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**Subject: ECS - Distribution of Wetland MOA
Interagency Local Operating Procedures**

Date: September 5, 1995

**To: All Field Offices
Management Team
Wetland Teams**

File Code: 190

The attached Interagency Local Operating Procedures (LOP's) have been developed and approved by the Wetland Memorandum of Agreement (MOA) agencies for distribution and use in Virginia. This document establishes a basic framework for completing agency responsibilities under this agreement and provides specific procedures to be followed.

This set of procedures consolidates all of the previously released materials related to completion of the MOA objectives, along with the operating procedures themselves, into one packet of information. This material will be reviewed and discussed at future District Conservationist meetings by the wetland team leaders.

In the mean time, if you have any questions, contact your wetland team leaders or Greg Moser.

L. W. Miller Jr.
M. DENISE DOETZER
State Conservationist

Acting

Attachment

**Wetland Memorandum
of Agreement
Virginia
Interagency
Local
Operating Procedures**

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**Wetland Memorandum Of Agreement
Virginia Interagency Local Operating Procedures**

Introduction:

The Interagency Memorandum of Agreement (MOA) on Wetlands establishes a basic framework for completing responsibilities under this agreement. In order to carry out the overall objectives of the MOA, specific procedures are needed that indicate how and who (which agency[s]) and under what conditions, various components of this program will be completed in Virginia. This document establishes specific procedures that have been agreed to by the following participating MOA agencies: The U.S. Army Corps of Engineers (Corps), the USDA, Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (USFWS).

I. Agency Responsibilities:

A. Which agency makes the Food Security Act (FSA)/Clean Water Act (CWA) determination?

1. On an **agricultural land** (both USDA participants and non-participants) - **NRCS** (*use NFSAM*)
2. On a **non-agricultural land** (Use Corps 1987 Wetland Manual)
 - a. USDA participant
 1. Small pockets (\leq 1 acre) - **NRCS**
 2. Narrow bands (\leq 200 feet wide, any length) - **NRCS**
 3. Other than a small pocket or narrow band (larger areas) - **NRCS in Coordination with Corps**
 4. In rapidly developing areas (See item II E below) - **Corps**
 - b. Non-USDA participant - **Corps**
3. In **Other Waters of US.** - **Corps/NRCS** (See Item VI below)

B. Agency Workload Priorities

NRCS (for determinations/certification):

1. Manipulations or conversions
2. Requests from participants (ag and non-ag) and non-participants (ag lands)
3. Delineation (where applicable, see item II B 3 below)

4. Certification of prior determinations

COE

1. Standard/General Permit Applications
 - Public notice (if needed) upon receipt of complete application
 - 30 day comment period on public notice
 - Permit issuance generally within 60 days, not to exceed 120 days
2. Pre-discharge Notification (Nationwide Permit)
 - Permit issuance or verification within 30 days of complete notification
3. Coordination with NRCS (Jurisdictional Determinations and Delineations)
 - Concurrence or modification of determination within 45 days of receiving a complete determination ("Worksheet")
4. Pre-application Consultation, site visits and delineation verification
 - Completed in less than 60 days
5. Enforcement (Sections 10 & 404)
 - Timely investigations and resolution
6. Compliance inspection of conditioned permits
7. Delineations

USFWS (Priority for field visits during consultation)

1. PFO1A and PFO1C (wet woods) wetlands
2. Wetland areas/types listed in Eastern Virginia in the publication "Recent Wetland Status and Trends in the Chesapeake Watershed, 1982 to 1989" by Tiner et. al, USFWS Ecological Services, May 1994
3. Other large wetland impacts

US EPA

1. Public outreach and education
2. Review of major 404 action
3. Environmental Impact Statement (EIS) reviews
4. Oversight of determination/delineations performed under the MOA
5. CWA enforcement

II. Interagency Coordination/Consultation

A. Jurisdictional Determinations/Delineations

1. Use of Virginia On-Site Wetland Determination Worksheet

a. Purpose

To transfer information and facilitate coordination between the MOA agencies for responding to wetland determination/delineation requests received from agricultural landowners in the state of Virginia. (See Section VIII., B below)

b. Initiation

- Use of the worksheet can be initiated by staff representing any of the four MOA signatory agencies.
- The MOA agency person initiating the worksheet fills out the worksheet, providing the required basic information. The worksheet is then forwarded to the appropriate NRCS field office to be completed and then forwarded to the NRCS Wetland Team Leader.

c. Worksheet Completion

The NRCS Wetlands Team Leader will determine whether a site visit is necessary, coordinate all on-site visits, and, in consultation with the USFWS, insure FSA compliance. A field representative from the Corps will be responsible for determining any CWA permitting requirements and may advise the applicant of any state or local permitting requirements. The Corps (only) will receive a copy of the completed worksheet and all attachments.

d. The worksheet can be used for reporting violations.

2. Small Pockets and Narrow Bands

a. Definition

The Virginia Mapping Conventions define small pockets as areas of non-tidal natural vegetation completely surrounded by agricultural land and not exceeding one ~~acre~~ (1) acre in size (considered isolated waters under 33 CFR 330.2(e)).

Narrow bands are natural bands of vegetation not exceeding 200 feet in width that are within agricultural lands. These bands may be any length.

b. Procedures

NRCS will make off-site jurisdictional determinations for FSA and CWA purposes on small pockets and narrow bands of non-agricultural land using the Virginia Mapping Conventions. These determinations do not need to be coordinated with the Corps.

Proposed activities in small pockets that would result in one or less acre of impacts for any tract would meet the conditions of one or more nationwide permits (including nationwide 26), and do not need to be coordinated with the Corps provided there are no endangered species or cultural resource concerns. However, the NRCS wetland teams will maintain a count of projects that are planned for isolated pockets, along with the approximate area of wetland impact (in square feet or acres) associated with each project. These totals will be reported to the MOA agencies on a quarterly basis by county.

NRCS will also maintain counts of spring development projects, along with the approximate area of wetland impact associated with each project. These totals will also be reported to all of the agencies on a quarterly basis by county. No further coordination with the Corps will be required for these projects.

All proposed activities in narrow bands will need to be coordinated with the Corps, because they may not meet the nationwide permit conditions. Coordination will be by worksheet.

3. Non-Agricultural Land Procedures

NRCS jurisdictional determinations for FSA and CWA purposes for areas that are not small pockets or narrow bands of non-agricultural land must be coordinated with the Corps before they are released to the property owner or operator. These determinations will be made using the Corps 1987 Wetland Manual. These jurisdictional determinations are not valid until the Corps has reviewed and concurred with the NRCS determination.

All proposed activities in areas that are not considered small pockets or narrow bands must be coordinated with the Corps. Coordination will be by worksheet.

The Corps will have 45 days to review a completed determination/delineation. During that period, the Corps will conduct any necessary site visits and revise the determination if needed. The Corps will strive to review the determination and provide a prompt response to NRCS. This response will include information on any necessary permits, possible verification of nationwide permits or agricultural exemptions. After 45 days, if NRCS receives no response from the Corps, it may assume Corps concurrence with the jurisdictional determination. (Does not include permit requirements.)

4. Linear Projects

The Corps will take the lead for determinations associated with linear projects (highways, pipelines, transmission lines, etc.) on both agricultural and non-agricultural land.

On agricultural land, the Corps will use the Virginia Mapping Conventions for off-site determinations. The Corps will examine and utilize any previous NRCS/SCS wetland determinations when appropriate. These off-site determinations will be field verified following selection of final project alternatives.

On non-agricultural land, the Corps will use their 1987 Manual for determinations/delineations.

B. Certification

1. Period of Certification

- a. Certified determinations will remain in effect for five years for Prior Converted Cropland (PC) and agricultural land non-wetland (NW) calls, unless technical error occurs, which can be corrected at any time.
- b. Certified determinations for other labels (Farmed Wetland [FW], Wetland [W], NW [in non-agricultural land], Farmed Wetland Pasture or Hayland [FWP], etc.) will remain in effect for 5 years unless manipulation is proposed or completed, in which case there will be a new determination that will be good for 5 years.
 - Any determination changes, based on a or b above, will be coordinated with the agencies prior to final labeling.
- c. Certified delineations are good for 5 years unless new information warrants revision.

2. Corps Standards (For Jurisdictional Determination/ Delineation on Non-Agricultural Land)

- Complete appropriate Corps 1987 Manual data forms and "worksheet" (for determinations and delineations).
- Flag field boundaries for delineations.
- For delineations, the wetland boundary should be clearly identified in the field or on a map or photograph.

3. NRCS Policy

Determinations:

- FSA procedures will be used to make all on and off-site agricultural determinations.
- Mapping conventions will be used off-site whenever possible in agricultural land to make determinations.
- On-site determinations will be required for all proposed manipulations (other than PC and agricultural land NW's), appeals, and for non-agricultural land.

Delineations (on-site boundaries): are made only in limited situations:

- At discretion of NRCS wetland team leaders where:
 - small areas (generally < 5 acres)
 - based on workload
- Otherwise delineations will be made by consultants and confirmed by NRCS (see Appendices VIII., J and A)

4. Information Exchange

Principal tools for exchange: (For use by all MOA agencies)

a. "Virginia On-Site Wetland Determination Worksheet" ("The Worksheet") (See Appendix VIII., B)

- Issues covered by the worksheet:
 - Coordination/Consultation between NRCS-COE-EPA-USFWS

b. Quarterly Report

- NRCS wetland team leaders will coordinate a report to the agencies consisting of:
 - wetland acreage manipulated for spring developments and isolated pockets of non-agricultural land by NRCS field offices
 - report data: number of acres by type, by county on a quarterly basis.
- All other coordination/consultation information will be provided to the agencies using the "worksheet"

C. Enforcement Activities

1. Corps of Engineers Enforcement (See 33 CFR 326)

Activities in wetlands and other waters of the United States that may require Corps authorization include placement of fill, excavation, mechanized land clearing, stumping, grading, and placement of some structures. Some activities conducted in wetlands and other waters of the United States have not been authorized, permitted, or verified by the Corps. Enforcement is the investigation and resolution of these activities by either the Corps or EPA.

When investigating a reported violation of Section 404 of the CWA, the Corps or EPA may conclude that:

- a. The activities are in violation of CWA;
- b. The activities do not require Corps authorization (No permit is required);
- c. The activities may be authorized under one or more general permits (nationwide or regional permits).
- d. No action is necessary.

When the Corps receives a reported violation of CWA, it begins an investigation. Key questions to be addressed during the investigation include:

- a. Is the activity in violation of CWA?
- b. What is the extent of the violation?
- c. What additional information is needed?
- d. Who is the property owner?
- e. When was the area disturbed (filled, ditched, etc.)? Why was it disturbed?
- f. Is the activity in a county in which EPA currently has the lead for enforcement activities (Accomack, Northampton, Stafford, and Fairfax) or should it be referred to EPA under the National 404 Enforcement MOA?

If the activity is ongoing and/or appears to be in violation of CWA, the Corps may order the participant to halt all work in wetlands and other waters of the U.S. (a Cease and Desist Order). Failure to comply with the cease and desist order can result in civil and/or criminal penalties. The Corps may also refer the case to EPA for further administrative, civil, or criminal actions.

Generally, the Corps and EPA prefer to see the participant take voluntary measures to correct a violation; however, either the District Engineer of the Corps or the Regional Administrator of EPA can direct the participant to take corrective actions.

The Corps and EPA prefer to see corrective measures taken to restore a violation. It is not always possible to restore a wetland area. In some instances, houses or other structures may already have been built in wetlands. In those cases, the Corps and EPA may seek compensation for the wetland losses. Compensation may include restoring wetlands, creating wetlands, preserving or enhancing wetlands, or a combination of these actions. Only on very rare occasions is an after-the-fact permit issued for an unauthorized activity. Occasionally, the participant will not cooperate with the Corps, at that point, the Corps may refer the case to EPA or choose to take legal action (civil or criminal). EPA can assess administrative penalties of up to \$125,000 for unauthorized activities:

2. NRCS Enforcement

The FSA prohibits those farmers that are currently receiving USDA program benefits from making commodity crop production possible in wetlands. In a forested wetland, for example, commodity crop production would be possible once the trees and stumps were removed.

Apparent violations of FSA may be observed by Consolidated Farm Services Agency (CFSA) or NRCS during routine examination of the slides of crop fields taken annually.

When investigating a reported FSA violation, NRCS may determine that:

- a. The activities are in violation of FSA (the activities made commodity crop production in wetlands possible);

- b. The activities did not make commodity crop production possible or are covered by FSA exemption.
- c. The activities were for expressly non-agricultural activities (such as roads, ponds, buildings, etc.), and are not in violation of FSA (CWNA). These activities may or may not require a 404 permit.

If an FSA violation is found by NRCS, it will request a Form 569 from CFSA. NRCS will also determine if a violation of FSA has occurred if reported on a Form 569 by CFSA. Processing this form may result in suspension of the participant's USDA benefits. Benefits may be restored pending restoration or mitigation of the impacted wetland area on a converted wetland plus year (CW + year), or after cessation of cropping on a converted wetland (CW).

3. Procedures

The public often reports suspected violations of the CWA. Federal employees are required to report suspected violations of federal law, including the CWA and the FSA. Timely notification of suspected unauthorized activities will facilitate investigation and resolution of CWA violations. In general, if an alleged activity is more than 5 years old, the Corps and EPA do not consider it a high priority for further investigation.

In order to investigate an unauthorized activity, the Corps, EPA, or NRCS need to know the site location, what activities were/are being conducted, and if the work is ongoing. In addition, it is important to know who is/was conducting the work, and when the work began. The wetland worksheet should be used to notify the Corps or EPA of suspected CWA violations and NRCS of suspected FSA violations. If a member of the public notifies any MOA agency of an alleged CWA/FSA violation on a farm, that agency will inform the other MOA agencies.

As per agreement with the Corps, EPA currently has the lead for CWA enforcement in four Virginia counties (Accomack, Northampton, Stafford, and Fairfax). Alleged CWA violations in those counties must be reported to the EPA Region III Enforcement Coordinator. (See Appendix VIII., A.)

