

SUPPORTING STATEMENT - PART A

Jurisdictional Determination Forms and Aquatic Resources Delineation Forms – 0710-0024

Regulations mandating or authorizing the collection of information: 33 CFR 320-332.

This collection includes 17 forms. Two of the forms in this collection are currently used for completing jurisdictional determinations, eleven of the forms are used to assist with aquatic resources delineations, and four of the forms are “historical” JD Forms that were used to document approved jurisdictional determinations (AJDs) under prior rules or regulatory regimes defining, “waters of the United States” (WOTUS), and are being retained for historical purposes. In addition to the forms that are included in this request, the Corps is also providing two internal USACE use only Memorandum for Record (MFR) templates that we are temporarily using internally to document the Corps basis of jurisdiction for AJDs. Those MFR templates are not included in this request, as they are internal USACE documents that are in no way intended to collect information from the public and do not include any information collected from the public that was not collected via other forms in this collection. The 17 forms in the collection and the two internal USACE use only MFRs are described below:

Active Jurisdictional Determination Forms (Active JD Forms):

1. ENG 6247 – Request for Corps Jurisdictional Determination Form
2. ENG 6249 – Preliminary Jurisdictional Determination Form

Aquatic Resource Delineation Forms (Delineation Forms):*

3. ENG 6116 – Automated Wetland Delineation Data Sheet - Alaska Region
4. ENG 6116-1 – Automated Wetland Delineation Data Sheet - Arid West Region
5. ENG 6116-2 – Automated Wetland Delineation Data Sheet - Atlantic and Gulf Coastal Plain Region ADS
6. ENG 6116-3 – Automated Wetland Delineation Data Sheet - Caribbean Islands Region
7. ENG 6116-4 – Automated Wetland Delineation Data Sheet - Eastern Mountains and Piedmont Region
8. ENG 6116-5 – Automated Wetland Delineation Data Sheet - Great Plains Region ADS
9. ENG 6116-6 – Automated Wetland Delineation Data Sheet - Hawai'i and Pacific Islands Region
10. ENG 6116-7 – Automated Wetland Delineation Data Sheet - Midwest Region ADS
11. ENG 6116-8 – Automated Wetland Delineation Data Sheet - Northcentral and Northeast Region ADS
12. ENG 6116-9 – Automated Wetland Delineation Data Sheet - Western Mountains, Valleys, and Coast Region ADS
13. ENG 6250 – OHWM Field Identification Data Sheet

Jurisdictional Determination Forms No Longer in Use (Historic JD Forms):

14. ENG 6245 – Approved Jurisdictional Determination Form (NWPR)
15. ENG 6246 – Dry Land Approved Jurisdictional Determination Form (Rapanos)
16. ENG 6248 – Approved Jurisdictional Determination Form (Rapanos)
17. ENG 6281 – Approved Jurisdictional Determination Form (2023 Rule)**

Internal USACE Use Only Memorandum for Record Templates (AJD MFR Templates):

1. 2023 Conforming Rule MFR Template
2. Pre-2015 Regime + *Sackett* Template

*Note that one group of forms listed above (ENG 6116 0-9) is technically a single form with a single purpose, but it has 10 variations that are used in different regions of the United States depending on the applicable geographic region.

**Note that form ENG 6281 has one main form and two appendices (ENG 6281-1 and ENG 6281-2).

1. Need for the Information Collection

Section 1.1 - Need for Information Collection: Jurisdictional Determination Forms:

The U.S. Army Corps of Engineers (Corps), through its Regulatory Program, regulates certain activities in waters of the United States (WOTUS), pursuant to Section 404 of the Clean Water Act (CWA). WOTUS are defined under 33 CFR Part 328. The Corps also regulates certain activities in “navigable waters of the United States” pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the CWA or the RHA tracts of land. A determination pursuant to this authorization shall constitute a Corps final agency action. (See 33 CFR 320.1(a)(6)). These formal determinations concerning the applicability of the CWA or RHA to tracts of land are known as “jurisdictional determinations.” Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the Corps to help implement Section 404 of the CWA (33 U.S.C. 1344) and Sections 9 and 10 of the RHA (33 U.S.C. 401, et seq.). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes.

