

RESOLUTION

Support for the National Wildlife Refuge System Drain Tile Setback Rule and Preservation of Federal Wetland Easement Interests

**Adopted by the
Louisiana Wildlife and Fisheries Commission
August 6, 2026**

- WHEREAS, the mission of the Louisiana Department of Wildlife and Fisheries (Department) is to manage, conserve, and promote wise utilization of Louisiana's renewable fish and wildlife resources and their supporting habitats through replenishment, protection, enhancement, research, development, and education for the social and economic benefit of current and future generations; to provide opportunities for knowledge and use and enjoyment of these resources; and to promote a safe and healthy environment for the users of the resources; and
- WHEREAS, the control and supervision of the wildlife of the state is vested in the Louisiana Wildlife and Fisheries Commission (Commission) by Article IX, Section 7(A) of the Constitution of Louisiana, and the Commission is specifically authorized, directed, and empowered by LA R.S. 56:115 to fix seasons and bag and possession limits and to adopt rules and regulations for the hunting and taking of wild birds, with seasons and limits for migratory game birds conforming to federal regulations; and
- WHEREAS, Louisiana is among the highest waterfowl harvest states in the nation, and waterfowl hunting is not merely a pastime in Louisiana but a defining element of the state's heritage, culture, and economy, supporting guides, lodges, outfitters, boat manufacturers and dealers, landowners, retailers, hotels, restaurants, and fuel stops throughout the state; and
- WHEREAS, the Prairie Pothole Region (PPR) of Iowa, Minnesota, Montana, North Dakota, and South Dakota is responsible for producing approximately 50 to 75 percent of the primary species of ducks on the North American continent and provides habitat for more than 60 percent of the breeding population, and waterfowl fledged in the PPR support waterfowl hunting and an associated industry that creates an estimated 30,000 jobs and nearly \$1 billion in economic benefit; and
- WHEREAS, Congress created the Small Wetlands Acquisition Program on August 1, 1958, by amending the Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718k), allowing proceeds from the sale of Federal Duck Stamps to be used to conserve and protect small wetland and pothole areas, and the acquisition of wetland easements accelerated following passage of the Wetlands Loan Act of 1961 (Pub. L. 87–383), such that these wetland easements are today part of the National Wildlife Refuge System governed by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd et seq.); and
- WHEREAS, a wetland easement is a voluntary legal agreement under which the U.S. Fish and Wildlife Service (Service) makes a one-time payment to a landowner to permanently protect wetlands located on the property, and landowners who sell a wetland easement to the Service agree that the protected wetlands cannot be drained, filled, leveled, or burned, while retaining the right to farm, graze, or hay those wetlands if they dry up naturally; and
- WHEREAS, waterfowl hunters, anglers, conservation organizations, state wildlife agencies, and the American public have collectively invested billions of dollars in these easements through Federal Duck Stamp purchases, hunting license revenues, Pittman-Robertson excise taxes, and other conservation funding, and Louisiana has directed funding to the breeding grounds of the Prairie Pothole Region since 1965 to restore, enhance, and protect habitat for migratory waterfowl; and

WHEREAS, these easements were not gifts but were purchased with sportsmen’s dollars, including Louisiana’s, and nearly one-third of the ducks harvested in Louisiana originate in the states to which the drain tile setback rule applies, making Louisiana both an investor in and a beneficiary of every acre of prairie wetland that remains undrained; and

WHEREAS, on May 13, 2024, the Service issued a final rule, “National Wildlife Refuge System; Drain Tile Setbacks” (89 FR 41336), effective June 12, 2024, and codified at 50 C.F.R. § 25.24, which provides that upon the request of a landowner using FWS Form 3-2554 the Service will provide setback distances for the placement of drain tile on lands covered by wetland easements, and that “[t]he setback distances will be based on the best available science and must be adequate to ensure that protected wetland areas are not drained”; and

WHEREAS, the 2024 rule further provides protection from legal redress, such that when a landowner coordinates tile planning with the Service and adheres to the Service-provided setback distances, including the tile diameters and depths used to calculate them, the Service will not seek legal redress if the setback distances later prove insufficient to prevent drainage, thereby providing landowners with regulatory certainty and safe harbor; and

WHEREAS, subsurface drain tile positioned adjacent to a protected wetland can shorten hydroperiods, intercept groundwater, and alter the natural hydrologic processes upon which these wetlands depend, and the artificial increase in the frequency or duration of dry conditions fundamentally changes the ecological character of these wetlands and is inconsistent with the conservation objectives for which the easements were acquired; and

WHEREAS, the potential effects of drain tile vary according to soils, topography, tile depth, tile placement relative to the wetland area, groundwater interactions, and other site-specific conditions, and accordingly there is no single setback distance that can adequately protect every wetland, making science-based, site-specific setback determinations the appropriate method for ensuring that each easement continues to meet its conservation purpose; and

WHEREAS, on July 24, 2026, the Service published a Request for Information regarding implementation of drain tile setbacks, inviting information on the efficacy of the 2024 rule, whether the rule worked as intended, and how the Service should calculate drain tile setbacks when requested by a landowner, with comments accepted on or before August 7, 2026; and

WHEREAS, the Secretary of the Department submitted comments to the Service on August 3, 2026, supporting retention of the conservation standard established in the 2024 rule, continued use of science-based, site-specific setback calculations, and rejection of policy changes that would weaken protections for the ecological integrity and hydrologic function of prairie wetlands protected by Service easements; and

WHEREAS, the governing regulatory standard should remain the prevention of drainage of protected wetlands rather than the minimization of impacts, because the purpose of the easement program has never been to minimize impacts but to preserve the natural hydrologic function of these wetlands, and a policy that accepts “minimal effects” in place of maintaining natural hydrology would diminish the ecological value of protected wetlands and would be inconsistent with the conservation commitments made when these easements were purchased; and

