# Module 1: NRCS Policy: the Food Security Act (FSA) and the National Food Security Act Manual (NFSAM)

In this module, the course participant will be presented with a brief history of wetlands in the United States and the decision-making process for wetland determinations within NRCS. The Food Security Act of 1985 includes Wetland Conservation (WC) provisions which are to:

> "Remove certain incentives for persons who convert wetlands to make possible the production of agricultural commodities; Protect the Nation's long-term capability to produce food and fiber; Reduce sedimentation and improve water quality (both HEL and WL); and Assist in preserving the functions and values of the Nation's wetlands."

**Developers**:

Modified from the National Wetland Phase I Training Course

Michelle Schuman, Palmer, AK, State Resource Ecologist

Alaska NRCS

## Module 1- NRCS Policy: the Food Security Act (FSA) and the National Food Security Act Manual (NFSAM) for Wetland Determinations

### *Objectives*

Upon completion of this module, the student will:

- **Be able to locate the NFSAM and associated reference materials**
- **Be familiar with the wetland certification process and appeals**
- **Recognize the difference between the Corps of Engineers 404 Wetland Manual (COEM) and the National Food Security Act Manual (NFSAM)**
- **Have an awareness of the history of wetland identification efforts in the U.S.**
- **Have an awareness of the unique NRCS responsibilities when making wetland determinations according to the Wetland Conservation (WC) Provisions of the 1985 Food Security Act (FSA)**
- **Be familiar with the FSA Wetland Determination process and how it relates to the Environmental Evaluation Worksheet CPA-52**

### *Key Concepts*

- 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).
- The WC provisions of the FSA were designed as a "self-certification" program, where USDA program participants have the personal responsibility to remain compliant. The role of NRCS is to assist the participant with identifying the areas of their land that are subject to the WC provisions and issuance of exemptions
- The National Food Security Act Manual (NFSAM) provides policy pertaining to the WC provisions.
- Certified wetland determinations performed by NRCS are based on Food Security Act definitions and may not be valid for the Clean Water Act (CWA) jurisdiction and permitting requirements by the Corps of Engineers (COE)
- Understand the variances between the NFSAM and the Corps of Engineers Wetland Manual (COEM)
- Understand the relationship between the CPA-52 and Wetland Conservation compliance

This module is designed to take about 90 minutes and includes required exercises. Links are provided to necessary information and additional learning opportunities.

## Learning Concept 1-1: The Food Security Act and the National Food Security Act Manual – *what, where, who, when*

This Learning Concept is designed to take 30 minutes and includes office exercises. Links are provided as optional learning opportunities.

Starting Time: _____

There have been many wetland definitions and concepts of a wetland over the years and those concepts continue to evolve over time. This evolution is based primarily on changes in societal perceptions. What was considered a "swampland" under the Swamplands Act of 1849 differs from what is considered a "wetland" under the wetland conservation (WC) provisions included in the Food Security Act of 1985 (FSA). In State and Federal programs there are 4 primary wetland definitions being used today (Circular 39, Cowardin et. al, Clean Water Act, and FSA).

Those making wetland *identification* decisions today need to understand that there is not a right or wrong when it comes to any particular wetland definition. Rather, those making wetland identification decisions must understand that wetlands are being identified for different purposes, under different rules and with the use of different definitions. However, a common goal amongst all programs is to prevent a "no net loss" of wetlands in the United States.

It is the role of the NRCS staff person to utilize the definition and process that meets the needs of the client. This training is designed to provide a knowledge base to NRCS staff specific to administering the WC provisions.

The Food Security Act of 1985 and its 1990 amendments established two conservation programs for the protection of wetlands: the wetland conservation compliance or "swamp buster" program and the wetland reserve program (WRP) (16 U.S.C. §§ 3801-3862). Rather than prohibiting filling activities as the Clean Water Act (CWA) does, the FSA specifies incentives and penalties to protect wetlands. Although the purpose and definitions of wetland determinations under FSA are slightly different than those of the CWA, the methodology is basically the same.