The regulations that define WOTUS have been subject to many changes during the past several years due to litigation and various rulemakings. Due to litigation, the Corps is currently implementing two separate regulatory regimes depending on geographic location and depending on the entity that requested the jurisdictional determination. The extent to which one regime is implemented vs. another has changed many times during the past 10 years and has already changed several times during 2023 due to rulemakings and litigation. During the past several years the Corps has implemented a number of WOTUS regulatory regimes, including 1) the “pre-2015 regime” (i.e., the Corps 1986 regulations as modified in 1993 and consistent with associated case law, guidance), the 2015 “Clean Water Rule” (CWR), the 2020 “Navigable Waters Protection Rule” (NWPR), the “2023 “Revised Definition of ‘Waters of the United States’” (the “January 2023 Rule”), the

September 2023 “Revised Definition of ‘Waters of the United States; Conforming” (the Conforming Rule), and the pre-2015 regime consistent with the Supreme Court’s 25 May 2023 decision in the case of *Sackett v. EPA* (pre-2015 regime consistent with *Sackett*). Each WOTUS regulatory regime has unique considerations and unique documentation requirements, so a different AJD Form has typically been developed specifically to facilitate implementation of the applicable rule or regime. Because the nature of WOTUS implementation is currently dynamic, there is potential that the Corps may need to use multiple AJD Forms at a time depending on which rule is in effect in which areas of the United States.

Under the most recent regulatory regimes (the September 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett*), the Corps has elected to use a Memorandum for Record (MFR) instead of a JD “form” to document the basis of its jurisdictional decisions under those two regimes, at least during the early phases of implementation. Therefore, while we are including four separate AJD Forms in this package, including 1) the “pre-2015 regime (a.k.a., “Rapanos”)” AJD Form, 2) The pre-2015/Rapanos “dry land” AJD Form, 3) the 2020 NWPR AJD Form, and 4) the January 2023 Rule AJD Form, none of those four AJD Forms are currently in use. Even though these four forms are not currently in use, they are included in this collection for historical purposes and such that they can be available for re-approval in the event that they may be needed in the future due to additional changes in the regulatory landscape.

This information collection request thus implements the collections of information associated with the Corps’ implementation of the 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett*. The Corps intends to implement the 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett* using two forms, which consist of the Preliminary Jurisdictional Determination Form (PJD Form) and a “JD Request Form.” As previously mentioned, four approved jurisdictional determination forms (AJD Forms) are also included for historical purposes. Therefore, there is a total of six JD forms (the PJD Form, the JD Request Form, and the 4 historical AJD Forms) in this collection.

Section 1.2 - Need for Information Collection: Aquatic Resource Delineation Datasheets:

The U.S. Army Corps of Engineers, through its Regulatory Program, regulates certain activities in WOTUS. WOTUS are defined under 33 CFR Part 328. In order for the Corps to determine the amount and extent of WOTUS at a site, the Corps must geographically delineate aquatic resources in accordance with established regulations, policy, and guidance. The aquatic resource delineation datasheets fall into two main categories: 1) the ENG 6119 (0-9) Series, which are our automated wetland determination data sheets (ADS) and 2) the Ordinary High Water Mark (OHWM) field identification datasheet.

ENG 6119 (0-9) Series: Automated Wetland Determination Sheets (ADS).

To delineate wetlands, the Corps uses the 1987 Corps of Engineers Wetlands Delineation Manual (Corps Manual) and the most current applicable regional supplement(s). The Corps

has been collecting information for delineation of wetlands through its Wetland Determination Sheets since 2006. However, prior to 2021, those collections had not been approved under the Paperwork Reduction Action (PRA). During 2021, the Wetland Determination Data Sheets (10 total) were approved as part of collection 0710-0024. There are ten wetland data sheets in total but these really are one single collection that is split into 10 regional sub-forms. The ten regional forms are identified below:

Automated Wetland Determination Sheets (ADSs):

- Alaska ADS (ENG 6116)
- Arid West Region ADS (ENG 6116-1)
- Atlantic and Gulf Coastal Plain Region ADS (ENG 6116-2)
- Caribbean Islands Region ADS (ENG 6116-3)
- Eastern Mountains and Piedmont Region ADS (ENG 6116-4)
- Great Plains Region ADS (ENG 6116-5)
- Hawai'i and Pacific Islands Region ADS (ENG 6116-6)
- Midwest Region ADS (ENG 6116-7)
- Northcentral and Northeast Region ADS (ENG 6116-8)
- Western Mountains, Valleys, and Coast Region ADS (ENG 6116-9)

The Automated Wetland Determination Sheets (ADSs) streamline the information collection process by incorporating reference material and analytical processes directly into the form, which is provided as a Microsoft Excel document rather than the PDF form included in the regional supplements. For example, when recording vegetation data, respondents simply enter the species name – names are stored in the form and made available for selection via drop-down boxes – and the ADS automatically infers species dominance information based on these entries with no referencing of the NWPL required on the part of the respondent. Additionally, the ADSs automatically complete data analysis using inputted information (e.g., the “dominance test” for wetland vegetation), saving respondents time and effort typically required to complete these processes. Such analyses are typically performed by hand using the current forms, introducing a potential source of human error that is eliminated by use of the ADSs. These forms can be accessed on Corps websites - https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/.

