1.2 Open Fields and Waters**

NGPC developed OFW in 2008 as a pilot program to expand public access to lands beyond just those enrolled in CRP. This was done in an effort to increase opportunities for new and existing hunters and anglers and to provide more opportunities to harvest expanding populations of deer (especially white-tailed deer) and wild turkey on private lands.

Through this program, the NGPC provides landowners with an annual payment in exchange for allowing public access for hunting and fishing. Instead of a flat rate for enrolled acreage, the payouts are based on the quality of habitat that is provided. Higher payouts are also made to those landowners located in areas of higher population density (i.e., areas that would have increased demand) and reduced payments are made for those landowners not willing to open the land for all seasons (hunting and fishing).

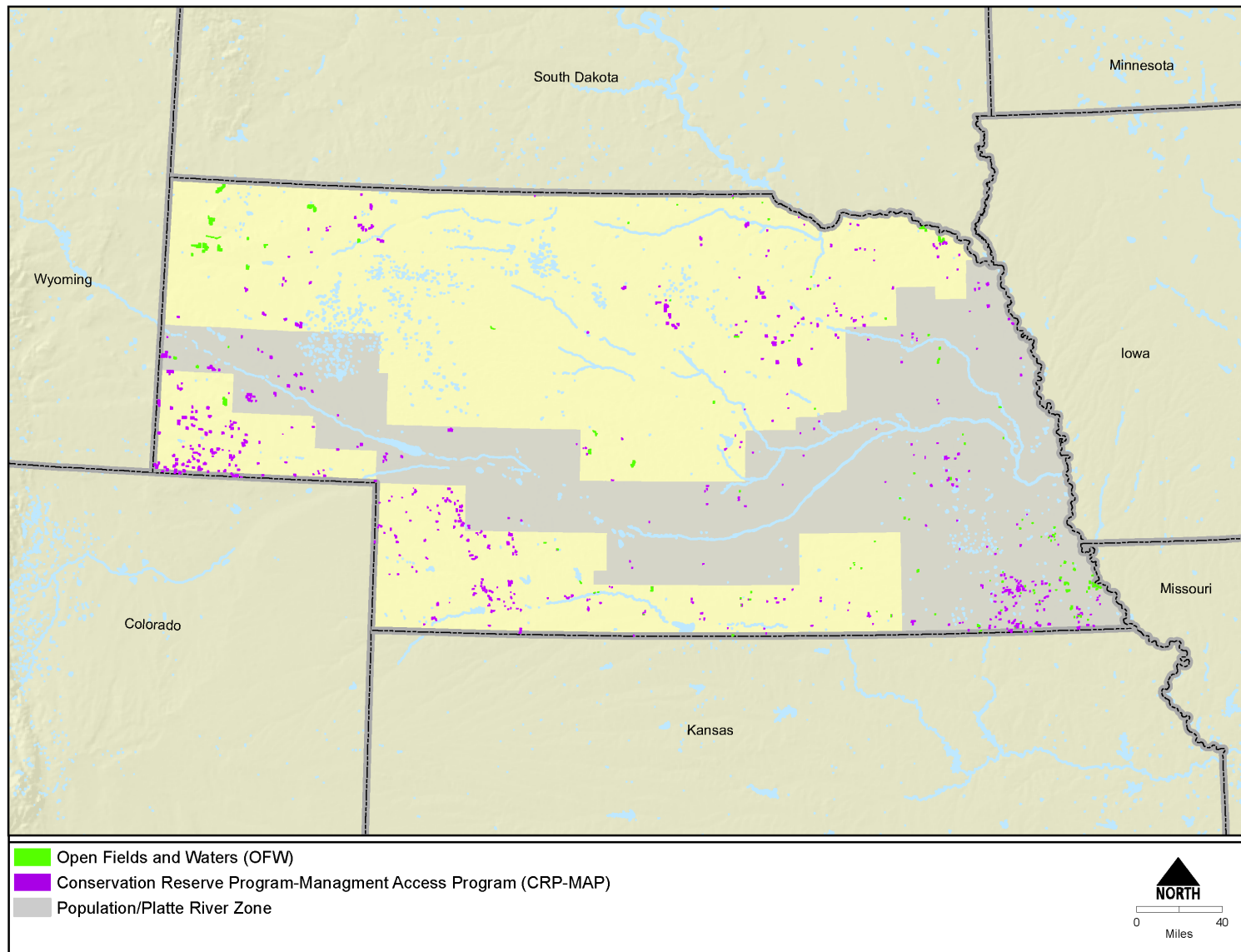


Figure 1. NGPC Public Access Lands and Population/Platte River Zone

In 2009, the OFW provided access to over 37,000 new acres of private lands, over 370 ponds, and almost 38 miles of fishable streams and rivers. NGPC has completed a second year of enrollments and as expected, most landowners that had enrolled in the previous year remained enrolled. An additional 6,500 acres of hunting access, 35 ponds, and 9 miles of fishable stream/river were also added in 2010. This has totaled over \$300,000 in payouts to private landowners for allowing public access.

OFW was a two year pilot program and was under review to assess the need to make any administrative changes before making the program permanent. As stated, NGPC is now merging the CRP-MAP program into the OFW program. The combined programs include participation by more than 600 landowners and open over 200,000 acres of private land to public access statewide.

### **1.1.3 Tall Wheat Stubble Management Program**

The Tall Wheat Stubble Program began as a pilot program in 2002 and provided a per acre payment to landowners for providing public access while leaving tall wheat stubble through the fall and winter. The tall stubble was found to provide benefits for both crop production and for ring-necked pheasant populations. As a requirement of the program, landowners were not allowed to till or graze the stubble until the spring. The program was successful for a number of years, but was discontinued due to lack of funds and challenges of providing tall stubble due to prolonged drought.

Nebraska is seeing a resurgence of taller wheat stubble due to the end of a multi-year drought. As a result, NGPC is again interested in introducing a similar stubble management program, only this time including small grain stubble for grain crops other than wheat, especially tall milo (grain sorghum).

## **1.2 THE PROPOSED ACTION**

With VPA-HIP grant funds and supplemental state and private funds, the NGPC proposes to expand enrollment in its public access programs by offering increased payouts and potential habitat improvements as an incentive for landowner participation and to create a new Small Grain Stubble Management Program.

### **1.3 PURPOSE AND NEED FOR PROPOSED ACTION**

The purpose of the Proposed Action is to increase the total acres of private lands enrolled in the public access programs by utilizing VPA-HIP grant funds to increase incentive payments, with emphasis on enrolling lands with multi-year contracts within the state of Nebraska. VPA-HIP funds would also be used to provide for potential habitat improvements on qualified lands where no other funding sources are available. Additionally, VPA-HIP funds may be used to offer one-time bonus payments for enrollment in multi-year contracts. The need for the Proposed Action is to meet demand for public access for hunting, fishing, and other outdoor recreation in Nebraska, which is 97 percent privately owned. Also, increased incentive payments are needed to update payout rates that have not kept pace with current land values.



## **1.4 REGULATORY COMPLIANCE**

This Programmatic Environmental Assessment (PEA) has been prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) (Public Law 91-190, 42 U.S. Code 4321 et seq.); implementing regulations adopted by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations [CFR] 1500-1508); and FSA implementing regulations, Environmental Quality and Related Environmental Concerns – Compliance with NEPA (7 CFR 799). The intent of NEPA is to protect, restore, and enhance the natural and human environment through well-informed Federal decisions. A variety of laws, regulations, and Executive Orders (EOs) apply to actions undertaken by Federal agencies and form the basis of the analysis presented in this PEA.

## **1.5 ORGANIZATION OF EA**

This PEA assesses the potential impacts of the Proposed Action and the No Action Alternative on potentially affected environmental and economic resources.

- Chapter 1.0 provides background information relevant to the Proposed Action, and discusses its purpose and need.
- Chapter 2.0 describes the Proposed Action and alternatives.
- Chapter 3.0 describes the baseline conditions (i.e., the conditions against which potential impacts of the Proposed Action and alternatives are measured) for each of the potentially affected resources and the potential environmental impacts to those resources.
- Chapter 4.0 describes potential cumulative impacts and irreversible and irretrievable resource commitments.
- Chapter 5.0 discusses mitigation measures utilized to reduce or eliminate impacts to protected resources.
- Chapter 6.0 contains a list of the persons and agencies contacted during the preparation of this document.
- Chapter 7.0 lists the preparers of this document.
- Chapter 8.0 contains references.
- Appendix A provides Programmatic Agreements with U.S. Fish and Wildlife Service (USFWS) and Nebraska State Historic Preservation Officer (SHPO).
- Appendix B provides agency correspondence.

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## **CHAPTER 2.0 DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES**

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### **2.1 PROPOSED ACTION**

The NGPC proposes to use VPA-HIP grant funds of \$2,391,007 along with state, private, and other funds to expand existing and create a new public access program to provide the public with more opportunities for hunting and fishing on private lands. Specific objectives include:

- Expand participation in the OFW program by increasing payout rates to reflect current land values.
- Enroll 312,500 acres of land and 100 miles of fishable streams/rivers into the combined OFW program, with 75 percent of contracts being for 5 years or longer.
- Enroll 10,000 acres of tall small grain stubble into the newly developed Small Grain Stubble Management Program.
- Hire a full time Access Coordinator to maintain focus on coordinating agency efforts on public access programs, administering VPA-HIP funds, and growing the new Small Grain Stubble Management Program.
- Hire an Administrative Assistant for the Access Coordinator to aid in tracking funding and contract status, processing fiscal paperwork, making payments, and providing fiscal reports of current projected status of the project.
- Undertake a true promotional campaign to increase awareness and interest in public access programs to landowners and recreational users.
- Provide habitat improvements on enrolled lands when other funding sources are not available.

These objectives can be consolidated into three main Proposed Action components: increase landowner payouts in OFW, create the Small Grain Stubble Management Program, and implement habitat improvement projects. These components are discussed in more detail in Section 2.1.1 through 2.1.3.

#### **2.1.1 Increase Landowner Payouts**

Under the Proposed Action, the rates for public access payouts for OFW would increase to better match current land values in Nebraska. Eligible lands would be evaluated for habitat quality by NGPC staff prior to contract development with payouts ranging from \$1 to \$15 per acre (with roundout acres being slightly less). Tables 2-1 and 2-2 show the proposed OFW access rates for both hunting and fishing. Also, NGPC would have a “Target Area” that would receive slightly higher payouts for suitable land. This target area has been identified as the Population/Platte River Zone and consists of approximately 89 percent of Nebraska’s population. Demand for public access for hunting and fishing is higher in this region (see Figure 1).

**Table 2-1. Proposed OFW Payout Schedule for Hunting Access**

Enrollment Zone	Habitat Type						
	Riparian Woodland	High Rate Woodland	Wetland	High Rate Managed CRP	CRP	Low Rate Woodland or High Rate Grassland or Low Rate CRP	Roundout Acres (Low Rate Grassland, Wetland, or Cropland)
<b>Target Area</b>	\$15	\$12	\$12	\$10	\$8	\$3	\$1
<b>Standard</b>	\$12	\$6	\$12 (\$6 Sandhills Wetlands)	\$10	\$4	\$1.50	\$0.50

*Other Specifications:*

Signing bonus for 5-year or longer contract = 25% of annual payment amount, payable first year after contract signed

Enrollment without Rifle Deer = 25% reduction in annual payout

Enrollment without Spring Turkey = 75% reduction in annual payout

**Table 2-2. Proposed OFW Payout Schedule for Fishing Access**

Habitat Type	Payout
<b>Ponds and Lakes</b>	\$250 base for first surface acre and \$40 per acre for each additional acre
<b>Cold Water Streams (with trout fishing opportunities)</b>	\$750 per mile if both sides of stream are enrolled \$350 per mile if only one side of stream enrolled
<b>Warm Water Stream/River (typical river fish species)</b>	\$500 per mile if both sides of stream/river enrolled \$250 per mile if only one side enrolled

*Other Specifications:*

Ice fishing only, December to February = 50% reduction in annual payout

Signing bonus for 5-year or longer contract = 25% of annual payout amount, payable first year after contract signed

Open water fishing only, March to November = 25% reduction in annual payout

**2.1.2 Creation of Small Grain Stubble Management Program**

The new Small Grain Stubble Management Program would be modeled after the Tall Wheat Stubble Management Program that began in 2002 and has since been disestablished. The main goal of NGPC for this program would be to enroll 10,000 acres of small grain cropland, both wheat and other small grains (especially tall milo), over the life of the VPA-HIP grant funding (5,000 acres per year for the next 2 years). Under this program, landowners with suitable wheat stubble would not be allowed to till, hay, or graze the grain stubble after summer harvest until after the following winter. Landowners of tall milo would not be able to till, hay, or graze stubble after fall harvest until the following spring. Landowners would receive payouts for allowing public access ranging from \$1 to \$3 per acre, depending on habitat quality. Also included in the acreages for enrollment would be any associated habitats in the vicinity of the stubble fields (i.e., grassy and shrubby canyons and draws, moderately grazed pasture, creeks, etc.).