In the 1985 FSA, Congress defined wetlands subject to the WC compliance requirements as:

> ***"Land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions".***

In the Urgent Supplemental Appropriation Act, 1986, Congress added the following to the wetland definition:

> ***"Except that this term does not include lands in Alaska identified as having a high potential for agricultural development and predominance of permafrost soils."***

The Alaska *exception* was added to the regulations (code of federal regulations) in 1987 and modified in subsequent farm bills to read:

"***For the purpose of this Act, and any other Act, this term shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils."***

For the first time (and only time) in the history of the U.S., Congress defined the term "wetland". Also, for the first and only time in federal law, Congress also provided a definition for the terms "hydric soil" and "hydrophytic vegetation". Each of these three definitions (as provided by Congress) differs slightly from what is used by the Corps and EPA for Section 404. Remember, just because Congress defined the terms wetland, hydric soil, and hydrophytic vegetation in one law does not mean that those definitions apply to another federal law.

For more information on the history of wetlands you can check out the following links:

- MOA between USDA, EPA, FWS, COE: **http://www.wetlands.com/fed/fr190194.htm.**
- USFWS NWI Program: **http://www.fws.gov/wetlands/index.html**; **http://www.fws.gov/wetlands/Data/Mapper.html**
- USFWS Classification of Wetlands: **http://www.charttiff.com/pub/WetlandMaps/Cowardin.pdf**

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 Section12.30).

The National Food Security Act Manual (NFSAM) provides policy pertaining to the WC provisions. The NFSAM is found under Manuals, Title 180 – Conservation Planning and Application. The link to the eDirectives where NRCS Manuals are located is as follows:

http://directives.sc.egov.usda.gov/

and it is also found on the Alaska SharePoint:

https://nrcs.sc.egov.usda.gov/west/ak/ecological_sciences/

Also of interest, is the policy concerning NRCS technical and financial assistance and the protection of wetlands which is located in NRCS General Manual (GM), Title 190, Part 410, Subpart B, Related Environmental Concerns, Section 410.26. Wetlands may be subject to other Federal, State, or local regulations. In carrying out the provisions of the act, NRCS may request technical assistance from the U.S. Fish and Wildlife Service (FWS) and State or local conservation agencies (7 CFR Section 12.30). By statute, only NRCS can make *certified* wetland determinations (16 U.S.C. 3821(e)) per FSA.

In addition to stating *where* determinations are made, the NFSAM also provides policy in regards to *who can* make certified wetland determinations for NRCS. Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of *ineligibility* for USDA program benefits. All wetland determinations made after July 3, 1996, are considered certified determinations (7 CFR Section 12.30). Determinations made prior to July 3, 1996, are considered certified if they met the procedural (appeal rights) and quality mandates as provided in 7 CFR Section 12.

It is also important to understand *what* triggers a certified wetland determination. They will be made under either of the following circumstances:

(i) In response to Forms AD-1026 or CPA-038 completed by a USDA program participant for the field(s) identified, or

(ii) In response to Form FSA-569

To identify wetlands subject to the WC provisions, NRCS uses **Off-site** (7 CFR Section 12.6(c) (5) and **On-site** ((7 CFR Section 12.6(c) (6)) methods. **On-site** visits are conducted only in following circumstances:

(i) Before withholding any USDA benefits (7 CFR Section 12.30(c) (4)).
(ii) When a USDA program participant requests an on-site determination (7 CFR Section 12.6(c) 7)).

(iii) When there is an appeal (7 CFR Section 12.6(c) (6)).
(iv) When a USDA program participant requests a pre-conversion minimal effect determination (7 CFR Section 12.31(d)).
(v) In response to a Form FSA-569 or a whistleblower complaint (7 CFR 12.30(a) (6)).
(vi) In conjunction with a compliance status review.
(vii) If there is inadequate information to make determinations Off-site (7 CFR Section 12.6(c) (6)).

Methods for Off-site and On-site determinations are listed in the NFSAM Appendix and will be covered in Module 4.

