



United States Department of Agriculture

Wetland Functional Assessment- Agricultural Lands

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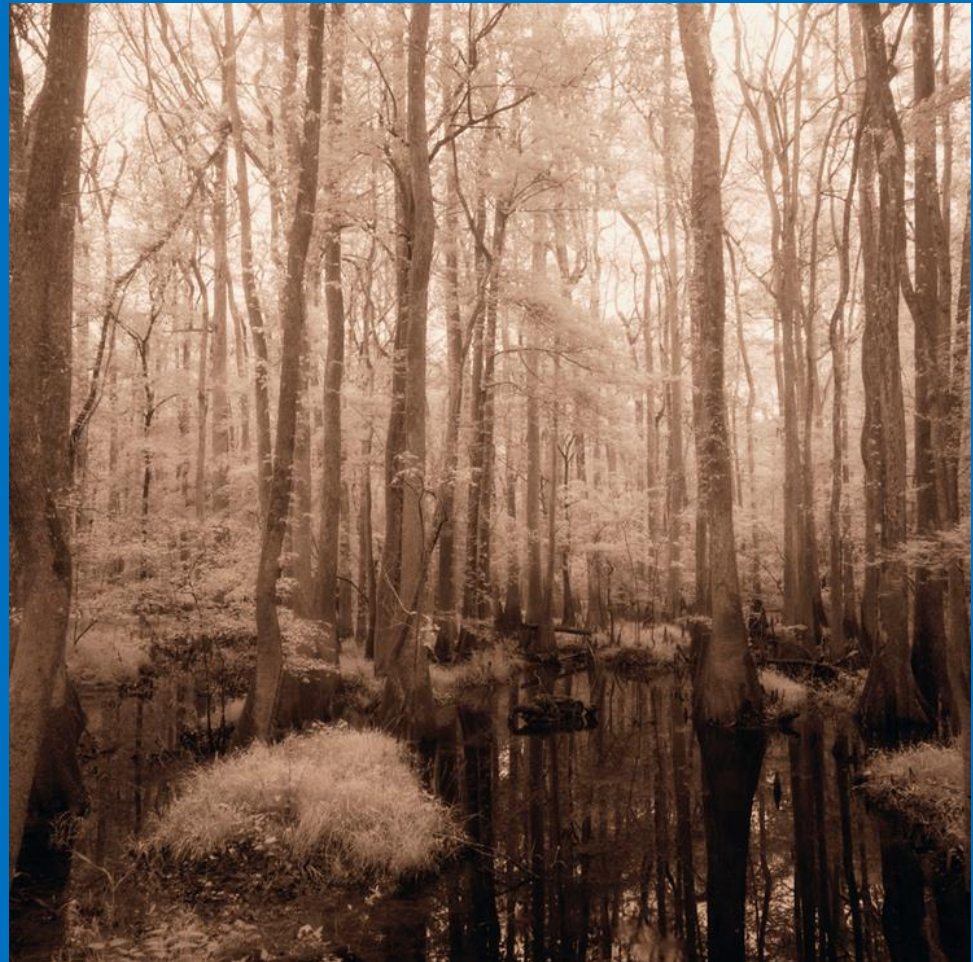
Natural Resources Conservation Service

