

# **2019 WALK-IN AREA PROGRAM INFORMATION**



## **South Dakota Department of Game, Fish and Parks**

### **EXECUTIVE SUMMARY**

The need for additional free hunter access to private land, with direction and funding mechanism provided by the state legislature led to the development of the Walk-In Area (WIA) program. This program will provide the best possible access to high quality game habitat on private land within the available budget. The budget will be partially determined by income from a legislated \$5 surcharge on most hunting licenses, with one-half of the generated funds designated for an expanded hunter access program and the other half designated for an expanded wildlife damage management program. Current funding will total over \$2 million for the Walk-In Area program in 2019.

Success of the existing WIA program, which was initiated in 1988, is demonstrated by its growth to over 1.3 million acres of land in 2011. 39% of our resident hunters and 40% of nonresident hunters used this program in 2015. In a state that is predominately privately-owned (80%), this program to-date has accomplished not only additional Walk-In Area hunting opportunities, but also helped improve relationships between landowners and hunters, and allowed additional harvest of game.

The initial focus of the past program plan was to enhance and expand WIA access in the western part of the state, especially to improve hunting opportunities for, and harvest of, big game. The focus for 2019 will also be to increase WIA enrollment in the eastern portion of the state where additional public access for pheasant hunting is needed.

Qualifications for land enrolled in the Walk-In Area program address types and amounts of wildlife habitat necessary for reasonable hunter opportunity to harvest game animals. With the current 1 million acres of Conservation Reserve Program (CRP) land in the state that meets many habitat needs for most wildlife, a significant portion of current and foreseeable future WIA areas can and should involve CRP. Other types of habitat that should be included are wetlands, woodlands, weedy areas, and/or good-condition rangeland or standing crop stubble.

## PROGRAM GOAL

The primary goal of the Walk-In Area program is to provide the best possible access to high quality game habitat on private land with the available budget.

## PROGRAM OPTIONS

### Season-Long Walk-In Hunting Access

The Walk-In Area Program was started by the Wildlife Division to provide hunters with guaranteed hunting destinations, and to provide landowners with liability assurances and fees for allowing unlimited public hunting. To qualify, landowners must own at least 80 contiguous acres in some kind of high quality permanent cover, primarily Conservation Reserve Program (CRP), or other cover such as wetlands, woodlands, abandoned building sites, good winter rangeland or other habitats with a reasonable opportunity to harvest game.

In December of 2018, the Walk-In Area Access Committee reviewed the payment system for the Walk-In Area program. The payment system is designed to prioritize securing access on CRP and other permanent, undisturbed habitats for pheasant hunting in the eastern part of the state while retaining the flexibility in negotiating rates on large tracts or tracts with unique habitats for big game hunting in the western part of the state.

**Option 1: Eastern South Dakota (East River plus Lyman, Gregory and Tripp counties):** The primary focus is securing permanent habitats like CRP, wetlands with standing emergent vegetation, abandoned farm sites or any other permanent non-woody habitat left undisturbed during the contract year. GFP will be paying \$1/acre base access payment, plus \$5/acre bonus payment for permanent habitat left undisturbed during the contract year.

**In the event that the permanent cover is disturbed, only the \$1/acre access payment will be issued on the mowed or grazed acres. If the enrolled acreage is also under a Conservation Program Signing Bonus contract for 5-10 years (with at least 5 hunting seasons remaining on the contract as of 2019), then 1 manipulation (including CRP haying and grazing) will be allowed without a payment reduction. If the enrolled acreage is under a Conservation Program Signing Bonus contract with more than 10 years left as of 2019 (in cases of 15 year CRP contracts), then 2 manipulations (including CRP haying and grazing) will be allowed without payment reduction.**

Option # 1 is also available on tracts of permanent, undisturbed habitats that provide good to excellent pheasant hunting potential in Perkins, Corson, Ziebach, Dewey, Haakon, Stanley, Jones, Mellette, and Bennett County. The local GF&P Wildlife Conservation Officer must make an assessment of the pheasant hunting potential and get approval from the Regional Review Team before finalizing these types of contracts in western South Dakota counties.

