

MINIMAL EFFECTS (MW) DETERMINATION PROCEDURES
IDAHO

The National Food Security Act Manual (NFSAM) provides for the granting of exemptions for activities that may have minimal effects on wetlands. The following procedure is to be used for making MINIMAL EFFECT (MW) exemptions. The Natural Resources Conservation Service (NRCS) is responsible for gathering data and providing results of the agreement to the producer.

The minimal effect procedure is for proposed agricultural conversions. Conversions of wetlands for non-agricultural purposes (i.e., buildings, subdivisions, airports) are not suitable for minimal effects determinations.

The procedure describes the technical approach required to conduct a minimal effect evaluation. The approach involves the hydrogeomorphic (HGM) functional assessment of the wetland proposed for modification, the consideration of secondary on-site wetland impacts, and a cumulative wetland impact evaluation in the surrounding watershed. Reference is made to Appendix 527.6.1 (NFSAM, Nov.1996) and Id. Biology Technical Notes 25 and 26 for the HGM wetland functional assessment procedures.

STEP 1:

Name of Minimal Effect Applicant _____
Address _____
Tract No. _____ Field No. _____ Site No. _____

STEP 2: Identify and characterize the wetland to be impacted as follows:

Wetland Determination (affected area) _____
(Attach determination Form 026e, worksheets and maps for the impacted area.)
Wetland Description (NWI, dominant plants, past use) _____

Hydrogeomorphic Classification (if known) _____
Size of wetland impact area _____
Type of conversion activity (filling, tiling, tree removal) _____
Is the impact area a portion of a larger contiguous wetland area (irrespective of tract boundaries)?
yes _____ no _____
If yes, size of larger wetland area _____

STEP 3: Determine if the site is in a red flag area, an area or situation that contains sufficient value to preclude an MW determination:

- a) Federal identified threatened, endangered or candidate species habitat?
List: _____ yes _____ no _____
- b) Site protected by the Idaho Protection of Graves Act or Native American Graves Protection and Repatriation Act?
List: _____ yes _____ no _____
- c) Site considered a fen or peat bog? yes _____ no _____
- d) Is the site a deciduous, forested wetland (Cowardin classification)? yes _____ no _____

IF 3 (a), (b), (c) or (d) is checked yes, a converted wetland as identified in the NFSAM is **not eligible for MINIMAL EFFECT (MW)** under the wetland conservation provisions (swampbuster) of the Farm Bill. **DO NOT** proceed further. Notify the landowner of the denial of proposed MW, reasons why, and appeal options.

STEP 4: The following wetland conversions are considered a **Minimal Effect (MW) Exemption with conditions** under the Wetland Conservation Provisions of the Farm Bill. They will be considered minimal effect when proposed and installed in accordance with the following conditions. **The landowner is responsible for any necessary federal, state and local permits.** Complete an MW agreement with conditions as required in the NFSAM (NFSAM 516.13 a, b). Document the exemption by checking yes or no below:

- a) Removal of Russian Olive trees from wetlands for the purpose of improved wildlife habitat and/or enhanced agricultural production.
yes _____ no _____

Terms of the MW with conditions are as follows:

- 1) Removal of willows, alders and other native woody vegetation is not authorized under this MW.
- 2) No annually tilled crops can be planted on the areas where trees were removed. The area can be used for grazing and haying.
- 3) No land leveling, smoothing or other practices that will change the hydrology, hydric soil condition or remaining herbaceous or woody vegetation is allowed. Use commonly used equipment to remove Russian Olive trees. The objective is not to remove native herbaceous or native woody vegetation.

STEP 5: Will the proposed activity impact a wetland >0.1 acre in size?
yes _____ no _____

NOTE: The 0.1 acre threshold is for consistency with many Clean Water Act (CWA), Section 404, Nationwide Permits (NWP).

