

JURISDICTIONAL DETERMINATION PROCESS

Ruthann Brien, Project Manager, Regulatory
USACE, New England District
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APPROVED JURISDICTIONAL DETERMINATIONS



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.



AJD REVIEW AREA



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.



AJD APPEALS



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.



AJD TIMELINE



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 DETERMINATIONS



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.



JURISDICTIONAL DETERMINATIONS (JDS)



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.

Appendix 1 - REQUEST FOR CORPS JURISDICTIONAL DETERMINATION (JD)

To: District Name Here

- I am requesting a JD on property located at: _____
(Street Address)
City/Township/Parish: _____ County: _____ State: _____
Acreage of Parcel/Review Area for JD: _____
Section: _____ Township: _____ Range: _____
Latitude (decimal degrees): _____ Longitude (decimal degrees): _____
(For linear projects, please include the center point of the proposed alignment.)
- Please attach a survey/plat map and vicinity map identifying location and review area for the JD.
- I currently own this property. I plan to purchase this property.
- I am an agent/consultant acting on behalf of the requestor.
- Other (please explain): _____
- Reason for request: (check as many as applicable)
 - I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
 - I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
 - I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
 - I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
 - I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
 - A Corps JD is required in order to obtain my local/state authorization.
 - I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
 - I believe that the site may be comprised entirely of dry land.
 - Other: _____
- Type of determination being requested:
 - I am requesting an approved JD.
 - I am requesting a preliminary JD.
 - I am requesting a "no permit required" letter as I believe my proposed activity is not regulated.
 - I am unclear as to which JD I would like to request and require additional information to inform my decision.

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

*Signature: _____ Date: _____

- Typed or printed name: _____
Company name: _____
Address: _____

Daytime phone no.: _____
Email address: _____

*Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.
Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.
Routine Use: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.
Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.



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
- Corps Jurisdictional Information Website:
https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/juris_info/
- Corps Regulatory Guidance Letter (RGL) 16-01:
<https://www.spn.usace.army.mil/Portals/68/docs/regulatory/resources/RGL/RGL16-01.pdf>
- Corps' Jurisdictional Determinations and Permit Decisions Public Interface: <https://permits.ops.usace.army.mil/orm-public>
- EPA's CWA Approved Jurisdictional Determination website:
<https://watersgeo.epa.gov/cwa/CWA-JDs/>