

SUPPORTING STATEMENT – PART A

Rapid Ordinary High Water Mark Field Identification Datasheet – 0710-OHWM

1. Need for the Information Collection

The U.S. Army Corps of Engineers is proposing to collect information through its Rapid Ordinary High Water Mark (OHWM) Field Identification Datasheet (ENG 6250).

The U.S. Army Corps of Engineers, through its Regulatory Program, regulates certain activities in waters of the United States. Waters of the United States are defined under 33 CFR Part 328. In order for the Corps to determine the amount and extent of waters of the United States at a site, aquatic resources must be geographically delineated in accordance with established regulations, policy, and guidance. Non-tidal, non-wetland waters of the United States, which are defined in 33 CFR part 328, must be delineated to the extent of the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(7).

The Ordinary High Water Mark (OHWM) defines the lateral extent of non-tidal aquatic features in the absence of adjacent wetlands in the United States, and has been used to delineate the jurisdictional limits of certain aquatic features since the passage and implementation of the 1899 Rivers and Harbors Act. The Federal regulatory definition of the OHWM (33 CFR 328.3(c)(7)) states, *“The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as [a] clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”*

Previous technical reports regarding OHWM were developed to assist in the identification and delineation of the OHWM, but those technical reports cover only a portion of the United States, mainly the arid and mountainous west, and lack explanations of how the physical characteristics can vary in different climatic and geographic regions of the country. In 2016, a Technical Report developed by the U.S. Army Corps of Engineers, Engineer Research and Development Center (ERDC), entitled “Synthesizing the scientific foundation for the ordinary high water mark delineation in fluvial systems”, provided the foundational science underlying the processes that control formation of the physical features that are used to identify the OHWM. The draft ERDC Technical Report, “National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams”, is the first national manual that provides and describes indicators and a methodology which will help improve consistency in the identification and delineation of the OHWM, by 1) providing consistent definitions of OHWM indicators; 2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and 3) providing a datasheet for logging information at a site.

The OHWM is identified through physical characteristics that correspond to a break in bank slope, transition in vegetation type and coverage, and changes in sediment characteristics. As such, the datasheet organizes OHWM indicators into four categories: geomorphic indicators, vegetation indicators, sediment indicators, and ancillary indicators. Recognizing that streams are highly complex systems, space is provided to include additional indicators that may be specific to certain regions or channel types. The datasheet and field procedure guide users through the

step-by-step process of identifying and documenting the OHWM in a more consistent and reliable manner. Each indicator listed in the datasheet is described in more detail in the draft Technical Report referenced above.

Upon release, the Rapid OHWM Field Identification datasheet will be made available on Corps websites (<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>) as well as the OHWM research and development website found here: <https://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/486085/ordinary-high-water-mark-ohwm-research-development-and-training/>.

2. Use of the Information

Information collected on OHWM datasheets help inform the lateral limits of the Corps' jurisdiction in non-tidal, non-wetland aquatic resources (e.g., streams or rivers). This information can then be used to inform jurisdictional determinations or permit evaluations. Applicants for Corps permits are generally required to submit delineations of aquatic resources to Corps district Regulatory offices as part of their permit application or in support of the permit evaluation process. Specifically, General Condition #32 of both the 2017 and the 2021 Nationwide Permit Program requires that pre-construction notification (PCN) submittals include a "delineation of wetlands, other special aquatic sites, and other waters...on the project site." The OHWM form will provide applicants with a tool to easily document and submit this information in a consistent format. The OHWM form also makes use of checkboxes and data entry prompts to ensure all of the necessary information is provided in a manner that minimizes data entry for respondents.

3. Use of Information Technology

The ENG Form 6250 is a fillable PDF form. Applicants may submit OHWM datasheets electronically in PDF format as part of their aquatic resources delineation report/application packages. Electronic submissions may be received by the Corps via email or File Transfer Protocol (FTP) services such as Army Research Laboratory (ARL) Secure Access File Exchange (SAFE). The Corps is currently not able to accept automated application submissions. This capability is not being pursued at this time but may be in the future as newly developed technologies become available. We estimate about half of all application forms were received electronically prior to the COVID-19 pandemic. This percentage is increasing as more applicants become familiar with our program and are emailing in their completed PDF submittals. Additional outreach efforts to describe the submittal process can increase the 50% estimate.

In addition to electronic submittals, the forms may be printed and submitted in hard copy with the applicant's aquatic resources delineation report/application package via post mail or via courier for large applications/plans.

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<https://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/486085/ordinary-high-water-mark-ohwm-research-development-and-training/>.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Business

This information collection does not impose any additional burdens on small businesses or entities relative to other respondents.

6. Less Frequent Collection

If the Rapid OHWM Field Collection Datasheet is not made available, the public will not be able to benefit from the streamlined information collection process that it provides.

Without the OHWM datasheet, the information required by the OHWM manual would need to be provided by the public via a different mechanism, and the public would not realize substantial benefits in terms of time, effort, and accuracy of data collection that would result from use of the OHWM datasheet.

7. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

Part A: PUBLIC NOTICE

A 60-Day Federal Register Notice (FRN) for the collection published on Tuesday, July 20, 2021. The 60-Day FRN citation is 86 FR 38318.

No comments were received during the 60-Day Comment Period.

A 30-Day Federal Register Notice for the collection published on Friday, October 29, 2021. The 30-Day FRN citation is 86 FR 60001.

Part B: CONSULTATION

No additional consultation apart from soliciting public comments through the Federal Register was conducted for this submission.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection.

