



LOUISIANA WILDLIFE FEDERATION

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Docket No. FWS-HQ-NWRS-2026-2641

Public Comments Processing

Attn: Docket No. FWS-HQ-NWRS-2026-2641

Policy and Regulations Branch, U.S. Fish and Wildlife Service

MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803

RE: Request for Information on Implementation of Drain Tile Setbacks;
Docket No. FWS-HQ-NWRS-2026-2641

Dear Sir or Madam:

The Louisiana Wildlife Federation (LWF) submits these comments in response to the Service's Request for Information (RFI) regarding its process for calculating drain tile setbacks on property where the Service holds wetland easements in the Prairie Pothole Region (PPR). Founded in 1940, LWF is Louisiana's oldest and largest conservation organization, representing more than 11,000 members and 23 affiliate organizations. Our members include a substantial waterfowl-hunting constituency with a direct interest in the productivity of the continent's primary breeding grounds, and a long-standing commitment to the wetlands and waterfowl those grounds sustain.

LWF's position is that the Service should retain the "no drainage" standard that governs its easements and the site-specific, science-based process it currently uses to implement that standard. The RFI identifies no empirical finding that the 2024 framework has failed to protect landowner certainty or wetland values, and LWF is not aware of evidence in the notice demonstrating that a less protective methodology is warranted. Our comments address the geographic and prospective scope of the program, the governing legal standard, the technical basis for the setbacks, the legitimate landowner concerns raised in the RFI, the Louisiana interest in the outcome, and the information the Service should compile before considering any change.

I. Scope of the Program and the 2024 Rule

For clarity, the program at issue applies to Service wetland easements in the five PPR states of Iowa, Minnesota, Montana, North Dakota, and South Dakota, where there are approximately 28,000 such easements, the majority on privately owned farmland. The 2024 rule became effective June 12, 2024, and its setback-calculation and safe-harbor provisions apply prospectively to setbacks the Service provides on or after that date. Easements acquired before that date remain fully protected by their underlying contracts, but not every setback issued before June 12, 2024, falls within the 2024 regulatory safe-harbor process. This distinction matters to any evaluation of how the current framework is functioning.

II. The Easement Standard Requires No Direct or Indirect Drainage — Not Merely “Minimal Effect”

The most important point for the record is a legal one that is easily lost in a technical discussion of setback distances. The Service’s wetland easements are contracts under which the landowner has already been compensated for an agreement that protected wetlands will not be drained, filled, leveled, or burned. In the 2024 final rule, the Service characterized this as a “no effect” standard: drain tile may be installed on an easement tract, but it violates the easement if it drains a protected wetland, directly or indirectly. The operative prohibition is on the outcome, drainage of the protected wetland, not on any installation practice.

This is a materially different standard from the “minimal effect” test under the Swampbuster provisions of the Food Security Act of 1985. Swampbuster governs eligibility for USDA program benefits and provides a process under which USDA may determine that an action will have only a minimal effect on wetland functions and values. The Service’s easements operate under a different contractual standard because the United States purchased protection against direct or indirect drainage. Any process that would migrate the easement setbacks toward the Swampbuster “minimal effect” standard would not be a technical adjustment. It would reduce the level of protection the government already paid for and convert a contract that prohibits drainage into one that tolerates it, without compensation to the public, and, wetland by wetland, would erode the breeding capacity that generations of hunters and conservationists have worked and paid to protect. LWF urges the Service to preserve this distinction explicitly in any output of this proceeding.

III. The Current Service Guidance Implementing the 2024 Rule Is Site-Specific and Science-Based

It is worth distinguishing the regulation from the internal methodology that implements it. The 2024 rule itself does not codify a specific equation by name; it requires that setbacks be calculated using the best available science, considering soil characteristics, tile diameter, tile depth below the surface, and topography, sufficient to meet the easement’s no-drainage standard. The specific calculation approach resides in Service guidance. Under the Service’s 2020 guidance memorandum, lateral effect is computed using the van Schilfgaarde equation, limited by the up-gradient catchment boundary of the wetland, with the calculated distance applied down-gradient because groundwater flow direction and lower elevation make enhanced subsurface drainage more pronounced in that direction. This is a defensible, individualized

engineering approach that accounts for site conditions rather than imposing a fixed, one-size-fits-all distance.