**Why is this important to me?** The field office planner can obtain critical information from a landowner when developing a conservation plan in regards to the Food Security Act. Questions that a planner can ask a landowner can include: If the area has been cleared, when was the area cleared? How long have you had the property? What are your goals? What are you growing? What do you plan to grow? Review the NFSAM (pay particular attention to Title 180, Part 510 – General Information, page 2 and part 514, Subpart A). All requests for HELC/WC determinations are made as follows:

1. Off-site or "in-office" determinations shall be issued **within 15 working days** of receipt of the Form AD-1026.
2. Determinations that require an on-site review shall be issued within 60 working days of the receipt of the Forms AD-1026 **or until** site conditions are favorable for the evaluation of soils, vegetation, and hydrology.

To ensure a timely response requires coordination among field office personnel that may require a prioritization if there are several requests. Reference: Title 180 – Conservation Planning and Application, NFSAM, Fifth Edition, Part 510 – General Information, page 7: https://nrcs.sc.egov.usda.gov/west/ak/ecological_sciences/

**If a landowner comes into the field office and requests a wetland determination for their parcel, what questions should the planner ask? What is required before a NRCS staff person can make an Off-site determination? When should the determination be made? What is a "commodity crop"? For example, a landowner on Kodiak grows trees and now ships those trees to other places. Are trees considered a "commodity crop" under the WC? The phrase, "can make possible to produce a commodity crop" is important. Why? If a landowner cleared or wants to clear a site by removing the trees , stumps, and debris, does it matter if a commodity crop is grown?**

## Learning Concept 1-2: What is a certified wetland determination and why is it important under the National Food Security Act Manual?

This Learning Concept is designed to take 30 minutes and includes office exercises. Links are provided as optional learning opportunities.

Starting Time: _____

First, let's clarify a few definitions which get tossed about in wetland policy:

- *Wetland Identification* is basically a "term" used by NRCS to make a decision related to whether or not an area is a wetland.
- *Wetland Inventory (ies*) are maps that outline the location of potential wetlands and are usually developed using Off-site remote sensing. Wetland inventories are not certified wetland determinations.
- *Wetland Determination* is defined in 7CFR12.2 as "a decision regarding whether or not an area is a wetland, but also identification of wetland type and size."
- A *Certified Wetland Determination* is one that "is of sufficient quality to make a determination of ineligibility for program benefits (7 CFR 12.3(c) (1). A final FSA determination (and delineation) made after July 3, 1996 are certified determinations.

The term *wetland determination* therefore includes a process of decisions that NRCS makes. This process includes three independent steps:

1. Is the site in question a wetland? (wetland identification)
2. Does the site qualify for an exemption (exception) according to 7 CFR 12.5(b)? (assignment of WC labels)
3. How large is each WC label? (delineation and determination of size)

Wetland delineation for FSA purposes is outlining the boundaries between different WC labels (i.e., types).

Therefore, a wetland determination is a *process* which includes identification of a wetland, assignment of WC labels, and geospatially, drawing each of the WC labels on a digital image to calculate acreage of each WC label. For the purpose of training, when the term "wetland determination" is mentioned, it is referencing the "process".

The complete boundaries and size of all fields must be delineated and identified on a map, including areas identified as non-wetland (NW). The label and acreage information from the map will be used to prepare Form NRCS-CPA-026e, "Highly Erodible Land and Wetland Conservation Determination." In Alaska, after a wetland determination has been made (Module 4 will discuss the FSA wetland identification procedures), it becomes *certified* when a CPA-026e is completed and signed by the Designated Conservationist (Title 180 – CPA, NFSAM, 5th Edition, Part 510, page 12). A copy of the NRCS-CPA-026e, along with the delineation map, and a letter informing the program participant (see examples of letters in Title 440 – Programs, Part 510, Subpart G) (sent certified receipt) of the results and their appeal rights will be provided to the USDA program participant. The participant has 30 days to respond before the certified wetland determination becomes final and sent to the Farm Services Agency. *Note: you may see this repeated several times during the module.*

Certified wetland determinations must be completed by a qualified NRCS employee, as determined by the State Conservationist. Qualified employees (i.e., agency experts) must meet all of the following criteria:

(i) Have completed all the required training, including update courses.
(ii) Have the appropriate job-approval authority.
(iii) Have demonstrated proficiency in making certified wetland determinations.