ENG 6250: OHWM Data Sheet.

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) and 33 CFR 329.11(a)(1). Regulatory Guidance Letter (RGL) 05-05 provides guidance on identification of OHWM. The 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 RHA.

During 2022 the Corps released a draft Engineer Research and Development Center (ERDC) Technical Report, “National Ordinary High Water Mark Field Delineation Manual

for Rivers and Streams” (Draft National Manual), which 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. As part of the development of the Draft National Manual, the Corps developed a Data Sheet for facilitating documentation of the OHWM.

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 particular 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, reliable, and repeatable manner. Each indicator listed in the datasheet is described in more detail in the draft Technical Report referenced above.

Upon release of the final national manual the 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

Section 2.1 – Use of the Information: Jurisdictional Determination Forms:

The respondents for this collection are members of the public who are requesting that the Corps complete a jurisdictional determination or aquatic resources delineation. The ENG 6247 (JD Request Form) is completed by members of the public who would like to request that the Corps complete a jurisdictional determination on a parcel of land. Other than the ENG 6247, each of the other JD Forms has historically been intended for internal Corps use only, and as such the vast majority of these forms have historically been completed by Corps staff as part of their regular work duties. However, a small percentage of JD requestors (~15%) have in the past provided completed versions of the JD forms along with their JD request, presumably because they believe that providing a completed JD form may speed the Corps review process.

With the exception of the ADS (ENG 6119 Series), each of the forms has been developed as a fillable PDF. Respondents (who typically are Corps staff for all of these forms except the ENG 6247) can complete the form using Adobe Acrobat or can complete using a paper copy. The ADS are Excel-based, as they have functionality built in the automate data collection and force accuracy and consistency. The ADS are also available as PDFs for

practitioners who would rather fill out a paper form, but the paper forms do not have the automation features of the Excel-based ADS. The collection is available on Corps websites (<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>).

The Corps is in the process of integrating all of these forms into its Regulatory Request System (RRS), an online portal that is being developed and will enable the public to submit and track requests for regulatory actions, such as permit applications and requests for jurisdictional determinations. Entities who submit forms via the RRS may be required to certify aspects of their submittals. As an example, before a form can be formally submitted in the RRS the requestor may need to certify in the portal that they consent to conduct business electronically, certify that the information in the request is complete and accurate, certify their understanding that knowingly and willfully making false statements on the forms could result in fines or imprisonment (18 USC Section 1001), and certifying their understanding that an e-signature has the same legal status as a handwritten signature.

Members of the public who request a JD may interact with Corps staff during the JD review process to schedule site visits and as onsite field work is completed. The Corps will verify any information provided on the collection instrument as part of its review process. Once the Corps has collected and/or verified the information required to complete a jurisdictional determination, the Corps will complete the determination and will provide it to the requestor.

The use of the information collected in each of the JD Forms is detailed as follows:

ENG 6247: Request for Corps Jurisdictional Determination. This form, which was developed based on the appendix to Corps' Regulatory Guidance Letter (RGL) 16-01, is currently available as fillable PDF. Respondents can complete the form using Adobe Acrobat or can complete using a paper copy. The request for Corps Jurisdictional Determination Form is used to facilitate requests from the public for Corps jurisdictional determinations. This form is designed to help ensure that the requestor provides the information needed by the Corps to determine whether to proceed with processing a PJD, AJD, or "no permit required" letter from the Corps or follow up with the applicant to provide additional information on the JD types they may request. This form also collects from the applicant all project-specific details needed by the Corps to begin processing a PJD or AJD, such as location of the property and the reason for the request. Finally, by signing the form, the respondent indicates that he/she has the authority (or is acting as the duly authorized agent of person or entity with such authority) to grant the Corps personnel right of entry to legally access the site if needed to perform a JD. This form is not affected by changes to the definition of WOTUS.

