



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

NRCS National Policy (National Food Security Act Manual)

Title XII of the Food Security Act of 1985 (FSA) 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 FSA 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.

FSA regulations and NRCS policy as described in the National Food Security 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 criteria 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 according to agency-approved policies and procedures.

Agricultural producers may request a wetland determination from NRCS, the US Army Corps of Engineers (Corps), a trained private consultant, or an NRCS-certified Technical Service Provider for planning or USDA program eligibility purposes. Typically, NRCS provides this service only to participants in USDA programs (i.e., producers who have a signed AD-1026 form on file with the local USDA Farm Service Agency office). Non-participants or those planning to convert lands to a non-agricultural use who request a wetland determination from NRCS are usually advised to contact the Corps or a private consultant.

A 1994 Memorandum of Agreement (MOA) between NRCS, the Corps, the US Environmental Protection Agency and the US Fish & Wildlife Service specified a coordination process between NRCS and the Corps when NRCS uses the 1987 Corps Wetland Delineation Manual to make certified wetland determinations. The 1987 Manual procedures are used by NRCS when making certified wetland determinations on lands that are in natural (non-agricultural) vegetation. Under the MOA, NRCS will provide the Corps with copies of wetland determinations that have been carried out using 1987 Manual procedures. The Corps must concur that NRCS determinations utilizing the 1987 Manual have been performed correctly. Procedures for performing certified wetland determinations on agricultural lands are contained in the NFSAM. To perform certified determinations, NRCS personnel and Technical Service Providers must be trained in both 1987 Manual and NFSAM procedures.

NRCS and the Corps also have procedures in place to determine which agency assumes the lead role when a wetland violation is caused by an agricultural producer. The Corps regulates the conversion of wetlands under Section 404 of the Clean Water Act (see FOTG I (E)(1)(c)). In many cases where a Corps permit is required to authorize the conversion of wetlands (where violation of the FSA has also occurred), NRCS will not require separate compensation from the client, but will accept the Corps' requirements as meeting the requirements of the FSA. Conversely, there are specific cases where NRCS is the designated lead agency to authorize a conversion and the Corps accepts the NRCS decision as meeting Clean Water Act requirements.

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 of wetlands, agency regulations and policies are sometimes different. NRCS and the Corps currently have several differences in their respective jurisdictional criteria (i.e., which wetlands are subject to agency regulations) and different exemption criteria (i.e., which conversions of jurisdictional wetlands do not require compensation according to the agency's statutory requirements). NRCS staff may familiarize themselves with these differences by referring to the NFSAM, Section 404(f) of the Clean Water Act (see hyperlink in FOTG I (E)(1)(c)), and their local Corps District headquarters for more information.

Florida NRCS Policy for Implementing the Wetland Conservation Provisions of the FSA

In addition to the NFSAM, which is contained in each Florida NRCS field office, state-specific policies and procedures for performing certified wetland determinations are found in the Florida FOTG Section I. These include guidance to help identify situations where a certified determination is required, a list of federal and state agency wetland program contacts, and the Florida Wetland Mapping Conventions, which provide criteria for determining and labeling wetlands for a certified wetland determination.

According to national NRCS policy, if a violation of the FSA Wetland Conservation Provisions by an NRCS client is confirmed, NRCS may assist the client to restore or mitigate the loss of wetland function caused by the violation by developing a restoration or mitigation plan for the client. Development of restoration/mitigation plans by Florida NRCS is contingent on the availability of qualified staff and other factors such as the financial resources of the client.

If Florida NRCS personnel discover a potential violation of Section 404 of the Clean Water Act during the course of their official duties, the local Corps Regulatory Office should be notified. Florida NRCS staff are urged to coordinate closely with both the Corps and their respective Water Management District, in addition to any other relevant state or local natural resource agencies, when resolving wetland violations for USDA program participants. This will help to ensure that a resolution agreeable to all parties is implemented in the most efficient manner.