STEP 6: Is the site identified in a yellow flag area listed below:

yes _____ no _____

Yellow flag areas indicate issues of local, state or regional significance.

a) Does the area support, or is part of the habitat used by a species of special concern?

List: _____

yes _____ no _____

b) Is the site identified in an Idaho Wetland Conservation Strategy Plan?

List: _____

yes _____ no _____

c) Is the site located in a water quality limited segment?

List: _____

yes _____ no _____

d) Is the site on an identified cultural resource site?

List: _____

yes _____ no _____

e) Is the site a wetland that was restored with public (local, state federal) funds?

yes _____ no _____

f) Is the site within a municipal watershed (i.e., used for a domestic water supply)?

List: _____

yes _____ no _____

g) Is the site within a CERCLA/RCRA area?

List: _____

yes _____ no _____

h) Is the site a Clean Water Act Violation?

yes _____ no _____

i) Is the site located within an existing mapped floodway?

yes _____ no _____

Contact the Idaho Department of Water Resources (IDWR)

If any yellow flag above is checked yes, and the proposed action is considered a converted wetland, as identified in the NFSAM, **an MW will only be considered with additional conditions (e.g. BMP's and minor restoration or enhancement to replace functions reduced or eliminated) and appropriate local, state and federal permits.** Complete an on-site functional assessment as described below to determine functions eliminated and/or reduced.

STEP 7: Conduct an on-site functional assessment using **guidance provided in NFSAM 527.6.1 or when available Interim HGM procedures (Id. Biology Technical Notes 25 and 26) or Regional HGM Models.** A comparison site may be used in place of an on-site evaluation only if the wetland has been converted or disturbed to the extent that an assessment of typical functions for the wetland is not feasible. For example, if the wetland is normally cropped, then the functional assessment should be performed on-site, as it is the normal or typical functional attributes of the wetland that must be discerned. However, if the wetland is typically undisturbed or infrequently cropped, and the disturbance or conversion of the wetland is an unusual condition, then it is appropriate to use a comparison site to conduct the functional assessment. Summarize the functional assessment on the Wetland Functional Assessment Worksheet for appropriate HGM classification (NFSAM 527.6.1 or Id. Biology TN-25 or 26).

STEP 8: Determine and record whether other wetlands within a 2-miles radius, within the same watershed, have been converted (irrespective of the circumstances predicated the conversion) since December 23, 1985.

yes _____ no _____

STEP 9: Minimal Effect Determination

- a) If one or more wetland functions will be eliminated due to the proposed activity, and
- i. Through direct and indirect means, more than 0.1 acre of the wetland will undergo this loss (i.e., Step 5 was answered yes)

OR

- ii. The loss will add to cumulative wetland losses in the area (i.e., Step 8 was answered yes)

THEN, **the effect is not minimal.** Mitigation to restore functions that will be eliminated may be pursued as discussed in the NFSAM, Part 517.

- b) If four or more functions are reduced due to the proposed activity, and

- i. Through direct and indirect means, more than 0.1 acre of wetland will undergo this loss (i.e., Step 5 was answered yes)

OR

- ii. The loss will add to cumulative wetland losses in the area (i.e., step 8 was answered yes)

THEN, **the effect is not minimal.** Mitigation to restore functions that will be reduced or eliminated may be pursued as discussed in the NFSAM, Part 517.

- c) If wetland functions are not eliminated or reduced as described in Step 9 (a) and (b) above, and are not listed in a red or yellow flag category (**see note below**),

THEN, **the effect is minimal.** The landowner is responsible for any necessary local, state or federal permits.

NOTE: Additional conditions may be required for an MW or an MW in a yellow flagged area such as implementing a BMP (e.g., erosion control, bank stabilization and/or minor restoration or enhancement to restore functions impacted). If conditions are required for an MW Agreement, NFSAM, Part 526.65 is to be completed by the NRCS and signed by the landowner, in order to grant an MW exemption.

STEP 10: Populate the conservation plan and resources inventory database with the MW determination.