

**U.S. Department of  
Homeland Security**



**United States  
Coast Guard**

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CGD17INST 16670.0

28 FEB 2012

**SEVENTEENTH DISTRICT INSTRUCTION 16670.0**

**Subj: FIELD GUIDANCE TO SUBMIT INFORMATION FOR A NAVIGABILITY DETERMINATION OF FEDERAL WATERWAYS IN D17**

- Ref:**
- (a) 33 Code of Federal Regulations 2.36
  - (b) Marine Safety Manual Vol. V, Chap. 2B, 2D, 4A, 5B\*, 6C5, 9A
  - (c) 46 United States Code 6101
  - (d) 46 CFR 13.103
  - (e) 46 CFR 15.301
  - (f) COMDTINST M16590.5C Bridge Administration Manual
  - (g) 33 CFR §§ 2.1 – 2.45

1. **PURPOSE.** This instruction promulgates Seventeenth Coast Guard District (D17) guidance regarding the collection of data required as part of the Coast Guard navigability determination process. This field guidance is designed to help field personnel gather pertinent information for Seventeenth Coast Guard District Legal Officer, D17 (dl) to properly determine the navigability of certain waterways. Once a navigability determination is made, it will help the Coast Guard field personnel and other Federal Law Enforcement agencies enforce federal regulations on commercial vessels (vessels that transport passengers, fuel or cargo for hire or engage in other commercial venues) and safety regulations on recreational boaters operating on certain interior waterways of Alaska. Some of the missions this instruction will enhance include Marine Safety activities regarding inspected or uninspected commercial vessels, mariner credentials or licenses, or other law enforcement and boating safety activities on commercial or recreational vessels.
  
2. **ACTION.** Sector Commanders and field personnel shall use this instruction to collect information on waterways that may be used for commercial or recreational purposes, but have not yet been classified as navigable waters of the United States for Coast Guard jurisdictional purposes. To ensure that federal vessel and boating safety regulations are properly enforced, Sector Commanders and field personnel shall collect data in enclosure (1), The Navigation Determination Checklist, to initiate a navigability study by D17 (dl). The

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navigability study will help the District Commander determine that appropriate waterways are navigable waters of the United States, which will empower vessel inspectors and law enforcement personnel to properly enforce federal regulations that are designed to keep passengers, cargo, crew, the general public and the environment safe.

3. DIRECTIVES AFFECTED. None.
4. REQUEST FOR CHANGES. To request changes be made to this guidance, please contact D17 (dl), (907) 463-2050.
5. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this instruction and have been determined to be not applicable.
6. FORMS/REPORTS. This instruction establishes a navigability determination checklist that field personnel shall use to gather information for D17 (dl) to initiate a navigability study for the District Commander to make a proper navigability determination on a particular waterway.
7. BACKGROUND.
  - a. There are more than 12,000 rivers, 3 million lakes, and uncounted thousands of streams located in Alaska; many of which are used for a commercial venue. When a request for a navigability determination is received, comprehensive research and legal review is conducted on the waterway, and a navigability determination is completed and approved by the District Commander. The legal review consists of determining whether the body of water meets the current legal standard for navigability based on a review of case law, federal statutes and regulations, and Coast Guard policy. D17 (dl) conducts the legal review of navigability determination requests and prepares the final determination decision for the District Commander.
  - b. There are nearly one hundred official navigability determinations approved in Alaska. This leaves thousands of rivers that may be used for other commercial or recreational purposes. Navigability determinations requested for other Coast Guard jurisdictional purposes are handled on a case-by-case basis using the process described above. To date there is no formal guidance to gather the requisite information to initiate a comprehensive evaluation and formal determination of whether that particular waterway is a navigable water in accordance with Reference (a).
  - c. There are waterways located in the interior of Alaska that have been determined to be navigable waters under the authority of other federal agencies but have not been reviewed for navigability by the Coast Guard for its own jurisdictional purposes. Commercial activities may occur on some of these waterways which do not have a current need for a navigability determination for bridge administration purposes. There are operators who do comply with the regulations, however, the potential arises that some of these commercial operators do not comply with federal regulations, including fire fighting,

lifesaving, mariner licenses/credentials, drug screening and other safety regulations. This instruction provides guidance to field personnel to initiate a formal review of the navigability status of a waterway thus allowing for even-handed enforcement of safety regulations on waterways being used commercially or recreationally.

- d. If the Coast Guard does not enforce the regulations appropriately, then it may create an unfair economic disadvantage for those complying with required standards. The Coast Guard's efforts need to be focused on vessels that are not in compliance and enforce safety regulations on all waterways subject to its jurisdiction. The best way to reach this goal is to identify where commercial vessels are operating or areas where certain recreational boating occurs and determine that the waterway is navigable. If the waterway is deemed as navigable, then the Coast Guard should educate the mariners and boaters regarding regulatory requirements and enforce the regulations after a thorough outreach is completed.
- e. This instruction creates guidance for field personnel to follow when they observe commercial vessel activity or certain recreational boating activity on a waterway that has not been subject to a navigability determination study. This field guidance equips field personnel with tools to gather information and start the process of a navigability determination and maximize the Coast Guard's workforce resources.