ENG 6249: Preliminary Jurisdictional Determination Form. This form, which was developed based on the appendix to RGL 16-01, is currently available as fillable PDF. This is an internal Corps form that is completed by Corps staff, though a small number of these forms are sometimes completed by members of the public and provided in support of their JD requests. Respondents complete these forms type text and select checkboxes in order to provide all the information necessary to document the AJD. Respondents can complete the

form using Adobe Acrobat or can complete using a paper copy. The Corps plans to integrate this form into its internal Regulatory database (known as “ORM2”), which will streamline data entry for Corps project managers and reduce duplicative data entry. For the small number of these forms that may be submitted by members of the public, the Corps will accept submittal of the form through its RRS. The PJD form is used to determine whether aquatic resources that exist on a particular parcel "may be" subject to regulatory jurisdiction. The PJD form cannot be used to determine either that there are no jurisdictional aquatic resources on a parcel at all (e.g., the entire parcel consists of dry land or the parcel only includes non-jurisdictional aquatic resources), or that only a portion of the aquatic resources on a parcel are jurisdictional. This form may include the delineation limits of all aquatic resources on a parcel as long as the PJD does not determine the jurisdictional status of such aquatic resources. The Corps uses the PJD Form to help implement Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 and to help specify what geographic areas will be presumed to be jurisdictional and therefore treated as subject to regulation by the Corps under one or both statutes.

The use of the information that was historically collected in each of the “Historic JD Forms No Longer in Use” is detailed as follows:

ENG 6248: Historic JD Form - Approved Jurisdictional Determination Form (Rapanos Guidance). This form is not currently in use but is being retained in the collection for historical purposes. This is an internal Corps form that is completed by Corps staff, though a small number of these forms are sometimes completed by members of the public and provided in support of their JD requests. Respondents complete these forms type text and select checkboxes in order to provide all the information necessary to document the AJD. Respondents can complete the form using Adobe Acrobat or can complete using a paper copy. The Corps plans to integrate this form into its internal Regulatory database (known as “ORM2”), which will streamline data entry for Corps project managers and reduce duplicative data entry. For the small number of these forms that may be submitted by members of the public, the Corps will accept submittal of the form through its RRS. This AJD form documents Corps jurisdiction under the Corps’ 1986 regulation and 2003/2008 guidance by providing a definitive, official determination that there are/are not jurisdictional aquatic resources on a parcel based on the jurisdictional requirements. This AJD form is also used to officially identify the geographic limits of jurisdictional aquatic resources on a parcel. The Corps uses this AJD Form to help implement Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 and to help specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes.

ENG 6246: Historic JD Form - Dry Land Approved Jurisdictional Determination Form (Rapanos Guidance). This form is not currently in use but is being retained in the collection for historical purposes. This form is available as a fillable PDF. This is an internal Corps form that is completed by Corps staff, though a small number of these forms are sometimes completed by members of the public and provided in support of their JD requests. Respondents complete these forms type text and select checkboxes in order to

provide all the information necessary to document the AJD. Respondents can complete the form using Adobe Acrobat or can complete using a paper copy. The Corps plans to integrate this form into its internal Regulatory database (known as “ORM2”), which will streamline data entry for Corps project managers and reduce duplicative data entry. For the small number of these forms that may be submitted by members of the public, the Corps will accept submittal of the form through its RRS. This AJD form documents Corps jurisdiction under the Corps’ 1986 regulations and 2003/2008 guidance by providing a definitive, official determination that jurisdictional aquatic resources are absent from a parcel. The Corps uses this AJD Form to help implement Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 and to help identify and specify geographic areas that are documented as specifically not subject to regulation by the Corps under one or both statutes.

ENG 6245: Historic JD Form - Approved Jurisdictional Determination Form (NWPR).

This form is not currently in use but is being retained in the collection for historical purposes. This form is available as a fillable PDF. This is an internal Corps form that is completed by Corps staff, though a small number of these forms are sometimes completed by members of the public and provided in support of their JD requests. Respondents complete these forms type text and select checkboxes in order to provide all the information necessary to document the AJD. Respondents can complete the form using Adobe Acrobat or can complete using a paper copy. This AJD form documents Corps jurisdiction under the Corps’ June 22, 2020 – August 31, 2021 regulation by providing a definitive, official determination that there are/are not jurisdictional aquatic resources on a parcel based on the jurisdictional requirements. This AJD form was also used to officially identify the geographic limits of jurisdictional aquatic resources on a parcel. The Corps used this AJD Form to help implement Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 and to help specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. An applicant may use this AJD form for the reasons specified on the “Request for Corps Jurisdictional Determination” form (see above).