The lead agency for investigation of possible violations is defined in the Ag MOA, Part IV Allocation of Responsibility, Paragraphs J and K. Non-exempt activities on lands mapped by NRCS as wetland (W), manipulated

wetland (WX), farmed wetland (FW), farmed wetland pasture (FWP), and converted wetlands (CW) may need CWA authorization or may be in violation of CWA if unauthorized. Activities that result in manipulated wetlands (WX), converted wetland non-agricultural use (CWNA), converted wetland (CW), wetlands converted since November 28, 1990 (CW + year), and converted wetlands missed due to technical error (CWTE) may be in violation of CWA.

During investigation of alleged unauthorized activities on farms, the MOA agencies will be afforded the opportunity to participate in site visits. Courtesy copies of all correspondence on alleged violations will be sent to the MOA agencies. All proposed resolutions of unauthorized activities will be coordinated with the MOA agencies to ensure that corrective actions are consistent with both CWA and FSA.

D. Appeals (FSA)

1. FSA

- The MOA requires interagency consultation/coordination early in the FSA appeals process under certain circumstances.
- Action: NRCS will notify USFWS, Corps & EPA to provide participation and input opportunity during the appeal process whenever a change in wetland determination is being considered. Otherwise no notification required.
- Notification & Documentation: Contact Corps & USFWS by phone (see attached lists, Section VIII., A) as soon as possible

2. CWA - The Corps does not currently have an appeals process.

E. Rapidly Developing Areas

1. Rapidly Developing Areas

Rapidly developing areas (RDA's) are localities in which the principle land use is shifting from agricultural to residential and commercial development. Three geographic areas located in the northern, central, and southeastern portions of Virginia have been designated as "RDA's". These areas are shown on the attached map. (See Appendix VIII., M.)

The northern area includes Fairfax, Prince William, Stafford, Spotsylvania, and Loudoun Counties and the Cities of Fredericksburg, Manassas, Manassas Park, Falls Church, Fairfax, Arlington, and Alexandria. The central area encompasses Henrico, Hanover, Charles City, Chesterfield, Goochland, Powhatan, New Kent, and Prince George Counties and the Cities of Richmond, Hopewell, Petersburg, and Colonial Heights. The southeastern area includes York and James City Counties and the Cities of Norfolk, Portsmouth, Chesapeake, Virginia Beach, Suffolk, Newport News, Hampton, Poquoson, and Williamsburg.

2. Justification/Background

Designation of rapidly developing areas will ensure that the Corps and Natural Resource Conservation Service (NRCS) make the most effective use of their limited resources and provide rural, urban, and suburban communities with the most prompt service possible. The relevant issues that gave rise to this action included staffing to implement provisions of the MOA, workload, and processing delays.

a. Staffing

In order to implement its responsibilities under the MOA, NRCS organized teams to conduct wetland determinations and delineations in Virginia. These teams operate regionally on wetland determinations and delineations, including appeals. The Corps has 34 environmental scientists capable of conducting jurisdictional determinations in Virginia. Twenty of those scientists work in rapidly developing areas.

b. Workload

Since implementation of the MOA, the Corps has seen the number of jurisdictional determinations, delineations, and enforcement cases on non-agricultural lands associated with agricultural operations increase 10 fold over previous years. Most of these requests are outside of the rapidly developing areas. Once training is complete, NRCS will assume the lead on most of this workload, however, the Corps will review these completed jurisdictional determinations in accordance with the MOA (Part VI Definitions, Paragraph A). The wetland worksheet will be used to transfer this information for review.

In FY '94, rapidly developing areas (19 cities and 15 counties) accounted for more than 50% (870 cases) of all Norfolk District Corps jurisdictional

determinations, delineations, and enforcement cases. Under the MOA, NRCS could be considered responsible for many of those jurisdictional determinations, even though less than 3% of those projects actually involved agricultural production.

c. Processing Delays

Designation of rapidly developing areas reduces the likelihood of project delays for both USDA program participants and property owners not involved in agricultural land uses, by allowing NRCS and the Corps to concentrate their efforts in the geographic areas their staff is concentrated in. Otherwise, the large workload in rapidly developing areas, the large number of requests for jurisdictional determinations in rural areas, and the small number of NRCS wetland teams would contribute to delays for all parties requesting jurisdictional determinations.

3. Procedures

In these RDA's, NRCS will continue to make wetland determinations for FSA and CWA purposes on agricultural lands (as defined in Part III of the Ag MOA), however, NRCS has requested the Corps to assist in making wetland determinations on non-agricultural lands except for "small pockets" and "narrow bands" (as defined in "Mapping Conventions and Off-Site Wetland Determination/Inventory Procedures for Virginia").

In these areas, requests for wetland determinations on non-agricultural lands may be referred to the Corps. If the Corps is not able to service these requests, they will be referred to consultants by NRCS.

Copies of all jurisdictional determinations made by the Corps on non-agricultural portions of agricultural operations (as defined in the Ag MOA Part III, Paragraph A) will be provided to NRCS for FSA application. Courtesy copies will be sent to the FWS. These determinations will be made in a prompt and timely manner. FWS will be afforded the opportunity to participate in site visits associated with jurisdictional determinations on the non-agricultural portions of farming operations. It should be noted that FSA does not have a minimum area in which wetland conversion for commodity crop production is acceptable, so the results of all determinations of any size must be provided to NRCS.

III. NRCS/FWS Food Security Act Consultation

Implementation of the MOA for delineating wetlands on agricultural lands does not supersede any of the consultation requirements called for in the 1985 Food Security Act and 1990 Food, Agriculture, Conservation and Trade Act (FACTA) between the Natural Resources Conservation Service and the U.S. Fish and Wildlife Service. Each agency will continue to be a full participant in enforcing the Swampbuster provisions of the FSA, as detailed in the Third Edition of the FSA Manual. See pages 513-9 through 513-11 in the FSA Manual for an overview of actions requiring consultation between NRCS and FWS.

Implementation of the MOA should enhance FSA consultation by streamlining wetland-related actions and calls and by utilizing a unified approach among the signatory agencies.

IV. Oversight Summary

The MOA provides that EPA will be the lead signatory agency in providing technical oversight for wetland determinations and delineations performed under the MOA. This oversight will be a team approach with representatives of the four signatory agencies. Oversight teams will visit NRCS field offices to conduct reviews of determinations prepared by use of the mapping conventions and wetland determinations/delineations performed in the field. The oversight will be performed on a scheduled and/or as needed basis. See Appendix H, Section VIII. for oversight procedures.

V. Agricultural Exemptions (See 33 CFR 323.4)

Certain activities conducted by farmers in wetlands are exempt from regulation under Section 404 of the CWA. In order to be exempt, the activities must be part of an ongoing farming operation, and cannot be associated with bringing a wetland into agricultural production. For example, stumping an area would not be an exempt agricultural activity. An operation is not ongoing when the area has lain idle for so long that hydrologic modifications are necessary to resume operations.

If a proposed activity would convert wetlands or other waters of the U.S. then a permit under Section 404 of CWA would be required. For instance, conversion of a bottomland wetland to another use, or the conversion of a wetland from silviculture to commodity crop production, would require a permit.

Contact the Corps or EPA if there are questions as to whether an activity is exempt from regulation under Section 404 of the CWA.

Exempt Activities include:

Harvesting crops from agricultural fields using combines, balers, etc.;

Cultivating using a cultivator, hoe, or similar implements to reduce competition from undesirable plants and to improve the growth, quality, or yield of crops;

Minor drainage such as connecting upland drainage facilities (tile drains, ditches, etc.) to waterways (in order to remove excess soil moisture from upland croplands) and the removal of drainage obstructions (sandbars, debris, etc.) in previously existing drainage ways. It does **NOT** include converting a wetland area to upland or converting one wetland use to another (such as converting a forestry operation to commodity crops);

Plowing includes the use of all forms of primary tillage (such as moldboard, chisel, wide-blade, discing, and harrowing) that are normally used to prepare a seedbed. Plowing does **NOT** include moving surface material by grading, blading, or shaping in order to fill wetlands;

Seeding includes sowing seed, planting seedlings, and creating seedbeds on established agricultural fields;

Maintenance and emergency repair or reconstruction of recently damaged parts of serviceable structures (dikes, dams, riprap, causeways, bridge abutments, roads, etc.). Maintenance does not include changes in the character, scope, or size of the original structure;

Excavated Farm/Stock Ponds for watering livestock, irrigating crops, or fire prevention, **NOT** for recreation or fish and wildlife; The pond must not be placed in a perennial or intermittent stream. The size of the pond must be commensurate with the amount of water needed to support the primary farming operation.

Maintenance of Drainage Systems includes mowing ditch banks, cleaning out sediment in farm ditches, replacing tile, repairing water control structures, and replacing culverts, so long as the work does not increase drainage effectiveness beyond the original scope and effect. Maintenance does not include drainage of wetlands nor does it include restoration

of drainage systems in wetlands (including abandoned crop fields and farmed wetlands);

Maintenance of Farm Ponds includes removal of accumulated sediment and repair and replacement of the dam and principal spillway. Maintenance does not include modifications that would change the size or purpose of the pond or result in changes to wetlands upstream or downstream of the pond;

Farm Roads or Lanes may be constructed through wetlands to access agricultural fields. The number, length, and width of the crossings must be held to a minimum. The road or lane must be bridged or culverted to allow for flood flows. Best management practices must be used in the design, construction, and maintenance of these roads. These roads may not impair the reach, flow, circulation, or characteristics of waters of the US. The Corps or EPA can provide a complete list of requirements.

VI. Other Waters of the United States

A. Definitions

Waters of the U.S. include wetlands, lakes, streams (perennial and intermittent), ponds (created through excavation or impoundment), rivers, territorial seas, all tidal waters (including tidal drainage ditches), mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, pocosins, abandoned borrow pits, etc.

Other waters of the U.S. refers to all waters other than wetlands. Work in "other waters of the US" (including placement of fill, excavation, grading, and placing structures) may require authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

Waste treatment systems, including treatment ponds or lagoons are generally **not** waters of the US and work in these systems may not require authorization from the Corps; however, if abandoned these may become waters of the U.S.

The complete regulatory definition of waters of the US is listed in the Corps of Engineers regulations at 33 CFR 328.3. The jurisdictional limits of waters of the US are defined at 33 CFR 328.4.

B. Procedures

Waters of the US (except wetlands) are not addressed in the Virginia Mapping Conventions and will not be mapped using off-site methods.

The Corps may determine whether an area is considered to be waters of the US and will advise property owners/operators of any permit requirements.

NRCS may identify "waters of the U.S." only when a proposed manipulation will affect both waters of the US and adjacent lands (farm field, pasture, etc.). NRCS will not make an other waters determination if the proposed activity is restricted to the area between streambanks (shoreline stabilization, stream channelization, etc.) because such activities are not covered under FSA. In those instances, NRCS may advise the owner/operator that those features may be waters of the US and that Corps confirmation and authorization may be required for work in those areas.

The wetland worksheet will be used to document waters of the US and to convey information between MOA agencies.

VII. Training

A. Cross-Manual Training for On-Site Wetland Calls

As called for in the MOA, inter-agency training on the Corps 1987 Manual for Identifying and Delineating Wetlands and on the wetland methodologies of the FSA Manual is required before determinations or delineations are conducted on-site. Agency staff who have not had this training are not authorized to identify or delineate wetlands on-site without the oversight of a trained MOA agency staff person.

Field Training for On-Site Wetland Calls

Members of the Wetland Teams organized by the NRCS to work in Virginia all received the cross-manual training described above. In addition, the Teams will be accompanied in the field by Corps staff (and periodically by EPA and USFWS biologists) until each Team gains adequate experience with the wetland methodologies, especially the methodologies of the 1987 Corps Manual. Over a period of time, the Wetland Action Teams will individually receive a "release notification" issued by the NRCS State Office in coordination with the other signatory agencies to conduct wetland field investigations without supervision in the field by staff from the other signatory agencies.

Team members will also receive botanical training before a release is issued. The release notifications will in no way remove the responsibility to coordinate wetland calls and actions among the signatory agencies.

Mapping Conventions for Off-Site Wetland Calls

Mapping conventions and procedures for off-site wetland calls in Virginia were finalized in August 1994 and re-authorized with revisions in December 1994 (see Appendix D.). NRCS Wetlands Team Leaders will be responsible for training NRCS field staff in use of the new mapping conventions. The MOA inter-agency oversight team will periodically visit NRCS field offices to insure accuracy and consistency in use of the mapping conventions. Wetlands Team Leaders will also participate in these oversight reviews.

VIII. Appendices

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IX. Concurrence of Virginia Interagency Local Operating Procedures

The following representatives of the MOA signatory agencies concur in the Virginia Interagency Local Operating Procedures as outlined in this document.

