



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
POST OFFICE BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

March 19, 2018

Regulatory Division

PUBLIC NOTICE

Determination of Navigable Waters

TO WHOM IT MAY CONCERN: The Jacksonville District, U.S. Army Corps of Engineers (Corps), seeks input from the public regarding the use of waters within the State of Florida for navigation.

BACKGROUND: Pursuant to 33 C.F.R. § 329.4, navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) (Section 10) requires a Department of the Army (DA) permit for certain activities in, over, or under navigable waters of the United States. A determination whether a waterbody is a navigable water of the United States is made by the division engineer and is based on a report of findings prepared at the district level according to specific criteria (33 C.F.R. § 329.14(b)).

In an effort to provide clarity to the regulated public regarding which waters are subject to permitting authority under Section 10, the Corps is performing an analysis of waterways in the state of Florida to determine the extent of navigability and identify the limits of Section 10 jurisdiction.

These navigability studies are required by regulation to be conducted and updated whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the Division engineer for approval (33 C.F.R. § 329.15(a)). Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions (33 C.F.R. § 329.16(a)).

Section 404(a) of the Clean Water Act of 1972 (CWA), 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue DA permits for

the discharge of dredged or fill material into waters of the United States (Section 404 Program). Pursuant to Section 404(g) of the CWA, the Florida Department of Environmental Protection (DEP) is pursuing approval from the United States Environmental Protection Agency (EPA) to assume the Section 404 Program and administer its own individual and general permit program. State assumption of the Section 404 Program would be limited to certain waters and does not include navigable waters of the United States. The navigability studies will also assist with determining the waters that would be retained by the Corps if the EPA approves the State's application for Section 404 Program assumption. The Regulations governing the assumption process can be found at 40 C.F.R. §233.

To assist with completion of the navigability studies, the Corps is seeking comments from the public regarding use of waters in the state of Florida for navigation. This includes identification of those rivers, streams, lakes, etc. associated with past, current, or potential future commerce, commercial traffic, or recreational activities.

COMMENTS: Comments should be submitted in writing to the District Engineer or sent via email to the below addresses within 30 days from the date of this notice. Please include mapping, figures, coordinates, etc. that clearly identify the reach of the associated waterbody and documentation relating to navigation, commerce, and recreation.

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
REGULATORY DIVISION
ATTN: DETERMINATION OF NAVIGABLE WATERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

Navigability_Determination@usace.army.mil

A handwritten signature in black ink that reads "Jori K White". The signature is written in a cursive, slightly slanted style.

for

Donald W. Kinard
Chief, Regulatory Division