

# NWPR: JURISDICTIONAL DETERMINATION PROCESS & IMPLEMENTATION

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# WHAT ARE THE IMPLICATIONS OF NWPR IN RI?



## The NWPR clarifies the definition of waters of the U.S.

- Does **not** change the types of *activities* regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- Does **not** change the USACE permitting process in Rhode Island
- Does **not** change the permitting process or jurisdiction of the Rhode Island Department of Environmental Management (DEM) or Rhode Island Coastal Resources Management Council (CRMC) Programs
- Does **not** change any local permitting processes or jurisdiction



# JURISDICTIONAL DETERMINATION PROCESS



# WHAT IS A JURISDICTIONAL DETERMINATION?



A jurisdictional determination (JD) is a **written** Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 CFR 331.2).

- Two types: **Preliminary** Jurisdictional Determination (PJD)  
**Approved** Jurisdictional Determination (AJD)
- JDs are typically made at the request of the landowner or project proponent. USACE generally does not issue a JD of any type when a JD is not requested.
- Additional information can be found in the Corps Regulatory Guidance Letter (RGL) 16-01, including a request form  
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/GuidanceLetters/>



# JURISDICTIONAL DETERMINATIONS (JDS)



- APPROVED JD (AJD): Used to make a definitive, official determination that an aquatic resource is or is not jurisdictional (33 CFR 331.2).
- PRELIMINARY JD (PJD): A determination that does not address questions of jurisdiction thereby treating all aquatic resources that could be jurisdictional as if they are jurisdictional for purposes of permit processing (i.e. impacts and compensatory mitigation) (33 CFR 331.2).
- JD request form found in RGL 16-01
- For both AJDs and PJDs aquatic resources must meet the definition of a wetland or contain an ordinary high water mark (OHWM) as defined by USACE methodology.



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## REGULATORY GUIDANCE LETTER

No. 16-01

Date: October 2016

SUBJECT: Jurisdictional Determinations

1. Purpose. Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an AJD as opposed to a PJD, or when it may be appropriate to not prepare any JD whatsoever.

The Corps has long provided JDs as a public service. In U.S. Army Corps of Engineers v. Hawkes Co., 136 S.Ct. 1807 (2016), the Supreme Court held that AJDs are subject to judicial review, and several members of the Court highlighted that the availability of AJDs is important for fostering predictability for landowners. The Corps recognizes the value of JDs to the public and reaffirms the Corps commitment to continue its practice of providing JDs when requested to do so, consistent with the guidance below. This clarification RGL does not change or modify the definitions of AJDs and PJDs included in Corps regulations, the documentation practices for each type of JD, or when an AJD is required by the terms of its definition (e.g., only an AJD can be used to determine presence/absence of waters of the U.S.). This RGL also does not address which aquatic resources are subject to CWA or RHA jurisdiction.



# PRELIMINARY VS. APPROVED JDS



## PRELIMINARY JD

- All potential jurisdictional aquatic features are included in a PJD and treated as if they are jurisdictional, even where initial indications are that a feature may not be jurisdictional were the District to complete an AJD
- To assist the requestor in planning for a proposed project (i.e. avoidance and minimization)
- Not appealable
- Applicant may request an AJD at any time

