



**What You Should know about  
Highly Erodible Land (HEL)  
and  
Wetland Conservation (WC)  
Compliance**

# HELWC

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- ✿ The United States Department of Agriculture (USDA) administers a number of programs that assist agricultural producers and protect our natural resources.
- ✿ The Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA) are required to verify that all producers benefiting from these programs comply with HEL and WC regulations.

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- ✧ **When did Highly Erodible Land (HEL) and Wetland Conservation (WC) Compliance become law and what is its purpose?**
  - ✧ The 1985 Farm Bill included conservation compliance requirements for HEL and WC for farmers who utilize certain USDA benefits.
  - ✧ to reduce soil erosion, protect the fertility of agricultural land, protect water quality and to preserve the functions of the nation's wetlands.

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- \* **How does compliance with HEL and WC provisions affect USDA program eligibility?**
  - \* CRP, CCRP, CREP, DCP, EQIP, WHIP, CSP, WRP, GRP, FRPP require compliance with the HEL WC

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- ✦ **The legal requirements, are they mandatory or voluntary?**

- ✦ If a producer chooses to participate in USDA programs and receive benefits, then they are legally required to comply with the HEL and WC provisions of the Farm Bill.

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## \* **I am a USDA participant. So what am I suppose to do?**

- \* Any person applying for or receiving USDA benefits must certify (Form AD-1026) they will not:
  1. produce an agricultural commodity on highly erodible land without a conservation system
  2. plant an agricultural commodity on a converted wetland; or convert a wetland to make possible the production of an agricultural commodity

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## \* **What is a wetland?**

\* Characteristics considered for determining if land is wetland include:

1. a predominance of hydric soils
2. is inundated or saturated by surface or groundwater (hydrology)
3. under normal circumstances does or will support a prevalence of vegetation normally found in saturated conditions

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## \* **What is a wetland determination?**

- \* technical decision made by an NRCS specialist regarding whether or not an area is a wetland
- \* identification of wetland type and size
- \* cropping history of the land using aerial and satellite images

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## \* **Can I farm a wetland?**

- \* Yes, under natural conditions, meaning the land was not:
  1. drained
  2. cleared
  3. otherwise manipulated to allow farming.

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## \* What constitutes the “conversion” of a wetland?

\* Dredging, draining, filling, tiling or otherwise removing the hydrology

or

\* Removing woody vegetation, including stumps  
Such that planting of a commodity crop is possible

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- \* **What if the wetland was converted to growing commodity crops before the WC requirement became law?**
  - \* Cropland manipulated and planted to an agricultural commodity before Dec. 23, 1985 and kept in agricultural production are classified as prior-converted (PC) cropland and are exempt from WC compliance.

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## \* What if I farm wetlands that were converted after Dec. 23, 1985?

- \* after Dec. 23, 1985

- \* **Planting** of a commodity crop on wetlands converted (CW) after this date places the participant in non-compliance

- \* After Nov. 28, 1990

- \* Conversion of a wetland making the planting of crops **possible** (CW + year) places the participant in non-compliance

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## \* **What recourse does the participant have?**

