

Wetland Compliance Factsheet

What Can I Do With My Wetland?



What can I do with my Wetland (W)?

The Food Security Act of 1985, as amended, states that "a person shall be ineligible for all or a portion of USDA program benefits...if...the person produces an agricultural commodity on wetland that was converted after December 23, 1985; or after November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible." (US Code of Federal Regulations; Title 7 – Agriculture; Subtitle A – Office of the Secretary of Agriculture; Part 12 – Highly Erodible Land and Wetland Compliance; Subpart A – General Provisions; Section 12.4 (b) & (c)).

PLEASE NOTE: these provisions only apply to the Food Security Act of 1985, as amended. They may not protect farmers from the requirements of the Clean Water Act (US Army Corps of Engineers authority); the Endangered Species Act requirements (US Fish & Wildlife Service authority); Indiana Wetland Laws (Indiana Department of Environmental Management authority); and others.

Can USDA give me assistance, advice, and/or permission on what I can or can't do to keep me in compliance?

USDA will only give advice and assistance that will ensure farmers remain in compliance with the Food Security Act of 1985, as amended, and other USDA policies. USDA does not issue permits, give permission, nor grant approval to take actions that could result in the future conversion of a wetland. USDA will not give advice nor analyze activities that may potentially violate other laws such as those mentioned previously, or other federal policies such as Executive Order 11990 signed by former President James Carter on May 24, 1977, that requires each federal agency to take action to minimize the destruction, loss, or degradation of wetlands in any financial and technical assistance activity.

The only safe advice available is to manage wetlands in their existing condition in a manner that retains the vegetation, hydrology/water regime, and soils as they exist. Such activities as recreation, sound forest management, and other passive uses are safe.

Any other activities may lead, sooner or later, to non-compliance if the wetland responds by changing. Remember, the activity must not be for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

Who makes the decision of whether my actions "make the production of an agricultural commodity possible"?

Local USDA representatives make this determination, and will determine the appropriate wetland label using USDA wetland determination procedures.

What if I don't do anything to my wetland and it was never converted, can I farm it under natural conditions?

The Food Security Act of 1985, as amended, does not consider farming a wetland under natural conditions a violation. It is critical, however, to not do anything to convert the wetland, simply because it is dry enough to allow the activity to occur.

What can I do with my Farmed Wetland (FW)?

The Food Security Act of 1985, as amended, does not consider farming, nor the maintenance, restoration, or repair of drainage to its 1985 capacities a violation, as long as the FW is not considered abandoned.

Abandoned FW sites have either grown up in woody vegetation or have regained a water regime due to the abandonment or dysfunction of the drainage that existed in 1985. Such sites are then considered Wetland (W).

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Find more information about wetlands on the Indiana NRCS website at:

www.in.nrcs.usda.gov





Can I cut trees in my wetland?

The Food Security Act of 1985, as amended, does not consider the removal of trees a violation. However, the action must not have the effect of making the production of an agricultural commodity possible, now and into the future.

Since USDA cannot provide a guarantee that an action today will not become a violation in the future (whether from further actions of the farmer, natural conditions, etc.), it is the farmer's decision and responsibility to ensure the site does not become capable of making the production of an agricultural commodity possible.

Further, any service or advice USDA provides must adhere to other laws such as the Endangered Species Act. Cavedwelling bats are in serious decline across the nation, and the Indiana Bat is a federally-listed endangered species that occurs throughout Indiana. USDA is not authorized to provide assistance to any tree removal practice that may result in the "take" of a federally-listed species without first consulting with the US Fish and Wildlife Service; further, USDA will not consult with the US Fish and Wildlife Service on behalf of farmers for Food Security Act of 1985, as amended, purposes. Therefore, neither assistance nor advice, directly or indirectly, that could potentially result in the "take" of protected species will be provided.

Can I fix or replace existing tile or surface drains in my wetland?

The Food Security Act of 1985, as amended, does not consider the maintenance of existing and functioning drainage features that serve non-regulated sites, to the extent they existed in 1985, a violation. However, the action must not have the effect of making the production of an agricultural commodity possible on wetlands, now and into the future.

How will USDA verify that I am in compliance?

The operator of record annually self-certifies with the Farm Service Agency on the form AD-1026 that they are in compliance with the Food Security Act of 1985, as amended.

USDA will also evaluate farmer actions to verify compliance as a result of annual Compliance Status Reviews activities; at the farmer's request and based on USDA priority workload; and/or as the result of a "Report of HELC and WC Compliance" (Whistleblower) request from the public.

For more information:

If you would like more information about what you can do with your wetlands, please contact your local USDA Service Center (http://www.nrcs.usda.gov/wps/portal/nrcs/main/in/contact/local/).



The Indiana Brown Bat is a federally listed endangered species and is located throughout Indiana.