

WETLAND MINIMAL EFFECT EXEMPTION draft DETERMINATION PROCEDURES Washington NRCS

The 1985 Food Security Act, as amended, allowed some wetland conversion activities to be exempt from the Wetland Conservation provisions if the activities only minimally impacted wetland functions and values. The following procedures have been developed by NRCS, in consultation with the State Technical Committee, to be used when a USDA participant requests a Minimal Effect (MW) Exemption. A certified NRCS Wetland Specialist has the lead responsibility for making MW determinations but an interdisciplinary team may be needed to complete procedures.

Notes: Washington does not currently have any Categorical Minimal Effect Exemptions. Also in cases where the Army Corps of Engineers (COE) will be conducting a review of the proposed activity in accordance with their permit procedures, NRCS may defer MW determination until COE decision is made. If the COE authorizes the activity, NRCS may accept the permit decision as granted with no further conditions if the wetland conversion will be adequately mitigated. The participant must provide NRCS with a copy of the permit decision. Refer to NFSAM 515.20.

Participant _____ County _____
Address _____ Tract No. _____ Field No. _____
Determination Performed By _____ Date _____

STEP 1: Verify that manipulation is subject to Food Security Act wetland provisions.

- Does the proposed wetland manipulation activity make possible the production of an agricultural commodity? Yes ____ No ____

IF YES, proceed to Step 2. IF NO, do not proceed. Minimal Effect exemption is not applicable because activity is not subject to Food Security Act wetland provisions.

STEP 2: Acreage Threshold

- Will the proposed activity impact >0.1 acre of wetland? Yes ____ No ____
(Note: This acreage threshold is consistent with Clean Water Act, Section 404, Nationwide Permit 18 – Minor Discharges.)

IF NO, proceed to Step 3. IF YES, do not proceed. Notify the participant in writing that **Minimal Effect exemption cannot be granted.** Provide the participant written explanation of why MW was denied and provide appeal rights.

STEP 3: Identify and characterize the wetland to be impacted.

- Conduct certified wetland determination (attach NRCS-CPA-026E, data sheets and maps for the impacted area to MW determination).
- Hydrogeomorphic (HGM) Classification:
- Wetland Description (past/current use, NWI label, dominant plants, etc):

- Size and type of conversion activity proposed (filling, tiling, tree removal, etc):
- Is the impact area a portion of a larger contiguous wetland area (irrespective of property boundaries)? Yes ____ No ____
If yes, approximate size of larger wetland area _____.

Proceed to Step 4.

STEP 4: Answer the following questions to determine if the proposed impact wetland is located in a “red flag” area (i.e., an area or situation that contains sufficient function or value to preclude an MW exemption). A Washington NRCS “Landowner Release Form” must be signed.

- Will the proposed activity impact habitat known to be used by any federal or state listed species (includes Threatened, Endangered, Candidate, or species proposed for listing)? (Consult NRCS State Biologist)
List species: Yes ____ No ____
- Will the proposed activity impact cultural resources? (Follow NRCS cultural resource consultation procedures.) Yes ____ No ____
- Is the wetland type considered rare or unique in Oregon? (Rare/Unique wetlands include: bogs, fens, vernal pools, and Willamette Valley wet prairie wetlands.)
Wetland Type: Yes ____ No ____
- Will the proposed activity violate any existing easement terms or deed restrictions on the site? (Ask landowner) Yes ____ No ____

IF NO to all of the “red flags” above, proceed to Step 5. IF YES to any of the red flags above, do not proceed. Notify the participant in writing that **Minimal Effect exemption cannot be granted**. Provide the participant written explanation of why MW was denied and provide appeal rights.

STEP 5: Answer the following questions to determine if the proposed impact wetland is located in a “yellow flag” area (i.e., an area with valuable wetland functions where extreme caution should be used when issuing an MW exemption).

- Will the proposed activity impact habitat known to be used by any federal Species of Concern or state Sensitive Species? (Consult NRCS State Biologist)
List species: Yes ____ No ____
- Is the proposed activity immediately adjacent and hydrologically connected to a stream?
List species: Yes ____ No ____

IF NO to all of the “yellow flags” above, proceed to Step 6. IF YES to any of the yellow flags above, additional conditions may need to be placed on the MW exemption if granted to reduce severe impacts to wetlands or waterways that are considered locally valuable; proceed to Step 6.

STEP 6: Assessing Cumulative Impacts

- Does the proposed activity occur within a wetland where a Minimal Effect exemption has been granted previously (only consider land owned by the participant)? Yes ____ No ____

- For contiguous farm tracts under the same ownership, add all of the acres of Minimal Effect (MW) exemptions that have been granted over time and the currently proposed impact area. Will the total be $\geq \frac{1}{2}$ acre? Yes ____ No ____

(Note: This acreage threshold is consistent with Clean Water Act, Section 404, Nationwide Permit 40 – Agricultural Activities – Regional Permit Conditions.)

IF NO to both of the above, proceed to Step 7. IF YES to either of the above, do not proceed. Notify the participant in writing that **Minimal Effect exemption cannot be granted**. Provide the participant written explanation of why MW was denied and provide appeal rights.

STEP 7: Conduct a wetland functional assessment using the interim procedure in NFSAM 527.6.1 or approved HGM Regional Subclass models when available.¹ If the proposed impact area is part of a larger contiguous wetland area, the functional assessment should be conducted over the entire wetland area to the extent possible. Attach a copy of the completed functional assessment worksheets.

- Will all of the functions in one or more category (hydrological, biogeochemical, or plant/animal habitat) be eliminated or severely reduced? Yes ____ No ____

IF YES, do not proceed. Notify the participant in writing that **Minimal Effect exemption cannot be granted**. Provide the participant written explanation of why MW was denied and provide appeal rights.

IF NO, the impact may be considered minimal. Determine if additional conditions are required for MW in a yellow flagged area to protect valuable functions. If conditions are required in order to grant MW, a Minimal Effect Agreement is to be developed by NRCS and signed by the landowner in order to grant an MW exemption (see NFSAM 515.3). Once the MW Agreement has been developed or if no additional conditions are required, then follow the procedures in NFSAM 515.2 to record the MW exemption and notify the participant by letter that MW exemption has been granted. Specify in the letter that this determination is solely for Food Security Act compliance purposes and that the participant is responsible for obtaining all necessary local, state, and federal permits to conduct the activity.

¹ Washington Department of State Lands HGM-based Functional Assessments may be approved for use as HGM Regional Subclass models in Washington.