

## WETLAND CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT OF 1985

(16 U.S.C. 3801, as amended)



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 to have the effect of, making production of an agricultural commodity possible. The USDA program participant must have a current Form AD-1026 (*Highly Erodible Land Conservation and Wetland Conservation Certification*) on file with the local USDA Farm Service Agency office. Any proposed land use changes will require the participant to update the form, which may result in the need for NRCS to complete a certified wetland determination for the field or area where changes are proposed.

NRCS uses Food Security Act wetland identification procedures found in the NFSAM to conduct certified wetland determinations. These incorporate use of the 1987 US Army Corps of Engineers (Corps) Wetland Delineation Manual and the Manual's Regional Supplements to determine wetlands and their boundaries in the field, but contain some variations due to the need to meet the statutory requirements of the Food Security Act, which differ from the Clean Water Act. A wetland determination procured by a USDA program participant from another source must be performed according to the NFSAM or Corps procedures to be eligible for NRCS certification. To certify a determination, NRCS will apply NFSAM procedures for delineating and labeling wetlands. NRCS wetland labels signify land use, cropping history, and other alterations that may have been made to natural characteristics since December 23, 1985. For further information on the Corps' jurisdiction and regulations, see the Jacksonville Corps District website: <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>.

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 client resources.

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.

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

In addition to the NFSAM (<http://policy.nrcs.usda.gov/> under Manuals/ Title 180), documentation and procedures necessary to complete wetland determinations are found in the [Florida Highly Erodible Land Conservation & Wetland Conservation Compliance Action Plan](#). Additional guidance for employees to help identify situations where a certified wetland determination is needed is located in the FOTG Section I Laws (1)(b).

Florida NRCS and the Jacksonville Corps District have developed joint procedures to coordinate compliance to the extent authorized by law for the Food Security Act and Clean Water Act when wetland conversions are subject to both laws. The joint procedures are contained in a Local Operating Agreement (LOA), which may be found in the eFOTG Section I Laws (1)(b) 8 and are intended to assist clients who wish to streamline compliance requirements between the two agencies.