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Natural Resources Conservation Service

7-20-95

DATE

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DATE

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WILLIAM H. POORE, JR.
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United States Army Corps of Engineers

25 July 1995

DATE

Appendix A. List of Agencies/Contacts

MOA Agency:

Corps of Engineers:

Specific contacts - See Attached map and list

General contact - Steve Martin
U.S Army Corps of Engineers
803 Front Street
Norfolk, Va 23510
Ph. (804) 441-7787 FAX (804) 441-7678

Natural Resources Conservation Service:

Specific contacts (Wetland team leaders) - See attached map for counties covered:

- Team #1 - Barry Skiles, Engineer
104 Hubbard Street
Blacksburg, Va. 24060
Ph. (703) 951-7865 FAX (703) 951-0112
- Team #2 - Louis Heidel, Soil Resource Specialist
Agricultural Service Center
505 N. Main St.
Woodstock, Va. 22664-1803
Ph. (703) 459-8671 FAX (703) 459-8069
- Team #3 - Jerry Quesenberry, Soil Resource Specialist
425-D South Main Street
Emporia, Va. 23847-2313
Ph (804) 634-0176
- Team #4 - John Nicholson, Supervisory Soil Scientist
1700-C South Main Street
Farmville, Va. 23901-2536
Ph (804) 392-4171 FAX (804) 392-1774

General contact - Gregory Moser, Biologist
Culpeper Building, Suite 209
1606 Santa Rosa Rd.
Richmond, Va. 23229-5014
Ph. (804) 287-1669 FAX (804) 287-1736

U.S. EPA:

- Chief, Wetland Protection Section
or
Enforcement Coordinator
EPA Region 3
841 Chestnut Building
Philadelphia, Pennsylvania
Ph. (215) 597-9301

Appendix A. List of Agencies/Contacts

U.S. Fish and Wildlife Service:

- Farm Bill Coordinator
U.S. Route 17
P.O. Box 480
White Marsh, Va. 23183
Ph. (804) 693-6694 FAX (804) 693-9032

Appendix A. List of Agencies/Contacts -Virginia Wetland Teams

VIRGINIA

VIRGINIA WETLAND TEAMS May, 1995

Team #1

- Barry Skiles - Engineer, Leader
- Louis Heidel - Soil Scientist
- David Hancock - Botanist

Team #2

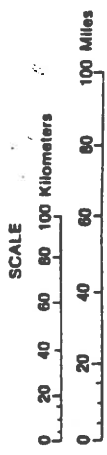
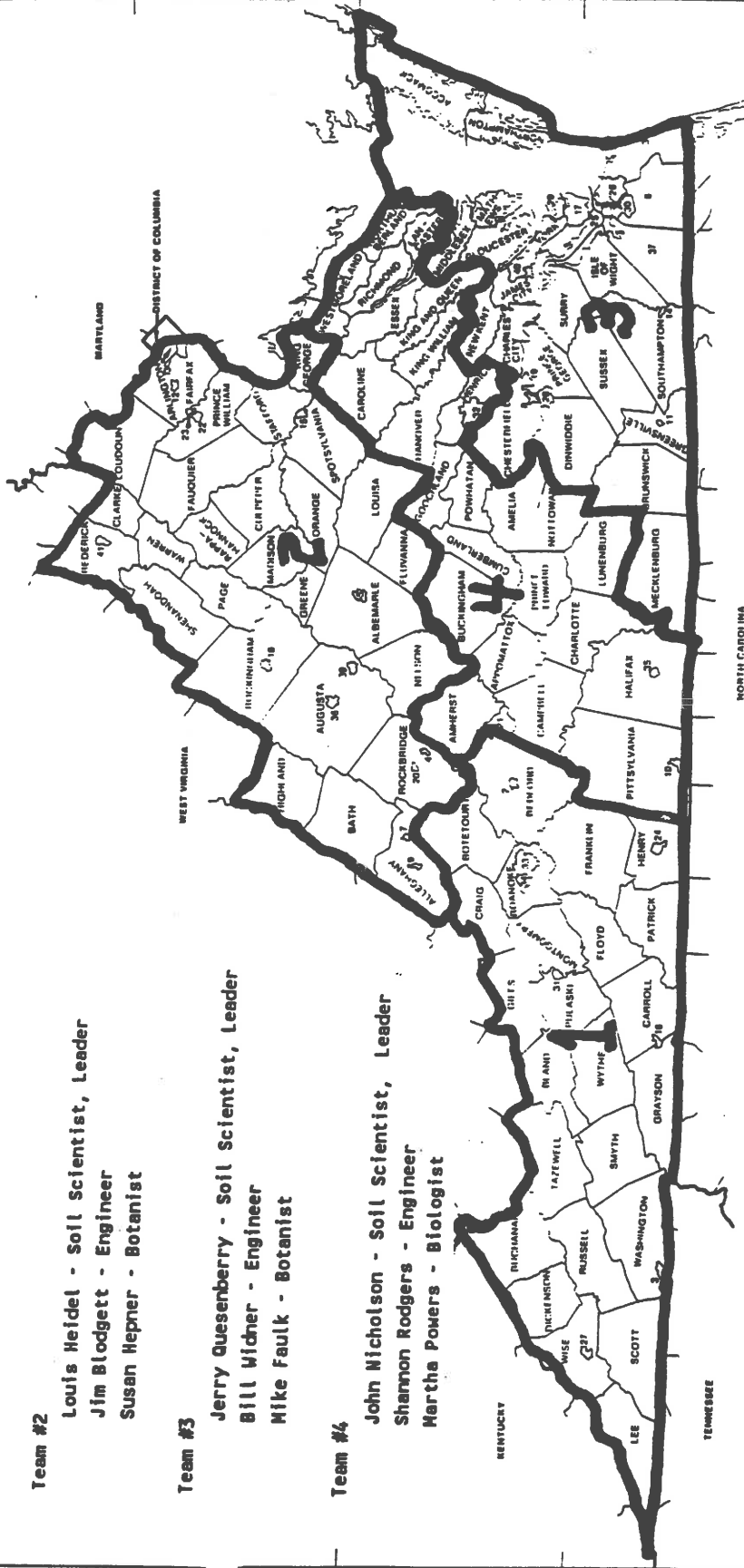
- Louis Heidel - Soil Scientist, Leader
- Jim Blodgett - Engineer
- Susan Hepner - Botanist

Team #3

- Jerry Quesberry - Soil Scientist, Leader
- Bill Wicher - Engineer
- Mike Faulk - Botanist

Team #4

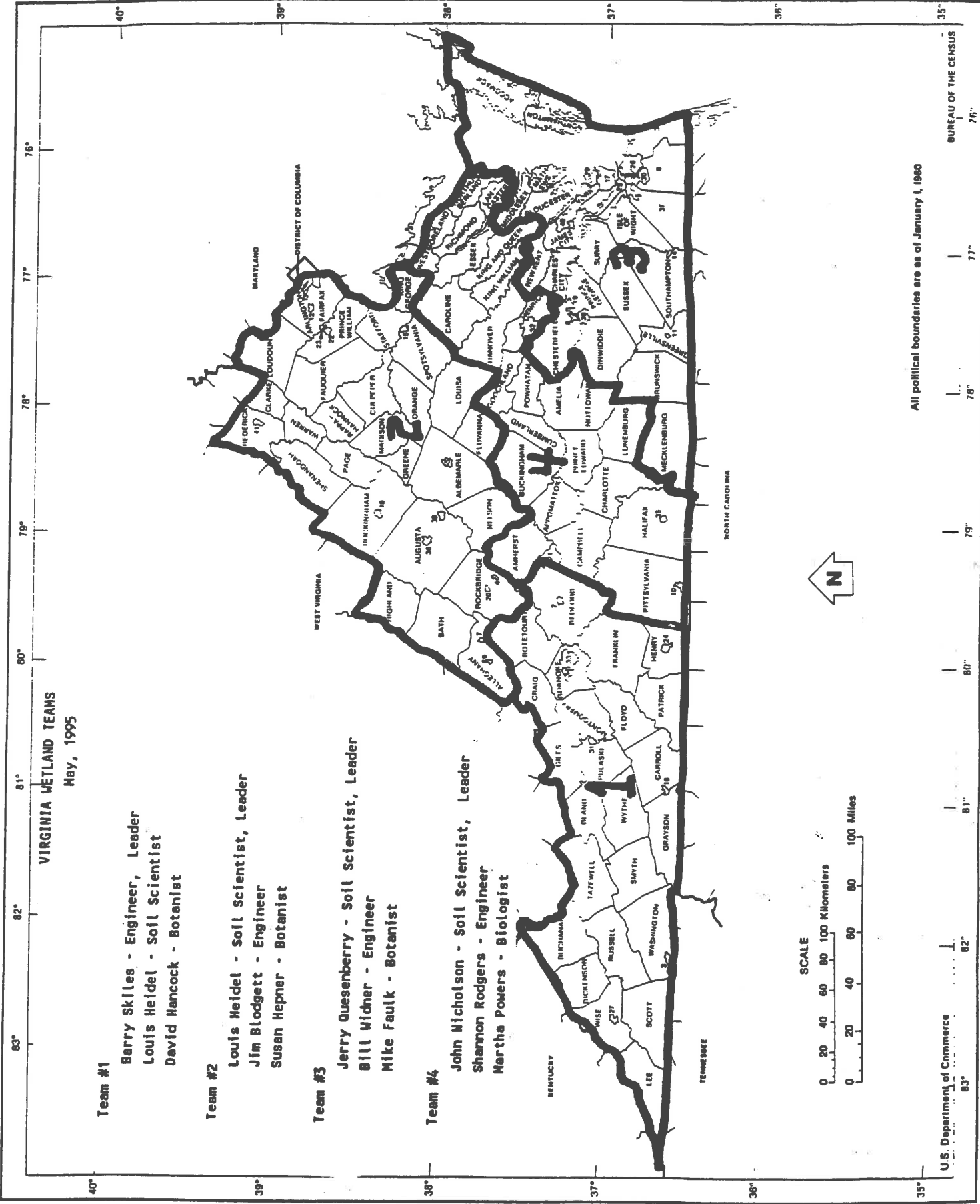
- John Nicholson - Soil Scientist, Leader
- Shannon Rodgers - Engineer
- Martha Powers - Biologist



All political boundaries are as of January 1, 1980

U.S. Department of Commerce

BUREAU OF THE CENSUS





Virginia On-Site Wetland Determination Worksheet

Requesting Agency Field Office Name _____ Phone Number _____ County _____	
Date Request Received in Field Office ___/___/___ Field Office Staff Contact _____	
USDA Participant () yes () no	Worksheet Control No. _____
Current Land Use: Agricultural () Non-agricultural ()	
If Non-agricultural, check one or more: Narrow Band () Small Pocket () Greater than 1 acre ()	
Within larger non-ag area: Greater than 1 acre () Less than 1 acre ()	
Site Information*	
Landowner's Name _____ Phone # _____	
Address _____ Farm # _____ Tract # _____	
Operator's Name _____ Phone # _____	
Required Attachments Checklist*	
() CFSA Tract Map	() CWNA Plan (if applicable)
() Soil Survey Map # _____	() NRCS Environmental Evaluation (VA Form EE1)
() SS Legend	() Offsite Wetland Determination (if done)
	() Copy of 7.5 Min. Topo Quad with Name _____
Previous Wetland Information*	
Previous Wetland Determination for tract? () Yes () No () NWI Wetland Determination Class(es) _____	
Previous COE visit? () Yes () No If Yes, COE Determination/Permit Type _____ Project # _____	
Manipulation Information*	
Type of Manipulation (Describe in detail including vegetation)	Potential T & E Species Impact? Yes _____ No _____
Purpose of Manipulation (Describe in detail)	
Size of Area of Manipulation: _____ Acres (nearest tenth of an acre)	Are there any hydric soils mapped in the impact area?
	Yes _____ No _____
Approximate Size of Wetland Impact: _____ Acres (nearest tenth of an acre)	

*Data to be provided by requesting Agency Field Office

(FAX completed front page with topo copy indicating location to USFWS (FAX # 804-693-9032))

**On-site Determination
(Wetland Team)**

Team Members: _____ Date(s) of Field Visit: _____

Wetland: () Yes () No
(If FW, FWP, or PC and scope and effect applies, see NFSAM Part 515)

T & E Species Impact? Yes ___ No ___
Cultural Resources Impact? Yes ___ No ___

Wetland Acres Impacted: (greater than 1 acre) _____ (nearest tenth of an acre)
Or, if 1 acre or less: Square Feet of Wetland Impacted: _____

Note: Attach wetland data forms, COE 87 Manual or NFSAM Manual, used for on-site determinations

Date Received By:

Date Mailed To:

NRCS Team Leader: ___/___/___

USFWS ___/___/___ COE ___/___/___ NRCS ___/___/___

Other Office: ___/___/___

USEPA ___/___/___ Other ___/___/___

**FSA / FACTA / CWA Determinations
Wetland Team Leader**

Check appropriate types:

() PC () NW () CW () CW_{year} () W () CWNA Check if post-approved () () AW
() WX () MW () CWTE () FW () FWP () Other (See NFSAM Pg. 513 - 18)

Is this a potential FSA / CWA violation () Yes () No

If yes, FAX this worksheet with all attachments to COE

Comments:

Coordination / Consultation

Is any further coordination / consultation needed? () Yes () No

If Yes, Agency Name _____

Describe Need:

US Army Corps of Engineers CWA Determination

Wetland () Yes () No If Yes: Permit Type: _____ Project # _____

Comments:

Note: If response is not returned to NRCS in 45 days of receipt by agencies, certification/approval will be assumed.

Appendix C.

Use and Interpretation of the "Virginia On-Site Wetland Determination Worksheet"

Purpose & Background of the "Wetland Worksheet"

The worksheet was developed by a subcommittee of the NRCS Wetland Action Team to distribute wetland coordination/consultation information between the wetland agencies as required by the MOA. All four of the MOA agencies (COE, USFWS, EPA and NRCS) have reviewed and approved the use of the "Wetland Worksheet". This form is designed to originate from any of the MOA agencies and be distributed to the other agencies for follow-up action or informational purposes.

Use of the Worksheet.

When to Use the Worksheet

- A. Provide to MOA agencies for:
1. Most wetland manipulations (includes agricultural land (FW and AW), non-agricultural land (W, NW and FWP) and narrow bands of non-agricultural land, see #B1 and #C1 below for exceptions)
 2. Potential wetland violations
 3. All non-agricultural determinations requested by participants (requires wetland team on-site check/concurrence and coordination with MOA agencies)
 4. Situations where NRCS is providing on-site technical assistance and/or evaluating manipulation (wetlands, either present or absent) where a stream will be impacted.
- B. NRCS use only (Form not provided to agencies):
1. Wetland manipulation involving isolated pockets of non-agricultural land (≤ 1 acre in size) interspersed among agricultural land (i.e. W and FWP surrounded by agricultural land)
- wetland team leader provides quarterly report to agencies
- C. Worksheet is not required for:
1. Wetland manipulations involving spring developments (≤ 1 acre wetland impact)
- Form VA EE-1 (include wetland and spring suppl.) is used by field office to report square feet of wetland impacted (filled, drained, etc.) to the wetland team leaders.
 2. All agricultural off-site determinations

How to Complete the Worksheet (See Attached)

(Front Page)

Item No.

