



**US Army Corps
of Engineers**



MEMORANDUM OF AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE U.S. ENVIRONMENTAL PROTECTION AGENCY, THE U.S. FISH AND WILDLIFE SERVICE, AND THE NATURAL RESOURCES CONSERVATION SERVICE FOR THE PURPOSE OF UPDATING AND MAINTAINING THE NATIONAL WETLAND PLANT LIST

I. INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) among the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (EPA), the U.S. Fish & Wildlife Service (FWS), and the Natural Resources Conservation Service (NRCS), hereinafter, together the "Signatory Agencies," is to maintain and update the "National Wetland Plant List" (NWPL), and to provide for the transfer of Plant Data from the NRCS-National Plants Database (PLANTS) to the USACE for future updating and maintenance of the NWPL.

The FWS originally developed the "National List of Plant Species that Occur in Wetlands" (88List) as part of their National Wetlands Inventory procedure for mapping wetlands in the United States. Through interagency efforts this list was revised and published in 1988 for use in wetland determinations under Section 404 of the Clean Water Act and the Swampbuster provisions of the 1985 National Food Security Act. On December 6, 2006 the responsibility for maintenance and revision of the 88List was transferred to the USACE from the FWS through an interagency agreement between USACE, EPA, FWS, and NRCS. The 88List was revised and published in 2012 under the name National Wetland Plant List (NWPL). The NWPL was last revised in 2016. The NWPL contains a listing of all vascular plant species known to occur in wetlands along with each species wetland indicator status designation by region. In order to maintain the botanical and scientific basis of the NWPL, the currently accepted plant names and synonyms must be used. Using the Federally developed plant data from USDA-NRCS PLANTS Database (PLANTS) for the NWPL meets this objective. The NWPL is maintained by the Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory (CRREL), Hanover, New Hampshire, in cooperation with the FWS, the EPA, and the NRCS. PLANTS is developed and maintained by the NRCS, National Plants Data Team, East National Technology Support Center, Greensboro, North Carolina.

II. SCOPE AND APPLICABILITY

A. Section 404 of the CWA authorizes the Corps, or an approved state CWA Section 404 program, to permit the discharge of dredged and/or fill material in waters of the U.S. The Code of Federal regulations defines "waters of the United States" and includes "wetlands" in that definition. Wetlands are "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 CFR §328.3(b)). Such vegetation is referred to in the 1987 Corps of Engineers Wetland Delineation Manual and its regional supplements as hydrophytic vegetation, and is identified by the indicator status of the plants in the approved NWPL.

B. The NWPL is also the primary basis for identifying hydrophytic vegetation for wetland determinations made by NRCS under the Food Security Act of 1985 (FSA). Wetlands, as defined by the FSA: "The term "wetland", except when such term is part of the term "converted wetland," means land that - (A) has a predominance of hydric soils; (B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (C) under normal circumstances does support a prevalence of such vegetation. For purposes of this Act, and any other Act, this term shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils (16 U.S.C. 3801 et seq.)."

III. PROCEDURES

A. The four Signatory Agencies will collaborate to maintain and update the NWPL in a manner that encourages transparency and active public participation. The USACE is responsible for overall leadership for the NWPL, and for convening National and Regional Plant Panels. These panels will be composed of representatives, that the four Signatory Agencies will provide to support this effort. The USACE is also responsible for publishing future updates to the NWPL in the Federal Register for public review and comment on a biennial basis.

B. To enhance communication among the participating agencies and encourage public participation at each step in the review process, the USACE provides a dedicated web interface with multiple levels of accessibility, including a public forum, and a secure workspace for the interagency Regional and National Review Panels. This web interface provides current wetland plant lists and takes input from both the agencies and the public on suggested indicator status changes. In addition, the USACE uses the web interface to receive and review public comments and to provide panel members the option of having an on-line forum to discuss proposed changes and to review and comment on any necessary changes to wetland ratings on the NWPL.

C. The Regional Panels are responsible for preparing Regional Lists of NWPL for submission to the National Panel, based on the best available data, expertise of panel

representatives, and public input. The National Panel may also call upon the Regional Panels to respond to technical comments raised during the public comment period.

D. The National Panel is responsible for reviewing the changes proposed by the Regional Panels, making modifications as needed in close consultation with the Regional Panels, and evaluating comments received in response to the public notice of the draft NWPL. As part of the National Panel's work, agency representatives to the panel are expected to involve their respective Headquarters offices during all phases of the process and to provide technical recommendations to the appropriate Headquarters staff.

