

Traditional Navigable Waters



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TNWs

- Include all of the “navigable waters of the United States,” defined in 33 C.F.R. Part 329;
- And by numerous decisions of the federal courts;
- Plus all other waters that are navigable-in-fact (e.g., Lake Minnetonka, MN, Devils Lake, ND).



TNW Determinations

- Relevant factors for consideration can include, but are not limited to:
- Corps regulations (33 CFR 329).
- Prior determinations by the Corps (Section 10 studies; stand-alone TNW determinations).
- Documented use of commercial navigation for the waterbody in question, including commercial waterborne recreation.
- Historic use of TNW for commercial navigation, including commercial waterborne recreation.
- Physical characteristics of the waterbody that support the capability of navigation (size and depth of waterbody, volume and frequency of flow, water source, etc.).
- Public accessibility to the waterway, including but not limited to public roads or access points, boat ramps, or similar.



“Stand-Alone” TNW

- 28 September 2008 Memorandum.
- Determination that specific waterbody is a TNW will be made by the Division Commander.
- Based on formal report of findings by DE, accompanied by legal opinion of District counsel, and forwarded to Division Commander for final decision.
- Often includes factors from 33 CFR 329.14.



“Stand-Alone” TNW

- TNW designation for specific segment of waterbody where it is made independently of a regulatory permit action or AJD.
- Upstream and downstream limits/lake borders.
- Not subject to administrative appeal process (no “affected party”).



“Case-Specific” TNW

- TNW determinations specific to use for an AJD.
- Cannot be relied upon for future use.
- Cannot establish limits of navigation, only TNW for that specific point/segment.



“Case-Specific” TNW

- Part of a specific request for an AJD or permit authorization.
- District should include documentation as part of the specific AJD that supports that the waterbody is a TNW.
- This documentation can utilize the factors provided in the stand-alone process as well as the relevant case law.
- Case-specific TNW determinations made as part of a specific AJD request should not be posted on a District’s TNW list as they are specific to the requested AJD and cannot be relied upon by the public to inform future AJDs.



Summary of Types of TNW Determinations

Stand-Alone vs. Case-Specific Determinations

Stand-Alone Determination	Case-Specific Determination
•Independent of permit/AJD request	•Associated with permit/AJD request
•Establishes TNW boundaries	•Does not establish TNW boundaries
•Can inform future AJDs	•Cannot inform future AJDs
•Do not expire	•Expire with associated AJD
•Cannot be appealed	•Appealable