ENG 6281: Historic JD Form - Approved Jurisdictional Determination Form (2023 Rule). This form is not currently in use but is being retained in the collection for historical purposes.

This AJD form is for internal Corps use and as such the vast majority of these forms are completed by Corps staff as part of their regular work duties. However, a small percentage of JD requestors (~15%) provide completed versions of this form along with their JD request, presumably because they believe that providing a completed form may speed the Corps review process. The 2023 Rule AJD form and its two appendices (ENG 6281-1 and ENG 6281-2) documents the extent of and basis for the Corps jurisdiction under the 2023 Rule as based on the 2023 Rule’s jurisdictional requirements. The Corps uses the 2023 Rule AJD Form to help implement Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 and to help specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. The 2023 Rule AJD Form is completed independently by Corps Regulatory staff using a combination of information submitted by the JD requestor and information gathered by the Corps during office reconnaissance and on-site field visits. It should be

noted that the EPA and the Army are in receipt of the U.S. Supreme Court's 25 May 2023 decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies will interpret the phrase "waters of the United States" consistent with the Supreme Court's decision in *Sackett*. The agencies continue to review the decision to determine next steps.

Even though the 2023 Rule AJD Form is an internal form for use by Corps personnel, some members of the public occasionally complete a draft version of the AJD form and submit it as part of their request for an AJD. As part of our request for collection 0710-0024, which includes the AJD Forms that are currently in use prior to the effective date of the 2023 Rule, Corps district representatives were polled to estimate the percentage of AJDs completed for which the requestor provided a completed draft AJD form. The average response from the Corps district representatives was that a requestor of an AJD would include a completed draft AJD for approximately 15 percent of AJD requests – this reflects the fact that the Corps, rather than the requestor, bears the responsibility for completing the AJD forms.

Section 2.2 – Use of the Information: Aquatic Resources Delineation Datasheets

The respondents for this collection are members of the public who are completing aquatic resource delineations to support requests for Corps jurisdictional determinations or permit applications. Aquatic resources delineation data sheets are included as part of wetland delineations completed by permit applicants to support and inform determinations as to whether jurisdictional wetlands are present on a project site.

Members of the public who request a JD or aquatic resources delineation verification may interact with Corps staff during the review process to schedule site visits and as onsite field work is completed. The Corps will verify any information provided on the collection instrument as part of its review process. Once the Corps has collected and/or verified the information required to complete a jurisdictional determination, the Corps will complete the determination and will provide it to the requestor.

The collection is available on Corps websites (<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>).

The Corps also plans to integrate this form into its Regulatory Request System (RRS), which will be an online portal that will enable the public to submit and track requests for regulatory actions, such as permit applications and requests for jurisdictional determinations.

The use of the information collected in each of the aquatic resource delineation datasheets is detailed as follows:

ENG 6116; (0-9) Series: Automated Wetland Determination Sheets (ADS).

Wetland data sheets are included as part of wetland delineations completed by permit applicants to support and inform determinations as to whether jurisdictional wetlands are present on a project site. The ADSs are formatted such that they may be readily converted to Portable Document Format (PDF) for inclusion as part of the applicant's request. The most efficient version of the form is the macro enabled excel spreadsheet which provides data to support the hydrophytic vegetation and hydric soil portion of the form.

Applicants for Corps permits are generally required to submit JDs as part of their permit application or in support of the permit evaluation process. If wetlands are present, the Corps generally requires that JDs include adequately documented wetland data sheets in order for the JD to be considered technically adequate. For example, an adequately documented JD must be provided by permit applicants applying for coverage under the Corps' Nationwide Permit (NWP) Program.¹ Specifically, General Condition #32 of the 2017 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." General Condition #32 further requires that "wetland delineations...be prepared in accordance with the current method required by the Corps."

Information collected in wetland forms is used extensively for the purpose of establishing Corps jurisdiction and evaluating Corps-jurisdictional activities. The extent of this use is illustrated by the fact that the Corps processes approximately 80,000 permit applications per year, a large number of which propose impacts to wetlands. A single permit application requesting authorization to discharge dredged or fill material into wetlands may require the submittal of a large number of wetland forms documenting the presence of multiple wetlands of varying sizes (delineation of larger wetlands generally requires the completion of multiple wetland forms). As an alternative to the wetland data sheets provided in the regional supplements, the ADSs are anticipated to be widely used to support determinations of jurisdictional wetland presence throughout a large number of permit applications.