- | | |
|----|---|
| 1 | Completed by the requesting agency's field office |
| 2 | County of the proposed action |
| 3 | See USDA participant definition page 6 of "Mapping Conventions" |
| 4 | Control # = FIPS Co. Code + tract # + 1, 2, 3, etc., if needed |
| 5 | See definitions pages 4 & 6 of "Mapping Conventions" |
| 6 | Provide if known |
| 7 | Self explanatory |
| 7a | Includes NRCS Form 026 & CFSA photocopy with determinations |
| 7b | Indicate site location on topo quad |
| 8 | Includes on or off-site. Does not include NWI data. |
| 9 | Indicate NWI map classes within area of impact, if any |
| 10 | Any known previous COE visits to impact site, if so, show type and number |
| 11 | Be specific, including existing site conditions and type of manipulation, examples 1.) .3 acres of herbaceous and .8 acres of forested wetland will be cleared and converted to irrigation pond and surrounding vegetated buffer. 2.) No wetland present, stream to be impounded by .8 acre pond. <u>Also include description of impacted streams. Include normal (Spring of year) width and length impacted.</u> |
| 12 | Describe purpose of manipulation, i.e., conversion of corn - soybeans to truck crops requires added source of irrigated water |
| 13 | Estimated size of <u>entire</u> area impacted (wetland + other) |
| 14 | Estimated size of all wetland types impacted (wetland only) |

(2nd Page)

Item No.

- 15 This block is for documentation of the on-site wetland determination/delineation. Indicate names of people (NRCS or otherwise) who made the call.
- 15a Applies only if originated by NRCS
- 15b Applies only to wetland impacts
- 16 Date NRCS wetland team leader or other agency office receives request for on-site determination/delineation
- 17 Date mailed to the other 3 agencies, 45 day response period begins 3 days after postage date
- 18 This item is to ascertain regulatory application of one agency's determination by the other wetland agencies. The wetland team leader/field office will forward to agencies.
- 19 All listed FSA calls may have CWA violation potential except: PC & NW. Also, any other potential violations noted during normal work hours are to be reported to COE and vice versa. The COE and USFWS should be invited to the initial field visit if a CW + YR call is likely.
- 20 FAX to COE ASAP - to reduce turn-around time (45 days). Phoning other agencies may also speed up the process, as needed
- 21 To be completed by applicable agency
- 22 The COE will indicate if a permit has been issued or is needed (in the comments section) and will provide a copy to the producer.

Worksheet Handling and Filing

When Initiated by NRCS (Provided to the Other MOA Agencies)

1. Wetlands present and stream(s) impacted or not
 - A. Field office (FO) completes front page and forwards to NRCS wetland team leader (a FO representative will be included on team for field visit and follow-up purposes).
 - B. The field office immediately FAX's front page and attachments to USFWS. (USFWS will notify NRCS Wetland Team Leaders if they will participate in initial field visit.)
 - C. Wetland team leader will oversee completion of the "Worksheet" in coordination with the agencies.
 - D. The NRCS FO and MOA agencies will store the completed "Worksheet" and attachments in their case files.
 - E. Corps will provide permitting information and/or permit verification for owner/operator.
2. Wetlands not present but stream(s) impacted by NRCS assistance (except spring development)
 - A. FO completes front page of worksheet and forwards to Corps - only attachment required is topo copy indicating site location.
 - B. Corps will follow-up with landowner/operator as needed for permit.
 - C. Complete any coordination needs.
 - D. NRCS FO and Corps will store copies of completed worksheets in their case files.

When Initiated by NRCS (Not Provided to Other Agencies - Isolated Pockets of Non-Agricultural Land)

Apply A, C and D (Item #1 above) only

When Initiated by Other Agencies (to NRCS)

Where applicable:

- Potential violations of FSA regulations
- Referral of jurisdictional determinations to NRCS for application of FSA regulations.
- The wetland team leader will receive "Worksheets" and will follow-up as needed in coordination with the FO and other agencies to apply FSA regulations.
- The NRCS FO and MOA agencies will store the completed "Worksheet" and attachments in their case files.

On-site Determination
(Wetland Team)

15
Team Members: _____ Date(s) of Field Visit: _____

Wetland: () Yes () No **15a**
(If FW, FWP, or PC and scope and effect applies, see NFSAM Part 515) T & E Species Impact? Yes ___ No ___
Cultural Resources Impact? Yes ___ No ___ **15b**

Wetland Acres Impacted: (greater than 1 acre) _____ (nearest tenth of an acre)
Or, if 1 acre or less: Square Feet of Wetland Impacted: _____

Note: Attach wetland data forms, COE 87 Manual or NFSAM Manual, used for on-site determinations

16 Date Received By: _____ **17** Date Mailed To: _____

NRCS Team Leader: ___/___/___ USFWS ___/___/___ COE ___/___/___ NRCS ___/___/___

Other Office: ___/___/___ USEPA ___/___/___ Other ___/___/___

FSA / FACTA / CWA Determinations
Wetland Team Leader

Check appropriate types: **18**

() PC () NW () CW () CW____ () W () CWNA Check if post-approved () () AW
year
() WX () MW () CWTE () FW () FWP () Other (See NFSAM Pg. 513 - 18)

Is this a potential FSA / CWA violation () Yes () No **19**

If yes, FAX this worksheet with all attachments to COE **20**

Comments:

Coordination / Consultation

Is any further coordination / consultation needed? () Yes () No **21**

If Yes, Agency Name _____

Describe Need:

US Army Corps of Engineers CWA Determination **22**

Wetland () Yes () No If Yes: Permit Type: _____ Project # _____

Comments:

Note: If response is not returned to NRCS in 45 days of receipt by agencies, certification/approval will be assumed.

**MAPPING CONVENTIONS
AND
OFF-SITE WETLAND DETERMINATION PROCEDURES
FOR VIRGINIA
REVISED
DECEMBER 1994**

**MAPPING CONVENTIONS
AND
OFF-SITE WETLAND DETERMINATION PROCEDURES
FOR VIRGINIA
REVISED
DECEMBER 1994**

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**MAPPING CONVENTIONS
AND
OFF-SITE WETLAND DETERMINATION PROCEDURES
FOR VIRGINIA**

These conventions utilize Food Security Act (FSA) and Corps of Engineers (COE) 1987 Manual off-site wetland mapping tools to make determinations on agricultural land and narrow bands and small pockets of non-agricultural land.

These mapping conventions do not identify other federally regulated waters of the United States, such as lakes, rivers, ponds and streams. These areas do, however, fall under federal and/or state regulatory authority.

The maps produced using these conventions are intended for planning purposes only. A field ("on-site") determination/delineation, will be made before any land modification, manipulation, or maintenance is conducted on wet areas or potentially wet areas.

Tools to be used to conduct an off-site wetland determination: county hydric soils list (FOTG), soil surveys, weather data for magery dates, National Wetlands Inventory (NWI) mylars, Consolidated Farm Services Agency (CFSA) slides, color infra red (CIR) photos, other photos, personal knowledge, United States Geological Survey (USGS) topo, CFSA Form 578.

- Notes:
1. NWI will be considered accurate unless proven otherwise (ex. shows absence of signature in later years)
 2. Hydric Soils include:
 - a. whole unit hydric soils
 - b. soils that are ponded and flooded
 - c. hydric soils included in non-hydric map units. (Hydric soil may occur in any soil map unit.)

Mapping Conventions for Agricultural Land:

Permanent pasture or hayland + hydric soils or wetland signature or NWI or USGS topo wet symbol or soil survey wet symbol on moderately well drained soil = FWP¹

Note: Removal of any woody vegetation (stumping) from FWPs may constitute a wetland conversion.

¹ FWP will be considered agricultural land for off-site mapping purposes. On-site review may indicate that portions of the area determined to be FWP meet the non-agricultural land definition.

Cropland² + hydric soil (due to ponding for long or very long duration {15 consecutive days}) + wet signature (dark signature in a normal or dry year) + not abandoned = FW (Whole map unit hydric soil)³

Cropland² + wet signature (dark signature in a normal or dry year) + not abandoned = FW (hydric inclusion)³

Cropland² in Southeastern Virginia (including Chesapeake, Virginia Beach, Suffolk, Isle of Wight and Southampton Counties) + histosols (or soils with histic epipedons) + wet signature (ponds for 7 or more days or saturated for 14 or more days during growing season) + not abandoned = FW (Pocosin)

Cropland² + hydric soil (due to long or very long duration flooding) + 15 consecutive days flooding + wet signature + not abandoned = FW (whole map unit hydric soil)³

Cropland² + hydric soil (sandy soil or poorly drained) + wet signature + not abandoned = PC (Coastal Plain only)

Cropland² + hydric soil + no wet signature + not abandoned = PC

Cropland² + wet signature (due to saturation) + not abandoned = PC

Cropland² + NWI + not abandoned = possible PC (needs on-site evaluation to determine)

Any cropland, permanent pasture or hayland + no hydric soil + no wet signature + no NWI = Non Wetland (NW)

Any Farmed Wetland (FW) converted to increase agricultural production after November 28, 1990 = CW + yr. (An on-site confirmation is required to ascertain a CW + yr.)

Pond on non-hydric soil or PC that was not abandoned prior to pond construction = AW

² Cropland planted to an agricultural commodity before December 23, 1985.

³ Refer to Page 10, Item B for ponding or flooding criteria.
NOTE: These soils may not exhibit typical matrix low chroma colors.

Mapping Conventions for Non-Agricultural Land (Includes only narrow bands and small pockets interspersed among agricultural land)

Woods⁴ + hydric soil + any of the following = **W**.

- NWI
- Ephemeral, intermittent or perennial stream
- Color IR signature
- Color or B/W aerial photography signature
- Not effectively drained
- Tidal connection
- Wet symbol/indications on USGS Topos
- Soil survey wet symbol on moderately well drained soil
- Stream gauge data
- Previous on-site knowledge
- Otherwise Not Inventoried (**NI**)

Natural herbaceous cover + not in rotation + used as idle, wildlife or other non-agricultural purposes + hydric soil or CIR wet signature + any of the indicators listed for woods above = **W** Otherwise Not Inventoried (**NI**).

Natural vegetation + no hydric soil + no wet signature + no NWI = **Non Wetland (NW)**

Beaver or other naturally created impoundment + any soil + present for five years = **W**

An on-site determination is required to ascertain a **WX**.

Any wetland converted so as to make agricultural production possible between December 23, 1985 and November 28, 1990 = **CW**.
(An on-site confirmation is required to ascertain a **CW**.)

Any wetland converted so as to make agricultural production possible after November 28, 1990 = **CW + yr**.
(An on-site confirmation is required to ascertain a **CW + yr**.)

⁴ Includes shrub cover.

DEFINITIONS

Agricultural Land

- Lands intensively used and managed for production of food or fiber.
- Where natural vegetation has been removed and replaced with domestic (planted) vegetation such as that found on cropland, hayland, pasture, orchards and vineyards.

Artificial Wetland (AW)

AW is wetland that meets the following:

- Impoundments and dugout ponds built on either:
 - non-Hydric Soils.
 - prior converted cropland that had not been abandoned prior to construction.

Cropland

- Refers to agricultural land planted to an agricultural commodity (annually planted crop) at least once every five years or
- In formal state or federal set-aside program.
- Also includes pasture or hayland in commonly used rotation with an agricultural commodity.
- Examples of agricultural commodities include corn, soybeans, sorghum, barley, tomatoes, melons, etc.

Converted Wetland (CW)

CW meets the following:

- Wetland manipulated after December 23, 1985, to the extent that production of an agricultural commodity is possible, even if such crop is not actually planted.
- Manipulation includes removal of woody vegetation (cleared and stumped) and/or modification of wetland hydrology by draining, filling, leveling, etc.

Farmed Wetland (FW)

FW meets the following:

- Manipulated and used to produce an agricultural commodity at least once prior to December 23, 1985.
- Area still meets wetland criteria and either seasonally floods or ponds for extended periods of time (at least 15 consecutive days during the growing season).
- Area not abandoned.

Farmed Wetland Pasture or Hayland (FWP)

FWP meets the following:

- Meets wetlands criteria.
- Used for hay or pasture prior to December 23, 1985, or used for crops before December 23, 1985 and subsequently changed to hayland or pastureland.
- Permanent pasture or hayland.
- Area not abandoned.

Growing Season⁵

- The growing season is defined as that part of the year when soil temperatures at 19.7 inches below the soil surface are higher than biologic zero (5 degrees C).
- In Virginia it can be approximated as the period of time between:
 - the average date of the last killing frost (28°F) in the spring
 - AND
 - the average date of the first killing frost (28°F) in the fall.

⁵ Refer to National Food Security Act Manual, Third Edition, page 527-69. Note that the US Fish and Wildlife Service does not utilize this definition for the purposes of wetland determination under the National Wetlands Inventory.

Isolated Pockets of Non-Agricultural Land Interspersed Among Agricultural Land

- Natural vegetation completely surrounded by agricultural land.
- Not exceeding 1 acre in size.

Narrow Bands of Non-Agricultural Land Interspersed Among Agricultural Land

- Natural vegetation within agricultural land areas not exceeding a maximum width of 200 feet.
- Any length.

Non-Agricultural Land

- Lands where natural vegetation has not been removed or has returned even though grazed, mowed, or collected as forage or fodder.
- Includes forest land, wood lots, tree farms and uncultivated meadows, and pastures.

Prior Converted Cropland (PC)

PC meets the following:

- A wetland drained, dredged, filled, leveled, and/or otherwise manipulated (cleared and stumped), prior to December 23, 1985, for the purpose of, or to have the effect of, making production of agricultural commodity possible.
- Applies if:
 - * Agricultural commodity produced at least once before December 23, 1985.
 - * Area not abandoned.
 - * Does not meet FW criteria (flooding or ponding).
 - * Does not meet FWP criteria.

USDA Program Participant

- Any producer enrolled in a current USDA program (documented by a current 1026).

