

Florida Highly Erodible Land Conservation & Wetland Conservation Compliance Action Plan



To improve effectiveness and efficiency in carrying out the conservation compliance provisions of the Food Security Act of 1985, NRCS has directed the development of Action Plans. The intent of Action Plans is to create a separation of duties for field office conservationists between HELC/WC compliance determinations and the voluntary assistance they provide at their servicing unit (i.e., county(s) directly assigned to their official duty location). Action Plans carried out at the state level will remove NRCS field office staff from the HELC/WC determination, appeal, and compliance review processes within their servicing unit. In addition to continuous separation of staff from these processes in their servicing unit, staff working outside their servicing unit shall not provide direct conservation planning assistance and conduct a compliance activity for a USDA program participant at the same time. Staff with other actual or perceived conflicts in these duties may request separation by discussing the issue with their supervisor on a case by case basis.

Action Plans must include four overarching objectives:

1. Ensure separation between field conservationists and USDA program participants within their servicing unit in conducting determinations, reviews, and addressing appeals,
2. Maintain a high-valued relationship between NRCS field staff and customers,
3. Improve efficiencies in determinations and reviews, and
4. Effect positive changes in NRCS HELC/WC processes and procedures.

All NRCS service center/field office staff must have an understanding of the HELC/WC provisions as well as other program eligibility, permit, and regulatory issues that impact agricultural producers. General information and guidance on the various eligibility, permit, and regulatory requirements associated with highly erodible land, wetlands, and other environmental concerns is an integral part of the conservation planning process. The separation of duties policy does not change the role and responsibilities of service center/field office staff when conducting conservation planning, but is limited to the official NRCS response to the receipt of an AD-1026, FSA-569, and processing of assigned Food Security Act (FSA) Compliance Review tracts.

The Florida HELC/WC Action Plan is effective October 1, 2012. It encompasses two distinct functions:

- A. Assistance Related to Conducting Determinations – conducting certified HEL/Wetland technical determinations, making related adverse technical decisions related to the HELC/WC provisions, responding to appeals of adverse technical determinations and decisions, and assisting USDA participants in regaining eligibility/reinstatement for program benefits.
- B. Conducting FSA Compliance Reviews in accordance with procedures in the National Food Security Act Manual, Part 518.

Procedures for carrying out these functions are described below:

A. Assistance Related to Conducting Determinations

HEL and WC technical determinations and decisions will be made only by staff listed on the respective Florida NRCS Job Approval Authority List of Certified Personnel. A current list of certified staff will be maintained in Section III of the Field Office Technical Guide, Part D, Legislated Program Criteria.

STEP 1: Forwarding of Request for Compliance Determination by Field Office

Area HELC/WC Teams have been established based on technical expertise and training to conduct compliance determinations. When a referral for a HELC and/or WC determination is received by the service center/field office (FO) on Form AD-1026 or Form FSA-569, it will be forwarded to the responsible HELC or WC Team Coordinator. Team Coordinators are designated by the Assistant State Conservationist-Field Operations (ASTC-FO). Other cases where HELC/WC Team assistance must be requested include investigation of potential HEL or wetland violations observed by FO staff or whistleblowers, and development or evaluation of HEL conservation plans, wetland minimal effect exemption determinations, scope and effect determinations, and wetland mitigation plans to help a client retain or regain eligibility for USDA program benefits. In all such cases, the District Conservationist (DC) will contact the Team Coordinator for assistance and will follow the steps below.

HEL and Wetland Compliance subfolders have been created on the Florida NRCS SharePoint website under each Area folder for transmittal of compliance determination requests to the appropriate HELC/WC Team. When the DC receives a referral or requests assistance, the FO will:

- a) Log the referral/request on form FL-CPA-42 located in the Area HEL and Wetland Compliance folder within one week of receipt from FSA or assistance request from client. The respective Team Coordinator may also request a courtesy email notification.

Note: Determinations needed for Farm Service Agency loan applications should be completed and issued within three weeks of referral (NFSAM Part 510.12) from FSA. FOs should log these referrals and upload the required supporting information as soon as possible after receipt.