**2.1.3 Habitat Improvement**

Landowners who choose to participate in any of the NGPC public access programs have access to NGPC staff's expertise for potential habitat improvement activities. Since there are limited funding sources for

these activities, NGPC proposes to utilize VPA-HIP funds for habitat improvement projects on eligible private lands where no other funding sources are available. These projects would be limited to only those improvement activities that NGPC staff deemed valuable to statewide conservation efforts. Potential projects could be activities such as tilling and reseeded with native grasses, inter-seeding of native grasses and forbs, noxious weed or invasive plant removal, prescribed burning, and mowing. Habitat improvement activities would only take place on land that has been previously disturbed, generally from cultivation. Additionally, habitat improvement projects may require landowners to sign a longer-term contract (e.g., 10 years) to ensure the public benefits offset the cost of habitat improvements.

All habitat improvement projects would be developed or approved by NGPC staff. NGPC has a programmatic agreement with the USFWS regarding the types of habitat improvement projects that have been determined to have minimal or no impact and are permissible without consultation in accordance with Section 7 of the Endangered Species Act (see Appendix A). It is anticipated that all habitat improvement projects that would take place utilizing VPA-HIP funding would fall within the limits of the types of activities outlined in the USFWS programmatic agreement. Any activities outside of this scope would require additional NEPA documentation and any permits required by state and local regulations prior to performing the activity. For the purposes of this PEA, it is assumed that all habitat improvement activities utilizing VPA-HIP funding would remain within the scope of the USFWS/NGPC programmatic agreement.

## **2.2 ALTERNATIVES**

CEQ regulations (40 CFR §1502.14) require the lead agency to identify all reasonable alternatives for implementing a Proposed Action. The Federal Register notice announcing the rule for VPA-HIP (Vol. 75(130), page 39135) explicitly states the purpose of VPA-HIP is to provide grants to state and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation and to improve fish and wildlife habitat on their land. Each VPA-HIP application received by USDA FSA underwent a selection screening process to identify those proposals that met the program objectives (listed in Introduction Section 1.0).

NGPC considered other alternative strategies for utilization of the VPA-HIP funds; however, it was determined that the best use of the funds was to provide increased landowner payouts to better reflect current land values. Landowner payouts haven't increased since 1997 and participation by new landowners in the public access programs has been declining in recent years. Adjusting the existing programs to offer bonus payments for long-term contracts and higher rates for quality habitat or land within the heavily populated target zone would provide the most value to the public and potentially increase participation. In addition, available funding for habitat improvement is limited. Utilizing VPA-HIP funds to supplement habitat improvement efforts would benefit the overall state conservation goals.

## **2.3 NO ACTION ALTERNATIVE**

Under the No Action Alternative, the VPA-HIP would not be implemented in the state of Nebraska. Increasing payouts, giving signing bonuses for longer term contracts, and the creation of the Small Grain Stubble Management Program would not occur. Public access programs would continue to be administered as they are currently, but would likely experience less landowner participation due to uncompetitive payout rates. Expansion of the public access areas to meet the statewide demand would not occur. The No Action Alternative does not meet the purpose and need of the Proposed Action, but is being carried forward in accordance with CEQ regulations to serve as the baseline against which potential impacts of the Proposed Action are measured.

## **2.4 RESOURCES ELIMINATED FROM ANALYSIS**

CEQ regulations (40 CFR §1501.7) state that the lead agency shall identify and eliminate from detailed study the issues which are not important or which have been covered by prior environmental review, narrowing the discussion of these issues in the document to a brief presentation of why they would not have a dramatic effect on the human or natural environment.

As described above, the Proposed Action consists of three main components: increase landowner payouts for OFW, creation of the Short Grain Stubble Management Program, and habitat improvement activities. Two of these components are primarily administrative, while the habitat improvement activities would have the greatest potential for environmental impacts. However, the potential direct and indirect impacts to physical resources would be dependent on specific ground disturbing activities proposed, methods, location, and time of year. Prior to any activity taking place, NGPC staff would make a site visit to determine habitat quality and any necessary improvement activities that would occur. NGPC staff would ensure that the proper measures to minimize any impacts and/or consult with the responsible agencies or authority to prevent any undesired consequences. Thus, from a programmatic level, the Proposed Action would have little to no impact on the following resource areas:

*Air Quality.* The Proposed Action would have little impact to air quality in Nebraska. Expansion of the public access programs and increasing landowner payouts would have no impact on air quality. Habitat improvements such as prescribed burning could have short-term, temporary impacts to local air quality. However, all counties in Nebraska are currently in attainment for all criteria pollutants regulated through the U.S. Environmental Protection Agency's National Ambient Air Quality Standards (USEPA 2010). As such, Nebraska presently has no air quality issues and prescribed burning would not cause significant deterioration of air quality. If prescribed burning were undertaken, efforts would be made to manage smoke and provide for fire safety of the general public and the surrounding environment.

*Soils.* Habitat improvement activities could potentially impact soils. However, all proposed habitat improvements would occur on previously disturbed land and disturbance would be similar in nature to cultivation. In general, most habitat improvement activities would be similar in nature to USDA approved conservation practices and would take into account erosion and sedimentation control measures to prevent loss of soils from water and wind. As such, only minor, short-term impacts to soils would occur.

*Noise.* The Proposed Action would not create any new permanent sources of noise to the environment. Expanding public access to new lands may introduce gunfire noise on lands where public hunting may not occur. This noise would be intermittent and occur during daylight hours during specified hunting seasons. In addition, the requisite size of land needed for safe hunting would reduce the potential for gunfire noise to be heard outside the property. Habitat improvement activities could require the use of heavy equipment. These activities would be localized, temporary in nature, only occur during typical working daylight hours, and are not likely to exceed typical noise levels experienced on active agricultural land.

*Human Health and Safety.* No components of the Proposed Action would directly impact human health or safety. The goal of the Proposed Action is to increase public access to privately-held land that supports an abundance of wildlife, thereby allowing hunting, fishing, and outdoor recreation. While hunting does pose a slight safety risk, this activity would occur on private land with controlled access. Nebraska hunting regulations require hunters to receive the appropriate education and meet minimum age requirements before a permit can be issued. All habitat improvement requiring the use of heavy machinery would be done in accordance with existing safety guidelines.

*Land Use.* The Proposed Action would not result in any changes to land use designations. The Proposed Action would occur on private lands on a voluntary basis and would not require the alteration of land use.

*Transportation.* No aspect of the Proposed Action entails any alteration of the current transportation system in the state of Nebraska. Increasing acreage available for enrollment in public access programs could cause an increase in the number of vehicles traveling to a newly enrolled area. However, it is highly unlikely this would be considered an impact to the transportation system, but rather a redistribution of vehicular traffic.

*Cultural Resources.* The Proposed Action would not directly or indirectly impact any cultural resources, either architectural or archaeological. NGPC is highly aware of the importance of cultural resources, and no aspect of the Proposed Action would allow for purposeful destruction of any cultural resources. NGPC maintains a programmatic agreement with Nebraska's SHPO for habitat improvement projects similar in nature to those proposed (Appendix A). As stated earlier, all habitat improvements that could potentially be funded using VPA-HIP grant monies would be modeled within the scope of the existing programmatic agreement. NGPC would continue to honor the agreement with SHPO for any projects funded by VPA-HIP. Additionally, habitat improvements would only occur on lands that had been previously cultivated, thereby making the occurrence of cultural resources unlikely.

*Coastal Zones.* The state of Nebraska has no coastal zones, as it is a land-locked state. However, lakes and reservoirs do exist. NGPC is a partner in the Nebraska Natural Legacy Project, a collaborative program that works to improve and restore Nebraska's ecosystems and waterways. Proposed habitat improvement projects would ultimately benefit these areas. Potential water resources impacts are addressed in Section 3.4.

*Other Formally Classified Lands.* The Proposed Action can only be implemented on privately owned lands. The only formal classification applicable on private land would be Prime and Unique Farmland or

Farmland of Statewide Importance. The Proposed Action would not include removing these lands from agricultural production. Therefore, there would be no impacts to any formally classified lands.



## **CHAPTER 3.0    AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES**

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This chapter provides a description of the existing environmental conditions that have the potential to be affected from implementation of the Proposed Action and the potential environmental impacts that may occur to those resources. Resource areas potentially impacted by the Proposed Action and covered in this PEA include:

- Biological Resources (Vegetation, Terrestrial and Aquatic Wildlife, and Protected Species)
- Recreation
- Socioeconomics and Environmental Justice
- Water Resources (Surface Water and Wetlands)

As described in Chapter 2, this PEA describes the potential impacts from implementing VPA-HIP funds in the state of Nebraska on a programmatic level. Prior to any landowner enrollment, NGPC staff would conduct a site visit to determine habitat quality and land eligibility for public access programs. Site-specific analysis for any proposed habitat improvement projects would also be carried out by NGPC staff. The site-specific analysis in combination with the programmatic level analysis provided in this PEA serves as the full NEPA documentation. Projects determined to have potential significant impacts would require a separate Environmental Assessment (EA) and are outside of the scope of this analysis.

Environmental consequences to each resource area are described for the Proposed Action (Preferred Alternative) and the No Action Alternative:

- **Proposed Action (Preferred Alternative):** utilize VPA-HIP funds to expand and enhance existing public access programs and improve habitat.
- **No Action Alternative:** continuation of existing public access programs as they are currently administered. No expansion or additional financial incentives for enrollment would occur.

### **3.1    BIOLOGICAL RESOURCES**

Biological resources are any living features of the natural environment that add to the intrinsic value of the local area. In this PEA, biological resources include vegetation, terrestrial wildlife, aquatic wildlife, and protected species. Biological resources are included in this PEA because habitat improvement projects have the potential to temporarily disturb the natural environment during implementation but would also result in long-term positive improvements to the natural environment. Also, expanding the public access programs and increasing hunting and fishing opportunities may increase the potential for impacting game populations.

#### **3.1.1    Affected Environment**

The Proposed Action covers the entire state of Nebraska. A very brief overview of the vegetation within the state is presented in Section 3.1.1.1, terrestrial wildlife that could potentially be affected by hunting is

described in Section 3.1.1.2, aquatic wildlife that could potentially be affected by fishing is described in Section 3.1.1.3, and protected species that could potentially be impacted are described in Section 3.1.1.4.

#### 3.1.1.1 Vegetation

The state of Nebraska contains four ecological regions (ecoregions). Ecoregions are divided based on the dominant vegetation found within the area. The four ecoregions of Nebraska are tallgrass prairie, mixedgrass prairie, shortgrass prairie, and the sandhills. The common vegetation of each ecoregion is described below.

*Tallgrass Prairie.* The tallgrass prairie ecoregion is located in the eastern portion of Nebraska. Historically, upland tallgrass prairie was the dominant plant community in this ecoregion; however, only two percent of the native tallgrass prairie remains due to the concentration of agricultural production in the area. Plants that are dominant in the upland tallgrass prairie community include big bluestem, Indiangrass, switchgrass, and Canada wildrye. Common wildflowers and forbs found in this community include showy goldenrod, prairie blazing star, and purple coneflower. The tallgrass prairie ecoregion also contains native woodlands and wet meadows communities (wetlands are described in detail in Section 3.4.1.2). Native woodlands in Nebraska that occur in wet floodplains are dominated by cottonwoods, willows, box elders, and American elm. Drier areas support oaks, hickories, basswood, and black walnut (NGPC 2005).