WHEREAS, aligning Service drain tile setbacks on voluntary wetland easements with Natural Resources Conservation Service Swampbuster standards would result in widespread drainage of protected wetlands and a significant loss of protected waterfowl habitat within the Prairie Pothole Region; and

WHEREAS, the fact that specific setback distances were not stated at the time many historical easements were acquired does not justify relaxing the protection afforded to the wetlands themselves, because the central obligation established through the easement was the permanent protection of wetland function and the setback distance is simply the technical mechanism necessary to achieve that objective under modern drainage practices; and

WHEREAS, advances in subsurface drainage technology should not reduce the level of protection intended by these perpetual easements, and the date an easement was purchased should not determine the level of protection provided to the wetland resource; and

WHEREAS, many waterfowl species have recently experienced reduced numbers associated with prolonged drought across the breeding grounds, placing American waterfowl hunters at the brink of more restrictive seasons, such that now is the time to protect and expand conservation investments rather than to weaken them; and

WHEREAS, any reduction in the effectiveness of wetland easement protections across the Service's easement estate has implications extending well beyond individual properties, affecting annual waterfowl abundance throughout North America and most directly within the Mississippi and Central Flyways, upon which Louisiana depends; and

WHEREAS, the final rule expressly recognizes that Service-provided setback distances may prove inadequate to protect easement wetlands from drainage, yet the safe-harbor provision at 50 C.F.R. § 25.24(c) directs the Service not to seek legal redress after such drainage occurs, provided the tile has not been modified; and

WHEREAS, a legal safe harbor that shields a landowner who reasonably relies on a Service calculation from punitive enforcement is distinguishable from a safe harbor that permits a protected wetland to remain drained without mandatory cessation of the hydrologic effect, restoration of wetland function, monitoring, or other corrective action; and

WHEREAS, the Commission respects retained private property rights and good-faith reliance by landowners, but finds that the public's perpetual no-drainage interest purchased with Duck Stamp and other conservation funds must not be converted into a paper protection when an approved setback later fails; and

WHEREAS, 3333 weakening the existing drain tile setback policy would also undermine public confidence that conservation investments made through Duck Stamp purchases and other funding mechanisms will continue to provide the permanent habitat protection promised when those investments were made, and erosion of that confidence risks reducing future support for wetland conservation initiatives that have benefited both wildlife and society for generations; and

THEREFORE BE IT RESOLVED, by the Louisiana Wildlife and Fisheries Commission that it supports the core conservation purpose and science-based, site-specific setback process established by the National Wildlife Refuge System drain tile setback rule finalized on May 13, 2024 (89 FR 41336) and codified at 50 C.F.R. § 25.24, but formally opposes the continued implementation of the legal safe-harbor provision at 50 C.F.R. § 25.24(c) in its present form. The Commission urges the Secretary of the United States Department of the Interior and the Director of the U.S. Fish and Wildlife Service to retain the "no-drainage" standard and the setback-calculation framework while promptly initiating notice-and-comment rulemaking to rescind or materially amend § 25.24(c).

BE IT FURTHER RESOLVED, that the Commission urges the Service to continue calculating drain tile setbacks using the best available science on a site-specific basis and to retain the standard that setback distances must be adequate to ensure that protected wetland areas are not drained. The Commission further urges that any methodology employ a protective margin of safety commensurate with scientific uncertainty, the permanence of the easements, and the irreversibility of subsurface drainage infrastructure; that setback determinations be supported by field verification rather than desktop analysis alone; and that the Service reject any substitution of a “minimal effects,” “no significant effects,” or similar lesser standard, or any alignment of Service setbacks with Natural Resources Conservation Service Swampbuster standards.

BE IT FURTHER RESOLVED, that the Commission urges the Service to apply the methodology established under the 2024 rule consistently whenever a setback determination is requested, including for easements acquired before adoption of the rule, but only if the safe-harbor provision is amended so that any protection afforded a landowner who fully and reasonably relies on a Service-provided setback is limited to protection from punitive civil or criminal enforcement and does not bar injunctive relief, removal or modification of the drainage system, restoration of hydrologic and ecological function, compensatory mitigation, long-term monitoring, or other measures necessary to protect the federal easement interest.

BE IT FURTHER RESOLVED, that any revised rule shall expressly state that a Service-provided setback, technical approval, or safe harbor does not release, abandon, diminish, or waive any property interest owned by the United States; does not authorize continuing drainage of a protected wetland; and that, when monitoring or other evidence demonstrates that a protected wetland has been drained or its hydroperiod materially reduced by an installed tile system, the Service shall require all technically feasible actions necessary to stop the continuing effect and restore the wetland, regardless of whether monetary penalties are pursued. Where the injury results solely from a Service calculation error and the landowner fully complied with the approved design, the Federal Government may appropriately bear all or part of the reasonable cost of corrective work, but the allocation of cost shall not determine whether the wetlands is restored.

BE IT FURTHER RESOLVED, that the Commission endorses the comments submitted by the Secretary of the Louisiana Department of Wildlife and Fisheries on August 3, 2026, in response to the Service’s Request for Information (91FR 46795), and directs that a certified copy of this Resolution be submitted into the docket for that Request for Information on or before the close of the comment period on August 7, 2026.

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to the Governor of the State of Louisiana, the Secretary of the United States Department of the Interior, the Director of the U.S. Fish and Wildlife Service, and each member of the Louisiana Congressional Delegation.

Kenneth A. “Andy” Brister, Chairman
Louisiana Wildlife and Fisheries Commission