U.S. Department of Agriculture

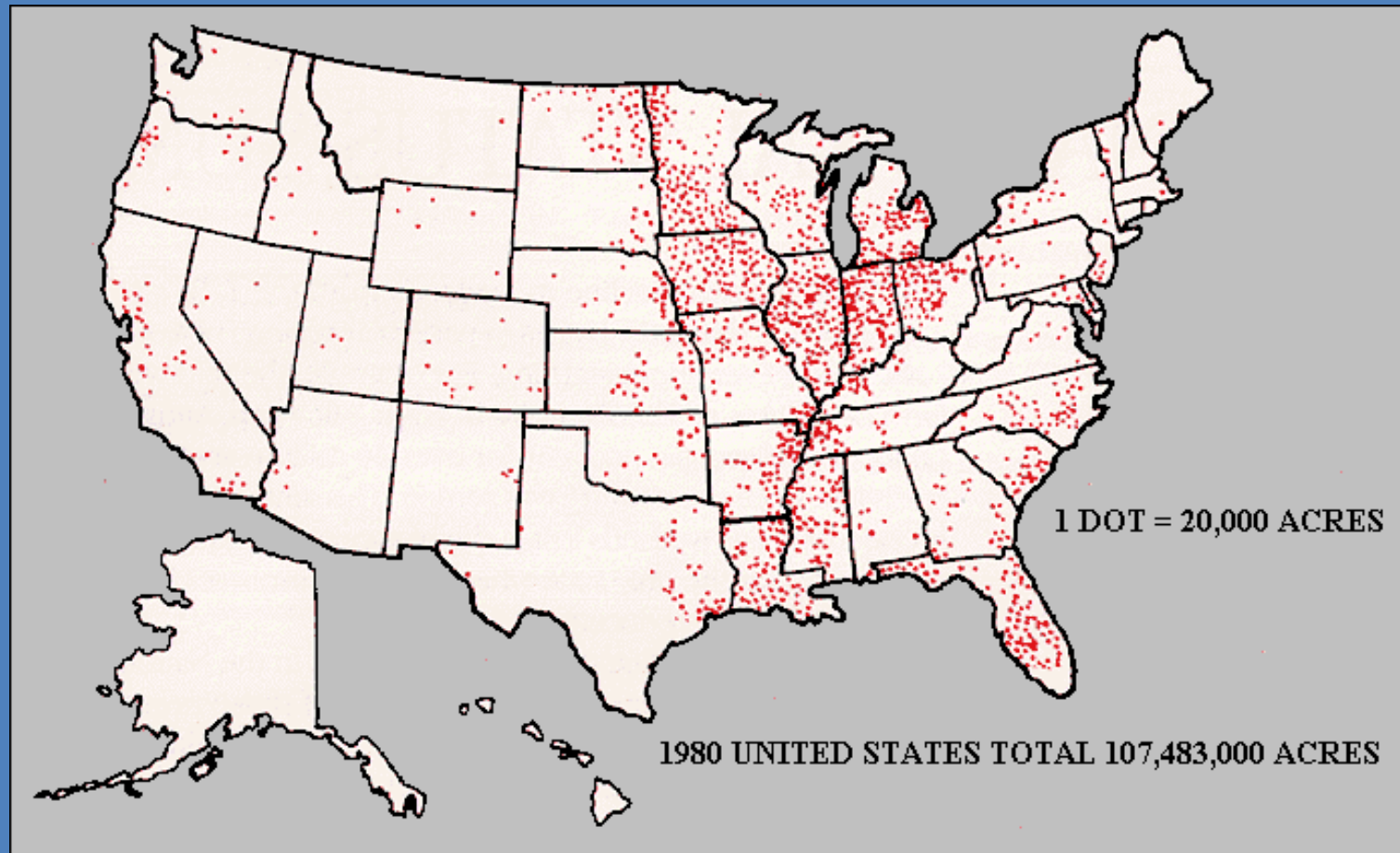
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Food Security Act of 1985

- 1985 Farm Bill
- Created Wetland Conservation Provisions (Swampbuster)
- Affects farmers receiving federal benefits



EXTENT OF ARTIFICIALLY DRAINED AGRICULTURAL LAND 1985



87% of wetland losses from 1950's to 1970's due to agriculture.
(U.S. Department of Agriculture Economic Research Service)



WETLAND CONSERVATION PROVISIONS

Producers are ineligible for USDA program benefits if, after December 23, 1985:

- (1) They convert a wetland making it possible to produce an agricultural commodity; OR
- (2) They produce an agricultural commodity on a wetland that was converted after December 23, 1985;

(Land could have been converted by another person)



WHO IS AFFECTED?