ENG 6250: OHWM Data Sheet.

OHWM data sheets are included as part of certain aquatic resource delineations that involve rivers or streams and that are completed by permit applicants to support and inform determinations as to whether jurisdictional wetlands are present on a project site. 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 provides applicants with a tool to easily

¹ NWP verifications are the Corps' most common permit type, accounting for approximately 35,000 of the 56,000 authorizations issued by the Corps in FY18.

document and submit this information in a consistent format. The OHWM form organizes the information into a logical and consistent format and makes use of checkboxes and data entry prompts to ensure all of the necessary information to document the OHWM is provided as necessary in a manner that minimizes data entry for respondents.

3. Use of Information Technology

Section 3.1 – Use of Information Technology: Jurisdictional Determination Forms:

Nearly 100% of Corps requests are now processed electronically, typically via email. The Corps is in the process of integrating all of these forms into its Regulatory Request System (RRS), which is an online portal that is being developed and will enable the public to submit and track requests for regulatory actions, such as permit applications and requests for jurisdictional determinations. Entities who submit forms via the RRS may be required to certify aspects of their submittals. As an example, before a form can be formally submitted in the RRS the requestor may need to certify in the portal that they consent to conduct business electronically, certify that the information in the request is complete and accurate, certify their understanding that knowingly and willfully making false statements on the forms could result in fines or imprisonment (18 USC Section 1001), and certifying their understanding that an e-signature has the same legal status as a handwritten signature. The timeline for implementation of the RRS is February 2024.

Section 3.2 – Use of Information Technology: Aquatic Resource Delineation Datasheets:

Respondents enter information in each ADS for each wetland determination completed. The ten different versions of the ADS have been developed as Microsoft Excel files, one for each of the regional supplements, and formatted such that they may be readily converted to PDF for inclusion as part of application submittals, often as supporting information included in the applicant's JD request.

Applicants may submit ADSs electronically in either PDF or Excel format as part of their JD request/application packages. Electronic submittals 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 plans to integrate this form into its Regulatory Request System (RRS), which will be an online portal that will enable the public to submit and track requests for regulatory actions, such as permit applications and requests for jurisdictional determinations.

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

Nearly 100% of Corps requests are now processed electronically, typically via email. The Corps plans to integrate all of the forms in this collection into its Regulatory Request System (RRS), which will be an online portal that will enable the public to submit and track requests for regulatory actions, such as permit applications and requests for jurisdictional determinations.

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 Businesses

This information collection does not impose a significant economic impact on a substantial number of small businesses or entities.

6. Less Frequent Collection

The JD request form is only used when a member of the public makes a request to the Corps for the Corps to complete a jurisdictional determination. This is the most infrequent collection interval possible that will facilitate these requests to the Corps.

The PJD form and the AJD forms should never be used by the public as they are for internal Corps use. However, a small percentage of JD requestors (~ 15%) provide completed versions of this form along with their JD request, presumably because they believe that providing a completed form may speed the Corps review process. This is the most infrequent collection interval possible since the JD forms are not required to be completed by members of the public at all.

The ENG 6116 must be completed any time a member of the public wishes to document the presence or absence of a wetland in a wetland delineation that they would like verified by the Corps. The ENG 6250 may be completed in cases where a member of the public wishes to document the limits of a river or stream in an aquatic resources delineation that they would like verified by the Corps. For the ENG 6119, this is the most infrequent collection interval possible since each wetland must be documented in accordance with the Corps 1987 Wetland Delineation Manual. For the ENG 6250, this is the most infrequent collection interval possible that ensures each river or stream delineated is documented in accordance with applicable Corps procedures and guidance.

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 Wednesday, November 1, 2023. The 60-Day FRN citation is 88 FR 74984.

USACE received comments during the 60-Day Comment Period that were submitted electronically via the Federal eRulemaking Portal. The comments were contained in a combined letter from representatives of the American Petroleum Institute (API), the Associated General Contractors of America (AGC), and the Fertilizer Institute (TFI). The comments have been included in full in the ICR package along with the USACE response.

A 30-Day Federal Register Notice for the collection published on Monday, April 1, 2024. The 30-Day FRN citation is 89 FR 22394.