*Mixedgrass Prairie.* The mixedgrass prairie ecoregion occurs throughout much of central Nebraska. Common species found in the mixedgrass prairie ecoregion include blue grama, buffalograss, side-oats grama, little bluestem, western wheatgrass, sand dropseed, big bluestem, Indiangrass, switchgrass, and Canada wildrye. Forb species found in this ecoregion include prairie clover, Illinois bundle flower, wild alfalfa, deer vetch, leadplant, prairie coneflower, stiff sunflower, and blazing star. The mixedgrass prairie ecoregion also contains some riparian forests and wetlands (wetlands are described in detail in Section 3.4.1.2). Common trees found in the riparian forests include eastern cottonwood, green ash, hackberry, red cedar, bur oak, and black walnut. Common shrubs include roughleaf dogwood, false indigo, and sandbar willow (NGPC 2005).

*Sandhills.* The sandhills ecoregion is located in parts of north-central and western Nebraska. Vegetative communities that are common in the sandhills ecoregion are sandhills dune prairie and wetlands; however, there are also some native woodlands in the ecoregion. Sandhills dune prairie is dominated by sand bluestem, prairie sandreed, little bluestem, hairy grama, big bluestem, Indian grass, and switchgrass. Common forbs include stiff sunflower, bush morning glory, Plains gayfeather, western ragweed, white sage, and prairie coneflower. Shrubs in this community include sand cherry, leadplant, prairie rose, yucca, Arkansas rose, and wild rose. Woodlands in the sandhills ecoregion are generally only found along river valleys and bluffs. Common tree species include eastern cottonwood, peachleaf willow, coyote willow, bur oak, basswood, black walnut, green ash, paper birch, quaking aspen, and ponderosa pine. Common shrubs include chokecherry, wild plum, and snowberry (NGPC 2005).

*Shortgrass Prairie.* The shortgrass prairie ecoregion is located in the western portion of Nebraska. Vegetative communities that occur in this ecoregion include shortgrass prairie, mixedgrass prairie, sandhills dune prairie and sandsage prairie, western alkaline meadows, ponderosa pine, riparian woodlands, and badlands. Each of these sub-regions are described in more detail below.

Shortgrass prairie is dominated by buffalograss, blue grama, side-oats grama, and purple threeawn. Forbs in this community include milkvetches, scarlet guara, cutleaf ironplant, spine-fruit prickly pear, purple locoweed, slender-flower scurfpea, prairie coneflower, and scarlet globe mallow (NGPC 2005).

Mixedgrass prairie in this ecoregion is dominated by western wheatgrass, blue grama, little bluestem, big bluestem, switchgrass, and side-oats grama. Shrubs in this community include leadplant and sandsage, and forbs include western ragweed, fringed sage, prairie coneflower, scarlet globe mallow, scarlet guara, and broom snakeweed (NGPC 2005).

Sandhills dune prairie and sandsage prairie are dominated by sandsage, sand bluestem, blue grama, prairie sandreed, needle-and-thread, yucca, hairy grama, and sunsedge. Forbs include sand lily, desert goosefoot, plains sunflower, bush morning glory, showy ipomopsis, stiff sunflower, plains gayfeather, brittle prickly pear, hairy puccoon, winged pigweed, and field snake cotton (NGPC 2005).

Western alkaline meadows are dominated by inland saltgrass, alkali sacaton, clustered field sedge, foxtail barley, and meadow bluegrass. Forbs include spearscale, alkaline aster, viscid camphor-daisy, and thelypody (NGPC 2005).

Ponderosa pine communities contain mostly ponderosa pine, but also may include quaking aspen and green ash. Shrubs in this community include serviceberry, chokecherry, dwarf juniper, fragrant sumac, mountain mahogany, and wolfberry, and the herbaceous layer may include Kentucky bluegrass and littleseed ricegrass (NGPC 2005).

Riparian woodlands are dominated by cottonwoods, peachleaf willows, green ash, box elder, Russian olive, and junipers. Shrubs include sandbar willow, wild plum, chokecherry, and buffaloberry, and the herbaceous layer includes field horsetail, Emory's sedge, woolly sedge, marsh muhly, and prairie cordgrass (NGPC 2005).

The badlands contain sparse vegetation but may include saltbush, rabbitbrush, silver orache, poverty weed, and Russian thistle (NGPC 2005).

#### 3.1.1.2 Terrestrial Wildlife

Nebraska contains an abundance of wildlife found throughout the various habitats in the state. Game species found in Nebraska include deer, turkey, antelope, elk, and bighorn sheep. Upland game species that occur in Nebraska include pheasant, grouse, quail, rabbit, squirrel, and partridge. Migratory upland game species include doves, rail, snipe, woodcock, and crow. Furbearer species that can be hunted include coyote, mink, muskrat, weasel, skunk, badger, opossum, red fox, raccoon, and beaver. Waterfowl species that can be hunted include ducks, teal, coots, Canada geese, white-fronted geese, light geese, and dark geese (NGPC 2011a).

#### 3.1.1.3 Aquatic Wildlife

The waters of Nebraska contain a wide variety of fish species that can be caught as sport fish, commercial fish, or bait fish. Commercial fish in Nebraska include black bullhead, freshwater drum, yellow bullhead, and yellow perch. Sport fish that can be caught in Nebraska include American eel, sunfish hybrids, black crappie, blue catfish, bluegill, brook trout, brown trout, burbot, channel catfish, Chinook salmon, cutthroat trout, flathead catfish, goldeye, grass pickerel, largemouth bass, muskellunge, northern pike, orange spotted sunfish, paddlefish, pumpkinseed, rainbow trout, redear sunfish, rock bass, sauger, saugeye, shovelnose sturgeon, skipjack herring, smallmouth bass, spotted bass, striped bass, wiper, tiger muskellunge, walleye, white bass, and white crappie. Bait fish in Nebraska include alewife, bigmouth shiner, brassy minnow, creek chub, emerald shiner, fathead minnow, gizzard shad, golden shiner, goldfish, longnose dace, plains killifish, red shiner, river shiner, sand shiner, stoneroller, suckermouth minnow, and white sucker. Some amphibians and crustaceans may also be used as bait fish, and these include devil crayfish, northern crayfish, papershell crayfish, ringed crayfish, and tiger salamander (NGPC 2011b).

#### 3.1.1.4 Protected Species

The state of Nebraska contains numerous species that are protected by federal or state Endangered Species Acts. The NGPC website lists all threatened and endangered species that have been documented throughout the state. The only game species that are protected in Nebraska are migratory birds. The hunting of these species is strictly controlled through licensing and bag limits, and is regulated by NGPC (NGPC 2011a). Nebraska also contains multiple protected fish species that are illegal to possess. Protected fish species include blacknose shiner, finscale dace, lake sturgeon, northern redbelly dace, pallid sturgeon, pearl dace, sturgeon chub, and Topeka shiner (NGPC 2011b).

### 3.1.2 Environmental Consequences

Impacts to biological resources would be considered significant if activities resulted in reducing the wildlife or fisheries populations to a level of concern, removing land with unique vegetation characteristics, and incidental take of a protected species or its habitat.

#### 3.1.2.1 Proposed Action (Preferred Alternative)

Under the Proposed Action, additional habitat improvement projects similar to those currently done by NGPC would occur on privately-held farms, ranches, and forest land throughout Nebraska under the VPA-HIP. These projects would be consistent with overall strategies to conserve habitat and wildlife important to the state of Nebraska as described in the Nebraska Natural Legacy Program (NGPC 2005). In general, the activities associated with installing these projects would result in minor, short-term impacts, which include disturbance to local vegetation and wildlife. However, the goal of these projects is long-term habitat improvement and sustainability of wildlife. Programmatic-level impacts to vegetation, terrestrial and aquatic wildlife, and protected species are described below.

### *Vegetation and Terrestrial Wildlife*

Under the Proposed Action, it is expected that implementation of the habitat improvement projects would increase habitat value by controlling less favorable vegetation species in preference for native species that provide greater habitat value. In general, habitat improvement would remove invasive or nuisance species to allow for preferred native species to dominate the habitat. Removal of nuisance species can be done by hand, mechanically, or with prescribed burning depending on the habitat type, size of project area, and local conditions. In some cases, preferred vegetation species may be seeded or planted to increase the habitat value, while in other cases the habitat would be allowed to naturally regenerate after removal of invasive species. Installation of the restoration activity could result in short-term, minor impacts to vegetation and disturbance to local terrestrial wildlife. However, these impacts would be more than offset by the long-term improvement in habitat value and subsequent conservation of important wildlife.

NGPC goes to great lengths to ensure hunting a game species does not negatively affect the status of the species. All game species are managed for the long-term viability of the populations. Expanding participation in the current programs and increasing hunting opportunities would not result in adverse impacts to game species' populations given the existing NGPC control through the permit process.

### *Aquatic Wildlife*

Under the Proposed Action, it is expected that implementation of the habitat improvement projects would improve riparian habitats and result in long-term decreases in erosion. Improvements to riparian habitat may include herbaceous seeding, shrub planting, and limiting grazing during certain times of the year; all of which would improve the quality of the surface water associated with the riparian area. Improving the water quality would have subsequent beneficial impacts to aquatic wildlife. The habitat improvement measure could cause a minor, localized, short-term impact by increasing sediment loads in runoff; however, the long-term benefit of the habitat improvement more than offsets the short-term impact. In addition, approved erosion and sediment control measures would be utilized during installation of the habitat improvement project. Fish populations are monitored and are controlled by permits and size limits on game fish by NGPC. Therefore, expanding participation in the access programs and increasing fishing opportunities would not result in adverse impacts to fish populations.

### *Protected Species*

Under the Proposed Action, it is expected that implementation of the habitat improvement projects would increase habitat value by controlling less favorable species in preference for native species that provide greater habitat value. This would result in long-term positive impacts to the habitat and associated wildlife. NGPC has a Programmatic Agreement with the USFWS for conducting habitat improvement projects of this type. USFWS and NGPC have determined that the potential impact to protected species from these activities would be negligible and therefore consultation under Section 7 of the Endangered Species Act would not be required (Appendix A).

#### 3.1.2.2 No Action Alternative

Under the No Action Alternative, the Short Grain Stubble Management Program would not be created, there would be no expansion of OFW, and VPA-HIP funding would not be available for habitat improvement projects on private lands. The current public access programs would continue to be available. While habitat improvement projects and restoration activities would still occur, the benefit from additional improvement projects throughout Nebraska utilizing the VPA-HIP funding would not be realized.

### 3.2 RECREATION

Recreation includes those outdoor activities that take place away from the residence of the participant. The state of Nebraska offers a wide variety of recreational opportunities to its residents. Recreational activities that are common in Nebraska include hunting, fishing, wildlife viewing, camping, golfing, boating, hiking, biking, and horseback riding. For this PEA, recreation focuses on hunting and fishing opportunities available to the public in the state of Nebraska.

#### 3.2.1 Affected Environment

Hunting in the state of Nebraska is regulated by NGPC and a valid hunting permit is required to hunt within the state. Separate hunting permits are required for each type of game and certain species, and the permits are valid for the specific hunting season within the year they are purchased. Hunting permits that can be purchased in the state of Nebraska include small game permits and furbearer permits. Species that require a separate hunting permit in Nebraska include bighorn sheep, deer, elk, antelope, and turkey. Migratory bird hunting in Nebraska requires a valid hunting permit, along with the purchase of a Nebraska Habitat Stamp, a Nebraska Waterfowl Stamp, and a Federal Duck Stamp. Permits can be obtained online, through a NGPC office, or at local retail stores (NGPC 2011a).

Like hunting, fishing is also regulated by NGPC. To legally fish in Nebraska, anyone who is 16 years of age or older is required to purchase a fishing permit. These permits last for one day, three days, or one year and can be obtained online, through a NGPC office, or at local retail stores. Lifetime fishing permits are also available (NCPC 2011b).

#### 3.2.2 Environmental Consequences

Impacts to recreation would be considered significant if they drastically reduced, increased, or removed available public lands designated for recreation or significantly degraded the quality of the recreation. Impacts to environmental conditions such as air, water, or biological resources within or near public recreational land in such a way to affect its use would also be considered significant.

