

U.S. Army Corps of Engineers Wetland Jurisdiction

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US Army Corps of Engineers
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Agenda

- Regulatory Goals and Authorities
- Wetland Delineation
 - Regional Supplement
- Jurisdiction
 - Rapanos
 - Clean Water Act Rule



Regulatory Authorities

- Discharge of dredged or fill material in waters of the U.S. (Section 404, Clean Water Act of 1977)
- Structures or work in navigable waters of the U.S. (Section 10, Rivers and Harbors Act of 1899)
- Transportation of dredged material for the purpose of disposal in the ocean (Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972)



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Regulated Waters



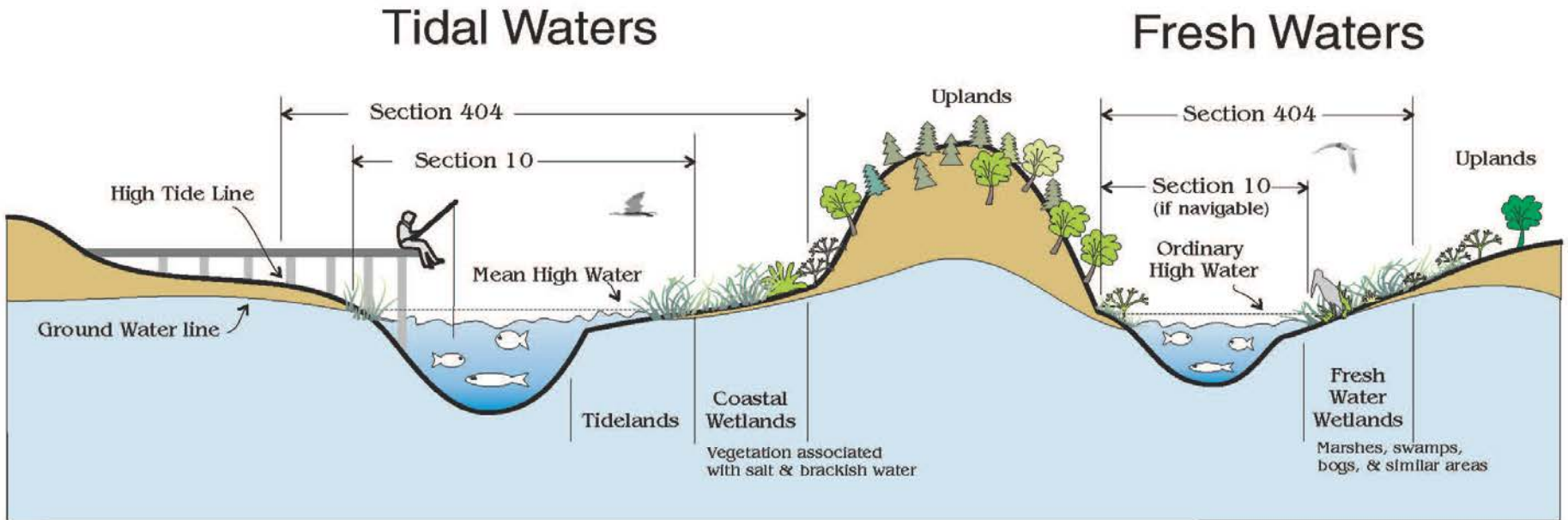
- Navigable Waters of the U.S. (33 CFR Part 329)



- Waters of the U.S. (33 CFR Part 328)
 - Open Waters
 - Wetlands



Regulated Waters and Activities



Typical examples
of regulated activities

Section 103
Ocean Discharge
of Dredged Material

Ocean discharges of
dredged material

Section 404

Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10

All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.

Wetland Delineation versus Jurisdictional Determination

- A wetland delineation identifies the boundaries of a wetland at a site; i.e., where is it located.
- A jurisdictional determination identifies the extent of Federal jurisdiction over waters of the United States, which can include wetlands.