- b) Create a folder entitled *(ClientName)_(CountyName)*. Additional text such as date or type of determination may be added to the end of the folder name if desired.
- c) Upload the following information to the folder within one week of referral/request:
 - current AD-1026 (or FSA-569 as applicable) **Note: It is the DC's responsibility to ensure that the AD-1026/FSA-569 is accurately completed before uploading to the Area SharePoint folder.** Refer to guidance in the Area SharePoint folder for help determining whether deficiencies exist on form entries.

- location map
- participant contact information
- current aerial photo of tract showing tract boundaries, and the field(s) and area of activity
- Web Soil Survey Map and NWI Map of the field(s) for wetland determinations
- previous HEL and/or wetland determinations for the field(s) in question
- Highly Erodible Soil Map Unit List for HEL determinations

Additional information may be requested from the FO by the HELC or WC Team Coordinator or other certified agency staff member assigned to conduct the activity. If both a HEL and a wetland determination are needed, there may be two responsible Team Coordinators. In this case, the **WC Team Coordinator** will be responsible for issuing official agency correspondence related to the determinations. FO staff will have no involvement in the technical determination or related activities once the request is forwarded to the HELC/WC Team Coordinator.

STEP 2: Assignment of Certified Agency Staff Member to Conduct the Activity

The HELC/WC Team Coordinator will transfer documents from the SharePoint client folder to the folder entitled HELC WC Compliance on the Florida NRCS server within one week of receipt to maintain space on the SharePoint website and will assign the project to staff with the appropriate HEL/ Wetland Job Approval Authority(s). Only certified agency staff members will be provided access to the server folder.

Note: Determinations needed for Farm Service Agency loan applications should be completed and issued within three weeks of referral from FSA. All other routine determinations should be completed within timeframes stated in the NFSAM Part 510.12.

If FO staff with job approval authority are needed for tasks associated with a technical determination or decision, it is the responsibility of the HELC/WC Team Coordinator to ensure complete separation of duties, i.e., the tract must not be within the FO staff's servicing unit.

STEP 3: Issuance of Preliminary Determination

- a) A certified agency staff member assigned to the project to complete a preliminary determination or other compliance activity will contact the client to schedule field visits as needed and will maintain direct contact with the client. FO staff will not be involved in scheduling of assistance or other communication with the client for the determination.
- b) Upon completion of the preliminary determination, the certified agency staff member will sign the letter of transmittal and NRCS-CPA-026e as the Designated Conservationist, and transmit the determination via certified mail directly to the participant with a copy to the DC and Farm Service Agency representative. If reconsideration or mediation is not requested within 30 days, the Designated Conservationist will sign and provide the final technical determination (NRCS-CPA-026e and map) and supporting documentation to the DC and FSA and log the date on form FL-CPA-42.

- c) If reconsideration is requested, the Designated Conservationist shall schedule the field or office visit and represent NRCS to review the preliminary determination. The Designated Conservationist shall notify the NRCS state HEL or Wetland Compliance Specialist when reconsideration is requested. If mediation is requested through NRCS, the Designated Conservationist shall notify the NRCS state HEL or Wetland Compliance Specialist who will schedule and document all mediation proceedings. See the Appeals and Mediation Manual (Title 440, Part 510) Subparts B and C for further information.
- d) If the decision is revised to be non-adverse, the Designated Conservationist will sign the letter of transmittal and NRCS-CPA-026e, and transmit the final determination via certified mail directly to the participant with a copy to the DC and Farm Service Agency representative. If the decision remains adverse, the Designated Conservationist with assistance from the NRCS state HEL or Wetland Compliance Specialist will transmit the decision and agency record to the State Conservationist (STC) for the final technical determination and will copy the DC on the final technical determination. See the Appeals and Mediation Manual (Title 440, Part 510) Subparts B and C for further information.