##### 3.2.2.1 Proposed Action (Preferred Alternative)

The Proposed Action has the potential to provide long-term, beneficial impacts to recreational resources in the state of Nebraska. Expanding the OFW program and creating the Short Grain Stubble Management Program would create more opportunities for citizens to enjoy the wildlife-related recreational activities

throughout Nebraska. Expansion of the programs would allow more opportunities and venues for hunting and fishing on private property. During habitat improvement projects there could be short-term, negative impacts to recreational resources because the land may not be accessible and improvement activities could disturb wildlife and game species. However, the increased funding for habitat improvement would also lead to long-term, higher quality hunting and fishing opportunities. Therefore, the Proposed Action would have long-term, beneficial impacts to recreational resources in Nebraska.

#### **3.2.2.2 No Action Alternative**

Under the No Action Alternative, the Short Grain Stubble Management Program would not be created, there would be no expansion of OFW, and VPA-HIP funding would not be available for habitat improvement projects on private lands. While, the current public access programs would continue to be available, the benefit to recreation in Nebraska from the expansion of OFW and the creation of the Short Grain Stubble Management Program would not be realized.

### **3.3 SOCIOECONOMICS AND ENVIRONMENTAL JUSTICE**

Socioeconomics for this PEA includes an investigation of population and demographic statistics as well as a discussion on the payouts to landowners from public access programs.

EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires a Federal agency to “make achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” A minority population can be defined by race, by ethnicity, or by a combination of the two classifications.

According to CEQ, a minority is defined as being one of the following groups: American Indian or Alaska Native, Asian or Pacific Islander, Black, not of Hispanic origin, or Hispanic. A minority population is defined as one of these groups exceeding 50 percent of the population in an area or the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population (CEQ 1997). The U.S. Census Bureau (USCB) defines ethnicity as either being of Hispanic origin or not being of Hispanic origin. Hispanic origin is further defined as “a person of Cuban, Mexican, Puerto Rican, South or Central America, or other Spanish culture or origin regardless of race” (USCB 2001).

Each year the USCB defines the national poverty thresholds, which are measured in terms of household income and are dependent upon the number of persons within the household. Individuals falling below the poverty threshold are considered low-income individuals. USCB census tracts where at least 20 percent of the residents are considered poor are known as poverty areas (USCB 1995). When the percentage of residents considered poor is greater than 40 percent, the census tract is considered an extreme poverty area.

### **3.3.1 Affected Environment**

#### **3.3.1.1 Population and Demographics**

As of the 2010 Census, Nebraska has an estimated population of just over 1.8 million people. From 1974 to 1990, the state experienced a net out-migration of residents. This has since changed with Nebraska showing slow growth from both natural births and international migration. Nebraska showed a 6.7 percent population growth from the 2000 Census (Nebraska Department of Economic Development 2011). Nebraska's economy is largely rooted in agricultural and livestock exports, but saw an increase in manufacturing jobs during the 1990s. Since 1980, the population has been shifting toward the urban areas of the state. In 2010 only an estimated 754,973 people lived in rural areas, while almost 1.1 million lived in areas considered urban (USDA Economic Research Service 2011).

Nebraska's population is predominately white, with 91.1 percent of residents claiming this ethnicity. Other races within the state rank as follows: African American, 4.6 percent; Asian, 1.7 percent; Native American or Alaskan Native, 1.1 percent; Native Hawaiian or Other Pacific Islander, 0.1 percent; and Hispanic, 8.4 percent. Hispanics make up the largest minority population in Nebraska (USCB 2011).

In 2008, an estimated 10.8 percent of Nebraskans were below the poverty level, slightly less than the nation as a whole (13.2 percent). Of the current population in Nebraska, 86.6 percent of persons over the age of 25 have attained a high school diploma, while 23.7 percent of persons over 25 have attained a Bachelor's degree or higher (USCB 2011).

#### **3.3.1.2 Employment, Income, and Public Access Programs**

Over the past few years, Nebraska's unemployment rate has been among the lowest in the nation. In 2010 the unemployment rate for Nebraska was only 4.7 percent, compared to 9.6 percent for the nation as a whole. Median household income in 2008 was \$49,731, slightly below the national average of \$52,029. Historically, Nebraska's per capita income has been below the U.S. average. In 2010, estimates show that Nebraskan's per capita income was \$39,557, which is approximately 95 percent of the national per capita income (Nebraska Department of Economic Development 2011, USCB 2011).

The Proposed Action has the potential to directly impact Nebraska's privately held farms, ranches, and forest lands. In 2007 there were 47,712 farms comprising 45,480,358 acres in Nebraska. This yields an average farm size of 953 acres (USDA 2007). Currently, landowners enrolled in public access programs receive monetary compensation for allowing public access to their lands. Last year the CRP-MAP had a total of 530 individual contracts and paid out \$432,067. The OFW program paid out \$168,560 to landowners for access to land, streams, rivers, and ponds (personal communication, McCoy 2011).

### **3.3.2 Environmental Consequences**

Significance of an impact to socioeconomics varies depending on the setting of the Proposed Action, but 40 CFR 1508.8 states that effects may include those that induce changes in the pattern of land use, population density, or growth rate.



Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and has equal access to the decision-making process. Significant environmental justice impacts would result if access to decision-making documents was denied or if any adverse environmental effects occurred that would disproportionately affect minority or low-income populations.

#### 3.3.2.1 Proposed Action (Preferred Alternative)

Under the Proposed Action, a total of \$3,802,757 in state, private, and Federal funds over three years would be used to expand Nebraska's public access programs. Specifically, NGPC would use \$2,391,007 in VPA-HIP grant funds to increase enrollment in OFW by offering increased payout rates to better reflect current land values and to instate a new Short Grain Stubble Management Program (see Tables 2-1 and 2-2 for payouts by habitat type). One-time signing bonus payouts could also be used for landowners who are willing to enroll lands for longer term contracts (5 years or more). VPA-HIP funds would also be used to hire an Access Coordinator and an Administrative Assistant to oversee the administering of VPA-HIP funds and to continue growing the public access programs. Habitat improvement projects may be funded with VPA-HIP grant monies if no other funding sources are available and if NGPC staff deemed the project to be of sufficient value to wildlife and public hunting and fishing opportunities.

Ultimately, all payouts to private landowners would offer a slight, direct economic benefit to those landowners with eligible lands. The level of monetary compensation would depend on the number of acres enrolled, the quality of the habitat, and the length of time the landowner would allow public access. Indirectly, increased hunting and fishing on these private lands would be beneficial to local economies wherever these new enrolled lands may be. Traveling sportsmen would spend dollars at local eateries, hotels for lodging, gas stations, and for any other goods and supplies that might be necessary for the hunting or fishing trip. Increasing the amount of high quality lands for hunting and fishing within Nebraska may attract out of state sportsmen, thereby bringing in more economic gain for local communities.

Goods and supplies (i.e., seed, plantings, equipment) for habitat improvement projects would likely be purchased locally. This would provide a slight one-time benefit to the local suppliers in or near the areas chosen for habitat improvement.

Under the Proposed Action, there would be no disproportionate impact to minorities or low income populations in Nebraska. The public access programs are voluntary and would only target landowners with suitable habitat. Once enrolled, participants must give equal access to all sportsmen with a valid hunting/fishing permit.

#### 3.3.2.2 No Action Alternative

Under the No Action Alternative, NGPC would not receive funding under the VPA-HIP. The No Action Alternative would not allow for any of the positive impacts from the introduction of the VPA-HIP funding into the economy, nor would it allow for the expansion of hunting and fishing opportunities on private lands, which also brings economic benefit via lodging and purchase of goods and supplies. While

public access programs and habitat improvement projects would remain available, the funding allocated to these activities would remain limited without VPA-HIP funds. Therefore, the long term positive environmental benefits from these activities would be diminished and NGPC would not be able to attain its newly established enrollment goals.

### **3.4 WATER RESOURCES**

For this analysis, water resources include surface water quality and wetlands. The Clean Water Act, the Safe Drinking Water Act, and the Water Quality Act are the primary Federal laws that protect the nation's waters including lakes, rivers, aquifers, and wetlands.

#### **3.4.1 Affected Environment**

##### **3.4.1.1 Surface Waters**

Surface water in Nebraska includes thousands of miles of perennial rivers and streams and over 2,000 lakes and reservoirs (NPGC 2005). Surface water is an important resource in Nebraska because it is necessary for drinking water, recreational opportunities, wildlife sustainment, and agricultural production. The quality of these surface waters impacts how they can be utilized by the populace.

Major rivers that flow through Nebraska include the Missouri River, Niobrara River, Republican River, North Platte River, Platte River, North Loup River, Middle Loup River, and South Loup River. The Missouri River flows through the eastern part of Nebraska and forms a portion of Nebraska's border with South Dakota and the entire borders with Iowa and Missouri. The North Platte and Platte Rivers flow through central Nebraska before joining the Missouri River. The North, Middle, and South Loup Rivers flow together to create the Loup River which then joins the Platte River in eastern Nebraska. The Niobrara River flows through the northern portion of the state before joining the Missouri River, and the Republican River flows through southern Nebraska (NGPC 2005). The Nebraska Department of Natural Resources regulates and monitors the state's surface waters.

##### **3.4.1.2 Wetlands**

Wetlands are broadly considered "waters of the U.S." and are defined by the U.S. Army Corps of Engineers (USACE) as areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (USACE 1987). Wetlands provide valuable habitat for a variety of wildlife.

The four ecoregions of Nebraska contain a variety of wetland habitats. These habitat types include wet meadows and marshes, playa wetlands, sandhill alkaline marshes, and freshwater marshes. Common plant species found in wet meadows and marshes include sedges, spike rushes, prairie cordgrass, switchgrass, broad-leaf cattail, bulrushes, bur reed, smartweeds, and arrowheads. Common plants found in playa wetlands include river bulrush, common cattail, nodding smartweed, spikerush, flatsedge, bladderwort, pondweed, duckweed, and switchgrass. Freshwater marshes contain ripgut sedge, common reed,

smartweed, hardstem bulrush, broad-leaf cattail, duckweed, and coontail. Sandhill alkaline marshes are dominated by Nevada bulrush and saltmarsh bulrush (NGPC 2005).

### **3.4.2 Environmental Consequences**

Impacts to water resources would be considered significant if implementation of the Proposed Action resulted in violating laws or regulations established to protect water resources, or actions resulted in major deterioration of water quality.

#### **3.4.2.1 Proposed Action (Preferred Alternative)**

##### *Surface Water*

Under the Proposed Action, it is expected that implementation of the habitat improvement projects would increase habitat value by controlling less favorable species in preference for species that provide greater vegetation and wildlife value, as well as long-term decreases in erosion. Improvements to riparian habitat may include herbaceous seeding and shrub planting. Surface water quality would be improved by stabilizing banks and through native species plantings. The habitat improvement measure could cause a minor short-term impact by increasing sediment loads in runoff; however, the long-term benefit of the habitat improvement more than offset the short-term impact. In addition, sound erosion and sediment control measures would be utilized during the habitat improvement.

##### *Wetlands*

The Proposed Action would not directly impact wetland areas; however, it is expected that improving adjacent habitats would increase wetland habitat value. Improvements to adjacent riparian habitat may include herbaceous seeding, shrub planting, and limiting grazing during certain times of the year. These measures would stabilize the banks and streambeds. Installation of the habitat improvement measure could cause a minor, short-term impact by increasing sediment loads in runoff; however, the long-term benefit of the habitat improvements more than offsets the short-term impact. In addition, erosion and sediment control measures would be utilized during project implementation.

#### **3.4.2.2 No Action Alternative**

Under the No Action Alternative, the Short Grain Stubble Management Program would not be created, there would be no expansion of OFW, and VPA-HIP funding would not be available for habitat improvement projects on private lands. The current public access programs would continue to be available. While habitat improvement projects and restoration activities would still occur, the benefit from additional improvement projects throughout Nebraska utilizing the VPA-HIP funding would not be realized.

