Wetland Functional Assessment - Agricultural Lands

Kim Farrell
Natural Resources Conservation Service
U.S. Department of Agriculture
October 13, 2015
Food Security Act of 1985

- 1985 Farm Bill
- Created Wetland Conservation Provisions (Swampbuster)
- Affects farmers receiving federal benefits
87% of wetland losses from 1950’s to 1970’s due to agriculture.
(U.S. Department of Agriculture Economic Research Service)
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

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
- 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.

<table>
<thead>
<tr>
<th>Applicants Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>County:</td>
<td>Phone Number:</td>
</tr>
<tr>
<td>Farm No.</td>
<td>Tract No:</td>
</tr>
<tr>
<td>Field No.</td>
<td>Wetland Area: Ac.</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>List Dominant Plants by Strata: (Taxonomical Name)</th>
<th>Indicator Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Herbaceous:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Woody Vine:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shrub:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sapling:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tree:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Data from U.S. ACOE wetland determination data form; collected in the field.
NRCS MINIMAL EFFECT PROCEDURE

<table>
<thead>
<tr>
<th>FUNCTIONS</th>
<th>VALUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Term Surface Water Storage</td>
<td>Maintains water table elevations and improves surface water quality and provides wildlife habitat.</td>
</tr>
<tr>
<td>Subsurface Water Storage</td>
<td>Recharge area for base and seasonal flow in streams.</td>
</tr>
<tr>
<td>Dissipation of Energy</td>
<td>Reduces downstream sediment loading.</td>
</tr>
<tr>
<td>Cycling Nutrients</td>
<td>Improves surface water quality.</td>
</tr>
<tr>
<td>Retention of soil particles</td>
<td>Reduces downstream sediment loading and protects instream habitat.</td>
</tr>
<tr>
<td>Non-export of organic Carbon and Detritus</td>
<td>Supports aquatic food webs.</td>
</tr>
<tr>
<td>Maintenance of Plant and Animal Communities</td>
<td>Provides plant and animal habitat, recreation, aesthetics, and educational opportunities.</td>
</tr>
</tbody>
</table>
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
   - Perennial streams, rivers or lakes
   - Bogs or Fens
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.
“The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).”