## APPROVED JDS

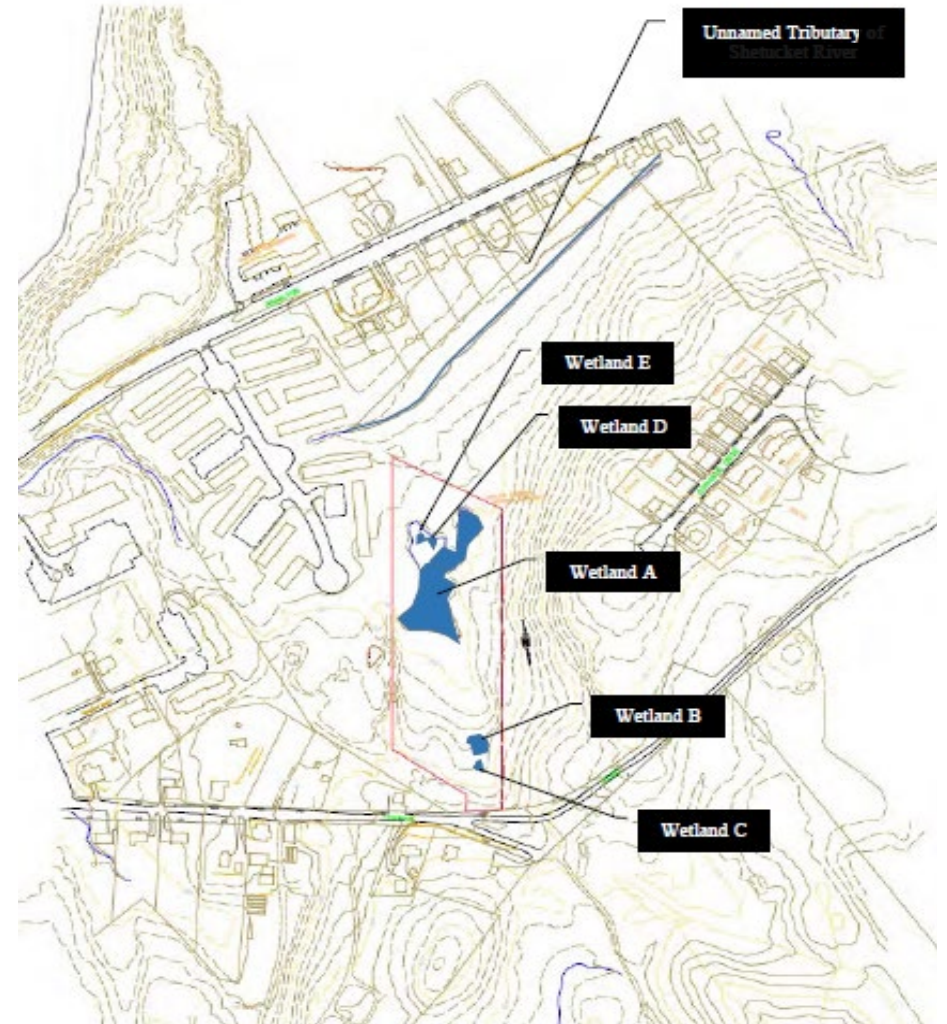
- Only way to determine an aquatic feature is not jurisdictional
- Valid for 5 years
- Appealable
- Includes a basis of jurisdiction with the document, providing the indicators that support the approved JD



# NWPR AND PRE-EXISTING AJDS



- The processor of a valid AJD may request that USACE reassess a parcel and issue a new AJD before the five-year expiration date.
- The NWPR does not invalidate an AJD that was issued before the rule was effective. As such, these AJDs will remain valid until the expiration date unless one of the criteria for revision is met under RGL05-02, or the recipient of such an AJD requests that a new AJD be issued.
  - New information may warrant revision of the determination before an expiration date
  - District engineer identifies specific geographic areas with rapidly changing environmental conditions that merit re-verification on a more frequent basis.





# IMPLEMENTATION





# IMPLEMENTATION OF NWPR

## Determining contribution of flow downstream:

- USGS maps
- State and local maps; Aerial photography
- Verified flow path models
- Flow path trace analysis in a Geographic Information System (GIS)
- USGS StreamStats

## Determining perennial or intermittent flow:

- NHD or local maps; Aerial photography
- NRCS hydrologic tools and soils maps
- NOAA snow maps
- Verified modeling tools
- Stream Duration Assessment Methods (SDAMs)



The image shows two overlapping web browser screenshots. The top screenshot is from the USDA Web Soil Survey website, displaying a search interface for soil maps in Rhode Island. It includes a search bar, a legend for map units, and a table of soil types. The bottom screenshot is from the NOAA National Operational Hydrologic Remote Sensing Center website, showing a 'Regional Snow Analyses: Northeast' page. This page features a map of the Northeast and a table of snow analysis data for February 22, 2021.

