

WETLAND CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT OF 1985 (16 U.S.C. 3801, as amended through 2002)



Title XII of the Food Security Act of 1985 (Act) encourages participants in USDA programs to adopt land management measures by linking eligibility for USDA program benefits to farming practices on highly erodible land and converted wetlands. The Wetland Conservation provisions of the Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agricultural commodity possible.

Food Security Act regulations and NRCS policy as described in the National Food Security Act Manual (NFSAM) describe activities in wetlands that will cause loss of program benefits and the conditions under which these activities can occur without losing program eligibility. The NFSAM contains procedures for identifying wetlands and converted wetlands and provides instructions for performing **certified wetland determinations**—an NRCS term signifying that a wetland, non-wetland, or converted wetland has been identified and labeled according to agency-approved policies and procedures sufficient to determine eligibility for USDA programs.

NRCS will conduct certified wetland determinations **for participants in USDA programs when necessary to determine the participant's eligibility for such programs**, i.e., when a potential wetland has been or is planned to be converted for the purpose of, or that has the effect of, making production of an agricultural commodity possible. A USDA program participant is a person who has a current Form AD-1026 (*Highly Erodible Land Conservation and Wetland Conservation Certification*) on file with the local USDA Farm Service Agency office. USDA program participants may also request a wetland determination from the US Army Corps of Engineers (Corps), a trained environmental consultant, or an NRCS-certified Technical Service Provider. NRCS can review and certify such determinations as appropriate to determine USDA program eligibility.

NRCS uses the 1987 Corps Wetland Delineation Manual to determine wetlands and their boundaries in the field. A wetland determination procured by a USDA program participant from another source must be performed according to the procedures in this Manual to be eligible for NRCS certification. To certify a determination, NRCS uses NFSAM procedures for labeling wetlands on official determination maps according to their compliance status under the Act. These labels signify land use, cropping history, and other alterations that may have been made to natural characteristics since December 23, 1985.

It is important to note that although federal agencies such as NRCS and the Corps use the same definition and criteria to determine the existence and boundaries of wetlands, some agency regulations and policies differ. NRCS and the Corps currently have several differences in their

respective **jurisdictional criteria** (i.e., which wetlands are subject to agency regulations) and **exemption criteria** (i.e., which activities in jurisdictional wetlands do not require mitigation according to the agency's statutory requirements). NRCS staff and others may familiarize themselves with these differences by referring to the NFSAM and Section 404(f) of the Clean Water Act for more information. A summary of the Clean Water Act Section 404(f) exemptions may be found at <http://www.epa.gov/owow/wetlands/facts/fact20.html>. More information on the Corps' jurisdiction and regulations may be found at the Jacksonville Corps District website: <http://www.saj.usace.army.mil/permit/index.html>.

Florida NRCS Policies for Implementing the Wetland Conservation Provisions of the Act

In addition to the NFSAM, which is contained in each Florida NRCS field office and online at http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_180.htm, state-specific policies and procedures for performing certified wetland determinations are found in Section I of the Florida FOTG/eFOTG. These include guidance to help identify situations where a certified determination is required, and a list of federal and state agency wetland program contacts.

Florida NRCS and the Jacksonville Corps District are developing joint procedures to coordinate compliance with the Food Security Act and Clean Water Act when wetland conversions are subject to both laws. Previously, such procedures were outlined in a 1994 national Memorandum of Agreement (MOA), which was rescinded in February 2005. A state level agreement will be issued in 2005 to replace the MOA in Florida and will include procedures for sharing information and coordinating resolution of joint violations efficiently.

If a USDA program participant converts a wetland in violation of the Wetland Conservation provisions of the Food Security Act, NRCS may assist the client to **mitigate** (by restoring, enhancing or creating wetland acreage) the loss of wetland functions by developing a mitigation plan for the client. Development of mitigation plans by Florida NRCS is contingent on the availability of qualified staff and other factors such as the financial resources of the client.

Activities involving earth moving, land clearing or drainage in wetlands may be subject to several federal, state and local laws. Therefore, NRCS should advise USDA program participants to inquire early with their Corps, Water Management District, and county or city natural resource agencies whether a proposed activity requires a permit. This may facilitate the coordination of potential permit requirements between permitting agencies and thus reduce the compliance burden on the program participant.