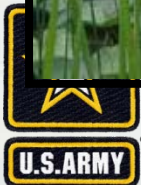


Federal Definition of Wetlands



Wetlands:

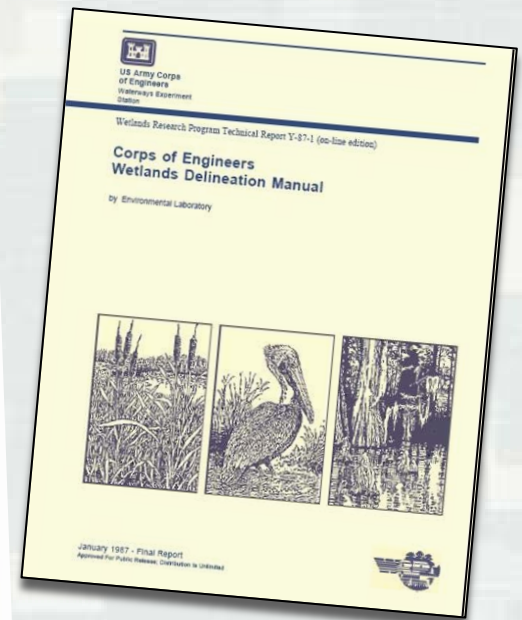
Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions



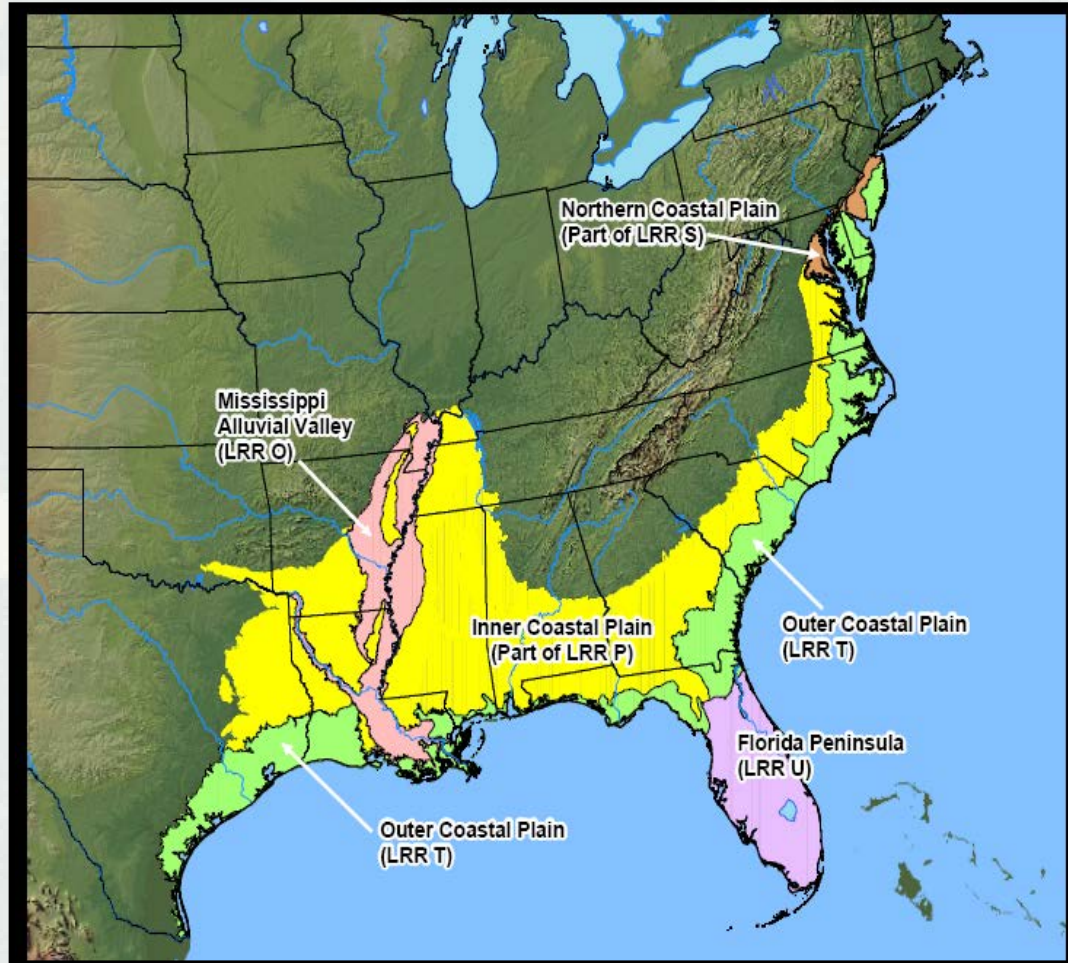
Corps Wetland Delineation Manuals

Purpose:

Provide guidelines and methods to determine whether an area is a wetland for purposes of Section 404 of the Clean Water Act (CWA)



Atlantic and Gulf Coastal Plain Regional Supplement Map



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Contents of a Regional Supplement

- Description of the region
- Hydrophytic vegetation indicators
- Hydric soil indicators
- Wetland hydrology indicators
- **Guidance for “difficult wetland situations” in the region including lands used for agriculture and silviculture**
- Data form, Glossary, References, Appendices



Table 1. Sections of the Corps Manual replaced by this Regional Supplement for applications in the Atlantic and Gulf Coastal Plain Region.

| Item | Replaced Portions of the Corps Manual (Environmental Laboratory 1987) | Replacement Guidance (this Supplement) |
|---|--|---|
| Hydrophytic Vegetation Indicators | Paragraph 35, all subparts, and all references to specific indicators in Part IV | Chapter 2 |
| Hydric Soil Indicators | Paragraphs 44 and 45, all subparts, and all references to specific indicators in Part IV | Chapter 3 |
| Wetland Hydrology Indicators | Paragraph 49(b), all subparts, and all references to specific indicators in Part IV | Chapter 4 |
| Growing Season Definition | Glossary | Chapter 4, Growing Season; Glossary |
| Hydrology Standard for Highly Disturbed or Problematic Wetland Situations | Paragraph 48, including Table 5 and the accompanying User Note in the online version of the Manual | Chapter 5, Wetlands that Periodically Lack Indicators of Wetland Hydrology, Procedure item 3(g) |



National Wetland Plant List

The screenshot shows the website's header with the title "US Army Corps of Engineers 2013 NWPL Website Version 3.1 National Wetland Plant List". On the left, there are statistics: Infra 2714, Families 251, Syn 19097, Genera 1843, Total 29748, and Species 7937. A search bar is on the right with a "Scientific Name" dropdown and a "Starting with" dropdown. Below the header is a navigation bar with "NWPL Home Page", "Home Page", "User Help", and "Create Plant List". The main content area features a grid of plant images, with a large central image of a red Cardinal Flower. The left sidebar contains sections for "Whats New?", "Wetland Plant Lists", and "Historic Plant Lists". The right sidebar lists "Partner Links" including the US Army Corps of Engineers, BONAP, US Fish & Wildlife Service, and NRCS.

- 1988 version no longer online



NWPL: <http://rsgisias.crrel.usace.army.mil/NWPL/>



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Hydrophytic Vegetation Test

- **Dominance Test:**

Can be used most of the time –
More than 50% of dominant
species in all strata are OBL,
FACW, or FAC.

- **Prevalence Index:** Used when
hydric soils and hydrology are
present, but does not pass
dominance test.

- It's a weighted average of the
indicator status of all species in
each stratum.



Prevalence index (PI) is less than 3.0



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USDA Field Office Climate Data

WETS Station : DAYTONA BEACH INTL AP, FL834 Creation Date: 01/05/2015
 Latitude: 2911 Longitude: 08103 Elevation: 00031
 State FIPS/County(FIPS): 12127 County Name: Volusia
 Start yr. - 1971 End yr. - 2000