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 provided at the top of the ENG 6247 (Request for Corps Jurisdictional Determination). The Privacy Act Statement is not required on the other five JD Forms or on any of the aquatic resource delineation datasheets as none of those forms/datasheets collect personal information for a system of records.

Information provided on all forms 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.

The System of Records Notices (SORN) associated with this collection (#A1145b, Regulatory Program Files) may be accessed at the following link: <https://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570115/a1145b-ce/>.

A draft copy of the 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

*Note: Even though the Historic JD Forms are not currently in use, we are retaining the burden information for the Historic Forms to account for the likelihood that future changes in the regulatory landscape could require that one or more of the forms need to be returned to service. Because the four historic AJD forms are mutually exclusive, the burden has been consolidated into a single estimate for the NWPR, Rapanos, and 2023 Rule Forms, and a second burden estimate was retained for the Rapanos dry land form since the time to complete the form is substantially less than the other JD Forms. Another reason we are retaining the burden estimates for the JD Forms is because the Corps intends to develop new JD Forms for the Conforming Rule and the pre-2015 regime consistent with *Sackett*, and therefore retaining the JD Form burden in this request better represents the longer-term overall burden associated with this collection.

1) Collection Instruments

ENG 6247 [Request for Corps Jurisdictional Determination]

- a) Number of Respondents: 16,891
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 16,891
- d) Response Time: 10 minutes
- e) Respondent Burden Hours: 2,815.2 hours

ENG 6245, ENG 6248, and ENG 6281 [Approved JD Forms]*

- a) Number of Respondents: 668
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 668
- d) Response Time: 2.5 hours
- e) Respondent Burden Hours: 1,670 hours

ENG 6246 [Rapanos Dry Land AJD Form]*

- a) Number of Respondents: 243
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 243
- d) Response Time: 15 minutes
- e) Respondent Burden Hours: 60.8 hours

ENG 6249 [Preliminary JD Form]

- a) Number of Respondents: 1,500
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 1,500
- d) Response Time: 25 minutes
- e) Respondent Burden Hours: 625 hours

ENG 6116 (0-9) [Automated Wetland Data Sheets]

- a) Number of Respondents: 48,692
- b) Number of Responses Per Respondent: 2
- c) Number of Total Annual Responses: 97,384
- d) Response Time: 30 minutes
- e) Respondent Burden Hours: 48,692 hours

ENG 6250 [Ordinary High Water Mark Data Sheet]

- a) Number of Respondents: 39,980
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 39,980
- d) Response Time: 30 minutes
- e) Respondent Burden Hours: 19,990 hours

2) Total Submission Burden

- a) Total Number of Respondents: 107,974
- b) Total Number of Annual Responses: 156,666
- c) Total Respondent Burden Hours: 73,853 hours

Part B: LABOR COST OF RESPONDENT BURDEN

1) Collection Instruments

ENG 6247 [Request for Corps Jurisdictional Determination]

- a) Number of Total Annual Responses: 16,891
- b) Response Time: 10 minutes
- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$4.96
- e) Total Labor Burden: \$83,779.36

ENG 6245, ENG 6248, and ENG 6281 [Approved JD Forms]

- a) Number of Total Annual Responses: 668
- b) Response Time: 2.5 hours
- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$74.40
- e) Total Labor Burden: \$46,699.20

ENG 6246 [Rapanos Dry Land AJD Form]

- a) Number of Total Annual Responses: 243
- b) Response Time: 15 minutes

- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$7.44
- e) Total Labor Burden: \$1,807.92

ENG 6249 [Preliminary JD Form]

- a) Number of Total Annual Responses: 1,500
- b) Response Time: 25 minutes
- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$12.40
- e) Total Labor Burden: \$18,600

ENG 6116 (0-9) [Automated Wetland Data Sheets]

- a) Number of Total Annual Responses: 97,384
- b) Response Time: 30 minutes
- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$14.88
- e) Total Labor Burden: \$1,449,073.92

ENG 6250 [Ordinary High Water Mark Data Sheet]

- a) Number of Total Annual Responses: 39,980
- b) Response Time: 30 minutes
- c) Respondent Hourly Wage: \$29.76
- d) Labor Burden per Response: \$14.88
- e) Total Labor Burden: \$594,902.40

2) Overall Labor Burden

- a) Total Number of Annual Responses: 156,666
- b) Total Labor Burden: \$2,197,862