Because subsurface drainage effects vary substantially with soils, drain depth and spacing, and local hydrology, there is no scientific basis for replacing this individualized calculation with a shorter uniform standard. A fixed setback that ignores catchment boundaries and soil variability would be under-protective on some tracts and would produce the indirect drainage the easement prohibits. If the Service's objective is administrative efficiency or predictability, the appropriate response is better landowner access to the calculation tools, transparent calculations, and clearer up-front coordination, not a reduction in the technical rigor of the standard. Predictability and protection are not in conflict here; the catchment-boundary method already supplies both.

IV. Legitimate Landowner Concerns Support Better Administration, Not Weaker Protection

The RFI notes that some landowners object that setbacks may constrain land outside the mapped wetland area for which they believe they were compensated, and that many older easements did not include calculated setback distances at the time of acquisition. LWF recognizes the legitimate need for landowners to understand the scope of recorded easements and to receive timely, site-specific guidance before investing in drainage systems. That history genuinely supports better mapping, early consultation, transparent calculations, administrative review, and clear processing timelines.

It does not, however, support authorizing drainage that impairs the wetland interest the United States purchased. The correct balance is to protect the easement wetland while avoiding unnecessary restrictions on the uses the landowner retained. Improving the administration of the program, how setbacks are mapped, communicated, and processed, addresses the concerns raised in the RFI without lowering the substantive standard of protection. LWF supports both wetland protection and fair, transparent administration, and sees no conflict between them.

V. Any Proposal to Align the Easement Program with Swampbuster Must Preserve the More Protective Easement Standard

The RFI does not propose adopting NRCS lateral-effect distances or Swampbuster standards; it asks broadly how setbacks should be calculated. To the extent commenters urge the Service to align its easement setbacks with NRCS distances in the name of consistency across federal programs, that argument should be evaluated carefully and, LWF submits, rejected on the merits.

The two programs exist for different purposes under different legal standards. NRCS lateral-effect distances determine eligibility for farm-program benefits under a "minimal effect" tolerance. The Service's setbacks enforce a purchased property interest under a "no drainage" standard. Harmonizing the numbers by adopting the less protective figure would not reconcile two equivalent standards; it would substitute the weaker one for the stronger one and nullify the additional protection the easement was bought to secure. Consistency across programs is a reasonable administrative goal, but it cannot be achieved by lowering a contractual standard the government has already paid to establish. If consistency is genuinely the objective, the

technically correct direction of alignment is toward the standard that protects the resource, not away from it.

VI. Louisiana Has Direct Conservation and Economic Interest in the Outcome

LWF's interest in this proceeding is concrete. The PPR produces approximately 50 to 75 percent of the continent's primary duck species and supports more than 60 percent of the breeding population. Those birds migrate down the Mississippi Flyway, and Louisiana consistently records one of the highest duck harvests of any state. Louisiana's waterfowl economy, licenses, tourism, guiding, equipment, and related activity, depends on production that occurs almost entirely outside the state, on the breeding grounds these easements protect.

That dependence is backed by sustained investment in breeding-ground landscapes and conservation objectives this proceeding implicates. Since 1965, the Louisiana Department of Wildlife and Fisheries has directed funding toward migratory-waterfowl breeding habitat in the prairie pothole regions, including Canadian Provinces. Under the current allocation, Ducks Unlimited and Delta Waterfowl each receive dedicated funds for breeding-ground protection, restoration, and enhancement. Act 114 of the 2024 Regular Session expanded the revenue dedication available annually for Louisiana's investment in prairie pothole protections. Weakening federal protection of PPR wetlands would undermine the broader conservation return Louisiana hunters reasonably expect from six decades of sustained breeding-ground investment and would weaken a partnership between the wintering grounds and the breeding grounds that has held for sixty years.