10. Confidentiality

A Privacy Act Statement is not required on the OHWM datasheet since it does not collect personal information for a system of records.

Information provided on the OHWM datasheet becomes part of the administrative record and may be shared with the Department of Justice or other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by law.

A System of Record Notice (SORN) is not required for this collection because records are not retrievable by PII.

A draft copy of the Privacy Impact Assessment (PIA), Civil Works Business Intelligence (CWBI), has been provided with this package for OMB's review.

In accordance with Army Regulation (AR) 25-400-2, records are maintained in the current file area for 6 years after expiration of permits/applications, then destroyed.

11. Sensitive Questions

No questions considered sensitive are being asked in this collection.

12. Respondent Burden, and its Labor Costs

Part A: ESTIMATION OF RESPONDENT BURDEN

We note that in most cases the only time the OHWM form would be required to be used is when riverine aquatic resources were determined jurisdictional. Wetlands are not delineated using the OHWM, and therefore wetland-only areas (non-tidal, non-wetland aquatic resources) were excluded from the count. Since there can be multiple aquatic resources associated with each JD, the number of all riverine aquatic resources was tallied.

To determine how often this proposed form may be used, we used our ORM2 data showing the number of riverine aquatic resources determined jurisdictional during calendar year 2020 (45,001).

Because the Navigable Waters Protection Rule (NWPR) became effective on June 22, 2020, the number of riverine aquatic resources found jurisdictional during 2020 is drawn from a period of time that was approximately half under the NWPR and half under one of the pre-NWPR jurisdictional regimes. We note that EPA and the Department of the Army have announced their intent to repeal and replace the NWPR, and we estimate the process will take 2-3 years. Therefore, we expect that about 50% of the time during the next 5 years, the OHWM forms will be completed as necessary to delineate riverine waters consistent with the NWPR jurisdictional regime. The other 50% of the time the OHWM forms will be submitted as needed, consistent

with a different WOTUS regime that would be more aligned with the pre-NWPR regulations. Therefore, using the 2020 data we can estimate the number of forms that will need to be submitted during the next 5 years, assuming a mid-stream change in regulatory regime.

This total was then multiplied by the estimated 30 minutes (0.5 hours) to complete the form. Most of these forms will be completed by applicants and/or their consultants as part of their aquatic resources delineation reports and/or permit application packages. These forms will also occasionally be completed by Corps staff, but to ensure a conservative estimate, this calculation assumes 100% will be completed by applicants. We envision most parcels that include streams or rivers would only need one form, however, very large and complex stream networks may require more than one form.

1) Collection Instrument

Rapid OHWM Field Identification Datasheet

- a) Number of Respondents: 45,001
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 45,001
- d) Response Time: 30 minutes (0.5 hours)
- e) Respondent Burden Hours: 22,500.5 hours

2) Total Submission Burden

- a) Total Number of Respondents: 45,001
- b) Total Number of Annual Responses: 45,001
- c) Total Respondent Burden Hours: 22,500.5 hours

Part B: LABOR COST OF RESPONDENT BURDEN

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1) Collection Instrument

Rapid OHWM Field Identification Datasheet

- a) Number of Total Annual Responses: 45,001
- b) Response Time: 30 minutes (0.5 hours)
- c) Respondent Hourly Wage: \$27.07
- d) Labor Burden per Response: \$13.54
- e) Total Labor Burden: \$609,088.54

2) Overall Labor Burden

- a) Total Number of Annual Responses: 45,001
- b) Total Labor Burden: \$609,088.54

The respondent average hourly work wage was obtained from the Bureau of Labor Statistics website and is reported above. This figure represents the average wage for all US workers from the May 2020 National Occupational Employment and Wage Estimates, and may be too high or

too low, depending on the occupation of each applicant.

https://www.bls.gov/oes/current/oes_nat.htm#00-0000.

13. Respondent Costs Other Than Burden Hour Costs

There are no annualized costs to the respondents other than the labor burden costs addressed in Section 12 of this document to complete this action.

14. Cost to the Federal Government

Part A: LABOR COST TO THE FEDERAL GOVERNMENT

1) Collection Instrument(s)

Rapid OHWM Field Identification Datasheet

- a) Number of Total Annual Responses: 45,001
- b) Processing Time per Response: 3 minutes (0.05 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$30.28
- d) Cost to Process Each Response: \$1.51
- e) Total Cost to Process Responses: \$68,131.51

2) Overall Labor Burden to the Federal Government

- a) Total Number of Annual Responses: 45,001
- b) Total Labor Burden: \$68,131.51

Part B: OPERATIONAL AND MAINTENANCE COSTS

1) Cost Categories

- a) Equipment: \$0
- b) Printing: \$0
- c) Postage: \$0
- d) Software Purchases: \$0
- e) Licensing Costs: \$0
- f) Other: \$0

2) Total Operational and Maintenance Cost: \$0

Part C: TOTAL COST TO THE FEDERAL GOVERNMENT

- 1) Total Labor Cost to the Federal Government: \$68,131.51
- 2) Total Operational and Maintenance Costs: \$0
- 3) Total Cost to the Federal Government: \$68,131.51

The respondent average hourly work wage was obtained from the average of a Corps Project Manager unburdened salary for a GS-11 step 5 (average grade of worker preparing/reviewing JD form) standard hourly rate: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf

15. Reasons for Change in Burden

This is a new collection with a new associated burden.

16. Publication of Results

The results of this information collection will not be published.

17. Non-Display of OMB Expiration Date

We are not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

We are not requesting any exemptions to the provisions stated in 5 CFR 1320.9.