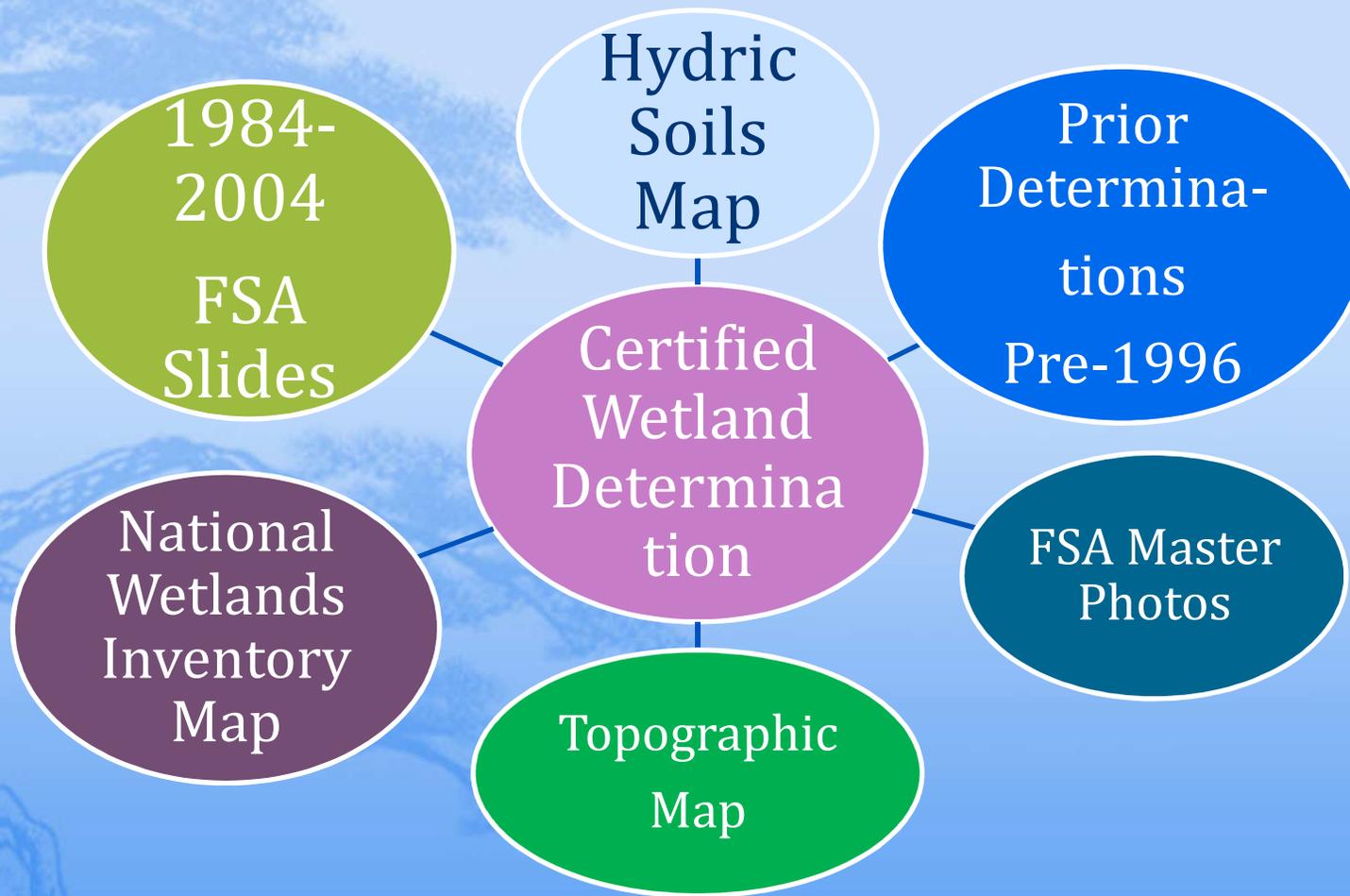
- \* Right to appeal determination
  - \* Burden is the appellant's
- \* Determination upheld
  - \* Mitigation (restoration)
  - \* Additional FSA requirements

# HELWC Status

## WL/HEL Determinations



# HELWC Determination Process



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## \* Preliminary Technical Determination (PTD)

- \* Completed using off-site methods

## \* Request for Reconsideration or Mediation

- \* Must be received by NRCS within 30 days of notice of PTD
- \* A reconsideration requires a site visit
- \* Mediation suspends the time clock

## \* Final Technical Determination (FTD)

- \* 30 days after PTD, or following reconsideration or mediation

## \* Request for Appeal to national Appeals Division (NAD)

- \* Within 30 days following notice of FTD

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- ✱ “Farmer Friendly” actions by NRCS
  - ✱ Honoring previous determinations – except for obvious wetlands (such as forested wetlands marked (PC).
  - ✱ Continue recognizing previously erroneous NRCS determinations.
    - ✱ Converted Wetland Technical Error determination
    - ✱ Can only be granted by the State Conservationist
  - ✱ Labeling fencerow removal similar to adjacent fields.
  - ✱ Allowing removal of woody vegetation that can be accomplished with a normal plow or disc.
  - ✱ Allow center pivot wheel tracks and outlets for upland drainage through wetland areas.

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## QUESTIONS ?

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