VII. Drainage Effects Are Long-Lived, Difficult to Reverse, and Disproportionate to the Marginal Benefit

A final substantive point bears the cost-benefit posture of any change. A prairie pothole is a shallow depression, often less than two feet deep and about an acre in size, that persists as a landscape feature absent deliberate alteration of its hydrology. When a tile system lowers the water table beneath such a wetland, the wetland's hydrology and its waterfowl productivity are diminished for as long as the drainage operates. Tile can in principle be removed or disabled and hydrology sometimes restored, but restoration is costly, uncertain, and far more expensive than prevention.

The Service's own analysis recognizes that drain tile positioned adjacent to wetlands can reduce hydroperiods depending on tile depth and site conditions, and USGS modeling indicates that tile placed outside a wetland boundary can shorten inundation periods and lower mean water depths under some conditions, with effects varying by placement, soil, and depth. Recent research has also documented declining wetland hydrologic dynamics in the region and associated declines in duck productivity, consistent with large-scale land-use change. Against these durable and well-documented risks, the benefit of a shorter setback is limited: the private benefit is additional flexibility to tile portions of an easement tract; the public risk is degradation of a permanently protected wetland whose conservation value has already been purchased. The Service acquired these easements over decades, with Duck Stamp and appropriated funds, precisely because the underlying wetlands are difficult to replace. These small, shallow basins are the foundation of the continent's waterfowl production, and they deserve protection commensurate with that role.

VIII. The Service Should Evaluate Implementation Before Changing the Standard

The 2024 rule has been in effect for only slightly more than two years. Before altering its substantive protections or its calculation framework, the Service should compile and disclose objective information about how the rule has performed. The RFI asks how the 2024 rule has or has not worked; that question is best answered with data, not assumption. LWF respectfully requests that the Service compile and make available:

- the number and location of setback requests received since June 12, 2024;
- average and median processing times, and the number completed within the Service's stated benchmarks, a timeline estimate within roughly two business weeks and completion of most cases within 60 calendar days;
- the number of administrative appeals and their outcomes;
- completed installations, and any instances in which tile drained an easement wetland after the landowner complied with a Service-provided setback;
- the number of safe-harbor cases; and
- any documented errors attributable to the current methodology.

If that record identifies administrative delay or inadequate communication, those problems should be corrected directly. They would not establish that shorter or less protective setbacks are scientifically or legally appropriate.

IX. Recommendations

For the reasons above, LWF respectfully recommends that the Service:

- Retain the contractual requirement that protected wetlands not be drained, directly or indirectly;
- Retain a site-specific, best-available-science process that considers soils, topography, tile depth and diameter, groundwater relationships, and wetland catchments, including the approach reflected in the Service's 2020 guidance, unless subsequent peer-reviewed evidence demonstrates a more protective and technically superior method;
- Retain the current safe harbor for landowners who disclose their plans, use the parameters on which the calculation was based, and do not modify, enhance, or replace the system without renewed coordination;
- Decline to substitute a Swampbuster "minimal effect" standard or an NRCS distance developed for another statutory purpose for the easement's no-drainage requirement;
- Improve mapping, calculation transparency, processing timelines, landowner consultation, and administrative review;
- Publish implementation data before proposing any substantive change; and
- Require any replacement methodology to be supported by peer-reviewed evidence demonstrating that it will protect easement wetlands at least as effectively as the current approach.

The current framework reflects sound science, a clear contractual standard, and a conservation partnership that has served waterfowl and the public well for six decades. LWF respectfully urges the Service to keep it in place and appreciates the opportunity to comment. We are available to provide additional information at the Service's request.

Respectfully submitted,

Rick Owens
Louisiana Wildlife Federation
Advocacy Director