Lands not containing CRP or other permanent habitat with sufficient habitat to harvest game throughout the hunting season (such as, but not limited to, quality crop stubble and grazing lands) may also be enrolled in Walk-In Area program (depending on the circumstances and hunting opportunity) and payments will be the \$1/acre base access rates.

**Option 2: Western South Dakota (West River excluding Lyman, Gregory and Tripp Counties):** Hunting opportunities in western South Dakota are very important to grouse and big game hunters. Since these types of hunting require large tracts of land, GF&P will negotiate access payment rates for hunting access. The negotiated rates will be done in a manner similar to the past and will reflect the unique habitats and hunting opportunities available on the offered acres.

### **Conservation Program Signing Bonus**

In an effort to gain access to more high quality habitat, a conservation program signing bonus will also be offered to landowners who sign a WIA contract on undisturbed habitat land enrolled in a USDA conservation program (i.e. CRP, WRP, CSP, EQIP). Landowners choosing to participate in the conservation program signing bonus will receive either a \$2.50 or \$5/acre rate for each hunting season of the WIA contract depending on the lands location in the state (Figure 1). This will be a one-time, upfront payment in the 1<sup>st</sup> year of the WIA contract. Landowners are required to sign a WIA contract for the length of their CRP contract to receive the signing bonus. **If the WIA contract is cancelled prior to the end date, the entire bonus amount must be repaid.**

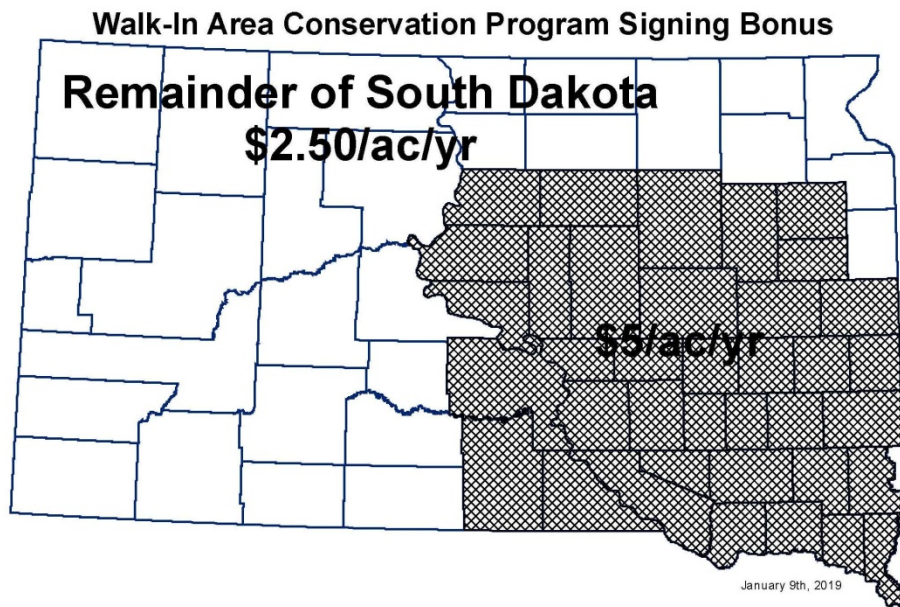


Figure 1. Conservation program signing bonus rate map

Currently, South Dakota has 1 million acres of CRP, down from 1.6 million acres in 2007. South Dakota will continue to lose acres of CRP at an alarming rate with the potential to have less than 800,000 acres by the fall of 2020. CRP has always been a very important part of the Walk-In Area program. In many parts of

the state, past success of the program is a direct result of CRP, with most of the pheasant hunting opportunity tied to CRP. Recognizing this, GF&P realizes that any future success is tied directly to new and existing CRP tracts.