E. To further facilitate the development and updating of the NWPL in a collaborative manner, the National Panel is responsible for developing specific operating protocols to be followed by the National and Regional Review Panels, including voting, science-based dispute resolution processes, and procedures to implement each Agency's requirements for sound science. To this end, the National Wetland Plant List will be updated using National and Regional panels and incorporating public input, and will be posted in the Federal Register as described in the Federal Register Volume 81, number 74, April 18, 2016 (or subsequent amendment). The requirements of the Data Quality Act (Public Law 106-554) will be followed in developing the appropriate procedures for the current effort to update and revise the List.

F. The Signatory Agencies are responsible for designating representatives to the panels with the appropriate wetland and plant expertise to support the development of the List. Each agency is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each agency is responsible for supervision and management of its personnel.

G. The taxonomy, synonymy, and biogeography of the NWPL will be consistent with the plant data used in the current version of PLANTS, which is maintained by NRCS in collaboration with the botanical community:

- a. PLANTS is considered the nomenclatural authority for the NWPL.
- b. The NRCS and USACE will collaborate to provide plant taxonomy and synonymy for all wetland taxa currently on the NWPL so as to revise the list consistent with PLANTS.
- c. The NRCS and USACE will collaborate to provide (NRCS) and incorporate (USACE) county distribution (biogeography) data associated with each species into the NWPL.
- d. The USACE will provide PLANTS all wetland indicator status designations for each species by geographic region so that the NWPL and PLANTS will maintain consistency across Federal programs.
- e. The NRCS and the USACE will collaborate to provide plant taxonomy, synonymy, and biogeography for all upland taxa not currently on the NWPL.
- f. NRCS will provide the USACE with changes to the taxonomy, nomenclature, and biogeography from records established by PLANTS, in

conjunction with the botanical community, for plants currently on the NWPL and plants not currently on the NWPL every two years from the effective date of this MOA.

- g. NRCS will provide the USACE with the photo database currently in PLANTS for use on the NWPL.

IV. INFORMATION SHARING

The NWPL and the data provided by PLANTS as incorporated into the NWPL will be shared with all Signatory Agencies and interested parties and are to be considered within the public domain. It is critical that the NWPL plant name data is consistent throughout the Federal government, is publicly accessible, and reflects the highest standard of scientific accuracy and reliability.

V. GENERAL

1. Nothing in this MOA is intended to diminish, modify, or otherwise affect existing agreements among any of the Signatory Agencies, including those related to the CWA Section 404 or the Food Security Act of 1985.
2. Nothing in this MOA is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities or requirements of Signatory Agencies.
3. This MOA does not document the exchange of funds or manpower between the Signatory Agencies nor does it make any obligation or commitment of funds or resources. Any exchange of funds or manpower between the Agencies must be made by separate agreement and under specific statutory authority; this MOA does not provide such authority. Further, no provision of this MOA will be interpreted to require obligation or payment of funds in violation of 31 U.S.C. § 1341. Any obligation of funds in support of this MOA will be accomplished pursuant to a subsequent support agreement using the appropriate agency form(s). If such obligation is made, the requesting agency will bill the servicing on a monthly basis in accordance with the procedures of the billing agency. A record of the transaction will be sent to the servicing agency within 30 days after the month in which the transaction occurred. The servicing agency paying office will forward payments, along with a copy of billed invoices, to the requesting agency within 30 days of the date of invoice. Bills rendered will not be subject to audit in advance of payment.
4. This MOA will be reviewed annually on or around the anniversary of its effective date for financial impacts and triennially in its entirety. This MOA may only be modified by the written agreement of the Signatory Agencies, duly signed by their authorized representatives and approved at Headquarters level. Any disputes relating to this MOA will, subject to any applicable law, Executive Order, Directive, or Instruction, be resolved by consultation between the Signatory Agencies through their chains of command. This MOA will take effect on the date of the last signature below and will continue in effect no longer than 9 years from the effective date. This MOA may be terminated at any time

upon the written agreement of all Signatory Agencies, or terminated by any of the Signatory Agencies alone upon 90 days written notice.

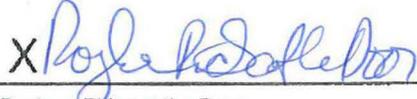
5. It is expressly understood and agreed that this MOA embodies the entire agreement between the Signatory Agencies regarding the MOA's subject matter. This Agreement is not transferable except with the written consent of all Signatory Agencies.

6. Each Signatory Agency is responsible for maintaining an administrative record in accordance with the requirements of the Federal Records Act (44 U.S.C. Chapter 31). The USACE is responsible for new records as they are developed related to this agreed-upon transfer of responsibility and continued maintenance in accordance with the requirements of the Federal Records Act (44 U.S.C. Chapter 31).

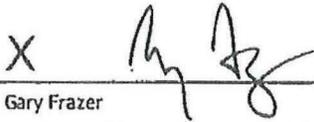
SIGNATORIES:

X 

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X 

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