JURISDICTIONAL DETERMINATION PROCESS

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APPROVED JURISDICTIONAL DETERMINATION (AJD): A process used by the Corps to make a definitive, official determination whether aquatic resources in the review area are or are not jurisdictional (33 CFR 331.2).

The only USACE process for determining that an aquatic resource is NOT jurisdictional is an AJD.

For AJDs, aquatic resources must first either meet the definition of a wetland based on the “Corps of Engineers Wetland Delineation Manual” and the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast” or contain an ordinary high water mark (OHWM) as defined by USACE methodology.

Aquatic resources will then only be determined to be jurisdictional under NWPR if they meet the definition of an (a)(1)-(a)(4) water.
The JD review area is determined by the requester and can be a subset of the aquatic features on-site. For example, if there are several wetland features on the site but the requester is only questioning the jurisdictional status of one feature, the review area can be limited to that single feature.
AJDs are appealable, but ONLY by the requester/landowner if he/she disagrees with USACE’s determination of jurisdiction.

A document outlining the appeals process is included with each AJD determination.
AJD DURATION

An AJD is valid for 5 years from the date of issuance.

However, the possessor of a valid AJD may request that the Corps reassess the review area and issue a new AJD before the five-year expiration date. For example, if Wetland C was found to be jurisdictional under an AJD issued in 2018 but the landowner believes that Wetland C would no longer be jurisdictional under NWPR, the landowner can request a new AJD.

NWPR does not invalidate an AJD that was issued before the rule was effective. AJDs issued prior to NWPR will remain valid until the expiration date unless new information warrants a revision of the determination, or the recipient of such an AJD requests that a new AJD be issued.
Obtaining an approved jurisdictional determination is a separate process from the USACE permitting process. Although USACE tries to make jurisdictional determinations as quickly as possible, prioritization is given to permit applications. Therefore if the applicant wants confirmation concerning the jurisdictional status of aquatic features on the site, he/she should come to USACE as early in the process as possible.
PRELIMINARY JURISDICTIONAL DETERMINATION (PJD): A USACE determination that does not address questions of jurisdiction thereby treating all aquatic resources within the review area that could be jurisdictional as if they are jurisdictional for purposes of permit processing (i.e. impacts and compensatory mitigation) (33 CFR 331.2).

For PJDs, aquatic resources must either meet the definition of a wetland based on the “Corps of Engineers Wetland Delineation Manual” and the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast” or contain an ordinary high water mark (OHWM) as defined by USACE methodology.

Because PJDs are just an approximation and an assumption that all aquatic features are jurisdictional, they are not appealable.

Even after a PJD has been issued, the recipient can request an approved jurisdictional determination at any time.
The JD request form can be found in Regulatory Guidance Letter (RGL) 16-01.

This request form can be used to request an AJD or a PJD.
JD INFORMATION REQUIRED

For both AJDs and PJDs, you need to show how you identified the boundaries of the aquatic features. For wetland features, you should submit USACE wetland delineation data sheets and show paired plots, one on the upland side and one on the wetland side. You should also submit supporting data in the form of USGS quadrangle maps, NWI maps, aerial photography, soils data, etc.

For an AJD, you will also need to submit data related to NWPR jurisdiction, such as contribution of flow data, flood data, typical year determination data, etc.
JD RESOURCES

- Corps Regulations at 33 CFR 331.2
- EPA’s CWA Approved Jurisdictional Determination website: [https://watersgeo.epa.gov/cwa/CWA-JDs/](https://watersgeo.epa.gov/cwa/CWA-JDs/)