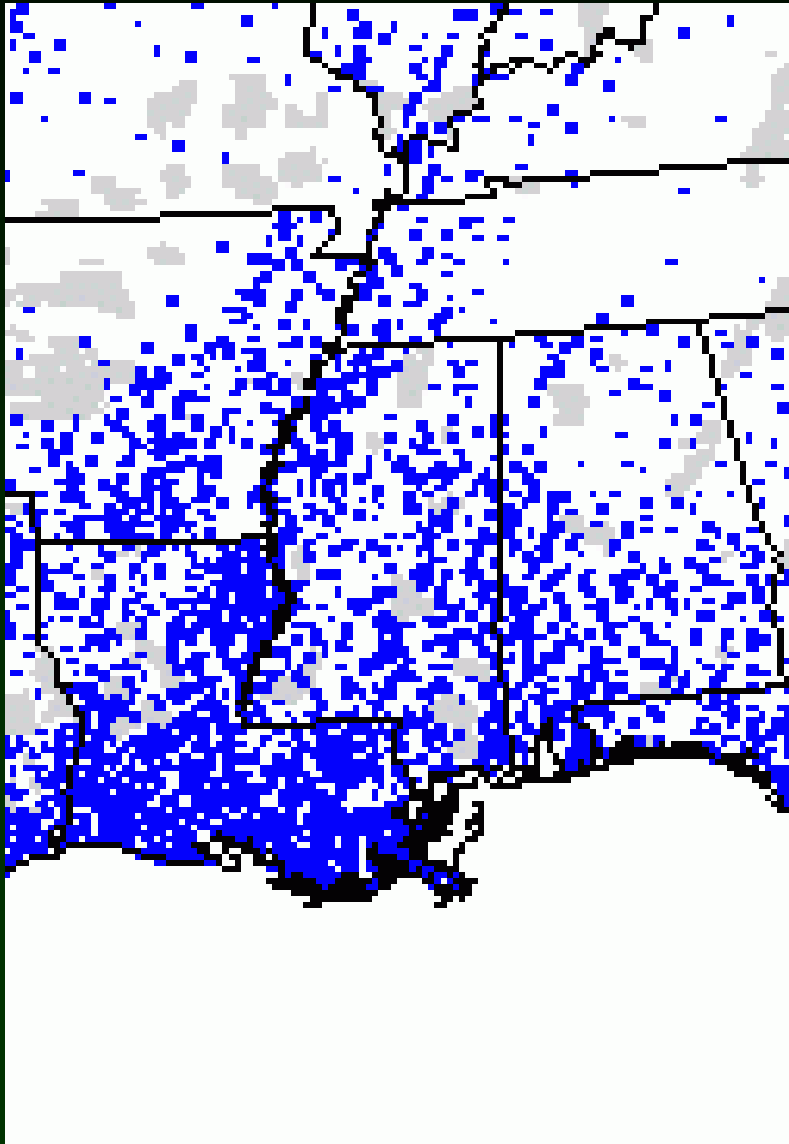


Federal Wetland Policy: What You Need To Know

Kevin Nelms, Wildlife Biologist
USDA, NRCS Greenwood, MS

Delineated Wetland Distribution, 1997



Wetlands can
be anywhere!

A photograph of a swampy forest, likely a cypress swamp, with tall, thin trees and water in the foreground. The trees are densely packed and have a characteristic buttressed base. The water is brownish and reflects the surrounding greenery. The sky is overcast.

Mississippi:

4.0 million wetlands acres

Approximately 80% in private ownership

A photograph of a swampy forest, likely a bayou in Louisiana. The scene is dominated by tall, slender trees with dark trunks and dense green foliage. The ground is submerged in water, which reflects the surrounding greenery. The lighting is natural, suggesting a bright day. The overall atmosphere is serene and lush.

Louisiana:

Greater than 25% of state is wetlands

Approximately 75% in private ownership

Two Federal Wetland Statutes

- Food Security Act of 1985 and Amendments
 - “Swampbuster” provisions deny USDA program benefits to landowners that convert wetlands for agriculture
- Clean Water Act of 1972 and Amendments
 - Section 404 authorized EPA and Corps to regulate certain activities in wetlands and other waters

Excluding Coastal Zone Management Act provisions overseen
by individual states

Wetland Identification and Delineation

- All agencies agree to use the 1987 Corps Wetland Identification Manual and 2012 Regional Supplements
- All use 3 factor approach: hydric soils, hydrophytic vegetation, and hydrology



US Army Corps
of Engineers
Waterways Experiment
Station

Wetlands Research Program Technical Report Y-87-1 (on-line edition)

