



Current Report

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Wetlands Determinations, Definitions and Management Options

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Concern over losses of natural wetlands has escalated since the first national wetlands inventory was conducted in 1954. Research has continued to illustrate hydrological and biological value of wetlands. As part of a complex hydrological and ecological system, wetlands may provide benefits for:

* **Waterfowl Breeding:** Over 12 million ducks nest and breed annually in northern U.S. wetlands.

* **Habitat for Waterfowl and Other Birds:** Some 2.5 million of the three million mallards in the Mississippi Flyway and nearly 100 percent of our four million wood ducks spend the winter in flooded bottomland forests and marshlands throughout the south.

* **Wildlife Habitat:** Wetlands provide food and shelter for a great variety of furbearing animals and other kinds of wildlife.

* **Habitat for Threatened and Endangered Species:** At least one-third of the nation's

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threatened or endangered species live in wetland areas.

* **Freshwater Fish:** Many of the 4.5 million acres of open water areas found in our inland wetlands are ideal habitat for such sought after species as bass, catfish, pike, bluegill, sunfish, and crappie.

* **Timber Production:** Wetlands, especially bottomland forests, are rich sources of timber.

* **Flood Control:** Wetlands temporarily store flood waters and thus reduce downstream losses of life and property.

* **Water Quality:** Wetlands act as natural water purification mechanisms to remove silt and filter out and absorb many pollutants such as waterborne chemicals and nutrients.

* **Saltwater Intrusion Control:** The flow of freshwater through wetlands creates ground water pressure that prevents saltwater from invading public water supplies.

In recognition of these benefits, considerable federal legislation has been passed in an attempt to control the losses of natural wetland areas. For example, the Federal Water Pollution Control Act of 1972 prohibited the deposition of fill material into wetland areas unless a permit was obtained from the U.S. Army Corps of Engineers. With the signing of Executive Order 11990 in 1977, wetlands protection was established as an official U.S. Government policy. However, until passage of the 1985 Food Security Act and its Swampbuster Provision, wetland areas on agricultural lands did not receive much attention. For large-scale land clearing and draining activities, landowners generally dealt with the Corps of Engineers and their permitting process. However, smaller wetland areas which were being farmed or, in some cases, drained to facilitate tillage were not subject to close Corps scrutiny. In fact, the Corps regulations generally exempt agricultural areas "above the headwaters of navigable streams" when fewer than 10 acres are involved. When Swampbuster was implemented, these areas were no longer overlooked.

Swampbuster Impacts on Commodity Program Participation

The Swampbuster provision was implemented in an attempt to discourage conversion of wetlands for production of agricultural commodities. The provision was included in the farm bill as one of several conservation provisions written in recognition of inconsistencies between USDA conservation programs and commodity programs encouraging production on fragile lands. Under the 1985 law, producers who converted wetlands and then produced agricultural commodities on that area would be excluded from participation in USDA programs, including:

- * price and income supports,
- * crop insurance,
- * Farmer's Home Administration loans,
- * Commodity Credit Corporation storage payments,
- * farm storage facility loans,
- * Conservation Reserve Program annual payments,
- * other programs involving commodity-related payments.

The 1990 Food, Agriculture, Conservation and Trade Act has made some changes in the Swampbuster program. The first major change is that any producer who converts wetlands is ineligible for commodity program benefits, **regardless** of whether he produces agricultural commodities on the converted area. The wetland is considered converted if it is manipulated to the extent that production of an agricultural commodity would be possible. The second major change is that, under the new law, a system of graduated penalties has been authorized. That is, a Swampbuster violation does not automatically result in complete loss of program benefits. The new system calls for the severity of penalties (in the form of losses of benefits) to more closely parallel the severity of the violation and for penalties to be imposed in consideration of whether a violation was unintentional. However, the graduated penalties and "good faith" exemptions require that the producer restore any converted wetland.

Wetlands Determinations

Soil Conservation Service (SCS) personnel in Oklahoma began making wetlands determinations in January of 1989. According to conventions established by regional and state technical staff, areas of wetlands in Oklahoma are being identified and mapped. Wetlands determinations are being made using soil survey maps, aerial photography, rainfall records, and U.S. Fish and Wildlife

Service (FWS) Wetlands Inventory Maps. At least three years of data and photographs are used making wetlands determinations. Producers who participate in USDA programs should receive wetlands delineation maps for their land. The information from SCS will inform the producers whether they have wetlands and how those wetlands are classified. Landowners or producers who do not participate in USDA programs will not automatically receive a wetlands delineation map. However, they may contact SCS if they are interested in learning whether they have areas determined to be wetlands.