Wetlands that have been manipulated (WX)

WX is a wetland:

- Undergoing an action leading toward wetland conversion.
- Examples: (1) Clear cutting wooded wetland (without stump removal).
(2) Drainage ditch through or adjoining a wooded wetland

PROCEDURES FOR CONDUCTING OFF-SITE PRELIMINARY WETLAND DETERMINATIONS:

1. Obtain the county list containing hydric soils and non-hydric soils with hydric inclusions (hydric soils include ponded and flooded soils). Note that hydric soils list is from Section II of the FOTG.
2. Correlate signatures (darkness, color, etc.) to present wetland conditions by comparing signatures with a variety of on-site conditions (ground truthing). The amount of on-site verification needed is based primarily on precipitation conditions present at the time photos were taken. Correlating wetland signatures to prior rainfall period (3 months) is necessary for each year that photos are being interpreted. This step is necessary to ascertain significance of any signature noted. This correlation process will be made by determining the dates (month/day/year), if possible, of all imagery (from CFSA slide or photo) years from 1985 to present and pre-1985 CIR photos. Send slide (or photos same year) dates for 1985, 1986, pre-85 CIR and 2 most recent years of slides to NRCS SO Environmental Specialist. NRCS SO will analyze weather data using current "Wetland Hydrology Tools" and notify DC of imagery years to use.
3. Transfer from the 1st generation CFSA photocopy the outer limits of the present ag-land to the base map.⁶ Note: Transfer all wetland information to base map using a soft lead pencil.
4. Any areas within the agricultural land boundary too small to encompass a pencil line will be indicated with a single dot or line as appropriate. Determinations will be made on these areas based on mapping conventions.
5. Transfer the outer boundary of hydric soil units within the ag-land from the soils map to the base map (i.e., if two or more hydric soils are adjacent to each other, outline only around their combined perimeter).
6. Scan the CIR photo within the ag-land boundary for wetland signatures and transfer their limits to the base map. Scan the CIR for non-agricultural areas within the agricultural land boundary and transfer to the base map. Areas too small to have a boundary will be shown either with a dot (isolated pocket), or a single pencil line (narrow bands). For larger areas of non-agricultural land, {small pockets > 1 acre (200' X 200') or narrow bands > 200' wide (any length)}, outline and label as NI (Not Inventoried).

⁶ Base maps are 7.5 minute USGS topo quads.

7. Transfer from the soil survey any wetland spot symbols found on moderately well or somewhat poorly drained map units within the agricultural land boundary to the base map using a dot.
8. Overlay the NWI Mylar on the base map. Outline any wetlands not previously indentified within agricultural land boundary on the base map. Outline any non-agricultural land not previously identified within the agricultural land boundary (as indicated by PFO__, PSS__, or PEM__) and transfer to the base map. Areas too small to have a boundary will be shown either with a dot or a single pencil line. For larger areas of non-agricultural land, outline and label as NI (Not Inventoried).
9. Scan USGS topo maps for wet symbols within the agricultural land boundary not previously found and transfer limits to the base map.
10. Make determinations according to mapping conventions and label on the base map.
11. For each individual determination made above check against other years of CFSA slides and/or photos for the following:
 - a. Use CIR photo and/or 1985 imagery (if 1985 imagery is unavailable, use 1986 imagery) to confirm pre-FSA land use, wet signatures and wetland manipulations.
 - b. Check most recent year of available CFSA slides for post-FSA wetland manipulation or conversion (ex. wet woods or other wetlands to different land use and for confirmation of wet signatures.

--If manipulation, conversion, or change (i.e., different cover/wetness) is evident, use other post-FSA CFSA slides to determine year of manipulation, conversion, or change.

--If no manipulation, conversion, land use or other change is evident from these slides, this confirms original determination.
12. Repeat the above process for each individual determination.
13. After completing the entire process and final Wetland Team quality check, go over penciled results with a red fine tip ink pen.

A. Determining Abandonment

1. Cropland (Applies to PC and FW)

Use 1985 or 1986 imagery; and current year slide plus imagery taken 5 years prior and CFSA Form 578 (Cropping History) same years.

NOTE: Bracket the most current 5 year period with imagery.

Require on-site evaluation to determine if wetland criteria has returned (abandonment). If criteria has returned, area is either FWP or W.

- Area is FWP if land use is pasture or hayland for preceding 5 years.
- Area is W if land has been idle for preceding 5 years.
- If a PC has been idled for 5 consecutive years and wetland criteria has not returned, the area remains a PC.

NOTE: Set-aside, CRP, or other conservation use programs do not constitute abandonment. Land in these programs are considered being actively cropped.

2. Pasture or Hayland (Applies to FWP)

Requires on-site evaluation

Suggested items to evaluate for abandonment:

- Fence maintenance
- Livestock movement (trails, etc.)
- Use of water facilities and streams
- Presence of livestock
- Presence of young woody vegetation
- Evidence of grazing/clipping
- Presence of hay bales

B. Determining Presence of Farmed Wetland (FW) on Cropland

FW only applies where ponding or flooding occurs for 15 or more days in the growing season. **NOTE: Exceptions to these are former Pocosin wetlands in Southeastern Virginia. See page 2.**

Generally at least 5 years of photographic imagery in a 10 year period is needed to make FW determinations. In some cases, 3 years of photographic imagery taken in normal rainfall conditions may be adequate. If all three years either clearly show a wet signature OR clearly do not show a wet signature for a given site, then the determination can be made without the use of additional imagery.

If the imagery from 3 normal years is inconclusive, then additional imagery will be required for the determination. For example, one of the 3 may show a signature, but the other 2 do not. In this situation, imagery must include either 2 additional normal years OR equally weighted between dry and wet years. Therefore, if > 3 years of imagery is needed to reach a conclusion, and no more normal years are available, then imagery from one dry and one wet year will be needed to reach a final FW determination.

If at least three years out of either three or five years of imagery as discussed above indicate one or more of the following, then 15 consecutive days of ponding or flooding is assumed.

- - Drowned Crop.
- - Lush growth (darker green, etc.) in a dry year.
- - Light green or yellow in a normal year.
- - Late planting date or avoidance.
- - Absence of crops.
- - Pondered water.

Note: Sites not meeting above criteria are labeled PC.

Determination Summary:

If all 3 years of normal imagery are positive = Positive FW Determination

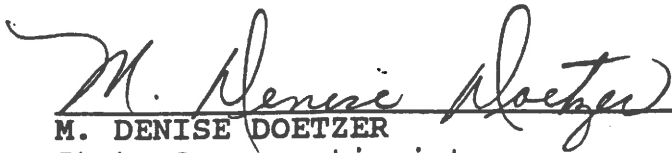
If all 3 years of normal imagery are negative = Negative FW Determination

If 3 years of normal imagery give mixed positive & negative results ---> Use 5 years of imagery

For min. 5 years of imagery use combinations of normal (N) & equal number of dry (D) and wet (W) years Examples: NNNWD, NWWDD, NNNNN, NNNNDW (must have equal no. W & D years)

Concurrence of Revised Mapping Conventions

The following representatives of the MOA signatory agencies concur in the December 1994 revision of the mapping conventions as outlined in this document, "Mapping Conventions and Off-Site Wetland Determination Procedures For Virginia, December 1994."



M. DENISE DOETZER
State Conservationist
United States Department of Agriculture
Natural Resources Conservation Service

1-16-1995
DATE



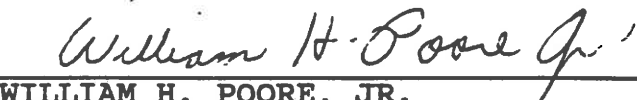
KAREN L. MAYNE
Supervisor
Virginia Field Office
Department Of Interior
United States Fish and Wildlife Service

January 5, 1995
DATE



BARBARA D'ANGELO
Chief
Environmental Protection Agency
Wetlands Protection Section, Region III

1-13-95
DATE



WILLIAM H. POORE, JR.
Chief, Regulatory Branch
Norfolk District
United States Army Corps of Engineers

21 Dec. 1994
DATE



1. When to do a determination¹

- Based on request using Form NRCS-CPA-38
 - 1026 Referral
 - Request on ag-land by non-participant
 - 569 receipt
 - Certification
 - Appeals

2. Types of determinations

TYPE	HOW	WHO	PROCEDURES
*Agricultural Lands for Participant (No Proposed Manipulation)	Off-site Determination	Field Office	Map Conventions/ FSA Manual
*Agricultural Lands for Participant (Proposed Manipulation)	On-site Determination	Wetland Team	Map Conventions/ FSA Manual
*Non-Agricultural Land for Participant . (No Proposed) Manipulation)	Off-site Determination with Wetland Team On-site/ Concurrence	Field Office/ Wetland Team	Map Conventions/ 87 Manual
*Non-Agricultural Land for Participant (Proposed Manipulation)	On-site Determination	Wetland Team	87 Manual
*Non-Agricultural for Non-Participant	Refer to COE		87 Manual
*Agricultural Land for Non-Participant (No Proposed Manipulation)	Off-site Determination	Field Office	Map Conventions/ FSA Manual
*Agricultural Land for Non-Participant (Proposed Manipulation)	On-site Determination	Wetland Team	Map Conventions/ FSA Manual
*Agricultural or Non-Agricultural Land for Spring Developments (≤ 1 acre Wetland impact)	On-site Determination	Field Office	Environmental Evaluation (EE) + Wetland & Spring Development Supplement. Supplement + impacted wetland size to Team Leader for approval. If > 1 acre wetland impact, on-site determination required. No work until EE approved.

¹ Determinations are off-site (map conventions) or on-site (87 or FSA Manual) findings that wetlands are present (approximate).

Wetland Determination Process

1. Use procedures for conducting off-site preliminary wetland determinations (See page 7 of "Mapping Conventions").
 - 1a. Notify participant of preliminary determination and appeal process. Once preliminary determination has become final, proceed to Step 2 below.
 2. Transfer determinations made in Step 1 above from USGS topos directly to CFSA 660 scale photos (or whatever base CFSA is using) following CFSA mapping guidance (i.e., pen size and type, etc.).
- NOTE: Do NOT use cross hatching on CFSA base map.**
3. CFSA will make a photocopy of their base map containing the wetland determinations and provide copies to NRCS. Clear, readable photocopies will be modified as noted below before being provided to the landowner. (See alternate method below if CFSA cannot provide clear copies of their base map).*
 4. Photocopy modification: (Use a medium or wide tip red pen for A, B, and C below. Use a fine or medium tip red pen for D and E):
 - A. Highlight the outer limits of the tract on CFSA photocopy.
 - B. Transfer the agricultural land boundary to CFSA photocopy.
 - C. Cross hatch and label all non-agricultural land that is Not Inventoried (NI).
 - D. Transfer and label areas of non-agricultural lands previously marked NI (not inventoried) on USGS topo to the photocopy and cross hatch.
 - E. Delineate boundary of spot symbols based on signature, if any, onto the CFSA photocopy and label as indicated on the topo. If no signature is present, draw an 1/8 inch circle around the point and label as indicated on the topo.

Alternate Method (where local CFAS does not have good base map reproductive capability): Follow Steps 1 and 2 above. In lieu of Step 3 above, transfer USGS topo determinations to existing CFSA photocopy - follow Steps 4 (A - E) above.

* Clear/readable determinations must be provided to the landowner.

Assembly and Distribution of Determination Results

1. Attach combined warning/legend sticker to all CFSA photocopies.
2. Send a copy of the standard wetland determination letter along with the following attachments to the owner and/or operator:
 - A copy of the disclaimer statement sheet titled "Important Information Concerning Your Wetland Determinations Map"
 - Revised Form 026
 - CFSA photocopy with determinations (The producer copy will be in red.)
 - Wetland Fact Sheet

(To be placed as a warning/legend sticker on the front of the CFSA photocopy)


WARNING (IN RED): This map has been prepared for a limited purpose. See attachments for an explanation of its use and interpretation.

LEGEND:

(Label) = Wetland Inventory Area

/ / NI / / = Not Inventoried

Important Information Concerning Your Wetland Determination Map**DETERMINATIONS (FOR USDA PARTICIPANTS):**

- ◆ The attached map supersedes any previous USDA wetland determinations and only covers areas indicated.
- ◆ This map does not show "other waters of the United States" which include, but are not limited to, tidal waters, lakes, rivers, streams, mudflats, and intermittent and perennial streams which are regulated under the Clean Water Act. If any work is proposed in these waters, the U.S. Army Corps of Engineers and/or appropriate state agency should be contacted concerning the need for permits.
- ◆ Determinations for areas labeled Prior Converted Cropland (PC) and Non Wetland (NW) are certified as correct for 5 years. If any manipulation (drainage, fill, or stump removal of woody vegetation) or maintenance of drainage is anticipated in other areas indicated as wetland (includes areas labeled W, FW, FWP, AW, etc.), an on-site verification and determination will be required and federal, state and/or local permits may be needed.
- ◆ Wetland determinations have not been made for red hatched areas labeled NI . If any manipulation is considered in these areas, contact the Natural Resources Conservation Service (NRCS) for an on-site determination. Federal, state and/or local permits may be required if wetlands are present.
- ◆ Contact the NRCS before commencing a manipulation on wet areas or maintenance of drainage anywhere. Failure to notify NRCS may subject the landowner to substantial Clean Water Act penalties and/or loss of USDA benefits.

Wetland Fact Sheet

The following table provides a summary of wetland types, labels, criteria, authorized use, and allowed maintenance activities for compliance with the wetland conservation provisions of the Food Security Act. It is provided as an information attachment to the *Natural Resources Conservation Service (NRCS) Wetland Determination*.

Consult the Natural Resources Conservation Service before any drainage, filling, leveling, or stump removal of woody vegetation is begun on wet areas or potential wet areas to avoid possible loss of USDA benefits.