Landowners will be required to enroll USDA Conservation Program fields and the adjacent property (commonly a quarter section) necessary to define a reasonable WIA boundary. **There needs to be more than one year left in the CRP contract for the land and the WIA contract needs to be for the length of the CRP contract to be eligible for the Walk-In Area Conservation Program Signing Bonus.**

**If the enrolled acreage is under a Conservation Signing Bonus contract for 5-10 years (with at least 5 hunting seasons remaining on the contract as of 2019), then 1 manipulation (including CRP haying and grazing) will be allowed without reducing the \$5/acre permanent habitat bonus for 1 year outlined in Option # 1. If the enrolled acreage is under a Conservation Signing Bonus contract with more than 10 years left as of 2019 (in cases of 15 year CRP contracts), then 2 manipulations (including CRP haying and grazing) will be allowed without reducing the \$5/acre permanent habitat bonus for 2 years outlined in Option #1.**

### **Delayed Opening Walk-In Hunting Access**

In some parts of the state, landowners may give exclusive hunting rights to family and friends during the first couple weeks of pheasant season. Also, some landowners may offer fee hunting for pheasants during the first couple of weeks of pheasant season. In response, GF&P is offers a Delayed Opening Walk-In Area option. This would allow landowners to maintain traditional early season hunts for friends, family and paying customers and allow them to provide Walk-In Areas **beginning November 1** for late-season pheasant and other types of hunting. **Landowners choosing the Delayed Opening WIA option will receive a payment equal to one-half the payment rates mentioned in Option 1.**

### **MINIMUM REQUIREMENTS**

To enroll land into the Walk-In Area Program, the landowner must:

- ❑ Agree to allow free, unlimited access by the public without having to obtain prior permission.
- ❑ Offer land with sufficient permanent habitat (primarily CRP or other permanent vegetation) to provide a reasonable opportunity to harvest game animals.
- ❑ Enroll a contiguous tract of at least 80 acres in size. Smaller tracts may also qualify depending on hunting opportunity.
- ❑ Offer land where they hold **exclusive** hunting rights.
- ❑ Agree to reasonably protect the offered land from degradation. If the wildlife habitat on the contracted land is degraded, the Walk-In Area payment will be reduced in equal proportion to the amount of habitat removed.

## **ANSWERS TO QUESTION YOU MAY HAVE ON THE WALK-IN AREA PROGRAM:**

*What is the reasoning behind GF&P payment system for Walk-In Area?*

Answer: With recent strong pheasant populations, more land has been leased for commercial pheasant hunting. Our payment levels prior to 2004 were much lower than the "going" rate for pheasant hunting access in many parts of the state. With those trends likely to increase in the future, GF&P needed to increase its rates if we were going to continue to provide free hunting opportunities for the public.

At the same time, GFP had been doing well leasing lands for hunting in the western part of the state. The reason for the success was because local wildlife Conservation Officers were given the ability to negotiate WIA leases with landowners to secure hunting opportunities by compensating the landowner based on unique conditions on their ranch lands. For that reason, GFP decided to keep that system in place in our western counties.

*If I have CRP, can I hay or graze the tract, as authorized by the federal government?*

Answer: Yes. It is your private land and as such, you can hay or graze your CRP if you have the required approval from the federal government (US Department of Agriculture). We will still make payment to you as per item # 4 of the Walk-In Area contract, but your payment will be determined that year depending on your base access payment and \$5/acre bonus for permanent habitat **left undisturbed**.

For example, if you had 160 acres of CRP enrolled in the program, you would earn \$160 for the base access payment (\$1/acre base times 160 acres) and you would earn \$800 for undisturbed permanent habitat (\$5/acre bonus times 160 acres) for a total payment of \$960 in a typical year. In the event you hayed or grazed 40 acres of your CRP, then you would earn \$160 for the base access payment and \$600 (\$5/acre bonus times 120 acres of CRP left undisturbed) for a total payment of \$760. This payment adjustment would be made regardless whether the hayed portion of the field partially regrew or not that year.

