

USDA NRCS – Vermont

Wetland Delineation, Determination, & Restoration Information

Prepared by: James Eikenberry, Wetlands Specialist, 11/06/19

James.eikenberry@usda.gov (802) 449-7255

Wetlands Delineation & Determination

- Participation in USDA programs is voluntary
- Most but not all USDA programs require wetlands conservation compliance
 - Required: Environmental Quality Incentives Program, Conservation Stewardship Program, Agricultural Conservation Easement Program (at time of application and easement closing), Crop Insurance with the Risk Management Agency, and some Farm Service Agency programs, notably the Conservation Reserve Program
 - Not required: Agricultural Management Assistance program (a Risk Management Agency program that is administered by NRCS). Also, some Farm Service Agency loans and USDA Rural Development grants and loans
- The Food Security Act only applies to USDA program participants
- USDA program participants voluntarily agree that they will comply with the wetlands conservation compliance provisions of the Food Security Act in return for USDA funding and technical assistance
- A violation of the Food Security Act wetlands conservation compliance provisions can result in ineligibility for USDA programs until wetlands are restored, exemptions may apply that would not result in program ineligibility
- 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. Sec. 3822; [7 CFR Section 12.30](#)).
- By statute, only NRCS can make certified wetland determinations (16 U.S.C. 3821(e)).
- In the wetland conservation provisions, USDA program participants are prohibited from converting wetlands to cropland after December 23rd, 1985 (unless the action qualifies for an exemption).
- In 1990, the Act was revised to change the non-compliance "trigger" from "planting of a crop on a converted wetland" to "for the purpose of, or making production of an annually tilled crop possible".
- An agricultural commodity is defined as any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane. ([7 CFR Section 12.2](#))
- Ex: Corn is a commodity crop, but Christmas trees are not because they are a perennial crop.
- USDA NRCS uses the Food Security Act Wetland Identification Procedures (2010) to delineate (define the wetland boundary) wetlands. These procedures use Part IV, "Methods," of the 1987 Corps of Engineers Wetlands Delineation Manual (Wetlands Research Program Technical Report Y-87-1) and the approved Corps of Engineers regional supplements to the manual are the foundations to the FSA wetland identification procedures.

- Because the act, statute, and regulation provide specific definitions (e.g., wetland, hydric soils, and hydrophytic vegetation) and guidance for implementation of the Food Security Act wetlands conservation compliance provisions that differ from those used by the Corps for implementation of the Clean Water Act, certain variances to the Corps methods are listed. The definitions and concepts provided in the statute and regulation take precedence over what is provided in the Corps methods as detailed in the "FSA Variances" found in Part V of the above noted Food Security Act Wetland Identification Procedures (2010).
- Once wetlands are delineated, they are then assigned a USDA wetland label based on the land use history of the site. This is the “determination” process.
- Common wetland determination labels include: Prior Converted Cropland (PC), Farmed Wetland (FW), Farmed Wetland Pasture or Hayland (FWP), Manipulated Wetlands (WX), Minimal Effect Exemption (MW), Converted Wetland + year (CW+year), & Prior Converted Cropland/Non-Wetland (PC/NW)
- USDA NRCS-Vermont has had a backlog of wetland determination requests since soon after the Food Security Act was passed on 12/23/85
- Average time to complete a request is 365 days due to low staff availability and high workload volumes

USDA NRCS-Vermont Recent Wetlands Determination Workload Information

Year	Backlogged Requests > 1 year since request	New Requests	Total Requests	Requests Completed	Delineated Acres
2015	24	127	151	70	992
2016	15	119	134	124	3410
2017	20	114	134	99	1003
2018	47	61	108	70	2202

- Soil formation factors: time, climate, parent material, topography and relief, and organisms
- USDA NRCS Soil Surveys provide information on whether soils meet hydric soils technical criteria
- Soil map units often contain multiple soil series, which can include hydric and non-hydric soils, that may not be differentiated in the data tables or GIS data, but are different in the soil. (Example Colonel-Cabot complex. Colonel is non-hydric, Cabot is hydric. GIS data shows all of it as hydric because the mapping units couldn't be separated with the technology available when the soils were mapped)
- Soil map units may contain only one soil series, but that soil series could be a dual drainage class soil series, and thus contain hydric and non-hydric soils within the mapping unit. (Example Swanton series. GIS data shows all of it as hydric because the mapping units couldn't be separated with the technology available when the soils were mapped)
- Onsite field investigation is typically needed to confirm the presence or absence of hydric soils, hydrophytic vegetation, and wetlands hydrology

Wetlands Restoration

- The USDA NRCS-Vermont administers the Agricultural Conservation Easement Program, (ACEP) which provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements component, NRCS helps Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements component, NRCS helps to restore, protect and enhance enrolled wetlands
- The Wetland Reserve Easement component was formerly named the Wetland Reserve Program.
- The US Fish & Wildlife Service estimates that by 1985 approximately 35%, (121,000 acres), of Vermont's wetlands were converted/lost from their natural state, primarily for agricultural use
- Since 1996, USDA NRCS-Vermont has enrolled 60 wetlands permanent conservation easements on approximately 4,500 acres, utilizing approximately \$4,500,000.
- Approximately 3,000 acres of those noted above are along the Otter Creek in Addison and Rutland counties
- Over 75% of the wetland easements closed and restored enrolled since 2007
- Additional wetland easement closings anticipated in 2019 will lead to over 5,000 acres in total permanently protected and managed to maximize wildlife habitat
- Over 50% of the acreage on permanently protected wetlands are restored wetlands
- Over 95% of wetland easements are adjacent to rivers and streams and three adjacent wetland easements are adjacent to a bay of Lake Champlain
- For reference & comparison, the US Fish & Wildlife Service Missisquoi National Wildlife Refuge is 6,729 acres
- Annual funding levels anticipated through the 2018 Farm Bill for ACEP WRE are between \$500,000 to \$1,000,000 annually for each of the five years between 2019 through 2023. A potential total investment ranging from \$2,500,000 to \$5,000,000. Additional funding could become available as well through Partners participating in the Regional Conservation Partnership Program (RCPP)
- Current collaboration through RCPP between NRCS, the Vermont Department of Environmental Conservation, Wetlands Program, has resulted in the State being able to pay an incentive payment that is additional to NRCS easement payments. This has successfully incentivized landowners in the Lake Champlain basin in key areas targeted for water quality improvement.
- Title insurance companies require that land is not enrolled in the Use Value Appraisal (Current Use) program at time of USDA NRCS wetland easement closing. This can present barriers to the landowners adoption of wetlands restoration and permanent wetlands protections through conservation easements, due to taxation concerns
- Some wetland easements are eligible to be re-enrolled into the Use Value Appraisal (Current Use) program if they meet the Forestry criteria for an Ecologically Significant Treatment Area
- Wetlands are regulated as water and taxed as land. This creates an economic conflict for many private landowners and can present barriers to the landowners adoption of wetlands restoration and permanent wetlands protections through conservation easements.
- Many landowners are unwilling to participate in the USDA NRCS ACEP WRE unless a buyer for the land can be secured once the easement is closed, since they don't want to pay taxes on a wetland that they have sold most of their property ownership rights on.