Name and Label	Criteria for Determination	USDA Authorized Cropping	USDA Authorized Maintenance of Drainage ^{1/}
Prior Converted Cropland (PC)	Converted and cropped before 12/23/85 Not abandoned	No restrictions	No restrictions provided no additional W, FW, or FWP is impacted or converted.
Farmed Wetland (FW)	Manipulated and cropped before 12/23/85 Is still a wetland Wetlands that are seasonally flooded or ponded for 15 consecutive days in the growing season or is a pocosin Not abandoned	No restrictions	May be only maintained to the extent that existed before 12/23/85. ^{2/}
Wetland (W)	Meets wetland criteria Not converted after 12/23/85 Includes abandoned wetland	May be farmed under natural conditions without removal of woody vegetation.	Only at level needed to maintain original system on related FW, FWP, or PC. Must not convert additional W or exceed scope and effect of system that existed prior to 12/23/85. ^{2/}
Wetlands that have been manipulated (WX)	Wetlands that have been manipulated after 12/23/85 Agricultural production not possible	Would cause ineligibility if production is made possible	No restrictions as long as production not made possible and adjacent wetland not affected. ^{2/}
Minimal Effect (MW)	Activity determined to have a minimal effect on the wetland. Must be requested and authorized before any alteration.	As stipulated in the written minimal effects agreement	Only those activities stipulated in the minimal effects agreement.

^{1/} To protect USDA benefits, contact NRCS before maintaining any drainage.

^{2/} May require a separate Clean Water Act (Section 404) permit. Contact the Corps of Engineers for information.

Name and Label	Criteria for Determination	USDA Authorized Cropping	USDA Authorized Maintenance of Drainage ^{1/}
Artificial and Irrigation induced Wetland (AW)	Man-made wetlands on areas previously nonwetland or PC.	No restrictions	No restrictions ^{2/}
Converted Wetland (CW)	Converted after 12/23/85 and before 11/28/90	Production of agricultural commodities will cause ineligibility	Maintenance allowed to original scope and effect of drainage system ^{2/}
Converted Wetland (CW + year)	Converted after 11/28/90	Conversion causes ineligibility	Not relevant ^{2/}
Farmed Wetland Pasture and Hayland (FWP)	Converted before 12/23/85 Not abandoned Used as pasture or hayland Is still a wetland Includes PC or FW where crops were not grown in previous 5 years, but was used for pasture or hay during that period	Used for pasture and hay production Used to produce agricultural commodities	Maintenance allowed to the extent that existed before 12/23/85, but not improved ^{2/} Maintenance not allowed Removal of woody vegetation not allowed
Converted Wetland for Non-Agricultural use (CWNA)	For prior approval - requested before start of conversion Only certain purposes allowed For post-approval -- person must document non-agricultural use	Production of agricultural commodities will cause ineligibility	No restrictions ^{2/} except when specified in CWNA plan CW + yr if production made possible until non-agricultural use is installed ^{2/}
Nonwetland (NW)	Does not meet wetland criteria under natural conditions Also includes wetland converted prior to 12/23/85, but not cropped and do not meet wetland criteria (not abandoned)	No restrictions	No restrictions

1/ To protect USDA benefits, contact NRCS before maintaining any drainage.

2/ May require a separate Clean Water Act (Section 404) permit. Contact the Corps of Engineers for information.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communications of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7608 (TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C., 20250, or call (202) 720-7327 (voice) or (202) 720-1127 (TDD). USDA is an equal opportunity employer.

Pre-discharge Notification Procedures for Norfolk District

- (a) Where required by the terms of the NWP (for example, NWP 26 for more than 1 acre of fill), the prospective permittee must notify the District Engineer as early as possible and shall not begin the activity:
- (1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
 - (2) If notified by the District or Division engineer that an individual permit is required; or
 - (3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
- (b) The notification must be in writing and include the following information:
- (1) Name, address and telephone number of the prospective permittee;
 - (2) Location of the proposed project;
 - (3) Brief description of the proposed project; the project's purpose;
 - (4) Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands or a drawing of the proposed project and/or project site; and
 - (5) A statement that the prospective permittee has contacted:
 - (i) The U.S. Fish and Wildlife Service regarding the presence of any Federally listed (or proposed for listing) endangered or threatened species or critical habitat in the permit area that may be affected by the proposed project; and any available information provided by that agency:
U.S. Fish and Wildlife Service
Virginia Field Office
Post Office Box 480
White Marsh, Virginia 23183
(804) 693-6694
FAX: (804) 693-9032
 - (ii) The Virginia Department of Historic Resources regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency:
Virginia Department of Historic Resources
221 Governor Street
Richmond, Virginia 23219
(804) 786-3143
FAX: (804) 225-4261
- (c) The Joint Permit Application may be used as the notification but must clearly indicate (statement in cover letter or on the first page) that it is a Pre-discharge Notification and must include all of the information required in (b)(1)-(5) above.

Appendix H. Oversight Procedures

Scope:

According to the Agricultural MOA Section B.2, EPA will lead the signatories in establishing interagency oversight at the state level to conduct periodic review of wetland determinations and delineations conducted under the provisions of the MOA. These reviews will occur on a quarterly basis the first year, semi-annual basis the second year, and annually thereafter. These reviews will also include changes to wetland determinations or delineations resulting from the appeals process.

Oversight is anticipated on the following categories of wetland determinations/delineations:

- 1) Wetland determinations made by use of the off-site mapping conventions
- 2) On-site wetland determinations/delineations by NRCS on agricultural land using the FSA manual
- 3) On-site wetland delineations by NRCS on non-agricultural land that are narrow bands or small pockets immediately adjacent to or interspersed among ag lands (using the 1987 manual)
- 4) On-site determinations/delineations on lands owned or operated by a USDA program participant that are not agricultural lands (delineated in coordination with signatories using 1987 manual).

Oversight Team:

One representative, or designated alternate, from each signatory agency of this agreement.

Mapping Conventions Oversight:

Oversight will occur in the NRCS field offices. The oversight team will review the map products and actual field sites for selected off-site determinations performed utilizing the mapping conventions. This oversight may include old determinations that are to be certified by NRCS.

The team will examine the aerial photography, soil surveys, NWI maps and other data used in the determination. An independent assessment will be made following the mapping conventions. The site will then be visited in the field in order to verify the results. EPA will compile notes and report on the results of this investigation. The purpose will be to determine if determinations made utilizing the mapping conventions match field conditions.

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Appeals Oversight:

Changes to wetland determinations or delineations that are granted by NRCS in response to the appeals process will be sent by the NRCS field office to:

EPA Region 3
841 Chestnut Building
Philadelphia, Pennsylvania 19107
ATTENTION: Chief, Wetlands Protection Section
(3ES42)
215-597-9301

EPA will keep a file of each request and the final NRCS action as a result of the request. EPA will randomly select appeals to be discussed with the NRCS and visited in the field.

Training

EPA will continue to participate in the development and instruction of inter-agency training to satisfy the requirements of the AG MOA (Reg 4). EPA will help with 1987 manual training to NRCS and other agency personnel.

Conflict Resolution

Issues that arise as a result of this oversight that need resolution will be addressed at the state level first; unresolved issues will be elevated to Headquarters. This elevation may result in resolution by Headquarters or the designation of "special case" areas. NRCS will no longer make CWA jurisdictional calls in these areas until final Headquarters guidance on the issue in question is issued.

Agricultural Exemptions (Excerpts)
(33 CFR 323.4: Discharges not requiring permits)

33 CFR 323.4(a): General.

Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

33 CFR 323.4(a)(1)(i)

Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

33 CFR 323.4(a)(1)(ii)

To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation and must be in accordance with definitions in Section 323.4(a)(1)(iii). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

33 CFR 323.4(a)(1)(iii)(A)

Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

33 CFR 323.4(a)(1)(iii)(B)

Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

33 CFR 323.4(a)(1)(iii)(C)(1)

Minor Drainage means:

33 CFR 323.4(a)(1)(iii)(C)(1)(i)

The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.);

33 CFR 323.4(a)(1)(iii)(C)(1)(ii)

The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

33 CFR 323.4(a)(1)(iii)(C)(1)(iv)

The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

33 CFR 323.4(a)(1)(iii)(C)(2)

Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

33 CFR 323.4(a)(1)(iii)(D)

Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Plowing as described above will never involve a discharge of dredged or fill material.

33 CFR 323.4(a)(1)(iii)(E)

Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

33 CFR 323.4(a)(2)

Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

33 CFR 323.4(a)(3)

Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

33 CFR 323.4(a)(6)

Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the state's approved program description pursuant to the requirements of 40 CFR Part 233.22(i), and shall also include the following baseline provisions:

33 CFR 323.4(a)(6)(i)

Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

33 CFR 323.4(a)(6)(ii)

All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

33 CFR 323.4(a)(6)(iii)

The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

33 CFR 323.4(a)(6)(iv)

The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

33 CFR 323.4(a)(6)(v)

Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

33 CFR 323.4(a)(6)(vi)

In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

33 CFR 323.4(a)(6)(vii)

The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

33 CFR 323.4(a)(6)(viii)

Borrow material shall be taken from upland sources whenever feasible;

33 CFR 323.4(a)(6)(ix)

The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

33 CFR 323.4(a)(6)(x)

Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

33 CFR 323.4(a)(6)(xi)

The discharge shall not be located in the proximity of a public water supply intake;

33 CFR 323.4(a)(6)(xii)

The discharge shall not occur in areas of concentrated shellfish production;

33 CFR 323.4(a)(6)(xiii)

The discharge shall not occur in a component of the National Wild and Scenic River System;

33 CFR 323.4(a)(6)(xiv)

The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

33 CFR 323.4(a)(6)(xv)

All temporary fills shall be removed in their entirety and the area restored to its original elevation.

33 CFR 323.4(b)

If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a)(1)-(6) of this section contains any toxic pollutant listed under section 307 of the CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a Section 404 permit.

33 CFR 323.4(c)

Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a) (1)-(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in

conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a Section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

33 CFR 323.4(d)

Federal projects which qualify under the criteria contained in section 404(r) of the CWA are exempt from section 404 permit requirements, but may be subject to other state or Federal requirements.

Wetlands Consultants

May 22, 1995

- NOTE:**
1. This list is not necessarily complete. Other firms and individuals are capable of performing wetlands delineations if qualified.
 2. This list has been prepared in alphabetical order and should not be interpreted as an endorsement of any firm.
 3. Other firms and/or individuals interested in being added to the list should contact the Corps.

AES Environmental Inc.

8997 River Crescent

Suffolk, Virginia 23433

(804) 238-2984

(804) 521-1585 (Southside pager)

(804) 881-8081 Peninsula

Agri-Technical Service Associates

Curtis E. Turner (Soil Scientist)

2111 Spring Road

Hillsdale, Michigan 49242

(800) 238-5413

Allison & Associates

Post Office Box 384

Montross, Virginia 22520

(804) 493-9066

Anderson & Associates, INC.

100 Ardmore Street

Blacksburg, Virginia 24060

(703) 552-5592

FAX (703) 552-5729

ATEC Environmental Consultants

Division of ATEC Associates of Va., Inc.

2551 Eltham Avenue, Suite Z

Norfolk, Virginia 23513-2511

(804) 857-6765

FAX (804) 857-6283

Michael Baker, Jr., Inc.

Ratcliffe Bldg., Suite 212

Richmond, Va. 23229

(804) 282-1821

Barrett Kays & Associates

304 East Jones Street

Raleigh, NC 27601

(919) 828-1903

Biohabitats of Virginia, Inc.
Post Office Box 29540
1891C Billingsgate Circle (23233)
Richmond, Virginia 23242-0540
(804) 750-1082

FAX (804) 750-1125

Bissell Associates
P. O. Drawer 1068
Kitty Hawk, NC 27949
(919) 261-3266

Black & Veatch, Inc.
18310 Montgomery Village Avenue
Suite 500
Gaithersburg, Md. 20879
(301) 840-1123

CH2M Hill
Post Office Box 4400
Reston, Virginia 22090
(703) 471-1441

Richard E. Callis Company
Post Office Box 157
Cobbs Creek, Virginia 23035
(804) 725-7516

Caskie Engineering
Donald F. Caskie, P.E.
P.O. Box 509
Saluda, Virginia 23149
(804) 758-5678
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The consultant you select should be familiar with and utilize the current 1987 Corps Wetlands Delineation Manual to perform a wetlands delineation. The consultant's findings can then be provided to the Corps in the form of a report. Corps staff will review the validity of the report and make an agency determination on the presence and extent of wetlands on the property.





MEMORANDUM OF AGREEMENT

AMONG THE DEPARTMENT OF AGRICULTURE, THE ENVIRONMENTAL PROTECTION AGENCY, THE DEPARTMENT OF THE INTERIOR, AND THE DEPARTMENT OF THE ARMY

CONCERNING THE DELINEATION OF WETLANDS FOR PURPOSES OF SECTION 404 OF THE CLEAN WATER ACT AND SUBTITLE B OF THE FOOD SECURITY ACT

I. BACKGROUND

The Departments of the Army, Agriculture, and the Interior, and the Environmental Protection Agency (EPA) recognize fully that the protection of the Nation's remaining wetlands is an important objective that will be supported through the implementation of the Wetland Conservation (Swampbuster) provision of the Food Security Act (FSA) and Section 404 of the Clean Water Act (CWA). The agencies further recognize and value the important contribution of agricultural producers to our society, our economy, and our environment. We are committed to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners to the fullest possible extent consistent with the important goal of protecting wetlands. We are also committed to minimizing duplication and inconsistencies between Swampbuster and the CWA Section 404 program. On August 24, 1993, the Administration announced a comprehensive package of reforms that will improve both the protection of wetlands and make wetlands programs more fair and flexible for landowners, including the Nation's agriculture producers. This Memorandum of Agreement (MOA) implements one of over 40 components of the Administration's Wetlands Plan.

II. PURPOSE AND APPLICABILITY

A. PURPOSE

The purpose of this MOA is to specify the manner in which wetland delineations and certain other determinations of waters of the United States made by the U.S. Department of Agriculture (USDA) under the FSA will be relied upon for purposes of CWA Section 404. While this MOA will promote consistency between CWA and FSA wetlands programs, it is not intended in any way to diminish the protection of these important aquatic resources. In this regard, all signatory agencies to this MOA will ensure that wetlands programs are administered in a manner consistent with the objectives and requirements of applicable laws, implementing regulations, and guidance.

B. APPLICABILITY

1. The Administrator of EPA has the ultimate authority to determine the geographic scope of waters of the United States subject to jurisdiction under the CWA, including the Section 404 regulatory program. Consistent with a current MOA between EPA and the Department of the Army, the Army Corps of Engineers (Corps) conducts jurisdictional delineations associated with the day-to-day administration of the Section 404 program.
2. The Secretary of the USDA, acting through the Chief of the Soil Conservation Service (SCS), has the ultimate authority to determine the geographic scope of wetlands for FSA purposes and to make delineations relative to the FSA, in consultation with the Department of the Interior, Fish and Wildlife Service (FWS).

