NRCS Wetland Compliance Updates

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The Three Wetlands

- Clean Water Act
- Food Security Act
- Wetland Protection Policy
Clean Water Act

- Section 404
- All waters of the U.S. including wetlands
- Permit required for discharge of dredged or fill materials
- Jurisdiction of US Army Corps of Engineers and EPA
The Food Security Act of 1985, as amended, requires NRCS to delineate, determine, and certify wetlands located on land on a farm or ranch subject to wetland conservation (WC) provisions in order to establish a producer’s eligibility for certain USDA program benefits (16 U.S.C. Section 3822, 7 CFR Section 12.30).
NRCS Wetland Protection Policy

- Identify wetlands when providing assistance (technical and financial)
- Protect wetland functions by avoiding and minimizing impacts
- Prohibits NRCS assistance resulting in adverse impacts to wetlands if practicable alternatives exist

General Manual Title 190 Part 410 Section 410.26
On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) finalized the Navigable Waters Protection Rule (NWPR) defining “waters of the United States” (WOTUS) and the scope of federal jurisdiction under the Clean Water Act (CWA). The NWPR not only defines WOTUS, but also identifies those waters and features that are excluded from the definition of WOTUS, including prior converted cropland (PC). Further, it describes how the EPA and the Army will rely on USDA PC designations and explains under what circumstances a PC might be considered abandoned such that the land no longer meets the PC designation for CWA purposes.

The NWPR does not alter the wetland conservation provisions of the Food Security Act of 1985, as amended.
July 17, 2020

Memorandum to the Field concerning implementation of Section 404 of the Clean Water Act (CWA) and the Food Security Act of 1985, as amended (FSA)

- USDA NRCS
- ARMY CORPS OF ENGINEERS (CORPS)
- U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)
Updated policy and guidance for the wetland and highly erodible land conservation policy in Title 180, National Food Security Act Manual (NFSAM), Fifth Edition.

- NRCS will utilize a triangle with a dot in the center as a cautionary icon on CWD maps to identify water features potentially subject to the CWA

- Clarifies NRCS’ role when providing CWA assistance to USDA clients
August 28, 2020
7 CFR 12 HEL and WC

Final rule for Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended

Federal Register:
This final rule confirms most of the changes made by the December 2018 interim final rule and makes these additional updates:

- Adding the requirement of the 2018 Farm Bill that USDA will make a reasonable effort to include the affected person in an on-site investigation conducted prior to making a wetland violation technical determination.

- **Further clarifying how wetland hydrology is identified for farmed wetlands and farmed wetland pasture.**

- Adding clarification to the consideration of best-drained condition for wetland hydrology in keeping with the definition of prior converted cropland.

- Relocating the provision that wetland determinations can be done on a tract, field, or sub-field basis in order to improve clarity.
Local Hydrology Indicators for the Identification of Farmed Wetlands

The Food Security Act of 1985, as amended
Background

On August 28, 2020, USDA issued a final rule for the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended. This final rule clarified how NRCS identifies hydrology criteria for Farmed wetlands (FWs). To decide if an area supports the required long-term inundation for a FW that is not identified as a playa, pocosin, or pothole, the final rule provides three options:

A. Observation of wetland hydrology indicators as identified in the local NRCS Field Office Technical Guide (FOTG);

B. Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or

C. The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.
Farmed Wetland Definition

“a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, did not support woody vegetation, and met the following hydrologic criteria: (i) If not a playa, pocosin, or pothole, experienced inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more)…”

As defined in Wetland Conservation (WC) provisions of the Food Security Act of 1985, as amended (7 CFR Part 12, “Highly Erodible Land and Wetland Conservation”)
Option A – Local level indicators

The preamble to the final rule provides that NRCS will seek local input through:

- Consultation with the NRCS State technical committee
- Notice and comment in the Federal Register (on a state basis)

NRCS will issue the local level hydrology indicators in the FOTG.
NRCS is requesting OTAC input on proposed Local Hydrology Indicators for the identification of Farmed Wetlands that are not playas, pocosins, or potholes
Local Hydrology Indicators
Farmed Wetlands

Indicators will be reflective of local conditions which meet the required inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years.
Local Hydrology Indicators
Farmed Wetlands

NRCS Recommendation to OTAC:
Adopt all national FW hydrology indicators with two clarifications to account for irrigation situations.
Local Hydrology Indicators
Farmed Wetlands

NRCS in OR will use the following Farmed Wetland Hydrology Indicators to make or assist in making the decision if the sampling unit supports long-term inundation:
FW-N01: Surface Water
FW-N02: Water Marks
FW-N03: Sediment Deposits
FW-N04: Drift Deposits
FW-N05: Algal Mat or Crust
FW-N06: Surface Soil Cracks
FW-N07: Evidence of Long-Term Ponding Visible on Aerial Imagery
FW-N08: Sparsely Vegetated Concave Surfaces
FW-N09: Water Stained Leaves
FW-N10: Aquatic Invertebrates
FW-N11: Perennial Obligative Plant Species
Local Hydrology Indicators
Farmed Wetlands

National FW hydrology indicators are applicable throughout Oregon with two additional clarifications.

**FW-N07: Evidence of Long-Term Ponding Visible on Aerial Imagery**

This indicator consists of ponding observed on aerial imagery taken during the growing season.

**FW-N07: Evidence of Long-Term Ponding Visible on Aerial Imagery**

- This indicator will not be applied to flood irrigated fields, unless the aerial imagery is taken during periods when irrigation has not occurred (e.g. aerial photography taken early in the growing season before irrigation starts).
Local Hydrology Indicators

Farmed Wetlands

National FW hydrology indicators are applicable throughout Oregon with two additional clarifications.

FW-N08: Sparsely Vegetated Concave Surfaces

This indicator consists of onsite observation of a sparsely vegetated concave surface.

FW-N08: Sparsely Vegetated Concave Surfaces

- In irrigated regions, the influence of irrigation shall be considered to ensure that the observation of a sparsely vegetated concave surface is not a false positive due to irrigation inputs, such as prior to when the first irrigation of the growing season has occurred. This indicator will only be used on irrigated fields prior to the start of irrigation.
Local Hydrology Indicators
Farmed Wetlands

NRCS Proposes the following decision options to OTAC:

☑ Adopt right now all national FW hydrology indicators with two Oregon clarifications

☑ Provide opportunity to review in more detail and provide written commentary (via email)

☑ Hold dedicated meeting for those interested in discussion and feedback
OR Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Provisions Webpage

https://www.nrcs.usda.gov/wps/portal/nrcs/main/or/programs/farmbill/cc/

National Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Provisions Webpage


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