Corps of Engineers Wetlands Delineation Manual

by Environmental Laboratory



Wetlands Research Program Technical Report Y-87-1
Corps of Engineers

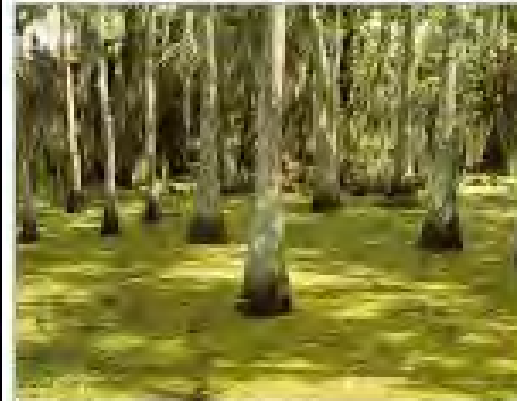
BRDC/ELTR

Regional Vegetation Assessment Program

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)

Environmental Laboratory

September 2011



Environmental Laboratory



Agency Responsibilities



- NRCS identifies wetlands on agricultural lands and non agricultural lands for USDA program participants
- If land has a FSA farm and tract number, they are a USDA participant
- USACE identifies wetlands on non agricultural and non USDA program lands
- USACE performs jurisdictional determinations



Statutory Role of USFWS and NOAA



- Evaluate impacts on fish and wildlife of all new Federal projects, Federal actions, and Federally permitted projects
- Provide consultation on trust species
- Provide technical assistance and review, upon request
- Coordinate to update the National List of Plant Species that Occur in Wetlands (USFWS)

“Triggers” for Both Laws

- Food Security Act of 1985 and Amendments
 - Planting an agricultural commodity on a wetland converted after 12/23/1985 or converting a wetland for the purpose, or to have the effect, of making production possible after 11/28/1990.
- Clean Water Act of 1972 and Amendments
 - Discharging dredge or placing fill in wetlands or other waters

Swampbuster Provisions and NRCS

Clean Water Act is separate

Program Participants

- Must adhere to both laws
- Can lose USDA payments
- Must come to USDA anytime they might be impacting wetlands (begins with AD-1026 with FSA – forwarded to NRCS)
- Often have wetland determinations already completed by NRCS



Prior Converted Cropland (PC)
Non Wetland (NW)



Farmed Wetland (FW)
Farmed Wetland Pasture (FWP)



Wetland (W)
Manipulated Wetland (WX)



Scope and Effect Determinations



Minimal Effect Exemption Determinations



Mitigation of Lost Wetland Functions and Values



Clean Water Act and USACE

Swampbuster provisions are separate

Section 404



- Requires a permit to place fill or discharge dredge
- Permits are not issued if a practical alternative exists or impacts have not been minimized
- Fill is “any pollutant which replaces waters of the US with dry land or which changes the bottom elevation of a water body”
- Including rock, sand, soil, clay, plastics, construction debris, wood chips, and materials used to create any structure or infrastructure

404 Exemptions



- Normal farming, ranching, or silviculture activities such as plowing, planting, minor drainage, and harvesting for production of food, fiber, and forest products or water conservation practices that are part of an established, ongoing farming or forestry operation
 - Maintenance (but not construction) of drainage ditches
 - Construction and maintenance of irrigation ditches
 - Construction and maintenance of farm or stock ponds
 - Construction and maintenance of farm and forest roads, in accordance with best management practices
 - Maintenance of dams, dikes, and levees

404 Permits



- Nationwide permit (NWP) issued nationally by COE every 5 years
- Regional General Permit (RGP) issued by districts for specific geographical areas
- Programmatic General Permit (PGP) issued by districts usually to refine NWP
- Individual or Standard Permit for projects with more than minimal impacts

USACE Districts



Some Pertinent NWP



- NWP 3 – Maintenance
- NWP 27 - Aquatic Habitat Restoration, Enhancement, and Establishment Activities
- NWP 30 – Moist Soil Management for Wildlife
- NWP 40 – Agricultural Activities

Pertinent RGP



- GP-21 (NO) - Improvements on State Wildlife Refuges Applied for by the Louisiana Department of Wildlife and Fisheries
- GP-25 (NO) - Improvements on Federal Wildlife Refuges Applied for by the U.S. Fish and Wildlife Service
- RGP-32 (Vburg) – Drainage and/or Water Level Control Structures

Individual Permit Steps

1. Application with designs, maps, etc. submitted to COE
2. COE acknowledges receipt and additional info may be requested
3. COE provides a jurisdictional determination
4. COE issues public notice for comments – 20-45 days
5. Any adverse comments are sent to applicant for response within 15 days
6. If needed, Environmental Assessment initiated
7. If needed, public hearing held
8. COE prepares NEPA documentation
9. COE makes permit decision and issues or denies permit



Rule of Thumb

If you think it is a wetland, It probably is

If you do not know, Ask

Better safe than sorry