#### 8. GUIDANCE:

- a. When Coast Guard field unit personnel identify a waterway not listed on the D17 List of Navigable Waters that supports commercial vessel traffic (i.e. passengers, fuel, or cargo for hire, etc.) or certain recreational activity, the member should document the information on the navigability determination checklist with as much information as possible. In the case of circumstances necessitating immediate action on a waterway that has not yet been reviewed for navigability; field personnel shall act to prevent injury, loss of life, or damage to property, and inform D17 (dl) of the activity necessitating intervention.
- b. D17, Sector Anchorage, and Sector Juneau personnel may have institutional knowledge of activities on particular waterways, including: inspections, recreational boating, passenger for hire, pollution, investigations, DAPI audits, and/or charter operations. If so, they shall provide D17 (dl) with this additional input regarding the use of the waterway to ensure the waterway is labeled with the proper determination.
- c. When all the pertinent information is gathered, the field unit shall forward the checklist and supporting documents to D17 (dl) to initiate a navigability determination request. D17 (dl) will then coordinate the collection of additional data on the particular waterway, if necessary, and commence a navigability study.
- d. The navigability study will help provide D17 (dl) with information on the physical characteristics of the waterway, its history of navigation for recreational and commercial purposes, obstructions to navigation, accessibility, and improvements to navigability.

The primary purpose of the navigability study is to provide enough data so D17 (dl) can draft a determination on the navigability of the waterway and submit to the District Commander a strong package based on solid grounds to deem a waterway navigable.

- e. Once the District Commander determines whether the waterway is navigable, D17 (dl) will file and disseminate the determination. When requesting verification of whether a waterway is listed as navigable, or if it is in the process of being listed as a navigable waterway, it is highly encouraged that field personnel contact D17 (dl) so as not to duplicate efforts.
  - f. Additionally, when the navigational waterway list is updated, D17 (dl) will disseminate it to D17, Sector Anchorage and Sector Juneau, Regional Examination Centers in D17, and post the information on the District Legal website.  
<https://cgportal.uscg.mil/delivery/Satellite/DISTRICT17/Article/LEGALOFFICE>
  - g. Courtesy copies of the updated list shall be provided to other Federal, State and local partners, including the BLM, USACE, and the Alaska Department of Natural Resources Division of Mining Land & Water's Navigability Program.
9. **DISCLAIMER.** This guidance is neither a substitute for applicable legal requirements, nor a rule. It is not intended nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements. An alternative approach may be used for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, you may contact the D17 (dl), who manages the waterways navigability determination process. If your question is in regards to navigability determinations for bridge purposes, questions should be forwarded to the D17 Bridge Administration staff, D17 (dpw).
10. **QUESTIONS.** Questions concerning this guidance should be directed to D17 (dl) at (907) 463-2050, D17 (dpw) at (907) 463-2268 or to D17 Prevention - Inspection and Investigation Branch at (907) 463-2809.



N. L. CUSTARD  
Chief of Staff

Encl: (1) Navigation Determination Checklist

## Navigation Determination Checklist

Collect the information below and forward with supporting documents to D17 (dl) for a navigability determination.

- 1) Body of water name
- 2) Physical characteristics:
  - a) Type of waterway (estuary, slough, bay, river)
  - b) Length
  - c) Width
  - d) Depth at Mean High Tide
  - e) Drainage area
  - f) Discharge volumes (maximum, minimum, mean)
  - g) Cross-section profile
  - h) Fall per mile
  - i) Velocity of Flow (maximum, minimum)
  - j) Evaluation of water surface at:
    - i) Design High Water (25 or 50 year flood)
    - ii) Mean High Water (mean annual flood)
    - iii) Mean Low Water (average low observed during navigation season)
  - k) Extent of tidal influence
  - l) Tributary of or to another waterway
- 3) Past or present use of waterway by boats, vessels, barges, rafts, canoes, ect.
- 4) Past or present use of the waterway for commerce and general types, extent and period of time
  - a) Commercial freight via barge or landing craft
  - b) Subsistence
  - c) Charter/Passengers for hire
  - d) Documentation, if available.
- 5) Nature and location of significant obstructions to navigation.
- 6) Length of time the waterway is open for navigation:
  - a) Time of spring break-up
  - b) Time of fall freeze-up
- 7) Description of any known proposed or completed projects to improve the condition of the waterway for navigational purposes.
- 8) Pictures of any obstruction to navigation.
- 9) List any other information that could assist in the navigability determination, i.e., the names and addresses of anyone interviewed, whether they use the waterway or not, during the review process, along with a summary of their comments.
- 10) Navigability determinations made by other agencies and basis for decision.
- 11) Extent of jurisdiction exercised by the State of Alaska, USACE, BLM, ect.
- 12) Any background/situational information that may be pertinent; i.e. "There are numerous illegal charterers taking passengers for hire and have been doing so for several years".
- 13) A point of contact (name, address and phone number) from the submitting unit.