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 2022 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 respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Cost to the Federal Government

Part A: LABOR COST TO THE FEDERAL GOVERNMENT

1) Collection Instruments

ENG 6247 [Request for Corps Jurisdictional Determination]

- a) Number of Total Annual Responses: 16,891
- b) Processing Time per Response: 5 minutes (0.083 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$2.68
- e) Total Cost to Process Responses: \$45,338.26

ENG 6245, ENG 6248, and ENG 6281 [Approved JD Forms]

- a) Number of Total Annual Responses: 668
- b) Processing Time per Response: 1 hour
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$32.21
- e) Total Cost to Process Responses: \$21,516.28

ENG 6246 [Rapanos Dry Land AJD Form]

- a) Number of Total Annual Responses: 243
- b) Processing Time per Response: 15 minutes (0.25 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$8.05
- e) Total Cost to Process Responses: \$1,956.76

ENG 6249 [Preliminary JD Form]

- a) Number of Total Annual Responses: 1,500
- b) Processing Time per Response: 25 minutes (0.417 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$13.42
- e) Total Cost to Process Responses: \$20,131.25

ENG 6116 (0-9) [Automated Wetland Data Sheets]

- a) Number of Total Annual Responses: 97,384
- b) Processing Time per Response: 10 minutes (0.17 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$5.37
- e) Total Cost to Process Responses: \$522,789.77

ENG 6250 [Ordinary High Water Mark Data Sheet]

- a) Number of Total Annual Responses: 39,980
- b) Processing Time per Response: 10 minutes (0.17 hours)
- c) Hourly Wage of Worker(s) Processing Responses: \$32.21
- d) Cost to Process Each Response: \$5.37
- e) Total Cost to Process Responses: \$214,625.97

2) Overall Labor Burden to the Federal Government

- a) Total Number of Annual Responses: 156,666
- b) Total Labor Burden: \$826,358

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/2023/GS_h.pdf

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: \$826,358

- 2) Total Operational and Maintenance Costs: \$0

- 3) Total Cost to the Federal Government: \$826,358

15. Reasons for Change in Burden

There has been no change in estimated burden since the Department received emergency approval to extend the OMB Control Number on October 12, 2023. However, we have maintained the summary of the reasons for change in burden for that emergency request below.

Some components of this (ENG 6247 and ENG 6281) are a new collection with a new associated burden. The ENG 6250 was previously covered by its own OMB Control Number, 0710-0025. However, it was determined that the form and its burden should be incorporated into this OMB Control Number.

The burden for ENG 6116 (0-9) has increased since the previous approval due to recalculation of the number of annual responses. The estimated response time has also been updated to better reflect the time needed to complete the form.

The burden for the ENG 6245, ENG 6246, ENG 6248, ENG 6249, and ENG 6250 have decreased since the previous approval due to recalculation of the number of annual responses. The estimated response time has also been updated to better reflect the time needed to complete the form.

The overall burden estimate has been updated to account for higher hourly wages from the Bureau of Labor Statistics.

In addition, the following updates were made to the burden estimates:

JD Forms: ENG 6245, ENG 6246, ENG 6247, ENG 6248, ENG 6249, and 6281

- 1) The largest driver of the change in burden is the addition of the JD Request Form to the collection. This form is estimated to be completed 16,891 times per year. The estimated time needed to complete the AJD forms and the PJD forms were also updated to more accurately reflect the time needed to complete each form. We have also added a new AJD form for the 2023 Rule.
- 2) The estimated time needed to complete the AJD forms and the PJD forms were updated to more accurately reflect the time needed to complete each form.
- 3) We have also added a new AJD form for the 2023 Rule.

ADS: ENG 6116 (0-9)

- 1) The anticipated number of responses was recalculated using ORM data for the number of wetlands included in JD requests. This did not result in a substantial departure from our previous estimate, which was based on nationwide permits data.
- 2) Our assumptions for the ADS now account for the fact that wetland data points are typically paired. This change has essentially doubled the number of anticipated responses relative to our previous submittal.
- 3) The estimated time needed to complete the ADS was updated to more accurately reflect the time needed to complete an ADS.

OHWB Datasheet: ENG 6250

- 1) The anticipated use of the form was recalculated using updated ORM data. The recalculation to more current data did not result in any substantial change in estimated burden.
- 2) The estimated time needed to complete the OHWB datasheet was updated to more accurately reflect the time needed to complete an OHWB datasheet.

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.