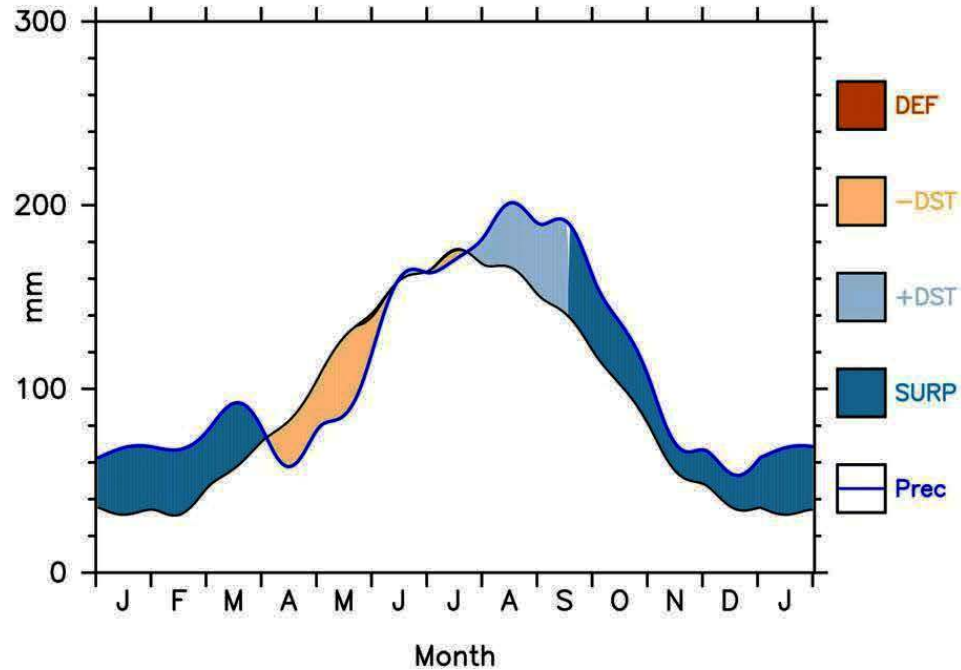
| Month | Temperature (Degrees F.) | | | Precipitation (Inches) | | | | |
|-----------|-----------------------------|---------------------|-------|---------------------------|-------------------------|--------------|---|------------------------------------|
| | avg daily max | avg daily min | avg | avg | 30% chance will have | | avg # of days w/.1 or more | avg total snow or fall |
| | | | | | less than | more than | | |
| January | 69.7 | 47.1 | 58.4 | 3.13 | 1.59 | 3.82 | 5 | 0.0 |
| February | 71.1 | 48.8 | 60.0 | 2.74 | 1.38 | 3.34 | 4 | 0.0 |
| March | 75.6 | 53.7 | 64.7 | 3.84 | 2.21 | 4.67 | 5 | 0.0 |
| April | 79.8 | 58.0 | 68.9 | 2.54 | 1.09 | 3.09 | 3 | 0.0 |
| May | 85.0 | 64.5 | 74.8 | 3.26 | 1.66 | 3.98 | 5 | 0.0 |
| June | 88.8 | 70.6 | 79.7 | 5.69 | 3.26 | 6.92 | 8 | 0.0 |
| July | 91.0 | 72.4 | 81.7 | 5.17 | 2.84 | 6.30 | 9 | 0.0 |
| August | 90.1 | 72.8 | 81.5 | 6.09 | 4.59 | 7.10 | 9 | 0.0 |
| September | 87.9 | 71.9 | 79.9 | 6.61 | 4.03 | 8.00 | 9 | 0.0 |
| October | 82.6 | 65.3 | 74.0 | 4.48 | 2.44 | 5.47 | 6 | 0.0 |
| November | 76.9 | 57.0 | 67.0 | 3.03 | 1.16 | 3.67 | 4 | 0.0 |
| December | 71.4 | 50.1 | 60.8 | 2.71 | 1.15 | 3.30 | 5 | 0.0 |
| Annual | ----- | ----- | ----- | ----- | 43.59 | 53.96 | -- | ---- |
| Average | 80.8 | 61.0 | 71.0 | ----- | ----- | ----- | -- | ---- |
| Average | ----- | ----- | ----- | 49.29 | ----- | ----- | 73 | 0.0 |

GROWING SEASON DATES

| Probability | Temperature | | |
|--------------|---|----------------|--------------------------|
| | 24 F or higher | 28 F or higher | 32 F or higher |
| | Beginning and Ending Dates Growing Season Length | | |
| 50 percent * | | | 2/ 3 to 1/ 5 336 days |
| 70 percent * | | | 1/23 to 1/16 358 days |



Water Balance at 81W, 29N
Project Title: Tanger



Location: **81W 29N** Elevation: **1 m**

Soil water-holding capacity: **150 mm**

Declining availability function: **G**

Prescribed average-monthly air-temperature changes: **0.0°C**

Prescribed average-monthly precipitation changes: **0.0 %**



Jacksonville District Policy

Wetland Delineation and Jurisdiction

- June 17, 1997 Public Notice: “*Survey Policy.*”
- RGL No. 08-02 : *Jurisdictional Determinations* (June 26, 2008).
- January 5, 2009 Public Notice: “*Wetland Delineation Information.*”