**The only exception to this policy will be made if the enrolled acreage is also enrolled under a Conservation Program Signing Bonus of 5 or more hunting seasons left in the CRP contract as of 2019. If the enrolled acreage under a GFP Conservation Program Signing Bonus of 5-10 years (with 5 or more hunting seasons left as of 2019), then 1 manipulation (including CRP haying and grazing) is allowed during the life of your Walk-In Area contract without reducing the \$5/acre bonus payment for permanent habitat for that year. If the enrolled acreage is under a GFP Conservation Program Signing Bonus with more than 10 years left as of 2019 (in cases of 15 year CRP contracts), then 2 manipulations (including CRP haying and grazing) are allowed during the life of your Walk-In Area contract without**

**reducing the \$5/acre bonus payment for permanent habitat for those two years. Again, this only applies to Walk-In Area contracts enrolled under Conservation Program Signing Bonus of at least 5 years as of 2019.**

*Why is GFP only allowing manipulation of CRP on bonuses of 5 or more years?*

Answer: The Farm Bill requires all new CRP contracts enrolled after 2002 to be manipulated at least once for 10 year CRP contracts and twice for 15 year CRP contracts. This is known as "CRP mid-contract management". The intent of this was to ensure the vigor of CRP planting during the duration of the CRP contract. The South Dakota State Technical Committee approved a variety of tools, including CRP haying and grazing for some CRP practices (check with USDA regarding whether a particular practice is eligible) to meet the federal mid-contract management requirements. Because significant numbers of CRP contracts will soon be at the time when federal rules require some type of disturbance, GFP wanted to make sure that was taken into account in its payment guidelines.

*I have a Walk-In Area contract with numerous CRP fields with different expiration dates. How will the manipulation exception mentioned above work?*

Answer: For example you have 3 CRP contracts enrolled in your GFP Walk-In Area contract. On CRP contract # 1, you took a GFP Conservation Program Signing Bonus for 3 years on 100 acres of CRP, on CRP contract # 2, you took a GFP Conservation Program Signing bonus of 5 years on 50 acres of CRP and on CRP contract # 3 you took a GFP Conservation Program Signing Bonus of 15 years on 20 acres of CRP. You would be eligible for 1 manipulation on 50 acres and 2 manipulations on the 20 acres (or a total manipulation on 90 acres) for the duration of your GFP Walk-In Area contract.

*Why doesn't GFP pay the annual permanent habitat bonus on manipulations on annual Walk-In Area contracts or on Conservation Program Signing bonus contracts of less than 5 years?*

Answer: Since CRP mid-contract management is required on all new CRP contracts enrolled after 2002, GFP wants to make sure that landowner remain compliant with USDA CRP rules. CRP contracts with 5 or more years remaining will represent the best opportunity to conduct a disturbance and enough time to provide good habitat for hunting after the manipulation. Shorter-term contracts may not offer enough time for the cover to fully recover after the manipulation within the time remaining in the Walk-In Area contract.

*If I take the Conservation Program Signing Bonus, can I hay or graze my CRP, as authorized by the federal government?*

Answer: Yes, you may hay or graze your CRP, as long as you have approval from USDA. You do not need prior approval from GFP. GFP will make the appropriate payment adjustments prior to issuing payments in the early winter.

*Do I have to pay back a pro-rated portion of the one-time GFP Conservation Program Signing Bonus if I hay or graze?*

Answer: No, the only time you would ever have to pay back the GFP Conservation Program Signing Bonus is if you cancelled your Walk-In Area contract before your CRP contract expires. If you do cancel your Walk-In Area contract early and a Conservation Program Signing Bonus payment from GFP was paid, then you would be responsible for repaying **the entire Conservation Program Signing Bonus**.

*Do I have to pay back my Conservation Program Signing Bonus if I terminate my CRP contract early?*

Answer: Yes. If your Walk-In Area contract is terminated early because your CRP contract was terminated early, then repayment of the entire Conservation Program Signing Bonus would also be required.

*Can I still control noxious weeds on my property?*

Answer: Yes. State law requires that noxious weeds be controlled and there is nothing in our Walk-In Area agreement to prevent you from spraying or clipping listed noxious weeds.