State Conservationists are responsible for maintaining a roster of agency experts, by training and experience, who have demonstrated the knowledge and skills necessary to conduct wetland determinations and delineations, scope and effect evaluations, functional assessments, minimal effects evaluations, mitigation planning, and mitigation easements. The roster will be maintained on the Ecological Sciences, Wetlands Share Point Site and found in Section III of the FOTG, "Legislated Programs, Job Approval Authority." In accordance with Part 518 - Compliance Reviews, of this manual, State Conservationists will carry out appropriate quality control reviews of certified wetland determinations. For more information refer to the SharePoint Site link or:

http://directives.sc.egov.usda.gov/

**Why is this important to me?** It is important for all field office personnel to be able to *identify* a wetland or at least differentiate a "wetland" from a "non-wetland" when conducting an inventory and evaluation (I & E) for a conservation plan. The information collected during the I & E can be used to correctly address the "special environmental concerns" section of the Environmental Effects Worksheet (NRCS-CPA-52) (refer to the Alaska SharePoint Site) which includes wetlands. The information can also be used in the Data Gathering step (first step in identification of a wetland) and ultimately, assist the wetland evaluator's decision making process to decide if ***an Off-site is sufficient or will an On-site wetland determination be required.***

However, NRCS recognizes that for a certified wetland determination, an employee must show the skills and understanding to *determine* whether or not a wetland meets the requirements according to the NFSAM. The Designated Conservationist or District Conservationist who certifies the wetland determination may or may not be the person making the wetland determinations but they need to be knowledgeable about the Wetland Conservation and HEL provisions to ensure the determination is correct. For a list of definitions refer to Title 180, Part 514, pages 38-40 at the link above.

**Appeals of Certified Wetland Determinations**

Before *finalizing* a *certified wetland determination*, NRCS will notify the person affected by the certification and provide an opportunity to appeal it. NRCS will certify the wetland determination as final 30 days after providing the person notice of certification or, if an appeal is filed with USDA, after the administrative appeal procedures are exhausted or discontinued by the affected person (See Conservation Program Manual, Title 440, Part 510 for NRCS policies regarding appeals). NRCS appeal procedures are also contained in 7 CFR Part 614. All requests for appeals, including those requests made at the preliminary technical determination stage, must be made in writing by the actual participant(s) affected by the certified wetland determination.

In the case of an appeal, NRCS must review and certify the accuracy of the determination for all lands subject to the appeal to ensure that it is accurate. Before a decision is rendered on the appeal, NRCS will conduct an On-site investigation of the subject land regardless if an On-site was already done.

**Duration of Ineligibility**

Persons who plant an agricultural commodity *(any crop planted and produced by annual tilling of the soil)* on a non-exempt wetland converted between December 23, 1985, and November 28, 1990, are ineligible for USDA benefits for any year in which an agricultural commodity crop is planted **or** until the functions, values, and acreage of the converted wetland are mitigated [7 CFR Section 12.4(a) (2)].

Persons who convert wetlands for the purpose of, or in such a way as to make the *production of an agricultural commodity possible after November 28, 1990,* remain ineligible for USDA benefits until the functions, values, and acreage of the converted wetland are mitigated (7 CFR Section 12.4(a)(3)).

Ineligibility will remain with the **person** even if the person is no longer associated with the land. Subsequent owners and operators will not be in violation as long as the converted wetland is not planted to an agricultural commodity and the new owner or operator was not affiliated with the conversion action (7 CFR Section 12.4(g)).

It is important for all field office personnel to be knowledgeable of the appeal process. The following link can provide more information about program appeals:

http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/alphabetical/camr/?&cid=nrcs143_008442

Who Can Appeal? USDA program participants adversely affected by an NRCS technical determination or program decision made by officials of the NRCS can request an appeal of that decision if made in writing within 30 days of receipt of the adverse decision.