Producers receiving or who have received federal benefits such as:

- Farm operating loans
- Conservation program payments
 - Conservation Stewardship Program (CSP)
 - Conservation Reserve Program (CRP)
 - Environmental Quality Incentive Program (EQIP)
 - Agricultural Conservation Easement Program (Farms and Wetlands)
 - Grassland Reserve Program (GRP)
- Agricultural Credit Act payments (1987)
- Watershed Protection and Flood Prevention Act payments
- Agricultural Market Transition Act payments (ARC-PLC) (1996)

WHO IS AFFECTED-2014 Farm Bill?

Producers receiving crop insurance premium subsidies

- 2014 Farm Bill re-linked conservation compliance to crop insurance



WHAT ACTIVITIES ARE REGULATED?

- Bringing new land into production
- Land clearing
- Land leveling
- Land filling or dredging
- Excavation or stump removal
- Installing new drainage
- Improving an existing drainage system



NRCS

WETLAND DETERMINATION PROCESS

- Offsite and onsite procedures
- Offsite based on GIS data (agricultural lands)
- Onsite based on indicators of hydrology, hydric soils and hydric vegetation (non-agr. land)
- Onsite conducted by NRCS Soil Scientist and Biologist



NRCS WETLAND DETERMINATION PROCESS

- Delineate wetland
- Determine Food Security Act label (Wetland “W”, Farmed Wetland “FW”, Farmed Wetland Pasture “FWP”, Prior-converted cropland “PC”)
- Consider all EXEMPTIONS
- Issue a notification, not a permit





MINIMAL EFFECT EXEMPTION

“The action, individually and in connection with all other similar actions authorized by the Secretary in the area, will have a minimal effect on the functional hydrological and biological value of the wetlands in the area, including the value to waterfowl and wildlife.”

16 U.S.C. 3822 (f)(1)

EVALUATING A MINIMAL EFFECT EXEMPTION

- Two-tiered functional assessment approach
- First tier
 - Red flag – exemption cannot be granted
 - Yellow flag – exemption may be granted
 - No flags – exemption is granted
- Second tier (yellow flag)
 - Consult with U.S. Fish and Wildlife Service
 - Conduct a more advanced functional assessment (not there yet)

REVIEW MINIMAL EFFECT FORM





NRCS MINIMAL EFFECT PROCEDURE

INTERIM PROCEDURE MINIMAL EFFECT DETERMINATIONS for NEW YORK

The following interim procedure was developed for use in making minimal effects determination exemption in New York by the State Technical Committee and will remain in effect until a functional assessment procedure based on Hydrogeomorphic (HGM) principles, or some other acceptable procedure is developed.



NRCS MINIMAL EFFECT PROCEDURE

Step 1: Identify and characterize the wetland to be impacted.

Applicants Name:

Address:

County:

Phone Number:

Farm No.

Tract No.

Field No.

Wetland Area:

Ac.



NRCS MINIMAL EFFECT PROCEDURE

Step 1: Identify and characterize the wetland to be impacted.

Wetland Description:

Attach completed determination forms NRCS-CPA-026, NRCS-CPA-038, tract map and soils sheet.

Proposed Land Use: _____ Present Land Use: _____

NWI Classification: _____ NYS DEC Classification: _____

Is the area being requested a portion of a larger contiguous wetland area, irrespective of tract or field boundary? _____
If yes, give size of total wetland area. _____



NRCS MINIMAL EFFECT PROCEDURE

FUNCTIONS

Long Term Surface Water Storage

Subsurface Water Storage

Dissipation of Energy

Cycling Nutrients

Retention of soil particles

Non-export of organic Carbon
and Detritus

Maintenance of Plant and Animal
Communities

VALUES

Maintains water table elevations and improves surface water quality and provides wildlife habitat.