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## **CHAPTER 4.0 CUMULATIVE IMPACTS AND IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES**

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### **4.1 CUMULATIVE IMPACTS**

CEQ regulations stipulate that the cumulative impacts analysis within an EA should consider the potential environmental impacts resulting from “the incremental impacts of the action when added to past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions” (40 CFR 1508.7). Recent CEQ guidance in considering cumulative impacts involves defining the scope of the other actions and their interrelationship with the Proposed Action. The scope must consider geographical and temporal overlaps among the Proposed Action and other actions. It must also evaluate the nature of interactions among these actions.

Cumulative impacts are most likely to arise when a relationship or synergism exists between the Proposed Action and other actions expected to occur in a similar location or during a similar time period. Actions overlapping with or in proximity to the Proposed Action would be expected to have more potential for a relationship than those more geographically separated.

In this PEA, the affected environment for cumulative impacts includes all of the state of Nebraska since the public access programs are available statewide; therefore, the proposed habitat improvement projects could occur anywhere in the state on private land enrolled in one of the public access programs. In addition to VPA-HIP, several other Federal and state programs in Nebraska focus on conservation. Federal programs include the CRP, Wildlife Habitat Incentives Program, Environmental Quality Incentives Program, and the Wetlands Reserve Program. Wildlife conservation in the state of Nebraska is a multi-agency coordinated effort. The Nebraska Natural Legacy Project is a program consisting of many partners with the goal of conserving Nebraska’s natural ecosystems and wildlife.

The potential long-term impacts from habitat improvement projects under the VPA-HIP in combination with other wildlife habitat conservation strategies would have overall long-term, beneficial impacts to the wildlife populations and habitat in the state of Nebraska. Increasing public awareness of the presence of important wildlife and game species and minor activities they can do to improve habitat on their land would create an environment to support a sustained wildlife population. Therefore, cumulative impacts are expected to be beneficial to the natural environment.

### **4.2 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES**

Irreversible and irretrievable commitments are related to the use of nonrenewable resources and the effect that the use of these resources has on future generations. Irreversible effects primarily result from the use or destruction of a specific resource that cannot be replaced within a reasonable time frame. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of the action. Under the Proposed Action, long-term beneficial impacts are expected to wildlife populations, game species, and their habitats. There would be no irreversible or irretrievable commitment of resources.

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## **CHAPTER 5.0 MITIGATION MEASURES**

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The purpose of mitigation is to avoid, minimize, or eliminate significant negative impacts on affected resources. CEQ regulations (40 CFR 1508.20) state that mitigation includes:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

CEQ regulations state that all relevant reasonable mitigation measures that could avoid or minimize significant impacts should be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies. This serves to alert agencies or officials who can implement these extra measures, and will encourage them to do so. The lead agency for this Proposed Action is FSA. The state partner agency is NGPC.

There are no expected long-term, significant negative impacts associated with implementation of the VPA-HIP in Nebraska. NGPC staff or representatives must complete site specific environmental evaluations prior to all habitat improvement projects which would reveal any protected resources on the property. In those site specific instances where a wetland, threatened or endangered species, or a cultural resource may be present, consultation with the appropriate lead agency would identify specific mitigation measures required to eliminate or reduce the negative impacts to an acceptable level.

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## **CHAPTER 6.0 PERSONS AND AGENCIES CONTACTED**

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Natural Resources Conservation Service

Nebraska Association of Resources Districts

Nebraska Department of Agriculture

Nebraska Department of Environmental Quality

Nebraska Department of Natural Resources

Nebraska Farm Service Agency

Nebraska Sportsmen's Foundation

Nebraska Wildlife Federation

Pheasants Forever

U.S. Fish and Wildlife Service

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## **CHAPTER 7.0 REFERENCES**

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## **CHAPTER 8.0 LIST OF PREPARERS**

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Matthew Ponish, National Environmental Compliance Manager

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### **Nebraska Game and Parks Commission**

Tim McCoy, Wildlife Division Administrator

Alicia Hardin, Assistant Division Administrator, Wildlife Division

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M.S. Environmental Science

7 years related experience

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7 years related experience

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## **APPENDIX A – PROGRAMMATIC AGREEMENTS**

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**Programmatic Agreement**  
**Between**  
**Nebraska Game and Parks Commission**  
**And**  
**U.S. Fish and Wildlife Service**  
**Regarding**  
**The Environmental Review Process**  
**For Proposed Activities by**  
**Nebraska Game and Parks Commission**  
**On**  
**Public and Private Lands**

**September 2008**

## **I. PURPOSE**

Activities undertaken by the Nebraska Game and Parks Commission (NGPC) on public and private lands are often done with funding from the U.S. Fish and Wildlife Service (USFWS) through grant programs including State Wildlife Grants and Landowner Incentive Program. Funds from State Wildlife Grants and Landowner Incentive Programs are to be used to benefit species at risk, including federal and state listed or proposed threatened and endangered species. Therefore, NGPC expects that project activities on the areas where these funds are used may result in beneficial impacts to these species of concern. NGPC will take all necessary precautions to avoid adverse impacts to listed and/or proposed species, and will reinitiate coordination with the USFWS's Nebraska Ecological Services Field Office (NEFO) if activities cannot be modified to avoid adverse impacts. The following guidelines for project activities will be followed by NGPC to avoid adverse impacts or potential adverse impacts to these species. NGPC is also responsible for ensuring that all necessary permits or approvals (e.g. State Historical Preservation Officer, Department of the Army permits from U.S. Army Corps of Engineers, Nebraska Department of Environmental Quality, etc.) for project activities are obtained.

Activities will either avoid or minimize adverse impacts to migratory birds and at-risk species while optimizing net benefits to such resources over the long-term (e.g., 10-year plan). It may be necessary to do restoration and/or land management activities that may result in some short-term, limited negative impacts to migratory birds, but has an overall objective of improving habitat conditions that result in long-term net benefits to migratory birds and other wildlife resources.

## **II. REVIEW PROCESS**

The individuals responsible for review of habitat management activities, as well as those conducting any necessary surveys for purposes of avoiding negative impacts to listed and proposed species and avian species covered under the Migratory Bird Treaty Act, have consulted with the NGPC Environmental Analyst for review of habitat management activities in general. Each individual is familiar with the Nebraska Natural Heritage database of federal and state threatened, endangered and candidate species and critical habitat, with additional training in reference to species within the region they manage.

The Heritage Database is available to NGPC project leaders to review for species in the project area. Project leaders will identify rare, endangered, or threatened species located within the immediate vicinity and design project work as outlined in Attachment A to create 'no effect' on the species or a "may beneficially affect".

If a survey (as required by "limits on habitat activities" below) is necessary for project work to proceed, the survey will:

1. Provide detail in regards to survey methods, date and time of survey, species observed and species location relative to project site.
2. Supply a written description of any avoidance measures taken.
3. Be reviewed and approved by the NGPC Environmental Analyst prior to initiation of project work should listed species be present.

**Practices requiring no further review if requirements identified  
in "Limits" Section are met**

The following practices can be conducted for habitat management projects designed by the individuals listed above WITHOUT REQUIRING FURTHER REVIEW BY NGPC Environmental Analyst and/or NEFO.

All projects listed will be conducted during the time frames and within the parameters identified below (under "limits") to avoid negative impacts to listed or proposed species.

1. Buildings – Operation, maintenance and repair of existing facilities.
2. Dams and Dikes – Repair and maintenance of existing small dams and dikes where activities are confined to previously disturbed areas.
3. Bridges Culverts and Low Water Crossings – Repair, replacement, and maintenance of existing structures.
4. Roads and Trails – Graveling, installing vehicle gates, and mowing on and within existing road and trail rights-of-way.
5. Fences – Construction of new boundary or interior fences, including installation of gates and repair and maintenance of existing fences. These are standard 3- or 4-strand fences.
6. Public Use Facilities – Operation, replacement, repair, and maintenance of existing blinds, parking lots, security lights, boat docks, boat ramps, drinking water wells, toilets, and fishing jetties. Repairs may include gravel placement, mowing, signing, and fencing.
7. Lake and Stream Improvements – Stream clearance of fallen timber and debris where necessary to maintain stream flow; maintenance and repair of wing dikes and deflectors, silt retention basins, deep water areas, fish attractors, spawning sites, and aeration systems; fertilization and edging; all on previously disturbed areas.
8. Signs and Boundary Markers – Installation and maintenance of boundary and information signs.
9. Tree and Shrub Plantings – Development of new tree plantings using approved native, non-invasive tree and shrub list, replanting and care for same (except when plowing and planting in previously undisturbed soils).
10. Herbaceous Seedings – Establishment of herbaceous seeding (except when plowing and planting in previously undisturbed soils).
11. Vegetation Control – (see (f) under LIMITS below) Use of approved chemical sprays, mowing, or disking to control noxious weeds to improve vegetative cover.

12. Nest Structures – Installation and maintenance of artificial nest boxes and platforms.
13. Project Administration – Record keeping, cooperator contract management and related administrative duties.
14. Demonstration Sites and Tours – Information and educational assistance for demonstration areas.
15. Custodial Functions – Inspection of project sites.
16. Site Renovation – Major cleanup activities. This can include removal of junked automobiles, farm equipment, and fence and trash.
17. Surveys of Use, Harvest, and Populations – Observations and investigations, report writing.
18. Boundary Surveys – The delineation of the exact boundary of tracts of land. This activity is most often conducted for boundary fencing or land acquisition purposes.
19. Fish and Wildlife Research – Research activities undertaken by fisheries and/or wildlife biologists that do not involve state and/or federally listed or candidate species. Population sampling, census work, disease investigation and life history studies are examples of this type of activity. Fish stocking MUST be reviewed.
20. Firebreaks – Firebreaks created with no soil disturbance. Plowing or roto-tilling strips ONLY IN PREVIOUSLY disturbed soils.
21. Wildlife Watering Devices – Repair, replacement and maintenance of existing structures, and installation of new structures as long as the activities do not involve disturbance of soil in previously undisturbed areas. The watering devices are free-standing, temporary, and usually mobile units.
22. Terraces and Waterways – Repair and maintenance of existing man-made soil and water conservation terraces and waterways on farmland.
23. Woody vegetation control – (see (a) under LIMITS below) above ground removal of woody vegetation by mechanical means.
24. Livestock watering facilities – Delivery and supply system for livestock (waterlines, wells). Survey for eagles along riparian areas during:
  - Wintering period extends from December-March;
  - Nesting mid-February through mid-August;
  - No disturbance within 0.5-mile.
25. Prescribed Burning – (see (a) under LIMITS below) Use of prescribed fire to improve wildlife habitat while maintaining and enhancing native communities and controlling and suppress the invasion of undesired vegetation (i.e. Eastern red

cedar). Prescribed burns will be delayed and/or restricted outside the identified area if species are present.

**American burying beetle (ABB) – burning between May 1 and August 30 in ABB range will require a review by NGPC Environmental Analyst in coordination with NEFO**

26. Slough Excavation – (see (b, d, h) under LIMITS below) Excavation of silt from wetlands, primarily slough channels.
27. Haying – (see paragraph 2, pg 1) Haying management practices taking place during the primary nesting season will be limited to not more than once every four to five years within a ten-year period.

**\*\*See Limits on all habitat activities to avoid negative impacts to listed species\*\***

DEFINITION: PREVIOUSLY DISTURBED AREAS – those land areas which have been subjected to agricultural or construction practices that involve disturbance of the land surface to a depth of at least 8 inches.

### LIMITS

**Limits on all habitat activities to avoid negative impacts to listed and proposed species and avian species covered under the Migratory Bird Treaty Act (includes the following as related to the above practices):**

- a) If prescribed burning or other management activity (with the exception of restoration activities on ground that was previously in agricultural crops) is needed between May 1 and July 15 (e.g. burning to control exotic species such as brome grass) that may impact nesting birds, a review will need to be conducted by NGPC Environmental Analyst.
- b) No habitat management activities involving heavy equipment or the removal of trees will be conducted within 0.5-mile of active bald eagle nests or communal, winter roosts sites from February 1 to August 15.
- c) No habitat management activities within 0.25-mile of active least tern and piping plover nest sites from April 15 to September 15.
- d) Habitat management activities will cease within 0.5-mile of any active, confirmed whooping crane location known by NGPC and such activities will be reinitiated after the whooping crane or cranes have left the area (i.e. spring migration March 20 to May 15 and fall migration September 25 to November 10).
- e) On sites where activities are planned outside the May 1 to July 15 dates, NGPC staff will conduct surveys as appropriate for migratory birds that nest during outside periods to avoid management activities that may affect active nests (e.g. raptors in woodlands nest from February 1 – July 5, sedge wrens in wetlands and American goldfinches in grasslands/old fields from July 15 to September 10).