What is an Adverse Decision? An adverse decision, as defined by regulation at 7 CFR § 11.1, is an administrative decision made by an officer, employee, or committee of an agency that is adverse to the participant.

There are two types of appeals:

(1) Informal Appeals: Appeals handled within NRCS such as:

a) A field visit and reconsideration of a preliminary technical determination at the local level (7 CFR § 614.7(a)(1));
b) Reconsideration of a preliminary technical determination by the State Conservationist (7 CFR § 614.7(c)).
c) Mediation or other forms of alternative dispute resolution of technical determinations or program decisions (7 CFR § 614.7(a) (2)).
d) An informal hearing before NRCS about programmatic decisions (7 CFR § 614.9(a) (1) and § 614.9(b)).
e) Informal appeal by the FSA county committee on final technical determinations and program decisions (7 CFR § 614.8(b) (1) and § 614.9(a) (3)).

(2) Formal Appeals: Appeals handled outside the agency such as to the National Appeals Division (NAD) on final technical determinations and program decisions (7 CFR § 614.8(b) (2) and § 614.9(a) (3)).

All certified wetland determinations, conditions, and exemptions remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification (16 U.S.C. Sec. 3822 (a)(4)).

A person may request review of a **final** certified wetland determination only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination (7 CFR Section 12.30(c) (6) and 16 U.S.C. Sec. 3822(a) (4)). A person must make all requests for review in writing, stating what the natural event was and to what extent that event altered the topography or hydrology or, where NRCS error is cited as the reason for review, the participant must state what the error is and how it affects the final certified wetland determination validity.

## Document! Document! Document!

The administrative record contains all materials related to an appeal. It should be prepared assuming that persons reviewing the record have no prior knowledge of the case or procedure governing the case. Assembly of the

administrative record begins when the participant submits a written request for an appeal of an adverse decision technical or programmatic decision. Materials included in the administrative record may be organized using an exhibit-based format as shown in Subpart G, Section 510.61, Exhibit 1, or by filing in a six-part folder. In either case, the administrative record must contain all the vital documents relative to the issue under appeal.

The National Appeals Division (NAD) requires that all materials submitted as the Agency record is organized and easy to find, follow, and use during the hearing. (See Section 510, Paragraph 510.52d for Labeling Requirements. Also see the NAD Hearing Officer's Guide.)

Information that should be included in a case file:

(1) Table of Contents of the Agency Record;
(2) Chronology of events leading up to the determination or decision that is under appeal;
(3) The technical determination or program decision under appeal;
(4) All materials included in the agency case record that provide documentation or evidence for the issues under appeal;
(5) All materials relied upon in issuing the technical determination or program decision. This could include any of the following:

- Topographic maps, Soils maps, Manuals, Regulations, Handbooks, Technical References (e.g., Chapter 19, National Engineering Manual); Conservation plans

NRCS will always maintain the original copy of the administrative record, including all original documents. All copies of documents must:

(i) Be completely legible,
(ii) Contain all the required signatures, dates, and pages
(iii) Show both sides of all two-sided documents, regardless of the nature of the information on the back, including contracts, appendices, etc.

**Why is this important to me?** If you read through the appeal process it should be obvious to the planner that the appeal process is not very enjoyable. Conducting a thorough examination during the inventory and evaluation (I & E) can help minimize potential problems. This step allows the planner to interview the land owner and ask those questions that are important to the FSA and to collect important resource information. It is at this step that the planner can decide if a wetland determination will be needed. Remember the goal is to protect wetlands and the most efficient way to do this is to avoid wetland conversion. The FSA states that no person shall be determined to be ineligible for USDA benefits for converting a wetland or producing an agricultural commodity on a converted wetland, but this is only if the person has adequately mitigated the lost wetland acreage, value and functions and/or receives a minimal effects determination (MED) (refer to the High Tunnel Flow Chart on the SharePoint Site). If the landowner insists on converting a wetland and wants to apply to a Farm Bill Program, they must first develop a mitigation plan. If the mitigation plan is acceptable, it is at that time they can apply for a Farm Bill Program or become eligible for USDA benefits. It is primarily up to Farm Service Agency for making the decision whether or not a landowner is eligible for Farm Bill Programs. Recommended reading: go to the Title 180 – Conservation Planning and Application, NFSAM, Part 515 (page 60-page 73) (links above).