*Is the Walk-In Area contract an easement?*

Answer: No, the Walk-In Area contract is not an easement. To cancel a Walk-In Area contract, the Cooperator needs to give GF&P 30 days advance written notice. **In the event that an up-front payment was made for a GF&P Walk-In Area CRP seeding cost-share or a GF&P CRP Retention Bonus or a GF&P Conservation Program Signing Bonus, then the entire sum of the GF&P Walk-In Area cost-share or GF&P Retention Bonus or GF&P Conservation Program Signing Bonus would have to be paid back before the contract was cancelled.**

*I am concerned about liability. What does the state do to protect me?*

Answer: This is a very common question. Currently, the state holds people who open their lands to free public hunting and state-leased public hunting at the lowest liability level. Pages 9-11 of this flyer outline the current state statutes. Essentially, these laws grant immunity from normal, non-negligent or intentional liability.

*Are there other reasons for me to participate in the Walk-In Area program?*

Answer: Aside for the financial benefits and the state statutes providing landowners with immunity from normal, non-negligent or intentional liability, there are numerous benefits to the participating in the Walk-In Area program. Those other benefits include foot traffic only, vehicular traffic limited to designated parking areas and trails only, minimal contact with

hunters, signs to tell hunters where they can hunt on your property, the harvest of animals which can help minimize later depredation problems and being part of South Dakota's rich hunting heritage.

*How does GF&P pay for the Walk-In Area program?*

Answer: The Walk-In Area program is funded from the access portion of the \$5 surcharge on most adult hunting licenses and from Pittman-Robertson (PR) Wildlife Restoration federal funds. The PR funds come from a tax on sporting arms and ammunition. These hunting license funds are used specifically to restore, create and enhance habitat, or provide free public access for hunters.

## **WHO TO CONTACT**

For more information on any of these programs or to enroll, see <http://habitat.sd.gov/resources/access.aspx> or contact your local conservation officer. You and your local conservation officer can discuss which options might work best for your farm or ranch. Thank you for your interest in GF&P Walk-In Area Program.



Your purchase  
of hunting equipment  
supports  
Wildlife Restoration



**Liability Statutes Regarding State Leased Land for Public Access**  
from the South Dakota Codified Law

20-9-12. Definition of terms. Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

- (1) "Charge," the admission price or fee asked in return for invitation or permission to enter or go upon the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge;
- (2) "Land," land, trails, water, watercourses, private ways and agricultural structures, and machinery or equipment if attached to the realty;
- (3) "Outdoor recreational purpose," includes, but is not limited to, any of the following activities, or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, of road driving, nature study, water skiing, winter sports, snowmobiling, viewing or enjoying historical, archaeological, scenic or scientific sites;
- (4) "Owner," the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

20-9-13. Landowner not obligated to keep land safe for use by others for outdoor recreational purposes or to give warning -- Exception. Except as provided in § 20-9-16, an owner of land owes no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on his land to persons entering for outdoor recreational purposes.

20-9-14. Liability of landowner for invitation to use property for outdoor recreational purposes -- Exception. Except as provided in § 20-9-16, an owner of land who either directly or indirectly invites or permits without charge any person to use his property for outdoor recreational purposes, including any person who is on the property pursuant to

§ 41-9-8, does not thereby:

- purpose;
- (1) Extend any assurance that the land is safe for any
  - (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
  - (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the owner as to maintenance of the land.

20-9-15. Liability of owner of land leased to state for outdoor recreational purposes. Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply to the duties and liability of an owner of land leased to the state or any political subdivision thereof for outdoor recreational purposes.

20-9-16. Liability of landowner for gross negligence or injury suffered where consideration charged or law violated. Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the owner;
- (2) For injury suffered in any case where the owner of land charges any person who enters or goes on the land for the outdoor recreational use thereof, except that in the case of land leased to the state or a political subdivision thereof, any consideration received by the owner for such lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational purposes be considered a charge; or
- (3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

20-9-17. Liability for injury to persons or property or failure to exercise care in use of land for outdoor recreational purposes. Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create a duty of care or ground of liability for injury to persons or property, or relieve any person using the land of another for outdoor recreational purposes from any obligation which he may have in the absence of §§ 20-9-12 to 20-9-18, inclusive, to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.