Map Unit Symbol	Map Unit Name	Acres in AOI	Pe of
AfA	Agawam fine sandy loam, 0 to 3 percent slopes	2,381.0	
AfB	Agawam fine	2,114.5	

Parameter	Value
Automated Model Discussion: February 22, 2021	
Area Covered By Snow:	100.0%
Area Covered Last Month:	79.7%
Snow Depth	
Average:	13.8 in
Minimum:	0.0 in
Maximum:	47.0 in
Std. Dev.:	5.3 in
Snow Water Equivalent	
Average:	3.2 in
Minimum:	0.0 in
Maximum:	14.1 in
Std. Dev.:	1.4 in

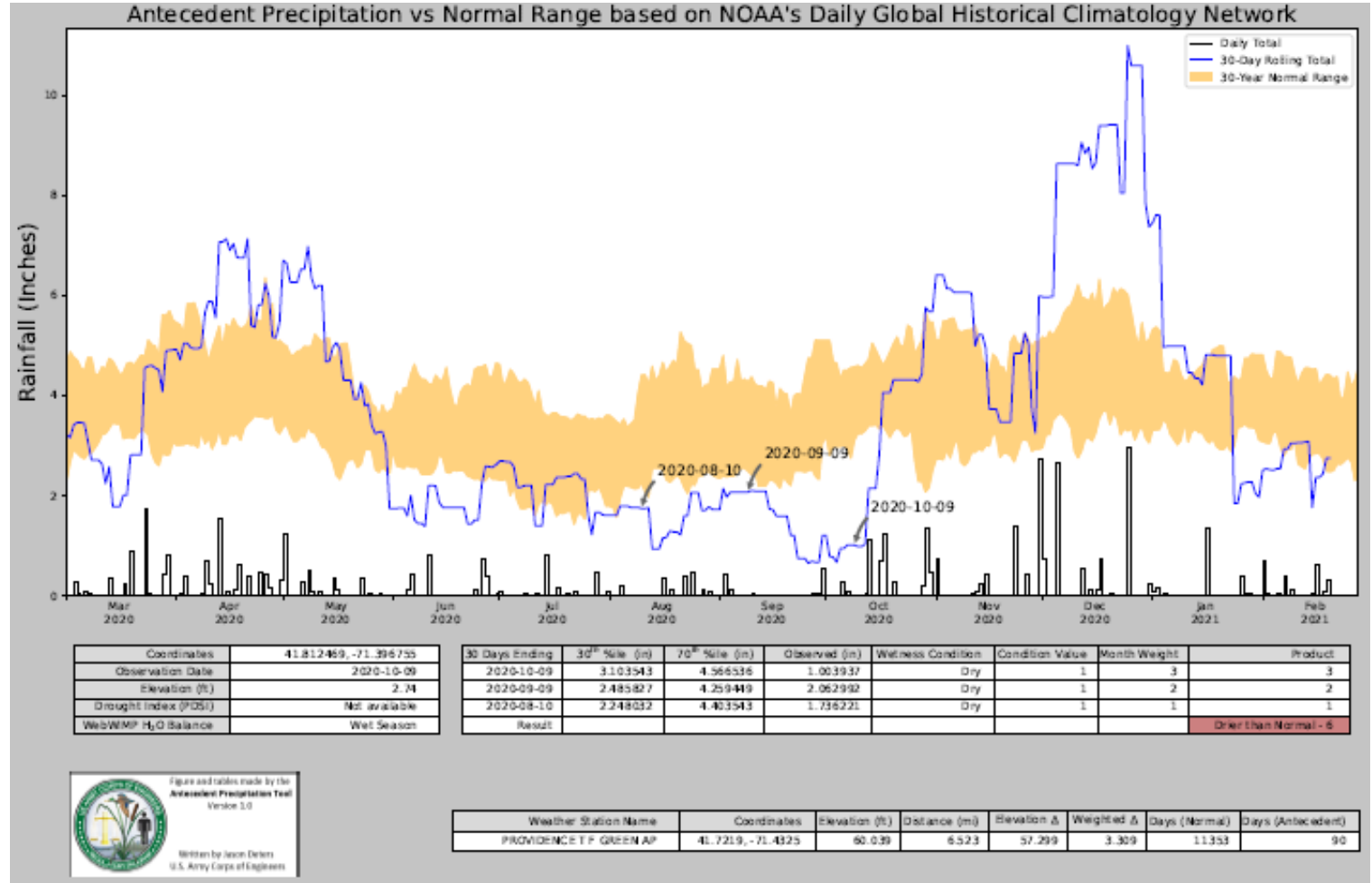


# IMPLEMENTATION OF NWPR



## Determining surface flow and surface water connections that occur in a typical year

- The agencies have developed an Antecedent Precipitation Tool (APT) that collects NOAA precipitation from nearby weather stations and compares precipitation from the time period of interest with precipitation data from the past 30 years, that may be used to determine whether precipitation conditions fall within the normal range.





# IMPLEMENTATION OF NWPR



**Other data sources and tools that may be used to inform whether hydrologic flows or surface water connections occur under normal climatic conditions include:**

- Palmer Drought Severity Index
- WebWIMP
- NOAA National Snow Analysis Map
- NRCS Snow Telemetry – Standard Precipitation Index
- NOAA/National Weather Service Meteorological Stations
- WETS tables
- Continuous flow models
- Hydrologic models
- Familiar resources (aerials, topographic maps, soil surveys, etc...)
- Physical and biological field indicators



# IMPLEMENTATION OF NWPR

Adjacency can be determined through a combination of:

- Federal, state and local maps
- Aerial photography and satellite imagery
- Other remote sensing information
- On-site observations
- Identification of artificial structures that allow for a direct hydrologic surface connection:
  - Construction design plans
  - Permitting data
  - State and local information,
  - Levee or drainage district information



## NHDPlus High Resolution Availability

NHDPlus HR Beta Available      NHDPlus HR Beta QC Coming Soon      NHDPlus HR Future Work