Recharge area for base and seasonal flow in streams.

Reduces downstream sediment loading

Improves surface water quality.

Reduces downstream sediment loading and protects instream habitat.

Supports aquatic food webs

Provides plant and animal habitat, recreation, aesthetics, and educational opportunities.



NRCS MINIMAL EFFECT PROCEDURE

Step 2:

Answer YES or NO to the following questions in order to determine if the wetland proposed to be impacted is located in a “Red Flag” area. A “Yes” to any of the following questions indicates a significant adverse effect on the wetland functions and values and would not qualify for a minimal effect exemption or conversion.

- A. Will the proposed activity impact an area or habitat known to support state or federal threatened, endangered, or candidate species?
- B. Is this area under deed restrictions that limit use where proposed use would conflict or degrade wetland functions and values?
- C. Does the proposed area contain any of the following:

- Tidal waters
- Bogs or Fens
- Perennial streams, rivers or lakes

- D. Will the proposed activity impact any area with known ecological or geological features or communities considered by state or federal agencies to be rare or unusual in the region?
- E. Will the proposed activity impact a wetland containing three vegetative strata and seasonally ponded or flooded for at least 15 consecutive days during the growing season, or 10% of the growing season, whichever is less, under normal growing conditions?



NRCS MINIMAL EFFECT PROCEDURE

Step 3: If the answer to any of the above listed “Red Flag” situation in step 2 are “Yes”, then a minimal effect determination may **not** be granted. Do not proceed further with the steps and follow the NFSAM procedures to notify the producer of their rights.

If the answers to all of the above listed “Red Flag” situations in step 2 are “No”, then proceed to Step 4.



NRCS MINIMAL EFFECT PROCEDURE

Step 4: CATEGORICAL MINIMAL EFFECT EXEMPTION

Categorical minimal effects – to be developed nationally; similar to a COE Nationwide Permit

Cross out Steps 4 and 5 – not currently authorized by NRCS

NRCS MINIMAL EFFECT PROCEDURE

Step 6:

Answer YES or NO to the following questions in order to determine if the wetland proposed to be impacted is located in a “Yellow Flag” area. A “Yes” to any of the following questions indicates a potential adverse impact on the wetland functions and values and may not qualify for a minimal effect exemption or conversion.

- A. Will the proposed activity impact a wetland containing two habitat strata, one of which is seasonally ponded or flooded for at least 15 consecutive days during the growing season, or 10% of the growing season, whichever is less, under normal conditions?
- B. Will the proposed activity impact a wetland containing three or more vegetative strata?
- C. Does the wetland serve as a ground water recharge site as identified by the NYS Department of Health?
- D. Does the wetland exist adjacent to a designated state or federal wild or scenic river?
- E. Does the wetland occur within ordinary high water mark of “other waters of the US” as defined in Part 514.26(a) of the NFSAM?
- F. Is the area within an existing or proposed public water supply intake or reservoir system?
- G. Has a wetlands been converted on this farm since 1985?
- H. Has the area been identified as a priority wetland of significance in a comprehensive local management plan?
- I. Does the proposed area contain a Forested Wetlands?
- J. Will the proposed activity impact a wetland greater than 1/3 acre?



NRCS MINIMAL EFFECT PROCEDURE

Step 7: Determining if a minimal effect determination exemption is appropriate:

If the answers to any of the above listed yellow flag situations in step 6 are "Yes", then contact the US Fish and Wildlife Service to coordinate assessment as outlined in Part 513.21(a) of the NFSAM and state guidelines.

If the answers to all of the above questions in steps 2 and 6 are "No", then a minimal effects determination exemption may be granted by the State Conservationist. Submit to the STC for consideration all information contained in this procedure document and a cover letter recommending a decision. If conditions of the exemption are required, follow the NFSAM Part 516.13 (a, b). Once the recommendation is approved, follow the NFSAM for notifying the producer and other agencies of the decision.



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