Jurisdictional Determinations

Preliminary

- Valid for a specific project
- All on-site waters are waters of the U.S.
- Not appealable
- No coordination with other agencies is required

Approved

- Valid for 5 years
- Determines waters of the U.S. versus non-waters of the U.S.
- Appealable
- In certain circumstances, coordination with EPA and HQ is required



Wetland Determination Data Form

- Required for every JD
- It is recommended that 1 set of data sheets (2 actual locations; 1 location each for the wetland and upland sides of proposed delineation line) be completed for each system present.
- Additional sets of data sheets for a single system might be necessary if the system is large.
- At some sites, similar wetland systems may be characterized through a single set of data sheets (discuss this with the Corps' project manager prior to implementation).



Wetland Determination Data Form

WETLAND DETERMINATION DATA FORM - Atlantic and Gulf Coastal Plain Region

Project/Site: _____ City/County: _____ Sampling Date: _____
 Applicant/Owner: _____ State: _____ Sampling Point: _____
 Investigator(s): _____ Section, Township, Range: _____
 Landform (hill slope, terrace, etc.): _____ Local relief (concave, convex, none): _____ Slope (%): _____
 Subregion (LRR or MLRA): _____ Lat: _____ Long: _____ Datum: _____
 Soil Map Unit Name: _____ NWI classification: _____

Are climatic / hydrologic conditions on the site typical for this time of year? Yes _____ No _____ (If no, explain in Remarks.)
 Are Vegetation _____, Soil _____, or Hydrology _____ significantly disturbed? Are "Normal Circumstances" present? Yes _____ No _____
 Are Vegetation _____, Soil _____, or Hydrology _____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

| | | |
|---------------------------------|-----------|----------|
| Hydrophytic Vegetation Present? | Yes _____ | No _____ |
| Hydric Soil Present? | Yes _____ | No _____ |
| Wetland Hydrology Present? | Yes _____ | No _____ |

Is the Sampled Area within a Wetland? Yes _____ No _____

Remarks:



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VEGETATION (Four Strata) – Use scientific names of plants.

Sampling Point: _____

Tree Stratum (Plot size: _____)

| | Absolute % Cover | Dominant Species? | Indicator Status |
|----|------------------|-------------------|------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |

Dominance Test worksheet:
 Number of Dominant Species That Are OBL, FACW, or FAC: _____ (A)
 Total Number of Dominant Species Across All Strata: _____ (B)
 Percent of Dominant Species That Are OBL, FACW, or FAC: _____ (A/B)

Sapling/Shrub Stratum (Plot size: _____)

| | Absolute % Cover | Dominant Species? | Indicator Status |
|----|------------------|-------------------|------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |

Prevalence Index worksheet:
 Total % Cover of: _____ Multiply by: _____
 OBL species _____ x 1 = _____
 FACW species _____ x 2 = _____
 FAC species _____ x 3 = _____
 FACU species _____ x 4 = _____
 UPL species _____ x 5 = _____
 Column Totals: _____ (A) _____ (B)
 Prevalence Index = B/A = _____

Herb Stratum (Plot size: _____)

| | Absolute % Cover | Dominant Species? | Indicator Status |
|-----|------------------|-------------------|------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| 11. | | | |
| 12. | | | |

Hydrophytic Vegetation Indicators:
 ___ 1 - Rapid Test for Hydrophytic Vegetation
 ___ 2 - Dominance Test is >50%
 ___ 3 - Prevalence Index is $\leq 3.0^1$
 ___ Problematic Hydrophytic Vegetation¹ (Explain)

¹Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

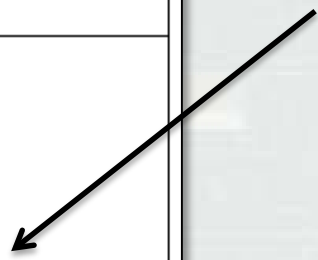
Woody Vine Stratum (Plot size: _____)

| | Absolute % Cover | Dominant Species? | Indicator Status |
|----|------------------|-------------------|------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

Definitions of Four Vegetation Strata:
Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height.
Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall.
Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.
Woody vine – All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? Yes _____ No _____

Remarks: (If observed, list morphological adaptations below).