- f) Herbicide use for exotic species control that is deemed necessary between May 1 and July 15 will require spot application to specific plants, and will specifically not allow whole-field treatment, to eliminate potential negative effects on nesting birds and native plants and federal and state listed plants.
- g) Habitat management activities (water management, prescribed burns, pesticide application, etc.) with 0.5-mile of the saline wetlands in Lancaster and Saunders Counties will require prior review by NGPC Environmental Analyst in coordination with NEFO.
- h) If a listed or proposed species is known to occur in the vicinity of the proposed activity and potential habitat of listed or proposed species will be impacted, the NGPC Environmental Analyst, in coordination with NEFO<sup>1</sup>, will advise management staff of the appropriate action to minimize or avoid impacts to species. A plan of action will be developed if the timing of habitat management activities cannot be modified to avoid potential negative impacts to listed, proposed listed, or migratory bird species.

### **III. LENGTH OF PROGRAMMATIC AGREEMENT**

The length of this Programmatic Agreement is ten (10) years from the date of signatures of the last signing party unless extended or terminated as provided in Sections IV and V below.

### **IV. MODIFICATION AND EXTENSION**

This Programmatic Agreement may be modified, amended, or extended in two-year increments by mutual agreement of the signatory parties.

### **V. TERMINATION**

This Programmatic Agreement may be terminated by either signatory party upon ninety (90) days written notice to the POC contact in the other agency

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<sup>1</sup> Coordination with the Nebraska USFWS Field office is not necessary if the species is state listed only.

## VI. POINT OF CONTACTS

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## VII. SIGNATORIES

9/11/08  
Date

Bill J. Sullivan  
Game and Parks Commission

September 5, 2008  
Date

John Cochnar  
USFWS Nebraska Field Office  
Deputy Nebraska Field Supervisor

## Attachment A

**FEDERAL AND STATE LISTED SPECIES AND DESIGNATED CRITICAL HABITAT**  
**Project activity in regions where the following federally listed species are likely will**  
**be surveyed and any project activity will be conducted within the guidelines that are**  
**outlined.**

Listed Species	Expected Occurrence
Interior Least Tern ( <i>Sterna antillarum</i> )	Migration, nesting
Mountain Plover ( <i>Charadrius montanus</i> )	Nesting
Piping Plover ( <i>Charadrius melodus</i> )	Migration, nesting
Whooping Crane ( <i>Grus americanus</i> )	Roosting migrant
Northern River Otter ( <i>Lontra canadensis</i> )	Known habitats
Southern Flying Squirrel ( <i>Glaucomys volans</i> )	Known habitats
Swift Fox ( <i>Vulpes velox</i> )	Known habitats
Massasauga ( <i>Sistrurus catenatus</i> )	Known habitats
American Ginseng ( <i>Panax quinquefolium</i> )	Known habitats
Blowout Penstemon ( <i>Penstemon haydenii</i> )	Known habitats
Colorado Butterfly Plant ( <i>Gaura neomexicana ssp coloradensis</i> )	Known habitats
Saltwort ( <i>Salicornia rubra</i> )	Known habitats
Small White Lady's Slipper ( <i>Cypripedium candidum</i> )	Known habitats
Ute Ladies' Tresses ( <i>Spiranthes diluvialis</i> )	Known habitats
Western Prairie Fringed Orchid ( <i>Platanthera praeclara</i> )	Known habitats
American Burying Beetle ( <i>Nicrophorus americanus</i> )	Known occupied habitats
Salt Creek Tiger Beetle ( <i>Cicindela nevadica lincolniiana</i> )	Known occupied habitats
Blacknose Shiner ( <i>Notropis heterolepis</i> )	Potential spawning, feeding, migration
Finscale Dace ( <i>Phoxinus neogaeus</i> )	Potential spawning, feeding, migration
Lake Sturgeon ( <i>Acipenser fulvescens</i> )	Potential spawning, feeding, migration
Northern Redbelly Dace ( <i>Phoxinus eos</i> )	Potential spawning, feeding, migration
Pallid Sturgeon ( <i>Scaphirhynchus albus</i> )	Potential spawning, feeding, migration
Sturgeon Chub ( <i>Macrhybopsis gelida</i> )	Potential spawning, feeding, migration
Topeka Shiner ( <i>Notropis Topeka</i> )	Potential spawning, feeding, migration

### Bald Eagle

The bald eagle, state listed as threatened and protected under the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act, nests, migrates, and winters statewide. Bald eagles utilize mature, wooded, riparian areas near rivers, streams, lakes, and wetlands and occurs along all the major river systems in Nebraska. The bald eagle southward migration begins as early as October and the wintering period extends from December-March. Bald eagles nest in Nebraska from mid-February through mid-August and observations of nesting eagles are becoming more common. The project site will be



surveyed approximately 1-mile upriver and downriver for nesting sites. Should nesting bald eagles be found, disturbances will not occur within 0.5-mile or in line of sight of the nest while the nest is occupied. Disturbances within 0.5-mile of an active nest or within line-of-sight of the nest could cause adult eagles to discontinue nest building or to abandon eggs. Bald eagles frequent the central Platte River during the winter where open water and forested corridors provide feeding, perching, and roosting habitats. The frequency and duration of bald eagle use of these habitats in the winter depends on ice and weather conditions on the Platte River. Human disturbances and loss of bald eagle wintering habitat can cause undue stress leading to cessation of feeding and failure to meet winter thermoregulatory requirements. These affects can reduce the carrying capacity of preferred wintering habitat and reproductive success for the species.

Project sites will be surveyed for nesting sites. No construction or management activities will be conducted within 0.5-mile of active bald eagle nests from February 1 to August 15.

#### Least Tern and Piping Plover

The least tern, state and federally listed as endangered, and the piping plover, federally listed as threatened, nest on un-vegetated or sparsely vegetated sandbars in river channels. The nesting season for the least tern and piping plover is from April 15 through September 15. Least terns feed on small fish in the river and piping plovers forage for invertebrates on exposed beach substrates. Levees, and other unnatural obstructions place in the channel and along river banks can result in the loss of broad, shallow, unobstructed channel and sandbar complexes used as feeding and potential nesting habitat by least terns and piping plovers. Additionally, ill-timed human activities in the vicinity of such feeding and nesting habitats can disturb least terns and piping plovers. Depletions of instream flows from the Platte River have negative impacts on least terns and piping plovers.

The area will be surveyed for nesting sites. If a nest is located within 0.25-mile range of the site, project work will be scheduled outside the April 15 through September 15 time frame.

#### Mountain Plover

Mountain Plovers are a state-listed (Threatened) species that inhabits heavily-disturbed short-grass prairie habitat in Kimball, southern Banner, and western Cheyenne Counties. Mountain Plovers inhabit relatively level, upland, topography or "tablelands" in the southwestern Panhandle. Mountain Plovers nest in agricultural fields, prairie-dog colonizes, and other disturbed or intensively-grazed short-grass habitats. Nearly all areas where Mountain Plover may have traditionally nested have been converted to agriculture. As a result, nearly all nesting now occurs in agricultural fields. Mountain plovers will forage on slopes and ridges. Adults with young have been observed in tall vegetation and around livestock watering facilities, which probably provide an abundance of insects. Breeding generally occurs from 1 April through 31 July, with primary nesting activity occurring from 1 April through 15 June. The migration period is March 15 through August 15. Most birds have left Nebraska by mid-August. If any construction activity will be occurring in short-stature grasslands (vegetation < 6 inches in height) or in fallow farm fields during this time period, a survey for mountain plover nests needs to be

conducted by a qualified biologist prior to construction. Nest marking projects during spring tilling are exempt.

### Whooping Crane

Whooping cranes, state and federally listed as endangered, use shallow, sparsely vegetated streams and wetlands in which to feed and roost during migration. Major river systems used by whooping cranes in Nebraska include the Platte, Loup, and Niobrara rivers. In addition, a 3-mile-wide, 56-mile-long reach of the Platte River between Lexington and Denman, Nebraska has been federally designated as critical habitat for whooping cranes. The broad, shallow, unobstructed channel and sandbar complexes are used as roosting habitat by whooping cranes. Ill-timed human activity in the vicinity of important roosting and feeding habitats can disturb whooping cranes, prematurely hastening their departure from the Platte River. Depletions of instream flow from the Platte River have negative impacts on the whooping crane.

Project work will be scheduled outside the dates of migration of March 20 through May 15, and from September 25 through November 10.

### Swift Fox

The swift fox is the smallest of the North American canines and utilizes burrows more than any other canine. This species utilizes a variety of habitats but uses fairly level upland grasslands for burrows and den sites. Swift fox uses many burrows during the year, it is typically tied to an individual burrow during the denning season, which in Nebraska is from April through August. If construction activity will be occurring in suitable habitat during the denning season, a survey for the swift fox dens should be conducted by a qualified biologist, prior to construction. Results of the survey should be sent to NGPC to determine if actions are needed to avoid impacts to the swift fox.

### Northern River Otter

River otters require large amount of space to meet their annual requirements. During a year, an otter may occupy 50 or more miles of stream course and will often move from one area to another. River otters are most often active from early evening through early morning, but may also be active during the day. This is a highly mobile species, and if present, is likely to leave during disturbance. However, otters are susceptible when they have young pups in the natal den. This species, like other Mustelidae, exhibit delayed implantation meaning that fertilized egg development can be delayed, resulting in highly variable reproductive cycles. The pups are helpless until about seven weeks of age. In Nebraska, female otters enter the natal den beginning in late February through April. River otters use dens that were dug by other species such as beaver and utilize upland dens. Therefore, if project work will be occurring within 0.5-mile of a river system with otters between February 15 and June 15, surveys for natal dens are necessary.

### Massasauga

Massasauga hibernate in crayfish burrows in wet, mesic areas in Southeastern counties. These areas are readily identified by reed canary grass or other wetland grasses and the presence of crayfish burrows. Massasauga hibernate from around September to mid-

March. In summer they are active and migrate between different areas for mating and foraging. They are found moving through warm season grassland areas. September through March, prior to any project work, a survey for hibernating habitat should be completed for the area including a 100-yard buffer around the area of impact (50 yards on each side) to ensure that no hibernating habitat is destroyed during project work. Should this habitat be found, contact the NGPC Environmental Analyst for further consultation. If project work will take place during the time when massasauga are active, visual surveys for massasauga need to be done and should one be found in the area during project work, it will need to be moved to a safe location.

#### American Ginseng

Ginseng is a long-lived herbaceous perennial that is very similar in appearance to several closely related and much more abundant species. In Nebraska, ginseng grows only in deep woods in shady ravines of the easternmost counties.

#### Blowout Penstemon

Blowout penstemon, federal and state listed as threatened, is the rarest plant species native to the Great Plains. It grows only in open, sandy habitat of blowouts. It blooms in May and June and has large lavender flower heads. They can grow up to 2 feet in height. After blooming, this plant can be still be identified by a qualified biologist. Projects will not involve any blowout stabilization.

#### Colorado Butterfly Plant

This species seeds germinates in the late summer or autumn. The following summer one or more upright stems grow up to three feet tall and produce flowers in mid to late summer. The flowers are less than an inch wide and open in the evening, suggesting a nocturnal pollinator. This plant prefers low meadows and stream edges. Flooding, grazing, pesticide application, herbicide application and habitat destruction are all threats to this plant. This species is state endangered and federally threatened. It is found only in Kimball County.

Land management activities proposed in areas where Colorado butterfly plant is known to occur will be reviewed by the Environmental Analyst in coordination with NEFO.

#### Saltwort

Saltwort (*Salicornia rubra*) is a state endangered plant that grows in a narrow range of habitat within the saline wetlands. It is found growing primarily on moist, saturated, clay mudflats. Saltwort generally grows in heavy soils with high salinity levels that inhibit other plants from growing in their wetland habitat. Saltgrass (*Distichlis spicata*) and sea blite (*Suaeda depressa*) are generally the only two species that grow in association with saltwort. The range of the saltwort extends from Minnesota to British Columbia and southward to New Mexico and Kansas. In Nebraska, it is known only from the saline wetlands of Lancaster County and Phelps County.