III. DEFINITION OF AGRICULTURAL LANDS

For the purposes of this MOA, the term "agricultural lands" means those lands intensively used and managed for the production of food or fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation.

- A. Areas that meet the above definition may include intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops (e.g., cranberries, taro, watercress, rice). For example, lands intensively used and managed for pasture or hayland where the natural vegetation has been removed and replaced with planted grasses or legumes such as ryegrass, bluegrass, or alfalfa, are considered agricultural lands for the purposes of this MOA.
- B. "Agricultural lands" do not include range lands, forest lands, wood lots, or tree farms. Further, lands where the natural vegetation has not been removed, even though that vegetation may be regularly grazed or mowed and collected as forage or fodder (e.g., uncultivated meadows and prairies, salt hay), are not considered agricultural lands for the purposes of this MOA.

Other definitions for the purposes of this MOA are listed below in Section VI.

IV. ALLOCATION OF RESPONSIBILITY

- A. In accordance with the terms and procedures of this MOA, wetland delineations made by SCS on agricultural lands, in consultation with FWS, will be accepted by EPA and the Corps for the purposes of determining Section 404 wetland jurisdiction. In addition, EPA and the Corps will accept SCS wetland delineations

on non-agricultural lands that are either narrow bands immediately adjacent to, or small pockets interspersed among, agricultural lands. SCS is responsible for making wetland delineations for agricultural lands whether or not the person who owns, manages, or operates the land is a participant in USDA programs.

- B. Lands owned or operated by a USDA program participant that are not agricultural lands and for which a USDA program participant requests a wetland delineation, will be delineated by SCS in coordination with the Corps, or EPA as appropriate, and in consultation with FWS. Final wetland delineations conducted by SCS pursuant to the requirements of this paragraph shall not be revised by SCS except where an opportunity for coordination and consultation is provided to the other signatory agencies.
- C. SCS may conduct delineations of other waters for the purposes of Section 404 of the CWA, such as lakes, ponds, and streams, in coordination with the Corps, or EPA as appropriate, on lands on which SCS is otherwise engaged in wetland delineations pursuant to paragraphs IV.A or IV.B of this MOA. Delineations of "other waters" will not be made until the interagency oversight team convened pursuant to Section V.B.2 has agreed on appropriate local procedures and guidance for making such delineations.
- D. For agricultural lands, the signatory agencies will use the procedures for delineating wetlands as described in the National Food Security Act Manual, Third Edition (NFSAM). For areas that are not agricultural lands, SCS will use the 1987 Corps Wetland Delineation Manual, with current national Corps guidance, to make wetland delineations applicable to Section 404.
- E. Delineations on "agricultural lands" must be performed by personnel who are trained in the use of the NFSAM. Delineations on other lands and waters must be performed by personnel who are trained in the use of the 1987 Corps Wetland Delineation Manual. This MOA includes provisions for the appropriate interagency delineation training below in Section V.E.
- F. In the spirit of the agencies' commitment to develop agreed upon methods for use in making wetland delineations, subsequent revisions or amendments to the Corps 1987 manual or portions of the NFSAM affecting the wetland delineation procedures upon which this agreement is based will require the concurrence of the four signatory agencies.
- G. A final written wetland delineation made by SCS pursuant to the terms of this MOA will be adhered to by all the signatory agencies and will be effective for a period of five years from the date the delineation is made final, unless new information warrants revision of the delineation before the expiration date. Such new information may include, for example, data on landscape changes caused by a

major flood, or a landowner's notification of intent to abandon agricultural use and the return of wetland conditions on a prior converted cropland. In accordance with Section 1222 of the FSA, SCS will update wetland delineations on this five-year cycle. Circumstances under which SCS wetland delineations made prior to the effective date of this agreement will be considered as final for Section 404 purposes are addressed in Paragraph V.C.

- H. Within the course of administering their Swampbuster responsibilities, SCS and FWS will provide landowners/operators general written information (i.e., EPA/Corps fact sheets) regarding the CWA Section 404 program permit requirements, general permits, and exemptions. The SCS and FWS will not, however, provide opinions regarding the applicability of CWA Section 404 permit requirements or exemptions.
- I. USDA will maintain documentation of all final written SCS wetland delineations and record the appropriate label and boundary information on an official wetland delineation map. USDA will make this information available to the signatory agencies upon request.
- J. In pursuing enforcement activities, the signatory agencies will rely upon delineations made by the lead agency, as clarified below, providing a single Federal delineation for potential violations of Section 404 or Swampbuster. Nothing in this MOA will diminish, modify, or otherwise affect existing EPA and Corps enforcement authorities under the CWA and clarified in the 1989 "EPA/Army MOA Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act." EPA, the Corps, and SCS may gather information based on site visits or other means to provide additional evidentiary support for a wetland delineation which is the subject of a potential or ongoing CWA Section 404 or Swampbuster enforcement action.
- K. For those lands where SCS has not made a final written wetland delineation, and where the Corps or EPA is pursuing a potential CWA violation, the lead agency for the CWA enforcement action will conduct a jurisdictional delineation for the purposes of Section 404 and such delineations will be used by SCS for determining Swampbuster jurisdiction and potential Swampbuster violations. For those lands where the Corps has not made a final written wetland delineation, and where SCS is pursuing a potential Swampbuster violation, SCS will make a final written wetland delineation consistent with Sections IV.A, IV.B, and IV.C of this MOA and provide copies to the Corps and EPA. Such delineations will be used by the Corps and EPA for the purpose of determining potential violations of the CWA. In circumstances in which either the Corps or EPA is pursuing a potential CWA violation on land that is subject to an ongoing SCS appeal, a wetland delineation will be conducted by the Corps or EPA in consultation with SCS and FWS.

- L. In making wetland delineations, the agencies recognize that discharges of dredged or fill material that are not authorized under Section 404 cannot eliminate Section 404 jurisdiction, and that wetlands that were converted as a result of unauthorized discharges remain subject to Section 404 regulation.

V. PROCEDURES

Accurate and consistent wetland delineations are critical to the success of this MOA. For this reason, the signatory agencies will work cooperatively at the field level to:

1) achieve interagency concurrence on mapping conventions used by SCS for wetland delineations on agricultural lands, 2) provide EPA and Corps programmatic review of SCS delineations, and 3) certify wetland delineations in accordance with Section 1222(a)(2) of the FSA, as amended. The following sections describe the procedures that will be followed to accomplish these objectives.

A. MAPPING CONVENTIONS

1. Each SCS State Conservationist will take the lead in convening representatives of the Corps, EPA, FWS, and SCS to obtain the written concurrence of each of the signatory agencies, within 120 calendar days of the effective date of this MOA, on a set of mapping conventions for use in making wetland delineations. Only mapping conventions concurred upon by all signatory agencies will be used by SCS for wetland delineations.
2. If interagency consensus on mapping conventions is not reached within 120 days of the date of this MOA, the State Conservationist will refer documentation of the unresolved issues to the Chief of SCS. The Chief of SCS will immediately forward copies of the State Conservationist's documentation of unresolved issues to the Corps Director of Civil Works; the EPA Director of the Office of Wetlands, Oceans, and Watersheds; and the FWS Director. Immediately thereafter, the Chief of SCS or an appropriate designee will lead necessary discussions to achieve interagency concurrence on resolution of outstanding issues, and will forward documentation of the resolution to the State Conservationist and the appropriate Headquarters offices of the signatory agencies.
3. Once interagency concurrence on mapping conventions is obtained, such mapping conventions will be used immediately in place of the earlier mapping conventions.
4. Agreed-upon mapping conventions developed at the state level will be documented and submitted, for each state, through the Chief of SCS to the Headquarters of each of the signatory agencies. State-level agreements will be reviewed by the Headquarters of the signatory agencies for the purpose of ensuring national consistency.

B. DELINEATION PROCESS REVIEW AND OVERSIGHT

1. This MOA emphasizes the need to ensure consistency in the manner in which wetlands are identified for CWA and FSA purposes, and provides a number of mechanisms to increase meaningful interagency coordination and consultation in order for the agencies to work toward meeting this goal. In this regard, the agencies believe it is critical that efforts for achieving consistency be carefully monitored and evaluated. Consequently, this MOA establishes a monitoring and review process that will be used to provide for continuous improvement in the wetland delineation process specified in this MOA.
2. EPA will lead the signatory agencies in establishing interagency oversight teams at the state level to conduct periodic review of wetland delineations conducted under the provisions of this MOA. These reviews will include delineations done by SCS pursuant to Sections IV.A, IV.B, and IV.C of this MOA and delineations done by EPA or the Corps pursuant to Section IV.K. of this MOA. These reviews also will include changes to wetland delineations resulting from the SCS appeals process, as well as disagreements regarding allocation of responsibility. These reviews will occur, at a minimum, on a quarterly basis for the first year, on a semi-annual basis for the second year, and annually thereafter. In addition, a review will be initiated whenever one or more of the signatory agencies believes a significant issue needs to be addressed. The purpose of each review will be to evaluate the accuracy of an appropriate sample of wetland delineations. When feasible, this will include actual field verifications of wetland delineations. Should the interagency oversight team identify issues regarding implementation of this MOA or wetland delineations conducted under the provisions of this MOA, the team will work to resolve those issues and reach agreement on any necessary corrective actions. Each review, and any necessary corrective action, will be documented in a report to be distributed to the signatory agencies' appropriate field and Headquarters offices.
3. In situations in which the interagency oversight team identifies and reports unresolved issues concerning wetland delineations conducted under the provisions of this MOA, including changes to wetland delineations resulting from the SCS appeals process, the Headquarters offices of the signatory agencies will informally review the issue and work to reach agreement on any necessary corrective actions. This informal process notwithstanding, the EPA Regional Administrator or the Corps District Engineer may, at any time, propose to designate a geographic area as a "special case".

4. Similar to the terms of the current Memorandum of Agreement between the Department of the Army and the EPA Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA, the EPA Regional Administrator or the Corps District Engineer may propose to designate a geographic area, or a particular wetland type within a designated geographic area, as a special case. A special case may be designated only after the interagency oversight team (EPA, Corps, SCS, and FWS) has reviewed the relevant issues and been unable to reach a consensus on an appropriate resolution. Special cases will be designated by an easily identifiable political or geographic subdivision, such as a township, county, parish, state, EPA Region, or Corps division or district, and will be marked on maps or using some other clear format and provided to the appropriate EPA, Corps, FWS, and SCS field offices. Proposed designations of special cases will not be effective until approved by EPA or Corps Headquarters, as appropriate.
5. Upon proposing a special case, the EPA Regional Administrator or Corps District Engineer, as appropriate, will notify the appropriate SCS State Conservationist in writing. Following notification of the proposed designation, SCS will not make wetland delineations for the purposes of CWA jurisdiction within the proposed special case for a period of 20 working days from the date of the notification. SCS may proceed to make wetland delineations for CWA purposes in the proposed special case after the 20-day period if the SCS State Conservationist has not been notified by the EPA Regional Administrator or Corps District Engineer of approval of the proposed special case designation by EPA Headquarters or the Corps Director of Civil Works, as appropriate.
6. Following approval of the proposed special case, the Corps, or EPA as appropriate, will make final CWA wetland delineations in the special case area, rather than SCS. In addition, the referring field office (i.e., either the EPA Regional Administrator or Corps District Engineer) will develop draft guidance relevant to the specific issues raised by the special case and forward the draft guidance to its Headquarters office. The Headquarters office of the agency which designated the special case will develop final guidance after consulting with the signatory agencies' Headquarters offices. EPA concurrence will be required for final guidance for any special case designated by the Corps. Special cases remain in effect until final guidance is issued by the Headquarters office of the agency which designated the special case or the designation is withdrawn by the EPA Regional Administrator or Corps District Engineer, as appropriate.

C. RELIANCE ON PREVIOUS SCS WETLAND DELINEATIONS FOR CWA PURPOSES

1. Section 1222 of the FSA, as amended by the Food Agriculture Conservation and Trade Act, provides that SCS will certify SCS wetland delineations made prior to November 28, 1990. The intent of this process is to ensure the accuracy of wetland delineations conducted prior to November 28, 1990, for the purposes of the FSA. This certification process also will provide a useful basis for establishing reliance on wetland delineations for CWA purposes. All certifications done after the effective date of this MOA that are done using mapping conventions will use the agreed-upon mapping conventions pursuant to Section V.A of this MOA.
2. Written SCS wetland delineations for lands identified in Section IV.A of this MOA conducted prior to the effective date of this MOA will be used for purposes of establishing CWA jurisdiction, subject to the provisions of Section V.C.3 below. If such SCS wetland delineations are subsequently modified or revised through updated certification, these modifications or revisions will supersede the previous delineations for purposes of establishing CWA jurisdiction. Written SCS wetland delineations for lands identified in Sections IV.B and IV.C of this MOA conducted prior to the effective date of this MOA will require coordination with the Corps, or EPA as appropriate, before being used for purposes of determining CWA jurisdiction.
3. As part of the certification effort, SCS will establish priorities to certify SCS wetland delineations. In addition to responding to requests from individual landowners who feel their original wetland determinations were made in error, SCS will give priority to certifying those wetland delineations where at least two of the four signatory agencies represented on the interagency oversight team convened pursuant to Section V.B.2 of this MOA agree that SCS wetland delineations in a particular area, or a generic class of SCS wetland delineations in a particular area, raise issues regarding their accuracy based on current guidance. These priority areas will be identified only after mapping conventions are agreed upon pursuant to Section V.A of this MOA. Identification of these high priority certification needs shall be made at the level of the SCS State Conservationist, FWS Regional Director, EPA Regional Administrator, and the Corps District Engineer. Following identification of these high priority certification needs, the SCS State Conservationist will immediately notify the affected landowner(s), by letter, that the relevant SCS wetland delineations have been identified as a high priority for being certified under Section 1222 of the FSA. In addition, the notification will inform the landowner that while previous wetland delineations remain valid for

purposes of the FSA until certification or certification update is completed, the landowner will need to contact the Corps before proceeding with discharges of dredged or fill material. This communication by the landowner will enable the Corps to review the wetland delineation to establish whether it can be used for purposes of CWA jurisdiction. The SCS State Conservationist will initiate, within 30 calendar days of landowner notification, corrective measures to resolve the wetland delineation accuracy problem.