Wetlands Definitions and Allowed Uses Under Swampbuster

The following terms are used to classify wetlands. Uses allowed for a specific wetland area under the 1990 farm bill depend upon the classification of the area. Allowed uses are those which will not disqualify the landowner from participation in commodity programs. The classifications are indicated on wetlands delineation maps using the abbreviations shown below.

Wetlands (W) - These are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands may be used to produce an agricultural commodity as long as they are not manipulated - that is, drained, filled, leveled, or cleared of woody vegetation.

Farmed Wetlands (FW) - These are wetlands which were manipulated prior to December 23, 1985 and are used to produce an agricultural commodity. However, the areas are still wet enough to meet the criteria for wetlands determination. Agricultural

production on these areas can be continued, and any drainage systems that were installed before December 23, 1985 can be maintained. However, additional manipulation is not allowed.

Prior Converted Cropland (PC) - These areas were converted from wetlands prior to December 23, 1985 and no longer meet the criteria for wetlands determination. Agricultural production on these areas is not affected by wetlands determinations unless the area is abandoned.

Abandoned Wetlands (W) - When prior converted cropland is not farmed for five or more successive years and drainage is not maintained, the area is considered abandoned and is a wetland. The abandoned area again meets the criteria for wetlands determination. As with wetlands, abandoned wetlands can be used to produce an agricultural commodity as long as they are not manipulated (e.g. re-drained.)

Converted Wetlands (CW) - These are areas which are designated as wetlands and which have been manipulated (drained, filled, or cleared of woody vegetation) since December 23, 1985. Identification of converted wetlands will result in losses of commodity program benefits.

When You Disagree With Wetlands Delineations on Your Farm

Every producer who participates in USDA commodity programs should receive from SCS a wetlands delineation map, an information sheet explaining the allowable uses for the wetlands shown, and an accompanying letter. As the letter states, each landowner should contact SCS if there is a question about the accuracy of the wetlands determinations for the farm. Each producer may request a site visit to verify the wetlands determinations. This is important since, despite the care taken

in the determination process, sole reliance on maps and photographs may still result in some errors.

If a site visit by SCS verifies that, in fact, those areas in question are wetlands and the landowner still disagrees, an appeal can be filed. Local SCS personnel will assist landowners in the appeal process. One option for landowners is to appeal based on a "minimal effect" argument. That is, if the landowner's planned conversion of wetlands will have only a minimal effect on the functional hydrological and biological value of the wetlands (including the value to waterfowl and wildlife), then that conversion may be approved. Minimal effect determinations are made jointly by local SCS and FWS personnel.

Additional Options for Wetlands Owners

There are at least two important options of which owners of areas designated as wetlands should be aware. First, restoration of prior converted wetlands or creation of new wetlands may be options which could allow a landowner to drain a frequently cropped wetland. That is, conversion of wetlands may be allowed if the hydrological and biological value can be provided by new or restored wetlands. The wetlands construction or restoration plan must be

developed in accordance with and be approved by SCS and FWS.

A second option is the Wetlands Reserve Program authorized by the Food, Agriculture, Conservation and Trade Act of 1990. Similar to the Conservation Reserve Program, this program provides for the voluntary enrollment of wetlands into the Reserve through a bid process and annual payments to participants. In addition, cost sharing funds may be available to establish trees or grasses on Reserve acres. Landowners may also receive assistance in restoring prior converted wetlands, which may then be eligible for enrollment in the Wetlands Reserve Program. In some cases, cost sharing funds may be available through FWS for wetlands restoration projects.

Finally, it is important to remember that a wetlands determination need not result in a change for the farmer who has been growing agricultural commodities on the designated area. Areas designated as wetlands can be used to produce agricultural commodities. However, they can not be drained or filled without violating Swampbuster. Areas which are too wet to sustain crop growth can still be used for recreational purposes, including hunting and fishing. The Wetlands Reserve Program might also be a viable option for these areas.