# RHODE ISLAND GENERAL PERMITS



# USACE PERMITS



## Rhode Island General Permits (RIGPs)

- Consist of 21 activity-based GPs
- Current RI General Permits (RI GPs) were issued on March 3, 2017, and expire on March 3, 2022.

## Self-Verification (SV)

- Project proponent confirms that project will comply with all terms and general conditions (GCs) of RIGPs
- Impact threshold is generally <5,000 sq. ft.

## Pre-Construction Notification (PCN)

- Requires application submittal and project plans
- Generally, impacts >5,000 sq. ft., but <1 acre (nontidal) & <1/2 acre (tidal)
- Generally required when historic properties, Essential Fish Habitat (EFH), Special AQUATIC sites (SAS) or Threatened & Endangered Species may be affected
- Etc. – see RIGPs and all GCs

Applicant: General Public, State of Rhode Island

Effective Date: March 3, 2017  
Expiration Date: March 3, 2022

**DEPARTMENT OF THE ARMY  
GENERAL PERMITS FOR THE STATE OF RHODE ISLAND AND  
LANDS LOCATED WITHIN THE BOUNDARIES OF THE  
NARRAGANSETT LAND CLAIM SETTLEMENT AREA**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues twenty-one (21) general permits (GPs) for activities subject to Corps jurisdiction in waters of the United States (U.S.), including navigable waters, within the boundaries of the State of Rhode Island and lands located within





# USACE PERMITS



## Individual Permit (IP)

- Work that is not eligible for authorization under the GPs provided in Appendix A, or that does not meet the terms and conditions of the GPs, will require review under the Corps individual permit procedures (see 33 CFR Part 325.1).
- Permanent and temporary fill >1 acre of non-tidal waters and/or wetlands, (b) permanent and temporary impacts >1/2 acre in tidal waters; >1000 SF in tidal SAS other than vegetated shallows, or >100 SF in tidal vegetated shallows.





# RESOURCES FOR NWPR



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For more training information: <https://www.epa.gov/nwpr/training-and-implementation-materials>