D. APPEALS

Landowners for whom SCS makes wetland delineations for either Swampbuster or Section 404 will be afforded the opportunity to appeal such wetland delineations through the SCS appeals process. In circumstances where an appeal is made and the State Conservationist is considering a change in the original delineation, the State Conservationist will notify the Corps District Engineer and the EPA Regional Administrator to provide the opportunity for their participation and input on the appeal. FWS also will be consulted consistent with the requirements of current regulations. The Corps and EPA reserve the right, on a case-by-case basis, to determine that a revised delineation resulting from an appeal is not valid for purposes of Section 404 jurisdiction.

E. TRAINING

1. SCS, in addition to FWS and EPA, will continue to participate in the interagency wetland delineation training sponsored by the Corps, which is based on the most current manual used to delineate wetlands for purposes of Section 404. Completion of this training will be a prerequisite for field staff of all signatory agencies who delineate wetlands on non-agricultural lands using the 1987 Corps Wetland Delineation Manual.
2. The interagency wetland delineation training will address agency wetland delineation responsibilities as defined by this MOA, including SCS NFSAM wetland delineation procedures.
3. Field offices of the signatory agencies are encouraged to provide supplemental interagency wetland delineation training (i.e., in addition to that required in paragraph IV.E), as necessary, to prepare SCS field staff for making Section 404 wetland delineations. For training on the use of the 1987 Corps Wetland Delineation Manual, such supplemental training will rely on the training materials used for the Corps delineation training program and will provide an equivalent level of instruction.


VI. DEFINITIONS

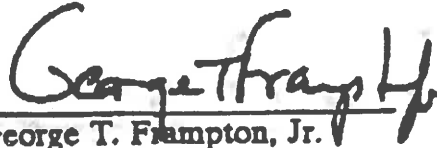
- A. "Coordination" means that SCS will contact the Corps, or EPA as appropriate, and provide an opportunity for review, comment, and approval of the findings of SCS prior to making a final delineation. The Corps, or EPA as appropriate, will review the proposed delineation and respond to SCS regarding its acceptability for CWA Section 404 purposes within 45 days of receipt of all necessary information. SCS will not issue a final delineation until agreement is reached between SCS and the Corps or EPA, as appropriate.**
- B. "Consultation" means that SCS, consistent with current provisions of the FSA, will provide FWS opportunity for full participation in the action being taken and for timely review and comment on the findings of SCS prior to a final wetland delineation pursuant to the requirements of the FSA.**
- C. A "wetland delineation" is any determination of the presence of wetlands and their boundaries.**
- D. A "special case" for the purposes of this MOA refers to those geographic areas or wetland types where the Corps or EPA will make final CWA wetland delineations.**
- E. "Signatory agencies" means the EPA and the Departments of Army (acting through the Corps), Agriculture (acting through SCS), and Interior (acting through FWS).**
- F. "USDA program participant" means individual landowners/operators eligible to receive USDA program benefits covered under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990.**


VII. GENERAL

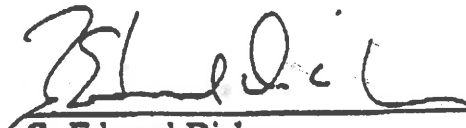
- A. The policy and procedures contained within this MOA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by the United States. Deviation or variance from the administrative procedures included in this MOA will not constitute a defense for violators or others concerned with any Section 404 enforcement action.**
- B. Nothing in this MOA is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. All formal guidance interpreting this MOA and background materials upon which this MOA is based will be issued jointly by the agencies.**

- C. Nothing in this MOA will be construed as indicating a financial commitment by SCS, the Corps, EPA, or FWS for the expenditure of funds except as authorized in specific appropriations.
- D. This MOA will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or revoked by any of the signatory agencies alone upon 90 days written notice. Modifications to this MOA may be made by mutual agreement and Headquarters level approval by all the signatory agencies. Such modifications will take effect upon signature of the modified document by all the signatory agencies.
- E. The signatory agencies will refer delineation requests to the appropriate agency pursuant to this MOA.

 1/6/94
James R. Lyons
Assistant Secretary for Natural
Resources and Environment
U.S. Department of Agriculture

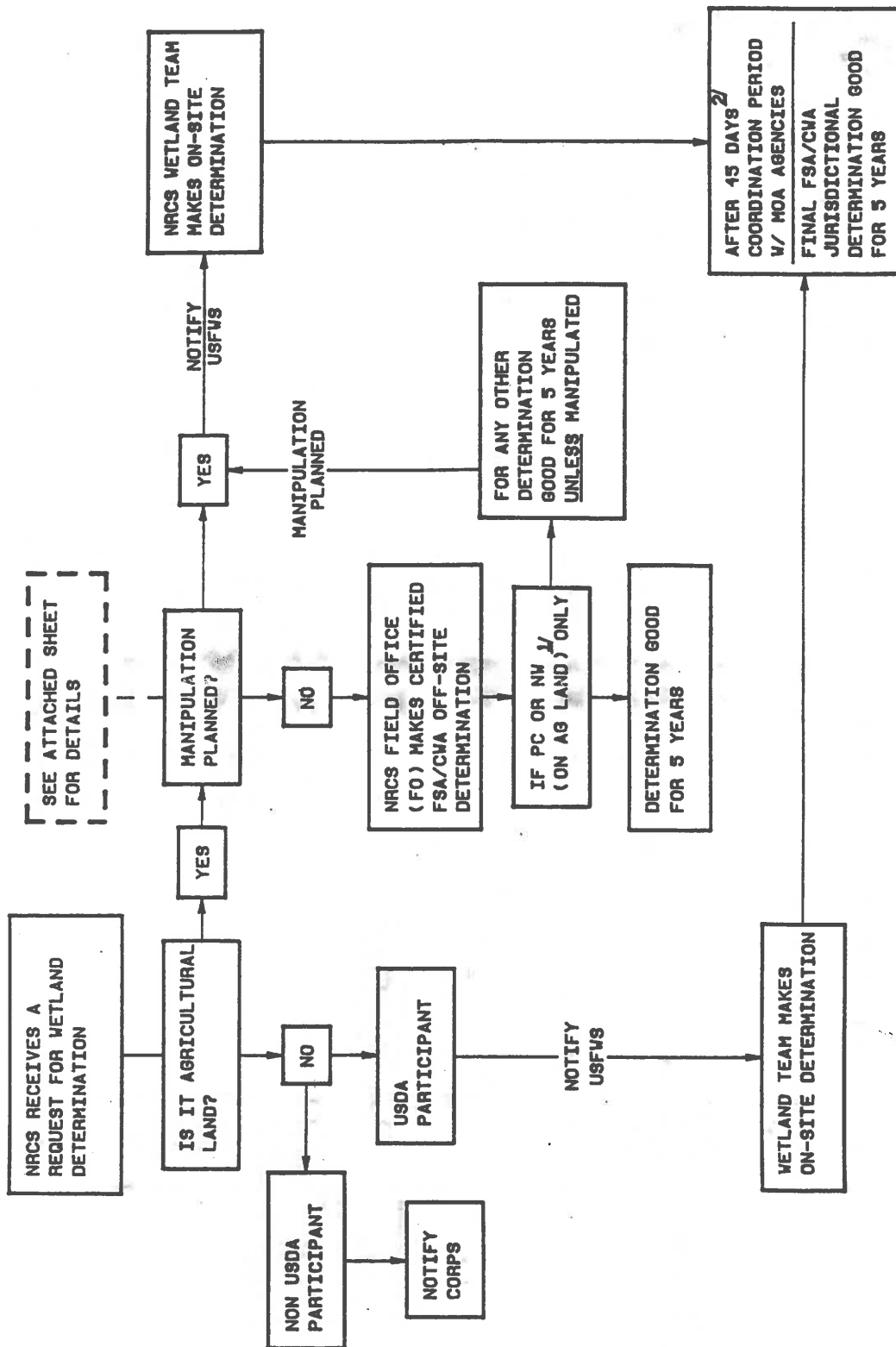
 1/5/94
George T. Frampton, Jr.
Assistant Secretary for Fish and
Wildlife and Parks
U.S. Department of the Interior

 1-4-94
Robert Perciasepe
Assistant Administrator for Water
U.S. Environmental Protection Agency

 1/6/94
G. Edward Dickey
Acting Assistant Secretary of the
Army for Civil Works
U.S. Department of the Army

OVERVIEW OF THE MOA WETLAND DETERMINATION PROCESS

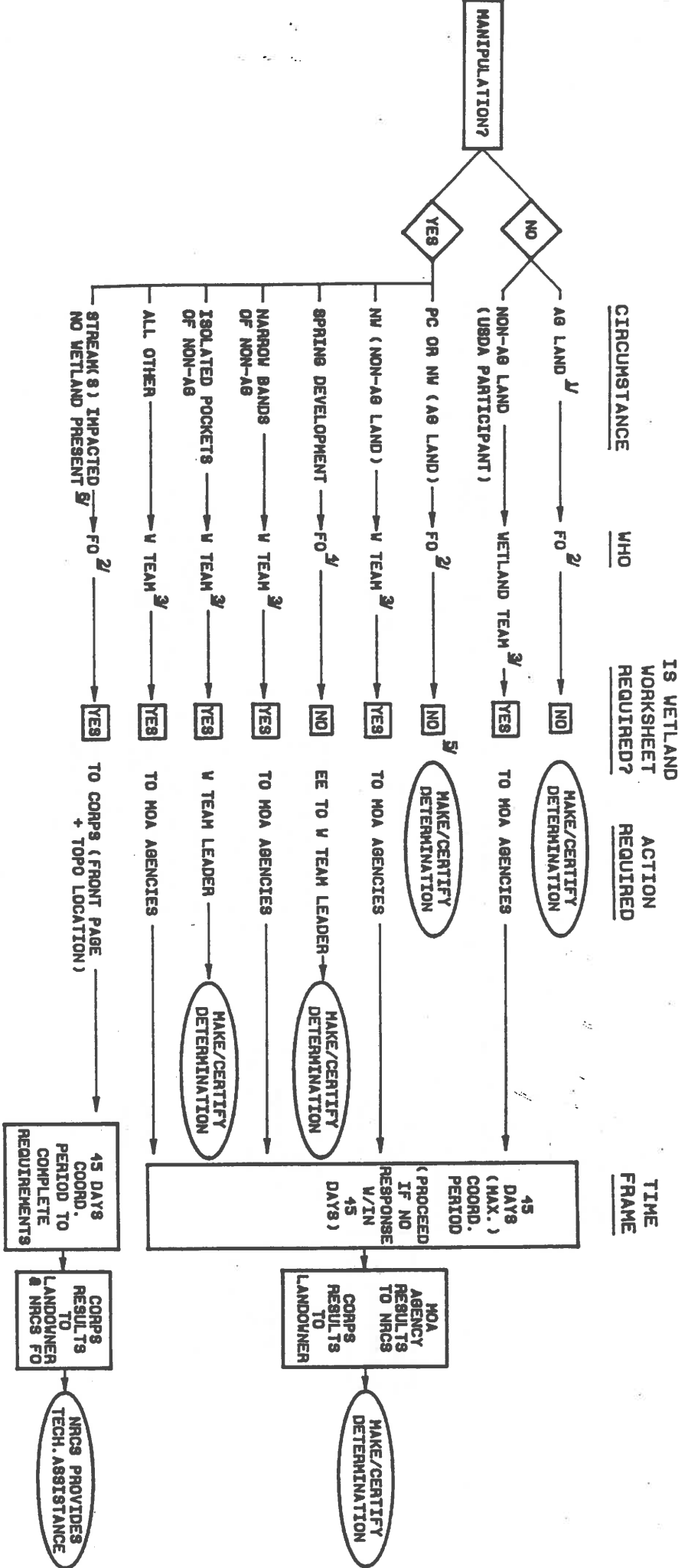
Appendix L. Flow Charts: Overview of the MOA Wetland Determination Process, with Attached Determination Process in Detail.



1/ AG LAND ONLY. DOES NOT INCLUDE ISOLATED POCKETS & NARROW BANDS OF NON-AG LAND

2/ EXPECTED TO BE LESS THEN 45 DAYS.

Attachment: DETERMINATION PROCESS IN DETAIL



NOTE : PROVIDE DETERMINATION (USE WORKSHEET) TO MOA AGENCIES ANYTIME A CERTIFIED OFFSITE DETERMINATION IS REVISED (DUE TO ERROR). APPLIES TO NON MANIPULATION SITUATIONS ONLY.

- 1) INCLUDES SMALL POCKETS & NARROW BANDS OF NON-AG LAND.(NOTE: SEE MAPPING CONVENTIONS FOR DEFINITIONS).
- 2) USE APPROVED OFF-SITE MAPPING CONVENTIONS (NOTE: NRCS FIELD OFFICE (FO) MUST BE TRAINED IN USE OF CONVENTIONS PRIOR TO DETERMINATIONS).
- 3) WETLAND (V) TEAM WILL MAKE ON-SITE DETERMINATIONS (NOTE: MUST BE TRAINED IN '87 COE MANUAL & FSA PROCEDURES TO MAKE ON-SITE DETERMINATIONS (EXCEPT SPRING DEVELOPMENT)).
- 4) FO APPLIES ENVIRONMENTAL EVALUATION (EE) ON-SITE.
- 5) FOR PC, REQUEST V TEAM SCOPE & EFFECT DETERMINATION IF NEW OR IMPROVED DRAINAGE IS ADJACENT TO FV, FVP OR V.
- 6) FOR SITUATIONS WITH WETLANDS & STREAM IMPACT, FOLLOW APPROPRIATE CIRCUMSTANCE PATH ON THIS PAGE.

Rapidly Developing Areas

in

Virginia