**If a planner finds out during an inventory and evaluation for a new landowner that the parcel is located on "fill" what questions should the planner ask? During the conversation, the landowner tells the planner that they bought the property in 1991 and the area was cleared when they bought it. The landowner**

**would like to develop a pasture and provide vegetables from their garden. Is the landowner eligible for farm bill programs? What worksheet guides the planner and addresses wetland concerns? What options does the planner have if the landowner refuses to choose an alternative site to avoid a wetland conversion? What Wetland Label would be assigned? If a landowner feels the decision adversely affects them, how many days does the landowner have before the certified wetland determination goes to Farm Services and becomes a final determination?**

## Learning Concept 1-3: What is the difference between a COE and a FSA wetland determination?

This Learning Concept is designed to take 30 minutes and includes office exercises. Links are provided as optional learning opportunities.

Starting Time: _____

Certified wetland determinations performed by NRCS are based on the Food Security Act and may not be valid for the Clean Water Act (CWA) which is under the jurisdiction and permitting requirements of the Corps of Engineers (COE). Therefore, NRCS will include the following language in all wetland determinations provided to the USDA participant:

***"This certified wetland determination/delineation has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the COE's Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting the work."***

**Why is this important to me?** NRCS only conducts wetland determinations for the purpose of assisting the USDA program participants in complying with the wetland conservation (WC) provisions of the FSA of 1985, as amended. The NFSAM and associated guidance documents are for the sole purpose of identifying FSA wetlands. NRCS does not conduct wetland determinations on lands that are not considered agricultural land and do not produce an *agricultural commodity* (or "intent to make production possible…"). For programs such as the Wildlife Habitat Incentives Plan (WHIP) where landowners do not necessarily produce an agricultural commodity, NRCS would not do the wetlands determination for the property. If a suspected wetland may be impacted from a NRCS practice installation, the landowner would need to contact the local Corps of Engineers (COE) and request a Clean Water Act jurisdiction decision. Remember, all permits must be secured, according to the CPA-52 (NEPA compliance form) **prior to obligation of funds** and installation of a practice. It is during the I & E (inventory and evaluation) step of the planning process that sensitive habitats, cultural resources, and wetlands are evaluated.

It is important to remember that NRCS adopted Section IV – Corps of Engineers Manual (COEM) and the COE Regional Supplements. NRCS did not adopt Sections I-III of the COEM which also includes the definitions. This will be further discussed in Module 3 and 4.

**A landowner would like a wetland determination on their property. What questions does the planner ask the landowner? During the conversation, the landowner does not produce a agricultural commodity. What does the planner tell the landowner with respect to wetland determinations? Can the planner still prepare a conservation plan for the landowner? What constitutes "special environmental concerns"? Where does a planner record information about "special environmental concerns"? When does the landowner become eligible for a wetland determination by NRCS?**

## FSA Variances to the COEM

These variances are based on the unique statutory and regulatory requirements associated with the FSA, as well as unique challenges associated with the identification of wetlands on lands associated with agricultural operations. Variances to the Corps Methods are discussed in the NFSAM Circular No. 6 (December 1, 2010) which is posted on the SharePoint Site (refer to Circular 6 for a complete list at the link below). In most cases the FSA follows the COEM and Alaska Supplement with the exception of:

- COEM Sec B, page 36: Because normal circumstances (NC) is determined based on pre- and post-12/23/1985 drainage actions, agency experts must utilize preliminary data gathering and synthesis in determining whether a typical or atypical situation exists.
- COEM Sec C, page 45: The comprehensive approach will not be used for FSA determinations
- COEM Sec D, page 45: States are provided an option of developing and approving additional guidance to a Level-1 determination, and for some sampling units, a soil survey may be sufficient to determine that the site supports a predominance of hydric soils.
- COEM Sec D, page 49: For the majority of FSA wetland determinations and delineations, the Areas Equal To or Less Than 5 Acres in Size method will be appropriate, regardless of size.
- COEM Sec F, page 73: NRCS will use the date of December 23, 1985, when making a decision on the disturbance-based consideration portion of NC as it relates to the soils and hydrology diagnostic factors.