### Small White Lady's Slipper

The small white lady's slipper grows in clumps with one flower at the tip of a flowering stem consisting of a white, pouch-shaped "slipper." This insect pollinated plant is found in moist to wet prairies, fens and sedge meadows. This orchid flowers from mid-May to June in Nebraska.

### Ute Ladies'-Tresses Orchid

Ute ladies'-tresses orchids are unlike most people's idea of orchids. The few roots are very thick and fleshy, and the narrow, erect leaves are up to ten inches long but less than an inch wide and resemble those of coarse grasses or sedges. The numerous small flowers are crowded in one or more dense, non-showy spikes up to 6 inches long and an inch wide. The flowers are helically arranged on the axis. They are about an inch long and sweetly fragrant. Populations in Nebraska are known only from lowland meadows by the Niobrara River in Sioux County.

Projects in areas of where the plant is known to occur will require prior review by NGPC Environmental Analyst in coordination with NEFO.

### Western Prairie Fringed Orchid

The western prairie fringed orchid, state and federally threatened, is a species of the North American tallgrass prairie community. In eastern Nebraska, the orchid occurs in mesic upland prairies in glacial drift and calcium-rich loess soils. In central and northeast Nebraska, it occurs in wet-mesic prairies and sedge meadows in alluvial soils of river floodplains. In the Sandhills of central and western Nebraska, the orchid occurs in the sandy soils of sub-irrigated meadows and prairie swales. While specific soil types vary, all sites are typified by the tallgrass prairie habitat and a high soil moisture profile.

Populations of the western prairie fringed orchid are found primarily in high to moderate quality, unplowed prairies. Plants will colonize disturbed areas of tallgrass prairie, such as graded road ditches and soil borrow sites, but will persist only if the site reverts to prairie. It is found in greatest abundance in high quality prairie. The plant blooms in June-July.

If the project will be in suitable habitat, a survey for the western prairie fringed orchid will be conducted in the proposed project area by a qualified botanist. Any native prairies or wet meadows will be surveyed. Surveys will be conducted during the flowering period, June 15 – July 7, since this orchid is extremely difficult to identify unless it is in flower.

Projects in areas where this plant is known to occur with suitable habitat will require prior review by NGPC Environmental Analyst in coordination with NEFO.

### American Burying Beetle

This species is found in a variety of habitats including grassland prairie, forest edge, scrubland and mesic areas such as wet meadows, streams, and wetlands. Carrion availability during certain times of the year appears to be a more important component of

habitat than a specific type of vegetation. The causes for the decline of this species are complex and remain unresolved, but likely relate to habitat fragmentation, use of artificial lighting, and degradation of habitats that result in declines of small birds and mammals (200 grams or less) that the American burying beetle (ABB) uses for reproduction purposes. In Nebraska, the American burying beetle has been observed from April 1 to October 29, with peak periods of activity extending from June through August.

Soil disturbing projects (as defined) that are implemented within ABB range and occur May through August, and will require review. Projects in areas where ABB is known to occur and in suitable habitat for the beetle will require prior review by NGPC Environmental Analyst in coordination with NEFO.

#### Salt Creek Tiger Beetle

The Salt Creek tiger beetle is considered one of the rarest insects in the United States. It is found in the Salt Creek Basin in the northern third of Lancaster County. It occurs in exposed mud flats of saline wetlands and along mud banks of streams and seeps. Management of wetlands in this area through elevating water levels or drawdowns has the potential to alter the hydrology and impact the beetle.

If the project is located within 0.5-mile of saline wetlands, the project will require consultation and review by NGPC Environmental Analyst in coordination with NEFO. Additionally, wetland management on properties owned and/or managed by the NGPC in this area will require consultation and review by NGPC Environmental Analyst in coordination with NEFO.

#### Blacknose Shiner

The blacknose shiner is in the minnow family and is found only in clear, well-oxygenated portions of streams that are relatively undisturbed. It was once very common in Nebraska and is now extremely rare. In Nebraska, it spawns in the end of June. Given its limited distribution, this species would be impacted by a reduction in flows or impairment of stream quality. The blacknose shiner is state endangered.

Habitat management activities in or around (within 0.25-mile) streams of known occurrences (see Heritage data) will require review by NGPC Environmental Analyst.

#### Lake Sturgeon

It is believed that the lake sturgeon occupies similar habitats as the pallid sturgeon, but is also found in lakes. Lake sturgeon feed on invertebrates and small fish and can be found at the downstream margins of islands and river confluences. This fish also spawns between February 1 and July 31, depending on river conditions.

In-stream work will be conducted outside the spawning time of February 1 to July 31 if the project is in the Sturgeon's range and the project will have no effect, as long as the project does not permanently alter river or lake habitat (i.e., structures in the river such as bridge piers or bank stabilization).

### Northern Redbelly Dace, Finescale Dace and Pearl Dace

The Northern Redbelly Dace, Finescale Dace and Pearl Dace are members of the minnow family. The Northern Redbelly Dace will reach three inches in length with two dark side stripes with a lighter area between them. The Finescale Dace has a stout body, a large mouth and can reach lengths of 5 inches. The pearl dace has more visible scales than the other two and can reach 6 inches in length. These dace are among Nebraska's most colorful minnows. In Nebraska, these dace are often found together in the headwaters of clear, cool, high quality streams. Potential factors that influence spawning include the water temperature and photoperiod. In Nebraska, these species spawn from April until June, but spawning may extend into August for the Northern Redbelly Dace.

### Sturgeon Chub

Sturgeon chub are associated with fast flowing, turbid water and gravel substrate. The species has been collected in side chutes and backwaters—it is thought that these kinds of areas provide spawning habitat to the fish. Sturgeon chub feed on invertebrates. This fish spawns between February 1 and July 31, dependent on river conditions. Land use practices that allow soil to runoff into waterways following rainfall events cause the siltation of streams, and increase turbidity which can result in a lowering of water quality and thus, a loss in the diversity of natural aquatic systems.

### Topeka Shiner

Topeka shiners, federally listed as endangered, occupy pools of small prairie streams, typically in the tallgrass region of Nebraska. Population decline has been due to stream sedimentation, channelization and pollution.

Habitat management activities in or around (within 0.25 miles) streams of known occurrences (see Heritage data) will require review by NGPC Environmental Analyst in coordination with NEFO should the federally endangered Topeka shiner potentially be present.

### Pallid Sturgeon

The pallid sturgeon, federally listed as endangered, is known to occur in the Missouri and lower Platte Rivers in Nebraska. Floodplains, backwaters, chutes, sloughs, islands, sandbars, and main channel waters formed the large-river ecosystem that provided macrohabitat requirements for the pallid sturgeon, a species that is associated with diverse aquatic habitats. These habitats historically were dynamic and in a constant state of change due to influences from the natural hydrograph, and sediment and runoffs inputs from an enormous watershed spanning portions of ten States and a small portion of Canada. Navigation, channelization and bank stabilization, hydropower generation projects, and depletions to instream flows have caused the widespread loss of this diverse array of dynamic habitats once provided to pallid sturgeon on the Missouri River, resulting in a precipitous decline in populations of the species.

In-stream work will be conducted outside the spawning time of March 1 to July 31 if the project is the Pallid's range and the project will have no effect, as long as the project

does not permanently alter river or lake habitat (i.e., structures in the river such as bridge piers or bank stabilization).

### Migratory Birds

Under the Migratory Bird Treaty Act (16 U.S.C. 703-712: Ch.128 as amended) construction activities in grassland, wetland, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests will be avoided. The NEFO will be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests that cannot be avoided by the planned activities. Adherence to these guidelines will help avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

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## PROGRAMMATIC AGREEMENT

BY AND AMONG THE DEPARTMENT OF THE INTERIOR, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE NEBRASKA GAME AND PARKS COMMISSION, AND THE NEBRASKA STATE HISTORIC PRESERVATION OFFICER REGARDING UNITED STATES FISH AND WILDLIFE HABITAT RESTORATION PROGRAMS.

WHEREAS, the United States Fish and Wildlife Service (Service) is responsible for administering the Federal Aid in Fish and Wildlife Restoration Acts, as amended [16 U.S.C. 669-669(i) and 16 U.S.C. 777-777(k)] (Acts) and awarding funds to States for habitat restoration, acquisition and development; and

WHEREAS, the Service has determined that funds provided for construction, including funds for acquiring, expanding, remodeling, or altering existing buildings, structures and/or terrain, may have effects on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties), and has consulted with the Advisory Council on Historic Preservation (Council) and the Nebraska State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, because the Acts involve state-administration, the task of collecting information on the effects of proposed undertakings to enable the Service to comply with Section 106 lies with the State Game and Parks Commission (G&P); and

WHEREAS the G&P participated in consultation and has been invited to concur in this Programmatic Agreement;

NOW, THEREFORE, the Service, the SHPO, the G&P, and the Council agree that the Acts will be administered in accordance with the following stipulations:

## STIPULATIONS

The Service shall ensure that the following measures are carried out:

**1. Guidance to the G&P**

The Service shall provide information to the G&P regarding the Council's regulations and the Standards and Guidelines for Evaluation (49 FR 44723-44726 and subsequent editions), and other standards as appropriate, issued by the Secretary of the Interior.

**2. Identification of Historic Properties**

A. Pursuant to 36 CFR 800.4, G&P shall consult with the SHPO to determine whether

historic properties are located within a proposed project's area of potential effects as defined by § 800.2(c). Such determinations shall be undertaken early in the process of planning each project, and completed before the application for funding assistance is submitted to the Service.

B. The G&P shall notify the Service if the G&P and the SHPO are unable to agree as to the eligibility of a property to be affected by a project for which funding assistance is sought. Upon receipt of such notification and relevant documentation from the G&P, the Service will consult with the SHPO to resolve eligibility problems. If the Service determines that a consensus cannot be reached with the SHPO, the Service shall submit appropriate documentation to the Keeper of the National Register to obtain a final determination of eligibility.

C. If, pursuant to § 800.4(d), no historic properties are identified within the area of potential effects, the G&P shall notify the SHPO, the Service, and any interested persons known to be interested in the possible effects of the project on historic properties. Upon notification, the project may proceed with no further consideration under Section 106.

D. If historic properties are identified within the area of potential effects, the Service shall ensure that the project's effects are assessed in accordance with Stipulation 3.

### **3. Assessing Effects and Treatment**

A. Pursuant to 36 CFR § 800.5, the G&P, in consultation with the SHPO, shall apply the Criteria of Effect (§ 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons. In accordance with 50 CFR 80.5, the G&P shall submit to the Service information regarding effects on historic properties as part of their funding application.

B. If the G&P and the SHPO agree that the project will have no effect on any historic properties, the G&P shall notify the Service and provide appropriate documentation. The Service shall make the documentation available for public inspection.

C. If the G&P and the SHPO do not agree that the project will have no effect on historic properties, or if the G&P and the SHPO agree that the project will have an effect on historic properties, the G&P shall notify and provide appropriate documentation to the Service which shall, in consultation with the SHPO, apply the Criteria of Adverse Effect (36 CFR 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

D. If the Service determines that the effect is not adverse, the Service shall consult with the SHPO and the Council in accordance with 36 CFR § 800.5(d) and obtain whatever information deemed necessary from the G&P to accomplish consultation needs and develop appropriate treatment measures. The G&P shall cooperate with the Service in providing appropriate information.

E. If the Service finds that the effect is adverse, the Service shall consult with the SHPO and the Council in accordance with 36 CFR § 800.5(e) and § 800.6 to develop appropriate treatment measures. The G&P shall cooperate with the Service in providing appropriate information and documentation.

F. If previously unidentified historic properties are discovered or if known historic properties are affected in an unanticipated manner during construction activities, such activities shall cease immediately in the vicinity of the discovery. The Service shall be notified immediately of the discovery, and shall comply with 36 CFR 800.11 to determine appropriate treatment of the discovery.

#### **4. Project Activities Not Requiring Review By the SHPO or the Council**

Project activities not requiring review by the SHPO or the Council are enumerated in Attachment "A". If previously unsuspected archaeological remains are uncovered during these project activities, the G&P will stop the project, notify the SHPO and the Service, and the project will be reviewed pursuant to the terms of this agreement. Activities not excluded in Attachment "A" will be reviewed pursuant to the terms of this Agreement.

