

## Background

Wetland conservation provisions of the 1985 Food Security Act, as amended, allow wetland drainage in place prior to December 23 1985, the date of the passage of the Act, to be maintained. However, many natural watercourses in North Dakota were never manipulated prior to December 23, 1985. Natural watercourses may be subject to wetland conservation provisions of the Food Security Act of 1985, as amended, if the water course is determined to be a wetland. Natural watercourses can be entirely non-wetland, a combination of wetland and non-wetland, or entirely wetland. Sloping areas that do not pond water can be classified as wetland due to intermittent flowing water or soil saturation.



Sediment is a natural feature of watercourses. However, if a stream is unable to “flush” sediments downstream at a rate in equilibrium with the accumulation rate, sediments accumulate until the watercourse fails to function properly. If this occurs, stream capacity, plant community and energy dissipation functions may be impaired. Restoration of these wetland functions can include sediment removal.

Before “cleaning out” a natural watercourse, USDA participants should consult with NRCS to ensure they stay in compliance.

## What is allowed?

Natural watercourses not meeting wetland criteria or areas identified as Prior Converted (PC) on a Certified Wetland Determination are exempt from Food Security Act provisions. Removing sediment or woody vegetation is allowed. Any material removed can not be placed in a wetland.

Accumulated sediment may be removed from wetland areas within a natural watercourse. NRCS personnel are available to determine accumulated sediment levels. A on-site review is needed to separate sediment from the natural soil profile by utilizing changes in soil chemistry, color, or texture. Herbaceous vegetation may be mowed or burned.

Trees and brush may be removed from wetland area in a natural watercourse, as long as stumps are left intact and cropping is not made possible. Small trees may be removed with normal tillage or mowing equipment.

Many natural watercourses have culverts installed through roads. Culverts or bridges may be replaced. In most cases, as long as the culvert is not lowered, the wetland will not be negatively impacted.

## What is not allowed?

The following actions may result in a wetland violation in a natural watercourse:

- Straightening and or filling the channel
- Deepening the natural water course by removing soil below the sediment

- Lowering culverts
- Placing spoil material in a wetland area adjacent to the channel
- Removing trees and stumps from a wetland, making cropping possible
- Installing drain tile pipe in or near the natural water course
- Diverting surface water or ground water from a wetland by diking, ditching, pumping, tiling, or other means

Action by someone other than a landowner or renter that impacts a wetland can cause a landowner and renter to be in violation. An example is a township board installing a replacement culvert deeper than the original pipe to increase drainage.

**How to stay in compliance:**

Notify your local NRCS office if you plan to maintain or alter a natural watercourse by requesting a certified wetland determination. Request a certified wetland determination by signing form AD-1026 at the local FSA office or signing an NRCS-CPA-038 form at the local NRCS county office

Review maps of the area and provide any additional information such as design survey notes with NRCS when you request a Certified Wetland Determination. If you want to remove sediment, request NRCS to determine how much sediment is present.

Be aware wetland determinations done prior to July 1996 by the NRCS are not certified and are not adequate for compliance determinations. Only NRCS Certified Wetland Determinations dated July 1996 or later can be used reliably. To ensure you are in compliance, request a Certified Wetland Determination from your local NRCS office.

**Other considerations**

Often, sediment build-up in the channel is blamed for wetness problems in cropland adjacent to a watercourse. Wetness problems adjacent to the channel may result from a combination of unused groundwater above the channel, salt accumulation in the soil, and soil compaction. In these situations, changes in cropping and management to restore soil health are usually needed. For an assessment of this potential condition and treatment recommendations, contact your local NRCS office.

**US Army Corps of Engineers 404 permit:** In many cases natural water courses meeting wetland criteria will be considered jurisdictional wetland by the United States Army Corps of Engineers (COE). A 404 permit may be needed if spoil material is to be placed in the wetland. The COE will need to complete a jurisdictional determination. The COE may use the NRCS wetland determination to make their jurisdictional determination. For more information contact the COE at 701-255-0015.

**County Water Resource Board permit:** County water resource boards have jurisdiction over drainage issues within the county. Contact the local water resource board prior to completing any manipulation in natural drainage courses.

**US Fish and Wildlife Service:** In most cases the United States Fish and Wildlife Service (FWS) does not purchase wetland easement on natural drainage courses. However, they may have an easement on depressional wetlands (potholes) adjacent to the drainage course. Contact the FWS office having jurisdiction in your county to determine if any drainage or fill may impact FWS easement wetlands.

**Where to get help:** Contact your local NRCS office for a certified wetland determination or more information regarding the wetland conservation provisions of the 1985 Food Security Act, as amended.