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SOIL

Sampling Point: _____

Profile Description: (Describe to the depth needed to document this indicator or confirm the absence of indicators.)

| Depth (inches) | Matrix | | Redox Features | | Type ¹ | Loc ² | Texture | Remarks |
|-------------------|---------------|---|----------------|---|-------------------|------------------|---------|---------|
| | Color (moist) | % | Color (moist) | % | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

Indicators for Problematic Hydric Soils³:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ Organic Bodies (A6) (LRR P, T, U)
- ___ 5 cm Mucky Mineral (A7) (LRR P, T, U)
- ___ Muck Presence (A8) (LRR U)
- ___ 1 cm Muck (A9) (LRR P, T)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Coast Prairie Redox (A16) (MLRA 150A)
- ___ Sandy Mucky Mineral (S1) (LRR O, S)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) (LRR P, S, T, U)

- ___ Polyvalue Below Surface (S8) (LRR S, T, U)
- ___ Thin Dark Surface (S9) (LRR S, T, U)
- ___ Loamy Mucky Mineral (F1) (LRR O)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Marl (F10) (LRR U)
- ___ Depleted Ochric (F11) (MLRA 151)
- ___ Iron-Manganese Masses (F12) (LRR O, P, T)
- ___ Umbric Surface (F13) (LRR P, T, U)
- ___ Delta Ochric (F17) (MLRA 151)
- ___ Reduced Vertic (F18) (MLRA 150A, 150B)
- ___ Piedmont Floodplain Soils (F19) (MLRA 149A)
- ___ Anomalous Bright Loamy Soils (F20) (MLRA 149A, 153C, 153D)

- ___ 1 cm Muck (A9) (LRR O)
- ___ 2 cm Muck (A10) (LRR S)
- ___ Reduced Vertic (F18) (outside MLRA 150A,B)
- ___ Piedmont Floodplain Soils (F19) (LRR P, S, T)
- ___ Anomalous Bright Loamy Soils (F20) (MLRA 153B)
- ___ Red Parent Material (TF2)
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____
Depth (inches): _____

Hydric Soil Present? Yes _____ No _____

Remarks: _____



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Federal Wetland Jurisdiction



Waters Subject to CWA Programs

33 CFR part 328.3(a)

Current “waters of the U.S.” (WOUS):

- Traditionally navigable (TNWs)
 - Interstate
 - Other waters - could affect interstate commerce if used, degraded, or destroyed
 - Impoundments of jurisdictional waters
 - Tributaries of jurisdictional waters
 - Territorial seas
 - Wetlands adjacent to jurisdictional waters
- *Excludes waste treatment systems and prior converted cropland



CWA Section 404: A Short History

- 1972: Enacted.
- 1975: NRDC vs. Calloway. WOUS broader than navigable.
- 1977: Regulation & Congressional Amendments.
- 1979: Civiletti decision on CWA authority. EPA lead.
- **1985: SCOTUS in Riverside Bayview Homes.** Adjacent wetlands. *“restore and maintain the physical, chemical and biological integrity” of Nation’s waters.*”
- 1986: “Migratory Bird Rule”; most recent version of consolidated regulations issued.
- **2001: SCOTUS in SWANCC v. USACE.** Isolated waters.
- 2003: Advance Notice of Proposed Rulemaking.
- **2006: SCOTUS in Rapanos & Carabell.** Adjacent wetlands and tributaries.
- 2007-8: Rapanos guidance issued and revised.



Clean Water Rule: Definition of “Waters of the United States”

- Final Clean Water Rule published in the Federal Register on June 29, 2015.
- Effective 60-days after publication date – August 28 2015.



Clean Water Rule: Definition of “Waters of the United States”

- 8 categories of waters (versus 7)
- Significant Nexus Determination
 - Limited to 10 wetland functions
- Adjacency and Neighboring Defined
- Exclusions



Clean Water Rule: Definition of “Waters of the United States”

- New technical tools (e.g., a new JD form) forthcoming.
- Implementation of the rule will involve new processes specific to the section 404 program, new technical tools for the field, field training, and public/stakeholder outreach.



Clean Water Rule: Definition of “Waters of the United States”

- Approved jurisdictional determinations (AJD) are generally valid for five years; any existing AJDs will not be reopened unless requested.
- Any AJD associated with a permit application determined complete by June 29, 2015 will be finalized consistent with the existing rule.
- The use of preliminary jurisdictional determinations (PJDs) is not affected by this rule in any way.



Questions?



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