#### **5. Monitoring and Review**

A. The SHPO and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review such activity if so requested. The G&P and the Service will cooperate with the SHPO and the Council in carrying out these monitoring and review responsibilities.

B. The parties to this agreement shall consult annually to review implementation of its terms and to determine whether revisions are needed. If revisions are needed, the parties will consult in accordance with 36 CFR Part 800 to make such revisions.

#### **6. Dispute Resolution**

A. Should the G&P, the SHPO or the Council object within 30 days to any plans provided for review or actions proposed pursuant to this agreement, the Service shall consult with the objecting party to resolve the objection. If the Service determines that the objection cannot be resolved, the Service shall request the comments of the Council pursuant to 36 CFR § 800.6(b). Any Council comments provided in response to such a request will be taken into account by the Service in accordance with 36 CFR § 800.(c)(2), with reference only to the subject of the dispute; the Service's responsibility to carry out all actions that are not the subject of the dispute will remain unchanged.

B. At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the G&P shall take into account and consult as needed with the objecting party, the SHPO, the Service or the Council, to resolve the objection.

## **7. Professional Qualifications**

All historic preservation work carried out by the G&P pursuant to this agreement shall be carried out by or under the direct supervision of a person or persons meeting, at minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).

## **8. Amendments**

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment.

## **9. Termination**

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Service will comply with 36 CFR 800.4-800.6 with respect to individual undertakings covered by this Agreement.

## **10. Failure to Comply**

In the event that G&P does not act in accordance with the terms of this Agreement, the Service will request the Council's comments on the effects of projects on historic properties on a project-by-project basis, as provided in 36 CFR Sec. 800.4 through § 800.6. The Service will not take any action, knowingly sanction any action on the part of the G&P seeking or administering project funding under the Acts, or make any irreversible commitment that would result in adverse effects on historic properties, until the terms of this agreement have been met.

## **11. Duration**

This agreement will continue in full force and effect for as long as the G&P is funded by the Service or until this agreement is terminated by any party pursuant to Stipulation 9 above.

Execution of this Programmatic Agreement evidences that the Service has satisfied its Section 106 responsibilities for all individual projects under the Acts.

UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Director, U.S. Fish and Wildlife Service

NEBRASKA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director

CONCUR:  
NEBRASKA GAME AND PARKS COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Director, Nebraska Game and Parks Commission

ATTACHMENT 'A'  
TO THE FISH & WILDLIFE SERVICE AND THE NEBRASKA GAME & PARKS  
PROGRAMMATIC AGREEMENT

PROJECT ACTIVITIES NOT REQUIRING REVIEW BY SHPO OR COUNCIL

1. Buildings -- Operation, maintenance and repair of previously determined non-historic structures.
2. Dams and Dikes -- Repair and maintenance of previously determined non-historic small dams and dikes where activities are confined to previously disturbed areas. All other structures 45 years old or older will be evaluated and/or reviewed for effects.
3. Bridges Culverts and Low Water Crossings -- Repair, replacement, and maintenance of previously determined non-historic structures where no archaeological properties exist. All other structures will be evaluated and reviewed for effects.
4. Roads and Trails -- Graveling, installing vehicle gates, and mowing on and within existing road and trail rights-of-way.
5. Fences -- Construction of new boundary or interior fences, including installation of gates, and repair and maintenance of existing fences. These are standard 3- or 4-strand fences.
6. Public Use Facilities -- Operation, replacement, repair and maintenance of existing blinds, parking lots, security lights, boat docks, boat ramps, drinking water wells, toilets, and fishing jetties, when there is no disturbance of soil in previously undisturbed areas. Repairs may include gravel placement, mowing, signing and fencing.
7. Lake and Stream Improvements -- Stream clearance of fallen timber and debris; maintenance and repair of wing dikes and deflectors, silt retention basins, deep water areas, fish attractors, spawning sites, and aeration systems; fertilization and edging; all on previously disturbed areas.
8. Signs and Boundary Markers -- Installation and maintenance of boundary and information signs.
9. Tree and Shrub Plantings -- Development of new tree plantings, replanting and care for same (except when plowing and planting in previously undisturbed soils or where archeological sites occur).
10. Herbaceous Seedings -- Establishment of grass and legume nesting cover and wildlife food plots (except when plowing and planting in previously undisturbed soils).

11. Vegetation Control -- Use of chemical sprays, mowing, or controlled burning to control noxious weeds or to improve vegetative cover.
12. Nest Structures -- Installation and maintenance of artificial nest boxes and platforms.
13. Project Administration -- Record keeping, cooperator contract management and related administrative duties.
14. Managed Public Hunts -- Providing direction and guidance to hunters under a controlled system.
15. Custodial Functions -- Inspection of wildlife management areas.
16. Site Renovation -- Major cleanup activities that are not associated with buildings or structures. This can include removal of junked automobiles, farm equipment, and fence and trash piles that are less than 50 years old. This exclusion does not apply to projects which involve earth disturbance.
17. Disease Control -- Sanitation, collection and disposal of diseased animals.
18. Surveys of Use, Harvest and Populations -- Observations and investigations, report writing.
19. Boundary Surveys -- The delineation of the exact boundary of tracts of land. This activity is most often conducted for boundary fencing or land acquisition purposes.
20. Fish Stocking -- Releasing various species of sport or prey fish into suitable waters as part of a fisheries management program.
21. Fish and Wildlife Research -- Research activities undertaken by fisheries and/or wildlife biologists. Population sampling, census work, disease investigation and life history studies are examples of this type of activity.
22. Hunter Education -- Hunter safety education activities, including instruction and administration, that do not involve soil disturbance on previously undisturbed areas.
23. Aquatic Resource Education -- Classroom and outdoor aquatic education activities that do not involve soil disturbance on previously undisturbed areas.
24. Firebreaks -- Plowing or rototilling strips (except in previously undisturbed soils and/or where archeological sites occur). This practice is similar to tree planting and food plot establishment where soil disturbance is limited to the plow zone.
25. Wildlife Watering Devices -- Repair, replacement and maintenance of existing structures, and installation of new structures as long as the activities do not involve

26. disturbance of soil in previously undisturbed areas. The watering devices are free-standing, temporary, and usually mobile units.

26. Terraces and Waterways -- Repair and maintenance of existing man-made soil and water conservation terraces and waterways on farmland as long as there is no disturbance of soil in previously undisturbed areas.

27. Potholes and Level Ditches -- Creation of deep, open water areas in existing, vegetative-choked marshes through the use of explosives or machines (except in areas where archeological sites occur). Dredge disposal areas are not excluded from review under the terms of this agreement.



## DEFINITIONS

1. HISTORIC PROPERTY -- Means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of Interior and all other properties that meet the National Register criteria.
2. PREVIOUSLY DISTURBED AREAS -- Those land areas which have been subjected to agricultural or construction practices, prior to acquisition by the Nebraska Game & Parks Commission that involve disturbance of the land surface to a depth of at least 8 inches.
3. PREVIOUSLY DETERMINED NON-HISTORIC STRUCTURES INCLUDING DAMS AND DIKES -- Structures which, under earlier reviews, were found not to meet the National Register's criteria for evaluation strictly for being less than 45 years old. Structures that are 45 years old or older must be evaluated or re-evaluated regardless of prior review decisions (refer to 36 CFR 800.4(c)(1)).

Amendment to the Programmatic Agreement between NGPC, USFWS, and the Nebraska State Historic Preservation Office for Proposed Activities by NGPC on Public and Private Lands

This will serve as an amendment to the SHPO programmatic agreement dated April, 1998. Activities in *italics* below will be included in this agreement. These activities are performed in a manner that does not affect historic or cultural resources, and are consistent with the intent of the April, 1998 agreement. These activities will not require further review by the Nebraska SHPO office.

Fences -- Construction of new boundary or interior fences, including installation of gates, and repair and maintenance of existing fences. These are standard 3- or 4-strand or *high tensile* fences.

Public Use Facilities -- Operation, replacement, repair and maintenance of existing blinds, parking lots, security lights, boat docks, boat ramps, drinking water wells, toilets, and fishing jetties, when there is no disturbance of soil in previously undisturbed areas. Repairs may include gravel placement, mowing, signing and fencing. *Development of parking lots in previously disturbed areas to include gravel placement, mowing, signing and fencing.*

Herbaceous Seedings -- *Native herbaceous restorations*, establishment of grass and legume nesting cover and wildlife food plots (except when *disking*, plowing and planting in previously undisturbed soils).

Vegetation Control -- Use of chemical sprays, *grazing*, mowing, or controlled burning to control noxious weeds or to improve vegetative cover.

Tree & Shrub Removal -- *Tree and brush removal and subsequent burning that does not involve ground disturbance of soil.*

Education -- Hunter safety education activities, *including instruction and administration, and other general outreach and education activities* that do not involve soil disturbance on previously undisturbed areas.

Bob Puschenclow Deputy SHPO 1/27/09  
Bob Puschenclow  
Nebraska State Historical Society

Rex Amack 1/22/09  
Rex Amack  
Director, Nebraska Game and Parks Commission

Meg Van Ness 3 Feb. 2009  
Meg VanNess  
U. S. Fish and Wildlife Service

Game & Parks Commission  
1250 N. D.

FEB 24 2009

Cash \_\_\_\_\_ MO \_\_\_\_\_  
Debit \_\_\_\_\_ Checks \_\_\_\_\_

## **APPENDIX B – AGENCY CORRESPONDENCE**

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May 2, 2011

**United States  
Department of  
Agriculture**

Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

1400 Independence  
Ave, SW  
Stop 0513  
Washington, DC  
20250-0513

**TO:** Nebraska Farm Service Agency  
7131 A Street  
Lincoln, NE 68510

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

**SUBJECT:** Final Programmatic Environmental Assessment/Finding of No Significant Impact for Voluntary Public Access Habitat Incentive Program in the State of Nebraska

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11817 Canon Blvd., Suite 300  
Newport News, VA 23606

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Matthew T. Ponish

Enclosure: 1 CD



May 2, 2011

**United States  
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Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

1400 Independence  
Ave, SW  
Stop 0513  
Washington, DC  
20250-0513

**TO:** Natural Resources Conservation Service  
100 Centennial Mall N Rm 152  
Lincoln, NE 68508-3866

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

**SUBJECT:** Final Programmatic Environmental Assessment/Finding of No Significant Impact for Voluntary Public Access Habitat Incentive Program in the State of Nebraska

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1400 Independence  
Ave, SW  
Stop 0513  
Washington, DC  
20250-0513

**TO:** U.S. Fish and Wildlife Service  
Michael D. George  
203 West 2nd St, Federal Building, 2nd Floor  
Grand Island, NE 68801

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

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**TO:** Nebraska Department of Natural Resources  
Bob Bettger  
PO Box 94676  
Lincoln, NE 68509-4676

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

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Stop 0513  
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20250-0513

**TO:** Nebraska Department of Environmental Quality  
Elbert Traylor  
PO Box 98922  
Lincoln, NE 68509-8922

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

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Farm and Foreign  
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Stop 0513  
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20250-0513

**TO:** Nebraska Department of Agriculture  
Bobbie Kriz-Wickham  
PO Box 94947  
Lincoln, NE 68509-0947

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
National Environmental Compliance Manager

**SUBJECT:** Final Programmatic Environmental Assessment/Finding of No Significant Impact for Voluntary Public Access Habitat Incentive Program in the State of Nebraska

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1400 Independence  
Ave, SW  
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**TO:** Nebraska Association of Resources Districts  
Pat O'Brien  
PO Box 98922  
Lincoln, NE 68509-8922

**FROM:** Matthew T. Ponish  
United States Department of Agriculture, Farm Service Agency  
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**TO:** Pheasants Forever  
Pete Berthelsen  
1011 Alexander Avenue  
Elba, NE 68835

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**TO:** Nebraska Sportsmen's Foundation  
Scott Smathers  
6140 Richland Cr  
Lincoln, NE 68516

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**TO:** Nebraska Wildlife Federation  
  
PO Box 81437  
Lincoln, NE 68501

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