https://nrcs.sc.egov.usda.gov/west/ak/ecological_sciences/

## Exemptions/Exceptions and Wetland Determinations and Delineations

The determination of whether or not land is a wetland is based on a technical determination using the FSA Wetland Identification Procedures (as described in the NFSAM Appendix, NRCS Alaska Policy and Procedures, COEM, and Alaska Supplement). Wetland labels are used to identify land subject to exemptions (exceptions) or *restrictions* under the Act. Such land may or may not meet the definition of wetland. For a complete list of these refer to the NFSAM, Subparts B through E which contain instructions for identifying and labeling wetlands to determine whether restrictions or exemptions apply to the land per the WC provisions of the Act. These can be found at the following links:

http://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29369

and https://nrcs.sc.egov.usda.gov/west/ak/ecological_sciences/

The planner must determine if an exception applies and delineate Sampling Units based on the applicable exception (FSA Wetland Labels). The assignment of the most appropriate FSA wetland label is made at the *sampling unit* scale (refer to Module 4). Decision thresholds (*conditions*) are provided in each of the statutory and/or regulatory exemptions [7 CFR Part 12; Section 12.5 (b)]. These *conditions* are most typically based on number of days of inundation or saturation, cropping history, or the site conditions for a particular point in time (i.e. December 23, 1985, November 28, 1990). Exemptions can be full (i.e. Prior Converted Cropland, irrigation induced or Artificial Wetland) or with conditions (i.e. Farmed Wetland, Farmed Wetland Pasture, Mitigation).

Congress approved special consideration for certain lands in Alaska in the Urgent Supplemental Appropriations Act (P.L. 99-34, 100 Stat. 714, July 8, 1986) by adding to the FSA wetland definition – *this term [wetland] shall not include lands in Alaska indentified as having high potential for agricultural development which have a predominance of permafrost soils*. This special provision is managed by USDA in Alaska similarly to the formal exemptions provided in Section 12.5. Criteria for AEW are found in Appendix A in the document *Policy and Procedures – Wetland Compliance.*

**Why is this important to me?** Understanding the application of wetland labels is critical in the implementation of the FSA. Wetland labels are grouped by category, (1) natural and artificial wetlands, (2) wetlands converted to agricultural use before December 23, 1985, and (3) wetlands converted after December 23, 1985. Some wetland labels (and the criteria for making that label determination) may cause a landowner to be ineligible for farm bill programs. It is also important to understand the Alaska Exemption Wetland (AEW) which applies to specific permafrost soils. Not all permafrost soils meet the criteria for this AEW. The criteria for assigning the AEW to a permafrost soil is listed in the 1994 Alaska Mapping Convention as well as the new 2011 Alaska Policy and Procedures on the SharePoint Site. Wetland labels should be assigned to a wetland layer or Wetland Plan Map in toolkit. If an area is suspected of being a converted wetland in which the intent is to make production possible of a agricultural commodity, the landowner must produce a copy of a COE 404 permit and either mitigate the functions and values lost or request a Minimal Effects and/or Mitigation exemption in order to be eligible for farm bill programs. Review Subpart F and G in the NFSAM, 514, page 54.

**A landowner purchased a parcel of agricultural land that was cleared prior to their puchase in 1987. What possible wetland labels could be assigned? How would you document that the land was cleared prior to 1985? Where would you go to find out this information? A planner does a site inventory in Fairbanks. They take a soil probe and find out the soil is frozen. There are no soils maps in the area. Can the planner use the AEW? If not, what would be the process to find out if the area meets the AEW?**

Stop Time: _____

Notes:

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Congratulations! You have finished with Module 1. Proceed to Module 2.