STEP 4: Rendering of Final Agency or Department Decision

- a) Final technical decisions that remain adverse are provided by the STC to the client with a copy to the DC. If the client chooses to appeal the decision to the Farm Service Agency County Committee or USDA National Appeals Division, the Designated Conservationist will assist the NRCS state Wetland or HEL Compliance Specialist to process the appeal and participate in appeal hearings as needed. See the Appeals and Mediation Manual (Title 440, Part 510) Subparts B and C for further information.
- b) Upon conclusion of appeals, the administrative record will be provided to the Designated Conservationist and DC by the NRCS state HEL or Wetland Compliance Specialist for proper filing. See the Appeals and Mediation Manual (Title 440, Part 510) Subparts B and C for further information. The date of conclusion of appeals will be recorded on form FL-CPA-42.

STEP 5: Assisting a USDA Participant in Regaining Eligibility or Reinstatement for Program Benefits

Program participants can regain their eligibility or reinstatement for USDA benefits following a determination of non-compliance by implementing a conservation plan on HEL or mitigating for lost wetland functions, values and acres.

- a) When NRCS assistance is required for reinstatement purposes or to regain eligibility, any participant requests to the FO for assistance will be referred to their HELC/WC Team Coordinator, who will assign tasks appropriate for this purpose. The procedures in Steps 1 and 2 above will be followed. Tasks for HEL compliance will be conducted in accordance with NFSAM Part 520.2. Tasks for wetland compliance will be conducted in

accordance with NFSAM Part 515, Subpart B and any additional guidance in the FOTG Section III.

- b) The final decision that the requirements to regain eligibility or reinstatement have been met will be made by the assigned certified agency staff member. A copy of all official documents and correspondence related to the decision will be provided to the DC.
- c) The final agency or Department decision will be provided from the assigned certified agency staff member or STC.

A copy of all official documents and correspondence related to the steps above will be maintained in the FO indefinitely and in the HELC WC Compliance folder on the Florida NRCS server for a minimum of three years from the date of the final decision or reinstatement.

If other staff assistance is required for any of the steps above, the appropriate HELC/WC Team Coordinator will assign those tasks to staff outside of the FO servicing unit with concurrence by the ASTC-FO in that area. Other staff assistance may include tasks such as coordinating meetings with the participant, assisting with plant species identification, wetland functional assessments, mitigation site selection, and conducting follow-up visits and monitoring.

B) Conducting FSA Compliance Reviews

HELC and WC certified agency staff members will be responsible for conducting Compliance Reviews annually. The steps listed below provide a basic outline of this process. See the National Food Security Act Manual (NFSAM) Part 518 for complete requirements:

1. Upon receipt of notification via State Bulletin of the assigned tracts for their Area, the **HEL Team Coordinator** will follow the Bulletin instructions to determine valid tracts. When valid tracts are selected, the Coordinator will assign Reviews to staff with the appropriate HEL and Wetland Job Approval Authorities. When assigning Compliance Reviews, it is the responsibility of the HEL Team Coordinator to ensure complete separation of duties for any FO staff assigned to conduct a Review.
2. The HELC and WC certified staff members assigned to complete the Review will contact the respective DC to request information needed in accordance with Part 518.10(B), such as:
 - location map
 - participant contact information
 - current aerial photo of tract
 - Web Soil Survey Map and NWI Map of tract
 - previous HEL and/or wetland determinations for the field(s) in question
3. The HELC or WC certified agency staff member will notify the landowner of the Compliance Review in accordance with requirements stated in the NFSAM Part 518.0(C).
4. The HELC and WC certified agency staff members will conduct an office review of the available data and make a site visit to confirm conditions. Supporting data will be kept in the

HELIC WC Compliance folder on the Florida NRCS server for a minimum of three years from completion of the online compliance report.

5. The HELC and WC certified agency staff members will complete the tract review, enter required data into the online compliance report, and report completion of the review to the HEL Team Coordinator. The HEL Team Coordinator will inform the DC that the online FSA Compliance Record Report has been completed.
6. If a potential violation (PV) is determined, the HELC/WC certified agency staff member will follow the notification procedures in Part 518.12, inform the DC to request form FSA-569 from the Farm Service Agency within one week, and complete the steps in Part A as necessary.